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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

in co-operation with
THE ROMANIAN MINISTRY OF FOREIGN AFFAIRS

ANNIVERSARY CONFERENCE

ON THE EUROPEAN CONVENTION ON HUMAN RIGHTS: FROM INTEGRATING STANDARDS TO SHAPING SOLUTIONS

Bucharest, 8 - 9 July 2004

CONCLUSIONS

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The occasion of yesterday's and today's meeting was the 10th anniversary of Romania's membership in the ECHR. Remarkably we did not deal with specific problems of relatively new members but with one of the hard core problems, the length of proceedings, which affects nearly all member States – and indeed even – the Strasbourg Court itself, I refer to the Kudla judgment where this problem is clearly expressed. Yesterday we heard a lot of countries commit themselves to tackling the problem of excessive length of proceedings. The legal situation according to Art. 6 ECHR was brought to our attention once again in a very precise manner (including new aspects of EU membership and related procedures). This morning concerned problems related to detention on remand. They should, however, be treated separately.

In a very simplified form the problem of length of proceedings calls for two types of reaction. Firstly, there is a need to organise the domestic judicial system in a way that complies with the reasonable time requirement in Article 6 of the Convention. Secondly, answers have to be found for effective redress in the individual cases where violations have occurred. These two issues should be separated for two reasons: it helps to define concrete and adequate solutions and it allows for an adequate sharing of tasks on both a national and on a European level.

With regard to the first topic of how to organise and improve the national judiciary, Mr. Leyenberger presented an excellent report on numerous measures developed and proposed by the Commission for the Efficiency of Justice – CEPEJ. These efforts exist and there is considerable progress in this direction. Eighteen lines of action in the framework programme stand for the quality of this work going far beyond the organisation of particular proceedings. Mr. Leyenberger referred to measures aimed at improving institutions, legislation and of course the procedures.

These measures are of course the key, if not the most important key to solving the problem of excessive length of proceedings. However, the best judicial system will face the problem of particular proceedings where the requirement of "reasonable time" for whatever reason has not been met. In addition there is quite a way to go in some states until such a system is achieved. It is this problem, which was addressed by the Government agents. What we need, as has been expressed in the Kudla judgment and many other judgments since 2000, is an effective remedy in cases where the parties have an "arguable claim" that there was a breach of Art. 6 para 1 in this respect. Different solutions were presented yesterday and this morning – I refer by way of example to the Pinto law, the jurisprudence of the Croatian Constitutional Court (with the setting of a concrete time limit) the Romanian solutions and to judgments or laws in Poland and Austria which enable the parties to call for time limits and the speeding up of the proceedings. All these solutions have one thing in common: they are based on a strong will on the side of the governments to solve the problem of length of proceedings before the problem reaches the Strasbourg Court. They are an answer through domestic law to a human rights issue raised in Strasbourg. While I am convinced that each member state concerned must shape its answer in detail on the basis of the particularities of each legal system, I strongly believe that there exists a need for a common European basis for shaping these solutions. This conference is a first contribution to form such a basis. The confrontation of the ECHR standards with the comparative approach of the government agents showed us in which way the journey must go. We should not stop here. This ambitious conference, which came in my view at the right time in the right place, should be followed by other activities – and these activities could be organised by and within the Council of Europe's institutions.

In my opinion, the European "atout" is the possibility of adopting a comparative approach to the matter of the implementation of Strasbourg judgments.

Within the Council of Europe, States have the possibility of sharing their respective experiences, of comparing them, of analysing them in order to identify the most appropriate solutions to a problem in a given context.

The competent Council of Europe bodies – and here I am thinking not only of the Committee of Ministers, assisted by the Department of execution of judgments of Directorate General II, but also of the European Commission for the Efficiency of Justice and of the Parliamentary Assembly, I am also thinking of the Venice Commission – represent the ideal forum for this exercise: they have accumulated a vast specific experience on a number of these issues and can assist – and guide, if need be – States in this endeavour. They can collect information, process it and circulate it; initiate and stimulate reflection on it. Each of these bodies has a specific field of competence, but their synergy can indeed provide a global solution to issues of common concern. The specific topic chosen for this conference – the unreasonable duration of proceedings – is a good example of how all the competent national authorities and international bodies can co-operate.

I do not want to conclude without expressing my thanks on behalf of the venice commission to the ministry of foreign affairs of romania as well as to the ministry of justice and to the parliament of romania for this initative and also for the perfect organisation of this conference. It is to be hoped that romania continues to contribute in an active way to solving this crucial question of human rights protection in europe.