



Council of Europe independent human rights mechanisms and institutions

Introduction

Over the past fifty-five years, the 46-member Council of Europe has developed a considerable human rights *acquis*, encompassing not only *standards* on civil and political rights, social rights, minority rights, treatment of persons deprived of their liberty and

the fight against racism, but also active European *monitoring* of respect of these standards by its member States. Such monitoring is carried out by several well-established human rights bodies with recognised expertise and professionalism, both on a country-by-

country basis (including through country visits and on-the-spot investigations) and, increasingly, also thematically, with the common feature that these bodies are all independent.

The European Convention on Human Rights

All States Parties to the European Convention on Human Rights (ECHR – adopted in 1950) undertake to secure to everyone within their jurisdiction the civil and political rights and freedoms enshrined in it and to provide effective domestic remedies in case of alleged breaches. The control of the respect of these obligations is ensured by the European Court of Human Rights in response to complaints by individuals or member States. Any individual within the jurisdiction of one of the States Parties who alleges to have been the victim of a violation of a right encompassed in the ECHR is entitled to lodge an application with the Court provided certain requirements laid down in the ECHR are met (prior exhaustion of domestic remedies, application lodged within six months from the impugned decision, victim status, etc.).

The Court (set up in 1959) is composed of a number of judges equal to that of the States Parties. They are elected by the Parliamentary Assembly

of the Council of Europe and sit on the Court in their individual capacity and do not represent any State. They cannot engage in any activity which is incompatible with their independence or impartiality. The Court issues judgments on the existence of a violation of the Convention. These judgments are legally binding on States Parties and must, therefore, be executed by them. The correct execution of each and every judgment is controlled by the Committee of Ministers of the Council of Europe

The ECHR has always been a fundamental element of democratic security in Europe and of European cooperation and integration. The evolutive interpretation of the ECHR by the European Court of Human Rights, the addition of new rights and freedoms through new protocols and the effective supervision of the execution of the Court's judgments, including the taking of all legislative and other actions necessary to remedy violations found, ensures a constant improve-

ment of the legal systems of the member States – the Committee of Ministers of the Council of Europe regularly controls the taking of several hundreds of legislative and other reforms to ensure compliance with the ECHR standard as identified in judgments of the Court. Indeed, a finding by the Court of a violation of the Convention often require the respondent State, and sometimes even other States, to take legislative or other regulatory measures to comply with the Court's judgment and the domestic courts to adapt their case-law. In some instances, the introduction of an application before the Court may in itself prompt or expedite amendments to national legislation and regulations or changes in the domestic courts' case-law. Judgments may also require the respondent State to pay just satisfaction to the applicants and/or to adopt concrete measures in order to redress the violations found (e.g. release from custody, re-opening of proceedings, restitution of property).

The European Social Charter

For more than thirty-five years, the task of the European Committee of Social Rights (ECSR) has been to interpret the fundamental social rights enshrined in the European Social Charter (the Charter) and to decide whether legislation and practice in the States Parties are in conformity with the commitments undertaken. Its fifteen independent, impartial members are elected by the Committee of Ministers. Successive reforms and substantive additions have radically transformed the Charter into a highly powerful instrument, inducing change in law and practice in such areas as trade union rights, child employment, social and health protection, equality and opportunity for persons with disabilities.

The monitoring procedure operated under the Charter is based on national reports submitted by States Parties and collective complaints. The ECSR examines national reports and decides whether or not the situations in the countries concerned conform to the Charter. If a given State takes no action on a Committee decision to the effect that it does not comply with the Charter, the Committee of Ministers addresses a recommendation to that State, asking it to change the situation in law or practice. The Committee of Ministers' work is prepared by a Governmental Committee comprising representatives of the governments of the States Parties to the Charter, assisted by observers representing European employers' organisations and trade unions.

Under a protocol opened for signature in 1995, which came into force in 1998, complaints of violations of the Charter may be lodged with the European Committee of Social Rights, by international organisations of employers and trade unions as well as certain other NGOs.

The Committee examines the complaint and, if admissible, takes a decision on the merits of the complaint, which it forwards to the parties concerned and the Committee of Ministers in a report, which is made public within four months of its being forwarded. Finally, the Committee of Ministers adopts a resolution. If appropriate, it may recommend that the state concerned take specific measures to bring the situation into line with the Charter.

The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

In recent years the Council of Europe's efforts to guarantee human rights have laid increasing emphasis on preventing violations. Article 3 of the European Convention on Human Rights provides that "no one shall be subjected to torture or to inhuman or degrading treatment or punishment". This article inspired the drafting, in 1987, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

The Convention provides non-judicial preventive machinery to protect persons deprived of their liberty by a decision of the authorities. It is based on a system of visits by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). The

CPT's members are independent and impartial experts elected by the Committee of Ministers. One member is elected in respect of each Contracting State.

The CPT visits places of detention (e.g. prisons and juvenile detention centres, police stations, holding centres for immigration detainees and psychiatric hospitals), to see how persons deprived of their liberty are treated and, if necessary, to recommend improvements to States.

After each visit, the CPT draws up a report setting out its findings and the recommendations which it considers necessary to improve the situation of persons deprived of their liberty. This confidential report is sent to the State concerned. The report includes a request for a written response from the

State, setting out measures taken to implement the recommendations made, reactions to comments made and replies to requests for information. The CPT's findings are confidential, but a State may request publication of the report and of its comments in response.

Over its years of activity in the field, the CPT has developed standards relating to the treatment of persons deprived of their liberty through its annual general reports in such areas as police custody, imprisonment, health care services in prison, foreign nationals detained under aliens legislation, involuntary placement in psychiatric establishments, juveniles deprived of their liberty, women deprived of their liberty, training of law enforcement personnel or combating impunity.

The Framework Convention for the Protection of National Minorities

The Framework Convention for the Protection of National Minorities, which came into force in 1998, now has 36 States Parties. The Framework Convention is unique in several respects, in particular in that it sets out in legally binding form the most extensive list of principles on the matter and also establishes a new type of moni-

toring mechanism designed to foster constructive dialogue with all the parties concerned.

The evaluation of the adequacy of the implementation of the Framework Convention by the Parties is carried out by the Committee of Ministers, which is assisted by the Advisory Committee. The Advisory Committee is

composed of 18 independent and impartial experts appointed by the Committee of Ministers. The States Parties are required to submit a report containing full information on legislative and other measures taken to give effect to the principles of the Framework Convention within one year of the entry into force. These State reports

are made public and examined by the Advisory Committee, which is to prepare an Opinion on the measures taken by each reporting State. Having received the Opinion of the Advisory Committee and the comment from the respective State, the Committee of Ministers is called on to adopt conclusions and, where appropriate, recommendations in respect of the State Party concerned.

The collective nature of the monitoring mechanism, which is guaran-

teed by the role of the Committee of Ministers, and the recourse to independent expertise in the form of the Advisory Committee's country-by-country Opinions ensures that all the States Parties are treated fairly and placed on an equal footing. Links with the representatives of national minorities and with civil society are guaranteed by the working methods of the Advisory Committee, which makes systematic visits to the States Parties that

enable direct contacts to be established with the main bodies concerned.

Dialogue initiated with national authorities in connection with the monitoring mechanism has produced significant advances in several cases. These have concerned not only improvements in legislative and institutional terms but also actual practices, where there has been a very direct impact on the situation of national minorities.

The European Commission against Racism and Intolerance

The European Commission against Racism and Intolerance (ECRI) is an independent human rights monitoring body specialised in questions relating to racism and racial discrimination. It is composed of independent and impartial members who are appointed on the basis of their moral authority and recognised expertise in dealing with racism, xenophobia, antisemitism and intolerance.

In accordance with its Statute, ECRI carries out country-by-country monitoring activities, elaborates

general policy recommendations and develops relations with civil society.

ECRI's country-by-country monitoring deals with all member States of the Council of Europe on an equal footing. The work takes place in 4/5 year cycles, covering 9/10 countries per year. The working methods for the preparation of the reports involve documentary analyses, a contact visit to the country concerned, and a confidential dialogue with the national authorities before the publication of the report. The reports contain an analysis of the

situation in the country in question as concerns phenomena of racism and intolerance and recommendations to the government concerned as to how to tackle the problems identified.

The two other aspects of ECRI's programme are the elaboration of General Policy Recommendations addressed to all member states (guidelines for drawing up national strategies and policies) and the development of relations with civil society (information and awareness raising activities).

The Council of Europe Commissioner for Human Rights

The Commissioner for Human Rights is an independent institution within the Council of Europe. The Commissioner's mandate is contained in Resolution (99) 50, which was adopted by the Committee of Ministers on 7 May 1999, at its 104th Session. It includes the following tasks:

- to identify shortcomings in the law and practice of member States with regard to human rights;
- to promote the effective implementation of human rights standards in member States and

to assist them in remedying shortcomings;

- to promote education in awareness of human rights;
- to encourage the creation of national human rights structures where they do not exist and facilitate their activities where they do.

In the fulfilment of this mandate the Commissioner presents regular reports to the Committee of Ministers and the Parliamentary Assembly of the Council of Europe on the effective respect for human rights in individual member States containing recommen-

dations based on the conclusions of official visits. The Commissioner also issues opinions on specific legislative shortcomings and makes recommendations to individual member States on specific human rights issues. In addition, the Commissioner organises seminars and conferences on topical human rights concerns and promotes the activity and establishment of ombudsman and human rights institutions through the organisation of round-tables and regular dialogue with national authorities.

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