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European Network for the exchange of information between persons and entities responsible for the training of judges and public prosecutors

(LISBON NETWORK)

10th PLENARY MEETING

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Minimum Corpus of the Council of Europe standards

Document prepared by the Secretariat of
the Directorate General of Human Rights and Legal Affairs

1. INTRODUCTION

The present document aims to provide the training institutions with a framework programme to be integrated in the curriculum for the initial and /or continuous training of judges and prosecutors. The necessity of developing the Minimum Corpus of the Council of Europe standards has been studied on several occasions and by several European bodies, with the two main documents being:

- the report of the second meeting of the Lisbon Network on “ The Trainig of Judges on the Application of International Conventions”, Bordeaux, 2 – 4 July 1997;
- Opinion N° 9 of the Consultative Council of European Judges (CCJE) on “The Role of National Judges in ensuring an Effective Application of International and European Law”.

The Minimum Corpus of the Council of Europe standrads contains a list of :

- A. *Council of Europe’ conventional acquis;*
- B. *Council of Europe non-conventional acquis.*
- C. *Opinions of the CCJE, CCPE and Recommendations of the European Commission against Racism and Intolerance (ECRI)*

2. THE RELEVANT CONTEXT

In the context of a growing flow of international legal standards on national legal systems, as societies develop and Europe’s legal and judicial systems become more uniform, more integrated:

“National legal systems have, increasingly, to deal with legal issues of an international nature, as a result both of globalisation and of the increasing focus of international and European law on relations between persons rather than states. This development necessitates changes in judicial training, practice and even culture, if national judges are to administer justice meeting the needs and aspirations of the modern world and respecting the legal principles recognised by democratic states¹.”

One of the consequences of this is that national courts have become **the guarantors** of compliance with, and proper implementation of, the international and European treaties to which their country is a party.

With this in mind, and although sometimes significant variations exist, all states are tending to recognise that international standards take precedence over domestic law.

¹ **Opinion No. 9 (2006) of the Consultative Council of European Judges (CCJE)**, on “*The role of national judges in ensuring an effective application of international and European law*”, paragraph 2.

Yet this process is not unencumbered, with several kinds of obstacles having been identified²:

- obstacles in terms of **access to information** - not all judges are familiar, as they should be, with the international conventions;
- obstacles of a **psychological nature** - all too often, judges do not regard international conventions as legislation integrated into their domestic law, but as a kind of "foreign body", which they apply with some hesitancy;
- obstacles of a **specifically legal nature** - while international conventions may give rise to difficulties of application or interpretation, interpretation by the courts should remain the principle to be observed; otherwise the principle that international conventions take precedence would lose all its substance.

3. TRAINING METHODOLOGIES

- i. Integrate the corpus of Council of Europe law into university syllabuses and into judges' training;
- ii. Provide national judges with information and documentation about the whole corpus of Council of Europe law;
- iii. Ensure the quality of the training of judges/prosecutors in European law;
- iv. Give judges means of accessing information in foreign languages;
- v. Encourage dialogue between national and European judicial organs, amongst institutions responsible for judicial training and amongst judges and prosecutors.

I. Integration of the corpus of Council of Europe law into university syllabuses and into judges' training

Before discussing specific methodologies, and in the light of the considerations set out in the previous section, care should be taken to ensure that the importance of training in the application of international conventions is recognised in **strategy documents** on judge and prosecutor training, particularly so as to make sure that sufficient funds are made available for this.

In view of the different approaches taken in initial and in-service training, a distinction will be made in this presentation of specific methodologies between judges/prosecutors who are newly recruited and those already in service.

Newly recruited judges/prosecutors

University training, competitions and examinations for entry to national legal services, initial training programmes, these are the different stages at which action should be taken. They are also closely interlinked.

² Conclusions of the 2nd meeting of the Lisbon Network, Bordeaux, 2-4 July 1997.

While it is relatively easy to take action relating to initial training programmes and to national legal service entry tests, **university training**, in contrast, is not under the direct supervision of training institutions. Training institutions do, however, have several ways of influencing the university curriculum. They could:

- adopt a document making references *to the requisite level of knowledge and skills relating to international law* for judges/prosecutors (including the Council of Europe's legal instruments);
- include in *national legal service entry tests* subjects testing candidates' ability to apply the corpus of Council of Europe standards;
- hold regular *meetings* between training institutions/judicial service commissions and law faculty leaders to discuss both parties' needs and requirements.

Obvious benefits derive from the inclusion in **competitions held to recruit judges/prosecutors** of subjects intended to test candidates' ability to apply Council of Europe legal instruments, i.e.:

- a very clear signal is sent out to law faculties about the importance of the study of international conventions;
- training institutions are able to assume, when they prepare their initial training programme, that the students concerned already have a certain level of competence.

The development of the **international dimension in initial training** nevertheless remains the most important and effective of the measures to be taken to improve future judges'/prosecutors' competence in the field concerned. One of the prerequisites for this is the inclusion of European law in courses in the fundamental disciplines. And there are fields in the corpus of Council of Europe law, such as the protection of fundamental rights, which are extensive and important enough to justify their study in their own right.

Lastly, it seems that testing the quality and quantity of the knowledge acquired during initial training by setting **end-of-course examinations** also covering European law is a logical part of the process as a whole.

Serving judges/prosecutors

The above thoughts about the development of the international dimension in initial training also apply to in-service training.

Consequently, the corpus of Council of Europe law should be both studied during specialised training and included among the themes for discussion at other training sessions which lend themselves to this. It is desirable that at least some specialised training courses should be organised in co-operation with the Council of Europe and/or

other legal service training institutions in Council of Europe member states, and this subject will be pursued below.

A specific need is apparent for legal services such as countries from Central and East European countries, where not all serving judges/prosecutors have undergone in-depth initial training, depending on the time at which they joined the system. Rather than organising one-off training sessions, it may prove more effective if such categories are grouped together for a **series of four to five training sessions**, which can thus cover a broader field.

The importance of the corpus of Council of Europe law justifies the inclusion in the **decentralised training** programme of subjects relating to its application. In this context, it is important for the **network of instructors** in European law to develop uniformly, covering all courts of appeal and the attached prosecutors' offices.

Other measures are conceivable with a view to improving judges'/prosecutors' competence in respect of the legal instruments developed at the Council of Europe, although their application in practice depends on the specific characteristics of each judicial system:

- inclusion of competence in European law as one of the criteria for the **promotion of judges/prosecutors** to higher courts;
- inclusion amongst the criteria taken into account for the **appraisal of judges'/prosecutors' work** of their training in European law, or of the regular and appropriate references made in their rulings to the corpus of Council of Europe law.

II. Providing national judges with information and documentation about the whole corpus of Council of Europe law

The following are among the measures intended to achieve this goal:

- a guarantee of *Internet access* from the premises of the training institution and from the centre for students of the training institutions;
- the organisation of training in *how to find relevant legal information* on the Internet, and the writing and making available to interested judges/prosecutors of *guides* to legal research;
- the provision of access for judges/prosecutors to national *case-law databases*, so that they can make a comparative study of the application by various European courts of the corpus of Council of Europe law;
- *translation* of the corpus of Council of Europe law so that it can then be made available to judges/prosecutors, either on paper or in electronic form (on the Internet site or via the distribution of CDs);
- ongoing supply to the training institution's library of the *latest works on European law*,

- requests to the institution's instructors to *summarise, index and annotate the relevant information*, making it easier for judges/prosecutors to read it, and the placing of such information at a legal resource centre for their use;
- setting up of a *virtual information office* relating to international conventions (helpline), with on-line access to information; the functioning of such an office requires a team of specialists capable of answering the questions raised by the persons concerned, the creation of an e-mail address for the submission of questions and the creation of links between the specialists for the collection of questions and sending out of replies;
- publication in *specialised legal journals*, etc, of articles on the application of the Council of Europe's legal instruments.

III. Ensuring the quality of the training of judges/prosecutors in European law

The development of the European dimension in initial and in-service training programmes for judges/prosecutors should go hand in hand with measures to ensure the quality of such programmes. These measures relate to the establishment of training programmes, access to these programmes, the choice of instructors, teaching materials and training methods, instructor training and international co-operation in the implementation of the said programmes.

In order to decide the content of initial and in-service training programmes, the authority responsible for training should first³:

- **ascertain the training needs** of the judicial system. This requires recourse to several categories of persons and information: not only instructors, but also judges/prosecutors themselves (through judges' and prosecutors' associations, for example), those who work alongside them (lawyers, notaries, bailiffs, etc), civil society, case statistics, analyses of questions of law differently resolved in judicial practice and the *types of cases in international courts* (first and foremost the *European courts in Strasbourg and Luxembourg*);
- take account of the lessons learned following an **evaluation** of the training provided the previous year.

Where the **choice of participants** is concerned, training institutions should ensure the *transparency* of their training programmes with a European focus and the *equity* of participant selection methods.

The choice of instructors, methods and teaching materials should reflect a concern to offer quality training centred on the needs of the system: the judiciary should be well represented among the instructors, the subjects discussed should cover aspects of

³ See the report on *the contribution of judicial training bodies to the concrete implementation of Opinion CCJE (2003) 4 of the Consultative Council of European Judges (CCJE) on appropriate initial and in-service training for judges at national and European levels*, Lisbon Network, RL/GT (2006) 1 Addendum.

particular relevance to judicial practice, and the teaching materials used should be appropriate⁴.

An **instructor training system** should be set up, covering both subject matter (updating on recent developments in the corpus of Council of Europe law) and method; the ongoing co-operation of an education sciences specialist is desirable in this context.

Added value undeniably comes from the organisation of training in European law in **co-operation with the Council of Europe** or with other legal service training institutions in Council of Europe member states.

In any case, there is no doubt whatsoever that every training institution needs to set up a **system for evaluating the quality of the training** provided, covering all these programmes and activities⁵, so including the training which has a European dimension.

IV. Giving judges means of accessing information in foreign languages

An improvement in judges'/prosecutors' linguistic skills is vital if they are to take more account in their activities of the corpus of Council of Europe law.

Foreign language training is so important that judicial systems are increasingly making it **compulsory** during initial and in-service training programmes. And increasing numbers of **strategy documents** relating to the justice system at national and European levels mention this as an objective⁶. It is inconceivable that a common judicial culture could be created without mutual understanding between legal systems and judges/prosecutors.

Numerous measures can be taken to improve the language skills of European judges/prosecutors⁷:

- introduction of foreign language training programmes, both at national level and on a decentralised basis,
- **compulsory language training** during initial training period,
- introduction of training programmes for instructors, some recruited from the legal service; creation of legal training courses for instructors from outside the service,

⁴ **Opinion No. 9 (2006) of the Consultative Council of European Judges (CCJE) on “The role of national judges in ensuring an effective application of international and European law”**, paragraph 14.

⁵ “*In order continuously to improve the quality of judicial training, the organs responsible for training should conduct frequent assessments of programmes and methods*”, CCJE, Opinion No. 4 (2003), see paragraphs 38 and 42.

⁶ See, inter alia, the Communication on judicial training in the European Union adopted by the European Commission on 29 June 2006; the Commission encourages the action necessary to develop an area of freedom, security and justice, necessitating closer dialogue among European judges/prosecutors, more detailed knowledge of the different judicial systems and **appropriate language training** for the judges/prosecutors of Europe enabling them to strengthen contacts with each other, and fostering the creation of a common judicial culture.

⁷ See, for example, the conclusions of the meeting on language training in Europe, held by the EJTN in Bucharest on 13 and 14 September 2007.

- creation of a **network** of specialist foreign language instructors, making it easier for them to exchange ideas about best practice,
- production of **legal dictionaries**, databases covering equivalent terms and **on-line** training programmes, etc.

V. Encouraging dialogue between national and European judicial organs, amongst institutions responsible for judicial training and amongst judges and prosecutors

The development of European co-operation, whether formal or informal, between courts, legal service training establishments and judges/prosecutors themselves is, quite clearly, likely to promote the taking into account of the corpus of Council of Europe law. Thus Council of Europe legal instruments will be better known and more uniformly applied in different countries.

It is highly likely that **common training at European level** on European issues will be available in future. This presupposes the existence of several intermediate stages⁸:

- gradual harmonisation as training programmes on European issues are developed;
- development of European quality standards in the field of training;
- creation of a network of educational resources and instructors in the field of education on European issues;
- an increase in co-operative activities: training periods abroad for students of the training institutions and for judges/prosecutors and instructors, training periods with European institutions and courts, other meetings (summer schools, competitions for students of the training institutions, training activities for judges/prosecutors from other countries, etc);
- an increase in the study of foreign languages.

4. CONTENT OF THE MINIMUM CORPUS OF THE COUNCIL OF EUROPE STANDARDS

A. THE COUNCIL OF EUROPE'S CONVENTIONAL ACQUIS

I. FUNDAMENTAL RIGHTS

1. EUROPEAN CONVENTION ON HUMAN RIGHTS

- *Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5 - Rome, 04.11.50) as amended by Protocol No. 11 restructuring the*

⁸ See the report on *the contribution of judicial training bodies to the concrete implementation of Opinion CCJE (2003) 4 of the Consultative Council of European Judges (CCJE) on appropriate initial and in-service training for judges at national and European levels*, Lisbon Network, RL/GT (2006) 1 Addendum.

- *control machinery established by the Convention (ETS No. 155 – Strasbourg, 11.05.94)*
- *Protocol to the Convention, as amended by Protocol No. 11 (ETS No. 9 - Paris, 20.03.52)*
- *Protocol No. 4 to the Convention, as amended by Protocol No. 11 (ETS No. 46 - Strasbourg, 16.09.63)*
- *Protocol No. 6 to the Convention concerning the abolition of the death penalty, as amended by Protocol No. 11 (ETS No. 114 - Strasbourg, 28.04.83)*
- *Protocol No. 7 to the Convention, as amended by Protocol No. 11 (ETS No. 117 - Strasbourg, 22.11.84)*
- *Protocol No. 12 to the Convention (ETS No. 177 – Rome, 04.11.2000)*
- *Protocol No. 13 to the Convention concerning the abolition of the death penalty in all circumstances (ETS No. 187 – Vilnius, 03.05.2002)*
- *Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention (ETS No. 194-13.05.2004)*

2. PREVENTION OF TORTURE

- *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126 - Strasbourg, 26.11.87) as amended by its Protocols No. 1 and No. 2 (ETS Nos. 151 and 152 - Strasbourg, 04.11.93)*

3. EUROPEAN SOCIAL CHARTER

- *European Social Charter (ETS No. 35 - Turin, 18.10.61)*
- *Additional Protocol to the European Social Charter (ETS No. 128 - Strasbourg, 05.05.88)*
- *Protocol amending the European Social Charter (ETS No. 142 - Turin, 21.10.91)*
- *Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (ETS No. 158 - Strasbourg, 09.11.95)*
- *European Social Charter (revised) (ETS No. 163 - Strasbourg, 03.05.96)*

4. MINORITIES

- *European Charter for Regional or Minority Languages (ETS No. 148 - Strasbourg, 05.11.92)*
- *Framework Convention for the Protection of National Minorities (ETS No. 157 - Strasbourg, 01.02.95)*

5. DATA PROTECTION

- *Convention for the protection of Individuals with regard to the Automatic Processing of Personal Data (ETS No. 108 - Strasbourg, 28.01.81)*
- *Additional Protocol to the Convention for the protection of Individuals with regard to the Automatic Processing of Personal Data on supervisory authorities and transborder data flows (ETS No. 181 – Strasbourg, 08.11.2001)*

6. BIOMEDICINE

- *Convention for the protection of Human Rights and dignity of the human being with regard to the application of biology and medicine: Convention on Human Rights and Biomedicine (ETS No. 164 - Oviedo, 04.04.97)*
 - *Additional Protocol to the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, on the Prohibition of Cloning Human Beings (ETS No. 168 - Paris, 12.01.98)*
 - *Additional Protocol to the Convention on the Human Rights and Biomedicine concerning transplantation of organs and tissues of human origin (ETS No. 186 - Strasbourg, 24.01.2002)*
 - *Additional Protocol to the Convention on Human Rights and Biomedicine, concerning Biomedical Research (ETS No. 195 – 25.1.2005)*

7. NATIONALITY

- *Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality (ETS No. 43 - Strasbourg, 06.05.63)*
- *European Convention on Nationality (ETS No. 166 - Strasbourg, 06.11.97)*

II. LEGAL COOPERATION

1. CRIMINAL LAW

- **EXTRADITION**
- *European Convention on Extradition (ETS No. 24 - Paris, 13.12.57)*
 - *Additional Protocol to the European Convention on Extradition (ETS No. 86 - Strasbourg, 15.10.75)*
 - *Second Additional Protocol to the European Convention on Extradition (ETS No. 98 - Strasbourg, 17.03.78)*

- *European Convention for the Suppression of Terrorism (ETS No. 90 - Strasbourg, 27.01.77)*
 - *Protocol amending the European Convention for the Suppression of Terrorism (ETS No. 190 - Strasbourg, 15.05.2003)*
- **MUTUAL ASSISTANCE IN CRIMINAL MATTERS**
- *European Convention on Mutual Assistance in Criminal Matters (ETS No. 30 - Strasbourg, 20.04.59)*
 - *Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (ETS No. 99 - Strasbourg, 17.03.78)*
 - *Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (ETS No. 182 - Strasbourg, 08.11.2001)*
- **LAUNDERING AND DRUGS**
- *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141 - Strasbourg, 08.11.90)*
- *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (ETS No. 198 – Warsaw, 16.05.2005)*
- **TRANSFER OF PROCEEDINGS**
- *European Convention on the transfer of proceedings in Criminal Matters (ETS No. 73 - Strasbourg, 15.05.72)*
- **ENFORCEMENT OF SENTENCES**
- *European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders (ETS No. 51 - Strasbourg, 30.11.64)*
- *European Convention on the international Validity of Criminal Judgements (ETS No. 70 - The Hague, 28.05.70)*
- *Convention on the Transfer of Sentenced Persons (ETS No. 112 - Strasbourg, 21.03.83)*
 - *Additional Protocol to the Convention on the Transfer of Sentenced Persons (ETS No. 167 - Strasbourg, 18.12.97)*
- **PROTECTION OF VICTIMS**
- *European Convention on the Compensation of victims of Violent Crimes (ETS No. 116 - Strasbourg, 24.11.83)*

□ **TERRORISM**

- *European Convention on the Suppression of Terrorism (ETS No. 90 - Strasbourg, 27.01.77)*
 - *Protocol amending the European Convention on the Suppression of Terrorism (ETS No. 190 – Strasbourg, 15.05.2003)*
- *Council of Europe Convention on the Prevention of Terrorism (ETS No. 196 – Warsaw, 16.05.2005)*
- *Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (ETS No. 198 – Warsaw, 16.05.2005)*

□ **TRAFFICKING IN HUMAN BEINGS**

- *Council of Europe Convention on Action against Trafficking in Human Beings (ETS No. 197– Warsaw, 16.05.2005)*

□ **PROTECTION OF ENVIRONMENT**

- *Convention on the Protection of Environment through Criminal Law (ETS No. 172 – Strasbourg, 04.11.98)*

□ **CYBERCRIME**

- *Convention on Cybercrime (ETS No. 185 - Budapest, 23.11.2001)*
 - *Additional Protocol concerning the criminalisation of acts of a racist or xenophobic nature committed through computer systems (ETS No. 189 – Strasbourg, 28.01.2003)*

2. CIVIL AND COMMERCIAL LAW

- *European Convention on Information on Foreign Law (ETS No. 62 - London, 07.06.68)*
 - *Additional Protocol to the European Convention on Information on Foreign Law (ETS No. 97 - Strasbourg, 15.03.78)*
- *Convention on the Establishment of a Scheme of Registration of Wills (ETS No. 77 - Basel, 16.05.72)*
- *European Agreement on the Transmission of Applications for Legal Aid (ETS No. 92 - Strasbourg, 27.01.77)*

- *Additional Protocol to the European Agreement on the Transmission of Applications for Legal Aid (ETS No. 179 - Moscow, 04.10. 2001)*
- *Convention on Insider Trading (ETS No. 130 - Strasbourg, 20.04.89)*
- *Convention on Information and Legal Co-operation concerning "Information Society Services" (ETS No. 180 - Moscow, 04.10.2001)*

3. FAMILY LAW

- *European Convention on the Adoption of Children (ETS No. 58 - Strasbourg, 24.04.67)*
- *European Convention on the Legal Status of Children born outside Wedlock (ETS No. 85 - Strasbourg, 15.10.75)*
- *European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children (ETS No. 105 - Luxembourg, 20.05.80)*
- *European Convention on the Exercise of Children's Rights (ETS No. 160 - Strasbourg, 25.01.96)*
- *Convention on contact concerning children (ETS No. 192 – Strasbourg, 15.05.2003)*

4. ADMINISTRATIVE AND FISCAL LAW

- *European Convention on the Service abroad of Documents relating to Administrative Matters (ETS No. 94 - Strasbourg, 24.11.77)*
- *European Convention on the Obtaining Abroad of Information and Evidence in Administrative Matters (ETS No. 100 - Strasbourg, 15.03.78)*
- *Convention on Mutual Administrative Assistance in Tax Matters (ETS No. 127 - Strasbourg, 25.01.88)*

5. CORRUPTION

- *Criminal Law Convention on corruption (ETS No. 173 – Strasbourg, 27.01.99))*

- *Additional Protocol to the Criminal Law Convention on Corruption (ETS No. 191 – Strasbourg, 15.05.2003)*
- *Civil Law Convention on Corruption (ETS No. 174 – Strasbourg, 04.11.99)*

6. MOVEMENT OF PERSONS, ASYLUM, REFUGEES

- *European Agreement on Transfer of Responsibility for Refugees (ETS No. 107 - Strasbourg, 16.10.80)*

7. LOCAL AUTHORITIES

COMPETENCES

- *European Outline Convention on transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106 - Madrid, 21.05.80)*
- *Additional Protocol to the European Outline Convention on transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 159 - Strasbourg, 09.11.95)*
- *Protocol No. 2 to the European Outline Convention on transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 169 - Strasbourg, 05.05.98)*

- *European Charter of Local self-government (ETS No. 122 - Strasbourg, 15.10.85)*

PARTICIPATION OF FOREIGNERS

- *Convention on the Participation of Foreigners in Public Life at Local Level (ETS No. 144 - Strasbourg, 05.02.92)*

8. SPORT

SPECTATOR VIOLENCE

- *European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches (ETS No. 120 - Strasbourg, 19.08.85)*

DOPING

- *Anti-Doping Convention (ETS No. 135 - Strasbourg, 16.11.89)*
- *Additional Protocol to the Anti-Doping Convention (ETS No. 188 – Warsaw, 12.09.2002)*

B. THE COUNCIL OF EUROPE'S NON CONVENTIONAL ACQUIS

I. RESOLUTIONS AND RECOMMENDATIONS OF THE COMMITTEE OF MINISTERS REFERRING TO COUNCIL OF EUROPE'S CONVENTIONS

1. JUDICIAL CO-OPERATION IN CRIMINAL MATTERS

a. Extradition

- Resolution (75) 12 on the practical application of the European Convention on Extradition.
- Resolution (78) 43 on reservations made to certain provisions of the European Convention on Extradition.
- Recommendation R (80) 7 concerning the practical application of the European Convention on Extradition.
- Recommendation R (80) 9 concerning extradition to States not party to the European Convention on Human Rights.
- Recommendation R (82) 1 concerning international co-operation in the prosecution and punishment of acts of terrorism.
- Recommendation R (86) 13 on the practical application of the European Convention on Extradition in respect of detention pending extradition.
- Recommendation R (96) 9 concerning the practical application of the European Convention on Extradition.

b. Judicial Assistance

- Resolution (71) 43 on the practical application of the European Convention on Mutual Assistance in Criminal Matters.
- Resolution (77) 36 on the practical application of the European Convention on Mutual Assistance in Criminal Matters.
- Recommendation R (80) 8 concerning the practical application of the European Convention on Mutual Assistance in Criminal Matters.
- Recommendation R (83) 12 concerning safe conduct for witnesses in application of Article 12.1 of the European Convention on Mutual Assistance in Criminal Matters.
- Recommendation R (85) 10 concerning the practical application of the European Convention on Mutual Assistance in Criminal Matters concerning letters rogatory for the interception of telecommunications.

c. Recognition and Execution of Judgments

- Recommendation R (79) 13 concerning the application of the European Convention on the International Validity of Criminal Judgments.

- Recommendation R (79) 14 concerning the application of the European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders.
- Recommendation R (84) 11 concerning information about the Convention on the Transfer of Sentenced Persons.
- Recommendation R (88) 13 concerning the practical application of the Convention on the Transfer of Sentenced Persons.
- Recommendation R (92) 18 concerning the practical application of the Convention on the Transfer of Sentenced Persons.

d. Transfer of Criminal Proceedings

- Recommendation R (79) 12 concerning the application of the European Convention on the Transfer of Proceedings in Criminal Matters.

e. Others

- Recommendation R (79) 15 concerning the application of the European Convention on the Punishment of Road Traffic Offences.
- Recommendation R (87) 1 relating to European inter-State co-operation in the penal field.
- Recommendation R (91) 12 concerning the setting up and functioning of arbitral tribunals under Article 42, paragraph 2, of the Convention of 8 November 1990 on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.
- Recommendation R (99) 20 concerning the friendly settlement of any difficulty that may arise out of the application of the Council of Europe conventions in the penal field.

2. JUDICIAL CO-OPERATION IN CIVIL MATTERS

- Resolution R (76) 5 on Legal Aid in civil, commercial and administrative matters.
- Recommendation R (88) 16 on ratifying and improving the implementation of the Conventions and Agreements concluded within the Council of Europe in the field of private law, notably the conventions which protect the interests of the children.
- Recommendation R (95) 6 on the application of the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children.
- Recommendation R (99) 6 concerning the practical application of the European Agreement on the Transmission of Applications for Legal Aid.
- Recommendation R (99) 7 on the application of the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children.

- Recommendation R (2003)18 containing a transmission form for legal aid abroad for use under the European Agreement on the transmission of applications for legal aid (ETS No. 092) and its Additional Protocol (ETS No. 179).
- Recommendation R (2005) 12 containing an application form for legal aid abroad for use under the European Agreement on the transmission of applications for legal aid (ETS No. 092) and its Additional Protocol (ETS No. 179).

3. DATA PROTECTION

- Recommendation R (87) 15 regulating the use of personal data in the police sector.
- Recommendation R (2002) 9 on the protection of personal data collected and processed for insurance purposes

4. SPORT

- Recommendation R (99) 11 on the prohibition on free fighting contests, such as cage fighting.
- Recommendation R (2000) 16 on common core principles to be introduced into national legislation to combat the traffic in doping agents.
- Recommendation R (2001) 6 on the prevention of racism, xenophobia, and racial intolerance in sport.

5. LOCAL AUTHORITIES

- Recommendation Rec (2005) 1 on the financial resources of local and regional authorities.
- Recommendation Rec (2005) 2 on good practices in and reducing obstacles to transfrontier and interterritorial cooperation between territorial communities or authorities.

II. OTHER IMPORTANT RESOLUTIONS AND RECOMMENDATIONS OF THE COMMITTEE OF MINISTERS

1. ASYLUM, REFUGEES, MOVEMENT OF PERSONS, SITUATION OF MIGRANTS

- Resolution (67) 14 on asylum to persons in danger of persecution.
- Resolution (70) 2 on the acquisition by refugees of the nationality of their country of residence.
- Recommendation R (81) 16 on the harmonisation of national procedures relating to asylum.
- Recommendation R (83) 1 on stateless nomads and nomads of undetermined nationality.

- Recommendation R (84) 1 on the protection of persons satisfying the criteria in the Geneva Convention who are not formally recognised as refugees.
- Recommendation R (94) 5 on guidelines to inspire practices of the Member States of the Council of Europe concerning the arrival of asylum-seekers at European airports.
- Recommendation R (97) 22 containing guidelines on the application of the safe third country concept.
- Recommendation R (98) 15 on the training of officials receiving asylum-seekers at border points.
- Recommendation R (98) 13 on the right of rejected asylum seekers to an effective remedy against decision on expulsion in the context of article 3 of the European Convention on Human Rights.
- Recommendation R (99) 12 on the return of rejected asylum seekers.
- Recommendation R (99) 23 on family reunion for refugees and others persons in need of international protection.
- Recommendation R (2000) 9 on temporary protection.
- Recommendation R (2000) 15 on the security of residence of long-term migrants.
- Recommendation R (2000) on subsidiary protection.
- Recommendation R (2003) on measures of detention of asylum seekers.
- Recommendation Rec (2005) 6 on exclusion from refugee status in the context of Article 1 F of the Convention relating to the Status of Refugees of 28 July 1951.

2. JUSTICE

- Resolution (78) 8 on legal aid and advice.
- Recommendation R (81) 2 on the legal protection of the collective interests of consumers by consumer agencies.
- Recommendation R (84) 5 on the principles of civil procedure designed to improve the functioning of justice.
- Recommendation R (86) 12 concerning measures to prevent and reduce the excessive workload in the courts.
- Recommendation R (91) 9 on emergency measures in family matters.
- Recommendation R (93) 1 on effective access to the law and to justice for the very poor.
- Recommendation R (94) 12 on the independence, efficiency and role of judges.
- Recommendation R (95) 5 concerning the introduction and improvement of the functioning of appeal systems and procedures in civil and commercial cases.
- Recommendation R (2002) 10 on mediation in civil matters.

- Resolution Res (2002) 12 establishing the European Commission for the efficiency of justice (CEPEJ).
- Recommendation R (2003) 14 on the interoperability of information systems in the justice sector.
- Recommendation R (2003) 15 on the archiving of electronic documents in the legal sector.
- Recommendation R (2003)16 on the execution of administrative and judicial decisions in the field of administrative law.
- Recommendation R (2003) 17 on enforcement.

3. CRIME PROBLEMS

a. *The treatment of offenders*

In general

The main texts are: R (65) 1, R (70) 1, R (76) 10 and R(84) 10.

Limited recourse to deprivation of liberty and more particularly to long-term imprisonment. Increasing recourse to alternative measures as well as measures for the supervision, assistance and after-care of released offenders. Promotion of community sanctions and measures. Specific measures relating to criminal records.

Prisoner's rights

Basic texts: The European prison rules [R (87) 3] which have replaced the old text on the standard minimum rules for the treatment of prisoners [R (73) 5] and which are completed by several texts especially dealing with electoral, civil and social rights [R (62) 2], prison leave [R (82) 16], custody and treatment of dangerous prisoners [R (82) 17], the case of foreign prisoners [R (84) 12], education in prison [R (89) 12], health problems in prison, transmissible diseases [R (93) 6], and overcrowded prisons, prison population inflation [R (99) 22]. Recently, R (2003) 23 on the management by prison administrations of life sentence and other long-term prisoners as well as the new Recommendation (2006) 2 on the European Prison Rules.

Other texts: R (75) 25 and R (76) 2

Social reintegration, individualisation of the system and treatments are the guiding principles.

Rights of sentenced offenders to sanctions and measures non restrictive of liberty

Basic text: European rules on community sanctions and measures [R (92) 16]. Other texts: R (2000) 22 on improving the implementation of the European rules on community sanctions and measures; R (2003) 22 on conditional release (parole)

Juvenile delinquency and protection of youth and family

Basic texts: R (66) 25 and R (87) 20. Other texts : R (67) 13, R (69) 6, R (78) 62, R (79) 17, R (85) 4, R (87) 20, R (88) 6, R (91) 1, and R (2000) 20.

As far as young delinquents, under 21 years old, are concerned: no to deprivation of liberty, no to long-term measures, yes to preventive measures even by the press and the cinema. Specific measures relating to violence in families, young persons who come from migrant families and the traffic of children and young adults.

- Recommendation R (2003) 20 concerning new ways of dealing with juvenile delinquency and the role of juvenile justice.

b. Criminal procedure

Several rights provided by Articles 5 and 6 of the European Convention of Human Rights were subject to further developments adapted to particular circumstances. Thus:

- the right to a fair trial, as far as judgements held in the absence of the accused are concerned [R (75) 11];
- the right to be heard when proceedings in criminal matters are transferred [R (79) 12];
- the right to be heard before the execution of the sentence, privative of liberty, is validated in another country [R (79) 13];
- the right to be informed on extradition requests [R (80)7];
- the right to be heard on the arguments against extradition [R (80) 7];
- the right for sentenced persons to be informed of the possibilities and conditions relating to their transfer in their country of origin [R (84) 11];
- the right to question or to ask that a prosecution witness be questioned [R (97) 13].

Some further principles are established, in particular:

- the principle of proportionality between the seriousness of the offence and the harshness that may result from the procedure of extradition [R (80) 7];
- the principle, which consists in the need of simple and summary procedures in order to obtain a sane administration of justice [R (68) 25, R (79) 15, R (87) 18 and R (88) 13];
- the guiding principles in the matter of simplified and summary procedures [R (87) 19];
- the guiding principles in the matter of sentencing, particularly as far as coherence in sentencing is concerned [R (92) 17];
- criteria in searching the truth [R (75) 12];
- the need of individualisation of the sentences [R (75) 12];
- principles concerning the use of deoxyribonucleic acid (DNA) within the framework of the criminal justice system;
- guiding principles on problems of criminal procedural law connected with information technology [R (95) 13];

- guiding principles concerning measures aiming to limit intimidation of witnesses [R (97) 13].

c. *Detention on remand in custody, pending investigation or trial*

Basic texts: R (65) 11 and R (80) 11. Other texts: R (80) 7, R (84) 12 and R (86) 13.

Detention on remand in custody or pending investigation or trial must remain an exceptional measure, guided by the principle of the presumption of innocence. It should be non compulsory, non punitive, reasoned, of a limited time, applied only if strictly necessary and only if the person concerned has been brought before a judicial authority. The periods of detention on remand in custody should be taken in consideration at the time of the sentencing.

These principles also apply to detention pending extradition [R (75) 12 and R (80) 7].

d. *Combating sexual exploitation and abuse of children and other vulnerable persons*

- Recommendation No. (91) 11 on Sexual exploitation, Pornography and Prostitution of, Trafficking in, Children and Young Adults.
- The European Follow-up conference to the Stockholm World congress against Commercial Sexual Exploitation of Children (Strasbourg, 28 – 29 April 1998) was organised, with a view to taking stock of the measures taken at national level, identifying problems encountered by Governments in implementing the Stockholm Agenda for Action and presenting examples of relevant good practice in combating the crimes concerned.
- Recommendation (2001) 16 on the protection of children against sexual exploitation.
- Resolution ResAP (2005) 1 on safeguarding adults and children with disabilities against abuse.

e. *Crime policy*

- (a) In addition to the above principles and in general:

(Basic texts: Recommendation R (2003) 21 concerning partnership in crime prevention; Recommendation R (96) 8 concerning crime policy in Europe in time of change).

- selective recourse to criminal law: need to decriminalise (transfer from criminal to civil procedures) certain behaviours (cf. Report on decriminalisation, 1980); establishment of dejudicialisation policies;
- no to short-term sentences which imply a deprivation of liberty; criminal justice must have a social trend rather than a punitive trend [R (73) 17 and R (73) 24];
- priority to the prevention of crime [R (87) 19];
- need of the participation of the public in crime policy [R (83) 7];
- selective recourse to crime liability of legal persons [R (88) 18].

(b) Particularly concerning:

organised crime

Recommendation (2001) 11 concerning guiding principles on the fight against organised crime.

protection of victims

Fundamental principles: the protection of victims; assistance to victims and prevention of victimisation deserve a pre-eminent place in the framework of criminal law and procedure; the need to improve the answers of the system of criminal justice and society to the victim's requirements [mainly R (85) 11 and R (87) 21, but also R (77) 27 and R (82) 14].

protection of witnesses and collaborators of justice

Recommendation Rec (2005) 9 on the protection of witnesses and collaborators of justice.

racism

Condemnation of racism and need of specific measures [R (68) 30]. Special case concerning video games with a racist content [R (92) 19]. The problem of "hate speech" [R (97) 20]. The prevention of racism, xenophobia, and racial intolerance in sport [R (2001) 6].

drug abuse

Need of a coherent and global policy, founded on prevention. Repression must only be complementary [R (73) 6].

terrorism

Condemnation of terrorism, need of prevention and repression. Objective limits to violence for political reasons [R (74) 3, R (70) 23, R (82) 1]. Special investigation techniques [Rec (2005) 10]. Identity and travel documents [Rec (2005) 7].

organ trafficking

Recommendation Rec (2004) 7 on organ trafficking.

consumer protection

Need to match the rules on consumer protection with criminal sanctions in order to better protect life, health and their legitimate economic interests [R (82) 15].

protection of the environment

Need to match the rules on protection of the environment with criminal sanctions while placing them in the global policy context [R (77) 28].

economic crime

Need of specific measures, on one hand against economic crime [R (81) 12] and, on the other, concerning computer-related crime [R (89) 9].

transfer and laundering of funds of criminal origin

The accumulation of funds of criminal origin and the factual power it entails constitute a risk for the principles defended by the Council of Europe. Thus, the need to adopt specific measures [R (80) 10, R (91) 12].

road safety

Road safety demands a specific treatment for road traffic offences [R (68) 25, R (71) 28, R (73) 7, R (75) 24, R (77) 29 and R (78) 42, R (79) 15].

criminological research

Need to base any crime policy on the data of criminological research [R (66) 18, R (67) 5, R (70) 13, R (73) 25 and R (76) 38].

4. PUBLIC PROSECUTION

- Recommendation R (2000) 19 on the role of public prosecution in the criminal justice system.

5. POLICE

- Recommendation R (2001) 10 on the European Code of Police Ethics.

6. FIGHT AGAINST CORRUPTION

- 20 Guiding Principles for the fight against Corruption adopted by the Committee of Ministers at its 101st Session (6 November 1997).

- Resolution on the links between corruption and organised criminality adopted by the European Ministers of Justice (Prague, 1997).
- Resolution (99) 5 establishing the Group of States against Corruption (CRECO).
- Recommendation R(2000) 10 on codes of conducts for public officials.
- Recommendation R (2003) 4 on common rules against corruption in the funding of political parties and electoral campaigns

7. NATIONALITY

- Resolution (70) 2 on acquisition by refugees of the nationality of their country of residence.
- Resolution (72) 1 on the standardisation of the legal concepts of “domicile” and of “residence”.
- Recommendation R (83) 1 on stateless nomads and nomads of undetermined nationality.
- Recommendation R (84) 9 on second-generation migrants.
- Recommendation R (84) 21 on the acquisition by refugees of the nationality of the host country.
- Recommendation R (92) 10 on the implementation of rights of persons belonging to national minorities.
- Recommendation R (99)18 on the avoidance and reduction of statelessness.

8. FAMILY LAW

- Resolution (72) 29 on the lowering of the age of full legal capacity.
- Resolution (77) 12 on the nationality of spouses of different nationalities.
- Resolution (77) 13 on the nationality of children born in wedlock.
- Resolution (77) 33 on placement of children.
- Resolution (78) 37 on equality of spouses in civil law.
- Recommendation R (81) 15 on the rights of spouses relating to the occupation of the family home and the use of the household contents.
- Recommendation R (82) 2 on payment by the State of advances on child maintenance.
- Recommendation R (84) 4 on parental responsibilities.
- Recommendation R (87) 2 containing a model agreement to enable the members of the family forming part of the household of a member of a diplomatic mission or consular post to engage in a gainful occupation.

- Recommendation R (89) 1 on contributions following divorce.
- Recommendation R (91) 9 on emergency measures in family matters.
- Recommendation R (98) 1 on family mediation.
- Recommendation R (98) 8 on children's participation in family and social life.
- Recommendation R (99) 4 on principles concerning the legal protection of incapable adults.
- Recommendation Rec (2005) 5 on the rights of children living in residential institutions.

9. EQUALITY BETWEEN WOMEN AND MEN

Gender Mainstreaming

- Recommendation No R (98) 14 on gender mainstreaming (see also report on gender mainstreaming: conceptual framework, methodology and presentation of good practices).

Combating violence against women

- Recommendation R (2002) 5 on the protection of women against violence.
- Report and Plan of Action on combating violence against women and compilation of legislation in the Member States of the Council of Europe in the field of combating violence against women.

Action against trafficking in human beings for the purpose of sexual exploitation

- Recommendation R (2000) 11 on action against trafficking in human beings for the purpose of sexual exploitation (see also: plan of action against traffic in women and compilation of legal instruments dealing with trafficking).

Other matters

- Recommendation R (90)4 on the elimination of sexism from language.
- Recommendation R (96)5 on reconciling work and family life.
- Recommendation R (2003)3 on balanced participation of women and men in political and public decision making.

10. SPORTS

- Recommendation Rec (2005) 8 on the principles of good governance in sport.

C. **OPINIONS OF THE CCJE, CCPE AND RECOMMENDATIONS OF THE EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE (ECRI)**

1. RECOMMENDATIONS BY THE ECRI

- *General Policy Recommendation No. 1: Combating racism, xenophobia, anti-Semitism and intolerance* - a comprehensive strategy for outlawing racism, covering in particular legislation, law enforcement and judicial remedies.
- *General Policy Recommendation No. 2: Specialised bodies to combat racism, xenophobia, anti-Semitism and intolerance at national level* - advocating the establishment of an independent specialised body in this field.
- *General Policy Recommendation No. 3: Combating racism and intolerance against Roma/Gypsies;*
- *General Policy Recommendation No. 4: National surveys on the experience and perception of discrimination and racism from the point of view of potential victims.*
- *General Policy Recommendation No. 5: Combating intolerance and discrimination against Muslims.*
- *General Policy Recommendation No. 6: Combating the dissemination of racist, xenophobic and antisemitic material via the internet.*
- *General policy recommendation N°7: National legislation to combat racism and racial discrimination.*
- *General policy recommendation N°8: Combating racism while fighting terrorism.*
- *General policy recommendation N°9 : The fight against antisemitism.*

2. CCJE OPINIONS

- *Opinion N° 1 (2001)* on “standards concerning the independence of the judiciary and the irremovability of judges”;
- *Opinion N° 2 (2001)* on “the funding and management of courts”;
- *Opinion N° 3 (2002)* on “ethics and liability of judge”s;
- *Opinion N° 4 (2003)* on “training for judges”;
- *Opinion N° 5 (2003)* on “the law and practice of judicial appointments to the European court of human rights”;
- *Opinion N° 6 (2004)* on ”fair trial with a reasonable time”;
- *Opinion N° 7 (2005)* on “justice and society”;
- *Opinion n°8 (2006)* on “the role of judges in the protection of the rule of law and human rights in the context of terrorism”;
- *Opinion n°9 (2006)* on ”the role of national judges in ensuring an effective application of international and European law”;

- *Opinion n°10 (2007)* on "Council for the Judiciary in the service of society".

2. CCPE OPINIONS

- *Opinion No.1 (2007)* on "Ways to improve international co-operation in the criminal justice field";
- *Opinion No.2 (2008)* on "Alternatives to prosecution";
- *Opinion No.3 (2008)* on "the role of prosecutor outside the criminal field".