Equal Access to Justice in the Euro-Mediterranean Region: Report from the conference at the Faculty of Law, Uppsala University 27-28 April 2001

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Preface

Between 27-28 April 2001 a conference at the Faculty of Law, Uppsala University, Sweden, on the theme ”Equal Access to Justice”. The conference, approved by the Euro-Mediterranean Committee for the Barcelona Process and the joint programme of the Swedish, Belgian and Spanish Presidencies for external relations in the field of Justice and Home Affairs, was sponsored financially by the University of Uppsala, the European Commission and the governments of Denmark, Finland and Sweden and supported by Algeria, Morocco and the Palestinian Authority. It followed on from an earlier conference organised by Spain and Morocco in Marrakech.

The preliminary report from the conference was published on the internet in May 2001. It was written by Professor Iain Cameron and Dr. Marc Schade-Poulsen, with the assistance of Professor Göran Lysén. It was circulated to an ad hoc reference group of participants chosen by the organisers. This, final, version makes only minor editorial amendments to the preliminary report. However, it includes summaries of the speeches to the plenary sessions, the presentations made to the working groups and the conclusions of the working groups. The summaries have been drafted on the basis of the tapes of the conference and the editors' notes. These were circulated to the speakers for comment. However, it should be stressed that the main editor of the final report, Professor Iain Cameron, bears responsibility for the summaries. The present report also contains the bullet (discussion) points for the working groups and a list of the participants in the conference.

Since the conference was held, the prospects for improving equal access to justice generally in the Euromediterranean area cannot be said to have improved. The terrorist atrocities committed on September 11th have evoked a powerful anti-terrorist response in the region and elsewhere. But the perpetrators of terrorism must not be allowed to set the reform agenda. A purely security based approach to Euro-Mediterranean relations will seriously harm the cause of human rights and democracy. The founding principles of the Euro-Mediterranean Partnership (as outlined in the Barcelona Declaration and Article 2 of the Association Agreements re-affirming respect for human rights as the basis of all international relations) must be remembered. While legitimate security concerns must be taken into account, repressive measures will not solve the root causes of terrorism. The glaring inequalities and injustices that characterise the world today and the pursuit of self interest, especially by the world's wealthiest and most powerful states, have contributed to the rise of

intolerance and terrorism. Individuals, and whole peoples, have been and are being denied some of their most basic rights – to life, human development, self-determination and access to justice. These fundamental and unacceptable grievances must be addressed by the international community. The goal of equal access to justice is as important today, if not more so.

Equal Access to Justice in the Euro-Mediterranean Region: Report from the conference at the Faculty of Law, Uppsala University 27-28 April 2001

Introduction

The conference was opened by the Swedish Minister for Justice, Mr. Thomas Bodström and the Moroccan Minister for Justice, Mr. Omar Azziman. The participants, over 70 government officials, academics and representatives of civil society from all 27 Euro-Mediterranean countries, discussed in six workshops and four plenary sessions, questions relating to the role of the judiciary, the courts and the administration of justice; the role of national human rights institutions, ombudsmen and mediators; and the role of civil society. The participants also discussed issues relating to the reform processes of the judiciary, human rights education and the training of law enforcement personnel, and the role of regional human rights mechanisms. A number of general problems as regards access to justice were identified, and concrete proposals were made for reform.

The conference was intended to foster, and hopefully has succeeded in fostering, a momentum for dialogue between main actors in the region (governments, academics and civil society representatives) on issues related to good governance, the rule of law, transparency and justice in the Mediterranean, all regarded as issues of priority in the Barcelona process and all an explicit or implicit part of the development of a regional justice and home affairs program as proposed in the Commission Communication, 'Reinvigorating the Barcelona Process' and in the 'Common Strategy for the Mediterranean' by the European Council.

Describing Access to Justice

The participants in the Uppsala conference agreed upon a concept of Access to justice that covers measures designed to improve the respect for the rule of law and human rights by the state, in particular measures to improve the quality of laws and the quality of justice. It means attempting to ensure that infringements of individuals' fundamental civil, political, economic, social and cultural rights (particularly infringements affecting the most disadvantaged sections of society) are brought to the attention of the courts, or alternative independent

mechanisms such as Ombudsmen or National Human Rights Institutions, and corrected in an effective manner.

Moreover, it also refers to measures to improve the access (through legal aid etc.) of the public to the judicial system, particularly the most disadvantaged sections of society, measures to improve the confidence of the public in the judicial system, measures to ensure (ultimately) some form of judicial determination of all disputes between the state and the individual, measures to promote the independence, impartiality, efficiency (streamlining etc.) and transparency of judicial determination of disputes and measures to ensure due process and fair trial. It also refers to the fostering of alternative methods (such as mediation and conciliation) for solving effectively societal disputes between individuals, without the need for the confrontation, expense and delay involved in judicial proceedings.

General Findings of the Conference

The conference discussions were built on the assumption that the question of security and stability in the North and the South of the Mediterranean is strongly interlinked and related to a strengthening of the judiciary, the respect for human rights and of the rule of law, and as such the main streaming of human rights into all fields of justice and home affairs. However, these aspects of justice and home affairs cooperation are so far lacking in the Euro-Mediterranean process.

Basically, the conference recognised the interdependence of national and regional levels of cooperation and the conclusions advocated the need for an operational inventory of problems relating to access to justice in the region, a continuing dialogue both between high officials of the Euro-Mediterranean Partnership States on access to justice, and between these officials, independent experts and civil society. Furthermore, the conference proposed the creation of a forum for dialogue and the adoption of certain specific measures to forward this dialogue.

There was consensus in the Uppsala conference that there was already sufficient clarity as to both problems and the desirability and feasibility of certain types of solutions, even though there are naturally major variations between states within the region, such that operational measures could and should be taken pending the completion of the inventory. These two areas concern the independence, impartiality, transparency and effectiveness of the courts and the independence, mandates and powers of national human rights institutions, including giving these bodies the sufficient human, technical and financial resources to fulfil their role.

Specific Proposals for Action

The following specific proposals have been formulated by the conference organisers on the basis of the reports from the workshops and the general findings of the conference which were presented and discussed at the plenary sessions.

1. A standing **working group** on access to justice should be established by the EuroMed governments (hereinafter, called the Justice group). This group should be composed of officials within the field of justice nominated by the governments and should be supported by an **advisory group** of independent experts from academia, national human rights institutions and NGOs. The members of the advisory group should be appointed by the European Commission after consultation with the Euro-Mediterranean Partnership Committee. The advisory group should be given the appropriate means and opportunities to provide relevant and substantive inputs to the Justice group and any ad hoc expert official working groups which might be established to implement specific projects agreed by the Commission and Partnership states (see annex 1).

2. The Commission, assisted where appropriate by the advisory group should regularly evaluate MEDA programs and the process of setting-up a free trade zone in relation to their impact on human rights promotion and protection, in particular in relation to the access to justice of the poor.

3. The Uppsala conference proposes that resources be allocated by the Member states and the European Commission to enable the cooperation between EU and non-EU partner states to work on training, law reform and capacity building relating to justice sector institutions, in particular, courts and national human rights institutions.

The projects should be specific, realistic activities that, moreover, should be sustainable and evaluable. Examples of such projects could be:
-the identification of weaknesses in the statutory mandate or powers of a national human rights institution with a view to law reform,
-the identification of inefficiencies in judicial or court administrative procedures with a view to streamlining these procedures and reducing delays,
-providing training for judges in applicable human rights norms relating to independence etc. of courts or creating simple and effective mechanisms for the dissemination for courts, prosecutors and defence lawyers, of applicable regional and international case law relating to applicable human rights norms - both of these activities being aimed at heightening

awareness of the importance and relevance of these standards and of incorporating these standards in the legal culture.

One particularly promising form of cooperation could be "twinning" of institutions. In order to avoid duplication or competing programmes, and to foster efficient use of resources, a coordination mechanism should be established, either by the Euro-Mediterranean Committee or by the Commission. Twinning should imply relatively long-term secondment (minimum 12 months) of experts to bring about longer-term and lasting change and cooperation. Their purpose of such twinning would be to build upon existing best practices in the region and applicable international norms relating to the impartiality etc. of courts and the mandate etc. of national human rights institutions.

4. A fundamental goal of any measure to improve access to justice, whether this is seen in a narrow or broad sense, is to improve the receptiveness of the justice system to individuals. Thus, an integral part of such cooperation as proposed above would be entail **consultation with, and involvement of, local civil society**.

Annex 1

The Advisory Group

1. The advisory group should be given resources to produce, within two years, a more detailed catalogue of the general problems, potentials and priorities related to access to justice in the region. In producing this report, the advisory group should build upon existing reports in the area (e.g. by UN supervisory bodies), the conclusions of the Uppsala conference and discussions in the earlier Marrakech conference.
2. The advisory group should identify which problem areas can most efficiently be addressed on 'a country basis' and which should be addressed on a regional level.
3. It should propose methodologies and strategies to address identified problem areas, such as strategies relating to the training of law enforcement personnel and mainstreaming of human rights education in broad institutional fields, placing appropriate emphasis on gender equality.
4. It should also propose ways to strengthen in general human rights culture and gender equality within the justice sector, to strengthen the role of civil society in pressing for reform and the function of civil society in creating public awareness about the need for a transparent, just and effective legal system.
5. It should address the issue of benchmarking and whether more permanent structures should be established in order to address problems related to the access to justice in the region such as bilateral structures within the framework of the association agreements or expert committees under the Euro-Mediterranean Committee for the Barcelona Process (in addition to the Justice group set out above).
6. The report should be submitted to the Justice group and presented at a meeting of the Euro-Mediterranean Committee for the Barcelona process and to the Commission in order to enable these bodies to take informed decisions recommending and financing concrete measures.

Summary of welcome address, Thomas Bodström, Swedish Minister of Justice

The seminar was opened by Thomas Bodström, Swedish Minister of Justice, who welcomed all the participants to the conference and underlined the importance of the conference for its implications for the legal systems in the region. He believed that European cooperation on judicial issues was both a pre-condition for the rule of law and the guarantee for human rights and he stressed that dialogue within the Euro-Mediterranean region on justice and home affairs issues must indeed take place in order to facilitate judicial cooperation both nationally and internationally.

He explained that the Commission in this context is developing a regional Mediterranean programme on these issues, which the Swedish presidency intends to discuss, at the June meeting on Justice in Montpellier for High Officials that would be attended by the French and Swedish Ministers of Justice. He added that this dialogue will continue during the forthcoming EU presidencies since it is essential to further understanding on the strengthening of the rule of law, including access to justice, legal assistance, fair trials and support for witnesses.

Thomas Bodström stressed that the rule of law is the foundation of every democratic society and of a properly functioning judicial system built on efficiency, liability and political independence. Indeed, public access to justice depends on an efficient administration, on a non-corrupted legal system and on good relations between government and the Court.

The Minister of Justice welcomed the fact that issues like these would be discussed during the conference, as well as the role of civil society and the role of human rights institutions and ombudsmen, and he underlined that civil society has a role to assist citizens in learning the meaning of justice.

Finally, Thomas Bodström expressed his hope that the conference would bring forth different views on promotion of education and training to strengthen the rule of law.

Summary of welcome address, Lena Marcusson, Deputy Vice Chancellor of Uppsala University

Lena Marcusson welcomed all the participants to the conference on Equal Access to Justice at the University of Uppsala, in her capacity of deputy vice chancellor of the University and of

professor of law at the Faculty of Law, the organisers of the conference. Uppsala University, the oldest university in the Nordic states, has a long history of commitment to international law, peace and development.

She underlined the importance in bringing people from different countries and varying environments together working for human rights and peaceful cooperation and the fact that the participants were representatives of governments and NGOs, as well as academia, coming from different countries of Europe and the Euro-Mediterranean region. This would give the conference an unique opportunity to benefit from their different competences and to shed light on the issues related to the question of international justice, just societies and international peace.

The Deputy Vice-Chancellor concluded by expressing her hopes that the meeting would be a milestone for coming partnerships and would contribute to the reduction of intolerance, racism and war.

Summary of opening speech, Abdelaziz Bennani, President of EMHRN

Mr. Abdelaziz Bennani opened his statement with a summary of the purpose of the Euro-Mediterranean Partnership, which is to establish peace and prosperity in the Mediterranean basin through dialogue and co-operation. The Contracting Parties have committed themselves to respecting the UN Charter and the Universal Declaration of Human Rights, and to promoting democracy in their home countries. Therefore, it is necessary to develop the co-operation between governments and civil society.

Mr. Bennani recalled that EMHRN was created in 1997 with the purpose of reinforcing this co-operation. Amongst other things, the network has helped to protect human rights defenders and has promoted legal guarantees for freedom of expression, freedom of association and due process in the region. He stressed that the Barcelona Process had not been furthered by the current situation in the occupied Palestinian territories and by the abstention of the European states on the resolution concerning these territories before the Commission of Human Rights. This explains the absence of certain participants from this conference. Therefore, people's confidence in the partner governments is a particularly pressing issue at this time.

Mr. Bennani underlined the importance of this conference to Euro-Mediterranean co-operation. He stressed the fact that reform of justice is imperative in these countries because

the realization of the Barcelona Declaration's objectives occurs through this reform. Among other issues, the working groups at this conference will address guarantees for the independence of the judges from political authorities as well as the role of institutions of human rights and civil society. He furthermore underlined the importance of defining the failures of justice in order to address them with the aid of politicians and civil society.

Bennani recalled that EMHRN had welcomed the statement issued by the European Commission entitled "A new impetus for the Barcelona Process" which proposed a regional programme on justice. Bennani expressed the hope that the recommendations put forward at the beginning of the conference would be incorporated in this programme.

Finally, Bennani welcomed the recent co-operation between EMHRN and the University of Uppsala and expressed a hope that the recommendations of the conference would strengthen Euro-Mediterranean co-operation.

Summary of speech, Omar Aziman, Moroccan Minister of Justice

In the beginning of his speech, the Moroccan Minister of Justice mentioned the presence in the conference room of participants from the Marrakech meeting, organised by Morocco and Spain in February 2000, on the subject of the Euro-Mediterranean judicial systems within the framework of the MEDA programme.

He asserted with conviction that in his country, access to justice is a condition for the strengthening of the rule of law and the democratisation of society as well as the modernisation and economic development of society.

Reform of the legal system is a priority for Morocco which aims to ensure independent justice and ethical treatment in the justice system, to upgrade and modernise the judicial apparatus and to adapt the prisons to human needs. Judicial security is in fact indispensable to economic progress which underlies the struggle for development.

The role and function of the judicial system is going through a change in mentality, which is leading to improved working conditions for the judges, the use of new technologies, a redefinition of the educational needs of judicial personnel and the creation of new specialised courts of law. Finally, the proper role and functions of the judicial system are becoming more open for discussion, both on a national and international level. Comparison of judicial

systems permits contributing to the elaboration of these changes by way of a cooperative dialogue.

Omar Aziman added that his ministry concluded a co-operation agreement with France in December 1997 and with Spain in June 1998, which falls within the field of administration of justice and concerns co-operation between judges. He underlined the importance of equality of the citizens before the law. To achieve this goal, judges need to be better distributed among the jurisdictions, and the number of specialised courts of law needs to be raised following the 1998 creation of commercial courts and the 1995 establishment of administrative tribunals. In this way, Morocco is going to simplify the judicial procedures by revising first the criminal law and then the civil law. Morocco has already established information centres at the courts in order to give advice to the defendants.

Furthermore, the Ministry works with the Moroccan bar associations in order to restructure the legal assistance to destitute people. The Ministry has likewise launched an internet site and published brochures to inform the citizens of legal questions. Omar Aziman indicated that he had also set up a mechanism for penal justice mediation under the framework of the revision of the criminal law, and that he would be setting up another mechanism for civil law procedures in order to make the judicial system more flexible in the context of rules for small claims litigations.

Finally, the Moroccan Minister of Justice declared that his country is committed to international cooperation in promoting the modernisation of judicial systems.

Summary of speech, Francisco Acosta, External Relations Directorate of the European Commission

In the introduction to his speech, Francisco Acosta explained that he will discuss the importance of the modernization of judicial systems in the Southern rim of the Mediterranean. To that effect, he first briefly explained the relationships of the EU with its Mediterranean partners. The point of departure of this collaboration is the Barcelona conference of November 1995, which stated that common objectives should be discussed with the implication of all the participating states. These objectives are the cooperation to establish peace, prosperity and stability in the Mediterranean region, not only economical but also social and cultural which constitutes the originality of the partnership in its efforts to strengthen regional cooperation and integration.

Thus civil society exchange developing of human resources and inter-cultural understanding is dealt with in ”the third basket of the Barcelona process”. The third one is applied through regional programmes like Euromed Youth, Euromed Heritage and Euromed Audiovisual, which all together represent 70 million Euro.

Francisco Acosta stressed the fact that these activities do not cover all the priorities of the Barcelona Declaration and that a work programme in the fields of migration, the fight against terrorism, drug trafficking, organized crime and illegal immigration, and judicial cooperation is yet to be established. Judicial cooperation implies that the partner countries have to accept the general principle of the rule of law, although they naturally decide themselves how to organize their own judicial systems.

Francisco Acosta insisted on the fact that a judicial system that guarantees impartiality and protects the rights of its citizens is one of the main bases for the stability of a country. He also stressed that the different areas of law within a judicial system should be equal in terms of the ”quality” of the system, and not only deal with issues such as the modernization of commercial judicial systems.

That is the reason why the Justice and Home Affairs (JHA) domain has become important in the Euro-Mediterranean context. In June 2000, The Feira European Council endorsed the EU’s Common Strategy on the Euro-Mediterranean region, which included a chapter on JHA. The European Commission has since then produced a document in order to launch the discussion on a regional programme for JHA within the partnership. Regarding judicial cooperation, it was proposed to improve the knowledge of legal systems, to promote transparency and modernization in the legal systems of the partnership, to try to solve problems related to civil law, and finally to promote gender equality.

In conclusion, Francisco Acosta underlined that the conference was the first initiative after the launching of the program and he expressed his hope that it would provide inputs to the working program, being the most delicate program of the Partnership.

Summary of speech, Khader Shkirat, Director of LAW - Palestinian Society for the Protection of Human Rights and the Environment

At the beginning of his speech, Khader Shkirat stated that he had been asked to talk about the role of the civil society in the Euro-Mediterranean region in guaranteeing access to justice. But due to the situation in Palestine, he had decided to change his topic and talk about the meaning of justice for the Palestinians. He furthermore stressed that because of the restrictions on movement caused by the Israeli occupation, some of his colleagues had not been able to attend the conference.

Khader Shkirat went on to emphasize that talking about justice for the Palestinians seems absurd as they have been living in injustice during the Israeli occupation. To that extent, he explained with two examples why he thinks justice is not being applied in Palestine. The first was a Palestinian child who was shot dead in 1996 by an Israeli settler. The settler was arrested and released on bail, and he was only sentenced to six months community service for the murder of the child. The second example was a Palestinian girl who tried to stab an Israeli soldier, and who was sentenced to six and a half years in jail. On this basis, Khader Shkirat believes that for fifty four years now, the Palestinians have been victims of the impunity of both the Jewish community and the state of Israel.

Khader Shkirat underlined that four hundred Palestinians have been killed since the Intifada began last September, more than fifteen thousand civilians have been wounded (40% of these are children) and 25% have been disabled. He expressed his belief that the Oslo process has produced apartheid, and that the international community has encouraged this practice. He gave as an example the water system: 90% of the Palestinian water resources are used by the Israeli settlers and therefore, many Palestinians are suffering under a lack of drinking water. Regarding freedom of movement, he explained how the Palestinians cannot go from the Gaza strip to the West Bank and vice-versa.

According to Shkirat, the main obstacle to building the Euro-Mediterranean partnership is the Israeli military occupation. To that extent, he recalled the fact that the Human Rights Commission voted no to a human rights resolution last October. On these grounds, he stated that the European governments use human rights issues in political bargaining and that their objective is to unify the Europeans rather than to promote human rights. He expressed his conviction that if the Palestinian human rights groups lose their credibility among the Palestinians, the EU will not help them regain it. The Palestinians therefore have to continue applying pressure in order to make human rights violators accountable for their acts, which the international community is at the moment failing to do. To this end, Khader Shkirat recommended activating the human rights dimension not only of the Barcelona process, but

also of partnerships like the EU-Israel Association Agreement. He finally expressed his hope that this issue will be widely discussed during the conference.

Summary of Workshop 1: The Administration of Justice Rapporteur George Hazboun, Professor of Law, Jordan

The workshop started with a paper presented by Dr. Hisham Fawzi entitled ‘Courts and the Administration of Justice in Egypt - A Regional Model’. The speaker clarified certain points mentioned in his paper concerning the Egyptian judicial system, and proposed a method for reviewing the constitutionality of laws with retroactive effect in the fields of taxation, penal and civil law. He then called for the adoption of the Egyptian constitutional court model (as a constitutional court to protect human rights) within the regional South Mediterranean zone.

This introduction was followed by an open dialogue between the participants which focused on judiciary reforms in the countries concerned. The major points invoked were the structure of the judicial system with regards to the potential of effecting more independence, impartiality and transparency and the question of how to mobilise all means in support of the judges’ work.
It was stressed that democracy is the precondition for guaranteeing the independence of justice.

The participants considered the following recommendations and reforms in the structure of the judicial system in order to guarantee the independence and impartiality of the judges and access to justice.

* International norms on human rights must be respected. Such norms are compulsory and must be respected even if they contradict the domestic constitution. In particular, the standards of impartiality etc. in Article 14 of the International Covenant on Civil and Political Rights must be applied in full.
* Steps should be taken to facilitate free access to relevant international judicial and national court decisions and to translate these to national languages
* Steps should be taken to facilitate access to justice of the poor, and/or the creation of an organ to represent the poor in bringing cases. In particular, the access of individuals to present cases before Constitutional courts should be facilitated.
* Ancillary organs to the courts, eg civil law enforcement agencies/baliffs should be strengthened and provided with the necessary means to work effectively.
* National court decisions should be publicized in a form accessible to the public.

* The speed of drafting of court decisions should be increased, by means of effectivization of routines and computerisation, including facilitating access to IT systems
* All emergency laws and courts of exceptional nature should be abolished.
* The decentralisation of the court systems should be encouraged.
* The adoption of ADR (alternative dispute resolutions) methods should be encouraged, although these must respect the principle of 'innocent until proven guilty'.
* A permanent committee of experts should be established to survey the evolution and development of international standards relating to the impartiality and independence of the judiciary and putting it under the disposal of the European and Mediterranean states.
* Full legal and financial security for the judges should be established and investments made so as to facilitate continuous training and education throughout their careers.

Summary of Workshop 2: Human Rights Institutions, Ombudsmen and quasi-legal institutions Rapporteur: Stefan Lütgenau, Bruno Kreisky Foundation, Austria

Workshop 2 pointed out the importance of independent institutions that could bridge the existing gap between the civil society and the national and supra-national (EU) governments and legislative and executive bodies.

The debate focused on the role of National Human Rights Institutions (with an introductory presentation by the Director of the Danish Institute for Human Rights, Morten Kjærum) and Ombudsmen, followed by a comparative analysis of the situation in five countries (Denmark, Morocco, UK, Austria, Turkey). The documentation distributed in advance of the workshop included a paper by Ilkka Rautio, the chief legal advisor to the Parliamentary Ombudsman of Finland.

National Human Rights Institutions

Following the Paris principles, National Human Rights Institutions should be
* institutions founded by an act of law
* independent
* rooted deeply in civil society
* internationally recognized

National Human Rights Institutions' close link to civil society gives them an advantage in empowering vulnerable/ marginalized groups as they offer an easy informal way to start a 'legal process'.

National Human Rights Institutions monitor, advice, train, educate and thus have an important impact on the political culture of a nation/society.

Ombudsmen

The main advantage of such an institution is that it is a very cheap and flexible, often informal, structure that can quickly react to new situations and challenges. The 'moral standing' of the person in office is of fundamental importance. Ombudsmen decide individual cases. They do not usually advise the decision-making bodies, however, depending on their terms of reference, some ombudsman can propose changes in legislation and delegated legislation.

Conditio sine qua non

National Human Rights Institutions, ombudsmen and quasi-legal institutions should, as a minimum standard, at least meet the condition of independence. Their work should further be transparent and follow applicable international standards and benchmarks that allow the comparison of different national developments on the institutional as well as on the national level.

Recommendations

There exists a wide range of instruments for national and supranational societies to deal on an internationally recognized and standardized level with national and international human rights issues. National human rights plans, round-tables, Ombudsmen and National Human Rights Institutions are but a few examples. All these institutions and structures should be promoted in the Euro-Mediterranean region.

An opinion forming process on how to design international standards and benchmarks for equal access to justice should be started within the national civil societies, the organizations and networks of NGO's in the Euro-Mediterranean region and with a view to cooperation with the national and international (EU) executive, legislative and decision making bodies (ministries, parliaments, political parties, EU-Commission etc.) as soon as possible.

Summary of Workshop 3: The role of civil society in promoting and monitoring equal access to justice Rapporteur: Nafsika Papanikolatos, Greek Helsinki

Monitor, Greece

Civil society can play an important role in the system of justice by facilitating access to courts for groups of society that would otherwise be excluded, something which is a fundamental part of the equal right to access to justice.

In workshop 3, three major actors were identified in the process of promoting and monitoring equal access to justice: Civil society, the state's authorities and the international community. Depending on political and socio-economic circumstances, civil society actors may be more or less effective in their actions. It remains however crucial to involve them as much as possible in enforcing state authorities' compliance with their commitments and for promoting equal access to justice.

The obstacles in the judicial system permitting free and equal access are not always independent from the obstacles to an effective civil society which could promote this equal access; lack of resources being one of them.

In most countries governments do not provide funds for legal aid. Costs of legal processes are very high and excessive delays increase them even more. Moreover, most states lack human resources in terms of legal professionals trained in international law that could be exploited to promote and monitor equal access to justice, rendering it impossible for them to apply already existing norms, let alone promoting and monitoring the implementation of new conventions. The lack of education and training in the use of international and human rights standards has an important effect on the independence of the judiciary and on the legal branch in general.

Training civil society actors in the use of international human rights instruments, both domestically and internationally, has proved very effective in promoting equal access to justice. Joint trial observations, monitoring international obligations, training human rights activists and legal professionals and credible reporting to international institutions as an interlocutor are all effective means which civil society can use.

However, this process requires certain skills by the actors involved (NGOs, lawyers, judges, teachers etc.). It was agreed that in order to empower civil society in debating and exchanging with the government, it needs the support of international and non-governmental organisations and institutions.

The main recommendation of the workshop therefore consists of a the proposal for a further seminar, or course, organised by the EMHRN and the University of Uppsala. The seminar should aim at training lawyers, judges and NGOs in establishing a constructive relation between governments, civil society and the international community in order to promote equal access to justice in the Euro-Mediterranean region.

Summary of Workshop 4: Reform Methodologies Rapporteur: José Manuel Ribeiro de Almeida, Ministry of Justice, Portugal

The debate in workshop 4 focused on the following points:
1) the connection between equal access to justice, the status of the judicial power, legislation in relation to the administration of justice, penal reform and legal aid.
2) the use of external advisors
3) capacity building in the justice sector : how is it to be measured?

Participants reached the following tentative conclusions:

The first one concerns the optimal design of justice reform methodologies. Justice reform programmes must aim both at procedural, that is to say organizational, and substantive improvement, that is to say more efficient institutions and organs, but also more just and fair laws. Another important point in the reform methodologies is that they should contemplate not only the court system, but also Alternative Dispute Resolution, namely conciliation and mediation in settling disputes.

The second conclusion of the Workshop 4 proceeds from differentiation principles: The reform programmes must always keep in mind differences between the present situation concerning access to justice in democracies and in the other countries, namely those of the South Mediterranean. In European Union (EU) states, or at least most of them, the question is usually how to achieve improvements in (more or less) well-functioning systems. In the other countries, the question is sometimes broader, because reform could aim at more substantial improvements.

The third conclusion concerns particular aspects of the reform methodologies: A fundamental prerequisite of reform is to have reliable data about the real situation in the field of access to justice in each country. Maintaining and improving services entails gathering information, including those from ”consumers” (i.e. the public) in order to put forward concrete proposals for reforms.

Two points though must be stressed about service. Service should be inclusive to encompass the use from all the representative sectors of society. Service should also be multi-disciplinary. It is important to consider the views not only of legal experts and members of the legal profession, but also of other relevant expertise in society such as sociology.

The fourth conclusion concerns the financing of the justice reform programmes. Costs should be kept as low as possible to achieve sustainability in the future. There are some resources, both human and material, in the institutions of the EU and within bilateral contexts that could be used for these purposes. External advice is available in these reform programmes and can be encouraged, but acceptance of this must be on a voluntary basis, in accordance with the norm of non-intervention.

Finally, the fifth and last conclusion relates to confidence and trust. Access to justice reforms must evolve in a confident and trusting environment. Confidence and trust both of the ordinary citizen and members of the legal profession is a prerequisite for the reform to succeed. In this confidence-building context, and also to keep costs low, it is fundamental to rely on and to attract civil society organizations that work on a voluntary basis.

Summary of Workshop 5: The Educational Challenge Rapporteur: Valerie Duffy, 80:20 Educating and Acting for a Better World, Ireland

The workshop dealt with two areas. Firstly, the area of training, education and information for those responsible for the administration of justice. Isabelle Jegouzo introduced the topic and spoke inter alia of the importance of a democratic society as a guarantee for social stability and citizens having faith in the legal service.

One of the educational challenges to equal access to justice is training both in human rights issues and roles, and the question arises of who needs training? Should it be solely members of the Judiciary or should it include other justice officers and all other people who deal with justice at work? Types of training discussed included training of a technical, legal and practical nature. For example, training in behaviour, how to listen and how to respect fundamental human rights.

But training and education should not take place in human rights alone as an isolated issue. Rather, human rights should infiltrate and be present in all justice and educational training.

Generalised training should firstly include how to listen, how to implement law and how to make decisions. Later, specialised training might be made available for those who require it. Ethical training should also take place for judges and others, and skills learned should include the importance of independence, attitude, ability to listen etc.

Methods of training depend very much on the system of the country involved and not all systems are identical. When this issue was opened to the groups, many very interesting examples were given concerning methods of training and educating the judiciary and other law and justice officials, inter alia twinning of institutions. There are two"families" of law in European states: – Common Law and Civil Law. A recommendation from the floor was that an attempt should be made to merge best practices from both in order to find the best general principles in which judges should be trained.

Training of all staff working in the legal system be they judges, lawyers, police officers or secretaries should take place to ensure the efficient, effective and consistent working of the courtroom and all levels of the justice system in order to ensure the equal and efficient access to justice by all. Ongoing training and education is another issue where new technology for example is coming on stream. Hence, all people involved in justice systems including judges should receive training in how to use computers.

Sharing of information between the North and South is vital in ensuring that new forms of crime such as cyber crime are dealt with adequately. Exchange of experience should be more widespread also among the Euro-Mediterranean countries where documents relating to subjects relevant to human rights should be translated and/or shared among the groups.

Another issue concerning training was the training of lawyers. The fact that lawyers work in a very competitive environment means that they may not have time to attend training courses and seminars. Possibilities for specific training and sharing of information among this group should be explored.

The second part of our workshop focussed on education of the public and citizens rights. This is simply essential for public confidence in justice. Education particularly among those who are illiterate has the effect of raising awareness of their rights. Training of the public in human rights and in being aware of their own rights is highly important so that if a legal system is deficient in some way, the public is able to question the system. The role of the Ombudsman and the introduction of Ombudsmen in many countries have benefited public and human rights education where educational programmes have been introduced.

Mainstreaming of human rights in schools through all subjects should be put in place especially bearing in mind the UN Decade for Human Rights Education, which ends in 2004.

NGO's have played an active part in this field of human rights education and in many cases, they are the sole promoters of human rights education. It was suggested that an official body is required to support the work and role of NGO's and that links between Governments and NGO's be established in fields where work could be undertaken on a joint basis. Another suggestion involving NGO's was that they should play a role in assessing the independence of the judiciary. Also, NGO's coming together and sharing experiences is important.

Finally, we had a brief discussion concerning the issue of measuring and evaluating training methods. It was recommended at this workshop that careful thought be given to methods of evaluation which should include the mutual sharing of knowledge and information among this group.

Summary of Workshop 6: Regional Norms and Instruments
Rapporteur: Marc Schade-Poulsen, Executive Director, EMHRN

The discussion in workshop 6 focused on the role of the Euro-Mediterranean Partnership (EMP) in promoting equal access to justice in the region. It started with a presentation by Kerim Yildiz on 'The Impact of the European Court for Human Rights in Promoting Access to Justice on the Turkish National Level', stressing mid-term and long-term effects rather than the Court's impact on individual and immediate remedy. The ECHR has thus been instrumental in indirectly harmonizing legislation in Europe and in assisting in bringing about changes in "structural" human rights problems, such as abuses of emergency law in Turkey. Furthermore, agreements have led to training programs for judges and police and the Court system in general has become an instrument for NGOs in 'search for truth'.

The following debate about the relation between national legislation and international and regional human rights mechanism concentrated on the African and the Arab system. It was stated, that the African system is not sufficiently independent, while an Arab "system" hardly exists at all. When discussing possible areas of action within the EMP, it was felt that one of the main problems was the lack of information about the existing human rights mechanisms themselves, both the African and the UN system. It was argued that there is a need for both training on the use of these instruments and for a procedural simplification of the systems themselves. Initiatives following these lines would prove useful in raising awareness about access to justice and human rights in the region.

However, information is not everything and will not necessarily lead to a redressing of the situation. Strong regional mechanisms are built on strong national judicial systems and therefore the workshop participants agreed that the EMP should play an active role in strengthening the national judicial systems.

The participants made the following two main recommendations on how this could be achieved from a regional level perspective:

* Human rights should be mainstreamed in the EMP's three pillar approach and focus set on one of the elements for establishing the free trade zone, i.e. the MEDA programs. An assessment of their impact on human rights in the region would provide the EMP with an additional human rights instrument and allow for the strengthening of equal access to social and economic rights of the poor. It could also be an instrumental in taking up the issue of business corporations' role in relation to human rights of the neediest population.

* Based on the experience from regional human rights mechanisms the participants found it useful to bring the EMP actors into a regular dialogue or forum addressing human rights and issues of justice. The participants were not in a position to give recommendations on the form of such dialogue but it was suggested a standing committee composed of independent individuals be established which could take up issues on their own decision and which could feed proposals, recommendations and suggestions into the Euro-Mediterranean partnership and as such be a catalyst for promoting equal access in the region. Questions to be addressed by such a committee could be: What as what are the key issues that need to be discussed in the region? Which issues could best be addressed on a regional level and which on a national level? How could we go about strengthening the links in the region between civil society on the one hand, and the state, in particular, the judicial branch, on the other?

Summary of Presentation to Workshop 1, Judicial Review and the Egyptian Constitutitional Supreme Court, Dr. Judge Hesham Mohamed Fawzi

Early Judicial Review in Egypt

Immediately after the adoption of the constitution in 1923 discussions arose among Egyptian legal academics concerning constitutional supremacy. This remained strongly influenced by the French model which denied its judiciary the power of judicial review, and an opposition to this conservative notion arose slowly.

During the first working-year of the State Council (established in 1948 with its main task being to protect Egyptian citizens against abuse by the Executive), Case 65 marked a landmark decision on the constitutionality of the legislation and the right of judicial review. The court's decision was based on the principle of subsidiarity: with two laws in conflict, higher law (the constitution) breaks lower law. At the same time, they claimed the constitution-based right of the judicial to review laws on their constitutional conformity and to nullify unconstitutional legislative acts.

The Establishment of the Centralised Constitutional Court in Egypt

The first Constitutional Supreme Court was established in September 1969[1] and took up its proceedings in 1970 after the administrative procedures had been provided by law 66/1970. The 1971 Constitution of the Arab Republic of Egypt 1971 finally included the Supreme Constitutional Court as an independent judicial body exclusively surveying the constitutional conformity of legislative acts and existing laws and regulations. The State Council as well as other courts forward critical cases to the Supreme Court. In 1979 the present Supreme Court replaced the first Supreme Court through law 48/1979.

The Court consists of a quorum of seven judges that issues judgements and decisions by simple majority.[2] Judges should satisfy the general qualifications for appointment in the judiciary and should not be younger than sixty-four. Once a judge is appointed, he cannot be removed from the quorum without his consent.[3]

The judges are appointed by the President of the Republic after the High Council of the judicial organs has delivered its opinion concerning the candidates chosen by the General Assembly of the Supreme Court. At least two-third of the Court members should be from other judicial organs; candidates must show adequate professional experience. Court counsellors must have practised their work for at least five years, law professors for at least eight years and lawyers for at least ten years. In practice, only former judges have been appointed members of the Supreme Court. The Supreme Court is not tied to the Ministry of Justice or any government body but enjoys complete independence with an independent budget and administration.

Legal Sources for Analysing Human Right Cases

[1] According to 81/1969
[2] 48/1979, Art. 3
[3] Article 11 of the law of the court

The Supreme Court's firm and consistent policy on the protection of human rights, which reflects its overall liberal interpretation of the Egyptian Constitution, has drawn wide admiration not only in Egypt but also in many other countries.

The constitution remains the superior law of the nation, being brought into existence by popular will it requires enforcement over other contradictory rules. All constitutional provisions form a coherent and harmonised legal framework in which no single provision can be viewed in isolation from the others.

1. Many articles of the constitution provide direct and specific sources for protecting individual human rights. By applying these articles directly in its decisions, the Supreme Court sets a standard that the government and the public has to notice.[4]

2. In accounting for legal sources, the Supreme Court may also read between the lines of the constitution, following the jurisdictional principle of 'true intent'. One example in this context is the court's ruling that the right on education includes the citizen's right to choose freely the kind and level of education according to his means and abilities.[5]

3. The Supreme Court can look into similar cases in countries with a similar democratic self-understanding in order to gain additional inspiration as to how to interpret law in the Egyptian national constitutional context.

4. Finally, the Supreme Court can refer to international law and international agreements. This was stated in case no.23, 16th judicial year, decided on March 18th, 1995 where the Egyptian constitution together with the Islamic Sharia provided for a ruling concerning the right to marry.

The Problem of Retroactive Effect

On July 10th 1998 the president issued a law which stipulated the unconstitutionality of the tax law. As the Supreme Court has the right to determine (and postpone) the date of the law's validity, a considerable amount of sales taxation did not have to be returned. The overall situation in Egypt concerning the retroactive effects, shows that (a) there is an absolute effect in penal law, but not as regards taxation, (b) any other categories are open to

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[4] Case no. 37, 11th judicial year, decided February 6th, 1993 based on Article. 43 (freedom of expression) of the constitution

[5] Case no. 23, 16th judicial year, decided March 18th, 1995

the court's final judgement and (c) the court may determine the date when the law gains validity.

Hesham Mohamed Fawzi concluded his speech by requesting to know about the situation in other countries and he suggesting a number of discussion points in order to pave the way for devising a fair theory on retroactive effect:

Summary of Presentation to Workshop 2 The Role of National Human Rights Institutions: Formal and/or Substantive Instruments in Promoting Equal Access to Justice, Morten Kjærum, Director, The Danish Centre for Human Rights

Morten Kjærum used the UN World Conference on Human Rights in Vienna in 1993 as a starting point in his discussion of the role and functions of national human rights institutions in creating sufficient and equal access to justice and in the following focused on the key functions these institutions have.

The Vienna Conference acknowledged the important and constructive role played by these institutions and put special emphasis on their 'advisory capacity, their role in remedying human rights violations, in dissemination of human rights information and education in human rights'. The members at the conference encouraged the strengthening and establishment of human rights institutions within a state's national framework.

Finally, the Paris-principles relating to the status of national institutions, issued by the Economic and Social Council, Commission on Human Rights, form a clear guideline as to the requirements an institution has to meet if it wishes to belong to this particular family. It should be:

- established by parliament – either through statute or by means of constitutional entrenchment;
- vested with competence to promote and protect human rights and
- ensured real independence through inter alia a pluralist representation of the social forces of civil society.

In accordance with the Vienna conference's recommendations, the three main responsibilities of a National Human Rights Institution in relation to the implementation of the

domestic as well as international human rights norms are: (1) monitoring state practices in relation to their compliance with international human rights instruments; (2) advisory function; (3) information and education.

1. Providing the institutions with the mandate and competence to investigate allegations of specific violations means that they are empowered to take concrete and focused action. One way of monitoring compliance is by focusing on individual cases whereby the institution could close a gap in the overall institutional structure in countries with weak court systems or little tradition of administrative complaints.

Other ways of monitoring include following the national law making process in order to come forward in case the proposed legislation is not in compliance with international human rights standards and surveying the implementation of specific laws. The treatment of senior citizens and the protection of children in the national Danish context served as examples to highlight the above mentioned methods.

Morten Kjærum stressed the fact that no matter how open they be, national human rights institutions may still be perceived as being part of the establishment and therefore judged as inaccessible by certain groups of the society. It is the strength and duty of the institution to reach out to these most vulnerable groups.

2. The advisory function can only be built upon the monitoring function. One needs to know the state of art for being able to offer weighty advice. Since it is the government and other statal bodies that are entrusted with the protection of human rights, it is primarily the interaction with these governmental structures that catalyzes the development of the advisory function.

Often, and especially in the beginning of its existence, the institution's input is limited to raising different issues related to their mandate. In the long term however, the state will recognise the institution's high quality work and consider it more fruitful to enter into an consultative process. In practice there are two ways of doing so: firstly, in the course of the lawmaking process and secondly in informal fora with relevant governmental institutions.

With the first option it is crucial to establish the institution's advisory function in the law-making process in line with others consultants (ministries, judges, municipalities). These might have only rudimentary knowledge about the human rights responsibilities of the state.

Involving the national human rights institution will often diminish the number of conflicts at a later stage.

Regarding the informal processes, Morten Kjærum stresses the importance of maintaining a lively dialogue between civil servants and human rights experts. By discussing upcoming changes or initiatives in the respective public institution - be it a prison, a hospital or an orphan's home- on an open agenda, human right norms can be perceived as a stimulation and a humanizing resource for institutions instead of being a threat to managers and employees.

The problem that might arise with this working method is that the national human rights institution ends up finding itself in a position where it cannot criticize the government or public servants any more because it has become too involved in the advisory process. Here, the institution's staff needs guidance from its governing bodies in striking the balance between constructive dialogue and constructive criticism.

3. National Human Rights Institutions together with the NGO community, government
bodies and the media share an obligation to inform society on all levels about the human rights instruments and their relevance domestically. In this sense, a precondition for creating equal access to justice is that people get a clear notion of justice and the national judicial system. Finally, key civil servants should receive human rights education in their training curricula so they hopefully realise that they have to serve people on an equal footing.

Summary of Presentation to Workshop 3, The Role of Civil Society in Promoting and Monitoring Equal Access to Justice in Lebanon - A Case Study George Assaf, Director, Human Rights Institute, Beirut Bar Association

After some preliminary remarks about the relationship between civil society and the system of justice, where he stressed the threat which transnational corporations can present to ordinary citizens, George Assaf presented an overview of the obstacles hindering equal access to justice and used Lebanon as an illustrative case study.

Obstacles in General to Civil Society Action

Civil society plays a key role in guaranteeing the individual's fundamental right to justice which goes beyond the formal right of access to justice.

However, there are numerous obstacles that hinder the fulfillment of this role:

1. Civil society organizations do not have adequate funding nor specialized human resources such as para-legals or other qualified persons to provide members of vulnerable groups with the possibility of obtaining legal assistance.
2. The legal framework of civil law offers little possibility for legal actions on behalf of collective interests.
3. Legal professionals are not sufficiently trained in interpreting and applying binding international rights instruments.
4. Civil society organizations often do not fully understand the nature and scope of the state's compliance with international conventions such as the UDHR, ICCPR and the ICESCR[6]. By putting pressure on the government to report on their efforts to implement the provisions of the conventions and submitting their own reports to the international organizations, the degree of compliance can be better assessed.

Other obstacles can be inherent to the judicial system of a country, such as the:

1. high costs and expenses for extended litigation;
2. excessive delays in the judicial process which can eventually result in the public's rejection of the judicial system *per se*;
3. many shortcomings of the formal system of legal aid to indigenous people;
4. limited judicial protection of collective or 'diffuse' interests; and
5. structural obstacles to the independence of the judiciary.

Despite these obstacles, civil society has created a high demand for justice, thus underlining the political role of the judiciary.

Lebanon- a case study

The new role for the judiciary with regard to an increasing demand for justice

The 1990 amendment to the Constitution of Lebanon, incorporating the Universal Declaration of Human Rights and other international conventions on human rights into the body of law, opened a new perspective as regards to the role of the Judiciary as an independent branch. The growing importance of the Judiciary can also be seen in the increasing demand for justice.

[6] Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights.

However, the Legislative as well as the Executive try to tie down the Judiciary excessively. The role of the Executive is particularly powerful as it is responsible for the recruitment and promotion of judges, even though the preparatory work is done in consultation with the Judiciary when making appointments to higher positions.

On the other hand, qualified paralegal staff is lacking, archaism is prevailing in the administration and there is a constant shortage of judges. Moreover, the government does not provide any form of legal assistance to the poor. Legal aid is entirely funded by the Bar association and provided on a pro bono basis.

The increasing demand for justice has not been met by modernizing the courts' facilities (such as computerized data bases), nor by increasing the number and degree of specialization of the judges, nor has any comprehensive court planning been undertaken. This leads to excessive delays in handling cases, causing enormous damage to the accused while the performance of the overworked judges has suffered more and more. On the whole, the slowness of the process of litigation has led to a lack of trust in the judicial system per se.

Making justice ”just” can only happen when the state recognizes its obligation to fund its judiciary branch sufficiently and to strengthen its components in order to meet the needs of the people it is intended to serve; when the accused enjoys certain rights and the penalties stand in proportion to the crime; when victims receive some form of compensation and when the inhuman prison system will be reformed.

Lately, the government seems to be more willing to find a solution to reforming its prison system as an essential part of good governance. The Ministry of Justice started to cooperate with the Beirut Bar Association's Institute for Human Rights and together with Penal Reform International, the Institute organized an independent evaluation of the prison system in July 2000.

Judicial activism based on self-executing international human rights mechanisms

When discussing the role of judges in applying international human rights conventions and reviewing domestic legislation, one must not overlook the judges' own interests. More often than not, they tend to be conservative in their interpretation of the law thus themselves hindering the development of human rights.

However, significant achievements in the field of labour relations and international human rights conventions were made after the courts began to take a strict stand on these norms

and the Higher Court adopted a general principle of presumption of harmony between national laws and international conventions, as well as a general principle of equality of rights and obligations between men and women.

Recognizing the importance of procedural rights for NGOs and interest groups in acting as plaintiffs or interveners, a proposal for a law on this issue was made in 1998 by an NGO active in environment protection. It remains unanswered to date.

Many difficulties in applying international sources of law do not stem from procedural shortcomings but from the lack of training of both judges and lawyers. In one of its general comments (CCPR General Comment 3, 31/7/81) the Human Rights Committee stated that the implementation of the covenant does not depend solely on constitutional or legislative enactments. The individual should also know about the rights granted by the covenant and all administrative and judicial authorities should be aware of the obligations the state has assumed under the covenant.

In an effort to give more independence to the judiciary, a law has been drafted proposing the judges' right to elect their representatives at the Higher Council of the Judiciary, which is to be responsible for surveying the judges' performance. Considering the importance of the judges' interpretation of the law in promoting and protecting the rights of the individual, this law could prove crucial for human rights instruments becoming a dynamic shaper of the system.

Summary of Presentation to Workshop 4 Reform Methodologies, Iain Cameron, Professor in International Law, Uppsala University

Professor Cameron began by sketching out some of the factors which should be taken into account when planning and implementing reforms of what is often collectively called the ”justice sector”; the judiciary, the police, prosecutors, the Ministry of Justice, Bar Associations and other actors in the field. In doing so he referred to a valuable report produced recently by the International Council on Human Rights Policy entitled ”Local Perspectives: Foreign Aid to the Justice Sector” (available inter alia at the Council's website).

Any attempt at reform involving foreign actors in an area as sensitive to national sovereignty as the justice sector must begin with a sustained and genuine dialogue. This dialogue must also continue throughout the reform process, allowing feedback and adaption of the reform process. The dialogue should involve not simply the state partners, but also national and

international civil society. Reform can be piecemeal, identifying particular projects where there is sufficient agreement between the parties to begin work more or less straight away. When and if confidence is built up regarding such a project, cooperation can be expanded into more sensitive areas. However, it is also possible to begin with, or to combine a piecemeal approach with, a detailed needs assessment of the area as a whole, identifying areas of necessary reform, priorities among these, methods of achieving the necessary reforms and the partners to be involved in each reform (”project ownership”) at the national and international level.

Although applicable international human rights standards (in treaties binding upon the parties, or in customary international law) can and should be used as the starting point for this needs assessment, there is no ”blueprint” which can be followed slavishly in all situations. Cultural relativism is a fact, but diversity should not be exaggerated either. Rather it is the case that there are many different ways of achieving and maintaining basic, minimum human rights standards. Cultural and economic factors obviously have major significance in assessing the feasibilty of reforms, and the priorities among these. And international human rights norms can give relatively little guidance on creating and maintaining the necessary institutions in a modern *Rechtstaat*.

Obviously there are different ways of carrying out needs assessments. One such approach presently favoured in Swedish development cooperation is ”logical framework analysis”, a helpful method of planning cooperation. It is important for any project that baseline or monitoring data is available regarding the ”output” of the project and the achievement of the overall project purpose. In areas of justice reform involving such vague outputs as improving awareness of basic human rights, measuring output can be difficult. And it is a mistake to believe that human rights problems are primarily a question of education. Structural causes of human rights problems, in particular economic underdevelopment, are vitally important to tackle. Where several states are participating in cooperation, there must be an overall ”country strategy”, allowing a proper coordination of reform projects.

Long term commitment is obviously necessary. There are few ”quick fixes” in changing legal culture. A sense of ownership of the project is also vital. A project which is perceived as imposed from outside will have little chance of success. And the quality of staff involved in cooperation is vitally important. For the national and foreign staff involved in the reform process, there must be a sense of purpose, that what is being done is important, rather than as a secondary function to his or her ”real” job. One way of assisting in a sense of ownership is by means of twinning arrangements between institutional actors (e.g. courts

administrations, in improving technical issues of access to justice, speed of judgments, transparency of reasoning and availability of judgments etc.). It is important, however, that institutional cooperation leave scope for some form of input from civil society, who are, after all, the ultimate ”consumers” in the justice sector, and whose acceptance of the system legitimizes it, as well as being important sources of knowledge of national and international law, ethical standards, educational networks etc. Institutional projects, e.g. on trial monitoring, or education of the police and the judiciary, designed to improve compliance with human rights standards, can often, and should often, involve local NGOs in important roles, something which should usually improve sustainability of such projects.

Summary of Presentation to Workshop 5, The Educational Challenge
Isabelle Jegouzo, Justice and Home Affairs Directorate General of the European Commission

Isabelle Jegouzo, a French judge employed at the European Commission in the Justice and Interior Affairs Department, noted at the beginning of her speech that she would be talking about education as an element in promoting access to justice. She began by pointing out that a reliable judicial system is one of the guarantees for democracy as well as for social stability and economic development.

The issue of access to justice in regards to the educational system poses the question of educational training of the professionals of the judicial system. Their competence guarantees their independence and hence the functioning of the judicial system. In addition, citizens also need to be educated in order to know their rights.

There are two systems for recruitment of judges. The first is right after university or some years after, which is practised in continental countries and in countries south of the Mediterranean. The second system consists of recruiting judges and not the prosecutors after 10 to 20 years at the Bar, which is a system that is practised in Common Law countries. Isabelle Jegouzo insisted that it should be a priority to educate the judicial system in its entirety. This means including, for example, lawyers who can encourage judges, when they are dealing with human rights issues, to refer to applicable international conventions and the case law interpreting these conventions. Clerks and those who accompany the judges also need to be educated as well as the police and the civil service in general.

The training of justice sector personnel should be technical, as their role is to apply the law and the procedures. Hence, these people must receive a legal as well as a practical education; in other words they should master judicial techniques in order to respect fundamental human rights principles. In fact, education in human rights issues should be mainstreamed into substantive subjects, for example criminal law and civil law. Teaching should occur in seminar form, so that students are activated, thus facilitating the learning process and giving students experience of debate, and the rules of debate (the need to allow everyone an opportunity to speak etc.) The issue of human rights should not be separated from other subjects.

Isabelle Jegouzo then addressed the question of how to know, which type of education to adopt - a general or a specialised type of education. Most important, a magistrate needs to know how to listen, how to apply the law and how to compose a decision. The specialisation should then target the function which the magistrates will be called upon to exercise.

Isabelle Jegouzo then addressed the question of education in ethics, which should provide the judges with a know-how allowing them to know what the public expects of them what their ethical and deontological obligations are. A judge must be respectable in order to be respected, and must be independent and impartial in order to fulfill his or her functions. This ethical education consists of confronting the young judges with the outside society, especially via internships, except in countries with Common Law systems, since people in these countries have been lawyers for ten years before becoming judges.

Isabelle Jegouzo turned to the question of methods of education, which differ according to country. Some countries have created specific educational structures, such as France, the Netherlands and certain Mediterranean countries. These schools allow for the continuation of education, which thereby becomes an element completely separated from the judicial system. In other states, such as Israel, continuing education is the standard because the country has a system of Common Law. In contrast, introductory (post law school) education is more widespread in countries south of the Mediterranean where one recruits younger judges.

The presentation likewise addressed the subject of educating the public in order for them to be better acquainted with and have more confidence in the legal system, and so that eventually, they will be able to address the system. This education in legal issues is part of education in general and of women in particular, because they have an important place in society. Concerning this issue, Isabelle Jegouzo stressed a series of experiences with NGOs

in different countries on educating women in their rights under for example family and consumer laws. On the other hand, it is necessary to adapt the educational means to the public level. To obtain this, it is important sharply to define the roles of different information services in order to ensure, that they deliver objective information. In this regard, Isabelle Jegouzo underlined that the judges have a role to play in ensuring social cohesion. She concluded her presentation by stressing the need to improve the level of communication and the competence of the judicial system in order to strengthen democracy.

Summary of Presentation to Workshop 6, National Impact of the European Court of Human Rights

Kerim Yildiz, Executive Director, Kurdish Human Rights Project (KHRP)

In 1950 the European Convention on Human Rights was adopted by the Council of Europe and came into force in 1953. The Convention aims at protecting civil and political rights rather than economic, social or cultural rights. It created the right to individual petition, which is the right of individuals and organizations to challenge their government by taking their case to the European Court of Human Rights (ECtHR) in Strasbourg.

In the first half century of its existence, the Convention has arguably established itself as the most effective human rights mechanism in the world by being applied in the ECtHR as the 'Basic Law of Europe'. Its success is reflected in its enforcement mechanisms and the increasing number of states that have signed it, bringing the number of contracting parties to 41 today, with a further two signatories.

Impact on a National Level

International human rights mechanisms are most effective when adopted as national law, especially in countries that lack their own bill of rights: A national procedure will always be more convenient and efficient than recourse to international courts. Even though this incorporation is desirable, it does not by itself ensure a remedy in a national court for a violation of the Convention, unless the convention is self-executing and guaranteed in its entity.

A state having signed the Convention must, under Article 13, in any case provide 'effective remedies' under its national law to a person whose rights have arguably been violated. Thus, in practice, a state which does not make the Convention directly enforceable in its national law risks breaching Article 13 of the Convention.

The European Convention and International Law

The Convention was a landmark in the development of the international law of human rights. For the first time, sovereign states accepted legal obligations to secure the classical human rights for all persons within their jurisdiction and to allow individuals to bring claims against it, which, in case of a breach, leads to a binding judgement by an international court. This is why the European Convention remains one of the most advanced instruments of human rights.

The ECHR's has generated among the most sophisticated and detailed jurisprudence and its enforcement mechanisms are unrivalled in their effectiveness and achievements. It has contributed to international human rights law in the areas of protecting particular rights, developing key concepts in the application and interpretation of human rights treaties and developing the law on the functioning of international courts.

Much more than being a super-controller of human rights violations, the convention has worked by harmonizing national law in Europe and providing incentives and assistance to reform laws. Changes in national law have mostly taken place following a judgement or decision: In order to comply with its treaty obligations, a state is required by international law to change its law or practice if inconsistent with the Conventions (Art. 1 of the Convention). Thus, careful examination will show that it is as an agent of law reform rather than as a means of controlling human rights violations on a wider scale that the Convention has made its mark.

Kerim Yildiz concluded his presentation by giving several examples of cases in which the Kurdish Human Rights Project has been involved since 1992, illustrating the above points.

BULLET POINTS ON ACCESS TO JUSTICE

The following issues were proposed by the organisers as a non-exhaustive list of *kinds* of issues which might be discussed at each workshop. They were intended simply to serve as guidelines, first, for speakers who wished to note one or other of the issues in their introduction to the subject, and second, for moderators who wished to steer the discussion so as to cover some, or all, of the issues noted.

Workshop 1 Courts and the Administration of Justice

- Legal aid models available in the Mediterranean countries
- The role of the judge in ensuring coherence between the constitution, international norms legislation and subordinate legislation
- The role of the judge in ensuring coherence between central government/federal laws and local government/state laws
- The role of the constitutional judge as regards controlling political power (government/executive)
- Legal and practical institutional guarantees for the independence of the judicial powers in relation to the political power.
- The power of the public prosecutor and the courts
- Court procedures guaranteeing fair trial
- Efficiency of legal aid or assistance
- Discrimination and barriers in relation to access to justice (gender, language, disparities of wealth, ethnicity, etc.)
- The impact of globalization on the development of national legal systems
- Problems and potential relating to the coexistence of customary/religious courts and ordinary courts
- Alternative ways of solving disputes: mediation etc.

Workshop 2 Human Rights Institutions, Ombudsmen and Quasi-Legal Institutions

- Genuine independence of ‘intermediate’ institutions.
- Role in prevention of human rights abuses and in strengthening the quality of administration
- Powers of ombudsmen: penal or cooperative institutions?

- The strengthening of human rights culture in the justice sector
- Human rights institutions vis-à-vis consultative councils
- Human rights institutions in the legislative process, insofar as this concerns access to justice
- The experience of the Maghreb countries and current projects in the Middle East.

Workshop 3 The Role of Civil Society in Promoting and Monitoring Equal Access to Justice

- Civil society's role as a reform proposing movement in relation to access to justice
- Civil society's role in trial observation, in evaluating the judicial system and in protecting the right to appeal and to fair trial.
- Judicial aid models as a way to promote equal access to justice
- Civil society's role in strengthening of awareness about the role and functions of a legal system in a Rechtstaat
- Paralegal aid; targeting vulnerable groups (in rural areas)
- Test case strategies: whether they work and if so how and why

Workshop 4: Methodologies for Justice Sector Reform

- The relation between equal access to justice, the status of the judicial power, legislation in relation to the administration of justice, penal reform and legal aid.
- Best practices in relation to involving "stakeholders" in reform of the justice sector:
- Best practices in relation locally managed systems;
- The use of external advice/ foreign advisors;
- Ensuring that human rights are built into all elements of a reform process
- Strategies to build up resources for access to justice based on the activism of legal professionals
- Capacity building in the justice sector: how is this to be measured?

Workshop 5 Access to Justice: The Educational Challenge

- Training of judges, prosecutors, lawyers and other court personnel.
- Promotion in schools, media, etc.
- How much of the problem of human rights abuse is an educational problem?

- Best practices in relation to mainstreaming of human rights into all fields.
- The role of government, national human rights institutions and of NGOs.
- Regional and national experiences in human right education
- Capacity building and educational programmes: measuring success and effectiveness

Workshop 6: Regional Norms and Instruments

- The relevance of mechanism within the framework of the EMP
- The relevance of the European system.
- The relevance of the African system
- The relevance of the Arab 'system'
- Is the EU ready to become a human rights mechanism'.
- Mechanisms for networking and linkage of legal aid systems in the Mediterranean
- Best practices in relation to making international human rights standards a living part of the work of the courts and ombudsmen
- Methods of disseminating regional standards.

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