

COUNCIL OF EUROPE MECHANISMS IN THE FIELDS OF DEMOCRACY, **RULE OF LAW AND HUMAN RIGHTS**



Council of Europe

- ▶ sets the standards
- ▶ monitors compliance
- ▶ assists implementation

Council of Europe
monitoring

- ▶ well-established
- ▶ specialised
- ▶ independent
- ▶ non-political

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Council of Europe mechanisms in the fields of Democracy, Rule of Law and Human Rights

Defending democracy and the rule of law and safeguarding human rights and fundamental freedoms are at the core of the common values of the Council of Europe. The Council of Europe strives not only to develop common rules and standards that form a European legal area based on the principle of the rule of law and human rights, but also has established a system for enforcing these standards.

This supervision is carried out by several well-established specialised monitoring mechanisms with recognised expertise, professionalism and working methods suited to their competence. Thanks to these mechanisms, the Council of Europe is able to supervise the implementation of its standards, discern cases of non-compliance and propose solutions or address recommendations to each of its member states.

www.echr.coe.int
www.coe.int/execution

All States Parties to the European Convention on Human Rights (ECHR) undertake to secure to everyone within their jurisdiction the rights and freedoms enshrined in the Convention, and to provide effective redress in case of breaches. Respect of these obligations is ensured by the European Court of Human Rights (the Court) in response to complaints by individuals or member states.

When the Court finds in its judgments that a violation of the Convention has occurred, respondent States are bound to execute the judgments. Above the payment of the pecuniary compensation awarded by the Court, a State may need to adopt other individual measures to erase the consequences of the violations suffered by the applicant in order to achieve, as far as possible, restitution in integrum. Often the respondent state has also to take general measures in order to prevent similar violations to occur again. Such measures may be to introduce legislative changes, or to change a judicial or an administrative practice.

The Committee of Ministers of the Council of Europe supervises the execution of each and every judgment by ensuring that the necessary measures are taken.

Both elements – the interpretation of the ECHR by the Court and the effective supervision of the execution of its judgments – ensure that the systems of member states constantly improve.

Examples

Malta amended the Criminal Code, granting the Court of Magistrates the power to automatically review the merits of any person's detention and giving to detainees the right to speedy review of the lawfulness of their continued detention.

Estonia introduced a new Code of criminal procedure, establishing time-limits to pre-trial detention, setting up a mechanism whereby the lawfulness of such detention can be regularly verified and fixing time-limits to decide about the lawfulness of the detention.

Spain enhanced the safeguards as regards the composition of military courts and the procedural rules applicable by military judges sitting on such courts, with a view to avoiding the situation in which the same judge hears a case at first instance and at appeal.

www.coe.int/socialcharter

The European Social Charter is the counterpart to the ECHR with an established mechanism that ensures fundamental rights in the social field. The successive reforms and substantive additions have transformed the Charter into a highly powerful instrument, inducing change in law and practice in such areas as trade union rights, prohibition of child labour, social protection, health care, housing, integration of persons with disabilities and non-discrimination.

The European Committee of Social Rights (ECSR) is an independent quasi-judicial body which interprets the rights enshrined in the European Social Charter and rules on the conformity of legislation and practice in the States Parties. The monitoring procedure of the Charter is based on national reports submitted by the States Parties and a collective complaints procedure.

Every year the States Parties submit a report indicating how they implement accepted provisions of the Charter in law and in practice. The Committee examines the reports and decides whether or not the situations in the countries are in conformity and publishes its decisions, known as Conclusions. If a non-compliant State takes no action, the Committee of Ministers may address a recommendation to that state, asking it to change the situation.

Since 1998, complaints of violations of the Charter may be lodged with the ECSR by national and international organisations such as trade unions, employers' organisations and international NGOs. The Committee examines the complaint and, if admissible, adopts a decision on its merits.

Examples

Responding to a decision in a collective complaint, Belgium took measures to address the lack of places for highly dependent adults with disabilities in day care and night accommodation centres, i.a. by adopting a new policy framework, improving data collection, adding budgetary resources and creating additional places.

Following Conclusions by the ECSR, Estonia's Employment Contracts Act was amended and now prohibits the termination of an employment contract of a pregnant woman or of a person raising a child under three years of age.

CPT

Prevention of Torture

www.cpt.coe.int

The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment was set up to protect persons against torture and other forms of ill-treatment, thus complementing the judicial work of the ECHR. Its Committee (CPT) works under a strict rule of confidentiality and organizes visits to places of detention, in order to assess how persons deprived of their liberty are treated. These places include prisons, juvenile detention centres, police stations, holding centres for immigration detainees, psychiatric hospitals, social care homes, etc.

CPT delegations have unlimited access to places of detention, and the right to move inside such places without restriction. They interview persons deprived of their liberty in private, and communicate freely with anyone who can provide information.

After each visit, the CPT sends a detailed report to the State concerned. This report includes the CPT's findings, its recommendations, comments and requests for information. The CPT also requests a detailed response to the issues raised as part of an ongoing dialogue with the States concerned.

Example

Following the CPT's recommendation, Slovak authorities amended the Code of Criminal Procedure in a way that, prior to the first interrogation, the investigative authorities now must read and explain to the apprehended person his/her rights, and the latter must confirm on a form listing such rights that he/she has understood them.

www.commissioner.coe.int

The Commissioner for Human Rights is an independent and impartial non-judicial institution established in 1999 by the Council of Europe to promote awareness of and respect for human rights in the 47 member states. The activities of this institution focus on three major, closely-related areas: country visits and dialogue with national authorities and civil society; thematic reporting and advising on the systematic implementation of human rights; and awareness-raising activities. The Commissioner also has the right to intervene as a third party in the Court's proceedings.

The Commissioner carries out visits to member states to monitor and evaluate the human rights situation. These are focused visits for defining key problems and issuing precise recommendations. Further to the visits, country-specific reports are published and the implementation of the Commissioner's recommendations is monitored as part of an ongoing, balanced dialogue with all member states. The Commissioner pays specific attention to the defence of human rights activists and engages in close co-operation with national human rights structures. His independent status within the Council of Europe allows him unique flexibility to work with other institutions, including human rights monitoring mechanisms, intergovernmental and parliamentary committees and civil society.

Example

Following the Commissioner's recommendations, the Finnish Child Welfare Act was reformed in order to respect the best interest of the child. Decisions on custody are now taken by child welfare authorities if an agreement on the measure between the parents and the child has been reached. If there is no agreement, the administrative court takes the decision.

www.venice.coe.int

The European Commission for Democracy through Law – better known as the Venice Commission as it meets in Venice – is the Council of Europe's expert body on constitutional matters. Among the 59 member states are all EU countries with the European Commission participating in the plenary sessions. Its individual members are designated for four years by the member states, but act in their individual capacity. The Venice Commission aims to bring legal and institutional structures into line with European standards in the fields of democracy, human rights and the rule of law and also helps to ensure the dissemination and consolidation of a common constitutional heritage, playing a unique role in conflict management.

Its primary task is to provide states with legal advice in the form of "legal opinions" on draft legislation or legislation already in force which is submitted to it for examination. It also produces studies and reports on topical issues. Groups of members assisted by the secretariat prepare the draft opinions and studies, which are then discussed and adopted at the Commission's plenary sessions. The Commission does not seek to impose the solutions set out in its opinions. Rather, it adopts a non-directive approach based on dialogue, including working group visits. It meets the various stakeholders and assesses the situation in the country concerned as objectively as possible. The

authorities are also able to submit comments on the draft opinions to the Commission. The opinions prepared are generally heeded by the countries concerned.

Example

In line with the recommendations of the Venice Commission, Ukraine improved the draft amendments to its constitution, strengthening the independence of judges *inter alia* by clarifying when judges can be dismissed, by limiting the influence of the General Prosecutor on decisions affecting the career of judges and by tasking the Supreme Court to watch over coherence of the jurisdiction.

CEPEJ

Efficiency of Justice

www.coe.int/cepej/

Established in 2002, CEPEJ aims at the improvement of the efficiency and functioning of justice in member States, and the development of the implementation of the instruments adopted by the Council of Europe to this end. For this, CEPEJ promotes a detailed knowledge of the judicial systems in Europe and designs concrete tools which enable to identify any difficulties and facilitate their solution. In particular, CEPEJ analyses the results of judicial systems, identifies their difficulties, defines concrete ways to improve, upon request provides assistance to member States and if needed suggests the elaboration of new tools or legal instruments. In order to carry out these different tasks, CEPEJ prepares benchmarks, collects and analyses data, defines instruments of measure and means of evaluation, adopts reports or guidelines and promotes networks of legal professionals.

CEPEJ is composed of experts from all the 47 member States of the Council of Europe. The European Union also participates in its work, thus documenting the strengthened cooperation with the European Union in the legal field.

Example

Following CEPEJ's court coaching programmes, courts of Germany, Italy and Slovakia have implemented new practices to improve case flow management and judicial timeframes and courts of France, Italy and Slovenia, have organised user satisfaction surveys and taken the conclusions into account for organising the functioning of the court.

GRECO

Group of States against Corruption

www.coe.int/greco

The Group of States against Corruption (GRECO) was established in 1999 and all European Union countries are member states. Greco's objective is to improve the capacity of its members to fight corruption by monitoring their compliance with Council of Europe anti-corruption instruments. This is done through mutual evaluation and peer pressure. Greco helps to identify shortcomings in national anti-corruption policies, laws and regulations as well as institutional set-ups with a view to prompting the necessary reforms.

GRECO's monitoring comprises an evaluation procedure which is based on on-site visits and followed up by an impact assessment ("compliance procedure") designed to appraise the measures taken by its members to implement the recommendations emanating from country evaluations.

GRECO deals with a wide range of issues, such as anti-corruption bodies, immunities of public officials as possible obstacles in the fight against corruption, party and election campaign funding, the protection of whistleblowers, the confiscation of corruption proceeds and corruption prevention in respect of members of parliament, judges and prosecutors.

GRECO's mode of operation – its expert appraisals of the anti-corruption policies of its members, the constructive nature of its country-specific recommendations and the impact assessment designed to appraise their implementation – provides an example of a successful monitoring mechanism.

GRECO closely cooperates with other international key players, such as the relevant bodies of the European Union in order to further enhance the effectiveness of the Council of Europe's anti-corruption endeavours and to avoid overlap and duplication.

Example

A key achievement in the fight against corruption in Slovenia has been the creation and maintenance of a specialised anti-corruption body, the Commission for the Prevention of Corruption, which has become a reference model for the region in terms of independence and range of responsibilities and powers.

MONEYVAL

Anti-Money Laundering Measures and the Financing of Terrorism

www.coe.int/moneyval

Established in 1997 as the Committee of Experts on the Evaluation of Anti-Money Laundering Measures, MONEYVAL is an evaluation and peer pressure mechanism designed to achieve compliance with the relevant standards on anti-money laundering and terrorist financing. MONEYVAL is responsible for the assessment of those 28 Council of Europe member states that are currently not members of the Financial Action Task Force, as well as the Holy See, Israel and the United Kingdom Crown Dependencies of Jersey, Guernsey and the Isle of Man. MONEYVAL's objective is to improve the capacities of its states to defend themselves, the global community and the global financial system against the threats from money laundering and financing of terrorism.

This is achieved through rigorous mutual evaluation and regular and systematic follow-up by countries in response to the main recommendations of MONEYVAL reports. If countries are not in compliance with the MONEYVAL reference documents, this includes the imposition of a graduated series of steps ("compliance enhancing procedures"). The application of these procedures seeks to ensure that the international standards are implemented effectively by MONEYVAL States and that corrective action is taken appropriately within MONEYVAL's own processes. The reports are very detailed, but contain firm deliverables: ratings on compliance with and the effectiveness of the implementation of each of the 49 major global standards, and action plans for necessary improvements. All MONEYVAL reports automatically become public documents and are published on the MONEYVAL website.

Example

Following MONEYVAL's recommendations, Hungary brought its ML/FT offences in line with international standards, resolved the deficiencies regarding the operational independence of the Hungarian Financial Intelligence Unit and conducted a national risk assessment.

www.coe.int/ecri

The European Commission against Racism and Intolerance (ECRI) is entrusted with combating racism, racial discrimination, xenophobia, anti-Semitism and intolerance in the light of the European Convention on Human Rights, its additional protocols and related case-law. It is composed of independent members and carries out regular country monitoring. The resulting country reports are published following a confidential dialogue with the national authorities. ECRI reviews member states' legislation, policies and other measures, including their application, implementation and effectiveness. ECRI then proposes concrete and practical advices on how to tackle problems of racism and intolerance in the country. Under an interim follow-up procedure it requests priority implementation of three specific recommendations within two years following the publication of the report. ECRI elaborates also General Policy Recommendations addressed to the governments with detailed guidelines which policy-makers are invited to use when drawing up national strategies and policies in a variety of fields.

Example

In accordance with ECRI's recommendation, Greece introduced a law on the implementation of the principle of equal treatment regardless of racial or ethnic origin, religious or other beliefs, disability, age or sexual orientation, prohibiting direct and indirect discrimination. The Greek Ombudsman was entrusted with monitoring compliance.

www.coe.int/minorities

The Framework Convention for the Protection of National Minorities aims at advancing minority rights in fields ranging from media and education to discrimination and participation. The Framework Convention is coupled with a dynamic monitoring mechanism, designed to foster constructive dialogue with all the parties concerned. The monitoring mechanism involves country visits and country specific opinions by the Advisory Committee of independent experts. These form the basis for the Committee of Ministers' conclusions and recommendations. All States Parties are treated on an equal footing and direct dialogue between the Advisory Committee and the representatives of national minorities and civil society is pursued during the visits and follow-up activities.

The monitoring process has revealed shortcomings in the implementation of some important principles in the Framework Convention. The dialogue initiated with the authorities and minorities has produced significant advancements in legislative and institutional terms but also improvements in actual practices, having direct impact on the situation of national minorities.

Example

Following FCNM-recommendations, the Bulgarian Parliament adopted the Protection against Discrimination Act together with the establishment of the Commission for Protection against Discrimination, thus providing a clear legal anti-discrimination basis, including in the field of employment.

www.coe.int/minlang

The European Charter for Regional or Minority Languages is the European legal frame of reference for the protection and promotion of languages used by traditional national and ethnic minorities. At present, the Charter has been ratified by 25 states. The Charter obliges its States Parties to actively promote the use of minority languages in virtually all domains of public life: education, courts, administration, media, culture, economic and social life, and trans-frontier co-operation. The Charter provides for a monitoring mechanism to evaluate at three-yearly intervals how the treaty is applied. The Committee of Experts is responsible for carrying out this monitoring mechanism. Its role is to evaluate a State Party's compliance with its undertakings, to recommend improvements in legislation, policy and practice, and to report to the Committee of Ministers.

Example

Following the expert committee's report to facilitate the use of Sami before judicial authorities, Norway established the Inner Finnmark court as the only bilingual court serving the Sami language administrative area.

www.coe.int/trafficking

The Convention on Action against Trafficking in Human Beings entered into force in 2008 and currently has 40 members. As the first European treaty in this field and the only independent human rights monitoring mechanism, it is a comprehensive instrument focusing mainly on the protection of victims of trafficking and the safeguarding of their rights, but also aims to prevent trafficking and to prosecute traffickers. The Convention is not restricted to Council of Europe member states; the European Union also has the possibility of becoming party to the Convention.

The monitoring mechanism of the Convention consists of two pillars: the Group of Experts on Action against Trafficking in Human Beings (GRETA), a technical body, composed of independent and highly qualified experts of States Parties, and the Committee of Parties. GRETA adopts reports evaluating measures taken by parties to implement the Convention. On the basis of GRETA reports and conclusions, the Committee of the Parties adopts recommendations on measures to be taken in order to implement GRETA's conclusions.

GRETA's first evaluation round lasts from 2010 to 2013 and provides an overview of implementation of the Convention by each of the parties.

Example

Following GRETA's recommendation to readjust criminal law provisions concerning trafficking in human beings, Austria amended its Criminal Code, i.a. through a more comprehensive enumeration of forms of exploitation, an increase of penalties, including an increase in the maximum term of imprisonment for trafficking of children under 18.

Besides the treaty and resolution-based monitoring mechanisms, the Council of Europe also maintains post-accession monitoring activities carried out by the Committee of Ministers, the Parliamentary Assembly and the Congress of Local and Regional Authorities.

“The Council of Europe provides benchmarks, indicators and concrete assistance... The Council of Europe promotes human rights through legally binding conventions and monitors member State’s implementation of these standards through specific independent specialised monitoring bodies. Cases of non-compliance are determined by these monitoring bodies and solutions on how to remedy them are proposed to member States.”

Thorbjørn Jagland
Secretary General
Council of Europe

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