

***Evaluation of Commission's cooperation with  
the Council of Europe***

***An assessment focussed on EU funding of Joint Programmes***

Final Report

Volume II

September 2012

*Evaluation for the European Commission*







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Framework contract for  
**Multi-country thematic and regional/country-  
level strategy evaluation studies and syn-  
thesis in the area of external co-operation**

**LOT 5:  
Evaluation of EC main policies and strategies in the  
areas of external cooperation**

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*This evaluation was carried out by  
**Particip GmbH***

**September 2012**



# Evaluation of Commission's cooperation with the Council of Europe

## Final Report

**Volume I: Main report**

**Volume II: Detailed information matrix**

**Volume III: Field visit country notes**

**Volume IV: Annexes**

### VOLUME I: MAIN REPORT

1. Introduction
2. Methodology
3. Background and context
4. Intervention logic
5. Inventory
6. Answers to the Evaluation Questions
7. Conclusions and Recommendations

### VOLUME II: DETAILED INFORMATION MATRIX

1. EQ1: Guidance criteria
2. EQ2: Specific expertise
3. EQ3: Impacts in Human rights
4. EQ4: Impacts in Rule of Law I
5. EQ5: Impacts in Rule of Law II
6. EQ6: Impacts in Democracy
7. EQ7: Implementation
8. EQ8: Complementarity and Synergies

### VOLUME III: FIELD VISIT COUNTRY NOTES

1. Armenia
2. Moldova
3. Serbia
4. Turkey

### VOLUME IV: ANNEXES

- Annex 1: Final evaluation matrix
- Annex 2: Synthesis of evaluation reports
- Annex 3: Results of survey to EU Delegations
- Annex 4: Inventory
- Annex 5: List of EC-CoE contracts
- Annex 6: Thematic case studies
- Annex 7: List of people consulted
- Annex 8: Key sources consulted
- Annex 9: Terms of Reference



## Table of Contents – Volume II

<b>Detailed information matrix</b> .....	<b>1</b>
<b>1 EQ1: To what extent have the criteria for decisions to cooperate with the CoE been clear, transparent and strategically sound?</b> .....	<b>1</b>
1.1 JC 11 Level of discussion/analysis of the choice of the CoE as a cooperation partner.....	1
1.2 JC 12 Degree to which EC/EU staff at headquarters and in the field are well-informed regarding the possibility to cooperate with the CoE.....	9
<b>2 EQ2: To what extent has the cooperation with the CoE, in particular via the channelling of funds, enabled the EC to use the CoE's specific sectoral expertise and mandate and geographical scope in the key areas of cooperation?</b> .....	<b>15</b>
2.1 JC 2.1 Degree to which the CoE's sectoral expertise and mandate and geographic scope and political capacity to hold partner countries accountable have been taken advantage of in cooperation activities including JP implementation.....	15
2.2 JC 2.2 Degree to which EU has benefited from jointly working with the CoE on legal issues / standards setting and monitoring / country assessments in human rights, rule of law, and democracy .....	26
<b>3 EQ3: To what extent has the cooperation with the CoE, in particular via the channelling of funds, contributed to increasing respect for human rights and fundamental freedoms?</b> .....	<b>30</b>
3.1 JC 3.1 Improved protection of human rights (civil, political, social, economic and cultural), including non-discrimination.....	30
3.2 JC 3.2 Degree to which accession to, and compliance with, the European Convention on Human Rights (ECHR) and the European Social Charter has been promoted and strengthened.....	43
3.3 JC 3.3 Enhanced protection of the rights of minority groups (including linguistic minorities).....	60
3.4 JC 3.4 Increased awareness of human rights and fundamental freedoms .....	67
3.5 JC 3.5 Improved treatment and conditions of detention .....	74
<b>4 EQ4: To what extent has cooperation with the CoE, in particular via the channelling of funds, contributed to strengthening the rule of law as it relates to the fight against corruption, money laundering, organised crime and trafficking?</b> .....	<b>86</b>
4.1 JC 4.1 Increased accession to, and compliance with, the conventions relating to the fight against corruption, money laundering, organised crime and trafficking.....	86
4.2 JC4.2 Improved prevention and deterrence of corruption, money laundering, organised crime and trafficking .....	102
<b>5 EQ5: To what extent has the cooperation with the CoE, in particular via the channelling of funds, contributed to strengthening the rule of law as it relates to legal systems and access to justice?</b> .....	<b>109</b>
5.1 JC 5.1 Increased transparency, efficiency, and effectiveness of the legal system.....	109
5.2 JC5.2 Improved access to justice .....	116
<b>6 EQ6: To what extent has the cooperation with the CoE, in particular via the channelling of funds, contributed to establishing stronger democratic institutions and practices at central and local level?</b> .....	<b>120</b>
6.1 JC 6.1 Strengthened democratic institutions and processes in the area of democracy.....	120
6.2 JC6.2 Improved electoral legislation and practice .....	132
6.3 JC6.3 Improved local and regional governance and practice.....	148
<b>7 EQ7: To what extent have the implementation modalities of Joint Programmes employed by the CoE been appropriate to help achieving EC objectives related to human rights, rule of law, and democracy?</b> .....	<b>155</b>

7.1	JC 7.1 Degree to which CoE implementation has reflected best practice of programme cycle management.....	155
7.2	JC 7.2 Quality of reporting, monitoring, financial management by JPs and quality of evaluation of JPs .....	161
7.3	JC 7.3 Appropriateness of relationship between JP management needs, CoE headquarters human resources, and field presence .....	165
7.4	JC 7.4 Mechanisms and processes for incorporating lessons learned and ensuring sustainability in place .....	168
7.5	JC 7.5 Degree to which EC political visibility has been ensured .....	171
<b>8</b>	<b>EQ8: To what extent has the cooperation with the CoE, in particular via the channelling of funds, helped to enhance complementarity and synergies between the EC and the CoE?.....</b>	<b>175</b>
8.1	JC 8.1 Degree to which CoE country strategies were aligned and coordinated with the EC country strategies .....	175
8.2	JC 8.2 Degree to which cooperation between EC and CoE has facilitated complementarity of JPs with EC other external assistance programmes.....	180
8.3	JC 8.3 Degree to which joint EC-CoE cooperation activities are aligned with government, EU and CoE priorities .....	182
8.4	JC 8.4 Degree to which EU-CoE cooperation has enhanced synergies between the organisations.....	186
8.5	JC 8.5 CoE value added .....	187

## List of Tables

Table 1:	Results of survey to EUDs: Availability and usefulness of formal guidance for aid channelling.....	5
Table 2:	Results of survey to EUDs: EUD involvement in decisions to implement via the CoE .....	11
Table 3:	Results of survey to EUDs: EUD involvement in non-financial cooperation.....	12
Table 4:	Ratification and compliance, money laundering and the financing of terrorism.....	89
Table 5:	Accession and compliance, corruption Theme I: Incrimination of bribery .....	94
Table 6:	Transparency International Index of Perceived Corruption, early and late in the evaluation period.....	103

## List of Figures

Figure 1:	Results of survey to EUDs: Basis for decision on EC-CoE cooperation .....	4
Figure 2:	Results of survey to EUDs: Reasons for EC-CoE cooperation as perceived by the EUDs .....	4
Figure 3:	Results of survey to EUDs: EUD knowledge of EC-CoE non-financial cooperation .....	11
Figure 4:	Results of survey to EUDs: Frequency of EUD-CoE communication at country level.....	13
Figure 5:	Results of survey to EUDs: Active promotion of EC-CoE cooperation by the CoE on country level.....	14
Figure 6:	Results of the survey to EUDs: Adequacy of CoE expertise as perceived by the EUDs.....	20
Figure 7:	Results of the survey to EUDs: Uniqueness of CoE expertise as perceived by the EUDs .....	24
Figure 8:	Results of the survey to EUDs: Importance of CoE expertise for achieving results .....	24
Figure 9:	EUD survey results: Impacts in Improved protection of human rights.....	33



Figure 10:	EUD survey results: Impacts in accession to, and compliance with, the European Convention on Human Rights (ECHR) .....	45
Figure 11:	EUD survey results: Impacts in Enhanced protection of the rights of minority groups .....	61
Figure 12:	EUD survey results: Impacts in Increased awareness of human rights and fundamental freedoms .....	69
Figure 13:	EUD survey results: Impacts in Improved treatment and conditions of detention .....	76
Figure 14:	EUD survey results: Increasing compliance with conventions relating to the fight against corruption, money laundering, organised crime and trafficking.....	87
Figure 15:	EUD survey results: Contribution of EC-CoE cooperation to prevention of corruption, money laundering, organised crime and trafficking.....	104
Figure 16:	EUD survey results: Impacts in Increased transparency, efficiency, and effectiveness of the legal system.....	110
Figure 17:	EUD survey results: Impacts in Improved access to justice .....	117
Figure 18:	EUD survey results: Impacts in Strengthening democratic institutions and processes.....	121
Figure 19:	EUD survey results: Impacts in improved electoral legislation and practice .....	134
Figure 20:	EUD survey results: Impacts in improved local and regional governance and practice .....	149
Figure 21:	EUD survey results: Perception of EUD staff of the quality of JP management.....	156
Figure 22:	EUD survey results: Perception of EUD staff of the Delegations' impact on JPs .....	157
Figure 23:	EUD survey results: Perception of EUD staff of the quality of EC-CoE joint programme design .....	158
Figure 24:	EUD survey results: Perception of EUD staff of the quality of progress/monitoring reports.....	164
Figure 25:	EUD survey results: Perception of EUD staff of the change in the visibility of EC-CoE JPs in the evaluation period .....	173
Figure 26:	EUD survey results: Perception of EUD staff of EU visibility with different JP stakeholders .....	174
Figure 27:	EUD survey results: Overall JP results compared to expectations and other implementing modalities .....	189
Figure 28:	EUD survey results: Overall result of EC-CoE non-financial cooperation compared to expectations and other implementing modalities .....	190

## List of Boxes

Box 1:	EEAS survey: Perception of EUD-CoE field office communication .....	12
Box 2:	Examples of perceptions relating to the CoE expertise at country level, emerging from project-related documents.....	21
Box 3:	Examples of capacity building in the field of ECHR for judicial officers and law-enforcement personnel .....	45
Box 4:	Turkey: JPs implemented in support of increasing knowledge of and technical familiarity with the ECHR among key institutions and main stakeholders.....	51
Box 5:	Examples of ECHR training directed towards non-judicial stakeholders.....	53
Box 6:	Dosta! campaign to fight prejudice against Roma population .....	72
Box 7:	EC-CoE JPs implemented in field of penitentiary and prevention of torture .....	76
Box 8:	Judicial and legal reforms in Joint Programmes.....	113
Box 9:	Armenia and Azerbaijan: The JP Ukraine and South Caucasus – Promoting the Democratic Process (2005-2008) .....	122

Box 10:	Armenia and Azerbaijan: JP Ukraine and South Caucasus – Promoting the Democratic Process (2005-2008).....	125
Box 11:	Armenia and Azerbaijan: Freedom of Expression and Information and Freedom of the Media (2008-2009).....	125
Box 12:	EC-CoE non-financial cooperation in the field of media.....	128
Box 13:	Azerbaijan and Armenia: South Caucasus Democratic Stability (2002-2004) – topics of seminars.....	130
Box 14:	Support to Free and Fair Elections (2008-2010) – Support to electoral legislation.....	135
Box 15:	Support to free and fair elections (2008-2010) – Capacity building of electoral management bodies.....	138
Box 16:	Support to free and fair elections (2008-2010) – Election complaints procedures.....	140
Box 17:	Support to free and fair elections (2008-2010) – Support to NGOs.....	141
Box 18:	Capacity building of media on the democratic electoral process.....	143
Box 19:	Serbia: Strengthening Local Self-Government.....	150
Box 20:	Moldova: Support to the development of local government.....	151
Box 21:	Project design of JP: Synthesis of findings from analysing JP evaluations and ROM reports.....	158
Box 22:	Examples of successful and unsuccessful management.....	166
Box 23:	Examples of JP coordination with other external assistance projects.....	181

## List of acronyms

ADR	Alternative Dispute Resolution
AI	Amnesty International
AP	Action Plan
BiH	Bosnia and Herzegovina
CARDS	Community assistance for reconstruction, development and stabilisation
CAT	UN Convention against Torture
CCCEC	Centre for Combating Corruption and Economic Crime (Moldova)
CEC	Central Electoral Commission
CEEC	Central and Eastern European Countries
CEPEJ	European Commission for the Efficiency of Justice
CLRAE	Congress of Local and Regional Authorities of the Council of Europe
CoE	Council of Europe
CoHR	Commissioner for Human Rights
CPI	Corruption Perception Index
CRIS	European Commission's Common RELEX Information System
CSLN	Civil Society Leadership Network
CSP	Country Strategy Paper
DAC	Development Assistance Committee
DCI	Development Cooperation Instrument
DG DEVCO	EC Directorate for Development and Cooperation
DG EAC	EC Directorate for Education and Culture
DG ELARG	EC Directorate for Enlargement
DG EMPL	EC Directorate for Employment, Social Affairs & Inclusion
DG INFO	EC Directorate for Information, Society and Media
DG JUST	EC Directorate for Justice
EaP	Eastern Partnership
EAR	European Agency for Reconstruction
EC	European Commission
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECLSG	European Charter of Local Self-Government
ECRI	European Commission against Racism and Intolerance
ECRML	European Charter for Regional or Minority Languages
ECSR	European Committee of Social Rights
ECtHR	European Court of Human Rights
EDC	Education for Democratic Citizenship
EEAS	European External Action Service
EIDHR	European Initiative / Instrument for Democracy and Human Rights
ENCJ	European Networks of Councils for the Judiciary
ENP	European Neighbourhood Policy
ENPI	European Neighbourhood Policy Instrument
EPR	European Prison Rules
EQ	Evaluation Question
ESC	European Social Charter
EU	European Union
EUD	Delegation of the European Union
EUROJUST	Agency of the EU for judicial co-operation in criminal matters
EUROPOL	European Police Office
FATF	Financial Action Task Force
FCPNM	Framework Convention for the Protection of National Minorities
FIU	Financial Intelligence Unit
FRA	European Agency for Fundamental Rights
FYROM	Former Yugoslav Republic of Macedonia
GONGO	Government-Organized Non-Governmental Organization

GRECO	Group of States against corruption
GRETA	Group of Experts on Action against Trafficking in Human Beings
HCNM	High Commissioner on National Minorities
HELP	Human Rights Education for Legal Professionals
HQ	Headquarters
HR	Human Rights
HRB	Human Rights Board
HRE	Human rights Education
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
IOM	International Organization for Migration
IPA	Instrument for pre-accession assistance
JC	Judgment Criterion
JP	Joint Project
LGBT	Lesbian, Gay, Bisexual, and Transgender people
LSG	Local Self-Government
MIPD	Multi-annual Indicative Planning Document
MoJ	Ministry of Justice
MOLICO	Project against corruption, money laundering and the financing of terrorism in Moldova
MONEYVAL	Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism
MoU	Memorandum of Understanding
MS	Member state
NGO	Non-governmental organisation
NHRS	National Human Rights Structures
NIJ	National Institute of Justice
NIP	National Indicative Programme
NJRS	National Judicial Reform Strategy
NPAA	National Programme for the adoption of the Community acquis
NPM	National Preventative Mechanism against Torture
ODIHR	Office for Democratic Institutions and Human Rights
OHCHR	Office of the High Commissioner for Human Rights
OPCAT	Optional Protocol to the Convention against Torture
OSCE	Organization for Security and Co-operation in Europe
PACE	Parliamentary Assembly of the Council of Europe
PACO	Support to the National Anti-corruption Strategy (Moldova) JP
PCM	Project cycle management
PRAG	Practical Guide to contract procedures for EU external actions
PROSECO	Support to the Prosecutors' Network in South-East Europe JP
RG	Reference Group
ROM	Results oriented monitoring
RUCOLA	Harmonisation Russian anti-corruption legislation with international standards JP
SC	Steering Committee
SEB	Supreme Election Board
SEE	South East Europe
SIDA	Swedish International Development Agency
SISP	Social Institutions Support Programme
SPS	Schools of Political Studies
SRSG	Special Representative of the Secretary General
TA	Technical Assistance
TI	Transparency International
ToR	Terms of Reference
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund
UNODC	UN Office on Drugs and Crime

UPR	Universal Periodic Review of the UN Office of the High Commissioner for Human Rights
VC	Venice Commission – European Commission for Democracy through Law
WB	World Bank

**Note:** The Evaluation uses the common acronym "**EC**" to refer to either the "Commission of the European Union" (post-Lisbon Treaty) or the "European Commission" (pre-Lisbon Treaty), as applicable. In some specific cases related to the overall EU Policy framework or the post-Lisbon Treaty context, the acronym EU refers to the Commission of the European Union as well as other EU services in charge of the European external action and its relations with third countries.



## Detailed information matrix

### 1 EQ1: To what extent have the criteria for decisions to cooperate with the CoE been clear, transparent and strategically sound?

#### 1.1 JC 11 Level of discussion/analysis of the choice of the CoE as a cooperation partner

We assessed this JC based on three Indicators. The first asked whether the EC, at Headquarters or EUD level, undertakes a strategic assessment of whether the CoE is the best partner for cooperation. The second, closely related, is whether there is a clearly articulated view at Headquarters or in the field, of the CoE's comparative advantage as a cooperation partner. The third is whether there is an overarching strategic vision for cooperation with the CoE.

The second is easiest to report on. At **EU headquarters** (to judge by interviews) as well as in EUDs (to judge by survey results and interviews in the field) **there is a clear and consistent view that the CoE's comparative advantage** is as a repository of expertise and knowledge in certain sectors and that its comparative disadvantage is as an implementing agency. It is regarded as old fashioned, overly bureaucratic, too Strasbourg-Headquarters oriented, inefficient in reporting, etc. This view is broadly confirmed by the synthesis of previous Joint Programme evaluations that has been produced (see Annex 2). As EEAS is more concerned with broad strategy and DG DEVCO is concerned with implementation, it is not surprising that there is more enthusiasm for the cooperation partnership in the first group than the second. Important to note, although the Indicator did not address the CoE's own view of its comparative advantage and disadvantage, the vision of an institution strong in expertise but weak in implementation skills is shared, overall, between Brussels and Strasbourg.

Views on non-financial cooperation are not so easy to characterise, but there is, at EC Headquarters, broad appreciation of the CoE's monitoring (and by extension, standard setting) mandate and the fact that, in countries which are not EU MSs, the CoE can exert political and moral pressure. It was striking that at no point in EC headquarters interviews, but frequently in CoE headquarters interviews, the fact that the CoE can act in EU MSs where the EC would be more constrained from acting was mentioned.

These points are also relevant to the first indicator (strategic assessment and/or justification for cooperation). Of importance is that in the EUD survey, almost all EUDs reported that there is some sort of **documented analysis** (more vulgarly, "paper trail") that would shed light on why the CoE was selected as a cooperation partners. However, in some cases, either a pre-existing document such as an Accession Agreement defines cooperation or another European entity, such as DG Enlargement, makes decisions. In the case of JPs, the decision to implement via an EC-CoE JP was often taken on the specific request of government. There are signs that the view of the CoE as a default partner for certain types of projects is being increasingly challenged at the EUD level, with the result that competitive bidding rather than direct award is increasingly viewed as the better approach. **The JP formulation process is often ad hoc** and, due to understaffing and high turnover, there is no forward looking strategic vision for cooperation at the EUD level.

The third Indicator, on existence of an **overarching strategic vision for cooperating with the CoE**, is broad, and we have addressed it in Section 3 of this report. Clearly, there is such a vision, and it is embodied mostly in the 2007 Memorandum of Understanding. On the non-financial side, there is a vision rooted in EU accession to the ECHR, the Lisbon Treaty, the desire to engage at least in mutually reinforcing standard setting if not joint standard setting, the promise and challenges of EC accession to monitoring bodies (notably GRETA), the need to coordinate monitoring activities, etc. This vision is being articulated through regular high-level consultations covering both political and practical matters that have developed over the last three to four years.

On the financial cooperation side, i.e. Joint Programmes, no strategic vision was discerned in EC Headquarters interviews apart from the consideration of comparative advantages and disadvantage as discussed elsewhere. The CoE appears to be a partner of opportunity; if they are the best available or there is a special request from government, they will be engaged, but another implementing partner might be just as good if they were as qualified.

This is in contrast to the situation in Strasbourg, where a tightly defined strategy was everywhere reported. This involves increasing JP cooperation, instituting organizational reforms to prevent the expansion of external resources from distorting internal priorities, strengthening implementation capacity by re-orienting towards the field, consolidating cooperation into fewer, larger, more sector-oriented projects, etc. Whether this is the right overall strategy for the CoE is debated, but that this is the cooperation strategy is not.

To conclude, the **level of discussions on cooperation at the high political level is excellent**, a result of improvements over the last four years. Legal analysis of the ramifications of new elements of the EU-CoE relationship is proceeding. In the area of JPs, there is what might be called an informal analysis, or shared view, of the strengths and weaknesses of the CoE as a cooperation partner. At field level, EUDs do engage in some documentable analysis of the choice of the CoE although, as we show, the choice is often either ad hoc or driven by Government. There is a strong institutional logic and set of procedures being put in place at CoE Headquarters and field responsibilities are being bolstered. At EC Headquarters, there are no explicit guidelines related to the choice of CoE, as opposed to another implementing agency have been found, although the logic appears clear ex post, and is based on assessment of the comparative advantages and disadvantages of the institution.

### **1.1.1 I-111 Evidence at EC/EU HQ level (e.g. strategic assessment) and at country level of justification for selection of the CoE as a cooperation partner, particularly as an aid channel**

There is a shared perception that the main justification for selecting the CoE as a cooperation partner is its sector expertise in areas related to human rights, democracy, rule of law, and other areas. Expertise was the main factor mentioned at EC Headquarters, at CoE Headquarters, and in the EUD survey which served as evidence sources for assessing this Indicator. The reputation of the CoE as a force for democracy and its powers of moral and political persuasion were also cited, not surprisingly most often at CoE Headquarters, but this was a distinctly secondary factor. Some cooperation officials at the EC pointed out that the CoE was not particularly well regarded from the standpoint of administration and implementation, and the EUD survey revealed a perception that CoE management costs were high. This is confirmed by the JP evaluation synthesis done by the team, which found that many evaluations cited weakness in implementation (issues of implementation of EC-CoE joint programmes are discussed in detail in EQ7).

The EUD survey shows that, while there is not a formalised standard process, in most EUDs, there was generally a documented analysis of the decision to engage the CoE as an implementing partner. This should be read, however, in the context of the view of multiple officials at CoE Headquarters that the project formulation process is often hasty and ad hoc – a view that also resonates with the results of the JP evaluation synthesis. Sometimes EUDs are involved in the aid channelling decision, sometimes not; for example, in FYROM the EUD pointed out that aid channelling decisions were made by DG Enlargement or DG Development, not at the field level. Many times, the decision to work with the CoE comes about because of a request of government. CoE officials often spoke of the need to tightly tie cooperation activities to CoE monitoring activities; this was never mentioned in EC Headquarters interviews with cooperation staff.

The insights from the field missions generally confirm the findings from the desk phase, i.e. that there are various factors that come into play when choosing the CoE as an cooperation partner, including a consideration of its comparative advantages in specific areas, a certain degree of institutional inertia, and/or explicit preference of the state institutions. There are also signs from the EUD level that the selection of CoE as a “default” partner has been increasingly challenged, making it necessary to more strongly defend the selection of the CoE.

In areas of non-financial cooperation, the term “selection as a cooperation partner” is not an apt one. However, it was clear from EC Headquarters interviews, as well as from document review (see Indicator I-113) that partnership with the CoE is largely based on respect for that institution's expertise. Also playing a role is the perception that, as countries are CoE members, the CoE is able to exercise political and moral powers of persuasion that the EU lacks. This view can be contrasted with that encountered at the field level, where there is often a perception that it is the EU, not the CoE that has stronger powers of persuasion.

#### **1.1.1.1 Evidence**

All EC officials and staff interviewed were familiar with and took a strategic view of the CoE as an aid channel. They generally identified the CoE's comparative advantage as expertise. As one official interviewed put it simply “*They had the expertise, we had the money.*” CoE officials shared the view that money flows from the EC to the CoE, expertise (as well as credibility and moral authority) flows from the CoE to the EC. This simplification needs to be qualified, however, by the fact that in Joint Actions, equal funding was common and the recurrent nature of the arrangements made for a closer long-term relationship. Admittedly, these were small, and in the case of large JPs, the bulk of funding came from the EC.

Also cited, but less often, at EC Headquarters was the CoE's reputation and its role as a force for democracy.



It is not clear, that at DG DEVCO, the CoE is regarded as a privileged partner. The choice of CoE as partner in JPs has often been driven by government request. One reason that the CoE is not a privileged partner is that it is not regarded as being as up to date on reporting and administration as alternative partners, such as NGOs.

In non-financial areas, expertise was also a strong factor, in particular as related to monitoring. The importance of CoE monitoring reports, as well as other reports such as those from the Commissioner for Human Rights' visits and the work of the Venice Commission, in compiling progress reports were cited.

At the CoE, programme officers responsible for Joint Programmes expressed some concern that the process by which JPs come into being is ad hoc. Often projects are initiated by a phone call from an EUD official who has learned from Brussels that funds are available for an activity, typically requiring a hasty project formulation process. JPs are too often characterised, one programme officer said, by "*a very short time frame and a very specific topic, because the money is available.*" One official objected that, while the EC is results-oriented, projects often show up at the last minute in the form of a project fiche. The CoE's still highly centralised systems are not suited to rapid expenditure. At least three months are needed for a sound project design, yet the fact is that Governments will often accept virtually anything that is offered, even if it is strategically unsound or duplicative.

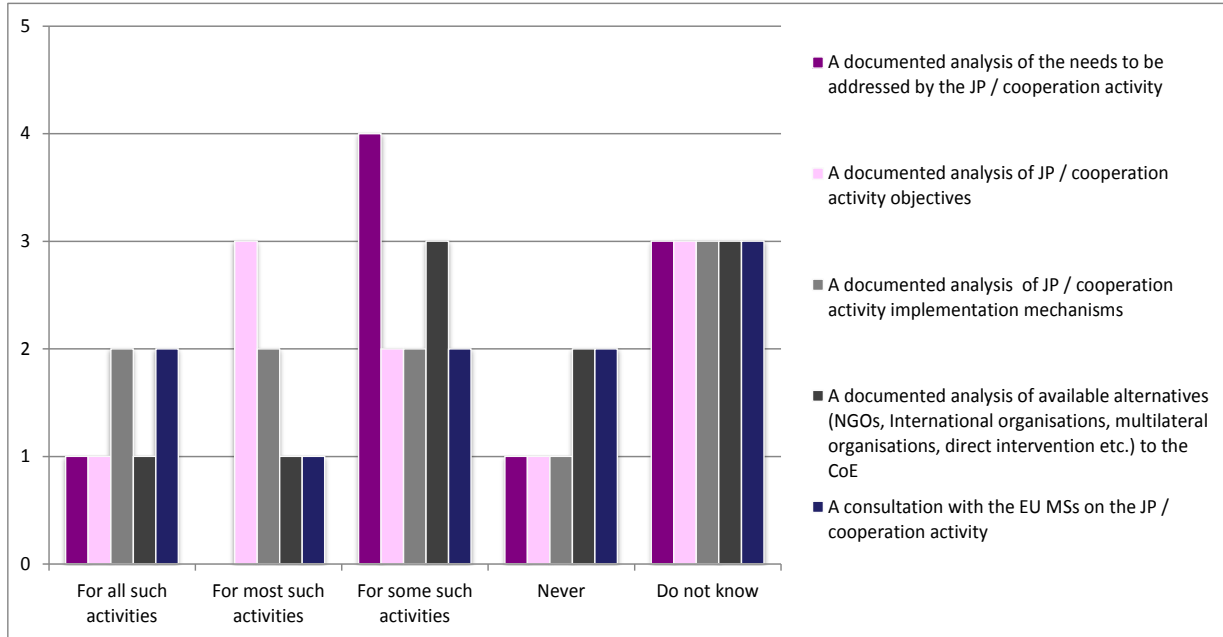
EUDs are perceived to be under-staffed, with project officers not having an overview. The desire for a more strategic, forward-looking process was expressed, with high turnover of EC staff being a particular challenge.

Several CoE officials report growing support for "twinning" arrangements, with clear advantages for EU MSs. While not against these in principle, the officials expressed concern over the dominance of a bilateral perspective rather than one with the credibility of the CoE's. Structural problems, it was argued, are under-detected in such cooperation arrangements.

In the EUD survey, Delegation officials were asked to identify whether the decision to channel aid through the CoE had been based on a documented analysis. As the accompanying Figure shows, there is no formalised approach, shared across EUDs, to the making of decisions for the cooperation with the CoE. Three Delegations (*Armenia, Azerbaijan, and Serbia*) were unaware of the existence (or non-existence) of a documented analysis or a consultation with the EU MSs underlying the decision for cooperation. The rest of the Delegations were usually aware of formal analysis of certain aspects of the intervention (needs, objectives, implementation mechanisms, available alternatives) for at least some of the JPs' cooperation activities. In *Turkey*, the basic strategic document was the Accession partnership and no project-specific analyses were performed. In general, the process through which the aid channelling decision is made is rather murky. EUD *Bosnia and Herzegovina* replied that decisions are ad hoc and driven by the needs and opportunities of the moment. EUD *Russia* added, though, that there are generally consultations with stakeholder. By contrast, EUD *Ukraine* reported that decisions on cooperation are closely based on documented analysis and consultations with EU MSs. EUD *Albania* also cited consultations with EU MSs and stakeholders.

The documents containing analysis were identified as Commission decisions, Financing Agreements and project fiches, which specifically justify the involvement of the CoE. EUD FYROM also cited the fact that a grant may be directly made to an organisation which exercises a de facto monopoly in the area, a condition that frequently applies to CoE.

Figure 1: Results of survey to EUDs: Basis for decision on EC-CoE cooperation

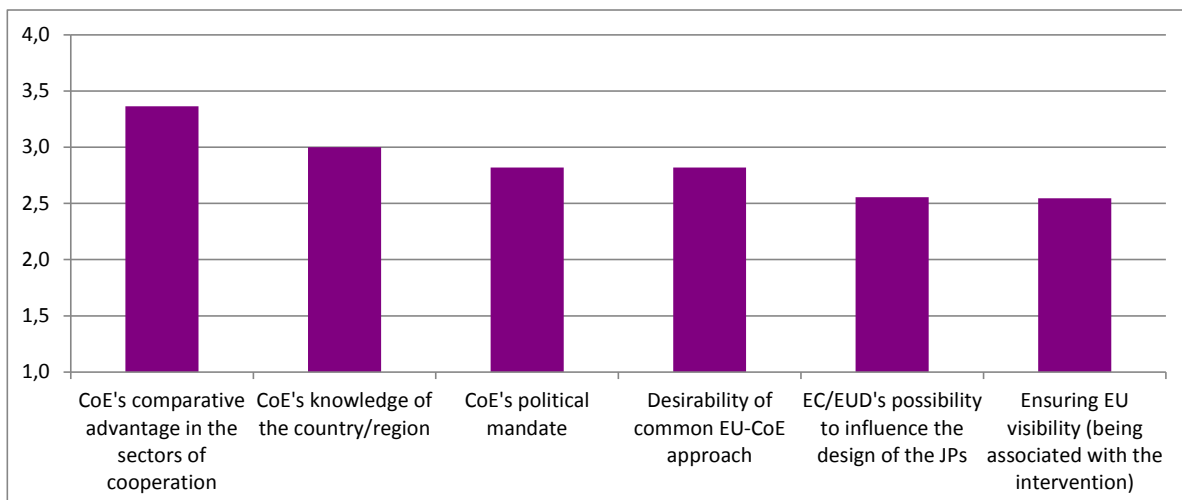


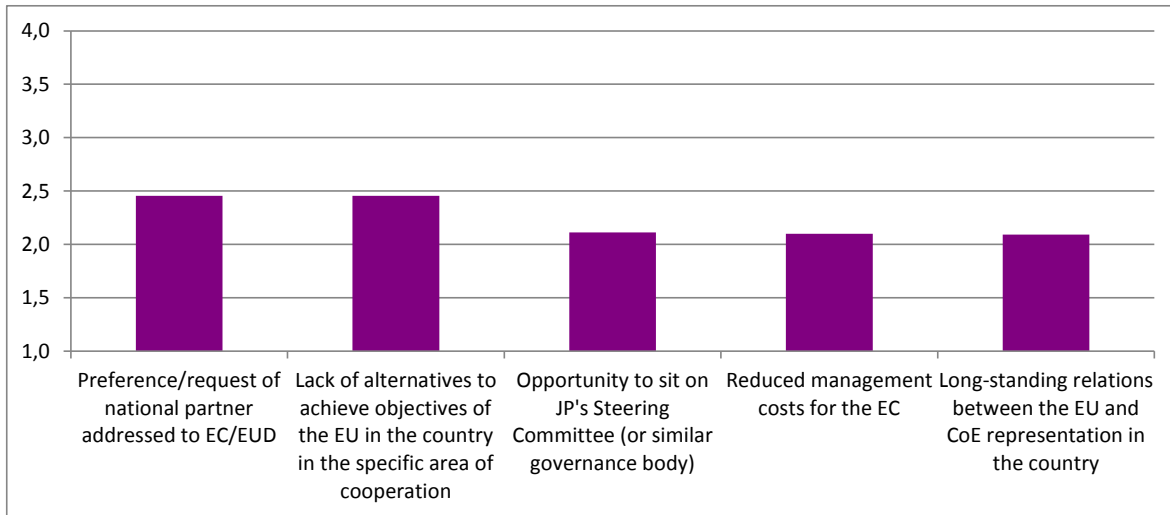
Source: Particip EUD survey

The Delegations were asked to rank potential reasons for cooperating with the CoE on a scale from “very important” to “not important”. The answers were assigned points from 4 to 1 for the purpose of calculating averages. The answer “do not know” did not enter the calculations.

The most important reason for the cooperation with the CoE indicated by the Delegations was the CoE’s comparative advantage in the sectors of cooperation (average 3.4). This confirms the result of EC Headquarters interviews in which specialised expertise and comparative advantage were the main reasons cited for cooperating with the CoE. This was followed, in the EUD survey, by “CoE’s knowledge of the country/region” (average 3), “CoE’s political mandate,” and “Desirability of common EU-CoE approach” (both average 2.8). Least important were “Long-standing relations between the EU and CoE representation in the country,” “Reduced management costs for the EC,” and “Opportunity to sit on JP’s Steering committee” (all average 2.1). One EUD pointed out that management costs when working through the CoE are actually higher than average. This provides some evidence that, at the EUD level, and probably at Headquarters level, as well, the decision to work with the CoE is not greatly driven by practical considerations, but by higher level ones having to do with the mandate, the expertise, and the excellent reputation of the CoE. In this context, it should also be mentioned that three EUDs – *Turkey*, *Kosovo*, and *Albania* – expressed concerns about visibility. This again suggests that, while the CoE is not an ideal partner, its overwhelming comparative advantage in certain areas trumps its disadvantages.

Figure 2: Results of survey to EUDs: Reasons for EC-CoE cooperation as perceived by the EUDs





Source: *Particip EUD survey*

Over half (7) of the Delegations reported awareness of some formal guidance for EC/EUD staff concerning aid channelling. Out of these, only four found the guidance useful for the purpose. Among guidelines considered useful, the Delegations listed the *Financial Regulations and Implementing Rules*, *PRAG Concept for European Community Support to security Sector Reform (COM (2006) 253)*, *Aid effectiveness document*, and the *PCM Manual*. On the other hand, the *Financial Regulations and PRAG* were equally considered not useful for the purpose by another Delegation. The DG DEVCO website with information and guidelines on financial cooperation with international organisations was also mentioned, without a value judgment on its usefulness.

Table 1: *Results of survey to EUDs: Availability and usefulness of formal guidance for aid channelling*

Availability of formal guidance	No of EUDs	Usefulness	
		Yes	No
Yes	7	4	2
No	4	-	-

Source: *Particip EUD survey*

The insights from the field missions generally confirm the findings from the desk phase.

- In *Serbia* according to respondents from the EUD, in the early stages of EC-CoE cooperation the CoE was the organisation that was understood to have expertise and experience in areas that others (e.g. private sector consultancy companies) could not provide. There was an acknowledgment that the specific themes that would be contracted to the CoE through a JP were difficult, and too complex to handle for the EUD through a routine procurement process. Stakeholders also suggested that the second generation of JPs (implemented the second half of the evaluation period) was, to some extent, the result of a degree of institutional inertia, where contracting the CoE was a default option not specifically weighed against other options. Questioning the choice of the CoE as contractor seems to have become more acute with the onset of IPA, a more prominent presence of the EU in Serbia, and the prospect of handing over of the administration of IPA-funds to the Serbian authorities.
- The decision to cooperate with the CoE through Joint Programmes in *Turkey* has been driven by the express preference of Turkish state institutions to cooperate with CoE. Bilateral arrangements and partnering with other IGOs such as the UN agencies represent a smaller percentage of activity in the sectors considered in the field visit. The preference by Turkey for partnership with CoE is not based on any evident formal criteria governing options for delivering assistance. There is an acknowledgement within EUD and elsewhere that CoE-led reform initiatives were possible at the start of the period under review (2000-2010) when other models of technical assistance would not have been politically viable. As the array of actors in the sectors concerned has expanded and more emphasis is placed on moving from what might be categorised as 'foundation' reforms (human rights awareness raising, adopting laws and policies, etc.) to measured progressive changes in practice (and monitoring of same), there has been some suggestion of the EUD revisiting the CoE as the 'default' partner for project implementation.

- In *Moldova*, from interviews with EUD, the CoE country office, and selected Government officials, it was clear that the selection of the CoE can respond to a range of factors. Thus, there was evidence that the choice of CoE is explicitly motivated. Sometimes the Government expresses a clear preference (and is concerned that the move from direct award to tender increases uncertainty and leads to time delays).
- *Armenia* was unique in that the EUD cited, among other factors, encouragement from the EUD Strasbourg to cooperate with the CoE.

### 1.1.2 I-112 Evidence at EU/EC headquarters and in EUDs of a clear vision of CoE, comparative advantage

The evidence strongly confirms a shared view of CoE comparative advantage, which is as a repository of expertise and moral and political authority in human rights, democracy, and the rule of law. There is particularly high regard for the CoE's monitoring functions. This view is shared throughout the EC, both in the HQ and at the EUDs. Not explicitly part of the Indicator, but of interest, is that this view of comparative advantage is shared at CoE Headquarters. The ability of the CoE to place political pressure on MSs is seen as an advantage, although this is tempered by the realisation that (as brought out in the synthesis of Joint Programme evaluations) long-term, process-oriented "muddling through" is often a viable option for countries in reaction to CoE criticism. In some areas, such as crime and money laundering, this is less an option, a fact which is appreciated at EC Headquarters.

There is also alignment of the two institutions' views (at least at HQ level) of the CoE's comparative disadvantage – it is not seen to be a particularly good implementer of projects, by which we here mean Joint Programmes (in the case of Joint Actions, discussed mostly at the EC Headquarters level, there was broad satisfaction with the CoE as partner). Management costs are seen to be relatively high; value added is eroded by over-reliance on consultants. No disconnect was found between EC Headquarters and EUDs' view of the CoE's comparative strengths and weaknesses.

In sum, both EC Headquarters and EUDs view the CoE's strength to be expertise, as well as moral and political authority, but perceive it to be a relatively weak implementer of projects.

#### 1.1.2.1 Evidence

The evidence here is mixed. It has come through in multiple interviews at EC Headquarters that the CoE's comparative advantage is seen to be not as an implementer of projects, but as a repository of knowledge and as an institution occupying the moral high ground in the areas where it works. More than one official interviewed expressed a twinge of regret that the CoE is increasingly seen as just another implementing agency. Yet, at the same time, there is recognition that the CoE's regular budget would hardly permit any cooperation activity at all. At least in the case of JPs, the CoE typically comes to the table with financially empty hands.

The shift is, in a sense, confirmed by informal conversations with international NGO representatives, whose view of the CoE might be summarised as, "What makes them think they are better than us?" (see next section). The CoE's dilemma has been well captured by one EC official: "*Is it not ironic that the CoE is attempting to develop further what it is not particularly good at [implementing projects] while de-emphasising what it is good at [serving as a repository of independent expertise financed exclusively by Member States]?*" Yet, another official thought that this was an appropriate response, referring to the CoE as inexperienced in project implementation and delivering low-quality project cycle management.

While expressing respect for the CoE's standards setting and monitoring activities, doubts were expressed as to whether the CoE was drawing the best talent at its disposal into cooperation (here meaning JPs). Particularly strong doubts were expressed in Armenia regarding the growing preponderance of free-lance consultants rather than staff expertise.

In the area of non-financial cooperation, there was high regard for monitoring bodies, such as MONEYVAL. MONEYVAL can make public statements (e.g., in *Azerbaijan*) more easily than the EC. As an inter-governmental institution, CoE monitoring bodies can apply pressure and, through their reports to the Council of Ministers, act as a channel into the political process.

In the survey to the EUDs, the "CoE's comparative advantage in the sectors of cooperation" ranked highest in the list of reasons for EC-CoE cooperation in the country. This was further explored in interviews with the EUD staff during the field missions – the EUD *Serbia* had clear expectations of the CoE's comparative advantage, but the mixed experience with implementation of JPs meant that these expectations were considerably lower at the time of the visit compared to previously. This was not the case across the board; at least one of the ongoing programmes (CAR) seemed to be more convincing than others. In *Moldova*, the comparative advantage of the CoE is perceived by the Delegation to lie in the cycle of standard-setting, monitoring, and cooperation. Monitoring gives the CoE a strong ad-

vantage in anti-torture, money laundering, corruption, and justice system reform. Improving the situation is the fact that, with decentralisation, the CoE Country Office is increasingly involved with project identification and project preparation. In *Armenia*, EU Delegation officials interviewed considered the CoE to have a comparative advantage in training (especially “academic” training) and provision of expertise, especially in drafting new laws.

In general the findings obtained through the survey and during the field visits from the EUDs confirm the results of EC Headquarters interviews that there is a shared view of CoE's strong sectoral expertise within the EC.

As at the EC Headquarters, the issue of the comparative advantage of the CoE was a major theme of CoE Headquarters interviews. The comparative advantage of the CoE in standard setting and monitoring was broadly cited, but so too was the fact that these are not major sources of revenue. Some officials were enthusiastic about the growth of the project implementation side of the CoE, while some regretted the dependence on external project funding. Even those enthusiastic about the project side, however, recognised that the CoE's value added was and will continue to be in the expertise provided. More than one official interviewed, while praising the hoped-for increase in JPs and voluntary contributions stressed at the same time that the CoE has to maintain its internal priorities. Much of this responsibility will go to the new Office of the DG for Programme, which will bear the responsibility of coordinating cooperation.

A message that came through consistently was “We are not just another implementing NGO – we are an international organisation” (an attitude which may explain the negative sentiments expressed by some NGO interviewees). This is in line with the sentiment expressed in Moldova that no NGO would have been able to be as effective as the CoE in justice sector reform. Yet, officials interviewed also frankly admitted that, absent EC support, there would be virtually no budget for cooperation activities following on from standard setting and monitoring. One official stated that over 70% of the budget for cooperation activities in the major areas came from the EC. Representatives of the Secretary General stated that the main thrust of the strategic reform is to make the CoE a more MS-responsive cooperation organisation; to deliver value for money that is no longer perceived to flow from its repository-of-expertise function.

A cooperation official hoped that the CoE could switch to sector approaches, which would require a strategic partnership with the EC and substantial sums of money. This would be in line with the EC's own shift towards sector approaches. Yet, as another cooperation official said, sometimes EU country priorities change for reasons not always apparent in Progress Reports. This can cause opportunities to build on progress to date to be missed.

### 1.1.3 I-113 Evidence of an overarching strategic vision for cooperation with the CoE

Much of the evidence for an overarching strategic vision was presented in I-112 above and will not be repeated.

Based on Headquarters interviews, there is a strong EC strategic vision, at least on the part of EEAS, for non-financial cooperation with the CoE. This strategy runs from EU accession to the ECHR through coordination of monitoring activities, leveraging the CoE's expertise and standing in non EU-MS states, etc. At CoE, as well, there is a very explicit strategy for non-financial cooperation, based on the promotion of mutually reinforcing standard setting, cooperative monitoring, and above all the improved high-level political communication and coordination that has developed in the last four years (as reported in interviews with representatives of the Secretary General). At field level, both CoE country offices and EUDs are committed to improving compliance with European standards and the respect for European values.

However, EC Headquarters interviews left little impression of an overarching strategy regarding Joint Programmes. The CoE appears to be a partner of opportunity; if they have the required expertise or if government specifically requests, they become the implementing partner of choice. However, the CoE is generally regarded as lacking in implementation skills (a view to some extent shared by the CoE, whose reform programme is in significant degree aimed at improving implementation skills). The relatively ad hoc attitude found at EC Headquarters contrasts strongly with the attitude at CoE Headquarters, where strong signals are being emitted: the goal is to substantially expand JP financing, a new organisational scheme has been put in place to guard against JPs becoming too donor-driven and not corresponding to the priorities emerging from the CoE's monitoring and standard-setting activities, a more decentralised, MS-relevant structure heavily oriented towards cooperation is envisaged, new operating procedures are being put in place, etc. As discussed previously, this turn towards a cooperation focus is not universally welcomed, either at CoE or EC Headquarters. However, at CoE Headquarters, the debate is framed and engaged in; this was not as clear at EC Headquarters. The CoE has formulated explicit strategic goals for cooperation: fewer, larger, more sectoral interventions, more

reliance on substantial flexible facilities and, above all, the desire to be treated as a privileged partner, an international organisation, not simply another bidder.

One theme that emerged from CoE Headquarters interviews is that there is no shared “house view” on the scope of CoE cooperation activities. Some officials suggested that the CoE ought to focus more on its core concerns in human rights, rule of law, and democracy. Others were as adamant that small, specialised areas of cooperation, such as youth and sport, biodiversity, etc. should on no account be neglected. Many of these relatively small interventions or activities take the form of Joint Actions funded on a recurrent basis. Within the CoE, areas develop strong MS support (the example given was that Russia is very keen on sport), in addition to which, partnerships, friendships, and constituencies build up over the years.

In sum, there is a high level strategic architecture for cooperation in all areas, this was presented in Section 3. Moving down a notch towards more concrete actions, there is a clear vision for cooperation in non-financial areas. In the area of Joint Programmes, there is a stronger strategic vision at CoE Headquarters than at the EC in Brussels.

### 1.1.3.1 Evidence

#### Joint Programmes

EC officials interviewed were, in many instances, most interested in JP implementation issues. On Joint Programmes, interviews with EU Headquarters officials left the impression that the choice to cooperate with the CoE is more a pragmatic one, based on the expertise issue, than the result of a strategic vision. To the extent that there is a strategic vision, it is an EEAS one, not a DG DEVCO one. In general, the view at DG DEVCO appears to be that the CoE has not been a very effective implementing partner, but that it has been promoted by EEAS for other reasons.

At CoE Headquarters, over the evaluation period, the essence of the strategy was to use EC support to complete the chain from standard setting to monitoring to cooperation activities such as technical assistance and capacity building. At present, the main strategic concern is the desire to significantly increase, perhaps double, the volume of JPs. Other themes, based on experience in past years, were:

- The desire to be a privileged partner, not “merely” an implementing NGO
- The desire for fewer, larger projects
- The desire for flexible facilities, on the order of the Eastern Partnership or South Facility, but involving much larger sums.

Officials often expressed the wish to move from small projects on order of a few hundred thousand Euros to substantial interventions that are more efficient and have chance of greater impact. One official placed the limit at Euro 1 million – JPs below this threshold would not be of interest. This would be in line with an external audit of the CoE by French authorities, which suggested concentrating on bigger projects.

In view of the increasing role of external funding, concerns were expressed that internal priorities would be lost sight of. In order to address this, the reform process has put in place a Directorate General of Programme which will be responsible for ensuring consistency through coordination and the preparation of country Action Plans. Over the evaluation period, there were no Action Plans; the first ones have only recently appeared. In addition, monitoring bodies will now have attached to them units for cooperation activities. Cooperation activities are being clustered in relevant DGs to provide an operational arm, and the DG for Programme will coordinate the cooperation activities of the operational DGs.

There is still perceived to be room for improvement, in the chain leading from standards to monitoring to JPs, capacity building, and technical assistance. An official stated that too often, the EC relies on parallel monitoring mechanisms (such as NGO reports) instead of rigorously following CoE monitoring bodies' work. To the extent that CoE monitoring is the basis for cooperation planning, it may be said that there is coordination in agenda setting even if it is informal.

There is no shared “house view” on the scope of CoE cooperation activities. The CoE is involved in many areas that are only loosely related to core concerns in democracy, human rights, and democracy. These include biodiversity, cultural heritage, youth, sport, and others. Some officials expressed concern at the proliferation of areas in which the CoE is involved, while others felt strongly that these need to be maintained. Specific areas and specific programmes (as often as not Joint Actions) tend to form constituencies (an example given is that Russia is extremely keen on sport) and relationship are built up over the years. This view should be considered at the same time as that of officials outside the Relex family of DGs in Brussels, who expressed deep appreciation of small, but prestigious and highly valued, joint activities and programmes with the CoE in areas outside the core.



The review and synthesis of available past evaluations (see Annex 2) shed some light on the existence or non-existence of an overarching strategic vision for JP cooperation. Evaluations concluded that, where JPs were found to have underperformed, this usually was due to the lack of a shared EC-CoE vision of strategic country-level goals. This problem was, in part, due to a fundamental difference between the EC and the CoE: the CoE is not an entity independent of the beneficiary country and cannot be expected to have an entirely independent strategic vision. This view was most strongly expressed by NGO representatives interviewed in Armenia. This stands in contrast to the EC, although in Moldova, NGO representatives felt that both the CoE and EU were being overly accommodative vis à vis Government. Among other things, the difference highlights the contrast between the CoE's process- and engagement-oriented approach and the EC's focus on concrete near-term impacts. Corroborating this, one CoE Headquarters official characterised the EC as "project oriented," meaning that it felt structural problems can be solved by one-off project interventions. Another CoE official commented that lack of results in the EC sense is essentially the result of weakness in the design stage. The CoE attempted to institutionalise a 6-month needs assessment or inception phase in logframes, but the EC was not accommodating. What should be an orderly formulation process can be taken over by financial and administrative procedures, the holiday calendar, etc.

The lack of shared strategic vision was found to have weakened project cycle management throughout, from needs assessment through project formulation through implementation, monitoring, and reporting. The JPs evaluated seem to have been not so much programmes, or even projects, but rather bundles of related activities. Sometimes the range of activities included was too broad. This both reflected the non-strategic approach and hinders the development of one, as projects lacking in strategy cannot be expected to generate lessons learned for future strategy.

#### Non-financial cooperation

Here, interviews at EC Headquarters suggested a more strategic view, essentially on the part of EEAS, based on the perceived need for coordinated action, the sharing of information, avoidance of duplication or mixed messages, etc. Both at the CoE and EC, the heart of CoE strategy for non-financial cooperation is EU accession to the ECHR and other conventions, growing participation in monitoring, and closer political dialogue and coordination.

There is broad perception at both institutions that the relationship between the EU and CoE has improved in recent years thanks to the re-commitment of the institutions to high-level political and strategic discussions. This improved political dialogue was spurred by ratification of the Lisbon treaty, which gave the EC competences extending to areas where the CoE has a traditional repository of expertise.

CoE officials expect more improvement in the context of EU accession to the ECHR. Given the deepening of high-level political coordination, they now call for better coordination at the country level (historically weak). It is at the country level that understandings achieved a high level with the Commission sometimes break down. For example, the CoE Secretary General and Lady Ashton reached strategic agreement on the South Facility, but then there were problems regarding details of implementation at lower level.

There are no glaring differences between EC and CoE country visions. CoE officials do perceive, though, that because of the MS / non-MS dimension, the EC is perceived at country level to have more of a targeted agenda than the CoE.

Relevant to both financial and non-financial cooperation is the view, expressed both at the EC and CoE, that over the evaluation period, the CoE's field presence was too weak. It was broadly perceived to be a Strasbourg-based organisation. One of the main strategic axes of the on-going reform process is strengthening CoE field offices by closing information centres and encouraging Headquarters staff to go to the field. As one official put it, "The situation used to be 70% Strasbourg, 30% field;" it should be the opposite."

## **1.2 JC 12 Degree to which EC/EU staff at headquarters and in the field are well-informed regarding the possibility to cooperate with the CoE**

Regarding the HQ level, we have little information relating to the evaluation period strictly speaking, but the CoE, in collaboration with EEAS, has recently held information seminars in Brussels with some level of EU official attendance. At the one event attended by a team member, senior attendance was much higher on the CoE side than the EU Side. All **EC Headquarters officials interviewed were familiar with the CoE**; however, this is not surprising since they were not a random sample. There was no sign that the entire breadth of cooperation possibilities was appreciated across the board. EEAS officials interviewed were closely acquainted with possibilities, but this is not surprising because they are responsible for the relationship with CoE.

EUD officials responding to the survey generally reported that they had received adequate information from the CoE and that the CoE was active in proposing cooperation possibilities. The impression is that this was very largely concerned with financial cooperation, i.e. Joint Programmes. EUD responses regarding the level of contact, discussion and coordination at field level were favourable. CoE field office reports detail dozens of meetings with EUD officials.

At CoE HQ, the view was overall less positive. Officials who had previously occupied field posts reported that EUDs are understaffed, particularly in the area of political affairs, which would be disproportionately important for non-financial cooperation. We already commented, in looking at Indicator I-111, that on the CoE side, there is a feeling that JP preparation was hasty and ad hoc, a view borne out by our synthesis of past evaluation findings. However, this must be balanced with the view, on both the EC and CoE side, that in the past, the CoE has been weak in the field, a situation that the current reform and reorganisation are trying to address.

Overall, EC and EU officials appear to **have been reasonably aware of possibilities for cooperation with the CoE via Joint Programmes**. The main constraints to such cooperation were financial, or had to do with staff constraints or lack of a shared strategic vision, not ignorance of possibilities.

### 1.2.1 I-121 Sound communication means / tools / channels in place to inform EC HQ and field staff regarding CoE as a relevant and useful cooperation partner

Recent developments suggest an effort to improve channels of communication and information flow. There have been CoE training events in Brussels in cooperation with EEAS, indicating a reasonable level of outreach. In the event attended by an evaluation team member, the CoE presence was considerably stronger than the EC presence. A very substantial number of participants were not affiliated with the EU (it was a public event). At the country level in general, the EC appears to be understaffed in EUDs, especially at the political level, which would be a constraint on non-financial cooperation. In part this is because, whereas CoE officials tend to be specialists in specific areas, EUD officials are likely to be generalists. Much depends on whether the Head of Delegation or Head of Operations is personally familiar with the CoE. As in the case of I-122, EUDs seem more satisfied with the situation than CoE Headquarters. Most EUDs reported regular and good communications with the CoE in the field, including involvement in JPs (also discussed under I-111). EUD awareness of non-financial cooperation was significantly lower.

#### 1.2.1.1 Evidence

EC officials interviewed were all identified as those involved with the CoE, so they provide a poor guide to the awareness level of the average EC official. However, in cooperation with EEAS, the CoE has recently held a series of "information days" introducing the CoE as an institution and potential cooperation partner. This occurred after the evaluation period, but may be indicative of a perceived need to improve information flow regarding possibilities for cooperation with the CoE.

On the CoE side, there is a strong perception that EUDs are understaffed and that project preparation is ad hoc has already been discussed in the context of I-111. One cooperation official called for increased involvement of EUDs in the JP programming process, while another expressed the view that, prior to decentralisation, when all authority was in Brussels, cooperation was easier. Experiences differ; for example, in Turkey, the EUD directly approached the CoE regarding cooperation, whereas in Serbia, the EUD issued tenders instead of directly contracting. In *Armenia*, the EUD in Strasbourg actively encouraged the EUD in Yerevan to cooperate with the CoE.

As discussed under I-113, the strategic vision of cooperation expressed at CoE headquarters calls for complementing improved CoE-EU coordination and communication at the top political level with better coordination and communication at the field level. Key to this is the strengthening of the CoE's field presence that is underway. In examining Indicator I-113, we discussed how the synthesis of past JP evaluations concluded that there was a lack of shared strategic vision at country level. This tended to be confirmed by the field mission in *Armenia*, where little consultation took place and, when the CoE prepared its Action Plan, there was little opportunity for EUD input. However, as confirmed in *Moldova* and elsewhere, the CoE and EU strategic agenda in most countries are very close.

EUDs surveyed were by and large satisfied with the amount of information available to them regarding the possibility of cooperation with the CoE. Only one Delegation (*Azerbaijan*) regarded the information as insufficient, and one (*Ukraine*) cited a constant dialogue with the CoE country office on possibilities for cooperation. These two EUDs represented the polar cases of the eleven responses.

We took involvement in decision making as a proxy for the existence of sound communication channels. Ten of eleven responding EUDs were aware of the 2007 Memorandum of Understanding governing cooperation between the EC and the CoE, and eight of these stated that they were familiar with its



content. Of these eight, all reported involvement in the aid channelling decision for at least some JPs, and four said that they were involved in the partnership planning phase for all JPs.

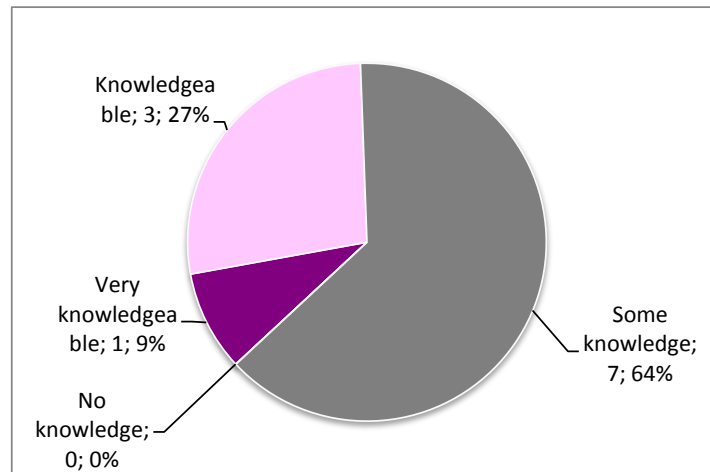
Table 2: Results of survey to EUDs: EUD involvement in decisions to implement via the CoE

Frequency of involvement in JP decision making	No of EUDs
For all JP	4
For most JPs	2
For some JPs	2
Never	0
Do not know	3

The field missions confirmed a general good knowledge of the CoE as a cooperation partner in the EUDs, while the actual on-going communication between the two organisations in the field varies. In *Moldova*, with the opening of the CoE Country Office, there is a good communication between the CoE and the EUD, and the CoE has been involved in all EU initiatives involving CoE areas of expertise, as well as in the EU-CoE Human Rights Dialogue. On the other hand in *Armenia*, EU Delegation staff interviewed were essentially negative on the state of communications regarding CoE cooperation possibilities.

In the area of non-financial cooperation (i.e., cooperation apart from JPs), EUDs were far less well informed. Most stated that they had only “some knowledge.”

Figure 3: Results of survey to EUDs: EUD knowledge of EC-CoE non-financial cooperation



Source: Particip EUD survey

Not surprising in view of this, EUD involvement in decisions regarding non-financial cooperation was lower than their involvement regarding the JPs. The EUDs also did not generally provide any details as to what forms such cooperation actually takes, with the exception of *Russia* (meetings between representatives of the CoE and the EUD when representatives of CoE were on mission to Moscow), *FYROM* (EUD involvement in IPA programming, which involved other donors including the CoE), and *Ukraine* (regular consultations). The EUD in *Bosnia and Herzegovina* was the only one to report that it was “very knowledgeable” regarding non-financial cooperation and actively participated in related decision making.

Table 3: Results of survey to EUDs: EUD involvement in non-financial cooperation

Frequency of involvement in non-financial cooperation decision making	No of EUDs
For all such activities	1
For most such activities	1
For some such activities	4
Never	1
Do not know	3

### 1.2.2 I-122 Discussions and meetings between EU Delegation staff and CoE country field office staff

There is a difference in point of view between Headquarters and the field. At EC Headquarters, no information was gained on the state of communication at field level. At CoE Headquarters, by contrast, there was a general view that EU Delegations were understaffed and the communications should be improved. This may reflect, in part, the fact that the CoE is becoming more field-oriented. EUDs themselves, however, strongly expressed the view that there were regular, high quality communications in the field. This positive view was corroborated by the field missions (with the exception of *Armenia*) and the EEAS annual survey of EUDs, as highlighted in the following box.

#### Box 1: EEAS survey: Perception of EUD-CoE field office communication

A good complementary information source is the annual EEAS EUD survey. The evaluation team was able to obtain all EUD responses for 2008 and 2010, as well as a summary and synthesis of results for 2009.

EUD *Albania* cited regular contacts, particularly regarding joint programmes, excellent information and data exchanges, and complementary sector analyses. The EUD was fully involved in JPs through joint management and steering committees (2008 response). Meetings were convened with CoE representatives when missions came from Brussels regarding visa liberalisation and rule of law. When CoE officials visit the country, they meet with the EUD (2010 response).

In *Bosnia and Herzegovina*, there was regular dialogue in the sectors where CoE and EC have common interests, e.g. human rights, prison reform, etc. Regular contacts between EUD and CoE country office staff occurred at least monthly, and also whenever missions came from CoE headquarters (2008 response). The EUD considered cooperation with the CoE country office head and staff to be excellent. Bilateral meetings were regularly held on specific topics and there were frequent e-mail exchanges held on a regular basis. The head of the CoE country office twice briefed the EU Ambassadors on (i) implementation of major ECtHR cases and constitutional reform and (ii) election monitoring. Cooperation at project level, for example in education and prison reform, was also considered good. This report is corroborated by the CoE official who was charged with managing the education programme in the Sarajevo office. It is somewhat qualified by the former head of the country office, however, who expressed the view that the EUD was seriously under-staffed.

EUD *FYROM* assessed project-level cooperation as "highly satisfactory." The EUD and CoE country office supported each other's events by providing speakers etc. The EU Special Representative team provided extensive political briefings to CoE delegations, in particular to the visiting Commissioner for Human Rights. (2008 response) Particularly intense exchanges took place during the period when FYROM was country chair of the Committee of Ministers of the CoE (2010 response).

EUD *Georgia* expressed disappointment with the flow of information regarding JP implementation to the EUD and failure to include the EUD in project events or last-minute invitations (2008 response). Ironically, a CoE official interviewed in Strasbourg complained of the generally high-handed attitude and unreasonable expectations of EUDs. All in all, these frictions are part of the rough-and-tumble of international cooperation and do not appear systemic.

In the absence of a permanent CoE field office in *Russia*, the CoE – in particular PACE – pro-actively sought contact with the EC delegation in the context of its visits. In cases when the CoE had not itself sought contact ahead of visits to Moscow, the EUD's Political Section pro-actively set up meetings. The EUD typically invited CoE representatives to its annual EIDHR conference. There was a well-established information network functioning between the EUD Moscow and CoE Strasbourg. Information from the Council of Ministers was received in Moscow indirectly via the EC Representative to the CoE, and the Delegation expressed the hope that they could obtain such information directly (2008 response).

EUD *Serbia*, like Georgia, complained that EC project managers were not properly informed of or invited to events (2008 response).

In *Turkey* the EUD reported that the CoE and ECD worked together from the design and programming of JPs through their implementation. This enabled a constant information flow and dialogue between the CoE and the ECD. When CoE Strasbourg officials visited Turkey, meetings with the EUD were organised to discuss current and possible future projects (2008 response). A useful initiative was taken by CoE in the form of a "satisfaction audit" carried out in October, for which two auditors came to Ankara for an in depth discussion with EUD (2010 response).

EUD *Ukraine* cited constant dialogue, coordination, and harmonisation with the CoE at country level (2008 response).

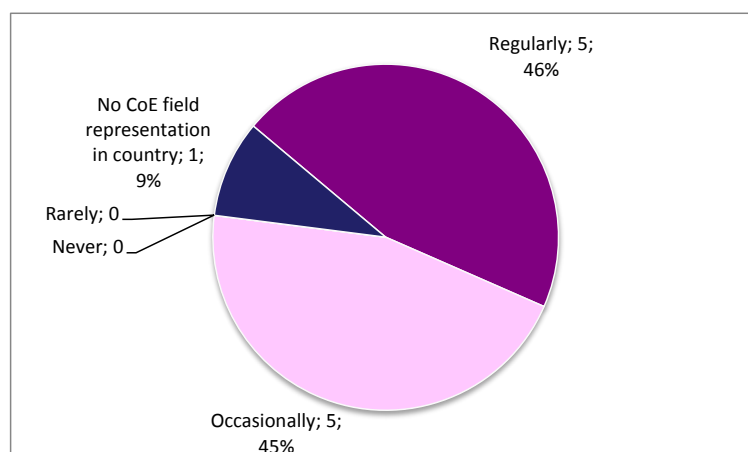
Source: EUD responses to EEAS survey

### 1.2.2.1 Evidence

CoE officials who had previously been in the field commented on the under-staffing of EUDs, particularly in the area of political affairs. There is some tension between the funders and implementers, with more than one CoE official expressing reservations about the tone of EUD discussions.

EUDs, responding to the survey, indicated that there is at least occasional communication taking place between the EUD and the CoE in all countries with a CoE field representation; in 40% of the countries this communication is qualified as “regular.” Apart from the communication with the CoE field office, the Delegations also mention communication with JP project teams and within steering committees for JPs. Communication with the CoE HQ staff is also taking place in some countries. For example, in *Russia*, there are semi-annual meetings between the CoE Political Director and the Head of Delegation or Head of Operations. CoE field office staff and CoE project teams regularly communicate. In *FYROM*, where there is no field office, consultations take place during CoE country visits and the EUD has regular communication with CoE relevant staff in the areas of justice, decentralisation, and rule of law.

Figure 4: Results of survey to EUDs: Frequency of EUD-CoE communication at country level



Source: Particip EUD survey

CoE field office reports give comprehensive and detailed references to dozens of meetings / discussions with EUD officials. It is clear from them that there were frequent consultations between EUD officials and CoE field offices where the latter were in place.

These findings have been also confirmed during the field missions, with the exception of *Armenia*, where the EUD reported lack of communication with the CoE field office.

In summary, there are regular consultations at field level. EUDs are more or less satisfied with the quality of these discussions, officials at CoE Headquarters, by contrast (many of whom previously served in field offices) expressed the desire for deeper discussions, indicating their view that the current level of communication is inadequate.

### 1.2.3 I-123 Evidence of pro-active measures, by CoE, to increase EC/EU staff familiarity with CoE (information material and seminars, lobbying, etc.)

We have found no evidence of pro-active communication measures taken by the CoE at HQ level that dates from the evaluation period. More recently, in partnership with EEAS, the CoE has participated in a number of “Information Days” in Brussels where CoE officials presented the organisation and described possibilities for cooperation. At the one event attended by a member of the evaluation team, the programme was of high quality but the number of officials unfamiliar with the CoE who attended was low. However, the opening of a CoE liaison office in Brussels, an initiative taken recently, is likely to increase the profile of the organisation and will make it easier for EC officials to gain access to information. The opening of an EUD in Strasbourg has also increased opportunities for the CoE to project information about itself.

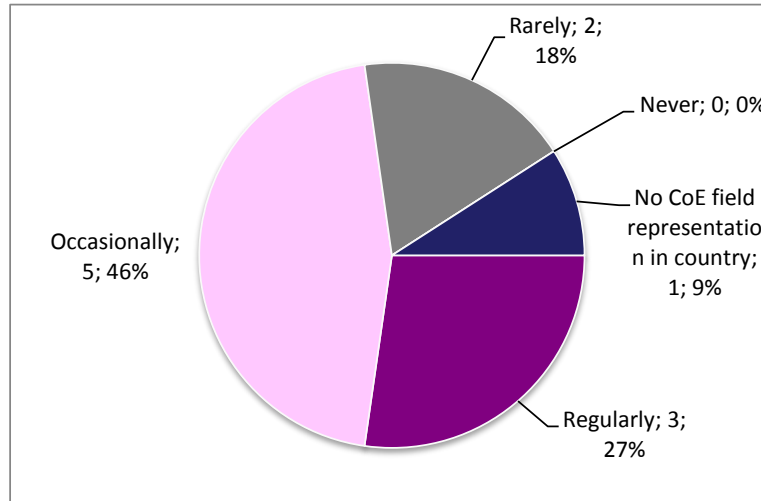
At country level, there has been occasional or even regular communication from the CoE to actively promote cooperation reported from most EUDs in the EUD survey.

### 1.2.3.1 Evidence

In the field, most EUDs reported that CoE field offices engaged in information and outreach activities, including fundraising. CoE field office reports contain many references to such activities.

EUDs reported occasional (46%) or even regular (27%) efforts of the CoE in the country to actively promote cooperation between the two organisations. This is corroborated by CoE country office reports, which document continuous outreach and fundraising among donors such as the EC.

Figure 5: Results of survey to EUDs: Active promotion of EC-CoE cooperation by the CoE on country level



Source: Particip EUD survey

In summary, we are not aware of systematic CoE outreach efforts over the evaluation period but can point to recent efforts to better inform Brussels officials regarding cooperation possibilities, and the CoE more generally. At field level, EUDs report satisfaction with the level of CoE outreach and CoE field offices themselves report continuous activities to inform partners and raise funds.

## 2 EQ2: To what extent has the cooperation with the CoE, in particular via the channelling of funds, enabled the EC to use the CoE's specific sectoral expertise and mandate and geographical scope in the key areas of cooperation?

### 2.1 JC 2.1 Degree to which the CoE's sectoral expertise and mandate and geographic scope and political capacity to hold partner countries accountable have been taken advantage of in cooperation activities including JP implementation

In assessing this JC, we looked first at the extent and quality of CoE involvement in JPs at all stages. Over the evaluation period, the CoE was universally recognised to be a Headquarters-based organisation with weak field presence. The current reform process, initiated at the end of the evaluation period, is designed in part to correct this weakness. In general, the CoE provided a good level of input of Headquarters expertise to JPs over the evaluation period, although programme officers are sometimes dealing with an overload of projects. However, JPs managed solely from Strasbourg were considered inferior to projects managed from the CoE country office in terms of quality of management and results. Human resource policies at Headquarters have also been changed to try to better manage the trade-off between turnover and ossification. The **need for better use of CoE expertise in JP formulation** has been discussed under EQ 1, and further evidence is presented below of the **need to take better advantage of the CoE's unique strength as an organisation whose work encompasses standard setting, monitoring, and cooperation**. This links directly to JC 2.2, whose assessment identified the progress made, but need for improvement in, coordination and joint work in standard setting and monitoring.

Over the evaluation period, the **evaluation function at CoE was weak and structurally flawed**, as evaluation was linked to project design and implementation. It was also ad hoc, and even gathering together a database of past evaluations has been a challenge. Poor evaluation weakened the quality of JPs and, by putting the CoE well behind competitors in project implementation, reduced the attractiveness of the CoE to the EU as an implementing partner. However, near the end of the evaluation period, as one of the first steps of re-organisation, the evaluation function was moved into the Office of Oversight, reporting directly to the Secretary General, and given enhanced staff resource and visibility.

The CoE's **reliance on external consultants in an increasingly integrated and competitive market conflicts in some ways with the CoE's perceived unique advantage as a repository of expertise** discussed under EQ1. Part of this trend is due to the explosion in the number of JPs over the evaluation period. It places the CoE, however, in precisely the position it wishes to avoid, namely, that of being "just another implementing organisation." An important step in strengthening performance on this JC is the putting in place of a Directorate General of Programme to ensure that cooperation activities (specifically JPs) conform to CoE priorities jointly agreed with Government. The alternative is a donor-driven agenda, with nefarious long-term effects as governments accept assistance programmes to whose results they have little commitment. That said, absent EC funding via Joint Programmes, the CoE's cooperation activities would have to be severely curtailed, and beneficiary governments are often willing to engage in projects even where the political will to achieve fundamental results is weak.

Was the EC, working through the CoE, able to obtain results that they would have not been able to attain with any other organisation? In answering this question, it is first necessary to recognise that the **CoE and the EC have different interpretations of results**. The CoE is a process- and long-term engagement oriented organisation. The EC (DG DEVCO more so than EEAS, which is somewhat closer to the CoE in orientation) is a traditional development organisation looking for near-term impacts as identified by objectively verifiable indicators. For an evaluator trained in such Results-based Management development evaluation, looking through CoE project reports is an exercise in frustration, as they tend to amount simply to an inventory of activities carried out.

**It the area of financial cooperation (JPs), it would be overly optimistic to say that the CoE's unique institutional status delivered results – in any sense – that could not have been delivered by another organisation** drawing on the same pool of consultants. However, there are exceptions. In cases where monitoring reports can give rise to independent sanctions (such as a negative MONEYVAL or, in the case of accession countries, a negative GRECO report), the CoE's unique status may leverage its effectiveness as an implementing partner. In some specific contexts the CoE could have been the only organisation engaging with governments in troubled times, when only few other alternatives were available (*Serbia, Turkey*). While the situation since then has changed, and many partners are now on the scene, the CoE is seen as the organisation, which made the initial cru-



cial steps. In some cases (*Moldova*), the CoE may have unique status in a Ministry that is, on the whole, resistant to change.

A difficult to pin down but clearly identifiable advantage of the CoE is the **moral high ground that results from the CoE's role in standard setting and monitoring activities**, including adjudication through the ECtHR. What is referred to at CoE Headquarters as **the "triangle" of standard setting, monitoring, and cooperation**, (with results of the latter feeding back into subsequent standard setting and monitoring) **is truly the CoE's "unique selling point."** This is related to, but distinct from the CoE's vaunted power to encourage change in MSs. MSs have quickly realised, following accession, that while non-compliance is unpleasant, it is not necessarily fatal to maintaining a relationship with the CoE. There are exceptions, such as MONEYVAL and GRECO, whose adverse findings can have immediate negative effects. In general, though, the standard setting and monitoring function, backed up by cooperation, is more effective in maintaining the relevance of the CoE's engagement than it is for producing quick results.

Two specific comments. The CoE's geographical scope, often mentioned, does not appear to deliver a great advantage in fact. If anything, by encouraging the CoE to work in areas such as North Africa and Central Asia, and in its limited efforts to promote CoE standards beyond Europe, it is the EU that is delivering geographic scope to the CoE, not the other way around. Second, the political influence of the CoE must be placed in perspective. If anyone has direct ability to deploy incentives and disincentives, it is the EU, with accession, or trade policy, or visa policy, etc. at its disposal. When countries fail to live up to their ECHR commitments, as shown by an adverse or non-executed ECtHR judgment or a critical monitoring body report or report of the Commissioner for Human Rights, this amounts to "name-and-shame." The increasing peer-to-peer nature of the CoE's operations increases the effectiveness of such policies; however, countries learned quickly after accession that their margin of appreciation is relatively wide.

### 2.1.1 I-2.1.1 Extent and quality of CoE HQ and field office involvement in cooperation activities, including JP design and implementation at all stages

It is acknowledged on all sides that, over the evaluation period, the CoE's field presence was not strong enough to maintain competitiveness as an implementing agency. Much, albeit not all, of the current reform effort is designed to strengthen field presence. One consequence of weak field presence was intensification of reliance on short-term consultants. These concerns were also shared by the EUDs during the field missions, and especially for projects that were managed from Strasbourg. CoE Headquarters staff is stretched very thin, but are able to maintain a reasonable degree of involvement in JPs, e.g. through annual Steering Committee meeting attendance. Like all organisations, the CoE has been struggling with the need to promote Headquarters staff turnover with the need to maintain institutional memory and depth. The reform programme aims to encourage headquarters staff to re-locate to the field, although it is to be expected that this will be a challenge in an institution traditionally as Headquarter-oriented as the CoE.

The need for stronger CoE involvement in JP formulation has already been discussed under EQ1. There is evidence that JPs have become increasingly donor (EU-) -driven over the evaluation period, and that beneficiary countries are reluctant to refuse assistance offered. This suggests a need to strengthen the standards setting – monitoring – cooperation triangle, an arrangement that has been proven to work in many areas (trafficking in human beings is one example given below). It also suggests better EU-CoE coordination on standards-setting and monitoring, discussed at length under JC 2.2 below. Interviews on all sides, as well as the synthesis of past JP evaluations, have identified the fact that, over the evaluation period, the CoE was weak in the area of evaluation. In fact, as it has increasingly become an implementing development agency, the CoE has failed to incorporate international good practice in the form of independent impact evaluation, significantly weakening project performance as impacts (and their absence) are not established and lessons learnt are not generated for incorporation into the next generation of projects. Too many projects have been of the "more of the same" variety, and nowhere is this more evident than in training, one of the largest CoE areas. Poor PCM is evident in project final reports, which leave the impression that the "project" was merely a bundle of activities implemented, not a project per se. A major development at the end of the evaluation period was moving the evaluation function from strategic planning, where it was linked to project formulation and implementation, to the Office of Oversight, where it reports directly to the Secretary General and can serve a truly independent evaluative role. And, in closing, it is to be noted that the EU continued to finance JPs despite poor PCM having repeatedly been cited in ROM reports and mentioned in field missions, EUD survey results, and those evaluations that were done.

In summary, evidence suggests that there was need for stronger, more pro-active CoE involvement in JP formulation over the evaluation period, as well as far better monitoring and evaluation. The recent reform and reorganisation process are addressing these concerns; however, whereas most of the

evidence gathered spoke of the need for greater headquarters involvement, the thrust of reorganisation is to strengthen field offices.

### 2.1.1.1 Evidence

Since, as seen in EQ 1, the provision of expertise is seen by EC officials, both at Headquarters and in the field), as the main comparative advantage of the CoE, it is safe to say that there is a reasonable degree of satisfaction with the provision of CoE Headquarters expertise. At the same time, concerns were expressed over the prevalence of external consultancy arrangements, the message being that another implementing partner, perhaps with lower management costs and better implementation skills, could equally well engage the same consultants. Difficulties of hiring long-term project staff, as opposed to short-term consultants, were frequently cited.

No concerns were expressed about provision of CoE HQ expertise in non-financial cooperation, which in the context of this Indicator would refer largely to monitoring. A classic example of CoE monitoring input into JPs is MONEYVAL. Countries are very quick to respond to negative ratings from MONEYVAL, often resulting in a specific request for a JP to address problems identified.

The CoE is represented in the EU Fundamental Rights Agency Governing Body. Expertise is exchanged and efforts are made to avoid overlap, with the CoE using the FRA's data gathering and research capacity.

All CoE officials interviewed spoke of high demands on their time, but also felt that input into JP implementation was adequate. One estimated that at least one visit, usually in the context of Steering Committee meeting, per year was standard practice. This must be contextualised, however, by recalling the evidence gathered that JP design was overly ad hoc, implying that CoE Headquarters officials felt that they often have insufficient degrees of freedom in designing JPs.

Over the evaluation period, as the volume of JPs expended, there was a tendency for them to become more donor-driven, raising a challenge for the future. The three ingredients of the programming process are country obligations as distilled from the monitoring process, the national policy agenda as established in CoE dialogue with government and other stakeholders, and existing cooperation. The reform goal of making the cooperation programme more country-driven and less donor-driven (and hence making the CoE more relevant to MS needs) implies, according to the CoE interviewees, the need for a stronger CoE Headquarters role in designing JPs in the future. The putting in place of a Directorate General for Programme under the Secretary General to establish priorities and ensure consistency is a step in addressing that need. Among the responsibilities of the Directorate for Programming will be the launching of country Action Plans in order to promote national ownership and establish highly visible partnerships. The first two (*Ukraine* and *Armenia*) were launched roughly at the end of the evaluation period.

To the extent that JP formulation successfully follows from monitoring, a degree of CoE Headquarters involvement is guaranteed. For example, a Committee for Prevention of Torture, a Commissioner for Human Rights report, and recent case law may lead to the formulation of a prisons project. The fact that monitoring bodies will, under the reorganisation, have an explicit cooperation role will reinforce the Headquarters role.

CoE personnel policy relating to Headquarters staff has tried to strike a balance between the costs of high turnover and the dangers of ossification. In the early years of the evaluation period, there was a wave of "permanentisation" in which formerly temporary staff became permanent. Recently, a new policy effectively limiting project staff to 4-5 years was implemented. In general, officials interviewed stated that a very large share of their time is spent on human resources, finance, and administration. CoE staff policy rules were described by one official as being unsuited to the explosion in JPs which began fifteen years ago. The JP formulation process too often is taken over by financial and administrative issues. This also suggests the need for better strategic involvement of CoE in formulation.

Particularly in responding to EQs 7 and 8, the failure of CoE to respect good international evaluation practice as it increasingly became an implementing agency was cited. Too often, JPs were inadequately evaluated, or evaluations consisted of lists of activities or references to positive beneficiary questionnaire responses post-training. One result for this evaluation has been the difficulty in assessing impacts in the sectors covered under EQs 3, 4, 5, and 6. The lack of evaluation has meant that lessons learnt have not been identified and incorporated into the next generation of projects. The result is that the CoE has become, overall, less attractive to the EU as an implementing partner.

Important changes have been instituted to address weaknesses in evaluation. In the past, evaluation was a strategic planning function, but in March 2010, it was moved to the Department of Internal Oversight and significantly strengthened. Under previous arrangements, evaluation was linked to the programme design and implementation side; now, it is entirely independent and depends directly on the Secretary General. Evaluation was ad hoc, carried out by Project Managers and operational Direc-

torates General; even finding and collecting evaluation reports together is a significant task. This move, and the increased visibility of evaluation, was in response to the perception, validated by the synthesis of past JP evaluations in Annex 2, that evaluation was the weakest link in the CoE's programme cycle management chain. The Framework Agreement with the EC permits the CoE to rely on its own evaluation, however, there have been significant consultations regarding evaluation with the Joint Evaluation Unit of the EC, and officials of the JEU participated in a training seminar in Strasbourg. The main challenge now, as evaluation results begin to come in, will be to ensure that they are actually used.

There was a widely-held perception that the CoE's weak point was its lack of strong field presence. Under the reform, field offices have been established in Russia, Turkey, the three South Caucasus countries (Azerbaijan, Armenia, Georgia), Ukraine, Moldova, Kosovo, Albania, Serbia, and BiH. Headquarters staff will be encouraged to relocate to the field, in addition to which, there will be direct recruitment to the field offices. The standard office structure is planned as follows:

- Head of Office (political),
- Deputy Head of Office (operations; liaising with Government, EU and others to identify joint priorities, coordinating JPs),
- a finance team,
- a communications officer, and
- JP teams responsible for decentralised finance, human resources and logistics.

In this way, the lack of implementation capacity identified by e.g. the synthesis of past JP evaluations will be addressed and the CoE will become more competitive as an implementing agency.

A challenge will, naturally, be promoting the new structure internally. The likelihood is that for most CoE staff at the right level, the move to be a field Head of Office will be a promotion, but the move to be a Deputy Head will be a sideways transfer.

The synthesis of past evaluations in Annex 2 leaves the impression that JPs would have been strengthened by more intense Headquarters involvement. This follows from the finding that JP design was often strategically unsound and that monitoring was poorly designed and carried out. The latter was, in part, because the logframe approach was not well used, resulting in poor project cycle management throughout. (A more detailed discussion on project cycle management can be found under EQ7.)

The field mission interviews generally confirmed the findings from the desk phase in that the CoE's expertise is valued and appreciated, but insufficient field presence sometimes had a negative impact on the project's quality.

- In *Turkey*, the CoE office staff, as opposed to core staff, is being employed specifically to work on designated projects. These capacity constraints appear to limit somewhat the resources that a local CoE Office might bring to outreach in key sectors, EUD and EU monitoring, strategy setting, etc. Another issue emerging from the interviews with the CoE office staff is lack of clarity regarding the appropriate / permissible level of CoE involvement in JPs designed by beneficiary institutions.
- In *Armenia*, the EUD expressed dissatisfaction with the extent of local CoE office involvement in project design and implementation and even with CoE office awareness of problems when they developed.
- In *Serbia*, where stakeholders had been involved, either as direct or indirect beneficiaries of JPs (in particular on the two consecutive JPs on local self-government reform), they were mainly very positive about the experience, citing the JP design as relevant for their context and specific needs, and implementation having been done in close contact with beneficiaries and responsive to their needs.
- In *Moldova*, the EU Delegation, as well as some stakeholders (NGOs who had worked in the context of Joint Programmes) were strongly of the view that management from Strasbourg was inadequate and that the quality of the CoE's engagement had benefitted from the strengthening of the country office. This has greatly increased field office involvement in JP design and implementation at all phases and has been warmly welcomed by the EU Delegation.

### **2.1.2 I-2.1.2 Adequate provision of CoE expertise at country level during implementation (in-house, external, quality, quantity, timeliness, etc.)**

In considering EQ 1, we concluded, largely based on interviews both at HQ and in the field and on the EUD survey, that one source of the CoE's comparative advantage was its role as a repository of ex-



expertise. In considering the evidence below, we are called upon to nuance this somewhat. The CoE relies on external consultants and must compete in the same market as other implementing agencies. An advantage of CoE, is that it can draw on the pool of expertise developed in its monitoring activities, such as the CPT, MONEYVAL and GRECO. In one area in particular, legislative reform, the CoE is regarded as *sui generis* because of the Venice Commission. However, even in technical areas, the market for consultants is increasingly well-integrated. The CoE finds it difficult to recruit long-term project staff, as opposed to short-term consultants. As discussed to some extent under EQ 1, the quality of expertise provided has not been largely criticised, but its timeliness, problems of attrition, and the difficulty of attracting project staff, as opposed to consultants, have been mentioned.

The provision of CoE Headquarter expertise is dealt with more in Indicator I-2.1.1 above. A point to be made is that the reform process, with the putting in place of a coordinating Directorate General for Programming, is meant in part to take advantage of cross-cutting opportunities and improve the quality of Headquarters expertise provided.

### 2.1.2.1 Evidence

EC officials are aware that the CoE is dependent on short-term consultants who are available on the open market to all. One official regretted the fact that the CoE is increasingly relying on consultants to prepare reports instead of doing it themselves, implying that this may prove in the long run to be a false economy. To the extent that the CoE has moved in the direction of consultancy, their credibility may suffer, particularly among the EU 27. Consultants, one official put it, “come and go,” with very little institutional sedimentation in the form of acquired expertise occurring. The CoE should not, under these circumstances, be treated as the only source of expertise. This suggests a fundamental conflict with the desire often expressed at CoE Headquarters to be treated not as just another implementing NGO, as it precisely suggests that NGOs, consultancy companies, or other international organisations can hire the same consultants as the CoE.

Increasing reliance on consultants needs to be seen in the context of pressure from the Council of Ministers to reduce permanent staff. Standard consultancy rates for the CoE are lower than those for other organisations (notably the EC). However, work arrangements at the CoE were consultant-friendly and that in unusual cases, means were available to boost the effective daily rate.

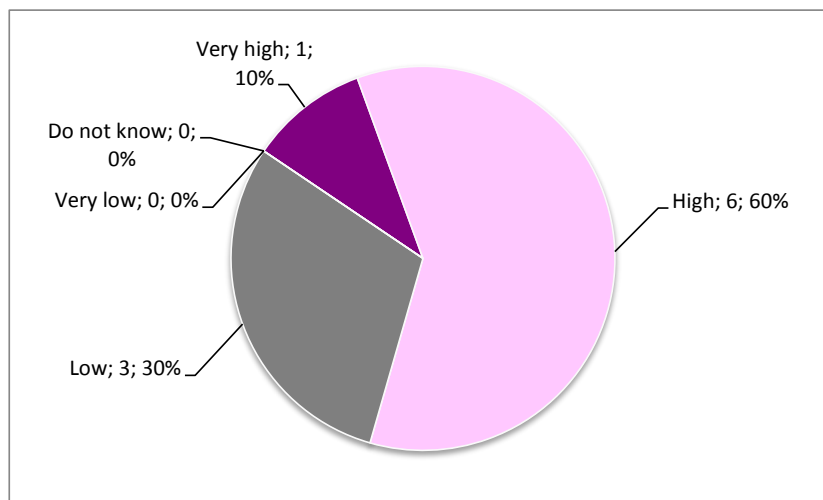
The CoE reform is aimed in part at increasing and focusing the provision of Headquarters expertise. One of the purposes of the new Directorate General for Programme is to encourage coordinated efforts across operational Directorates General. Also under the re-organisation, monitoring bodies will have their own cooperation units, enabling them to have more direct input into JP design and implementation.

A CoE cooperation official warned that cooperation is increasingly in the form of dialogue, not traditional technical assistance. This suggests that more reliance on peer-to-peer mechanisms, as in the Eastern Partnership, may be needed. The dynamic, with more countries acceding to the EU and expanding work in non-European countries, will require new work modalities and forms of expertise. Another challenge is that both academic and practical expertise is often needed, resulting in the need to recruit multiple persons since few combine both aspects. It is rare to hire non CoE-MS experts, limiting the pool.

A strong point of the CoE as implementing partner is its ability to draw on experts with long involvement in monitoring bodies such as the CPT, GRECO, or MONEYVAL.

The EUD survey was an important source of evidence on the adequacy of expertise provided by the CoE. Most Delegations (70%) assess the adequacy in terms of quality, usefulness and timeliness of the specific CoE expertise as high or very high, while the remaining one third as “low.” Among countries rating it as “high,” reference was made to specific sectors, such as treatment of prisoners or the rule of law and functioning of the judiciary. One EUD reporting poor quality said that the expertise provided was excellent in and of itself, but projects were slow in starting because of delays in forming teams, leading in some cases to project obsolescence.

Figure 6: Results of the survey to EUDs: Adequacy of CoE expertise as perceived by the EUDs



Source: EUD survey

EUDs do not perceive the CoE as having a monopoly in their areas of expertise. NGOs and other international organisations are regarded as competent competitors. EUDs also recognise that the CoE is effectively hiring consultants, which can equally be done by other implementing partners, or directly by the EC itself. As corroboration, one expert with wide experience of CoE activities cited examples of weak consultant performance, and expressed the view that these are common. However, the review and synthesis of JP evaluations given in Annex 2 found that experts sent to deliver training were generally held to be extremely competent. However, delays in recruitment and high staff attrition were identified, as well as long time lags between the request for expertise and its delivery. The role of the project manager was crucial, as experts tended to be drawn from his or her network.

A number of EUDs (*Azerbaijan, Georgia, Russia, Ukraine, Turkey*) recognised that, in some fields, the CoE's expertise is unique. One such field is legislation, where the reputation and standing of the Venice Commission, combined with the fact that countries are CoE MSs, gives the organisation a unique role. The latter is important because countries recognise that, as CoE MSs, they have an obligation to make good on their commitments. This is corroborated by some response to the EEAS survey, where CoE expertise in the rule of law and protection of fundamental rights was identified as an asset in implementation of EU standards.

More detailed information from the EUDs was collected also during the field missions, together with some partner and beneficiaries' views on the CoE expertise.

- In *Serbia*, the level of expertise provided through JPs was, with one exception, cited as being very high and relevant for the Serbian context.
- In *Turkey*, for the most part, JP beneficiary implementing partners report high levels of ownership in the selection of, and satisfaction with, JP consultants engaged by the CoE. A non-exhaustive list of experts involved highlight that JPs have been able to draw upon some leading international experts, in some cases in specialised areas of detention management, forensic medicine, etc. as well as combining knowledge of Turkish cases before ECtHR and involvement in comparable reform efforts in other CoE Member States. However, it is not clear whether extensive substantive experience is always matched by expertise as trainers *per se*. Generally the term trainer and 'training of trainers' is used rather loosely.

Some observations offered in interviews were that in some cases local experts could have been used instead of external experts, though CoE and implementing partners express confidence that lines of communication are open for any concerns about experts to be raised. One area identified as offering scope for improvement is that of linkage between JP experts and experts engaged in related bilateral activities, including Twinning and more concrete advance identification of training objectives (in terms of expected impact).

- In *Armenia*, a clear preference was expressed for in-house CoE expertise over externally recruited consultants, and the need to have a project leader on the ground was stressed. There was some echo in these comments by implementing partners in Government, who expressed some dissatisfaction with the provision of expertise by the CoE, especially failure to respect a demand for experts fluent in English. Not surprising, assessments of the quality of experts

provided varied widely; some were reported to have been outstanding and some unsatisfactory.

- In *Moldova*, in general, government officials interviewed were satisfied with the expertise provided, in one case where there was dissatisfaction, the expert was changed.

In general, there appears to be a shared EC Headquarters and EUD "house view" that despite the unique reputation and comparative advantage identified in answering EQ 1, the reliance on external consultants is moving the CoE into the same category as other potential implementing partners.

A number of JP documents reviewed made specific reference to the quality of CoE expertise at country level. These are excerpted in the accompanying box.

*Box 2: Examples of perceptions relating to the CoE expertise at country level, emerging from project-related documents*

*Freedom of expression and information and freedom of the media (2008-09):* "The implementer provides high quality expertise. In this regard, the expert support (through expertise of different documents and expert meetings) is the most cost-efficient instrument of the project." (ROM 2009)

"The amendments on the Law on Television and Radio were aligned to Council of Europe standards, based on expertise and discussions provided by the experts." (ROM Arm 2009)

*South Caucasus democratic stability (2002-2004):* "The CoE's access to high level and high quality experts has already been noted. The choice of experts depends in part on personal as well as institutional contacts. This appears to have led to larger numbers being involved from Western European countries; even though some interviewees expressed more interest to interact more with experts from Central European transitional countries." ... "A clearer selection process for experts, with at least some involvement from the in-country partners, would be helpful. This would increase accountability, as well as ensuring that in-country partners understand why particular people have been asked to contribute. Having clear criteria would also make it easier to involve in-country experts more regularly." (Evaluation report - Armenia country note 2004)

*Combating ill-treatment and impunity in South Caucasus, Moldova, and Ukraine (2009-2011):* "The seminar participants highly praised both international and local experts. The fact that the seminars were conducted jointly with a local expert was much appreciated." (ROM Arm 2010)

"The results achieved so far are of high quality. The interviewed seminar participants highly praised the experts and underlined their satisfaction that the seminars were presented as well by local experts. The Country Reports were produced by eminent experts, who have a good understanding of the regional and national context. Both brochures were produced by an international expert having an excellent knowledge of ill-treatment problematic in the region." (ROM 2010)

*Azerbaijan – Penitentiary reform (2005-2006):* "The project was rather slow in the mobilisation of its team, completing this process by the end of March 2006. Ultimately, it involved in its activities 12 highly qualified international experts. Also, competent Azeri specialists are involved in the work of the four Working Groups formed."

*South Caucasus democratic stability (2002-2004):* "The Council of Europe's particular expertise in law drafting, the development of institutions and processes for the delivery of justice, for local government, and for human rights, based on more than 50-year experience of developing European conventions and charters and monitoring their implementation, was clearly an important factor in determining the content of the programmes." (Evaluation report - Armenia country note 2004)

Source: JP documents

### **2.1.3 I-2.1.3 Cooperating with the CoE enabled the EC to obtain results in countries where their reach through alternative partners was limited and /or to attain results that would not have been attainable working through other organisations**

So far, in the area of financial cooperation (JPs), there is little evidence that the CoE is in a unique position, apart from its special relationship with its member states. The market for consultants is a thin one, and the same consultants on offer to the CoE are on offer to other implementing agencies. There may be technical areas related to monitoring in which the CoE's access to consultants is unparalleled, but over the evaluation period, the CoE steadily lost its monopoly supplier status. What makes the CoE unique is not so much its unique supply of expertise, but its lack of an agenda apart from the high moral one, and its inter-governmental nature, meaning that the countries receiving assistance are themselves MSs. According to the Headquarters interviews at both institutions, the EU is perceived to have its own agenda; the CoE is perceived to be sharing the agenda of its MSs.

As this suggests, the power of the CoE as an implementing partner has little to do with its strength as an implementing agency per se, it has to do with its unique institutional status. Only the CoE offers the "triangle" of standard setting-monitoring-cooperation, with feedback from cooperation information and lessons learnt to standard setting. The operation of the triangle is being adjusted in the reform process, in response to lessons learned over the evaluation period. It remains, nonetheless, a unique characteristic of the CoE.

Emerging from the field missions is also the view that the CoE's role was indispensable in some countries at times when it was difficult for many other partners to provide assistance (e.g. *Serbia, Turkey*), and could have made a real difference in helping to engage the government in necessary reforms, and paved the way for subsequent involvement of other international partners somewhat later in the process. In *Moldova*, the CoE was judged able to obtain results in a sector resistant to change (Justice) which another implementing agency would have found difficult if not impossible to obtain. In *Armenia*, while the EUD expressed deep dissatisfaction with the CoE as an implementing agency, it recognised that the CoE was a good provider of expertise, especially where training of a relatively academic nature was concerned.

A fundamental issue is that (not explicitly treated in the Indicators below, but a theme that has pervaded all EQs), the EU's and CoE's interpretation of "results" differs. Only with the Lisbon Treaty has the EU moved fully into broad areas of human rights, democracy, and rule of law. It is an institution whose strength is still in enforcing the four freedoms of movement – goods, services, people, capital – and which is still finding its feet in the broader domain, not without internal conflicts as its own MSs are sometimes found wanting.

Nothing could contrast more strongly with the CoE (save perhaps for its engagement with economics through the European Social Charter). Regarding "results," the CoE has a long term perspective, the EU has a shorter-term one. For the CoE, the passage of a law is a "result;" for the EU, it is the implementation of the law and its impact on verifiable indicators. There is no lack of understanding or communicative ability on the part of either institution – on the basis of extensive interviews, each well understands the institutional language of the other. One CoE official put it well, stating "*Failure to implement a ECtHR judgment will be a millstone around your neck ... every time you come to Strasbourg, it will be brought as evidence of, at best, your incompetence and, at worst, your bad faith, in meeting your CoE Commitments.*" No such moral authority can be found in any alternative institution. This view is predicated, of course, on the unique role of Government, an assumption well worth questioning. Elsewhere, we deal at length with the lack of engagement of the CoE with NGOs.

Cooperation with monitoring bodies such as MONEYVAL and GRECO and (not strictly a monitoring body) the Venice Commission has helped the EC to contribute to constructive change that would not have been possible working through alternative groups.

The Norway Grants programme is of interest because it is, through loose EC coordination, permitting the EC to contribute to needed cooperation in EU MSs where it could not work under current arrangements. At the same time, the ability of the EC to project CoE standards beyond Europe (e.g., cybercrime in Tonga and Vietnam), the South Facility, and work in Central Asia) has underscored the mutual gains from cooperation between the two institutions.

In summary, even though the uniqueness of the CoE as an implementing organisation is diminishing as it increasingly draws on the same pool of consultants as other organisations, , the CoE still offers unique advantages due to its institutional status.

### 2.1.3.1 Evidence

A number of EC officials outside the Relex family stated that partnership with the CoE, for example, through Joint Activities, opened up possibilities in countries outside the EU27. No mention was made of the lack of alternative partners. It is difficult to make any strong judgment regarding Joint Programmes given the conclusions on impact in EQs 3-6, and the fact that other implementing partners were available.

In the broader area of non-financial cooperation, the CoE is in a unique position in many areas, and particularly so in the case of the Venice Commission. The involvement of Venice Commission in the South Facility is an example of an intervention uniquely possible by cooperating with the CoE. The use of GRECO and MONEYVAL as "gatekeepers" for accession could also not be replicated with any other partner, as these are broadly considered as representing the state of the art in their respective fields. Practically speaking, what happens is that information from monitoring bodies flows into DG Enlargement country progress reports. Meetings between the CoE and DG Enlargement have been arranged by DG Political Affairs and Cooperation. In specific cases, there can be other consequences. For example, when MONEYVAL identifies a country as problematic, reports go out to the G20 countries, with possibly serious consequences, and the EU may declare that all financial transactions with the country are potentially dangerous or even call on MSs to suspend transactions. Early in the evaluation period (2001-2002), when Ukraine was subjected to countermeasures, the EU took collective action by identifying all transactions with Ukraine as suspicious. MONEYVAL also applied "compliance enhancement" procedures to Azerbaijan and BiH.

The CoE's internal "triangle" of Standards-Monitoring-Cooperation gives it a unique ability to deliver results. An area where this has been especially productive is economic crime. There is also a feed-

back loop from cooperation to standard setting, although as discussed at a number of places (especially EQs 7 and 8) the weakness of evaluation makes it difficult to extract lessons learnt from JPs. A positive example of the feedback loop is trafficking in human beings, where the 2005 convention was significantly informed by project experiences in South-eastern Europe, especially Romania and Moldova.

In the area of crime, cooperation through the CoE, especially TA, allowed quick, flexible intervention, (typically) TA to deal with emerging problems. Flexibility and speed are enhanced because this cooperation was below the governmental level. An example is cybercrime, where the EC is promoting the Budapest Convention and has supported CoE cooperation activities to that end. At the government level, or working through a committee would have been much slower than working with the CoE. Small interventions, on the order of Euro 100-200,000 were quick and fast to design and launch.

The Committee for Prevention of Torture is especially effective because of its strong persuasive authority and essentially unlimited access to facilities. This was, for example, the case in Russia, where CPT has been allowed to visit facilities even in the North Caucasus. In field missions, the two CoE institutions that were universally praised were the Office of the Commissioner for Human Rights and the ECtHR.

A concrete example of results obtained is the abolition of the death penalty in Albania, which resulted from coordinated efforts of the CoE, the EU Delegation, and the EU.

Yet, there is sometimes frustration on the part of EUDs that the CoE is perceived to be too timid in dealing with non-compliance in countries that are CoE MSs. While the EU's relations with Third Countries are problem- and results-oriented, the CoE's relations reflect a long term process of assisting countries to meet the commitments that they have made in human rights, democracy, rule of law, and other areas. The two approaches are complementary, but require mutual understanding. As we have stated elsewhere, for the CoE, for example, changing a law is regarded as an impact; for the EC, implementation of the law and tangible resulting changes in citizens' lives is an impact.

Through the Human Rights Trust Fund, financed by Norway and five other countries, the CoE can provide capacity building specifically targeted at reducing the number of cases being brought to the ECtHR.

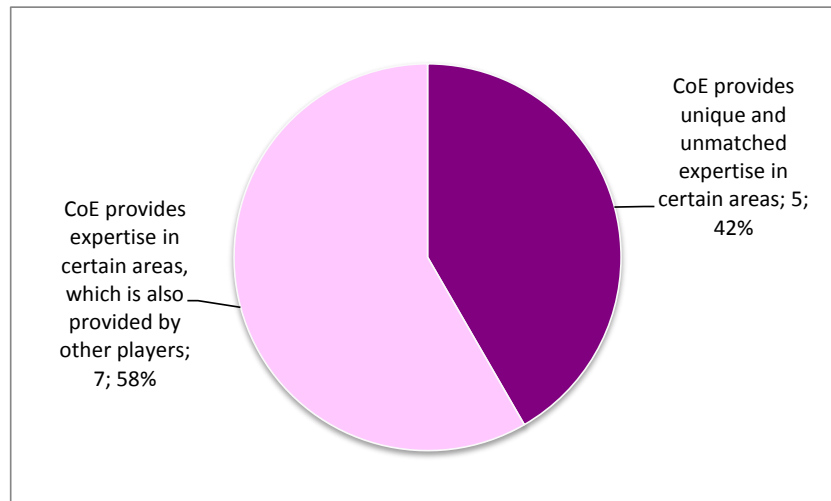
The CoE also has an advantage in that, through the CoE Development Bank, it can back up its policy advice and capacity building with infrastructure development, e.g., lending for prisons as in *Georgia*. Alternatively, it can provide policy advice to EC-financed infrastructure projects, as was the case in the construction of temporary detention facilities in *Moldova*.

The Norway Grants financed by European Economic Area (EEA) members provide assistance over a wide range of issues, including corruption and Roma to new EU MSs (e.g., Bulgaria, Romania, Slovakia) in which EU cooperation would not be possible. While the EC cannot in any way formally participate in these activities, there is communication between the CoE and the EU. The CoE is a "programming partner" and guarantor of quality, i.e. it advises on project formulation and monitors, but government is the implementing partner. Therefore, it is in the programming phase that there can be coordination between the CoE and the EUD.

The EU and CoE have different approaches to country strategies and priority setting, although the two are rarely in conflict. As an inter-governmental organisation, the CoE is more attuned to government priorities, and it is significantly less influenced by NGOs. Moreover, since its financing comes from MS governments (it has no dedicated tax base, unlike the EU) and there is no direct equivalent of the popularly-elected European Parliament, there is a lower sense of direct accountability to MS citizens.

Survey results indicate that EUDs have respect for the CoE, but also perceive that the organisation does not have a monopoly on expertise in all fields. The aspects most often cited: unique credibility in legislative reform through the Venice Commission and the advantages implicit in the fact that countries are CoE MSs, giving the organisation a degree of moral and political authority. This is corroborated by the comment of one CoE official interviewed, who reported that sometimes EUDs wanted the CoE to be more aggressive with governments, citing Turkey and Albania as examples. However, even EUDs that were very positive on the special role of CoE expertise (e.g., *Azerbaijan, Georgia*) gave concrete examples of other groups that could effectively implement activities with government. Only a bit less than half of the responding EUDs were willing to describe the CoE as "unique."

Figure 7: Results of the survey to EUDs: Uniqueness of CoE expertise as perceived by the EUDs

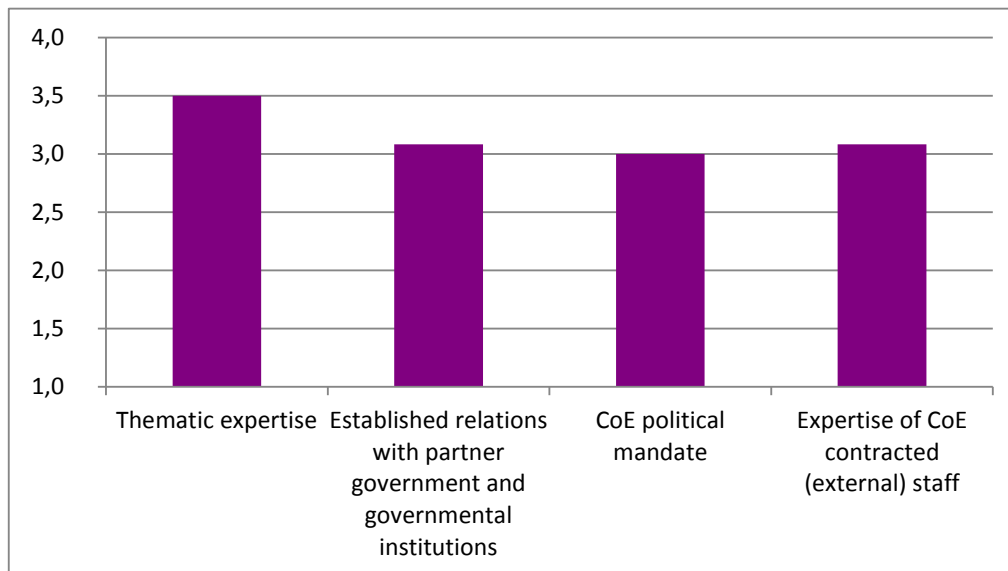


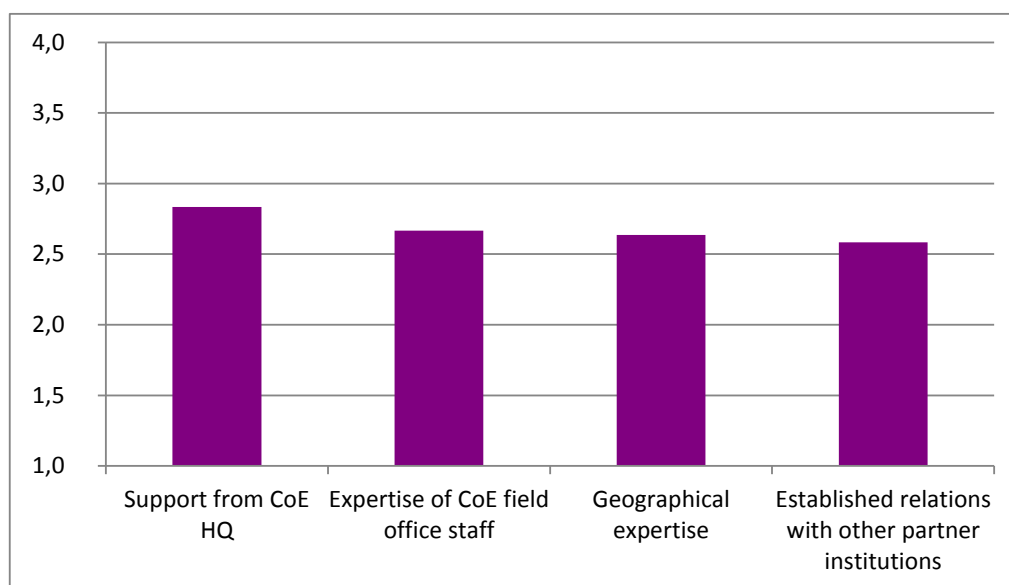
Source: EUD survey

The Delegations were asked to rank the importance of a given list of different aspects of the CoE expertise/mandate for the achievement of results. The answers were assigned points from 4 to 1 ("Very important" to "Not Important") for the purpose of calculating averages. The answer "Do not know" did not enter the calculations.

The importance of the CoE thematic expertise was rated the highest by far (average of 3,5), confirming the previous comments of the Delegations (above). "Established relationships with partner governments and governmental institutions" and "CoE political mandate" followed in perceived importance for results (averages 3.1 and 3.0 respectively). "Geographical expertise" and "Established relations with other partner institutions" were rated as relatively less important for success (both average 2.6).

Figure 8: Results of the survey to EUDs: Importance of CoE expertise for achieving results





Source: EUD survey

The review and synthesis of past evaluations (see Annex 2) casts some doubt on the idea that the CoE exercises unique influence. The review reveals that project impacts in the immediate wake of country accession to the CoE tended to be large, whereas impact weakened in later JPs. One possibility is that fear of the dire consequences of failing to meet commitments abated the more familiar with the organisation countries became. The review points out that the incentive for accepting a project may not be a genuine intention to reform in all cases; it could also be a desire to be seen to wish to reform. In this case, the CoE's inherent advantage would be neutralised. This is corroborated by one CoE official's remark (regarding weak JP formulation) that one problem is that some governments will accept almost any intervention, even if not strategically sound.

The field missions brought some more illustrative examples and details on specific instances where the CoE's status allowed the EU to obtain results unlikely to have been achievable otherwise, but also showing that this is not an universal quality of the CoE applicable in all contexts, confirming the findings from the desk phase.

- In *Moldova*, the CoE's special relationship with current pro-EU Government allowed it to have impacts that would have been difficult to obtain by working with a consulting company. A concrete example is in justice sector reform, where prosecutors and judges are resistant to change and only the institutional clout of the CoE can provide effective backup to the Ministry of Justice. A number of persons interviewed in the field were of the view that, particularly in justice sector reform, it was unlikely that a consulting company, even if it succeeded in recruiting experts of high quality, would be able to wield the influence of the CoE. However, the influence of the CoE is not only as a result of the new government. During the 2001-2003 period of weakening democratic institutions under Communist rule, the CoE became the most influential international organisation in Moldova in the field of democracy, justice, and rule of law. Proof of this is to be found in contacts at the highest level and visits to Chisinau of CoE Secretary General Shwimmer to Moldova and the Moldovan leadership to Strasbourg.
- In *Armenia*, no information was obtained on the availability of alternative partners. However, many NGO and civil society representatives met expressed concern with and even distrust of both the CoE and the EU as a force for change, citing close relations with the Government both at the level of Yerevan (both institutions) and headquarters (CoE).
- In *Serbia* local stakeholders were mostly able to clearly identify the advantages of projects implemented through the CoE as opposed to a private sector consulting firm: a CoE-implemented project was likely to open doors to senior government officials in a way that a private-sector company-led one was not; the CoE was identified by stakeholders to be the main repository of expertise in the subject areas concerned; and there was an acknowledgement that (mainly ongoing) JPs contributed to relevant CoE monitoring instruments. CoE was also credited, by national stakeholders, as being able to provide a legitimate facilitating framework for regional projects that would otherwise not be able to take place; in this context, a regional JP on judicial cooperation in the fight against organised crime, PROSECO, facilitating contacts between prosecutors from the Western Balkans, was cited as an example of such facilitated networking.



- Cooperating with the CoE enabled the EU to engage in reform efforts in *Turkey* at a time when alternative partners were not likely to have secured engagement by the State. This critical factor at a decisive time means that all subsequent technical assistance was to some degree made possible by CoE JP activity in the early 2000s. That said, other implementing partners may have brought more experience and expertise in project cycle management – and could equally have applied CoE norms and utilised independent experts engaged in CoE mechanisms (as some bilateral donor projects have done).

## 2.2 JC 2.2 Degree to which EU has benefited from jointly working with the CoE on legal issues / standards setting and monitoring / country assessments in human rights, rule of law, and democracy

There has been **more progress on mutually reinforcing standard setting rather than joint standard setting per se**. CoE standards have been transposed into stricter EU Directives for the 27 MSs, giving the CoE the opportunity to then take the stricter standard's requirements over in the form of an Optional Protocol. The EU has also taken the opportunity to promote CoE standards outside the European area through its cooperation programmes. There was a setback to joint standard setting over the evaluation period when collaboration on a cross-border television convention was stopped in its tracks by an EC Legal Services finding that this was a MS area of competence. There has **continued to be duplication in normative activities**, for example, the CoE convention on trafficking in human beings in addition to an EU Directive. However, CoE and EU standards can serve a mutually reinforcing role. The EC participates in the drafting of conventions and therefore has an automatic right to accede, but over the evaluation period this proved legally difficult.

Indicator 2.2.1 asked if the EU and CoE drew on separate and complementary bodies of expertise, to which the frank answer is “No.” The **same experts and consultants are available to both institutions**, and the argument that the CoE has unrivalled access experts is thin. While the CoE has excellent in-house expertise, it draws on external experts and here, it must compete with other implementing agencies. It experiences difficulty in recruiting long-term project experts, as opposed to short-term consultants. The **unique advantage of the CoE, as discussed above, is more its institutional status and relationship with MSs**, although it continues to rank high on expertise. As we discuss at a number of points, the unique relationship can be a double-edged sword, as the relationship of trust that the CoE has with governments gives it a long-term process- and engagement-based view of impacts. Only recently is the CoE, recognising that it is increasingly an implementing development agency, beginning to apply good-practice impact evaluation. The change of approach cannot be expected to occur immediately.

When **country assessments and monitoring reports are produced, there is close communication between the two institutions** (Indicator 2.2.2) and the EU, in particular, benefits from the CoE's monitoring bodies such as GRECO and MONEYVAL. As discussed in Indicator 2.2.3, the EC participates in monitoring activities, albeit usually informally. Formal participation, e.g. in GRECO, is being pursued but raises legal issues. There is concern over the proliferation of standards and of the resulting “monitoring fatigue”; however, in general, the assessment of EU-CoE coordination is positive.

All persons interviewed pointed to the change caused over the evaluation period by the Lisbon Treaty, which gave the **EU competence in areas that had traditionally been the exclusive purview of the CoE**. This unfortunately occurred in the context of a period of relatively weak political relations between the two institutions, a situation that has radically improved in the latter years of the evaluation period (see discussion under EQ 1). With the high-level political coordination mechanisms now in place, there is the **possibility of closer coordination and greater combined impact in normative activities including monitoring**. All evidence suggests that the EU accession to the ECHR will promote coherence, although it will also lead to legally challenging situations such as the EU being a respondent in ECtHR cases.

An area in which there could have been improvement is in the EU's use of the link between monitoring and cooperation. As CoE MSs, not EU MSs, countries benefitting from JPs should be improving compliance with CoE standards and pursuing priorities in the context of their CoE membership, not pursuing EU priorities. In many cases, the agenda are the same, and the EU has benefitted tangibly from the use of CoE monitoring bodies as “gatekeepers” to accession, however, there is still evidence that JP design does not always reinforce the triangle of standard-setting-monitoring-cooperation, with information from cooperation the feeding back into standard setting. Elsewhere (e.g., in answering EQs 7 and 8) we point to the fact that poor PCM, especially the weakness of the evaluation function, has impaired JP performance, made it difficult to assess impact and generate lessons to be incorporated, and has overall weakened the attractiveness of the CoE to the EU as an implementing partner.

So overall, the **EU has benefitted from joint work with the CoE in the area of standards and monitoring, and the CoE has benefitted as well.** This has reflected not so much actual collaboration in joint-standard setting, but in the mutually reinforcing nature of standards set by the two institutions. While there is concern over duplication in standard setting, the fact that EU standards tend to be tougher presents opportunities, as well. In monitoring, there is need to avoid duplication but changes over the evaluation period have increased opportunities for the EU to participate in CoE monitoring exercise. CoE monitoring reports are crucial inputs into EU progress reports.

### 2.2.1 I-2.2.1 Extent to which Joint Programmes and other EC TA projects, as well as CoE activities in elaboration of EU acquis standards, draw on the same pool of expertise

The universal assumption, both at the EU and the CoE, at Headquarters and in the field, and regarding both financial and non-financial cooperation, is that roughly the same pool of expertise is for hire by all agencies. One CoE official identified the great difficulty in recruiting expert staff, as opposed to short-term consultants. There has been considerable overlap, both for project staff and consultants, between the CoE and the EU. A consequence is to weaken the CoE's claim to have unique access to expertise, even though we have seen in answering EQ 1 that this continues to be perceived as a CoE comparative advantage.

### 2.2.2 I-2.2.2 EU and CoE consult in the process of producing country assessments and monitoring reports

All evidence gathered is there is good consultation between the two institutions in the production of country assessments and monitoring. This is true both at the country level, where EUDs and CoE country offices interact, and at the Headquarters level. EEAS (formerly DG Relex) experts and CoE headquarters experts consult intensively. CoE monitoring reports and ECtHR decisions are fully integrated into EU analytical work. At field level, all EUDs responding to the survey reported that CoE reporting and analysis were incorporated into their work. At EC Headquarters, the mutual feedback between EC and Strasbourg experts was reported to be excellent. A weak link in the chain was that, while the EC produces Country Strategy Papers giving an explicit prioritisation of goals, the CoE's strategic planning process at country level over the evaluation period was obscure. One of the points of the reform process is to produce country Action Plans under the responsibility of DG Programme which will integrate CoE strategic priorities with the cooperation programme. In discussing these under EQ 8, we point out that, while some of the handful that the evaluation team was able to examine were in a meaningful sense strategic, others were simply a list of projects looking for funding.

Indicator I-2.2.3 also covers monitoring and describes coordination / collaboration.

It was reported by all Headquarters staff interviewed that there is a large amount of consultation between EC officials and CoE experts, especially when EU progress reports are assembled. Monitoring body reports, reports of the Commissioner for Human Rights and the Committee for the Prevention of Torture, and European Court of Human Rights opinions are key inputs. All the Delegations that provided any comments in this section in the survey (a total of 9) are using the CoE outputs such as monitoring reports and the expertise of specialised bodies, as a source of information for their own analyses and reports. Areas of particular strength are the human rights and judicial reforms. In *Russia*, this was especially relevant for human rights and the rights of minorities, In *Turkey*, assessment and monitoring reports draw on judgments of the ECtHR and the reports of specialised bodies such as the Committee for the Prevention of Torture and monitoring bodies. In *Kosovo*, the CoE was a key source for reporting on political development. EUD Ukraine specified that Venice Commission expertise on judicial reform was widely used in EU documents, operational papers, and planning instruments. The conclusions from the EUD survey are corroborated by the EEAS survey. *FYROM* (2008) cited regular consultation and a highly "convergent" drafting process. EUD *Russia* (2008) referred to a progressively stronger relationship with the CoE in 2007 and 2008, with an increase in contacts and mutual exchanges. *Albania* (2010) reported receiving regular information from the CoE field office Tirana on ECtHR cases and related statistics,

This evidence was further corroborated during the field missions:

- In *Serbia* there is, at HQs level, consultation with regard to the elaboration of country assessments, specifically, EU Progress Reports.
- In *Turkey*, some degree of consultation and input from JPs is reported with regard to producing country assessments and monitoring reports but overall sense of a project by project approach suggest that this can be enhanced.
- According to CoE officers interviewed, the CoE has not been involved in the development of EU country strategies in *Moldova*. However, when the EU Delegation sets budgetary priorities, it consults with the CoE. There was no evidence found of formal coordination of normative ac-

tivities and monitoring between the EU and Moldova, but the EU depends heavily on CoE monitoring reports. Country-level contacts and consultations in Moldova are very strong, especially now that a Country Office director and deputy are in post, both with extensive EU experience.

- In *Armenia*, CoE monitoring reports are heavily used by the EU in preparing its progress reports. Apart from this, the EU relies heavily on CoE materials while conducting trainings in areas, such as human rights, justice, elections, etc.

The EU is represented in the Venice Commission, participates in GRETA meetings, and is working on accession to GRECO (see next Indicator). As matters now stand, EU participation strengthens and also helps the EU in its battle against corruption. The GRECO statute and two conventions (one civil, one criminal) make reference to participation of the EC.

Country-level consultation, i.e. EUD-CoE country office coordination, has been especially significant in *Moldova, Russia, and Ukraine*.

An area in which the organisations could have done better over the evaluation period is in coordinating the translation of monitoring into JPs. In the past, the EC has under-appreciated that CoE cooperation has to be directed towards CoE standards, not other standards or considerations. The EC, by contrast, sometimes acts on the basis of NGO reports. There could be better agreement between the two institutions on the criteria for offering assistance to a country. It also brings up, again, the issue of whether the CoE is overly accommodating to its members, a point repeatedly raised in the field missions by NGOs (who in some cases also are of the view that the EU is too accommodating, as well).

Overall, there is good evidence of the EU relying on various CoE monitoring reports as inputs to its own country assessments and strategies. There is regular communication at the HQ level, as well as at the country level in most cases, in the preparation of key country documents, especially on the EU side (progress reports for enlargement countries, country level assessments and strategies).

### 2.2.3 I-2.2.3 Formal coordination of normative activities (including monitoring) between the EU and CoE

“Formal” coordination is only the tip of the iceberg. It is clear that there is a great deal of coordination between EU and CoE on standard setting and monitoring (we will take these as both normative activities, even though an argument might be made that only the former is normative strictly speaking). The context in which the Indicator should be seen is the Lisbon treaty, which has taken EU competences beyond the mainly economic to cover areas also covered by the CoE. This raises dangers of incoherence (differences in standards, perhaps opening possibilities for “standard shopping,” i.e., countries’ searching for the least demanding standard to adhere to) and “monitoring fatigue” (countries being subjected to multiple overlapping monitoring exercises). Domestic politics may play a role, for example, the Czech government has not endorsed the CoE convention on trafficking in human beings because this would require changes in law not necessary under the EU Directive.

Joint standard setting and monitoring is difficult. Some of the CoE MSs that are not EU MSs may find EU standards too strict to accede to. Lest it be thought that the difference is in one direction only, a number of EU MSs are probably not in compliance with CoE standards in the area of corruption (e.g., in political party financing and legislation relating to “whistle blowers”).

While **joint standard setting** was limited over the evaluation period, there was generally good coordination and cooperation on the setting of mutually reinforcing standards. For example, the EU has taken CoE standards as the basis for stricter Directives, which then opens the door to the CoE to take the Directive as the basis for an Optional Protocol. Possibilities were also developed for the EC, through its global cooperation programme, to encourage the adoption of CoE standards in non-European countries. The EU helped to promote the Budapest convention against cybercrime in Tonga, which had become a hotbed of cybercrime, and to use CoE standards in Vietnam, where European banks were being targeted by cybercriminals.

Forms of **formal coordination** are in place, but tend to be weak. The EU is represented on the Venice Commission, through Legal Services, but in a rather technical role. Formal accession of the EU to monitoring bodies (e.g., GRECO) is underway but has been found to raise challenging issues. The EU participates in drafting conventions, giving it the automatic right to accede, but this falls into a legal grey area. EU MSs will already have acceded or not, depending on their wish, so the competence of the EU is in question. There was, during the evaluation period, an unfortunate episode in which considerable effort was invested in joint standard setting regarding cross-border television; effort that was lost when there was an EC ruling regarding MS-EC competences. Interviews suggested that the scars of this experience are still felt.

EU accession to the ECHR is expected to reduce some of the incoherence experienced during the evaluation period, but will lead to issues of its own – not least of which being the possibility that the EC or EU may find itself a respondent to an ECtHR case.

In the area of **monitoring**, there has been more concrete EC-CoE collaboration. The EU was instrumental in setting in place MONEYVAL, one of the premier CoE monitoring bodies, and both the EC and Council of the EU participate as observers. EC and MONEYVAL experts collaborate, and MONEYVAL ratings and reports are a vital part of the process by which progress towards accession is evaluated. However, possibilities for more effective coordination of monitoring have yet to be taken advantage of. While the EC participates in GRECO, full accession has raised problems still being addressed. The attempt to coordinate monitoring for GRETA and the EU Directive against human trafficking has not borne fruit. The EU insistence that accession countries retain the advice of the Venice Commission is evidence of coordination, but as mentioned, the EC's presence in the Venice Commission has been at the technical level.

### 2.2.3.1 Evidence

#### Standard setting

The EC is undertaking a mapping of where DGs stand in relation to CoE conventions. As part of its reform process, the CoE itself is performing a review of conventions, of which there are over 200. The intention is to elaborate an Action Plan for consolidation. While there has been rather little joint standard setting, there has been a significant amount of mutually reinforcing standard setting. The existence of separate EU mandates is not always undesirable, as it can give an opportunity to the CoE to increase the commitments of the 20 non-EU MSs via optional protocols. Examples include sexual exploitation of children and violence against women.

The EU is invited to participate in drafting conventions and has the automatic right to accede. The idea of the EU acceding to CoE conventions is attractive, but legally troublesome when it is possible that not all EU MSs have themselves acceded. When the EU acceded to the ECHR, MSs were adamant that their bilateral relation with the CoE would not be affected. Before the CoE can set standards, it needs assurance from Brussels that EU MSs will be able to participate; i.e. that this it does not cover an EU competence. This was the basis for an unfortunate incident on trans-border television, in which the EC was involved in negotiating an additional protocol, but then discovered that MSs would not be able to sign.

One potentially powerful aspect of coordination would be if the EC could promote “open” conventions (those which non-CoE MSs can ratify) outside Europe through its cooperation programmes.

EU accession to the ECHR will promote consistent and coherent human rights standards. Confusion will be reduced as, for example, it would no longer happen that the EU would be engaged in standard setting in areas such as suspects' rights that are clearly covered by the CoE. It would also be a strong statement of the EU's commitment to human rights. When it accedes to the ECHR, the EU will automatically be involved in negotiating optional protocols, a form of joint standard setting. At present, the EU participates only as an observer. One impact will be that, while the EU is now free to participate in a ECtHR case as a third party, after accession, it will find itself in the role of a full respondent. Another practical implication is that EU accession will give the ECtHR a truly constitutional dimension.

In order to achieve true joint standard setting, it would be necessary for the EU to join the CoE, a step fraught with controversy and political challenges.

#### Monitoring

*General.* There is a danger of “monitoring fatigue” if there is a proliferation of instruments, in addition to which, where multiple instruments cover the same area, countries may “instrument shop,” acceding to the least demanding. The UN Convention Against Corruption is an example. When the UN monitors, government and the external team must agree. This is not the case for GRECO. There is no problem with duplication of monitoring so long as the EU limits itself to monitoring its own conventions. The problem is that, as the number of EU conventions expands (the EU has the power to legislate, which other organisations do not), overlap with the CoE is inevitable.

If the EC wishes to more effectively use CoE monitoring results, it should more actively participate in the work of CoE monitoring bodies. The potential for the EU to join GRECO is a good example of the potential activities. Yet, even without the EU joining of monitoring bodies, there are possibilities for enhanced participation. For example, the EU could bring particular concerns to the attention of monitoring bodies. The EU also has the power to translate monitoring body findings into Directives and other instruments with legal or moral force.

*Commissioner for Human Rights.* The level of EUD engagement with human rights varies from country to country. The Commissioner always visits the EUD, and communicates frequently with EC Commissioners.

*GRECO.* The EU was involved in all the work leading up to GRECO, yet in early period, there was no interest in EU accession. Following the 2003 Communication policy against corruption, the EC requested a legislative mandate from the European Council to accede, but this never materialised. EU accession to GRECO is now in process but still not assured. An EU anti-corruption package was adopted in June 2011. This includes modalities for EU accession to GRECO and as informed by extremely valuable discussions with DG Home Affairs. If negotiations succeed and the EC can be formally associated with GRECO, this will add huge leverage to GRECO's work. The EC could participate in GRECO monitoring missions, including those to EU MSs identified by GRECO. As part of the package, the EC will set up its own anti-corruption monitoring mechanism.

The proliferation of monitoring bodies is a source of concern. A recent example of duplication and poor coordination involves the OECD working group on bribery and the UN Convention Against Corruption. A challenge is that, as regards corruption, some EU MSs may themselves fall foul of standards in areas such as whistleblowing, political party financing, and freedom of information.

*Venice Commission.* The Venice Commission is officially an advisory board, not a monitoring body, but we discuss it in this section. Formally, the EU is represented in VC meetings by Legal Services. It would be better if EEAS, with stronger country links, would also formally attend. The main substantive points of contact are DG Enlargement and EEAS, with the latter taking a rising role as countries gradually become EU MSs. However, DG Enlargement has played a very important role because it asks countries to consult with the Venice Commission in the framework of accession. For example, in Turkey, the EU brokered an arrangement involving the Venice Commission. The Venice Commission is particularly powerful because, as it reports to the Parliamentary Assembly, it can provide opinions even when MSs do not request them.

*MONEYVAL* MONEYVAL was set up to monitor CoE MSs who are not members of the Financial Action Task Force (FATF). MONEYVAL's existence dates back to the 1990s when there was strong desire on the part of FATF and the EU to set up a body to monitor "transition" economies. The EC contributed to the design and putting in place of MONEYVAL in 1997. The EC and the Council of the European Union have observer status. FATF recommendations are reproduced in EU Directives and, when MONEYVAL monitors compliance with FATF recommendations, it also looks at areas where EU Directives depart from FATF standards. The EU has been a particularly strong supporter of MONEYVAL because of its contribution to vetting countries for EU accession. EC experts meet with MONEYVAL experts twice a year. DG JLS follows MONEYVAL work very closely and suggests areas for work, e.g. now asset recovery and non-conviction based confiscation.

*GRETA.* There is a degree of overlap because the EU adopted its own anti-trafficking Directive despite the fact that the CoE Convention was already in place. This has, for example, discouraged the Czech Republic from ratifying the CoE convention. However, the CoE successfully persuaded the EC not to set up its own separate monitoring body. There is generally good communication with the EC, specifically with the coordinator at DG Home Affairs. When meetings for EU MSs are arranged, the CoE attends.

*Roma issues.* This is an area that could provide good opportunities for coordination and harmonisation. The EU has its non-discrimination directive, while the CoE has legally binding instruments covering all aspects of Roma affairs. Yet the Communication adopted by the EC in April 2011 did not take into account CoE work on Roma issues. There is no need for two monitoring missions. On a better note, there is excellent complementarity between the work of the European Fundamental Rights Agency (FRA), with this agency concentrating on data collection and analysis, its strong point, while the CoE concentrates on monitoring and uses FRA data and reports.

### **3 EQ3: To what extent has the cooperation with the CoE, in particular via the channelling of funds, contributed to increasing respect for human rights and fundamental freedoms?**

#### **3.1 JC 3.1 Improved protection of human rights (civil, political, social, economic and cultural), including non-discrimination**

This JC looks into the protection of the basic human rights, including discrimination through four Indicators:



- Increased availability of formal and practical legal procedures (application for bail, leave to appeal, scope of judicial review, etc.) in the protection of human rights (I-311);
- Increased use of ECtHR jurisprudence in the curricula of academic and professional training (lawyers, journalists, prison staff, medical staff, etc.) (I-312);
- Increased NGO involvement in human rights (death penalty, torture, etc.) (I-313);
- Access to social and economic rights (European Social charter) (I- 314).

The availability of **formal and practical legal procedures** (application for bail, leave to appeal, scope of judicial review, etc.) has generally evolved in a positive direction in case study countries and while rarely an explicitly stated JP objective may have benefitted from JP engagement by Justice Ministries and judiciary generally in justice reform JPs. Virtually every JP cited is also cited under a more specifically defined Indicator below. (ECHR compliance and support to ombudsman institutions are discussed under EQ 3; judicial reforms and access to justice under EQ 5.)

In most case study countries there have been positive developments in inclusion of ECHR and **ECtHR jurisprudence in the curricula** of academic and professional training, and EC-CoE joint programmes have contributed to this progress. Examples include impact on curricula development in a JP supporting the Academy of Justice in *Russia*, in *Moldova* the National Institute of Justice has been set up and made operational with the support of two consecutive JPs, with the Justice Academy in *Turkey* also assisted. In *Bosnia and Herzegovina* Centres for Judicial and Prosecutorial Training have been supported, and in *Armenia*, there is on-going cooperation with the School of Advocates. Enhanced knowledge and capacity to train justice system personnel on human rights is acknowledged as a key need in all of case study jurisdictions, and providing support via state training institutions maximises the likelihood of sustainability. The scale of the training needed, in terms of numbers of personnel, low starting point regarding human rights awareness/knowledge, new and prospective treaty responsibilities etc. (particularly in 2000) made training a logical focus of many JPs. However, as noted in project reports, for example in the *Turkey JP Support to the implementation of human rights reforms* in 2006-2007, without follow-up activity there was no guarantee that trainers applied knowledge. Field visits in Serbia and Armenia highlight an on-going need for translation of ECtHR judgments and capacity building to actually apply the judgments domestically. On professionals other than those working in the justice system, see below with regard to journalists/media. In Armenia, there have arisen issues of sustainability because of the failure to ensure premises for the School of Advocates.

Actual change in practice as a result of training provided and supported is more difficult to gauge given JPs' lack of monitoring and evaluation systems that might capture changed practice over time. In many cases the relatively low starting point means that any change could only be tentatively measured in the immediate aftermath of JPs (even those run over several years), but successive JP activity could have been used to seek to measure such impact. While impact of training is generally presumed rather than systematically verified, examples of impact are offered anecdotally by field visit interlocutors and in the case of Turkey two external evaluations (post 2010) identify important examples of impact. These evaluations are reported also as having been important for having now made implementing partners more aware of the rationale and utility of evaluation, especially when done mid-project.

As an intergovernmental organisation, the CoE has a comparative advantage in securing cooperation from state institutions for programme implementation, a factor identified in Turkey and Moldova, for example, as key to securing engagement on some sensitive topics, particularly, in the first case, at a time when this type of international cooperation was new. This approach has certain logic, with the State being the primary duty-bearer for ensuring compliance with treaty obligations. NGOs as representatives of rights holders are however key to ensuring human rights compliance. Overall, while many of the selected case study countries have seen more active **NGO involvement in human rights** (albeit with varying degrees of constraints) JPs focus on State institutions as JP partner means that there is somewhat less evidence of JPs contributing specifically to NGO activity. However, NGOs have been involved in numerous JPs (including general human rights awareness raising, minority rights, media freedom, elections (see EQ6 *Increased opportunities of participation and mobilisation of independent civil society in the political processes*; etc.) as well as on the advisory boards of justice/detention related JPs in Turkey, for example. This is a potentially important step towards promoting the role of NGOs in, but there remain fundamental reluctance by state to recognise legitimate NGO activity, particularly monitoring of State compliance with its human rights obligations and most of the case study countries visited report a significant problem of Government controlled NGOs. More generally, on the issue of increased NGO involvement in human rights, CoE membership, monitoring and ECtHR decisions are all cited in field visits as helping to legitimise and secure a 'space' for the increasing numbers of NGOs that choose to base their work on human rights norms.

Social, economic and cultural rights featured as a central element in only a few JPs during 2000-2010 (Regional JPs including Social Security Co-ordination and Social Security Reforms in South-East Eu-

rope 2008-2010 and Access social rights anti-poverty Caucasus, with cultural rights featuring in the series of Roma projects). The reasons for this are not obviously apparent though the relevance in terms of state accession to the European Social Charter and the fundamental gaps in protection in this regard in the selected case study countries is not in question.

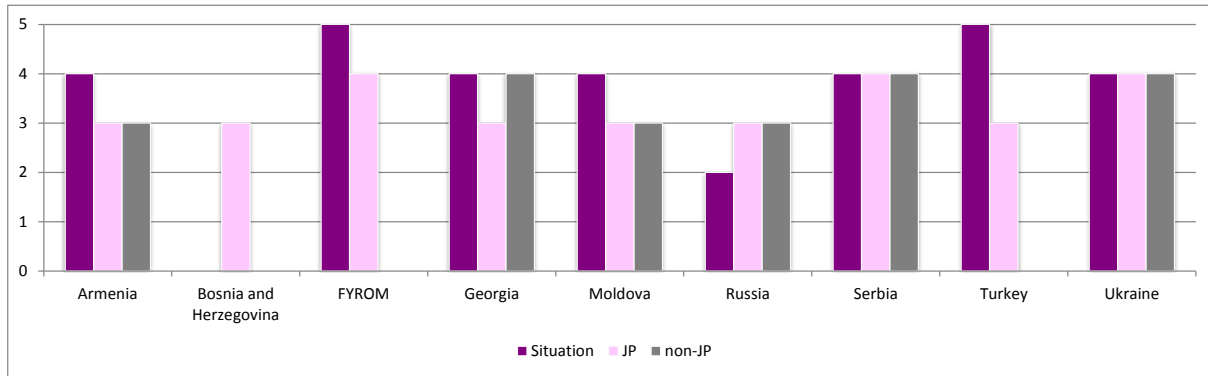
In terms of contributing to improved **access to social and economic rights**, two large regional JPs implemented in the *Balkans* and later also in *Turkey* addressed social security reforms, including cross-border social security cooperation between countries. Support was also provided to countries to accede to the European Social Charter, and capacity building regarding ESC reporting (*Armenia, Azerbaijan, Serbia, Russia* and *Moldova*). Under Indicator I-341, we address specific programmes to improve the economic and social rights of specific groups, especially the Roma people.

The overall situation regarding human rights protection has improved, although varying over time with some examples of significant deterioration also identified (e.g., freedom of media and other civil society actors in some countries, justice system rights of defendants in 'political' cases in others), very slow progress (e.g., conditions of detention in most countries covered, social and economic rights). Some positive impacts of JPs have been identified, but, as throughout this evaluation, making the link between capacity building (including training, awareness raising, etc.), new policies, action plans and laws, and impact in terms of human rights change is difficult.

For all JCs in impact EQs EUDs were asked their assessment of the overall change in the country situation, and the impacts of the EC-CoE cooperation, both through JPs and other forms of cooperation. The results are captured by the following figures (Figures 1-12). EUDs survey responses express more positive assessment than that which emerges from other evidence. The views of the EUDs on the impacts of EC-CoE cooperation in the area of protection of human rights are presented in the following Figure 9. The most positive were EUDs in *FYROM, Serbia* and *Ukraine*, which indicated high impacts of JP cooperation, in the case of FYROM, together with significant improvements in the overall situation of human rights protection in the country. Significant improvements in the situation generally were also reported by EUD Turkey, with some contribution by JPs. The EUD in *Russia* noted some deterioration in the situation but still some positive impacts of the EC-CoE cooperation, both JP and non-JP.



Figure 9: EUD survey results: Impacts in Improved protection of human rights



Scales			
Change in situation		Impacts of JP and non-JP cooperation	
Significant improvements	5	Very high extent	5
Some improvements	4	High extent	4
No change	3	Some extent	3
Some deterioration	2	Low extent	2
Significant deterioration	1	Very low extent	1
Do not know, Not applicable, No answer	0	Do not know, Not applicable, No answer	0
Note: Countries that provided no information for impacts in both JP and non-JP cooperation under this JC are not shown			
Source: EUD survey			

### 3.1.1 I-311 Increased availability of formal and practical legal procedures (application for bail, leave to appeal, scope of judicial review, etc.) in the protection of human rights

The increased availability of formal and practical legal procedures has been addressed in JPs considered in the context of areas covered under other Indicators (ECHR compliance, support to ombudsman institutions, judicial reforms and access to justice). In *Russia*, one on-going JP, also discussed under EQ 5 on the rule of law, is specifically targeted at introducing judicial appeal.

#### ENPI countries

- Its membership of the CoE entails a range of legal obligations on the *Russian Federation*. Over the last fifteen years, Russia's legal system has undergone a fundamental restructuring and this process is on-going. Progress towards the implementation of membership obligations has been regularly monitored by the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe. The Committee notes in a recent last monitoring report<sup>1</sup> that "The most outstanding concern in this category of commitments is, in our view, the non-ratification of Protocol No 6 to the European Convention on Human Rights on the abolition of death penalty in time of peace." However, the death penalty is *de facto* not applied. The Law on the Office of the Commissioner for Human Rights was adopted and the first Ombudsman assumed office in 1998. Regional ombudsmen institutes were also developed. The new Criminal Procedure Code entered into force 1 July 2002. New principles of justice declared include equality of arms and access to the right to appeal against procedural actions and acts. The maximum term of pre-trial detention is defined (12 months, to be prolonged only given extraordinary reasons). However, the Universal periodic review of the UN Human Rights Council<sup>2</sup> reports that "According to Russian NGOs, the equality of arms principle in criminal proceedings continues to be a simple formality" and that "ICJ stated that where victims or their families attempt to seek justice and obtain reparations for violations of human

<sup>1</sup> AS/Mon(2011)09 rev.; 12 April 2011.; Honouring of obligations and commitments by the Russian Federation

<sup>2</sup> Summary Prepared By The Office Of The High Commissioner For Human Rights, In Accordance With Paragraph 15 (C) of the Annex To Human Rights Council Resolution 5/1, Russian Federation, December 2008, A/HRC/WG.6/4/RUS/3

*rights, either in domestic courts or before the European Court of Human Rights, they typically face harassment and death threats, abduction or other ill-treatment.”*

JPs aiming at general improvements in Russian legal system and its compatibility with European standards are dealt with in EQ5. Relevant specifically to this Indicator, there is an ongoing JP *Introduction of the appeal in the Russian judiciary system* (2010-2013), with the objective to contribute to the establishment of a fully-fledged appeal within the system of courts of general jurisdiction through the development of relevant legislation and the provision of assistance in the structural reforms. This JP builds on a series of previous interventions that also sought to strengthen the right to appeal. Previous JPs of relevance were *Strengthening the rule of law and the protection of human rights* (2002-2004), *Strengthening the rule of law, human rights, and educational standards in the Russian Federation* (2003-2005) and *Enhancing the capacity of legal professionals and law enforcement officials in Russia to apply the ECHR in domestic legal proceedings and practices* (2006-2010). Components of other projects also addressed reform of the Russian legal and political system; these include *Strengthening federalism, regional and local democracy, and regional human rights protection mechanisms* (2003-2005), and *Enforcing the rights of the child and re-integrating children at risk into society in the Russian Federation* (2008). Peer project – *setting up an active network of independent non-judicial Human Rights Structures* (2008-2009) supported ombudsmen, and *Peer to Peer II – preventing national non-judicial mechanisms for the protection of human rights and especially the prevention of torture* (2010-2012). General capacity building for leading persons was provided by the *EIDHR Network of Schools of Political Studies* projects (2004-2006 and 2006-2008). Where identifiable in desk review, contributions of these projects are described under relevant indicators below.

- In *Armenia* important reforms have strengthened the human rights infrastructure. Particularly important were the Constitutional reform of 2005 (which for the first time allowed citizens to petition the Constitutional Court directly), the founding of the Administrative Court in 2008 (which facilitated judicial review of administrative decisions, effectively expanding the right to review), and the setting up of the Office of the Human Rights Defender (Ombudsman). Regulations on bail and pre-trial detention are in line with international standards (see JC 3.5), but actual practice remains problematic. Both the CoE and the EU have been active on human rights reform in Armenia, with efforts accelerating after March 2008. JPs which address human rights include *Access to Justice* (2009-2011), which reformed legal education including education on ECHR, and several multi-country projects: *South Caucasus – JP to promote and strengthen democratic stability and prevent conflict in the South Caucasus region* (2002-2004), the *EIDHR Network of Schools of Political Studies* (2004-2006 and 2006-2008) programmes, the two *Peer-to-Peer* projects cited above to support Human Rights Ombudsmen's offices, *Combating ill treatment and impunity in South Caucasus, Moldova, and Ukraine* (2009-2011), and *Ukraine and South Caucasus – Fostering a culture of human rights* (2006-2009). The operation of the Ombudsman's office has been controversial, with concern having been expressed over the relatively mild reaction of the Office to the violent post-election events. However, the Commissioner for Human Rights reports that the number of complaints registered and heard has been expanding and the EC reports in its ENP progress report that the independence and engagement of the office have been strengthened. The field visit indicated NGO concern over the independence of the Office, but at the same time a strong degree of sympathy for the difficult course that he was pursuing. Support to legislative reform and access to justice are discussed under EQ5.
- In *Azerbaijan*, a National Action Plan on the protection of human rights was adopted in December 2006. The Commissioner for Human Rights characterised it as based on a thorough review of the situation and representing “a genuine commitment to action” while calling for increased attention to implementation. JPs in Azerbaijan included *South Caucasus – JP to promote and strengthen democratic stability and prevent conflict in the South Caucasus region* (2002-2004), the *EIDHR Network of Schools of Political Studies* programmes (2004-2006 and 2006-2008), *Ukraine and South Caucasus – Promoting a culture of human rights* (2006-2009), and the *Peer project* (2008-2009) supporting non-judicial human rights structure described above.

#### **Pre-accession countries**

- In the past years, *Serbia* has made some progress in enhancing its judicial procedures. A law on administrative review was adopted in December 2009 and the new Administrative Court became active in January 2010. Misdemeanour courts, once administered by the Ministry of Justice, became part of the judiciary in January 2010. The new 2009 Law on Discrimination (while subject to a range of criticism) provides for remedies via the civil court system or the

Commissioner for the Protection of Equality. The JP *To support the process of accession by Serbia and Montenegro to the Council of Europe* (2003-2005) promoted European human rights standards by providing trainings. This JP was one of only a very small number of 2000-2010 JPs that was externally evaluated. The JP *Co-operation between the EC and the CoE to support the process of accession by Serbia and Montenegro to the CoE* 2003–2005 concerned legislative amendment in line with ECHR. The post-JP evaluation adjudged the first expected result “*MoJ is supported in amending legislation in the judicial system according to European standards and the ECHR*” as *having been achieved to a low extent... with an overall rating of ‘poor; Problems identified include timing problem in the reviewing process of drafted laws indicate a limited ownership of the MoJ to the process, resulting in the fact that only few laws reviewed have been amended according to the CoE recommendations. In addition, the delay of the start of the programme and the political changes during implementation have to be taken into account*”. Field visit interviews did not conflict with this assessment. . Serbia also benefitted from the EIDHR *Schools of Political Studies* JPs (2004-2006 and 2006-2008) and the *Peer* project (2008-2009) supporting Human Rights Ombudsmen’s offices. In the context of EQ 5, the JP *On the implementation of the National Judicial Reform Strategy* (2007), provided expertise to ensure that legislation reforming the judiciary was compatible with European standards.

- In *Bosnia and Herzegovina*, the EU invested more than €34.36 million in judicial reform in BiH through the CARDS programme. While there seems currently no substantial formal lack of legal procedures ensuring the protection of human rights, shortcomings in its justice system mean an on-going failure to meet human rights obligations. As the EC has pointed out in its *Bosnia and Herzegovina 2010 Progress Report*, the complexities arising from the four separate justice systems (State-level, Republika Srpska, Federation and Brčko District) pose serious challenges to the functioning of the justice system. Weaknesses with regard to availability of free legal assistance and backlogs / delays are discussed under EQ 5. While the EC has invested heavily in judicial sector reform, there has been relatively little support in the form of Joint Programmes with the CoE. The CARDS project *Judicial training centres, including law faculty reform* (2003-2006) supported training and legal education reform, and *Bosnia and Herzegovina* benefitted from several multi-country projects, including the *Network of Schools of Political Studies* (2004-2006 and 2006-2008), and *Peer to Peer I* (2008-2009) and *Peer to Peer II* (2010-2012) in support of the Ombudsman’s office.
- The case study for *Turkey* found that a number of steps have been taken regarding legal procedures for the protection of human rights, linked to judicial modernisation, court management, police and penal reform, training of lawyers, etc. Different aspects of judicial reform, compliance with ECHR, support to the national human rights structures are dealt with in discussing JPs under the specific indicators. These include *Support to the implementation of human rights reforms* (2006-2007), designed to promote full compliance with human rights standards set by the ECHR through capacity building and training, and the *Peer I* and *Peer to Peer II* projects supporting the Ombudsman’s office. Contributions to legal reforms and access to justice are discussed in EQ5, while related areas of compliance with ECHR, penal reform, etc. are reviewed under other indicators of this EQ.

### 3.1.2 I-312 Increased use of ECtHR jurisprudence in the curricula of academic and professional training (lawyers, journalists, prison staff, medical staff, etc.)

The increased use of ECtHR jurisprudence in the curricula of academic and professional training has been the aim of a number of JPs in the case study countries. However, only limited evidence of direct impact of JPs in this indicator has been found, with a trend towards increased awareness of ECHR standards (less so ESC) through translation and other exposure via activities of various actors and the CoE generally.

#### ENPI countries

- The JP *Access to Justice in Armenia* is credited with assisting the integration of human rights into curricula developed for the Judicial School and the Chamber of Advocates with all persons interviewed, national and international, reporting that the level of training and competence of advocates, judges, and prosecutors has improved. While judges with international standards of competence are still deemed to be a minority, a higher level of awareness ECtHR jurisprudence among advocates is reported to compel judges to achieve higher level of adherence to the Convention standards.
- In *Armenia* and *Azerbaijan*, a regional JP *Ukraine and South Caucasus-Fostering a culture of Human Rights* (2006-2009) was implemented, one component of which sought to include a

component on European human rights standards in national curricula for judges and prosecutors. However, the final report of this JP does not provide any information on whether any changes in national curricula were achieved in any of the four countries included. Large volume of training and training-of-trainers was delivered under this programme, and is discussed under I-321.

- In *Russia*, monitoring of legal education by the human rights NGO “Sutyajnik” in 2004 revealed a lack of courses on ECHR jurisprudence in Russian law schools. Some courses exist, but these are not obligatory in the standard legal curriculum. Practicing lawyers lack knowledge regarding the ECHR and the national system of professional selection and the national system of professional education and qualification does not require knowledge of ECHR standards and jurisprudence

The JP *Strengthening the rule of law and the protection of HR* (2002-2004) included a focus on training for professionals. The project evaluation report<sup>3</sup> noted that this part of the JP “fed into domestic programmes for judicial reform and was effective with judges. At the request of the RF Academy of Justice, the CoE devised training strategies for all serving judges and assisted in curriculum development for 10 Regional Justice Academies. The CoE was unable to devise and implement long term training strategies with other legal officials, where it lacked this institutional support. Potential partners were either unwilling (like the Procuracy), or in a state of institutional flux (like the bailiffs).” A follow-on JP *Strengthening the rule of law, human rights and educational standards in the Russian Federation* (2004-2007) translated the European Prison into Russian and supported incorporation into the training curricula of all prison staff training centres.

Another JP *Enhancing the capacity of legal professionals and law enforcement officials in the Russian Federation to apply the ECHR in domestic legal proceedings and practice* (2006-2010) apart from extensive training delivery (see I-321), claims in its final report that links in the training were established with CoE's own European Programme for Human Rights Education for Legal Professionals (the HELP Programme), which aims at integrating the ECHR standards, as interpreted in the case law of the ECtHR, into the national curricula of respective training institutions for judges and prosecutors. There is no evidence however as to whether any actual impact in the national curricula has been achieved through these links, however, it is significant for having introduced the study of case law into professional legal education.

- In *Moldova*, one of the objectives of the JP *Continued democratic reforms* (2004-2006) was the establishment of training structures for judges. In the course of the JP expert assessments on the draft law on the National Institute of Justice (NIJ) were delivered and generally taken into account, according to the JP final report. The NIJ is supposed to go beyond what was covered at university level and provide future judges and prosecutors with all the necessary tools for a satisfactory performance within the justice system. The objective of establishing a training structure has been achieved, and according to the same report “*The curriculum has been discussed.*” The evaluation report of the JP notes that “*at the time of the evaluation, activities are ongoing for the development of the NIJ curricula, with support being provided by the CoE.*” In the framework of a follow-up JP *Increased independence, transparency and efficiency of the justice system* (2006-2010) the NIJ was established and became operational, with the JP's support, according to its final report. The same report continues: “*The Project subsequently played a major role in consolidation of all capacities of the NIJ and implementation of appropriate training programmes. The NIJ produced a completely new curriculum in the field of initial training, without any precedent in Moldova. In the sphere of continuous training, the focus was put on practical aspects of the work of the legal professionals.*” Field visits confirm some progress, for example, it is reported that the Constitutional Court has started to cite ECtHR decisions in its judgments. However, more in-depth evaluation is required to determine whether as noted in other field visits that this goes beyond a “cut-and-paste” of ECHR articles and case law references, and there is capacity and practice of accurately incorporating ECHR principles into actual reasoning and decision-making.

#### Pre-accession countries

- *Serbia* has built up various institutions for on-the-job-training of professionals. An example is the Judicial Training Centre with its main office in Belgrade and two regional offices in Niš and Novi Sad. A Law on the Training of Judges, Public Prosecutors and Their Assistants was

<sup>3</sup> Evaluation of the Russia EC/CoE Joint programmes, Human European Consultancy, Final report, December 2005

passed, under which the Judicial Training Centre is authorised to provide basic training courses and to adopt permanent training programmes and implement them. Judges, prosecutors, attorneys, and police officers involved in minor offender or minor victim cases, must complete specialised training. The Law on the Judicial Academy was adopted in December 2009 and the Academy was established as the body responsible for the vocational training and continued professional development of judges, prosecutors, and judicial staff. In addition, the Rules on Acquiring Special Knowledge on the Rights of the Child foresee a special training course for all judges involved in family relations proceedings. Prison staff is trained at the Prison Staff Training Centre in Niš, including on human rights issues. As for universities, law faculties, such as University of Belgrade Faculty of Law, address the human rights and the ECHR in courses and programs on international law though these were not reviewed for any specific JP contribution. In the case of media-related JPs in Serbia (see further below) the translation of Serbian ECtHR cases concerning 'defamation' of politicians is identified as having been key in bringing domestic judicial practice on the issue in line with the ECHR.

- Similarly *Bosnia and Herzegovina* has built up various institutions for on the job training of professionals. Examples are the Judicial and Prosecutorial Training Centres established in each entity by legislation in 2003. The Centres have competence to provide both continuing training to judges and prosecutors and induction training for people who wish to become judges and prosecutors.<sup>4</sup> The BiH "Justice Sector Reform Strategy 2008-2012" foresees under No. 1.3.6 the aim to enhance strategic plans to "ensure that judges and prosecutors are trained in all relevant human rights' conventions and are informed about the decisions of the Court of Human Rights in Strasbourg." Recently, the Centres have received donations of legal literature on European human rights. The Center for Interdisciplinary Postgraduate Studies of the University of Sarajevo offers a "European Regional Master's Degree in Human Rights and Democracy in South East Europe (ERMA)", an intensive one-year Master programme established through the joint efforts of the participating universities and coordinated by the Universities of Sarajevo and Bologna. At present, it is in its tenth year of implementation. The Programme is co-financed by the European Commission and the Italian Ministry of Foreign Affairs. The University of Banja Luka has been maintaining a Human Rights Centre for more than 10 years. There is also a Center for Human Rights in Mostar. Police are trained at the police academies of Vrača, Sarajevo, and Banja Luka. In 2010, over 225 prison staff were trained on human rights and a training manual made available through a joint EU/CoE project. At the same time, a pool of social workers specialising in human rights, including in the treatment of vulnerable groups, was established.<sup>5</sup>

Several JPs contained components that possibly contributed to progress on this Indicator. The JP *Support to the Centres for Judicial and Prosecutorial Training (2003-2005)* aimed at developing training curricula for initial training, developing training curricula for continuous training of judges and prosecutors, provision of specialised courses through the Centres to assess the curricula, teaching and reference materials and the quality of the trainers. The JP ensured that domestic legislation and practice were taught and developed according to European legal norms in the field of human rights and the rule of law, and undertook a comprehensive review of the way in which law is taught within the law faculties of BiH. In its final report, the achievement of objectives was assessed as mixed. Some progress was noted on capacity building for curricula development: "*After the course organised in the first year, two expert meetings have been organised for two groups of domestic trainers in order to provide them with tools for enhancing their capacity to work further on developing curriculum and training sessions. Within the train-the-trainers activities, reference materials have been translated and distributed to participants (current and/or potential trainers). No specialised courses/expertise missions have been organised in order to assess curricula, since the latter have not been developed fully in the fields to be covered by the project proposal. [...] In all continuous training activities organised within the project, reference was made to European standards and relevant documentation has been translated and distributed.*" However, not much progress has been noted on actual development of curricula. The review of law faculties of BiH was also completed, followed by the establishment of working groups in faculties for implementation of recommendation.

A JP on "*Efficient Prison Management in BiH*" (2008-2010) specifically counted as one of its objectives the building of "capacity for prison staff in the human rights area". To this end, "*training materials were prepared or updated, refresher trainings for national trainers and cas-*

<sup>4</sup> <http://www.hjpc.ba/edu/Template.aspx?cid=2370>.

<sup>5</sup> [http://ec.europa.eu/enlargement/pdf/key\\_documents/2010/package/ba\\_rapport\\_2010\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ba_rapport_2010_en.pdf), p. 16.

*cade trainings for prison management and staff were organised (319 participants overall)."* The evaluation report concluded that "*Capacity building was one of the most important and successful project components. Although not yet envisaged in the Ministry's official curricula, in several prisons new staff already receive training in human rights, according to manuals and guidelines developed by the project.*" However, in terms of recommendations, the evaluation found that there is still need and considerable scope to train the authorities to promote ECtHR judgements and CPT recommendations.

- In *FYROM*, while some JPs<sup>6</sup> saw engagement with various professionals and some production/translation of materials relating to ECHR standards (discussed elsewhere), they did not specifically involve development of training curricula as such. Only limited information is obtainable from desk on human rights content in academic and professional training curricula. Some institutions have been active in this issue of curricula development. From a technical point of view the JP *Assistance for the reform of the prison system (2007-2008)* was deemed to have achieved its overall objectives. However, the CoE end of project report notes a lack of commitment on the part of the government. Important recommendations from several earlier project reports had not been taken into account at the time of completion of the JP and there was found to be on-going problems of lack of effective training centre for prison staff. The end of project report also highlighted deficiencies in impact in that "important recommendations from several different reports have not (yet) been taken into account". In the absence of post-project evaluation it is not possible to determine whether these recommendations identified as "prerequisites for a substantive prison reform" have been implemented. Issues such as the lack of an effective training centre for prison staff and inadequate programmes and facilities for juveniles turned up repeatedly in the project assessment reports.
- In *Turkey* a feature of many JPs has been their emphasis on training - both self-standing and sometimes ad hoc training projects as well as reform of curricula and training in key state institutions, as well as non-state actors. Lawyers and others met in the course of the field visit identify the JP *Cascade training for Turkish lawyers on the ECHR* as having contributed considerably to the pool of lawyer-trainers nation-wide – many of whom are reported by the Union of Turkish Bars as continuing in that capacity with their Provincial Bar Associations. However the need for more to be done is reflected in recommendations of key actors such as the Human Rights Commissioner in his 2009 and 2010 reports. A trend towards specifically designated human rights lecturers and professors in law schools suggests increase use of ECHR jurisprudence in legal education. The country case study also identified a number of active research centres active in the area though in many cases these were not engaged on actual JPs. The JP *Police, Professionalism and the Public (2002-2003)* aimed among other at providing support to the Police Academy in preparing a revised training curriculum in compliance with Council of Europe standards. Absence of evaluation reports does not allow for assessment of the results, but the annual US State Department human rights report for 2011 does report that human rights education is integrated into the police academy curriculum. The on-going JP *Training of military judges and prosecutors on human rights issues (2010-2012)* includes plans to develop and adopt an official human rights training curriculum, though this does not seem to be building upon a previous bi-lateral project with the same objective. The citing of ECHR jurisprudence by Prosecutors and Judges in the indictments and decisions is a specific promotion consideration by the High Council of Judges and Prosecutors from 2012 and is linked in general terms by the High Council of Judges to JP activity. In general, the identified need and number of persons trained is not in question, but it remains to be established that training capacity built within institutions is done in an optimum way for knowledge/skills gained to be applied in a sustainable fashion. One source of concern is the brief duration of the training of trainers and lack of considered analysis on the fact that some training consists of seminars and workshops external to training institutions, raising the question of how participants are being selected.

In general, most case study countries have documented positive developments with respect to inclusion of the ECtHR jurisprudence in the academic and professional training curricula. The key question remaining is to what extent the training strategy produces sustainable results given the resource-short and politically complex context in which members of the judiciary and law enforcement communities work. Project documents in this area are strongly focussed on reporting activities (or initial trainee feedback), as opposed to actual impacts in terms of changed practice or behaviour. Any such impact

<sup>6</sup> Assistance for the reform of the prison system (2007-2008) and Support to the Prosecutors' Network in South-Eastern Europe (2008-2010)



in any event is likely to be only identifiable some time after project conclusion and to require plans and resources. Despite the large amount of training delivered, the scale of personnel involved as well as new institutions new personnel and low training capacity means that training continues to be an identified need in all countries addressed.

### 3.1.3 I-313 Increased NGO involvement in human rights (death penalty, torture, etc.)

While, JPs were generally delivered in partnership with state institutions as opposed to NGOs, NGOs have been involved in some JP activities (e.g., training) (see EQ6 *Increased opportunities of participation and mobilisation of independent civil society in the political processes*; etc.) as well as on the advisory boards of some JPs. This is a potentially important step towards promoting the role of NGOs, but there remain fundamental reluctance by state to recognise legitimate NGO activity. More generally, on the issue of increased NGO involvement in human rights, CoE membership, monitoring and ECtHR decisions are all cited in field visits as helping to legitimise and secure a space for the increasing numbers of NGOs that choose to base their work on human rights norms.

- *Serbia* has a traditionally strong civil society, and a large number of organisations address human rights issues, some of which have developed into professional watchdog organisations; there are also media outlets and individual journalists who take on this role. Reports say that the majority of NGOs are not using all possible domestic legal mechanisms in their work, mostly because of distrust in institutions. For example, NGOs have the right to monitor prison conditions, but in a 2008 memorandum to the Ombudsman, it was stated that none did so regularly or systematically. Despite positive developments such as the signing of a memorandum of cooperation between the Ministry for Human and Minority Rights and over 150 human rights NGOs in 2009, the atmosphere for NGOs working in sensitive areas, such as transitional justice or the rights of LGBT persons, remains hostile. In the Serbia field visit civil society interlocutors reported a contribution (among others) by Peer to Peer II to the preparation for a Serbia's new NPM (which includes the Ombudsman's office).
- Similarly, in *Bosnia and Herzegovina*, there is a variety of human rights organisations that focus on human rights issues, such as equality, women's rights, torture, conflict-related issues. Desk review yielded no evidence that JPs directly resulted in increased NGO involvement in human rights.
- In *Russia*, as a component of the JP "*Enhancing the capacity of legal professionals and law enforcement officials in the Russian Federation to apply the European Convention on Human Rights in domestic legal proceedings and practices*" (2006-2010) seven thematic seminars on the ECHR jurisprudence for two hundred and forty two NGO representatives were conducted. Linked to CoE Membership obligations Russia adopted the federal law "On public control of human rights observance at places of detention" which in principle gives NGO activists possibilities to exert influence in the areas of torture and conditions of detention. Apart from the JP mentioned, no JP specifically aimed to support the NGO sector, but NGOs were widely involved in the overall framework and activities of JPs (identified in the country case study). The draft final Project (June 2007 of the JPs in the Russian Federation and Ukraine it is reported that the need to work closely with local NGOs is recognised both by the EC and the CoE.
- For *FYROM*, Recent years have seen an expansion in the array of civil society organisations (CSOs) and NGOs active across a range of subject matters. NGOs such as the Association for Emancipation, Solidarity and Equality of Women (ESE) and the Civil Society Research Center (CSRC) have partnered with external NGOs in capacity building and advocacy on human rights while coalitions of NGOs are active on women's issues, children's rights, sexual orientation etc. Both the U.S. State Department and Freedom House have reported progress in government's relationship with NGOs, although the latter characterised the progress as "limited." However, recent reports of the UN Special Representative of the Secretary-General on the situation of human rights defenders highlighted a number of obstacles for human rights NGOs. The Commissioner for Human Rights, in his 2008 report, also warned that NGOs were not strategically involved in decision making, although since that report, a new strategy for involvement of NGOs has been developed and there has been progress on developing a legal basis for NGOs in line with European standards. While there were no Joint Programmes specifically aimed at strengthening civil society (most being targeted at State actors), a number did involve NGOs (e.g., on Roma rights) and may be presumed to have contributed to increased NGO involvement in human rights, though this specific issue is not addressed in end of project reports or otherwise measured.
- Similarly for *Turkey*, while the JPs being considered saw some involvement by NGOs the principle focus of Turkey-specific and multi-country regional ones was State actors. JPs in-



volving activity by NGOs included JP *To enhance the ability of the Turkish authorities to implement the National Programme for the adoption of the Community acquis (NPAA)* (2002 – 2004), *Support to the implementation of human rights reforms* (2006-2007), and *Dissemination of Model Prison Practices and Promotion of the Prison Reform in Turkey* (2009-2011). *Support to the implementation...* encouraged strengthening of dialogue between NGOs and Human Rights Boards / Human Rights Presidency. *To enhance the ability...* involved NGOs to some degree but project reports do not specifically address the issue of enhanced NGO activity. *Dissemination of model prison practices...* encouraged closer cooperation between prisons and NGOs, but here, as in other projects, ultimate impact in terms of increased NGO involvement is difficult to assess based on evidence available. The country case study cites a 2007 survey of over 200 NGOs found that only about one-quarter of respondents felt that NGOs were effective in holding the state to account and generating policy change. The case study notes that enhanced NGO involvement in human rights issues requires ongoing attention to laws governing freedom of speech and association. Whilst funding has been offered to NGO projects and forums have been set up to encourage cooperation and networking, the fact that stringent laws on expression can hinder their work makes it difficult for activities aimed at strengthening NGO activity to be effective.

No relevant information was found in the *Armenia* and *Azerbaijan* case studies.

### 3.1.4 I-314 Access to social and economic rights (European Social Charter)

Several JPs for ENPI East and pre-accession countries have aimed at promoting social and economic rights, and compliance with the European Social Charter (ESC).

- Even more than other post-Soviet countries, *Armenia* found itself with inadequate policy infrastructure and resource allocation to meet social and economic rights treaty obligations such as the European Social Charter, including pension provision, social assistance etc. Regional EC-CoE JPs contained components targeting access to social rights. The JP *Ukraine and South Caucasus – Promoting the democratic process (2005-2008)* promoted integrated social services. This consisted of the elaboration of methodological guidelines for integrated social services which were submitted to the Ministry of Labour and Social Issues, to be monitored by the Special Representative of the Secretary General. As a result, it was demonstrated that the pilot integrated social services centres were progressing towards user-centred and co-ordinated new service practices benefiting the service users. Two JPs, “*South Caucasus democratic stability (2002-2004)*” and “*Fostering a culture of Human rights – Ukraine and South Caucasus (2006-2009)*”, dealt with the ESC and provided training on the legal requirements of the revised charter as well as capacity building to the relevant authorities to submit reports to the European Committee of Social Rights. Pension reform remains an on-going project in Armenia. . The last two JPs also involved training and capacity building regarding European Social Charter contents and reporting requirements in *Azerbaijan*.
- The European Social Charter was ratified by Russia in 2009. Prior to this the JP “Strengthening The Rule of Law, Human Rights and Educational Standards“ (2002-2004) included a component “Encourage ratification of the European Social Charter (ESC)” aimed at assisting relevant agencies and other actors for the ratification of the ESC. The activities included regional awareness-rising seminars on the European Social Charter, meetings on ESC ratification, study visit of Russian specialists to learn good practice on access to social rights, training seminars on improving access to social rights of vulnerable categories of people (children, disabled, elderly). Technical expertise was provided through seminars with the Inter Ministerial Committee preparing for ratification, training civil servants from the various ministries involved in the preparation of the ratification and later, with the implementation of the Charter. The country case study summarises the project final report, which documents a large amount of training delivered across a broad spectrum of stakeholders. 250 Russian specialists, coming from all different regions of the Russian Federation, were trained. The training delivered, much of technical and tailored to experts in sectors as varied as the elderly, children at risk, employment and labour markets, etc., may have delivered enhanced capacity and promoted access to economic and social rights, but conclusive findings of such impact cannot be made. It must also be recognised, that access to these rights is ultimately constrained by political will to prioritise the necessary allocation of budgetary resources, and technical specialists trained may not find themselves working in an enabling atmosphere.
- In *Moldova*, the JP “Moldova Support to continued democratic reforms” (2004-2006) included a component on social services for vulnerable groups which, according to the JP’s final report, provided a series of trainings for 20 heads of different regional social services, as well as 22 employees, including the head of the National Employment Agency,. Expert recommendations

were provided to the National Health Strategy in the area of mental health, and some awareness raising and expertise was delivered in the area of organ transplantation. Despite mandatory health insurance (designed with EC technical assistance under Tacis), informal payments for medical care are reported in field visit meetings to remain the norm and the availability of adequate treatment is very limited, with those who can afford it going abroad for treatment or medicines. The ongoing JP "Democracy Support Programme" (2010-2011) provides advice and legislative expertise for Moldovan law-makers in line with European standards and practice. This is mainly done through the provision of legislative expertise on the Moldovan social protection legislation and checks whether the latter is compatible with the European Social Charter. Field visit meetings also saw failure to provide adequate special education for disabled children highlighted. The Ombudsman's Office with the support of the Support to Democracy Project, produced a guide to the rights of persons with disabilities.<sup>7</sup>

In **pre-accession countries**, JPs dealing with social and economic rights have also an emphasis on the compliance with ECS, but also sought to support more specific issues, such as social protection.

- In the *Balkans*, six countries (*Albania, Bosnia and Herzegovina, Croatia, Serbia* (including *Kosovo*), *Montenegro*, and *FYROM*) were covered by the implementation of a regional JP *Social Institutions Support Programme – SISP* (2004-2008). The objective of the programme was to support co-operation on the reform of the social sector and to offer models of reform to the partner countries. This was to be achieved through coordinating and monitoring social policy, improving cross-border cooperation and improving institutional capacity in the sector. However, the last monitoring reports available for this project for desk study countries (*Serbia, FYROM, BiH* – July 2007; regional *ROM* – October 2007) are critical of project results. All of them assess the quality of project design, effectiveness of implementation and impact prospects as 'C' for all the indicators. For Bosnia and Herzegovina, the report notes: "*In the case of BiH the project effectiveness has been evidently limited. This is not a surprise in view of the insufficient cooperation and harmonisation inside the country, among Entities, Brcko District and Cantonal level. Due to this and the existing limited coordination capacities at the state level, BiH could not participate in the regional cross-border cooperation to the same extent as other countries. Evidently, the main benefit from the project remains to be the capacity building of professionals through Summer Schools and conferences.*" For Serbia the ROM report concludes "*The Speaking Days held between Serbia and its neighbours: BiH and FYROM have been a success but they have not been held often enough, nor sufficiently followed up, in order to confidently make a statement concerning their effectiveness on beneficiaries. In Serbia, expertise, provided by the project, has not yet translated into extensive practical support to beneficiaries.*" Similarly for FYROM "*The improved know-how of civil servants and institutions, responsible for the delivery of social security, regionally, their upgraded capacity to work in a network and the ability of institutions to facilitate mobility of workers has not yet materialised for FYROM, where lack of capacity continues to plague the public services. In FYROM, the Chapters on free movement of persons / labour mobility and on Social / Employment policy have yet to be closed.*"
- A follow-up JP *Regional Programme for Social Security Co-ordination and Social Security Reforms in South-East Europe* (2008-2010) included, in addition to the above countries, *Turkey* in its implementation. The objective was to further enhance the coordination of the social security systems and to facilitate the institutional, legislative and administrative reforms in the field of social protection according to EU standards. The regional ROM report of May 2010 notes that the JP is "*more focused than its predecessor similar intervention; it is relevant to the needs of all the beneficiary countries.*", and continues "*The first component (to improve institutional capacity for quality development and proficiency in the social sector) has been largely achieved, but not with the same success in all beneficiary countries. In Albania, FYROM, Montenegro, Serbia and Turkey the success was stronger. In Bosnia, there is no evidence that the institutional capacity has adequately improved. The Speaking Days succeeded to satisfactorily solve more than 50% of the problem cases presented; furthermore, the participants acquired adequate know-how to enable them resolve future problems on a bilateral basis. The second component (to provide institutional, legislative and administrative guidance to reform the SS coordination field in line with EU standards) has also mixed results. The political stalemate in Albania, the complicated administration in Bosnia and the inexperience in Kosovo together with the ongoing bilateral issues with Serbia hinder implementation. In Croatia, FYROM, Mon-*

<sup>7</sup> Moldova has yet to ratify the UN Convention on the Rights of Persons with Disabilities, one of several recommendations arising from its 2011 UPR.

*tenegro, Serbia and Turkey the purpose is likely to be achieved.*" Further information on concrete project results in Turkey and FYROM is given below.

- In *Serbia*, the promotion of social rights has been a relatively minor component of EU-CoE joint activities. However, the JP "*Serbia & Montenegro: Support to the process of accession to the CoE (2003-2005)*" established an expert working group to review national legislation for compatibility (resulting in a compatibility study) with the ESC before signature in 2005. This was complemented by training of 50 governmental and other officials and other national relevant actors who would be dealing with the Charter after ratification. The 2010 EC progress report notes some progress on economic and social rights in the country, with a legal framework in place. However, problem areas include protection of women and children against violence, discrimination, property rights etc.
- The *Bosnia and Herzegovina* country case study does not identify JP involvement beyond the multi-country project discussed above. The EC's Bosnia 2010 progress report identifies areas of progress, as did the Commissioner for Human Rights in his March 2011 report, however, the latter cited continuing weaknesses concerning national minorities, disabled persons, LGBT persons, and public manifestations of hate speech and intolerance.
- *Turkey* ratified the European Social Charter in 1989 and the UN Covenant on Economic, Social and Cultural Rights in 2003. While noting some progress, a range of authoritative monitoring bodies, including the Committee on the Convention on the Rights of the Child and CEDAW have highlighted weaknesses in Turkey's protection and promotion of socio-economic rights. Turkey has been reforming its social security system for the last 15 years in efforts to implement ratified international legal instruments. Reported priorities include financing pension systems and collection of premiums, improving non-contributory pension schemes such as social aid, guaranty pension as well as supplementary pension schemes (second pillar pension) and training on comparative social security systems. The UN Country Team highlighted, as an important legislative development in 2008, the entry into force of the Law on Social Insurance and General Health. The new social security scheme covers old age pensions, survivorship, work accident/occupational diseases, health care, unemployment etc. Country-specific JPs in Turkey only involved socio-economic rights as subsidiary elements as workshop topics in JPs with awareness-raising aspects, e.g. *Support to the implementation of human rights reforms (2006-2007)*. The most relevant JP in this context was *Regional Programme for Social Security Co-ordination and Social Security reforms in South East Europe (2008-2010)*, which was described above. The programme sought to enhance the coordination of social security systems, to facilitate the institutional legislative and administrative reforms in social protection according to EU standards and to improve institutional capacity for quality development and proficiency. It was expected to promote analysis to be followed by compatibility and technical meetings leading to concrete recommendations for aligning current legislative framework with EU requirements. The project was particularly relevant to Turkey in light of problems such as unregistered employment and immigration. There was a specific impact in the context of speaking Days with Albania which addressed social security issues affecting migrant workers at both sides, notably Turkish migrants working in Albania. A package of 200 complaints identified within these two Speaking Days are reported as being solved by the Albanian and Turkish Partners. Albania and Turkey also identified and discussed the gaps on pension care of the already existing Bilateral Agreement on Social Protection. Also in the context of this project a bilateral social protection agreement between Serbia and Turkey was ratified (and said to have come into force by the end of 2010).
- *FYROM* ratified the European Social Charter in 2005 and the revised charter in 2009 but as with all other case study countries has yet to sign the additional protocol relating to collective complaints. Protection of socio-economic rights in FYROM arises in the context of some profound social and economic problems, a new state with new institutions. Progress combating poverty has been limited and the European Committee of Social Rights has issued findings of non-conformity including inadequate efforts to improve the employment situation, inadequacies of anti-discrimination legislation, low levels of social assistance and inadequate unemployment benefit period. Education is also a source of concern, especially segregation along ethnic lines and the low enrolment rates of girls from the Turkish and Roma minorities. In FYROM, the above mentioned successive regional JPs have been implemented *Social Institutions Support Programme – SISP (2004-2008)* and "*Regional programme for social security coordination and social security reforms in South Eastern Europe*" (2008-2010). The primary aim of these JPs was to enhance the coordination of social security systems, to facilitate the institutional legislative and administrative reforms in the field of social protection according to EU standards and to improve institutional capacity in the social sector. The CoE Monitoring

report of June 2010 noted that a considerable amount of training had been delivered, with likely multiplier effects, despite problems such as staff turnover, limited English language capability, and the occasional refusal of governments to release officials to attend international events. A major concrete impact was the signature of a bilateral social security agreement between FYROM and Montenegro. Both in this project and "Social Institute Support," a major problem was the frequency with which trained project participants moved to the private or international development sector.

In summary, increased access to social and economic rights under the European Social Charter has been addressed to some extent in all of the desk study countries. The most ambitious intervention regarding social sector reforms covered the *Balkan* countries (and later *Turkey*) with two successive regional JPs, involving a significant amount of training, institutional capacity building and facilitated cross-border cooperation. With the exception of *Bosnia and Herzegovina*, some concrete impacts have been identified, including the conclusion of a number of cross-border social security agreements. Support was also provided to countries to achieve compliance with the European Social Charter, and capacity building regarding ESC reporting on country progress (*Armenia, Azerbaijan, Serbia, Russia* and *Moldova*). The programme in *Russia* was ambitious and delivered a very large amount of technical training across a broad range of sub-sectors. The ultimate ability of the states concerned and personnel trained to deliver support in conformity with ESC commitments depends on political will to prioritise necessary resource allocation.

### 3.2 JC 3.2 Degree to which accession to, and compliance with, the European Convention on Human Rights (ECHR) and the European Social Charter has been promoted and strengthened

This JC assesses the degree to which accession to, and compliance with, the European Convention on Human Rights (ECHR) and the European Social Charter (ESC) has been promoted and strengthened through the following indicators:

- Level of knowledge and technical familiarity with the ECHR among key stakeholders and main institutions (I-321);
- Implementation and execution of the ECtHR decisions (I-322);
- ECtHR jurisprudence incorporated into domestic law and practice (I-323);
- Strengthened and more effective state institutions in defence of human rights (such as Offices of Human Rights Commissioners and Ombudsmen) at both central and local levels in beneficiary countries (I-324);
- Human rights education introduced in school curricula (I-325).

Increased **level of knowledge and technical familiarity with the ECHR** among key stakeholders and main institutions has been addressed in JPs in nearly every country reviewed.

Mostly this has been enhanced through seminars, training, production, translation and dissemination of materials and placements to CoE institutions as well as visits to justice institutions in other CoE member states (*Armenia, Turkey, Azerbaijan, Bosnia and Herzegovina, Russia*). JP reports and field visit interviews suggest that these have resulted in an increase in knowledge and also enhanced technical capacities to comply with the ECHR among key institutions, though with less JP focus and less verifiable evidence of JPs contribution in the case of the ESC. Generally, while enhanced capacity contributing to greater ECHR compliance is supported by some field visit discussions, more specific attribution proved a challenge, in part due to weaknesses in project design – lack of baseline surveys, absence of objectively verifiable indicators, or specific provision to measure impact (beyond training participant feedback).

The promotion aspect of JPs can hardly be doubted and, while other donors were also active, the contribution of EC-CoE joint programmes is clear. More problematic is assessment of these activities actually strengthening compliance. Generally it is difficult to say whether the person receiving the training will be able/allowed/required to apply the new knowledge. Lack of political will and rigid institutional culture stand in the way, as evidenced by, for example, the continuing lack of independence of the judiciary in some countries (I-321), **for implementation and execution of the ECtHR decisions** (I-322) and the **incorporation of ECtHR jurisprudence into domestic law and practice** (I-323) there was very little evidence of results attributable specifically to JPs. Training, particularly of lawyers (fewer of whom have received training than judges and prosecutors), can have benefits even in legal systems characterised by lack of independence. As found in *Armenia*, for example, when lawyers begin to raise ECtHR issues in court, prosecutors and judges are forced to respond in kind. Second, a cadre of lawyers capable of taking cases to Strasbourg is formed.

Whatever the contributing factors, among the selected case study countries three (*Moldova, Russia and Turkey*) were listed in 2011 as showing "extremely worrying delays", in complying with ECtHR decisions, with others (*Armenia, Azerbaijan, Bosnia and Herzegovina, and Serbia*) are identified as jurisdictions where "the issue of non-compliance and solutions to outstanding problems should also be made a priority".<sup>8</sup>

With regards to **strengthening of NHRIs** (I-324), multi-country JPs, such as the *Peer-to-Peer I and II* projects and *South Caucasus Democratic Stability*, contributed to strengthening of state institutions responsible for protecting human rights (I-324). However, these regional JPs represent only a very small percentage of activities relative to on-going institution support from a range of actors, OSCE, bi-lateral donors etc. The NPM in *Armenia* also involves a combination of Ombudsman (the Office of the Human Rights Defender) as well as NGOs (the latter involvement reportedly at the Office's initiative), but it is not clear what support the Peer to Peer JPs played. An acknowledged aspect of *Peer to Peer I & II* is the opportunity they afforded for jurisdictions less advanced towards establishing an NHRI or NPM to learn from the experience of others. The Ombudsman's Office in *Moldova*, for example cites the Support to Democracy JP as facilitating contacts with the Ombudsmen in Greece and Poland and affording an opportunity to compare experiences related to the rights of persons with disability.

Overall, perspectives on Ombudsman's Offices vary from very favourable among interlocutors in *Serbia* to doubts about independence and of power in *Moldova* and *Armenia*. At the same time there is a year-on-year increase in complaints being filed (in countries visited this is reported to be an indicator of increasing confidence in the institutions). Generally, however there is a need for more systemic monitoring and evaluation of programme support to such institutions (and of the institutions generally) assess the merit of criticisms and significance of complaint trends and the impact of project support.

In three case study countries (*Russia, Serbia, Bosnia and Herzegovina*) JPs have been implemented which contributed to the incorporation of **human rights education in school curricula** (I-325). This has been done through seminars, trainings for teacher and curricula development. However, Desk phase review of documentation did not identify impacts attributable to JPs and field visit constraints precluded verification of possible impacts, including in the context of CoE. In *Turkey* a JP is implemented in partnership with the Ministry of National Education and the Board of Education, officially commenced in 2011. While the JP was not reviewed given the relatively recent start date it is noted that the request for assistance by the Ministry is attributed to participation by officials in an earlier regional JP.

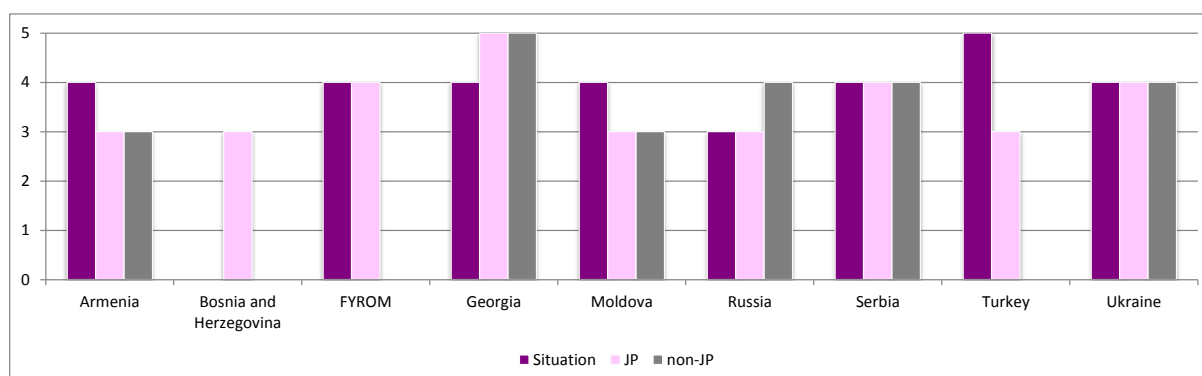
The JC asks whether accession to, as well as **compliance with the ECHR and ESC has been promoted and strengthened**. As to promotion of both, we have no hesitation in replying in the affirmative and crediting EC-CoE cooperation. Compliance with is a much more difficult question, and we would refer the reader to more specific Indicators and JCs, where we find progress overall, but countries consistently falling short of their international commitments on practically the entire range of issues covered. In field visits to *Serbia, Turkey, Moldova, and Armenia* interlocutors express varying views on trends regarding compliance with the ECHR and the ESC (for the most part interlocutors were more familiar with the former), though there was a consensus of overall improvement in human rights since 2000 (with the possible exception of *Armenia*, where independent NGOs paint a dark picture). However, apart some examples, generally offered by project implementing partners, (e.g., JP Judicial Modernisation and Penal Reform 2004-07 in *Turkey*), it remains difficult to distinguish the contributions to greater compliance with human rights of JP activities, as opposed to wider CoE functions (monitoring, ECtHR decisions, etc.), other technical assistance by the EC (e.g., twinning) and others and political pressure by the EU.

The EUDs were positive about the JPs impact in this area, with three EUDs reporting high extent of impact (*FYROM, Serbia, Ukraine*), and one very high impact (*Georgia*), all noting some improvements in the country situation. Notably, in this JC a high number of EUDs attribute impact to non-financial EC-CoE cooperation (*Russia, Serbia, Ukraine*), *Georgia* assesses this as very high.

<sup>8</sup> <http://echrblog.blogspot.ie/2010/11/pace-report-points-out-biggest-echr.html>



Figure 10: EUD survey results: Impacts in accession to, and compliance with, the European Convention on Human Rights (ECHR)



Scales			
Change in situation		Impacts of JP and non-JP cooperation	
Significant improvements	5	Very high extent	5
Some improvements	4	High extent	4
No change	3	Some extent	3
Some deterioration	2	Low extent	2
Significant deterioration	1	Very low extent	1
Do not know, Not applicable, No answer	0	Do not know, Not applicable, No answer	0
Note: Countries that provided no information for impacts in both JP and non-JP cooperation under this JC are not shown			
Source: EUD survey			

### 3.2.1 I-321 Level of knowledge of and technical familiarity with the ECHR among key institutions and main stakeholders improved and application of human rights law increased

JPs aiming at increasing the knowledge of and technical familiarity with the ECHR and ECtHR case-law have been implemented in all case study countries, and represented a high proportion of JP activities during the evaluation period. The aim was to increase knowledge and technical familiarity with ECHR standards among legal professionals – mainly judges, prosecutors, advocates, government officials and law enforcement professionals but also among other stakeholders, such as media representatives and future political leaders. Often the approach of training-of-trainers was employed in order to reach wider audience and in principle for greater sustainability.

In most of the desk case study countries, JPs provided trainings or training materials and study tours to judicial and law enforcement officers with the aim to reach justice sector institutions and ensure effective functioning on the basis of European Standards. Examples of training activities implemented based on JPs final reports are presented in the following boxes.

Box 3: Examples of capacity building in the field of ECHR for judicial officers and law-enforcement personnel

#### **South Caucasus democratic stability (2002-2004)** (Armenia, Azerbaijan, Georgia)

Implemented extensive human rights training activities for trainers and judges/prosecutors and other legal professionals.

- 17 training seminars (8 in Georgia, 7 in Armenia and 3 in Azerbaijan) for judges and prosecutors were organised on a wide range of themes relating to the ECHR. In each country at least 30 prosecutors and 40 judges were trained (in Georgia the number of trained judges are higher (around 70)). Training materials (human rights publications) were elaborated and distributed at the training seminars.
- The reports on the compatibility of Azeri and Georgian legislation and practice with the provisions of the ECHR were completed. Important delays did not allow for their publication before the end of the Programme.
- Two study visits of 10 judges each were organised. Twenty judges were familiarised with the European Court of Human Rights and got first hand experience of the European Human Rights protection machinery

at work

The evaluation report<sup>9</sup> notes on the Human rights component of the JP:

*Armenia: Overall a successful project Led to a positive change in human rights; awareness Indicative decline in cases of unjustified or deficient judgements and diligent behaviour of judges; Judges stated positive impact and they now able to take account of HR issues more comprehensively; Armenia manual on commentaries on ECHR being produced by judges*

*Azerbaijan: The aims of the project are modest given the complexity of the task. It achievements successful to some extent, but only at a preliminary level.*

*Fostering a culture of Human rights – Ukraine and South Caucasus (2006-2009):*

The project aimed at strengthening the application of human rights standards at domestic level through increasing knowledge, skills and competencies of specific professional groups with respect to the ECHR. Extensive training and training-of-trainers was provided to legal professionals and law enforcement officers in 4 countries of implementation.

**Legal professionals:**

According to its final report, the JP resulted in the creation of the first pools of national ECHR trainers for prosecutors in Armenia and Georgia, and the reinforcement of the existing pool of national ECHR trainers for prosecutors in Ukraine (Armenia: 18 trainers, Georgia: 15 trainers, Ukraine: about 55 trainers). The trainers acquired substantive knowledge and methodological skills, enabling them to conduct the ECHR trainings autonomously. Through a series of cascade seminars, conducted by national trainers, 2613 prosecutors from Armenia, Georgia and Ukraine (Armenia: 172 prosecutors; Georgia: 232 prosecutors; Ukraine: 2209 prosecutors) have been instructed in the selected articles of the ECHR and the relevant ECtHR case-law as well as in the operational framework and mode of application of the relevant provisions and standards in a country-specific context. In all beneficiary countries, 1330 judges and judicial staff (Armenia: 60 judges; Azerbaijan: 153 judges; Georgia: 203 judicial staff; Ukraine: 914 judges) have deepened their knowledge of the selected articles of the ECHR and the relevant ECtHR case-law, as well as of the operational framework and mode of application of the relevant provisions and standards in a country-specific context. The pool of Ukrainian ECHR trainers for judges has been reinforced. Moreover, Armenia, Azerbaijan, Georgia and Ukraine have been provided with additional human rights material, translated into national languages.

**Law enforcement officers:**

According to the final report, the train-the-trainer programme has succeeded in establishing, in Armenia, Azerbaijan and Georgia, a core group of law enforcement officers who demonstrated a credible knowledge of human rights standards to be applied in their daily work. In addition to the substantive knowledge, these persons acquired specific methodological skills, enabling them to train their peers.

*Access to justice in Armenia (2009-2011).*

A core concern of this JP was putting in place and strengthening the system of legal education for judges, prosecutors, and lawyers. It may safely be assumed that, as a result of this activity, understanding of human rights has been enhanced. However, there is no evidence that this is having the impact of increasing its application.

***Moldova democratic stability (2001-2003)***

The main aim of the project was to raise awareness amongst the legal professionals and human rights NGOs on the ECHR in general, and its interpretation by the ECtHR, as well as on the concrete procedures before the Court and the execution of Court's judgments in particular. These issues have been central to all the training activities conducted under the project. In addition, the opportunity has also been taken to raise awareness on the European Social Charter control mechanisms.

An important number of legal professionals and future lawyers benefited from the ECHR trainings. About 50 judges, 40 prosecutors, 50 lawyers and 40 law students attended this training. For the majority of them, it was the first training on the ECHR.

***Moldova Support to continued democratic reforms (2004-2006):***

Component of the Programme on strengthening human rights:

Training of judges, prosecutors and lawyers: 300 judges and prosecutors, 80 lawyers were provided with initial training on the ECHR, its procedure and the main selected substantive rights. The seminars concentrated on the most recent case law of the ECtHR, and in particular the new trends developed, in order to update the target groups' knowledge of the ECHR case law. The training programme created the conditions for a multiplier effect during and after the completion of the Programme. A group of 12 national trainers for judges and prosecutors, and 10 national trainers for lawyers respectively, has been established and proved to be competent to provide ECHR training. Activities implemented: Translations and publications of ECtHR case law; development of training materials on ECtHR, training workshops, seminars.

Police officer assistance with ECHR: Expertise on the internal and external communication systems of the police

<sup>9</sup> ITAD (2005): Evaluation of the South Caucasus European Commission/ Council of Europe Joint Programme



and organisation of a seminar on these matters; Expertise on the training strategy on the code of ethics for the police of Moldova; Seminar on the code of ethics for the police of Moldova; Publication and Translation of the Moldovan Code of Police Ethics; Study visit on management and internal/external communication of police. (Final report 2007)

Evaluation report 2007 notes: "Interviews conducted at the Supreme Court of Justice, the Constitutional Court and the Supreme Council of Magistrates, converge in remarking that since about one year there is an increasing tendency in judgements issued by First and Second Courts to make reference to the ECHR and the case-laws of the ECtHR. The phenomenon has not been monitored so that it cannot be quantified, but the convergence of the gathered received confirm this tendency. A similar trend has been noticed by Judges of Courts of Appeals, in different districts."

*Strengthening the Rule of Law and the protection of HR in **Russia** (2002-2004):*

Activities: training on the ECHR mechanism for more than 100 lawyers of human rights NGOs and the staff of the regional ombudspersons offices; Furthermore around 100 police trainers were trained on practical aspects of applying human rights norms domestically.

Results: One positive result, more concretely in respect of Saratov, was that the Militia Academy decided to start to select its students based on psychological tests and interviews. Thus, instead of quantity more emphasis will be placed on the quality of the recruits. The participants appreciated the possibility to draw on the experience of other countries and to explore how foreign experiences could be applied in the Russian Federation. The fact that the MIA invited local ombudspersons and NGOs to participate in the workshops gave rise to an improvement in the relationship between them and the Militia. It was recognised that conducting training would be incomplete without ensuring that all legal professionals had access to relevant human rights information. This meant making available in Russian the jurisprudence of the ECtHR for the legal professionals, government officials and all interested parties. Categories of recipients included judges, lawyers and prosecutors, as well as government officials and academics. The text of the Bulletin was posted on the www.echr.ru website, access to which is free. (Final report 2005)

The ECHR handbooks and ECtHR case law, translated into Russian, have reinforced the access of key groups of legal professionals to European standards and their domestic application. The project resulted in enabling the target groups to apply these standards in their daily work. Although there is no evidence yet about the actual implementation of these standards, their developed capacity to apply them clearly points in the right direction. However, such capacity does not offer any guarantee in itself of compliance. The latter will require not only training but continuous efforts including at the highest political level to develop a policy of strict compliance of the standards and values of the CoE.

*North-West Russia/Kaliningrad (Russia VII) (2003-2006):*

According to the final report series of training seminars on human rights for judges enhanced the judges' understanding of the ECHR and of the interpretation of its norms developed by the ECtHR. The training sessions provided judges with additional knowledge of the ECHR case law, which increased their capacity to use the ECHR norms domestically. 240 judges from the same federal region having received direct training from CoE experts on the ECHR.

Round table for prisons officials devoted to a comparative discussion of European human rights standards and laws and practices in the Russian Federation was organised. Unfortunately, representatives of the North-West federal district holding key positions in the regional penitentiary structures could not take part as planned.

*Strengthening the rule of law, human rights and educational standards in the Russian Federation (2004-2007):*

About 390 judges' trainers from throughout the Federation received in-depth training on the domestic application of selected ECHR norms. The trained national trainers were higher courts judges from throughout the Federation who had been tasked with delivering training to their peers in the regions. The training contributed to placing the theoretical standards developed in the ECtHR jurisprudence into a practical context of their daily application in Russian courts of general jurisdiction.

About 15 prosecutors, 50 lawyers, 25 law enforcement officers and 50 prison officers also attended ECHR training sessions as part of the Programme.

About 30 prison management officials and representatives of the ombudsperson's office from the Kaliningrad and St Petersburg regions participated in the discussions on the application of ECHR and Convention on prevention of torture standards in the domestic penitentiary systems and existing systems for public monitoring of penitentiary establishments

*Enhancing the capacity of legal professionals and law enforcement officials in the Russian Federation to apply the European Convention on Human Rights in domestic legal proceedings and practices (2006-2010)*

Activities: The program delivered 18 thematic seminars for 600 judges of regional courts in the Russian Federation; 10 thematic seminars for 560 prosecutors and 1 study visit to the CoE for 17 prosecutors and professors; 2 conferences and 1 thematic seminar for 145 law enforcement officers, judges, prosecutors, academics and NGOs participants; 16 thematic seminars for 635 lawyers and 2 study visits to the CoE for 37 lawyers; 7 thematic seminars for 242 NGO representatives and 5 thematic seminars for mixed groups of 230 lawyers, judges and prosecutors.

The target group were key national institutions defining directions of legal development in Russia such as: Academy of Justice, Office of the Prosecutor General, Academy of Prosecutors, Constitutional Court, Supreme Court, Federal Chamber of Lawyers, Ministry of Interior, NGOs.

Results: The human rights materials component of the programme has increased the volume and quality of reference materials related to the ECHR available in Russian. The distribution of the materials during training events, and to the libraries of national training institutions for legal professionals, has increased access of a large segment of Russian professionals working in the judiciary, prosecution, and law enforcement agencies to human rights reference materials.

*JP to assist **Bosnia and Herzegovina** in fulfilling post-accession commitments and in developing and maintaining democratic institutions (2003-2005):*

The project aimed at providing training to legal professionals in order to ensure full implementation of the ECHR at the domestic level, and conducting a compatibility study of the conformity of national legislation with the requirements of the ECHR.

According to the final report a group of 10 national trainers for lawyers has been established and proved to be competent in providing ECHR training. About 440 lawyers and 160 civil servants from Bosnia and Herzegovina have undergone initial training on the ECHR, its procedure and selected substantive rights. About 60 civil servants, including social assistants, participated in awareness-raising activities on the European Social Charter, its functioning and application in the member States. “

Regarding the compatibility study the expected results have not been achieved during the JP – the report notes that, “*Although all members of the national working group and the Council of Europe experts agreed on all points discussed, no subsequent action was taken by the national working group. Indeed, virtually no notice was taken of the Council of Europe experts' input.*”

*Support to the Centres for Judicial and Prosecutorial Training in BiH (2003-2005):*

JP aimed at enhancing the professional capacity of the judiciary in BiH through ongoing education. The JP was a contribution to the then judicial reform strategy. Among the specific objectives of the project was to “ensure that domestic legislation and practice are taught and developed according to European legal norms in the field of Human Rights and the Rule of Law, and hence to ensure an improved functioning of the judiciary”. According to the final report of the project, in addition to external factors that put a brake on achieving the objectives, there was also considerable resistance among trainers-to-be to accept the new curricula, and there were questions as to whether they would use them beyond the project duration. A training programme for judges and prosecutors was not accepted by the judicial authorities. This seems to suggest that although this project has trained a number of stakeholders, these activities might not have been sufficient to effect institutional changes.

*Efficient Prison Management in Bosnia and Herzegovina (2009-2010):*

Component on capacity building for staff, in particular, training on the European standards in the field of prisons with specific focus on human rights.

According to the evaluation report<sup>10</sup> activities organised consisted in: (i) preparing and/or updating training materials; (ii) organising 2 refresher trainings for the national trainers; (iii) 15 cascade training sessions for management and operational prison staff, some 225 prison staff benefited from training sessions. The same report concludes: “*Based on interviews with prison staff, results seemed more tangible in prisons from which national trainers and members of the working group came. They shared their knowledge not only during formal trainings, but also, as they were active prison professionals, in their daily work. This is added value to the project and could be assessed as its main strength. However, the sustainability of this result was not entirely secured. BiH still lacks a formal system of continued professional education for prison staff and managers.*”

In **Serbia** the JP “*Support to the Process of Accession by Serbia and Montenegro to the CoE*” (2003-2005)

JP aimed at reforming the judicial institutions and ensuring their effective functioning and management on the basis of European standards and the ECHR. The project also targeted the Ministry of Justice of Serbia to fulfil European requirements/standards in managing the penitentiary system and in preparing for prisoner reinsertion. It trained 400 officials of the prison administration of Serbia (and Montenegro, but most of the trainees were from Serbia). As with other project documents, in absence of baseline data providing the overall size of the target group, it is difficult to interpret the data: it would, for example, be useful to know the percentage of all potential prison administration staff to get an idea of the coverage through this type of project.

The evaluation report<sup>11</sup> done for the JP pointed to the fact, that the expertise provided aimed at harmonisation of the legislation with the European standards has not been used to a high extent, by the authorities, due to the limited ownership of the MoJ to the process, and only few laws reviewed have been amended according to the CoE recommendations.

The same JP also promoted human rights standards among officials of the Ministries of Interior and Justice, representatives of the judiciary (such as from the Supreme Courts, the associations of judges, the PGOs, associations of prosecutors, etc.) politicians and members of parliament.

<sup>10</sup> Evaluation Report On The Council Of Europe / European Union Joint Programme “Efficient Prison Management In Bosnia and Herzegovina”, Council of Europe, April 2011

<sup>11</sup> Final Evaluation of the Joint Programme of Co-operation between the EC and the CoE to support the process of accession by Serbia and Montenegro to the CoE, 2006

**Turkey: Support For The Implementation Of Human Rights Reforms In Turkey (2006-2007):**

The objective of this Project was to support implementation of human rights reforms and strengthen national capacity to apply European human rights standards, in particular that of legal professionals, law enforcement officials, the HRP and the HRBs, including equipping judges and prosecutors. Through training and other capacity-building activities the aim is to use the ECHR case law in daily work of the participants and to transfer skills to the Inspection Board of the MoJ and law enforcement bodies (Governors, Deputy Governors, Sub-governors, Police and Jandarma) and like this facilitate effective implementation of European standards at national level; Further, strengthen the profile and develop the capacity of the HRP in dealing with human rights complaints and increase its co-operation with the HRBs and civil society. Activities included:

- training on ECHR of 500 Police and Jandarma officers, training on ECHR of 250 Deputy Governors, and 420 members of the HRBs as trainers;
- round tables,
- symposia;
- translation of essential texts;
- publication and dissemination of training materials; 9 study visits to The UK, Spain, the Czech Republic, Ireland, France and Luxembourg, Austria and placements.

Features focusing on local ownership are likely to have enhanced impact. The end of project report notes increased awareness of participants.

**Joint EC/CoE Initiative with Turkey to enhance the ability of the Turkish authorities to implement the National Programme for the adoption of the Community acquis (NPAA) (2002-2004)**

The programme comprised 3 projects that represented the first major initiatives since Turkey joined the CoE. The purpose was to enhance the capacity to implement the national programme for the adoption of the Community acquis in the area of justice and home affairs. Activities involved training workshops, study visits, expert studies on legislative reform leading to draft legislation incorporating European standards in on the judiciary, criminal/civil norms, data protection, human rights, freedom of media and expression and democratic institutions. Production of Turkish editions of a series of CoE materials, posters, leaflets a TV programme on human rights issues in Turkey and 30 second clips on human rights themes. In addition some 200 trainers of judges, prosecutors & public officials trained on ECHR standards as well as 180 lawyers in collaboration with the Turkish Union of Bar Associations.

The relevant joint programmes have been completed, various human rights reports continue to highlight an ongoing need for training of lawyers and judges in human rights. Surveys undertaken during the "cascade training of lawyers" project showed that dissatisfaction levels among participants decreased during the implementation of the project. Participants mostly criticised the limited time available for such an immense range of subjects and suggested that the seminar be extended to at least two days, and include more case studies. That 61 of the 117 trainers trained went on to deliver training suggests a good return especially with some trainers delivering as many as 25 workshops. The project approach whereby short-term consultants observed some of the cascade seminars and provided feedback to new trainers is an important part of capacity building.

Some issues of concern were highlighted, the main issues relating to the time and content however, there were also some problems with trainers giving their personal opinions on judgments, PowerPoint slide being too dense with written text and a lack of comprehensive coverage of case law including background information and basic facts. The final report of the project mentioned scope for future projects/funding in this area in order to set up human rights advice centres.

Positive results identified in the end of project report include increased capacity to train lawyers on the ECHR; lawyers better able to apply these standards in their work in the regions and improved access to lawyers of human rights materials in Turkish, including a handbook on the new Criminal Procedure Code, publication of training materials. Some 117 national trainers were selected and trained in four training sessions and 9,500 other lawyers trained on the ECHR in 300 cascade seminars.

Attention to involvement in design and delivery of project activities by national partners is evident. The use of "cascade training" produced a pool of lawyer-trainers with the expectation that a wider target group can be reached in subsequent training in future years after the completion of the Project. Though it is acknowledged that this is dependent upon the capacity and resources of the local bar associations and some interest in individual CoE Member States building upon CoE initiatives, in training of professional groups. Systematic sharing of details of trainers trained (in particular those favourably assessed) with other relevant projects bi-lateral donors as well as UNDP etc.

**Turkey – Police, Professionalism and the Public & Support to Court Management System in Turkey (2002-2003)**

Increased use of ECtHR jurisprudence in the curricula of academic and professional training (lawyers, journalists, prison staff, medical staff, etc.)

**Cascade training for Turkish lawyers on the European Convention on Human Rights (ECHR) (2006-2008)**

The project sought to develop and strengthen human rights in Turkey by increasing knowledge and skills as regards European standards among lawyers, enabling them to apply these standards at the national level and before the ECtHR. Activities included the training of trainers, regional training sessions, reproduction and publication of documents, steering committee, establishment and running of a local office and the recruitment of personnel.

*Training of military judges and prosecutors on human rights issues in Turkey (2010-2012)*

JP includes plans to develop and adopt an official human rights training curriculum by MoND & TGS. This 2m euro project runs 2010-2012 has the purpose of developing and strengthening the culture of human rights in Turkey by supporting the interpretation and application of legal provisions related to human rights in line with the ECHR and related case law. Activities included training of all military judges, prosecutors and legal counsellors, including training of trainers, leading to the establishment of a pool that will train others in cascade training, as well as the development of training curriculum to be adopted by the Ministry of National Defence.

Source: JP final reports, evaluation reports

- In *Armenia*, as a result of training, much of it delivered under JPs, there has been a massive diffusion of awareness, knowledge and technical familiarity on all aspects of the ECHR. There seems little doubt that due both to individual and joint efforts of the CoE and EU, awareness of and technical familiarity with ECHR has broadly increased. Through JPs, many, if not most, judges and prosecutors have received training, some of them multiple trainings, on the ECHR, ECtHR jurisprudence, and human rights in general. A significant number of law enforcement professionals have received such training, as well. As witnessed by the events following the March 1, 2008 disturbances, it was not always possible for them to put into action the principles that had been acquired. Through CoE-delivered capacity building and training, persons in human-rights sensitive positions have acquired knowledge, but it is more difficult to ascertain whether and to what extent they have been able to apply that knowledge. As stated in reports of the Commissioner for Human Rights and international NGOs, violations of human rights and fundamental freedoms remain widespread. During the country field visit, it was apparent that there is a core of highly competent lawyers in the country, but most judges and prosecutors remain profoundly out of touch with the obligations placed on them by ECHR. A representative of the Chamber of Advocates was, however, hopeful that the increased use of ECtHR jurisprudence by advocates will be a force for positive change.
- In *Azerbaijan* by the Commissioner for Human Rights in his 2007 Report, the Ministry of Justice and Supreme Court have made efforts to ensure continuous professional education of judges, including the case law of the ECtHR. The EC's 2008 progress report also cited progress in training of the judiciary. Yet, the human rights situation in *Azerbaijan* has deteriorated over time, with a 12 May, 2011 in a European Parliament resolution condemning the prevailing atmosphere of oppression and highlighting in particular, the systematic use of violence and intimidation against journalists. A great deal of training has been provided by EC-CoE JPs to persons in the justice system. Their freedom to apply such training in a system that is fundamentally hostile to rights-based justice is, however, limited. While many NGOs are active in human rights, their room for manoeuvre, as well, is narrow. According to Freedom House's *Nations in Transit* 2010 country report on Azerbaijan, the justice system's actions have grown worse, not better, regarding respect for human rights, and the Commissioner for Human Rights' 2010 report noted continuing violations of the Article 6 right to a fair trial.
- In *Russia*, according to the case study, there is a significant difference between promotion of the ECHR and ESC, and level of their acceptance by the State. The ECHR was ratified in 1998 and Russia has been the leading source of findings of violations by the ECtHR. The ESC was ratified by Russia only in 2009 and it has not accepted the collective complaints system. The case study reports an enormous amount of technical training and capacity building implemented through JPs (see details in Box 3). However, a range of IGO monitoring bodies report ongoing fundamental problems in compliance with international human rights standards
- *Serbia* acceded to the ECHR in 2004 and has ratified all subsequent Protocols to that Convention, save for Protocols 9 and 10. Serbia is also a party to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the European Charter for Regional or Minority Languages, the Framework Convention for the Protection of National Minorities and the European Charter of Local Self-Government. The Serbian government upgraded the former Agency for Human and Minority Rights to the rank of a Ministry. The new Ministry is tasked to supervise and co-ordinate the work of other governmental Ministries within the scope of human and minority rights. The joint EC-CoE efforts aimed at increasing the familiarity with the ECHR covered not only government officials (including justice system personnel) and legal professionals but also representatives of media, and young political leaders. In the final evaluation of the Joint Programme of Co-operation between the EC and the CoE to support the process of accession by Serbia and Montenegro to the CoE, (2006) it is pointed out that the expertise provided aimed at harmonisation of the legislation with the European standards was not used to a high extent by the authorities, due to the limited ownership of the MoJ in the process, and that few laws reviewed had been amended according to the CoE recommendations. No evidence was available from the desk phase of direct EC-CoE contribution to increased use of ECtHR jurisprudence in the curricula of academic and profes-



sional training institutions. Field visit discussions saw journalists confirm statements in the final report of the JP *Support to promote the freedom of expression and information (2006-2008)* of concrete impact in the form of better compliance of laws relating to media and free expression with CoE standards. The final evaluation of the *Network of Schools of Political Science* JP reported that the project suffered from the absence of a strategic framework in its approach. All in all, Serbia appears to be a country where training has led to a significant degree of knowledge creation and skills transmission, but with no post-JP evaluation and many donors active in human rights training attributing specific impact to EC-CoE interventions is difficult.

- *FYROM* ratified the ECHR in 1997 and the European Social Charter in 1998 (both in advance of any of the JPs). Its signature of the Revised European Social Charter in 2009 coincided with the second social security JP (Regional Programme for Social Security Coordination and Social Security Reforms in South East Europe). The October 2011 EU Progress Report notes “*Limited progress ... in the promotion and enforcement of human rights*” and “*uneven*” implementation of legal framework though the recent establishment of the Commission for protection against discrimination is noted.” With the amount of training that has been delivered through single country and regional JPs, it is likely that there is an increase in the knowledge of and technical familiarity with the ECHR among key institutions and main stakeholders, however, documents such as the 2010 progress report continue to identify training as a continuing need. For example, the October 2011 European Commission Progress Report noted that “knowledge of international and European standards among police officers is low and safeguards against ill-treatment in police stations are not adequately enforced.” A specific area where need has been identified (in the EC 2010 progress report and in the final report of the JP Assistance for the reform of the prison system) is the training of prison staff, yet the project final report also noted a lack of commitment to prison reform on the part of national authorities. Overall, EC-CoE JPs have contributed to increased awareness and technical familiarity with the ECHR among persons in human-rights sensitive positions (including the ESC, in the case of the multi-country social security project), but whether this knowledge is actually being applied has never been established by post-project evaluation. In *Turkey*, a national programme for the period of 1998-2007 involved a nation-wide public campaign to raise human rights awareness among civil servants, particularly those employed in law enforcement and members of the judiciary.. Training courses covering human rights have become mandatory for candidate judges and trainee public prosecutors. The MoJ has included human rights in in-service training provided for judges and public prosecutors who have completed their probationary period. Judges and public prosecutors have been receiving human rights courses in cooperation with the CoE and other international organisations. Prison superintendents, as well as physicians, psychologists, social workers and teachers employed in penal institutions are also given human rights education. Courses on human rights have become mandatory in the curricula of the Police Academy and Police Colleges since 1991. Law on the Higher Education of Police, prepared in line with the recommendations of the National Committee, was adopted in 2001. With this law, the 26 police schools all over Turkey, which formerly trained police officers for nine months, have been converted into two-year vocational schools with an expanded emphasis on human rights education. Periodic seminars, conferences and workshops have been held as part of the human rights training carried out for the staff of the Ministry of Interior at various levels.

The trend in terms of ECHR being a route for redress by individuals, NGOs and civil society organisations is also indicative of awareness among key stakeholders.

An overview of JPs implemented in Turkey in this area is presented in the following box:

**Box 4:** *Turkey: JPs implemented in support of increasing knowledge of and technical familiarity with the ECHR among key institutions and main stakeholders*

*Judicial Modernisation and Penal Reform (2004-2007)*

This 7m euro project supported the improvement of the functioning and efficiency of the judiciary and the prison system according to European standards, as foreseen in the Accession Partnership and the National Programme for the Adoption of the Acquis. Activities included study visits, training programmes, working group meetings, English language courses, training sessions, seminars, training of trainers, purchases of training centres and symposiums. This project provided technical assistance in the architectural design of new prisons, the rehabilitation of old ones and the guidelines on prison architecture. The training capacity of prison staff training centres was strengthened. Concrete tools for systemisation and standardisation, such as PMM for prison governors and a “Prison Doctor’s Handbook” for medical staff were developed. Two model prisons were selected as physical conditions had been improved and staff had been specifically trained to provide a range of services for rehabilitation and training, complying with international standards. Vocational training workshops and social facilities were established and instruments were procured in these two prisons. According to the MoJ the achievements of this

project is credited with a decrease in disciplinary offences, the reduction in the need for extra security measures and the improvement of prison administration.

*Support For The Implementation Of Human Rights Reforms In Turkey (2006-2007)*

The objective of this Project was to support implementation of human rights reforms and strengthen national capacity to apply European human rights standards, in particular that of legal professionals, law enforcement officials, the HRP and the HRBs, including equipping judges and prosecutors to use the ECHR case law in their work; to transfer skills to the Inspection Board of the MoJ and law enforcement bodies (Governors, Deputy Governors, Sub-governors, Police and Jandarma) through training and other capacity-building activities, facilitating effective implementation of these standards at national level; and to strengthen the profile and develop the capacity of the HRP in dealing with human rights complaints and increase its co-operation with the HRBs and civil society. Activities included training on ECHR of some 500 Police and Jandarma officers, 250 Deputy Governors and 420 members of the HRBs as trainers; round tables, symposia; translation of essential texts; publication and dissemination of training materials; 9 study visits to The UK, Spain, the Czech Republic, Ireland, France and Luxembourg, Austria and placements

Features likely to have enhanced impact are focus on local "ownership" and the end-of-project report notes increased awareness of participants but acknowledges that "there is no guarantee that the trainers will actually be used in a training role" and numbers of people participating in study visits are identified as lessening their impact.

While all activities are logical in terms of acknowledged need for awareness raising and training. the CoE end of project report generally acknowledges that while And "participants of the training courses showed an interest in the topics" longer term impact and sustainability is somewhat a matter of conjecture e.g. "It will be important that the participants disseminate the information acquired during these visits and placements so that more members of the HRP and HRBs benefit from them" ... "only practice will show whether they will change their way of working". In particular the report highlights a key lesson that "the ToT courses produced a number of trainers but there should have been a second phase which would have guaranteed that they apply their knowledge and skills in practice by training others." Second Phases are always subject to funding which highlights the priority that in and time-defined project participating institutions should themselves identify how from their won resources progress mad will be sustained, trainers used etc.

*Dissemination of Model Prison Practices and Promotion of Prison reform in Turkey (2009-2012)*

4.2m euro budget the purpose of this project is to assist the Turkish authorities in developing the prison system, based on the rule of law and respect for fundamental rights and the European standards. This programme was designed to disseminate the results of the previous JMPR (above) to 90 medium and high security prisons. Activities involved the development and publication of training materials, expert meetings, needs assessment on vocational training ateliers, study visits, training seminars, workshops, training of trainers and cascade training sessions on the EPR, prison management, prison education, psycho-social and health care services in prisons. In addition, activities include ToT sessions on the New Codes, legislation and the 2006 European Prison Rules (EPR); completion of training of the DG staff on the New Penal Enforcement System and legislation, the EPR and the CPT recommendations; completion of the ToT on prison management, leadership and operation standards and cascade training sessions reaching 1000 prison governors through 32 training sessions. The highlights of the project are training of 18,000 prison staff on the EPR, training of 800 prison governors on good prison management, publication and dissemination of 20,000 copies of the Booklet on the CoE recommendations in the penitentiary field and development of six new offending behaviour programmes.

*Enhancing the role of the supreme judicial authorities in Turkey (2010-2012 on-going)*

The purpose of this project is to improve the functioning and efficiency of the judiciary according to European standards as foreseen in the Accession Partnership and the National Program for the Adoption of the Acquis. Activities include conferences (with Constitutional Court, Court of Cassation and the Council of State on a range of topics from the prohibition and dissolution of political parties and associations; financing of political parties and election campaigns, the performance evaluation of the judiciary, social rights, gender equality, immigration and asylum, expropriation procedures etc.), round tables (on topics such as right to a fair trial, ECHR positive obligations under Articles 2 and 3, freedom of expression, thought, conscience and religion, peaceful assembly and association property rights, protection of social rights and protection of the environment), multiple study visits to CoE Strasbourg and ECJ in Luxembourg (and to EUROPOL, EUROJUST, ENCJ in the Hague proposed), conference. CoE materials and other project outputs translated and made available at <http://www.yargitay.gov.tr/abproje> Activities include study visits to ECtHR and the ECJ; study visits to EU institutions; conferences on performance evaluation of the judiciary and court management within the high courts and on possible solutions to the workload of high courts; conferences on the relations between the superior courts and the courts of appeals; conferences on asylum and immigration and conferences on social rights and gender equality.

On its face *Enhancing the role of the supreme judicial authorities in Turkey (2010-2012 on-going)* seems like massive financial commitment with a large volume of activities study visits conferences etc. Much depends on objectives set for study visits and placements and means of establishing that the most appropriate people participate that they are then committed to stay in relevant posts on return and that there is some means of tracking application of lessons learned. Since this project is ongoing definitive conclusions as regards impact are more difficult to make. The progress report of 2010 highlights some of the steps that are still to be taken in the remaining period. However, the awareness raised may contribute to addressing a key barrier judicial culture/habits that discourage many judges from implementing Article 90 of the Constitution and the provisions of the ECHR. Project reports refer to success of events in terms of "the quality of the presentations" and "number of senior judges

from the high courts" participating. Commitments by the new HCoJP in 2010 to participate more actively in future activities

The project would appear to have been timely with round-table and conference discussions are directly relevant to referendum changes in 2010, legislative amendment and important structural changes in the high courts of Turkey, the Constitutional Court and the High Council of Judges and Prosecutors. As this project is a relatively early stage impact asserted are preliminary but a number of project features justify for expectations that knowledge and capacity of judiciary will be enhanced. These include local ownership through a Project Steering Committee, Translation of materials (CoE/FRA Handbook on European non-discrimination and of ECtHR case law etc) and a project webpage, which if developed with translated materials can reach wider audience of judges than direct participants. However, the Logframe indicators are weak with 'performance indicators' Confused with objectives and sources of verification (e.g. EU progress reports) unlikely to assist in determining impact of this specific project.

*Source: JP final reports*

As is clear from the project summaries in the box, training persons in human rights-sensitive positions has been a priority in *Turkey* for over a decade and a key focus of a variety of organisations and projects. This has included long-standing and new institutions; some specifically tasked with human rights roles. However, various human rights monitoring bodies and reports (such as the 2011 report of the Commissioner for Human Rights) continue to highlight an on-going need for training of judges, prosecutors, and other members of the judiciary and law enforcement professions in human rights. Through JP-delivered training persons in human-rights sensitive positions are likely to have acquired knowledge. Whether this knowledge has been applied in practice is more difficult to say, as noted in the final report of the JP *Support for the Implementation of Human Rights Reforms in Turkey (2006-2007)*: "There is no guarantee that the trainers will actually be used in a training role" and that it will be important that the participants disseminate the information acquired during these visits and placements so that more members of the HRP and HRBs benefit from them". To repeat language used above, the numbers of professionals in key institutions trained is not in question and the focus on training of trainers and cascade training represents a logical alternative to on-going reliance on external experts with all the cost and limitations involved). However, it remains to be established that training capacity is built within key institutions in a sustainable fashion with on-going commitment that trainers trained will continue in that role for a defined period so that the benefit for training will be harvested by the institution. We have earlier cited the very short duration of training of trainers interventions and the fact that trainings are often provided to persons over whose selection the training provider has had no control. Similarly study visits, while useful as a capacity building tool if planned targeted and involving the appropriate people, are problematic for the day-to-day functioning of the institutions from which participants are drawn – many of which already suffer backlogs and staff shortages. Field visit discussions in Turkey do suggest that participation in study visits and overseas placements is now more targeted ensuring that relevant people participate and share knowledge gained on their return.

Besides judicial stakeholders such as judges, prosecutors, police and prison staff, non-judicial stakeholders have received ECHR training as well. Examples of trainings included in JPs for NGOs, media and other stakeholders are presented in the following box.

**Box 5: Examples of ECHR training directed towards non-judicial stakeholders**

*Moldova Support to continued democratic reforms (2004-2006):*

Component of the Programme on strengthening human rights – Improving capacity for HR NGOs:

Awareness-raising seminars for NGO representatives (about 60 in total) on ECHR issues and the role of civil society in the protection of human rights: three-day training on the ECHR, the European Social Charter, the Framework Convention for the Protection of National Minorities and on the Charter for Regional and Minority languages. International experts shared the experience of the role played by civil society under the Council of Europe human rights mechanisms in their respective countries, or in the countries where they worked. (Final report 2007)

*North-West Russia/Kaliningrad (Russia VII) (2003-2006)*

Series of six ECHR training sessions for NGO lawyers. Special attention was paid during the seminars to the Russian cases before the ECtHR as well as to domestic application of the standards developed in the ECtHR jurisprudence.

*Strengthening the rule of law, human rights and educational standards in the Russian Federation (2004-2007)*

In total, about 164 civil society representatives and journalists improved their understanding of the application of the ECHR and the functioning of its enforcement mechanism.

*"Network of Schools for Political Studies" EC co-funded through EIDHR in different years*

These regional projects, covering countries of the former Soviet Union and the Western Balkans, inter alia, trained young or promising political leaders, covering, among other topics, ECHR-related issues. A 2007 evalua-



tion commissioned by the EC was somewhat critical with regard to these projects having achieved the intended objective, partly because of a lack of a strategic framework in the approach; the evaluation acknowledged that impact, if any, would become visible only in the medium-term.<sup>12</sup> The EC recently ceased financing the Schools, citing a lack of sustainability.

*“Support to promote freedom of expression and information, and freedom of the media in Serbia (2006-2008)*

Objectives: Promotion and awareness raising on CoE standards on freedom of expression and information, and the right to privacy (Articles 10 and 8 of the ECHR, respectively). The project targeted media representatives, the activities undertaken were a total of 16 events (seminars, workshops, awareness raising events, and study visits). Results: The end-of-project report acknowledged the activities had been very well received by participants; For many participants, this was the first time that they had participated in training on ECHR issues. The project also published handbooks on Article 10 and provided a number of translations of relevant legal provisions into the local language. Overall, the JP claimed 3 achievements as follows: 1) compliance of new and/or amended existing laws and regulations on freedom of expression and freedom of the media with Council of Europe standards; 2) public authorities being better informed and trained with respect to European standards on the freedom of expression and information; 3) media professionals being better informed and trained with respect to their rights and responsibilities and European standards on the freedom of expression and information. With regards to the latter, the end-of-project report acknowledged that it was too early to say whether the newly acquired knowledge would be applied in practice. With regards to objective no 3, the same reports states that it was too early to say whether the newly acquired knowledge would be applied in practice.

*Assist Bosnia and Herzegovina in fulfilling post-accession commitments and in developing democratic institutions (2003 - 2005)*

As part of sub-objective 3, “*Harmonisation of both State and Entity legislation and compatibility of legislation in-line with ECHR and other European standards*”, this JP planned to train stakeholders, in particular parliamentarian, on ECHR issues.

The activities foreseen had to be substantially modified as one of the main target groups, parliamentarians, did not show any interest in the trainings. The project, as a consequence, provided training for lawyers, which, according to the project documents, showed great interest in this type of training

Source: JP final reports

Overall, evidence documents a significant volume of training, mostly on the ECHR (and to a lesser degree the ESC provided by EC-CoE Joint Programmes). Other donors have been active as well, making attribution of any impact arising from training difficult. More fundamental, however, there is remarkably little focus on planning to gather evidence that awareness and technical knowledge gained from training has actually been translated into practice and behaviour likely to protect human rights. Project documentation tends to focus on activities and outputs rather than impacts and, when impacts are claimed, it has proven hard to find independent corroborating evidence in the absence of external post-project evaluations. Some of the problem lies with project design and planning with logical frameworks often failing to include objectively verifiable indicators, means of verification etc. and resources and plans for *ex post facto* evaluation being the rare exception. Without this it remains a matter of conjecture whether lack of the training is the most pressing need, whether in terms of content or methodology training delivered meets all or any of the standard criteria of relevance, efficiency, effectiveness, impact and sustainability. The lack of rigorous baseline assessment of the need for, the likely impact or, and the risk factors associated with training are striking.

### 3.2.2 I-322 Implementation and execution of the ECtHR decisions

No JP could be found that focused specifically on this indicator though generally JPs that promoted awareness and engagement with the ECHR should in principle promote more timely and comprehensive implementation of ECtHR decisions. However as the examples below highlight fundamental problems remain;

- A 2011 PACE report on *Turkey* criticises implementation of ECtHR decisions, where problems continue to arise, especially in the context of contentious issues such as freedom of expression, the prosecution of journalists, Cyprus and ethnic minorities. As highlighted by the fact that Turkey is prompt in paying pecuniary charges but slow in implementing needed legislative changes, delays in implementation are as much due to political constraints as to resource- or procedural impediments. According to the 2011 PACE report, Turkey is among the worst offenders for failing to implement ECtHR decisions. The Turkish judiciary has also been accused of interpreting the ECHR incorrectly and making decisions that go against previous decision of the ECtHR, particularly in the area of freedom of expression and the prosecution of

<sup>12</sup> See EIDHR Evaluation on the Network of Schools of Political Studies , ECORYS Nederland, at [http://ec.europa.eu/europeaid/what/humanrights/documents/final\\_report\\_ec\\_schools\\_evaluation\\_280807\\_en.pdf](http://ec.europa.eu/europeaid/what/humanrights/documents/final_report_ec_schools_evaluation_280807_en.pdf) .

journalists. The 2010 EU Accession Progress report notes that the number of rulings by the ECtHR in which Turkey is found in violation of the ECHR continues to increase – though a decline was recorded in 2012. During the period covered by the progress report a total of 553 judgements found Turkey in breach of the Convention and the number of new applications to the ECtHR went up for the fourth consecutive year. Since October 2009, a total of 5,728 new applications were made to the ECtHR. As of September 2010, 16,093 cases against Turkey were pending before the Court. The country case study identified a number of JPs which focused on ECHR standards and their application in the domestic legal system; most of these have been cited under Indicator I-321 above. The various CoE end of project reports document increased knowledge and satisfaction (and implicitly at least) capacity of key personnel. Whether some acknowledged implementation problems are due to deficiencies in the projects, or due to lack of political 'will' to ensure positive human rights change, remains a matter of conjecture.

- In the case of *Serbia*, the Annual Report on the Execution of the Judgments of the European Court of Human Rights 2010 by the Committee on Legal Affairs and Human Rights of December 2010 lists several cases in which Serbia failed or substantially delayed in abiding by final judgments. The PACE has also criticised Serbia for inter alia non-compliance with court judgments. As stated in EC's "Serbia 2010 Progress Report"<sup>13</sup>, the ECtHR delivered since October 2009 45 judgments finding that Serbia had violated the ECHR. Over the same period, a total of 1,364 new applications were made to the ECtHR. The largest number of judgments refers to the violation of the right to a fair trial due to the length of the procedure. No JPs have been identified which aimed directly to increase implementation and execution of ECtHR decisions, however, Serbia is a beneficiary of the Human Rights Trust Fund-financed project *Removing the obstacles to the non-enforcement of domestic court decisions* (2009-present), which aims, in part, to improve execution of ECtHR decisions.
- In *Russia*, as described under Indicator I-31 JPs included significant focus on disseminating ECtHR jurisprudence and training. However, in its 2011 report, the PACE sounded the alarm on major structural problems impeding and delaying the implementation of ECtHR judgments. This contributes to a climate of impunity, relating in particular to grave and repeated violations of human rights in the North Caucasus region. The case study notes that the main obstacle to implementing the Convention is ignorance of this issue on the part of judges and litigators and lack of motivation to apply the Convention. Attempts to educate judges on the Convention are ineffective due to the lack of motivation. Legal professionals are poorly motivated to invoke the Convention. This is partially due to a lack of will on the part of the Supreme Court and regional courts (high courts) to insist that lower courts invoke the Convention. Practising lawyers are reported as disinclined to base arguments on the Convention, since they are aware that such attempts are unproductive. Lawyers within NGOs tend to be more proactive in making arguments based on the Convention because their reason for litigating tends to be to address issues affecting wider groups of people, rather than a particular client. However, until judges explicitly base their decisions on ECtHR and ECtHR jurisprudence the overall situation is unlikely to change.
- In *Armenia*, the judicial reform of 2008 created a system of precedent by which ECtHR decisions became binding on lower courts. No information has been found on the implementation of ECtHR judgments. During the country field visit, independent NGOs expressed little confidence in the ECtHR as a force for progress. There has been substantial training in ECtHR jurisprudence, and dissemination of decisions, all supported by JPs, yet representatives of the legal education establishment felt that few judges were able to effectively use ECtHR jurisprudence. That having been said, there is a core of competent advocates familiar with ECtHR jurisprudence in the country and, as a representative of the Chamber of Advocates stated, the more they cite this in legal argument, the more judges and prosecutors will be required to increase their competence. In *Azerbaijan*, since 2002 European law is superior to domestic law with the exception of constitutional law. No information has been found on implementation of ECtHR judgments. In *Moldova*
- The *FYROM* country case study notes simply that FYROM does not figure among the nine countries identified by PACE in January 2011 as prime offenders in the implementation of ECtHR judgments in a timely fashion. The Commissioner for Human Rights, in his 2008 report, cited significant improvements in the enforcement mechanism. No JPs specifically targeted

<sup>13</sup> [http://ec.europa.eu/enlargement/pdf/key\\_documents/2010/package/sr\\_rapport\\_2010\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/sr_rapport_2010_en.pdf), p. 12.

implementation and execution of ECtHR judgments, but training and awareness-raising may have raised the profile of ECHR mechanisms among key actors.

In summary, there have been significant efforts to disseminate ECtHR decisions and to train key personnel on their implications for domestic law the overall situation remains poor in terms of implementation of ECtHR decisions.

### 3.2.3 I-323 ECtHR jurisprudence incorporated into domestic law and practice

A range of JPs involved dissemination of knowledge of ECtHR jurisprudence – through publication of decisions, incorporation of ECHR into curricula, training of state personnel and non-state actors. Countries vary in the degree to which they incorporate the ECHR and ECtHR jurisprudence into their domestic legal system. The ECtHR has repeatedly said the issue is not formal incorporation, but whether measures are taken to ensure ECHR provisions are effectively implemented. Attributing progress in this regard to JPs is problematic. The non-enforcement or delayed enforcement of ECtHR decisions, while we have not rigorously established it according to the Indicator I-322, is often cited. A summary of examples follows:

- Under Article 194 of the *Serbian* Constitution, universally accepted rules of international law and ratified international treaties are integrated into the domestic legal system and directly apply therein. This includes the ECHR and the ECtHR jurisprudence. Significantly, the Russian legislature has not yet formulated either the place of ECHR judgments in the legal system or any procedure for the entrance into force of judgments of the ECHR for all law enforcement organs. Theoretically it is clear, it is all written down in the Convention. Since the Convention and case-law are in English and French, and Russian lawyers speak and administer justice in the Russian language, these documents should be “russified.” There must be an act of government to legalise and achieve this.

### 3.2.4 I-324 Strengthened and more effective state institutions in defence of human rights (such as Offices of Human Rights Commissioners and Ombudsmen) at both central and local levels in beneficiary countries

In all case study countries (and other non-EU CoE countries) two consecutive JPs supporting the networking of non-judicial human rights structures, including Ombudsmen, were implemented:

- *Peer-to-Peer I: Setting up an active network of independent non-judicial Human Rights Structures in the Council of Europe member States which are not members of the European Union (2008-2009)*
- *Peer-to-Peer II: Promoting national non-judicial mechanisms for the protection of human rights and especially the prevention of torture (2010-2012 on-going)*

*Peer-to-Peer I* aimed to contribute to reducing human rights violations through building up the competencies of independent National Human Rights Structures (NHRs) and promoting joint initiatives, networking, and sharing of best practices. Drawing on the final report, some 50 NHRs senior staff from the 14 targeted countries participated in the network, with over 200 lower-level staff participating in the workshops. Over ten international workshops were held, covering topics ranging from application of OPCAT, the handling of complaints against the police, the human rights of irregular migrants, persons with disabilities, the elderly and others. According to the JP's final report, cooperation between NHRs developed rapidly, and cooperation between the members of the Peer-to-Peer Network and the CoE was intensified.

In *Peer-to-Peer II*, in addition to continued organising of thematic workshops, a second component was added at the request of the participants – specific technical cooperation of NHRs who have been entrusted with the task of serving as National Preventative Mechanisms against Torture (NPMs) in their countries.

- In *Azerbaijan*, The office of the Ombudsperson for Human Rights was established in 2002 following discussions between government authorities and the CoE. A national plan of action for human rights protection was approved by a presidential order in December 2006. In March, 2010, Professor Elmira T. Suleymanova was elected by Parliament to a second seven-year term as Commissioner for Human Rights (Ombudsman). The legislative basis for the Office of the Ombudsman was also strengthened. However, despite an active programme of work and high public profile, NGOs continue to view the Commissioner as an agent of the ruling political party. Reservations of NGOs are cited in the evaluation report of the *South Caucasus democratic stability* (2002-2004) multi-country JP “*This institution has been established and the staff of Ombudsman Office had some initial training. However, while this may appear to be a positive indicator of progress in human rights, the evaluation found that many representatives of NGO sector consider this institution as pro-government and are do not believe it affords satis-*

factory human rights protection. The Report of the Committee on the Honouring of the Obligation and Commitments by Member States of the Council of Europe on functioning the democratic institutions in Azerbaijan (January 2004) also noted the lack of action by this office.”

- According to the case study in Armenia, the role of the Human Rights Defender (Ombudsman) in Armenia has strengthened in recent years (in particular, handling more complaints), in part thanks to capacity built by EC-CoE JPs, though it also benefits from other project support including EU-OSCE and EC funded twinning support. For instance through the JP *South Caucasus democratic stability* (2002-2004), according to the Evaluation Report 2005, the CoE provided policy advice and assisted in the drafting of an act on the Defender of Human Rights adopted by the National Assembly in December 2003 which is reported to reflect many of the comments of European experts and to meet European standards. The multi-country JP *Fostering a culture of Human rights – Ukraine and South Caucasus* (2006-2009) sent two representatives of the office to a summer school organised by the Helsinki Foundation for Human Rights, to increase their understanding of the ECHR and the ECtHR case law. Senior staff of the Office visited CoE headquarters in Strasbourg and the Office of the Ombudsman in Spain and in 2008, a seminar of Article 6 ECHR was organised in Yerevan. The 2008 ROM Report for Armenia stated that “*the obtained knowledge and links assist the Ombudsman institute in Armenia to become a real role player for handling of, participating in, monitoring and communicating to CoE bodies the human rights violation cases at critical segments of governance and judiciary*”. According to its constituent statute the Ombudsman, is the National Preventive Mechanism in Armenia and the Ombudsman has solicited the cooperation of the civil society organizations as a de facto part of this mechanism. Field visit discussions saw civil society express scepticism regarding the independence of the office from the executive. At the same time, it was reported that the independence of the Ombudsman was raising some concerns in the ruling party.
- Late in the evaluation period, according to the Interim report 2011, one component of the Moldova country JP *Democracy Support Programme* (2010-2011 on going) supported the Ombudsman institution through expert assessment visits and training seminars on ECHR standards. The expert recommendations served as a conceptual basis for developing a joint position regarding the Institution's reform and guided the drafting of technical amendments to the legislation governing the functioning of the Ombudsman Institution. While complaints to the institution increase, field visit meetings with some civil society organisations revealed lack of confidence on their part in the effectiveness of the institution.
- Developing the system of regional ombudsmen in Russia was one of the Russia's CoE Membership obligations. In 2011, there were 65 Regional ombudsmen in Russia, and the independence, prestige, and power of the regional Ombudsmen generally increased over the evaluation period. Components of several JPs were devoted to the support of the implementation of this membership obligation;
  - The *North Caucasus JP to strengthen democratic stability* (2001-2004) evaluation report<sup>14</sup> concluded, “*Ombudsman institutions were established in four North Caucasus regions during the implementation of JP NC, but it was not clear if this was an outcome of the programme. The European Court of Human Rights cannot at present be said to have extended its reach to the North Caucasus but it is making inroads. JP NC contributed towards extending the reach of human rights institutions to the region through activities for the judiciary, regional constitutional courts, lawyers, ombudsmen, and NGOs. However, the activities were few and far between, which limited their significance, as did the absence of activities on the Strasbourg Court for prosecutors.*”
  - For the JP *Strengthening the Rule of Law and the protection of HR* (2002-2004), the same evaluation report is more positive about the results, stating that, “*With longstanding local partners, the CoE provided regional ombudsmen with support across a broad front. It lobbied successfully for new laws and ombudsmen in the far east of Siberia, and began to mainstream existing ombudsmen into the legal life of the RF, for example by inviting them to take part in the compatibility study of remand prison, with the participation of foreign experts and lawyers from the Presidential Administration. Twelve new ombudsmen were elected during this JP. Although the CoE budget was insufficient to maintain the regional ombudsman website [www.ombu.ru](http://www.ombu.ru) as anticipated, the website soon found alternative funding.*

<sup>14</sup> Evaluation of the Russia EC/CoE Joint programmes, Human European Consultancy, Final report, December 2005



- The JP *Strengthen federalism, regional and local democracy and regional human rights protection mechanisms in the Russian Federation* (2003-2005), according to the evaluation report, “achieved four of its five expected outcomes: the number of regional ombudsmen had risen by its close (to 31); a draft federal law had been prepared; the ombudsmen's informal Coordinating Council was meeting to exchange experience and had the support of the CoE. No 'good practice' guidelines foreseen in Annex I to JPVI had been prepared, however, although it was clear that regional ombudsmen were taking steps in this direction on their own.”
- The JP *Strengthening the rule of law, human rights and educational standards* (2004-2007) supported the creation of regional ombudsmen institutions (notably in the Chechen Republic, North Ossetia and Dagestan) and facilitating the setting up of a co-ordinated network of regional ombudsmen, and promote co-operation with the Federal Ombudsman (notably in the Ingush Republic).
- In *Serbia*, the Protector of Citizens of the Republic of Serbia (Ombudsman) was introduced into the legal system in 2005 by the Law on Ombudsman and is mentioned in the Constitution of Serbia.. The EC's 2010 progress report, reported that the Deputy Ombudsman in charge of protection of persons deprived of their liberty was operational but still not fully effective. Concern was expressed by the UN Committee against Torture (CAT) in 2009 with regard to the structures of the Ombudsman's office, which it found to be not fully consolidated; the independence of the Ombudsman's office, which it found to be not ensured; and resources and analytical capacity available, which it found to be inadequate. There are also several provincial Ombudsmen, some of them have been operating much longer than the State Ombudsman, as e.g. the provincial Ombudsman of Vojvodina, who was established in 2002. The EC's Serbia 2010 progress report<sup>15</sup> acknowledged that the various Ombudsman Offices at both state and provincial level were very active. Besides the multi-country JPs *Peer to Peer* and *Peer to Peer II*, there is no information available on any further EC-CoE contribution to support to the ombudsman institution.
- In *Bosnia and Herzegovina*, the Institution of Human Rights Ombudsman/Ombudsmen of BiH was set up by the “*Law on the Human Rights Ombudsman of Bosnia and Herzegovina*” in 2004. The EC's BiH 2010 Progress Report” referred to several recommendations issued by the Ombudsman on public administration appointments, tenders and anti-discrimination to institutions operating at each of the four administrative levels (State, Entity, Cantonal and municipal), which were, however, not implemented. However, the functioning of the Ombudsman's Office was hampered by budgetary constraints and enforcement capacity and political will to implement the Ombudsman's recommendations remain weak. Besides the multi-country JPs *Peer to Peer* and *Peer to Peer II*, there is no information available on any further EC-CoE contribution to support to the ombudsman institution.
- In *FYROM*, the Ombudsman institution has been functional for more than a decade. However, in 2008 the UN Human Rights Committee noted that the institution is not fully in compliance with the Paris Principles relating to the status of national institutions. The EC's 2010 FYROM progress report noted an on-going problem that second-instance government commissions, which decide appeals against administrative bodies' decisions, continue to be the least responsive to the Ombudsman's instructions. The Ombudsman's office reports good cooperation and communication with the government but raises an issue of government responses lacking substantive content and sometimes not providing information requested. The case study for FYROM finds that *Peer to Peer* and *II* are likely to have strengthened the Ombudsman's Office in terms of lessons learning with regional counterparts, production/translation of materials and establishment of networking mechanisms that are on-going.
- *Turkey* has several state institutions (other than courts) tasked with the defending human rights, including Human Rights High Council, Human Rights Presidency, Human Right Boards, Bureau for inquiry on allegations of human rights violations in the Ministry of the Interior, Human Rights violations investigation and evaluation centre, and parliamentary Human Rights Inquiry Commission. In Turkey, which has yet to establish an Ombudsman Office<sup>16</sup>, some interlocutors reference JPs such as *Support to the implementation of human rights reforms* in 2006-2007 as having contributed to political momentum for an NHRI, though strong criticism is

<sup>15</sup> [http://ec.europa.eu/enlargement/pdf/key\\_documents/2010/package/sr\\_rapport\\_2010\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/sr_rapport_2010_en.pdf), p. 8.

<sup>16</sup> A law establishing a general ombudsman was passed in 2006 but was overturned by the Constitutional Court in December 2008 on the grounds that it did not comply with the constitution.

voiced regarding the lack of civil society consultation and concerns that the proposed institution will not comply the Paris Principles for NHRIs.

To sum up, multi-country JPs, such as the *Peer-to-Peer I and II* have aimed at strengthening state institutions in defence of human rights and some impact is suggested to have been linked to capacity-building and promoting of networking and the sharing of best practices. In some case study countries there is also some evidence available that single-country JPs have had an impact on the development of regional Ombudsmen (*Russia*). This has been done through expert advice, organising training, seminars and meetings, and promoting cooperation. While there is evidence that Ombudsmen offices have seen increase in profile and complaints gained strength in most case study countries over the evaluation period, the institution in many countries is subject of criticism by some domestic and international actors (e.g., *Serbia, Bosnia and Herzegovina, FYROM*) See further below at number of complaints filed with the office of Ombudsman (I-343).

### 3.2.5 I-325 Human rights education introduced in school curricula

Desk research has found evidence that JPs contributed to strengthening human rights education in *Russia, Serbia, Bosnia and Herzegovina*, and the countries of the *South Caucasus*.

- In *Russia*, one component of the JP *Strengthen democratic stability in North Caucasus* (2001-2004) focused on establishing educational standards, teacher training, and a network for civic education and history teaching. According to the JP final report, some 30 educational officials and practitioners took part in the work on the draft Law on Education for the Chechen Republic, and about 120 history teachers and educational officials participated in the seminars. The evaluation report concludes however, that “*Activities in the education field did not meet JP’s objective, as they did not coincide. Yet, participants were highly enthusiastic and felt the activities were an impulse for change. However, the activities did not reach the level of intensity needed to create real momentum for reform and so the effect was limited to the participants and their immediate colleagues.*” Also in *Russia*, one component of a single-country JP *Strengthening the Rule of Law, Human Rights and Educational Standards* contained trainings and meetings for secondary school teachers to enable them to transmit knowledge and values in line with standards in a multicultural context and in a manner conducive to effective participation, critical thinking and mutual respect. 800 Russian educational authorities, teachers, Ministry officials, and textbook authors, brought together with European educators, adopted recommendations on integrating inter-cultural dialogue into the teaching of history. Recommendations regarding the teaching of religion and language education were also adopted. These recommendations were reflected in a document prepared by a team of experts from *Russia, the UK, and Switzerland*.
- In *Serbia*, the JP *Support the process of accession by Serbia and Montenegro* (2003-2005) had as one of its objectives the promotion of the values of human rights and civic education in the education system through the implementation of seminars and trainings. According to the Final Report, a team of approximately 30 teacher trainers and curriculum developers benefited from expert contributions and experiences. This helped the participants to produce a Draft National Framework for Education for Democratic Citizenship (EDC) in *Serbia*. Following the breakdown of co-operation between the university professors and the Ministry of Education, the impact was not as widespread as was originally hoped. Due to the difficult political situation at the time, 30 foreseen teacher training seminars on human rights education had to be cancelled. Time constraints meant this JP was not reviewed in the *Serbia* field visit.
- In *Bosnia and Herzegovina*, the JP *Assist Bosnia and Herzegovina in fulfilling post-accession requirements and in developing democratic institutions* (2003-2005) had as one of its objectives to improve human rights and civic education. It targeted 50 representatives of the Ministries of Education at the State, Entity, and Cantonal levels. It trained 150 teachers, curriculum developers, and policy-makers in the field of Education for Democratic Citizenship (EDC) and Human rights Education (HRE), an estimated 1,000 EDC and HRE primary and secondary school teachers and pupils. The project also aimed at developing teaching material, and at a process of certification for EDC teachers. No desk phase information is available on the project’s actual impact.
- In the countries of *South Caucasus* the JP *South Caucasus Democratic stability* (2002-2004) included a component on education for a democratic citizenship (EDC). According to its final report, the EDC policy and standards setting seminars in the beneficiary countries brought about a greater awareness about the EDC practices in the CoE member states, an opportunity for the public at large to get an overview of EDC aided by translation of CoE documents into *Armenian, Azerbaijani and Georgian*, and the setting-up of a network of policy makers and practitioners in the field of EDC at member state level. Over 100 key education actors in Ar-



menia and Azerbaijan attended EDC seminars, where the importance of civic education was explained and emphasised. The evaluation report of the project concludes:

- Armenia: *The relevant decrees were approved by government covering the standards of secondary education; Text books have been translated and rewritten; Skills development by teachers participating in the process of revising the curriculum.*
- Azerbaijan: *The project is regarded as successful and has already made an impact with the Ministry of Education now adopting a new curriculum, which replaces the earlier communist ideology. Documents have been translated into Azeri language including the EDC.*

According to the CoE, EDC and HRE has a significant place in the *FYROM* school curriculum, as does HRE. In *Turkey*, a JP with similar focus, implemented in partnership with the Ministry of National Education and the Board of Education, commenced in 2011 but falling outside the evaluation period was not reviewed.

### 3.3 JC 3.3 Enhanced protection of the rights of minority groups (including linguistic minorities)

The criterion of enhanced protection of the rights of minority groups was addressed through four Indicators:

- State sponsored events in support of inter-group confidence building and multiculturalism (I-331);
- Implementation of anti-discrimination legislation and implementing rules (I-332);
- Level of legitimate activity of minority group NGOs (I-333);
- Policies in place/developed to support Cross Border Cooperation relating to minority groups (I-334).

Only a limited number of JPs involved **state-sponsored events for confidence building and multiculturalism** (I-331). An example of such JP activity targeted prejudice and discrimination against Roma minority in the Balkans countries through the Dosta! campaign.

State supported events in support of Roma have been noted, outside of JP activities, notably the Roma Decade, in which *Serbia* and *FYROM* take active part. Even though some state-sponsored events and even long-term engagement of authorities in the promotion of multiculturalism have been noted, in all concerned countries the protection of Roma rights still see concerns raised by various monitoring bodies.

The support to Roma minority in the *Balkans* has been promoted by three successive regional JPs in the area of **legislation and implementing rules** (I-332), Roma I-III. Specifically the development of National strategies for the integration of Roma, and the support to their implementation and monitoring has been provided. Some progress is reported in this area, although to a different extent in different countries involved. The overall progress on the implementation of anti-discriminatory legislation and integration of Roma remains mixed at best. Support was provided to the promotion of the Framework Convention for the Protection of National Minorities in *Armenia* and *Azerbaijan* with limited results, and the promotion of European Charter for Regional and Minority Languages recently commenced in *Russia* through a targeted JP. JP activities in *Turkey* did not address minorities as a central focus, though human rights of minorities remain one of the most significant areas of human rights concerns. *Turkey*, for example, has not yet ratified the Framework Convention for the Protection of National Minorities. Similarly CoE visibility on LGBT human rights (e.g. in *Serbia*) was not reflected in specific JP activity. While the Support to Democracy JP saw the Ombudsman's Office in *Moldova* produce a guide to the rights of persons with disabilities, this group is generally not visible in JPs despite specific needs in justice system, detention and other contexts and historical legacy in many of the jurisdictions concerned of being denied their human rights. Some civil society actors met in the field express the view that government 'ownership' of JPs explains this failure to prioritise certain issues/groups and that CoE should have done more to ensure they were included.

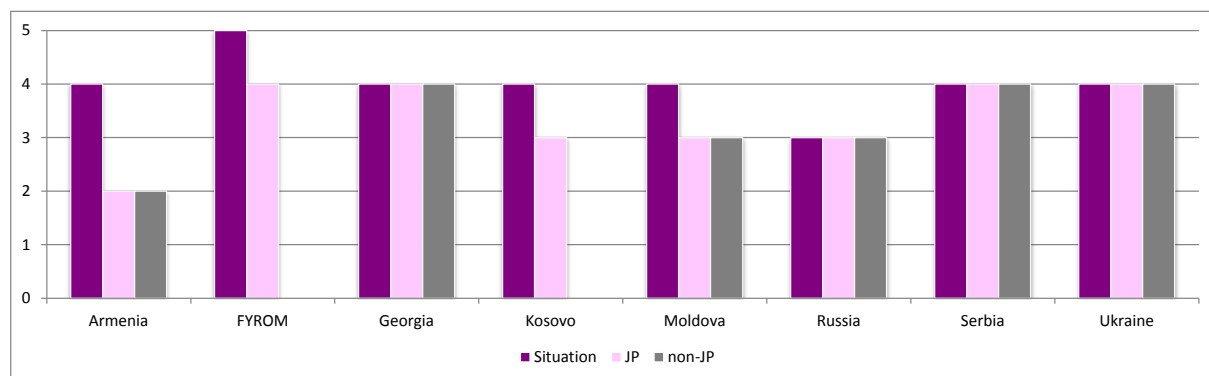
The regional JPs supporting Roma inclusion involved **activity of minority group NGOs** (I-333) in the processes of policy development and project implementation and are likely to have strengthened capacities and promoted cooperation, leading in some cases (e.g., *FYROM*) to a demonstrable increase in the level of activity. In other cases (e.g., *Serbia*, *Bosnia and Herzegovina*) it is more difficult to assess whether NGOs' JP involvement was an expansion in their activity levels. A cross-section of stakeholders active on Roma issues met in the course of the *Serbia* field visit (the one field visit that reviewed JPs concerned with minority issues) were not able to recall details of regional Roma JPs though generally CoE was not seen as a lead actor on Roma issues in *Serbia*, though the FCNM was acknowledged as providing a critical framework for NGO activity.

A minority language JP in Russia is reported to have also contributed to an increased level of legitimate activity of minority groups through developing the capacity of the NGOs. In country field missions in *Armenia* and *Moldova*, while admittedly no ethnic minority NGOs representatives were met, it was striking that human rights NGOs and, the former case, both the CoE Country Director and the Ombudsman expressed the view that, despite support from regional JPs in the area, ethnic minority rights were not a priority issue.

Very little evidence has been found as regards actual policies in support of **cross-border cooperation** relating to minority groups (I-334) arising from JPs, but regional JPs generally (including three on Roma) are acknowledged to some degree as helping foster cross-border engagement – which is particularly noteworthy in the post-conflict Balkan context.

The views reported by the EUDs are presented in Figure 11 below. Overall, EUDs seem to be fairly positive about the situation of minorities in their respective countries, most noting some improvements. EUD *FYROM* reports significant improvements together with high impact of the JPs in this area. High impact of JPs is also reported by EUDs in *Georgia*, *Serbia* and *Ukraine*, in all cases EUDs also report high impacts of non-JP cooperation.

Figure 11: EUD survey results: Impacts in Enhanced protection of the rights of minority groups



Scales			
Change in situation		Impacts of JP and non-JP cooperation	
Significant improvements	5	Very high extent	5
Some improvements	4	High extent	4
No change	3	Some extent	3
Some deterioration	2	Low extent	2
Significant deterioration	1	Very low extent	1
Do not know, Not applicable, No answer	0	Do not know, Not applicable, No answer	0
Note: Countries that provided no information for impacts in both JP and non-JP cooperation under this JC are not shown			
Source: EUD survey			

### 3.3.1 I-331 State-sponsored events in support of inter-group confidence building and multiculturalism held

Among the case study countries, there are only a few cases where JPs supported state events related to the topic of minorities and multiculturalism. Some evidence has been found in the three regional JPs *Roma - Council of Europe-OSCE-ODIHR project on Roma under the Stability Pact (2001-2002)*, *Roma II – Joint Programme between the EC and the Council of Europe regarding democratisation and the rule of law (2003-2005)*, *Equal Rights and Treatment for Roma III (2005-2008)* and *Fostering a culture of Human rights – Ukraine and South Caucasus (2006-2009)*. More extensive information on these projects is given under Indicator I-332 below.

The multi-country JP “*Equal Rights and Treatment for Roma – Roma III*” (2005 -2008) was implemented in the Balkans countries *Serbia, Albania, Bosnia and Herzegovina, Croatia, FYROM, Montenegro* and *Kosovo*, and aimed, in one of its components, at increasing and supporting government-led awareness-raising campaigns on Roma issues – “Dosta!”. According to the project documents, the project had to severely downscale its activities but did implement various activities, such as a press conference in *Serbia* with a special emphasis on awareness raising campaigns. Furthermore, the pro-

ject also produced TV spots, which have been aired in *Albania, Bosnia and Herzegovina* and *FYROM*, and radio spots, which have been broadcast in *Albania, Serbia* and *Bosnia and Herzegovina*. The final report notes that the results of the implementation of the project can be considered as satisfactory on the basis of positive feedback on the Dosta! campaign given by Roma representatives and international actors.

According to the CoE field offices reports, a number of EC-CoE joint activities other than JPs related to minority rights also took place. For instance, the EC-CoE award to the best short video in the campaign "Dosta!" against prejudice towards the Roma population or the "Hajde da..." campaign has been reported to have received media attention.

Dosta! was also supported in *Moldova* and *Ukraine* under the JP *Roma-EIDHR* (2008-2009). However, in *Moldova*, the campaign activities under this JP had to be cancelled due to the unfavourable stand of the Moldovan Bureau for Inter-Ethnic Relations, which argued that the campaign privileged the Roma over other equally important minorities in the country, and that policies in favour of this minority group were not justified because the discrimination they face was not really specific to them. This official position was questioned by the European Commission against Racism and Intolerance (ECRI) and the Advisory Committee of the Framework Convention for the Protection of National Minorities, as both called upon the Moldovan Government in their recent reports to recognise discriminatory practices, affecting in particular the Roma community. While representatives of ethnic minority communities were not interviewed during the *Moldova* field mission, human rights NGO representatives interviewed expressed the view that Roma issues were not of particular importance in the country. The same comment applies to *Armenia*.

The regional JP *South Caucasus democratic stability* (2002-2004) implemented a component "Education Policy and Minorities" implemented in *Armenia, Azerbaijan* and *Georgia*. According to the JP final report the activity resulted in the preparation of country reports, which focused on legal issues and language policies. The reports contain a detailed description and analysis of the national education policy and legislation, as well as examples of best practices. Country reports were presented to the Ministries of Education of *Armenia, Azerbaijan* and *Georgia* at the regional conference of the project held on 18-19 November 2004 in *Kiev*.

The regional JP *Fostering a culture of human rights – Ukraine and South Caucasus* (2006-2009) had a component aimed at enabling educational institutions in the region to benefit and integrate experiences from each other and to implement European best practices in the field of inter-cultural and inter-faith dialogue; and to contribute to introducing education policy guidelines and practices in matters related to management of cultural and religious diversity at all levels of education. The project analysed the status of intercultural education in beneficiary countries and to some extent implemented "working packages" for each country. This included: awareness-raising and training on multicultural issues for teachers and education decision makers, and preparation of pedagogical material based on innovative methodological approaches. However, according to the evaluation conducted by the project's expert group, which included national counterparts, the project's duration was too short and funding was too limited to deliver its full potential.

As for nonfinancial cooperation between the EC and the CoE, little evidence has been found regarding state-sponsored events in support of inter-group confidence building and multiculturalism: DG Education worked with the CoE on European Youth Days, which may have contributed to tolerance for diversity. In the joint efforts of both institutions to promote tolerance and diversity in *Serbia*, the EU took a very visible public role at the *Belgrade Gay Pride* march in October 2010, with the head of the EU Delegation addressing participants in a public statement and stressing that the event was an expression of tolerance, freedom of expression and assembly. In general, activities relating to LGBT rights are an emerging theme of EC-CoE collaboration, although one that can be expected to continue to grow.

*Serbia* participated in the "Decade of Roma Inclusion"<sup>17</sup>, a political commitment by European governments to improve the socio-economic status and social inclusion of Roma. The country took over the rotating presidency of this international initiative in 2008-2009. However, no direct link between the above-mentioned JP and this type of state-sponsored events could be found.

In summary, a few examples have been of campaigns and events supported by the EC-CoE, in cooperation with state authorities, notably the Dosta! campaign promoting Roma rights and anti-discrimination in the Balkans countries, and involvement of national authorities in the South Caucasus region in developing policies and best practices in the area of inter-cultural and inter-faith dialogue.

<sup>17</sup><http://www.romadecade.org/>

Important initiative such as the Roma mediators' project and the Secretary General's recent renewed focus on Roma issues are important, but do not necessarily relate to this Indicator strictly speaking.

Topics related to multiculturalism have also been promoted by actions in the education sector and related to school curricula development (see discussion under I-325 on curricula development for human rights and democracy).

### 3.3.2 I-332 Anti-discrimination legislation and implementing rules enacted and implemented

Most JPs implemented in this area have been of regional character.

In the countries of South Caucasus, in the framework of JP *South Caucasus democratic stability* (2002-2004) support was given to the promotion of the Framework Convention for the Protection of National Minorities. The evaluation report concludes:

- Armenia: "Only very limited impact has been achieved; The Department of National Minorities and Religious Issues established; A building was allocated to establish a cultural centre for national minorities; The legal framework was reviewed and a law on national minorities was drafted. Regarding the weaknesses: Government did not give this project a high priority; No appropriate government structures to manage the project; No concrete plan developed after initial meeting; Much of the work the government has undertaken in the field was outside of the JP."
- Azerbaijan: "The project has not had any concrete, positive impact as the only tangible result was the translation of a book on the Framework convention into local languages; a better awareness of the national minorities' issues raised by the project is reported." No confirmation was possible at desk phase.

The Armenia report might be qualified by the results of the country field visit where no interlocutor (admittedly, no ethnic minority NGO was consulted) including the CoE Country Director, and Ombudsman felt that ethnic minority issues were particularly important in the country. A country-by-country survey of the situation reveals a mixed picture:

- In *Armenia*, recent amendments proposed to the Law on Religious Organizations have aroused the concerns of NGOs, the Venice Commission, and OIDHR. Here, as opposed to the area of ethnic minorities, there are significant concerns. An area of special concern is the prosecution of Jehovah's Witnesses for refusing military service and the failure to provide an alternative, in response to which, the *South Caucasus democratic stability* (2002-2004) JP provided policy advice and assisted in drafting legislation. Despite a generally tolerant atmosphere and some signs of improvement over the evaluation period, the Advisory Committee on the Framework Convention for the Protection of National Minorities in 2010 expressed concerns regarding the Census, the participation of ethnic minorities in local government, and the lack of needed legislation and data on discrimination. The *South Caucasus* evaluation, as stated above, was quite negative.
- In *Azerbaijan*, there was, as of 2007, no law on ethnic discrimination in place. Prosecutions for discrimination are essentially unknown, a fact that is officially ascribed to the climate of tolerance. However, the ECRI, in its second report, cited numerous instances of inflammatory public speech against minorities, notably ethnic Armenians living in Azerbaijan. In reporting on his 2007 visit, the Commissioner for Human Rights wrote that the main issue is not so much discrimination but the lack of any legislative or policy framework for protecting the rights of minorities. Structures for the expression of minority rights, such as the Council for National Minorities, were non-functional and difficulties persisted regarding the freedom of association. However, the Council of Ministers has identified positive steps undertaken since the early 2000s. In the country case study, specific interventions of *South Caucasus democratic stability* are listed but, given the negative evaluation cited above, it would be difficult to attribute any of the progress made to this JP.
- In *Moldova*, the single-country JP "*Moldova democratic stability (2001-2003)*" had a component "Education Policy and Minorities" on the reform of education policy and legislation. This was implemented through seminars, study visits, trainings and consultative meetings. The main outcome was elaboration of detailed recommendations for legal and policy reform, especially concerning official terminology that determines the status of different languages and clarifies the status of the Russian language. These advisory services to the Moldovans authorities led to adoption of the definition of "minority" in relation to education. The work coincided with the work of the expert team considering Moldova's future accession to the European Charter for Regional or Minority Languages, and the Framework Convention for the Protection of National Minorities, and therefore the recommendations of this group were able to place emphasis on conformity with those European norms while focussing on the education sector.

As pointed out in the field visit country note, however, no one interviewed in Moldova viewed ethnic minority rights as an important problem area.

In the Balkans, several regional JPs (implemented in *Albania, Bosnia and Herzegovina, Croatia, FYROM, Montenegro* and *Serbia*) focused on the promotion of rights of the Roma minority by support to developing and implementing action plans for equal treatment of Roma:

- *Roma under Stability pact – Roma I* (2001-2002) - tripartite EC/CoE/OSCE-ODIHR project
- *Roma under Stability pact – Roma II* (2003-2005) - tripartite EC/CoE/OSCE-ODIHR project
- *Equal Rights and Treatment for Roma – Roma III* (2005-2008)

*Roma I* included activities such as assessment of Roma access to health care, housing, social welfare, citizenship and residence, roundtables, establishment of National Roma Council. According to the JP *Roma I* final report, by the end of the JP, four countries (*Bosnia and Herzegovina, Croatia, Albania, and the FYROM*) had adopted a national strategy for the integration of Roma since the beginning of the programme.

*Roma II* had an overall objective to assist and empower Roma groups in South East Europe to claim their human rights entitlements. This was to be achieved by promoting more active international cooperation among Roma organisations in pursuit of shared goals, including the realisation of National Roma Strategies and Action Plans and strengthening the capacity of local and national public administrations to protect and ensure the human rights of Roma people in line with international human rights standards. Activities included workshops, trainings, and roundtables. The final report claims that “CoE met its objectives in Croatia and Bosnia and Herzegovina; the project objectives were only partially met in FYROM but this was compensated by some positive actions in Serbia and Montenegro, which were not primarily envisaged in the initial project proposal.”

*Roma III* had as its the overall objective developing participatory monitoring and evaluation mechanisms of national programmes/action plans for Roma in South East Europe. This was to be achieved by actions to strengthen inter-ministerial commissions and other relevant actors in charge of the implementation of national programmes/action plans for Roma: improving their monitoring mechanism and communication strategy and strengthening financial management. Activities included seminars, needs assessments on monitoring and evaluation, training and mentoring, training of trainers, and production and dissemination of campaign material including the Dosta! campaign. According to the final narrative report, the results of the implementation of the project are considered to be satisfactory, but this cannot be corroborated by an evaluation.

- As documented in the country case study, the situation of national minorities particularly the Roma, in *FYROM* is dire, and has given rise to criticism by a wide range of international actors including Amnesty International, the U.N. Committee on the Rights of the Child, the European Commission against Racism and Intolerance, and UN Women. The Albanian ethnic minority also suffers from discrimination, as do LGBT persons and women. Most attention, however, has been given to the problem of discrimination against the Roma people. While no project specifically aimed at legislation, both *Roma I* and *Roma II* engaged in substantial interventions. According to the project evaluation reports,
  - *Roma I* in *FYROM* “missed the opportunity to make larger impact on Roma issues. Programme results were minor and insufficient to achieve the programme purposes and objectives. The overall conclusion is that although the programme objectives were relevant, CoE did not manage to achieve them through the programme.” The evaluation concluded that programme objectives addressed Roma needs but that programme objectives were too extensive and numerous and results were minor and insufficient to achieve the programme purposes and objectives.
  - The evaluation was more positive about impact of *Roma II*. Here too, however, limitations were noted: “CoE mainly had indirect influence regarding the National Strategy for Roma and the incorporation of the refugees’ issues within it. ... The programme had some minor influence on the situation of the Roma refugees from Kosovo in *FYROM*.”
  - In summary for both JPs, the evaluation report concludes: “Significant number of objectives set up both in JP I and II is in relation to the Roma related state policies – JP I focuses on elaboration, while JP II on implementation and monitoring and evaluation. The role of CoE in regard to the preparation, adoption, implementation and monitoring and evaluation of the National Strategy for Roma is seen as minor and insignificant; It seems that CoE initiated the process of policy elaboration with the JP I and although it had two programmes over 45 months period, it lost the leadership role in the process.” Other conclusions from these projects include the need to use experience gained to further develop communication with relevant country stakeholders in formulating fu-



ture programmes. The number of programme objectives should be modest, programme objectives should be concrete and realistic and should fit the capacities of programme management.

- In 2001, *Serbia* ratified the Council of Europe Framework Convention for the Protection of the Rights and Freedoms of National Minorities; and, in 2006, the European Charter for Regional or Minority Languages. Serbia is member of the OSCE, and thus, has obligations that relate to the rights and protection of national minorities. According to the OSCE 2011 Country Report on Serbia, and a multitude of incident reports logged by Amnesty International, discrimination against minorities, in particular against Roma, continues to be a serious problem. Roma are subject to forced evictions from illegal settlements, without being legally protected or alternative accommodation being offered to them. The JP *Roma I* (2001-2002) in Serbia aimed to establish a National Roma Council. This objective could not be achieved, due to the Roma community itself not having had a strong degree of self-organisation at the time, as well as a shift in the political priorities (and commitment) of the then-government, which preferred to promote new legislation on national minorities instead of the establishment of the Roma Council. *Roma III* proposed activities in Serbia had to be downscaled and altered – according to the end-of-project report, the initial activities (seminars and training on evaluation methodologies for national policy implementation) were replaced by a press conference in Serbia, but no other Serbia-specific activities took place. Whether due to the limited country specific activity or to passage of time Serbia field visit meetings with a number of stakeholders active on Roma issues found no awareness of CoE project activity with this group. In addition to discrimination against Roma, other problems in Serbia include violence against LGBT persons, as evidenced by the violent counter-demonstration at the October 2010 Belgrade Gay Pride parade worsening ethnic relations in the Vojvodina region with its large Hungarian minority, and discrimination against minority religions.
- In *Bosnia and Herzegovina* a Law against Discrimination was passed in 2009. However, there are concerns with regards to its implementation. For example, Amnesty International's 2011 report on BiH highlights discrimination against Roma on issues such as right to education, health care, housing, and identity documents. The Law on the Protection of Members of Minority Groups foresees a Council of Minority Groups under the auspices of the parliamentary assembly. The first Council was confirmed in 2008, and has 12 members, representing one minority group each. The Council is currently headed by Nedžad Jusić, the representative of the Roma minority in Bosnia and Herzegovina. Separate, entity-level Councils have been in place since 2007 in the RS, and since 2009 in the Federation BiH. There is also a state-level Action Plan on the Protection of the Right of Minorities.
- *Russian* CoE Membership obligations included ratifying within a year from the time of accession the European Framework Convention for the Protection of National Minorities; to conduct its policy towards minorities on the principles set forth in Assembly Recommendation 1201(1993)<sup>18</sup>, and to incorporate these principles into the legal and administrative system and practice of the country. One CoE instrument which was signed but – contrary to the commitment entered into upon accession – not ratified within a year, is the European Charter for Regional and Minority Languages (ECRML). The Charter was signed on 10 May 2009, but to date it has not been submitted by the Government to the State Duma for ratification.<sup>19</sup> Although the Russian Federation Constitution, Criminal Code and Labour Code contain general anti-discrimination provisions, the Russian Federation has still not adopted comprehensive anti-discrimination legislation. A country JP *Minorities in Russia: Developing Culture, Language, Media and Civil Society* (2009-2012) is on-going. This targets federal, regional and local authorities (in particular autonomous oblasts and districts) responsible for future implementation of the ECRML and the NGOs of speakers/national minorities in Russia, as well as media, cultural and educational institutions. The activities have so far focused on the promotion of the ECRML, identification of practical steps which should be taken in order to ratify the ECRML once it is ratified, awareness-raising of specific instruments, research into previously undocumented areas, network-building, clarification regarding the current situation and position of different minority languages in Russia, identification of mutually-beneficial and co-operative action between different stakeholders, as well as enhancing civil society participation. The overall objective of the project is to promote the rights of Russia's ethnic and national minorities and to increase awareness of the CoE legal instruments that relate to languages, education,

<sup>18</sup> <http://assembly.coe.int/Documents/AdoptedText/ta93/EREC1201.HTM>

<sup>19</sup> Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee); Honouring of obligations and commitments by the Russian Federation; January 2011



media and culture) among the federal authorities and national (umbrella) NGOs representing national minorities.

- *Turkey* has an array of anti-discrimination legislation covering various contexts and groups, under the Constitution and statutory law. In its 2010 Universal Periodic Review (UPR) process Turkey reported that a draft law on a Non-discrimination and Equality Board, based on international standards, has been prepared. The grounds of non-discrimination include, inter alia, sexual identity, disability and ethnic origin. However, Turkey rejected UPR recommendations to bring its definition of minorities into line with international standards, and withdraw its reservation to ICCPR article 27 on minority rights. It also rejected a recommendation to ratify the Council of Europe Framework Convention for the Protection of National Minorities and has also not yet ratified Protocol ECHR No.12 (signed by Turkey in April 2001) containing the general prohibition of discrimination on any grounds including race, national or social origin and association with a national minority. Currently no laws exist that protect LGBT people from discrimination in Turkey. According to Amnesty International, LGBT persons in Turkey suffer discrimination in employment, housing and access to public services. Women also suffer from discrimination, with Turkey ranked 126 among 134 countries in equality in the 2010 Global Gender Gap Index of the World Economic Forum. JPs in Turkey did not have equality/non-discrimination as central objectives or even reference to the issues in Log Frame. This is a significant gap given the CoE and EU mandates and the acknowledged problems in Turkey.

In summary, in the area of anti-discrimination legislation and its implementation, the EC-CoE efforts focused on the promotion of the Framework Convention for the Protection of National Minorities in *Armenia* and *Azerbaijan*, and the promotion of European Charter for Regional and Minority Languages recently in *Russia*. Evaluation of results of these activities in South Caucasus was not very positive, while in Russia project is still on going and it is too early to assess its impacts. In both *Armenia* and *Moldova*, the relevance of anti-discrimination efforts regarding ethnic minorities can be questioned as these do not appear to be national priority problems. Gender and non-discrimination was either not addressed in JPs at all, or not as a cross-cutting priority in objectives and activities, despite gender/non-discrimination issues being a fundamental human rights concern in all case study countries and gender/non-discrimination a legal and policy obligation of the EU and CoE. In the countries in the Balkans have been supported especially regarding their protection of the Roma minority from discrimination, through three regional JPs. While some progress has been achieved in the area of creating, implementing and monitoring of National Strategies for the integration of Roma in all the countries, the overall progress on the implementation of anti-discrimination legislation towards Roma remains mixed at best.

### 3.3.3 I-333 Level of legitimate activity of minority group NGOs increased

This indicator looks at the extent to which NGOs representing minority groups can freely conduct their activities, thus possibly allowing them to influence national decision and legislation processes relevant for them.

A positive trend can be seen in some pre-accession countries, especially *Serbia*, *FYROM*, *Albania*, *Bosnia and Herzegovina*, *Croatia*, *Serbia* and *Montenegro* with regard to the Roma minority.

- According to the case study in *FYROM*, there has been an increase in attention paid to ethnic minority issues since 2001 along with an increase in the activity level of NGOs fighting intolerance and addressing human rights of minority groups. The *Roma I* and *II* projects, both of which involved NGOs, were judged by the 2007 final evaluation to have had impact – “limited” in the first case, “good” in the second case (although for *Roma II* the evaluation qualified its finding with rather opaque language). According to the evaluation, the overall assessment of the two JPs was “good.” Furthermore, the report rated as “very good” the activities related to education issues, as they “*changed behaviours of state institutions and Roma NGOs on education issues radically and produced a tangible progress.*” This is corroborated by the final report of the JP “*Advancing equality, tolerance and peace: Equal rights and treatment for Roma – Roma III*” which concludes that an empowerment has taken place: “*The networks and consultative bodies of Roma already established during previous projects were described as reliable partners for the governments and local authorities and generally are positive of the efforts made to improve the participation of Roma in the monitoring process.*”<sup>20</sup> The National Roma Strategy - adopted in 2005 as a result of a long negotiating process between governmental

<sup>20</sup> *Roma voice missing from Dosta! Campaign The Council of Europe's method of tackling racism towards Roma with fetishisation misses the point.* <http://www.guardian.co.uk/law/afua-hirsch-law-blog/2010/jun/22/roma-fanny-ardant-council-of-europe>

authorities, Roma NGOs and CoE - has helped to empower NGOs fighting for minority rights. Still, the CoE ECRI notes in its 2010 report that many NGOs engaged in fighting intolerance, safeguarding fundamental rights and/or protecting the interests of minority groups consider that they do not have a sufficient role in the decision-making process in these fields. ECRI also notes that the authorities would like to involve them more and draws the authorities' attention to the importance of providing them with lasting support in order to ensure to those NGOs sufficient stable financial resources.

- The JP *Roma III* reinforced existing Roma NGO networks (*Albania, FYROM*) and used official consultative structures such as Roma councils (*Bosnia and Herzegovina, Croatia, Serbia and Montenegro*). It also contributed to the creation in *Moldova* of a network of 20 (out of 21) Roma NGOs, which became a partner for the government and local authorities in drafting and implementing the National Programme for Roma. In *Serbia* and *Bosnia and Herzegovina*, however, the country case study uncovered little information and concluded that it was difficult to judge whether the activity of NGOs had increased over the evaluation period. In *Turkey*, the country case study identified no JPs in the area covered by the Indicator, and notes a number of restrictions, some related to freedom of expression, on NGOs defending minority interests and rights.
- Another example of EC-CoE contribution to increased level of legitimate activity of minority group NGOs can be identified in *Russia*. There, the JP "*Minorities in Russia: Developing Languages, Culture, Media and Civil Society*" (2009 – 2012) supported the capacity development of NGOs concerned with the protection of the culture and languages of minorities. According to the Interim progress report of 2011, this included also improvement of co-operation between civil society and public authorities. As a result of these activities, NGOs working for minorities and public authorities got a better understanding of the core role of civil society in the monitoring of effective ECRML implementation in the event of its ratification. Overall, the JP is reported to have resulted in a productive platform for discussion, two-way communication, and networking both among NGOs and between NGOs and regional/local authorities, as well as mass media and professionals. A database of NGOs working for minorities was created in 2010.

In summary, particularly the implementation of the JPs *Roma I, II and III* in a range of countries involved NGOs defending Roma interests and rights and strengthened them in the process, leading in some cases (e.g., *FYROM*) to a demonstrable increase in the level of activity. In other cases (e.g., *Serbia, Bosnia and Herzegovina*) it is difficult to judge whether there was an expansion in the activity level of NGOs or not. A minority language JP in *Russia* is also reported as having contributed to an increased level of legitimate activity of minority groups through developing the capacity of the NGOs.

### 3.3.4 I-334 Policies in place/developed to support Cross Border Cooperation relating to minority groups

Not much evidence has been found for joint EC-CoE support having been provided to develop cross border cooperation relating to minority groups over the evaluation period. It seems that no JP has tackled the issue of development and implementation of policies to support Cross Border Cooperation relating to minority groups in particular; however some non-financial EC-CoE cooperation activities have taken place: For instance, in *FYROM* this collaboration takes the shape of a task force on the Roma refugee crisis at the Medzitlija border crossing. Other members of the task force include, inter alia, the OSCE, UNHCR, EUSR and the presidency of the European Union. The resident expert of the CoE and the Director of the Information Office attended task force meetings and other meetings concerning the situation at the border crossing and been in close contact with the Roma Division.

## 3.4 JC 3.4 Increased awareness of human rights and fundamental freedoms

The criterion of increased awareness of human rights and fundamental freedoms was assessed through three indicators:

- Increased media coverage on questions relating to human rights and fundamental freedoms (I-341);
- Awareness-raising campaigns undertaken (I-342);
- Number of complaints dealt with by the Ombudsmen, both at central and local levels (I-343).

Overall, it proved difficult to attribute specific **increases of awareness of human rights** and fundamental freedoms among the general public to JPs delivered during the evaluation period. However, the scale of JP activities and associated publicity (particularly linked to JPs with some NGO involvement) suggest contribution to general increase in human rights awareness – particularly in educated

urban circles. (Awareness-raising activities targeted to personnel working in State institutions legal professionals, journalists etc. are discussed under other Indicators in this EQ).

Interviews with journalists and civil society representatives in all case study countries visited report **increased media coverage of human rights** issues (I-341) with a range of Factors including JPs are seen as contributing to this. Media were also used to disseminate advocacy messages in a number of JPs (for instance *Roma I-III* campaign on minority rights, see below.)

Several components of JPs in *Serbia* and *Russia* addressed this indicator to some extent, through providing trainings for journalists and media professionals on their rights and responsibilities. In *Armenia* and *Moldova*, as well, regional JPs aimed to increase the professionalism of media. In *Serbia* two JPs<sup>21</sup> were identified by participants met as having been key to increasing the human rights literacy of journalists at a time when the language and concepts were new to the profession. In general, media coverage of human rights and fundamental freedoms seemed to have increased in pre-accession countries, while in *Armenia* and *Azerbaijan* the case study reports continuing censorship of the media by State authorities, even though some progress have been achieved in the coverage of human rights via new media, especially the internet. In addition, in *Turkey* self-censorship is reported as a factor in media avoiding controversial human rights issues. Raised human rights awareness attributed to JP activities and resulting in publications is reported by various interlocutors among specific JP target groups, CSO participants in *Peer-to-Peer I* and *II* (in *Turkey* and *Serbia*), journalists in media-related JPs (*Serbia*) etc. But absent baselines and post JP assessment it remains difficult to quantify the scale of this or distinguish impact of JP activities from media coverage of ECtHR decisions or CoE activities generally.

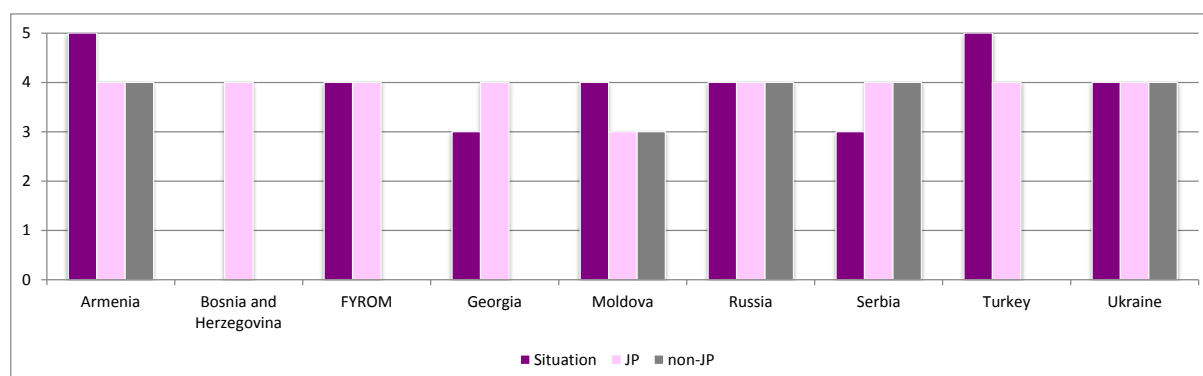
**Awareness-raising campaigns** (I-342) have been specifically supported by JPs in *Turkey* (see above), and the Dosta! campaign raising awareness for Roma rights in the Balkans (*Albania, Bosnia and Herzegovina, Montenegro, Serbia, and FYROM*). This campaign was later extended to *Ukraine* and *Moldova* through another JP, although in *Moldova* only limited implementation was possible. Relevance in *Armenia* and *Moldova* was called into question by interlocutors in the field visits, who expressed the view that Roma problems were only a minor concern. These campaigns are likely to have had some impact in awareness-raising. Indirect human rights awareness-raising is reported in the case of a number of JPs, notably the two regional JPs in support to the non-judicial human rights structures (*Peer-to-Peer I* and *II*) implemented in all case study countries. The offices of Ombudsmen, receiving support through the network, have also engaged in publicity campaigns, e.g., linked to International Human Rights Day, and more generally promote human rights awareness as part of their mandate.

In all the desk study countries the **number of complaints filed with the office of Ombudsman** (I-343) increased over the evaluation period. This could be interpreted as a positive sign of increased awareness in the general public of their rights or popular trust in ombudsmen's authority, but equally it may represent an increase in human rights violations or lack of confidence in /access to courts etc. Generally these trends require in-depth analysis in order to identify relevant programme support. In *Armenia*, the Ombudsman's Office expressed particular satisfaction that the number of complaints settled had increased. See further support provided to strengthen the capacities of ombudsmen offices at I-324.

The EUD survey answers (presented below in Figure 12) show that the JPs related to awareness raising of the general public are considered by the EUDs to have the highest impact compared to all other topics covered in this EQ on Human Rights. Total of eight EUDs assessed the impacts of JPs in this area as high (*Armenia, Bosnia and Herzegovina, FYROM, Georgia, Russia, Serbia, Turkey* and *Ukraine*), and four of them had the same view on the impacts of non-JP cooperation as well (*Armenia, Russia, Serbia* and *Ukraine*). *Armenia* and *Turkey* report significant improvements in the public awareness of human rights over the evaluation period.

<sup>21</sup> Media in Serbia 2001 – 2002 and Support to promote freedom of expression and information and freedom of media in accordance with CoE/EU standards 2006 – 2009.

Figure 12: EUD survey results: Impacts in Increased awareness of human rights and fundamental freedoms



Scales			
Change in situation		Impacts of JP and non-JP cooperation	
Significant improvements	5	Very high extent	5
Some improvements	4	High extent	4
No change	3	Some extent	3
Some deterioration	2	Low extent	2
Significant deterioration	1	Very low extent	1
Do not know, Not applicable, No answer	0	Do not know, Not applicable, No answer	0
Note: Countries that provided no information for impacts in both JP and non-JP cooperation under this JC are not shown			
Source: EUD survey			

### 3.4.1 I-341 Increased media coverage on questions relating to human rights and fundamental freedoms

A difficulty encountered in addressing this Indicator is how to systematically measure media coverage. In the absence of a rigorous analysis of print and broadcast media content, internet website hits, etc., conclusions must be general and qualified.

- In *Armenia* and *Azerbaijan* the media is still heavily controlled by the state, meaning that the discussion of human rights related issues is limited, especially in media with the widest reach to the general public – newspapers, TV and radio. However, in both countries, coverage of human rights and fundamental freedoms expanded over the evaluation period with growth of the internet and the multiplication of NGO websites, and greater use of social media etc. In both countries, the CoE provided expertise on the regulatory framework (including public procurement and laws on public broadcasting). In Armenia, there was a divergence between media regulatory advice provided by the CoE and OSCE, with media rights organisations strongly preferring the framework suggested by OSCE. In both countries, training and awareness-raising were provided to media managers (including representatives of public authorities) and journalists in order to be more in line with European standards and ensure the freedom of press. This aspect of lifting legal and practical barriers to free and independent media is discussed in detail in I-612. Support was also given to media with respect to election coverage, as discussed in I-625. In *Moldova*, trends in freedom of expression and the volume and quality of investigative journalism were reported during the field visit to be generally positive.

The picture is mixed when looking at the pre-accession countries where the degree of independence in media is generally much higher.

- In *Turkey*, there are known problems of media freedom. The Constitution provides for freedom of speech and of the press; however, the government continued to limit these freedoms in significant numbers of cases. The EC stated in its November 2011 progress report that the law does not sufficiently guarantee freedom of expression and noted as particular concerns the high number of cases initiated against journalists, undue political pressure on the media, legal uncertainties, and frequent Web site bans. In June 2011, the OSCE / ODIHR criticised the legal framework for creating uncertainty and scope for arbitrary interpretation, constraining political campaigning and threatening freedom of expression more broadly. English language me-

dia such as Today's Zaman, routinely publish human rights related news and profiles but a more in depth review is required to assess the degree or accuracy of human rights coverage by media generally. Field visit interlocutors suggest that there is widened human rights debate aided by the media with on-going contentious issues at least now being discussed. In this context the CoE Human Rights Commissioner's 2011 report observed that "*the media landscape in Turkey, which is dominated by large conglomerations, raises certain concerns about editorial independence of newspapers and broadcasting media.*" He characterised the situation regarding freedom of expression and media freedom as "particularly worrying." Access to justice issues (e.g., the length of proceedings and pre-trial detentions) contribute to self-censorship.

Increasing human rights awareness of central and municipal level institutions (Governors, Human Rights Boards etc.) has been a central element of some earlier JPs at a time when use of human rights concepts and language was in its infancy in Turkey. JP reports highlight that the creation of space for human rights debate may have been a key result. While all JPs have some awareness-raising element to them, specific and extensive awareness-raising featured in the JP "*Initiative with Turkey to enhance the ability of the Turkish authorities to implement the National Programme for the adoption of the Community acquis (NPAA)*" (2002-2004) component "to increase awareness and understanding of human rights among the public at large." This JP is identified by participants met in the course of the field visit as being important for its reach outside of the main cities and its use of popular media. The 18 month human rights awareness campaign involved an array of outputs, ranging from a Turkish pocket version of the ECHR, to "Let's know our rights" posters, leaflets and TV programme on human rights issues for 10 December, TV spots on issues such as freedom of expression, torture, equality between women and men, freedom of assembly, round-tables for NGOs as well as public officials in the provinces. While no baseline was prepared or impact assessment undertaken, the Human Rights Presidency of the Prime Minister's Office links this (and the JP *Support to the implementation of human rights reforms 2006-07*) to an increase in complaints it receives (which is itself taken as an indicator of increased human rights awareness); However, as an illustration of the constraints faced in Turkey, the final project report noted that it was "not possible to make a TV programme on human rights issues in Turkey" with a well-known Turkish director willing to take on the project if given an assurance of complete editorial freedom – something deemed "impossible to provide, given the close co-operation between the Project and the Turkish authorities." Instead a TV programme was made in Strasbourg with the involvement of the Project Team and a Turkish broadcast journalist. Overall the report notes that relations with the press were consistently been very good, however, the report does not go beyond assessing effectiveness, making it difficult to assess impact in terms of changed attitudes, practices, etc.

- The media in *FYROM* have been accused of fuelling racism and diversity problems rather than positively covering human rights and fundamental freedoms. The ECRI report 2010 noted that the media, which is divided along ethnic lines, reported events in a very different manner depending on their ethnic bias, a situation which tended to foster intolerance and mistrust between communities. Some 60 incidents of ethnic hostility in the media have been noted by the "journalists' council of honour" over the last 3-4 years and civil society representatives point out that the media propagate stereotypes concerning Roma, women and LGBT persons. The dividing line is primarily between media and news published and broadcast in Macedonian and those in Albanian. The fact that the state is a major client of the media has apparently permitted successive governments to favour those media outlets deemed to be pro-government. In July 2011 Amnesty International criticised the Macedonian authorities for interfering with media freedom in closing down a number of newspapers ostensibly due to unpaid taxes seen as part of a systemic assault on media critical of the government. There were no CoE-EU joint activities directly related to media in *FYROM*.
- In *Russia*, some JP components aimed to raise awareness on human rights and European standards in human rights protection. One objective of the JP "*North-West Russia/Kaliningrad*" (2003-2006) was to raise the social role of the media in public debate and the democratic process, and to improve quality of the press, notably via effective self-regulatory mechanisms. Around 60 media professionals, journalists' trainers and members of the Central Election Commission improved their professional skills and learned more about CoE standards in the field of freedom of expression and information, media coverage of elections access to official information, and newsroom management. No information on results is available. The on-going JP *Minorities in Russia: Developing Culture, Language, Media and Civil Society* (2009-2012) is also partly devoted to media with respect to promoting the rights of Russia's ethnic and na-



tional minorities and better recognition of their specific integrity. No assessment of results is yet available.

However, despite these JPs no progress in this area was made. Over the evaluation period, progressively less and less coverage was given to questions relating to human rights and fundamental freedoms. One illustrative example is that only the first four ECtHR judgements against Russia were published in the official newspaper *Rossiyskaya gazeta*. No official publications of violations established by the ECtHR were given to other 1,100 judgments against Russia. There were some notable exceptions, for example, issues such as the draft law on selective execution of the ECtHR judgements by Head of the Upper House of the Russian Federal Assembly Troshev were discussed widely even in the official press. The growth of the internet was a force for encouraging debate, each significant ECtHR judgment was followed some discussion in the Internet media. But this is becoming rarer than in the beginning of 2000s, and the ownership of major websites became increasingly concentrated in the hands of business interests aligned with the ruling party.

In *Serbia*, the JP *Support to promote freedom of expression and information, and freedom of the media* (2006-2008), targeted media representatives and delivered, through a total of 16 seminars, workshops, awareness raising events, and study visits, training on CoE standards on freedom of expression and information, and the right to privacy (Articles 10 and 8 ECHR, respectively). The CoE's end-of-project report states that the activities had been very well received by participants; according to the report, for many participants, this was the first time that they had participated in training on ECHR issues. The end-of-project report acknowledged that it was too early to say whether the newly acquired knowledge would be applied in practice. The Serbia field visit saw examples of JPs launched with media events as a means of increasing public awareness of the issues involved, e.g. The JP on search, seizure and confiscation of proceeds from crime.

The country case studies have presented some examples of media coverage of human rights, for instance wide coverage in *Bosnia and Herzegovina* of annual press conferences by BiH Ombudsmen, and media coverage of intense debate in *Serbia* regarding the anti-discrimination law in 2008. In addition, informal and "fringe" media outlets, notably the internet, have widened the availability of human rights information (though internet censorship in some countries, such as *Turkey*, remains an issue, as does concentration of ownership of major sites in *Russia*). The internet in *Armenia* has provide an outlet for independent opinion, but it has also hosted a proliferation of pro-Government web sites with obscure ownership. In some countries tight control of the mainstream media by the state remains (as documented in desk studies on *Armenia* and *Azerbaijan*), affecting the coverage of human rights issues, but also the fairness of the electoral process, as discussed in I-625. In addition, as documented in the case of *Turkey*, self-censorship is likely to be a factor incentivising media to avoid controversial human rights issues or critical human rights coverage. Another source of concern reported from the *FYROM* desk study is media coverage which represents a negative human rights factor being accused of stoking inter-ethnic discontent and promoting stereotypes of minority groups.

The extent to which the JPs have contributed to greater media coverage of human rights (beyond documented coverage of JP activities themselves) is largely speculative in the absence of systematic measurement of impact in this context. Even in the case of *Turkey* where a JP had the most specific focus on media coverage of human rights, the programme reports do not make an attempt to monitor the results of the JP activities in increased media coverage of human rights.

Issues concerning the barriers to free and independent media are discussed in I-612. Media role in electoral process is discussed in I-625.

### 3.4.2 I-342 Awareness-raising campaigns undertaken

In three of the desk study countries (*FYROM*, *Moldova* and *Turkey*), country JPs have specifically supported awareness-raising campaigns. The regional JPs *Roma III – Advancing equality, tolerance and peace: Equal rights and treatment for Roma* (implemented in *Albania*, *Bosnia and Herzegovina*, *Croatia*, *FYROM*, *Montenegro* and *Serbia* (2005-2008), and *Enhancing the domestic capacity to devise, implement, monitor and communicate on the national Roma related policies, and fighting negative stereotyping faced by Roma people* (implemented in *Ukraine* and *Moldova* 2008-2009) supported awareness raising campaigns to fight discrimination and stereotyping of Roma. More detail on the Dosta! campaign is given in the following box.



**Box 6:** *Dosta! campaign to fight prejudice against Roma population*

**Dosta!**, a Romani word meaning "enough", is a Council of Europe awareness raising campaign which aims to bring non-Roma closer to Roma citizens by breaking down the barriers caused by prejudices and stereotypes.

The Dosta! campaign started as part of a wider CoE-EC Joint Programme "Equal Rights and Treatment for Roma in South Eastern Europe" and was implemented in Albania, Bosnia and Herzegovina, Montenegro, the Republic of Serbia, and FYROM, during 2006 and 2007. Launched as a regional campaign, "Dosta!" raised the interest of other CoE Member States. Consequently, in 2008-2009, it was launched in Ukraine and Moldova, as well as opened to partnerships in other CoE member States. Thus, Italy, Romania, Croatia, Slovenia joined the campaign in 2008, followed by Latvia in 2009 and Bulgaria and France in 2010.

Dosta! was supported by the following JPs:

*Advancing equality, tolerance and peace: Equal rights and treatment for Roma (Roma III) (2005-2008)*  
Implemented in *Albania, Bosnia and Herzegovina, Montenegro, Serbia and FYROM.*

One of the project objectives was to "ensure transparency and visibility of governmental action through improved communication channels and to promote a better image of Roma through an awareness-raising campaign and a range of activities or through the support of projects aimed at improving intercultural dialogue and inter-ethnic understanding."

The Dosta! campaign was launched in the target countries, through series of seminars, trainings, press conferences and promotional events. Large number of promotional materials was also produced, including leaflets, posters, audiovisual material and media pack. With respect to results, the final report notes: "*The preparation of the Dosta! campaign has strongly contributed to the visibility of both partner organisations; furthermore, it has fostered cooperation with other CoE bodies and it has contributed to the collection of audio-visual material on Roma that can be easily used by both partners organisations to support their work in favour of Roma. The cooperation with actors at the local level has also sensitively increased. The campaign (and therefore the partner institutions) has been mentioned several times in newspapers and other media.*" No assessment of results in terms of increased awareness or changes of attitudes of majority population has been found.

*Enhancing the domestic capacity to devise, implement, monitor and communicate on the national Roma related policies, and fighting negative stereotyping faced by Roma people (2008-2009)*  
Implemented in *Moldova and Ukraine.*

One of the JP objectives was to "promote a better image of Roma through an awareness-raising campaign and activities aimed at improving intercultural dialogue and inter-ethnic understanding and combating prejudices and negative stereotypes".

Activities implemented included i) translation and adaptation of Dosta! Campaign's promotional materials, including the revamping of the campaign's website; ii) implementation of the Dosta! Campaign and iii) organisation of a set of media training sessions on ethical and stereotype-free reporting with respect to Roma.

However, in Moldova, the campaign activities under this JP had to be cancelled after unfavourable stand of the Moldovan Bureau for Inter-Ethnic Relations (BRI), which claimed the campaign privileged the Roma in particular in comparison to other minorities in the country, and that more pro-active policies in favour of this minority group were not justified because the discrimination they face was not really specific to them. This position from the Moldovan authorities was questioned by the European Commission against Racism and Intolerance (ECRI) and the Advisory Committee of the Framework Convention for the Protection of National Minorities as both called upon the Moldovan Government in their recent reports to recognise discriminatory practices, affecting in particular the Roma community. *As a consequence, no Dosta! specific activities were organised in Moldova.* The Council of Europe ensured that Dosta! material translated into Moldovan/Romanian was distributed to the participants at all seminars and training sessions organised in Moldova under this project. Some Moldovan NGOs also promoted the campaign in their activities or brochures.

The BRI – Moldova did not oppose the organisation of the media training session addressing discrimination towards Roma in the media, and training sessions for journalists were organised in both Ukraine and Moldova.

No assessment of results in terms of increased awareness or changes of attitudes of majority population has been found.

Source: JP final reports, and CoE Roma website<sup>22</sup>

- In FYROM, ECRI noted in its 2010 Report the low awareness among the general public of issues of intolerance and discrimination. The authorities mentioned a public awareness-raising campaign called "Enhancing respect and tolerance within the population" which was run in the media in 2008. The civil society representatives whom the ECRI delegation met during the contact visit reported that this initiative had gone unnoticed and that awareness-raising measures were still needed. A specific area where awareness was been raised is that of trafficking in human beings. Regarding JPs implemented, reported positive feedback from *Peer to Peer* and *Roma* projects in CoE reports suggests awareness raised by participants. Similarly

<sup>22</sup> [http://www.coe.int/T/DG3/Romatravellers/dosta\\_en.asp](http://www.coe.int/T/DG3/Romatravellers/dosta_en.asp)

the *CARDS - South East Europe - Police and Economic Crime* project produced an extensive array of studies and manuals in Macedonian on a range of policing topics. However, without a knowledge baseline established at commencement of awareness raising activities it is difficult to assess the degree of change or to make concrete statements regarding attribution of change to project activities

- Wider awareness-raising/education on human rights is commonly a role taken on by the State (it is a State legal obligation under human rights law) through institutions such as a NHRI – which *Turkey* currently lacks. NGOs and other civil society organizations are active in *Turkey* on raising awareness. This means, inter alia, that awareness raising efforts tend to be tightly focused on specific issues of importance to NGOs. A number of JPs involved awareness-raising elements among justice and security sector personnel and the public at large (via cinema and other media), production of posters leaflets etc. As outlined above (I-341) the JP *Initiative with Turkey to enhance the ability of the Turkish authorities to implement the National Programme for the adoption of the Community acquis (NPAA)* with a specific sub-element (Project II: Human Rights awareness raising campaign). But no baselines were established or activities undertaken to measure actual impact on viewers/readers of participating media.
- In other case study countries, there is less evidence of direct support for awareness raising, but JPs have without doubt made at least some contribution. In *Azerbaijan*, *Armenia*, and *Bosnia and Herzegovina*, the Ombudsman's office, which had received support through *Peer to Peer* and *Peer to Peer II*, engaged in publicity campaigns associated, e.g., with International Human Rights Day. It is difficult to judge the actual impact of such generic interventions.

In summary, in some case study countries there were JPs specifically aimed at awareness raising; in others there were no dedicated JPs but overall, EC-CoE JPs are likely to have contributed to raising awareness of human rights and fundamental freedoms, though reliably assessing actual impact on awareness is impossible in the absence of project planning to do so, e.g. by establishing awareness baselines.

### 3.4.3 I-343 Number of complaints dealt with by the Ombudsmen, both at central and local levels

Support to the institutions of the Ombudsman has been provided in all case study countries, as well as in other non-EU CoE countries, through the two regional JPs supporting the Peer-to-Peer network (see also Indicator I-324 for information on Ombudsmen). Evidence of further assistance to the institution was also found in *Armenia*, *Azerbaijan*, *Russia*, and *Moldova*. For discussion on support provided to the Ombudsman institution, see I-324.

Over the evaluation period, in most case study countries the number of complaints filed with these institutions is growing, and in some cases (notably *Russia*) the actual number of ombudsman offices has also grown over the period. There are invariable ambiguities, but the increase in the number of complaints can probably be interpreted as reflecting both greater public awareness of the authority of ombudsman itself and greater general increase in awareness of human rights. The ambiguity arises, of course, because one factor increasing the number of complaints is the number of abuses.

- In *FYROM*, the 2010 report of the Ombudsman registers an 11% increase of complaints compared with the previous year, attributed to “a greater need for the citizens to be assisted by the Ombudsman.” The CoE Human Rights Commissioner noted in his 2008 Report that the number of complaints to the Ombudsman was increasing, which can be a sign that more people are aware of their rights and are aware of the mechanisms available to them in the event of a breach or violation. However the majority of these cases were described in the Ombudsman's report as “consumer” cases. Despite significant documentation of on-going discrimination along lines of ethnicity, gender, and sexual orientation, see, e.g., Indicator I-332 above), the number of discrimination cases dropped from 20 in 2009 to 16 in 2010. Even assuming that knowledge and capacity were increased by projects such as *Peer-to-Peer*, the October 2011 EC progress report notes that “three new units within the Ombudsman Office remain understaffed, with three employees in each.”
- In *Serbia*, the number of complaints filed with the ombudsman at central level has been increasing every year since 2007, when the first ombudsman assumed office. According to the ombudsman's Annual Report for 2010, the largest proportion of complaints was related to the actions of the administrative decisions made by public bodies. The increase in complaints is viewed by the Office as a positive reflection on public confidence.
- For *Armenia*, the case study reports that the Office of the Human Rights Defender (Ombudsman) registers an increasing number of cases. According to the 2009 EC Progress Report, the office of the Ombudsman has been strengthened and the independence and engagement of

the office have increased, leading to with a growing number of complaints and increased credibility. One reason for the improvement is the Office's activities in monitoring trials that took place following the election disturbances of March 1, 2008. The President has directed that all legislation raising human rights concerns should be reviewed by the Ombudsman. As confirmed by the field visit, NGOs continue to criticise that the Ombudsman's Office is not independent of Government (see Indicator I-324 above). However, communication between the Office and NGOs is good; the NGOs have been "partnered" with the Office in inspecting conditions of detention, and there are signs of unease in the presidential administration with the energy of the Ombudsman. While the number of complaints is increasing, more important, the number of complaints resolved has increased.

- In *Azerbaijan*, the Office of the Human Rights Defender is well known and had, by 2007 according to the Commissioner for Human Rights' report, received over 30 000 complaints. According to the 2010 Annual Report, complaints are now running at approximately 10,000 per year.<sup>23</sup> The Ombudsman ascribed the increased number of complaints as evidence of growing confidence in the office.
- In *Moldova*, according to the annual reports of the Centre for Human Rights, the complaints made to the Ombudsman have also increased over the period, with 1,215 complaints filed in 2003 and 1,732 in 2010. However, the trend has not been linear, with e.g. year 2006 reporting 1,913 complaints made. In addition, approximately 40% of complaints in 2010 came from the capital (Chisinau) municipality, while the residents of the breakaway region of Transnistria filed only 23 complaints. The report explains this "*both by the lack of trust of citizens that the authorities from Chisinau shall resolve the problems existent in this region, where the laws of the Republic of Moldova are not enforceable and by the fear of being persecuted for this by the self-proclaimed authorities in Tiraspol*". The field visit suggested that NGOs have only limited faith in the independence of the Ombudsman's Office.
- In *Russia*, according to the Annual Report of the Russian Federal Ombudsman for 2009 the number of complaints in 2009 increased by 16.2% (32,043) in comparison with 2008. Annual Report of the Russian Federal Ombudsman for 2007 informs about 28,617 complaints which is 3,860 complaints less than in 2006 (32,477). Annual reports for 2005 and 2004 report 33,424 and 30,392 complaints respectively. In 2010 the Federal Ombudsman notes the reduction of number of complaints (over 29,000). Analysis of the categories of rights allegedly violated illustrates that the structure of violations repeats and reflects the structural problems found by the ECtHR against Russia (non-effective judicial protection, length of procedure, non-enforcement of national courts decisions, rights violations in criminal procedures, conditions of detention). Regional Ombudsmen statistics illustrate the increasing of number of complaints. Thus, according to Sverdlovsk Regional Ombudsman Reports<sup>24</sup> the number of complaints is increasing gradually (for example, 4,971 complaints to Sverdlovsk Ombudsman in 2009, 5,466 complaints in 2010). This increase could be an indicator of successful work and popularity of ombudsperson institution in Russia.

In summary, most evidence is that the number of complaints filed with the Offices of Ombudsmen on both central and regional levels has been increasing. This could be interpreted as a positive sign of increased awareness in the general public of their rights and of the authority of ombudsmen, even if it is recognised that unambiguous interpretation of this trend would require an in-depth analysis.

### 3.5 JC 3.5 Improved treatment and conditions of detention

The criterion of improved treatment and conditions of detention was assessed through two indicators:

- European standards (mainly defined by the Committee for the Prevention of Torture recommendations and the ECtHR judgments) are increasingly adhered to (I-351);
- Reduced recourse to detention (in particular pre-trial); and reduced duration of deprivation of liberty (I-352).

Significant amount of support over all the desk study countries has been delivered in promotion of the **European standards in treatment and conditions of detention** (I-351) over the evaluation period. This support was of particular relevance in the context of States ratifying the CoE and UN Torture Conventions as well as preparation for establishing NPMs under OPCAT. The activities in country and regional JPs included the provision of legal expertise on regulatory framework (South Caucasus, Mol-

<sup>23</sup> Annual Report 2010, Commissioner for Human Rights (Ombudsman) Azerbaijan

<sup>24</sup> [http://ombudsman.midural.ru/biblioteka/ezhegodnye\\_doklady\\_upolnomochennogo/](http://ombudsman.midural.ru/biblioteka/ezhegodnye_doklady_upolnomochennogo/)

dova, FYROM, Russia), expertise in different aspects of prison management (South Caucasus, Moldova, Bosnia and Herzegovina, Serbia, FYROM, Russia, Turkey), training and awareness-raising campaign for legal professionals, and law enforcement officers and support provided to prison training centres (Azerbaijan, FYROM, Turkey). To a lesser extent detention-related JPs involved human rights NGOs. All CoE countries have been a part of two regional JPs establishing Peer-to-Peer support network of ombudsmen and National Preventive Mechanisms under OPCAT. Nevertheless, while incremental improvements have been reported in various aspects of detention treatment and conditions, the situation of detention treatment and conditions at national level in all the desk study countries remains well below the European treaty standards, whose attainment the programmes were intended to support. This can be ascribed to a lack of awareness/knowledge among key personnel, punitive institutional culture (including a deviance-control approach to criminal and sometimes also civil justice), a lack of/failure to allocate resources necessary to improve detention conditions, and lack of political commitment to address impunity. Lack of political will has been highlighted as a key barrier to project effectiveness, impact and sustainability by ROM reports and other credible sources. While a number of JPs have likely contributed to increased knowledge, (through training study visits, production and translation of relevant materials etc.), and in some cases new laws and structures these efforts did not necessarily translate into changes in legislation, procedures or behaviour.

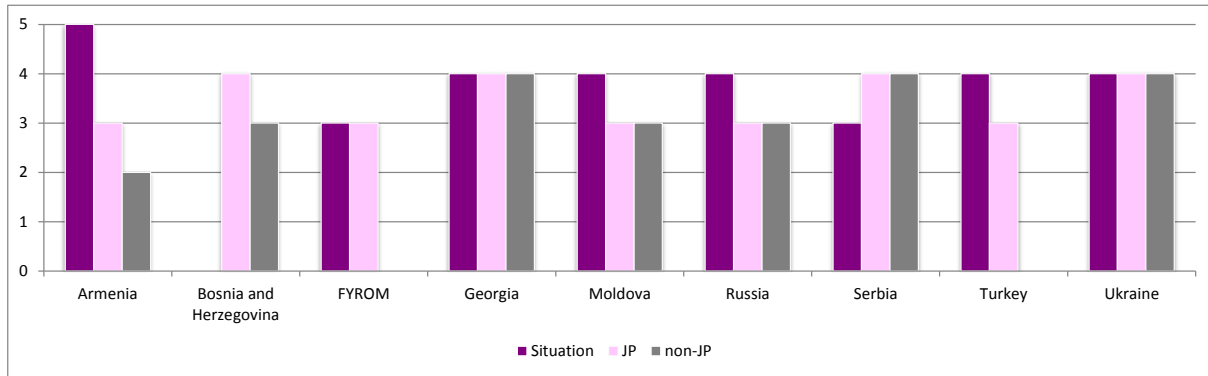
The case studies for *Armenia*, *Azerbaijan*, *Russia* and *Turkey* particularly highlight problems in **excessive detention, including pre-trial** (I-352). Some JPs included elements addressing this particular issue, in addition to general support to penitentiary reforms and prevention of torture. In *Russia*, *Turkey*, *Armenia*, and *Moldova*, JPs addressed recourse to detention or the duration of deprivation of liberty to some extent. Achievements included for instance, adoption and changes in criminal norm and penitentiary to remove certain barriers to parole (*Armenia*), and promotion of alternatives to pre-trial detention (*Moldova*). However, the impact on the overall situation is difficult to attribute. The field visit in Armenia, for example, produced evidence that reforms in regulations regarding pre-trial detention are commonly flouted.

Overall, it is important to note that reservations have been expressed (e.g., case study *FYROM*) regarding the measuring of impact. For instance, the JP *Assistance for the reform of the prison system in FYROM* did not include “any objective measuring of the current application of the European standards.” Instead its conclusions were based on the assessment of the training, whether trainees are likely to have absorbed the learning sufficiently and motivated to apply it and take on the role of trainers as well as whether the drafts of parts of the national strategies would be able to contribute of the overall national strategy on prison reform. While generally positive assessment of training is offered the report notes that in the “absence of a defined framework for follow-up or continued assistance, there is a risk that the sustainability will be lost”. Consequently it is difficult to link project assessments to impacts on the actual country situation.

The results of the EUD survey (presented in Figure 13) show more positive assessment of the impact of JPs than the case study findings support in the detention situation, and to a lesser extent the impact of JPs. Armenia being identified as a case of “significant change” needs to read against the case study findings and reports of key international monitoring bodies (CoE CPT in 2010 and UN CAT in 2012), as well as flatly negative assessments heard in field visit interviews.

The majority of EUDs report some or even significant improvement (*Armenia*) of the situation related to rights and conditions of detention in the country. The Delegations in *Bosnia and Herzegovina*, *Georgia*, *Serbia* and *Ukraine* view the impact of JPs as high, and with the exception of *Bosnia and Herzegovina* these EUDs also rate the impacts of non-JP cooperation as high. Although *Azerbaijan* was targeted under both regional and country JPs, the EUD did not know whether JPs contributed to improved conditions of detention.

Figure 13: EUD survey results: Impacts in Improved treatment and conditions of detention



Scales			
Change in situation		Impacts of JP and non-JP cooperation	
Significant improvements	5	Very high extent	5
Some improvements	4	High extent	4
No change	3	Some extent	3
Some deterioration	2	Low extent	2
Significant deterioration	1	Very low extent	1
Do not know, Not applicable, No answer	0	Do not know, Not applicable, No answer	0
Note: Countries that provided no information for impacts in both JP and non-JP cooperation under this JC are not shown			
Source: EUD survey			

### 3.5.1 I-351 European standards (mainly defined by the Committee for the Prevention of Torture recommendations and the ECtHR judgments) are increasingly adhered to

Significant resources and efforts have been devoted in the EC-CoE cooperation programme to support the promotion of European standards of treatment and conditions of detention, through provision of legal expertise and capacity building to state authorities and others. The following box presents an overview of JPs with focus or components in this area.

#### Box 7: EC-CoE JPs implemented in field of penitentiary and prevention of torture

##### Armenia

*Fostering a culture of Human rights – Ukraine and South Caucasus (2006-2009).*

Under the component of capacity building of the Ombudsman office in Armenia, upon the request of the Human Rights Defender of Armenia (Ombudsman), more emphasis has been put on assistance in relation to the designation of the Armenian Ombudsman institution as a National Preventive Mechanism (NPM) under the Optional Protocol to the Convention Against Torture (OPCAT). Two training events were carried out:

- Workshop on establishing National Preventive Mechanism under the OPCAT, 11-12 December 2007, 30 participants, Yerevan
- Workshop on the monitoring of places of deprivation of liberty, 29-30 January 2008, Yerevan, 15 participants

##### South Caucasus, Moldova, Ukraine

*South Caucasus democratic stability (2002-2004).*

Under this JP, the law on police as well as the provisions of the administrative code on the administrative detention were submitted to the CoE for an expert appraisal in Armenia. Expert meetings were held related to, inter alia, long term imprisonment and commutation, the structure and management of a civilian prison service, pre-trial detention facilities, health care in prison, the management and treatment of long term and life sentence prisoners, inmate work accidents, and the treatment of prisoners who reject food.

*Combating ill-treatment and impunity in South Caucasus, Moldova, and Ukraine (2009-2011):*

The objective of this JP is to develop national capacities for combating torture and ill-treatment by law enforcement agencies and investigative institutions.

The specific objectives of the project included :

- improving the regulatory framework, procedures and mechanisms for investigation of complaints of ill-treatment in line with applicable European standards



- enabling key groups of legal professionals through training, awareness and publication activities to apply these standards in their daily work.

The following activities were implemented (JP Interim report):

- Finalisation, publication and distribution of the country reports highlighting the regulatory framework, as well as structures, procedures and mechanisms aimed at combating ill-treatment and impunity in line with European standards elaborated by the CPT, the ECtHR, the CoE HRC, as well as other monitoring institutions and bodies of the CoE. The reports included a part containing relevant recommendations.
- Extensive training and awareness-raising campaign was carried out. Publication and distribution of training materials on combating ill-treatment and impunity and European standards for the effective investigation of ill-treatment. Key groups of legal professionals, including judges, prosecutors, lawyers, law enforcement officers, human rights NGOs, were trained with the support of the partner institutions on the ECHR and CPT standards, as well as ECtHR case law.
- Training materials were elaborated, published in national languages and distributed to the trainees, including the official opinion of the CoE Commissioner on Human Rights dated 12 March 2009 concerning independent and effective determination of complaints against the police, the country reports, the "Guidelines on European standards for effective investigation of ill-treatment", the brochure on the rights of detainees and obligations of the law enforcement officials.

According to the interim report (2011) the authorities undertook concrete legislative and structural amendments based on the country reports. Regarding the trained professionals, the same report notes that it is not clear yet whether they have been able to apply this knowledge in practice.

The regional (horizontal) ROM report of October 2010 notes:

*"The results achieved so far are of high quality. The interviewed seminar participants highly praised the experts and underlined their satisfaction that the seminars were presented as well by local experts. The Country Reports were produced by eminent experts, who have a good understanding of the regional and national context. Both brochures were produced by an international expert having an excellent knowledge of ill-treatment problematic in the region."*

*"So far achievement of the overall objective is rather low, but greatly differs among beneficiary countries: the tense political situation in Moldova and the recent Presidential elections in Ukraine can jeopardize the project's impact; Armenia and Georgia have already introduced some Country Report recommendations; in Azerbaijan, the legislation on torture prevention will be revised. Yet these are only first steps that Governments are undertaking, without having yet tangible results. Also, these first steps should be followed by implementation strategies, monitoring procedures and involved of the civil society."*

### **Azerbaijan**

*Penitentiary reform (2005-2006)*

Project was aiming at modernising the prison system of Azerbaijan through:

- Contributions to legal reform (Activities included expert comments and recommendations on national legislation, workshops, seminars and study visits for Azerbaijani experts.)
- Improvement of the management of the prison system (Activities included: Expert assessment of prison management, draft strategy for prison management.)
- Support to the Prison training centre (Activities included: Expert assessment of situation and recommendations, IT equipment, training manual)
- Improving system for prisoners' rehabilitation and resettlement. (Activities included: Expert assessment of situation, recommendations)

According to the ROM report of 2006, the *"The project has high political support. This is primarily shown by the Presidential Decree of 17 August 2006, concerning the judicial legal reforms including the reform of the penitentiary system. The Ministry of Justice and its Penitentiary Service have a high sense of ownership of this project. The project is well embedded in local institutional structures. It is quite technical and is to transfer know-how/ technologies to the local side, but this has not started yet and it will be difficult to bring this process to real effects if the project is not extended."*

### **Bosnia and Herzegovina**

*Efficient Prison Management in Bosnia and Herzegovina (2009-2010)*

The JP had as an overall objective to "improve staff management capacity in prisons, promote use of non-custodial sanctions and strengthen the ability to remedy shortcomings and to provide suitable support for prisoners with special needs." An evaluation<sup>25</sup> carried out towards the end of the project in late 2010 by the CoE's Directorate of Internal Oversight finds that the project overall lacked logic, in that it conflated a number of sub-issues, some of which would be deserving of projects in their own rights, but that the project design had been based on a specific request by the EU at the time. The evaluation report points to the lack of political will to reform the issues the project tried to address; the project is reported to having opted, therefore, to work with individuals rather than structures. The report also points out the limits that the CoE had to facilitate necessary legislative change.

<sup>25</sup> Evaluation Report on the Council Of Europe / European Union Joint Programme "Efficient Prison Management in Bosnia and Herzegovina", Council of Europe, Directorate of Internal Oversight, April 2011



### South East Europe

*Development of a reliable and functioning Prison system respecting fundamental rights and standards and enhancing of regional co-operation in the Western Balkans (2007-2008)*

This regional JP, implemented in Albania, Bosnia and Herzegovina, Croatia, FYROM, Montenegro and Serbia, had an overall objective to “enhance regional co-operation and develop a reliable and functioning prison system in the Western Balkans countries, based on the rule of law and respect for fundamental rights and European democratic values and standards.”, which was to be achieved through:

- Development of regional guidelines for harmonised prison strategies
- Reviewing of national laws and regulations.
- Strengthening prison management and operational staff's professionalism by improving their knowledge on European human rights standards
- Contribute to the development and consolidation of systems of governmental and independent inspection mechanisms
- Improve the conditions of imprisonment of vulnerable groups and special high risk prisoners through the development of dedicated programmes
- Optimising conditions for reducing prison overcrowding by reviewing legal provisions promoting alternatives to imprisonment and identifying good practices in the optimisation of space

Activities included assessment visits, expert missions, seminars, training of trainers, pilot cascade training seminars on European human rights standards, preparation of guidelines, round tables, working meetings and study visits. Countries involved were given the opportunity to meet and share their experience.

However, the regional (horizontal) ROM report of July 2007 does not assess the JP favourably, marking the indicators of efficiency, effectiveness, impact prospects and potential sustainability all with a ‘C’ score, suggesting problematic implementation.

### FYROM

*Assistance for the reform of the prison system of FYROM (2007-2008)*

The objective was to “fulfil European standards and international best practices in the field of enforcement of criminal sanctions, juvenile justice, and the management of penitentiary establishments”, through the following expected results:

Outputs of the project included:

- team of national trainers (72) who have been trained on the EPR, the ECHR and its case-law, the CPT standards and procedure and professional standards for operational staff; training manual was produced.
- draft national strategy on rehabilitation programmes;
- a draft national strategy on penitentiary health care;
- legal analysis of the Law on the Execution of Criminal Sanctions and a list of recommendations presented to the national authorities.

The final report of this JP notes that the project design “did not include “any objective measuring of the current application of the European standards.” Instead its conclusions are based on the assessment of the training, whether trainees are likely to have absorbed the learning sufficiently and motivated to apply it and take on the role of trainers as well as whether the drafts of parts of the national strategies would be able to contribute of the overall national strategy on prison reform. From this point of view the report concludes that the JP has achieved its objectives. However, the same report also admits that the prison administration “not only continues to face enormous challenges in respect of material conditions, including capacity/overcrowding, as regards the emotional well-being of its staff and the programmes and other support available to it, but it is noticeable that prison reform and development tends to be given a lower priority.”

### Moldova

*Democracy support programme (2010-2012 on-going)*

Contains a component II with the following objectives:

- The institutional/operational systems for the prevention of ill-treatment, the fight against impunity and effective investigation of complaints are reinforced to better process allegations of ill-treatment in accordance with European and international standards;
- The professional level of police officers and prosecutors is upgraded and their capacity to prevent violations of the ECHR and to conduct special operations such as riot control measures in line with European standards for non-infliction of human losses/injuries is enhanced;

According to the Interim report of December 2011 “It is expected that the implementation of training courses for the vast majority of acting judges, prosecutors and around 500 police officers will contribute to strengthening their knowledge of relevant European and other international standards, as well as to increasing the quality of their day-to-day work. In this regard, a core group of judges, police officers and prosecutors was established and trained to act as national trainers on prevention of torture and ill-treatment, illegal arrests, on procedural rights surrounding police custody, positive obligation to protect detainees, witnesses, on investigation of allegations of ill-treatment.”

### Russia

*Joint Programme to strengthen democratic stability in North Caucasus (2001-2004)*

Included component on the reform of the penitentiary system. Implemented training sessions for staff-members working in direct contact with persons deprived of their liberty in prisons. The evaluation report<sup>26</sup> concludes that the JP “contributed to this process [of reforms of the judiciary and penitentiaries], although its contribution was limited because it tried to cover so much ground. Many interlocutors felt that JPs should devote more attention to police abuse and impunity for such abuses.”

*Russian Federation V – Strengthening the Rule of Law and the protection of HR (2002-2004):*

Component of the JP on penitentiary reform and the fight against tuberculosis in prisons:

Outcomes of the project:

- Elaboration of the strategy and assistance in implementing the penitentiary reform in the Russian Federation in order to improve the conditions of detainees and reduce the prison population;
- Elaboration of the guidelines and their implementation with the aim to improve the legal environment for combating TB in prisons;
- Training of the prison staff (about 80 with the multiplying effect on 4 000).

According to the evaluation report<sup>27</sup> “Penitentiary reform was one example of effectiveness. It has acquired high status in the RF, with a presidential commission working on it and a new Federal Service dedicated to the execution of sentences. Under JP Russia V, DGII helped review the remand prison regulations for their compatibility with international standards and a law on the amendments was adopted in 2003. DGI managed a long term Steering Group on Prison Reform as a planning forum with penitentiary staff, through which the Director of the Federal Service could set an agenda for reforms to be discussed. Feeding into this was a prison-partnership scheme, that gave insights into how ECHR principles might be applied in practice. ... Least effective, perhaps, was the CoE's programme with WHO to combat TB in prisons.”

**Turkey***Judicial Modernisation and Penal Reform (2004-2007):*

This JP aimed to improve the functioning and efficiency of the judiciary and the prison system, according to European Standards.

Implemented activities included (final report):

- The preparation of curricula for the pre-service and promotion trainings as well as for the in-service training and the adoption of training tools was an important achievement of this sub-component. All training centres were expected to implement the same curricula and to use the same training tools. This was an important step forward in the implementation of a training strategy. Furthermore, all trainers of the training centres were intensively trained in a way which will have an impact on their everyday work.
- The development of two model prisons, the introduction of offending behaviour rehabilitation programmes into Turkish prisons and the dissemination of clear management guidelines taking into consideration international standards.
- Handbooks and manuals – Prison management manual, Prison Doctors handbook, Prison Doctors handbook, Handbook for Prisoners, European Prison Rules

According to the MoJ the achievements of this project is credited with a decrease in disciplinary offences, the reduction in the need for extra security measures and the improvement of prison administration.

*Dissemination of Model Prison Practices and Promotion of Prison reform in Turkey (2009-2011)*

The purpose of this project is to assist the authorities in developing the prison system, based on the rule of law and respect for fundamental rights and the European standards. Activities involved the development and publication of training materials, expert meetings, project management, needs assessment, study visits, training seminars, workshops, training of trainers and cascade training. This programme was designed to disseminate the results of the previous JMPR (above) to 90 medium and high security prisons throughout Turkey. In addition, activities include ToT sessions on the New Codes, legislation and the 2006 European Prison Rules (EPR); completion of training of the DG staff on the New Penal Enforcement System and legislation, the EPR and the CPT recommendations; completion of the ToT on prison management, leadership and operation standards and cascade training sessions reaching 1000 prison governors through 32 training sessions.

So far achievements highlighted include completion of the needs assessment report on training; development of training materials and tools. These include two training manuals on the European Prison Rules and on Good Prison Management, Leadership and Operational Standards Manuals have been developed as well as Suicide Prevention Programme developed. The Prison Management Manual has been updated. The project scoring report for October 2010 notes that evaluation by participants rated the content of each project activity as “highly satisfactory”. Most participants expressed the view that knowledge gained would be useful in their daily work. In particular it is noted that seminars helped establish a platform of discussion among different actors in the penitentiary system and records active participation of target groups in the preparation of Manuals.

<sup>26</sup> Evaluation of the Russia EC/CoE Joint programmes, Human European Consultancy, Final report, December 2005

<sup>27</sup> Evaluation of the Russia EC/CoE Joint programmes, Human European Consultancy, Final report, December 2005

**All countries**

*Peer-to-Peer: Setting up an active network of independent non-judicial Human Rights Structures in the Council of Europe member States which are not members of the European Union (2008-2009)*

*Peer-to-Peer II - Promoting national non-judicial mechanisms for the protection of human rights and especially the prevention of torture (2010-2012 on-going)*

For all case study countries, the Peer-to-Peer I project aimed to contribute to avoiding HR violations through building up the competencies of independent National Human Rights Structures (NHRSS) and promoting their joint initiatives (networking, best practice sharing). Drawing on the final report, some 50 NHRSS staff from the 14 targeted countries participated in the network, with over 200 of their staff participating in the workshops in total. Over ten international workshops were held, covering topics ranging from application of OPCAT to persons deprived of liberty, the handling of complaints against the police, the human rights of irregular migrants, the human rights of persons with disabilities, human rights of the elderly, and others. According to the final report, cooperation between NHRSS developed rapidly, and cooperation between the members of the Peer-to-Peer Network and the CoE was intensified.

In the follow-up Peer-to-Peer II, in addition to continuation of organising thematic workshops, a second component was added at the request of the participants – specific technical cooperation of NHRSS who have been entrusted with the task of serving as National Preventative Mechanism against Torture (NPM) in their countries.

*Source: JP final reports, ROM reports, Evaluation reports*

The detention situation in many countries remains far from ideal, even though incremental progress has been observed in some cases:

- The Government of *Armenia* has ratified the OPCAT though the definition of torture in the Criminal Code does not reflect that in the UN Torture Convention, and the CoE has provided expertise through JPs on how to put in place a NPM. At least three JPs from which Armenia benefitted – *South Caucasus democratic stability (2002-2004)*, *Fostering a culture of human rights – Ukraine and South Caucasus (2006-2009)*, *Combating ill-treatment and impunity in South Caucasus, Moldova, and Ukraine (2009-2011)* consisted in large part or entirely of training and capacity building to combat torture and ill-treatment in detention. On the recommendation of the CoE, responsibility for the prison system was transferred from the Ministry of Internal Affairs to the Ministry of Justice in 2003. In his 2007 report the Human Rights Commissioner commented that important steps towards compliance were being taken, but that many guidelines were not followed and material conditions of detention were poor. He described ill-treatment by the police as widespread and “quasi-normal.” The risks of punishment run by those inflicting such treatment are regarded as low. According to the Ombudsman and civil society organizations conditions of detention continue to remain poor and there are many incidents of ill-treatment in the police with practically no effective investigations and conviction of those responsible for such treatment. More positively, he reported that medical facilities for prisoners appeared adequate (less so for psychiatric patients) and that conditions for women and children in detention were satisfactory. In the wake of the events of March 1-2, 2008, protocols on detention by the police were not adhered to, especially as regards time in police detention without charge. Virtually all persons arrested, with the exception of “high-level” detainees not immediately arrested, complained of physical ill-treatment. These and other shortcomings indicated that a number of recommendations made relating to the CPT in 2006 had not been acted on. The delegation of the CPT generally found that with some exceptions (e.g., failure to provide bedding, inadequate exercise) the conditions of detention for those detained in the context of the March 1, 2008 disturbances had been adequate, however, Human Rights Watch reported significant instances of abuse. It would be difficult to say, based on this evidence, that the JPs implemented in Armenia had the desired impacts. The 2010 ROM report on the latter project was negative and field visit discussions saw the Ombudsman and civil society organizations highlight conditions of detention as continuing to remain poor, reporting many incidents of ill-treatment in the police with practically no effective investigation and conviction of those responsible for such treatment.
- In *Azerbaijan*, as reported by the Commissioner for Human Rights in 2010, the ECtHR found violations of Article 3 (prohibition of torture) in three of its judgments. Also reported by the Commissioner was that the Ombudsperson for Human Rights visited places of detention regularly, but was not permitted to monitor all State agencies. The Public Committee, a group of NGO representatives established in 2006 to monitor places of detention, was reported to be unable to conduct a visit to a prison without prior notification and had not been granted access to pre-trial detention centres. Representatives of NGOs indicated to the Commissioner that, since April 2009, they had not been able to visit prisoners. In addition to the South Caucasus projects, Azerbaijan dedicated from a country level JP *Penitentiary reform* which, as reported in the Box above, was favourably reviewed by the 2006 ROM.
- For *Bosnia and Herzegovina*, in 2009, the BiH Human Rights Ombudsmen institution opened a Department for the Protection of the Rights of Prisoners/Detainees. A “Special Report on the

Situation of Human Rights in the Institutions for Execution of Criminal Sanctions in BiH”, issued in 2009, highlighted positive developments concerning investment in the physical infrastructure of many prisons, and thereby, in improvement of the conditions of detention. The report also highlighted improvement in prison conditions for juvenile offenders in the RS. The latter remained a problem in the Federation BiH. The evaluation of the country-level EC-CoE JP *Support to efficient prison management (2008-2010)* states that the CoE has been engaged in prison reform in BiH since 1998. The project evaluation found that it lacked overall logic and conflated a number of issues each of which could have called for a project in itself, but that the project represented a response to a specific EC request. Government will to change institutions was judged to be weak, as a result of which the project had worked with individuals rather than institutions. Specifically in the case of torture, the EC's “Bosnia and Herzegovina 2010 Progress Report” states the following: “*The Council of Europe Committee on the Prevention of Torture (CPT) found several deficiencies in the treatment of detainees and convicted criminals. Areas of concern included ill-treatment, intimidation and poor health services, particularly for vulnerable prisoners. Bosnia and Herzegovina has still not appointed a representative to the CPT. Very little was done to improve the procedures for investigating cases of alleged torture and ill-treatment.*”

- FYROM is a party to the CoE Torture Convention UN CAT and ratified the Optional Protocol to CAT in February 2009. In its 2007 visit, the CoE CPT reported serious concerns covering a gamut of areas including ill-treatment by prison officers of inmates, abusive use of means of restraint, deplorable material conditions, lack of adequate medical care, corruption, poor management, and absence of prison supervision. In 2008 it reported “*few visible improvements were observed in the prisons ... on the contrary, in general, the situation has continued to deteriorate.*” In reporting on his 2008 visit, the Commissioner for Human Rights noted that government had adopted a prison reform plan but there had not been much progress. The Ombudsman (the designated OPCAT NPM) has also concluded that the system does not function in accordance with international standards and that premises are substandard and overcrowded. The EC's 2010 progress report, while registering some progress, noted dire conditions in prisons, police stations, psychiatric institutions, and juvenile centres, and linked this to insufficient supervision and inspection services as well as the politicisation of appointments to prison management positions. A number of EC-CoE JPs were active in FYROM. The multi-country project *CARDS – Development of a reliable and functioning prison system respecting fundamental rights and standards and enhancing regional cooperation in Western Balkans (2007-2008)*, according to the July 2007 ROM report, implemented few activities in FYROM. *Assistance for the reform of the prison system of FYROM (2007-2008)* aimed to disseminate European standards and best practice, but as the final report noted, there was no objective measuring the end-of-project application of European standards. This report is typical of many CoE reports in that the project is assessed on the basis of training delivered, the likely increase on trainee's awareness and capacity, and contributions to the draft national strategy – rather than on actual impact in terms of changes to treatment and conditions. Continuing interest is demonstrated by a JP begun after the evaluation period, *Support of the probation of Macedonia's prison system (2011 – on going)* designed to ameliorate prison crowding by promoting non-custodial sanctions.
- For *Russia*, despite some improvements, the ECtHR continues to issue adverse judgments concerning conditions of detention and problems of inhuman and degrading treatment. PACE in its Resolution 1787 (2011) maintains: “*continuing efforts to solve the major issues of poor conditions and overcrowding in remand centres, ill-treatment in police custody, excessive length of detention on remand and several procedural deficiencies related to the latter, are insufficient and must be increased in order to bring Russian practice into line with Convention requirements*”. Fact-finding missions and visits to detention facilities initiated by the CoE and a wide range of actions in the framework of several components of JPs have contributed to the training of the police and prosecutors, dissemination of guidelines on the CoE standards of treatment and conditions of the detention. The slow progress in this sphere can be explained by the lack of political will and the deeply ingrained deviance-control mentality of the Russian legal and security establishments. *Russian Federation V – Strengthening the rule of law and the protection of human rights (2002-2004)* contained a component on prison reform to improve conditions and reduce overcrowding, as well as a specific component to improve the legal environment to combat TB in prisons. As reported in the country case study, the project final report gives a very positive assessment of results, but no independent corroboration has been found.
- The 2010 Annual Report by the Ombudsman of *Serbia* points to the fact that at the level of governmental policies and strategies, there is a willingness to improve the conditions of deten-



tion in Serbian prisons. However, the report also notes that due to insufficient infrastructure and overcrowding, conditions are inconsistent with European human rights standards. The report explicitly expresses concern regarding little to no improvement in conditions of detention over time. Another concern voiced in the report is the trend, in Serbia, towards stricter criminal sanctions as opposed to alternative sanctions, and an increase, therefore, in the possibility of recidivism. As in the case of Russia, part of the problem with prison conditions in Serbia is the failure to comply with ECtHR judgments in a timely fashion. Specifically in the case of torture, the EC's "Serbia 2010 Progress Report" found little progress in the prevention of torture, ill-treatment and the fight against impunity. It expressed concern regarding police detention procedures and the lack of internal and independent external oversight mechanisms. The Deputy Ombudsman in charge of the protection of persons deprived of their liberty was, as noted above, described as operational but still not fully effective. The national requirement to set up a NPM for OPCAT had not been fulfilled. The only JP active in Serbia appears to have been the regional CARDS programme *Development of a reliable and functioning police system based on the rule of law and the respect for human rights* (2007-2008). A 2007 ROM report signalled a delay in implementation of planned activities, but no further information is available. The detention context was not reviewed specifically in Serbia field visit but some civil society interlocutors noted a contribution of Peer to Peer II (among a range of interventions by multiple actors) to the establishment of Serbia's NPM.

- Treatment and conditions of detention in *Turkey* have been a fundamental concern for many years and remain so. In its consideration of Turkey's belated report under the UN Torture Convention the CAT Committee in 2010 expressed grave concerns concerning "numerous, ongoing and consistent allegations concerning the use of torture, particularly in unofficial places of detention, including in police vehicles, on the street and outside police stations"<sup>28</sup> Other matters of concern included suspended sentences for law enforcement officials found guilty of ill-treatment, the use of "excessive force" statutory provisions to address what was, under international standards, torture; excessive use of force by law enforcement officers and the use of counter-charges to intimidate persons reporting torture and ill-treatment. The committee also expressed serious concern at reported overcrowding in detention facilities and noted "the frank acknowledgment" by the representative of Turkey that the situation is "unacceptable". The country case study cites deeply critical assessments of the U.S. State Department (2010) and Amnesty International (2011). The CPT, however, has issued relatively optimistic views of the trend, while continuing to find the situation unsatisfactory. In reporting on its 2009 visit, the CPT cited a continuing downward trend in the incidence and severity of ill-treatment by law enforcement officers. While highlighting a range of other concerns, the CoE CPT's 2010 visit to Turkey noted that conditions in new detention facilities appear to be improving<sup>29</sup>, with Justice Ministry officials reporting in the course of the evaluation field visit the technical assistance of detention related JPs, *Judicial Modernisation and Penal Reform (2004-2007)* and *Model Prison Practices and Promotion of the Prison Reform in Turkey 2009–2011* (extended to 2012) as a key factor on architectural design of new prisons and guidelines on prison architecture. More generally, Ministry officials attributes changes to these outputs of these JPs such as strengthened training capacity of prison staff training centres and standardized tools, (e.g. a manual for prison governors and a "Prison Doctor's Handbook" for medical staff) and support of short and long term experts. However, it must be kept in mind that the baseline situation at the beginning of the evaluation period was extremely low, and there is still a long way to go to ensure that minimum required standards of detention across the board comply with human rights obligations. As evidence of this, the CAT's November 2010 report continued to express concern about grave violations of human rights. The country case study reports on a large number of JPs, both country-specific and multi-country implemented in Turkey in the area of conditions of detention and prevention of torture and ill-treatment. There JPs are pre-cised in the Box above.
- In *Moldova*, the country field visit suggested that ill-treatment and torture continue to be common in police custody, and that the problem is more serious there than in penitentiaries. Of the many complaints of ill-treatment in police custody brought after the April 2009 disturbances, a large number were dismissed and only re-instated following an adverse ECtHR judgment. None have been decided as of July 2012, leading to widespread belief that police mistreatment is carried out with impunity.

<sup>28</sup>[http://www.unog.ch/80256EDD006B9C2E/%28httpNewsByYear\\_en%29/E10CE048E3ECF630C12577E0005C338B?OpenDocument](http://www.unog.ch/80256EDD006B9C2E/%28httpNewsByYear_en%29/E10CE048E3ECF630C12577E0005C338B?OpenDocument)

<sup>29</sup><http://www.cpt.coe.int/documents/tur/2010-20-inf-eng.htm>

What emerges from the evidence above is a very substantial investment of programme resources in all case study countries, and others as well. While some overall progress is reported the situation in all countries remains well below the European standards to which the countries benefitting are required to comply and whose attainment the programmes were intended to support. Three main reasons can be adduced: the lack of allocated resources in the case of physical conditions of detention, the persistence of a deviance-control institutional culture, and the weakness of political commitment.

The fundamental problem of lack of political will is highlighted in the case study of *FYROM* where three JPs targeted the issues of treatment and conditions of detention and the political commitment at the Ministry of Justice as well as from the Prime Minister helped to improve the penitentiary system of the country. The ROM report (July 2007) of the JP “*Development of a reliable and functioning prison system respecting fundamental rights and standards and enhancing of regional co-operation in the Western Balkans 2007-2008*”) noted that “*while the effectiveness of the project was difficult to assess, a strong will and readiness (from the MoJ) to cooperate indicating that the project should have a positive effect in the future.*” The positive impact of a joint EC-CoE strategy is also highlighted in the EEAS survey: “*Where the objectives of both organisations were aligned significant progress could be made*”, especially regarding the alarming state of prison conditions.

In *Azerbaijan*, the ROM report (2006) for the JP “*Azerbaijan – Penitentiary reform (2005-2006)*” emphasised the high political support and the sense of ownership of the Ministry of Justice and its related penitentiary services as key to success. The Presidential Decree (17/08/2006) on the judicial legal reform and reform of the penitentiary system can be seen as an indirect outcome of this JP. However, the ambiguity of evidence in this area is demonstrated by the fact that the ROM report (2010) for *Combating ill-treatment and impunity in South Caucasus, Moldova, and Ukraine* contradicted this statement by noting that implementation was jeopardized because in practice the political willingness was low. There is a strong reticence to openly speak about ill-treatment and governmental officials met during the ROM monitoring mission denied that ill-treatment and impunity were an issue.

The case study of *BiH* further highlights the problems resulting from a lack of political will for reform related to treatment and conditions of detention. In the case of JP “*Support to efficient prison management*” (2008-2010), the evaluation report points to the lack of political will to reform the issues the project tried to address; the project is reported to having opted, therefore, to work with individuals rather than structures. The report also points out the limitations faced by the CoE in facilitating necessary legislative change.

In summary, despite considerable efforts of a number of JPs, their impact at the national level, e.g. through a change in legislation and more specifically improvement of treatment and behaviour cannot easily be assessed. All reports are that, even where improvements have been registered, European standards regarding conditions of detention, torture, and ill-treatment are still not being adhered to.

### 3.5.2 I-352 Reduced recourse to detention (in particular pre-trial); and reduced duration of deprivation of liberty

Some support was specifically dedicated to measures aimed at reducing pre-trial detention and reducing the duration of deprivation of liberty, in addition to interventions described in I-351 above.

- The criminal justice system in *Armenia* continues to be almost entirely oriented towards deprivation of liberty. Use of community service as an alternative to detention is underdeveloped in Armenia<sup>30</sup>. Application of the American Bar Association’s Detention Procedure Assessment Tool suggested that there is an overwhelming propensity towards incarceration, that the parole system is non-transparent and non-impartial<sup>31</sup>. Early release is officially sanctioned, but decisions are taken by a Commission that is regarded as politically motivated<sup>32</sup>. In Armenia, in the framework of the JP *South Caucasus democratic stability (2002-2004)* in the area of criminal norms and penitentiary there were adoptions and changes in four acts and two drafts sent to the National Assembly. Among the accomplishments was the removal of certain barriers to parole and while it was under consideration by the European Court of Human Rights, the Court of Cassation eliminated administrative detention. The new Criminal Procedure Code is reported in field visit meetings as including some positive developments related to pre-trial detention including the obligation that police must testify at pre-trial hearings in order to justify

<sup>30</sup> See

[http://apps.americanbar.org/rol/news/news/ armenia\\_community\\_service\\_alternative\\_to\\_incarceration\\_0511.shtm](http://apps.americanbar.org/rol/news/news/ armenia_community_service_alternative_to_incarceration_0511.shtm)

<sup>31</sup> See [http://apps.americanbar.org/rol/publications/armenia\\_dpdt\\_final\\_04\\_2010\\_eng.pdf](http://apps.americanbar.org/rol/publications/armenia_dpdt_final_04_2010_eng.pdf)

<sup>32</sup> See Report by the Commissioner for Human Rights Mr. Thomas Hammarberg on his visit to Armenia 7-11 October 2007, CommDH(2008)4



the detention and that a pre-trial hearing must be held within 72 hours. However, it was reported that various strategies are routinely used to extend the period of pre-trial detention.

- On 3 November 2009 the Plenum of the *Azerbaijani* Supreme Court instructed all courts to consider alternatives to pre-trial detention. Since 2000 and the adoption of the new Criminal Procedure Code of Azerbaijan, the power to order pre-trial detention of a person suspected or accused of a crime has been transferred from the Prosecutor General to judges. This is in accordance with European standards. In practice however, judges continue to order the detention of the vast majority of indicted persons with no consideration given to alternatives. The decision of the Plenum of the Supreme Court aimed at changing this practice, but no information is available on its success. No evidence of EC-CoE support on this issue has been found.
- In *Russia*, the first sufficient positive changes of the situation of broaden application of detention and excessive terms of detention in Russia are connected with the ECtHR case *Kalashnikov v. Russia*.: The new Code of Criminal Procedure, which entered into force on 1 July 2002, is reported to have resulted in a large decrease of the number of accused persons detained pending trial due in particular to the transfer of the power to order detention to the courts and the introduction of stricter criteria for allowing pre-trial detention. However, even after these positive changes the ECtHR continued to found violation of article 3 and 5 of the Convention in new cases against Russia, concluding that the general measures were insufficient. JPs' contribution includes many seminars with judges, prosecutors and lawyers enabling them to apply the legal positions of the ECtHR in cases on Article 5 at the national level. Despite strong JP measures providing for changing minds of the representatives of law-enforcement bodies, the structural problem still persists. Further progress in legislative amendments in Criminal Procedural Code in 2009 reducing the application of detention, is the result of efforts to comply with the CoE standards in issues of detention. They require strong judicial control and national practice improvement. The "deviance control" mentality still exerts a strong hold in Russia. The recent (and admittedly long-post evaluation period) Pussy Riot trial, in which President Putin and the Orthodox Church have publicly demanded heavy prison sentences against the members of a rock band for singing anti-Putin songs in proximity to a cathedral, is typical of the mentality.
- One of the criticisms of *Turkish* justice system is the protracted period between arrest and trial leaving many arrestees detained in prisons alongside convicted prisoners in breach of international law norms. The 2010 UN CAT observations on Turkey noted information provided by Turkey of half of its 120,000 prisoners being prisoners on remand and expressed concern at excessively long pre-trial detention and the lack of use of alternative measures. The 2010 EU Accession progress report notes that "The implementation of pre-trial detention is not limited to circumstances where it is strictly necessary in the public interest. This adds to the overcrowding in prisons, where more than half of the inmates await trial. Judges do not make effective use of the probation system." Even with core problems remaining, reduced recourse to detention and the reduction of deprivation of liberty is an area of some progress for *Turkey* to which the JPs (for instance *Training of military judges and prosecutors on human rights issues in Turkey* and *Judicial Modernisation and Penal Reform; Support to Court Management system in Turkey*) are likely to have contributed both in terms of technical capacity as well as political momentum. Both the CoE and UN Committee Against Torture in 2011 and 2010 respectively raised concerns regarding inadequacies of custody registers failing to record those detained or those deprived of their liberty without being formally detained. Further improvements of court structures and management systems and awareness are required to address ongoing delays in cases and to lead to reduced recourse to detention. The February 2011 changes to the law should contribute to changes in detention periods in the worst cases but some underlying factors will prevail even with the new maximum pre-trial duration.
- In *Moldova*, the JP *Democracy Support Programme (2010-2011)* aimed in one of its components at safeguarding pre-trial guarantees. In this context the use of alternatives to pre-trial detention and imprisonment, such as bail provisions, are promoted. The Interim Report notes that progress has been made so far with regard to training of judges and prosecutors on the use of alternatives to pre-trial detention and imprisonment. As a result of training of trainers (ToT) seminars, a resource of national trainers is created and involved in training on the use of alternatives to pre-trial detention and imprisonment of judges and prosecutors holding the office. Field visit discussions suggest some 'fragile' progress on with regard to probation.

In summary, some JPs included elements addressing the issue of excessive detention, including pre-trial, in addition to general support to penitentiary reforms and prevention of torture (I-351). In *Russia*, *Turkey*, *Armenia*, and *Moldova*, JPs addressed recourse to detention or the duration of deprivation of liberty to some extent. Achievements included for instance, adoption and changes in criminal norm

and penitentiary to remove certain barriers to parole (*Armenia*), and promotion of alternatives to pre-trial detention (*Moldova*). However, with so many parallel cumulative efforts (advocacy, monitoring, technical assistance etc.) it remains difficult to go beyond stating that JPs are likely to have made a contribution to such positive change as is identified.

## 4 EQ4: To what extent has cooperation with the CoE, in particular via the channelling of funds, contributed to strengthening the rule of law as it relates to the fight against corruption, money laundering, organised crime and trafficking?

### 4.1 JC 4.1 Increased accession to, and compliance with, the conventions relating to the fight against corruption, money laundering, organised crime and trafficking

The JC is assessed through two indicators. The first investigates whether countries acceded to and complied with the provisions of the relevant legal instrument and their additional protocols in the area of organised crime, corruption, money laundering, and trafficking. The second assesses the capacity of domestic institutions to apply and implement the provisions of the relevant legal instrument.

To assess the first JC, we selected major conventions related to two areas – money laundering and corruption – and investigated whether countries covered by case studies had acceded and how their compliance had been assessed by the relevant monitoring bodies MONEYVAL and GRECO (Indicator I-411). We left organised crime aside due to a lack of data and human trafficking, because GRETA published its first evaluation reports only in 2011. First, almost all countries have acceded to almost all major conventions, albeit with frequent reservations (e.g., *Armenia* and *Azerbaijan* regarding corruption). In most countries, there was progress in compliance over the evaluation period. Regarding money laundering, this was sometimes significant progress (e.g., *Russia* and *Serbia*); the field visit to *Serbia* showed that the relevant JP is too recent to allow attributing progress to the JP. Only in *Bosnia and Herzegovina*, which benefited only from regional JPs that dealt with money laundering under the broader umbrella of economic crime, did MONEYVAL report an outright deterioration. However, in all the other countries, despite progress, there remain serious problems of non-compliance and partial compliance with international recommendations. JPs may have contributed to better compliance; however, this could not be corroborated beyond doubt during the in-country phase. (Indicator I-412). What can be said without hesitation is that the MONEYVAL monitoring process has contributed to better compliance as countries have been forced to report on concrete steps and their reports have been carefully scrutinised by the MONEYVAL Secretariat. In *Armenia* and *Moldova*, field visit interviews indicated that money laundering is not, at present, a major problem.

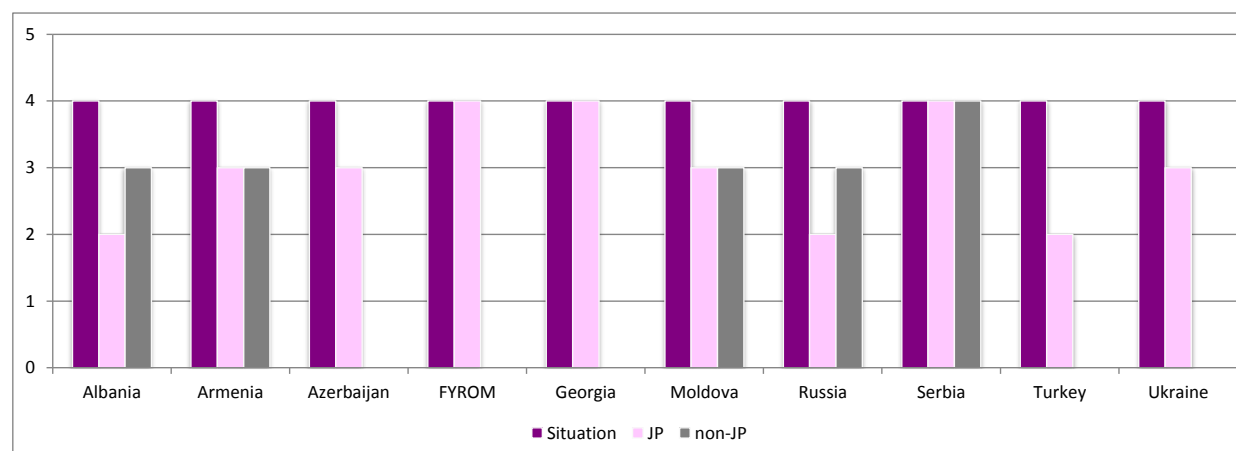
In the area of corruption, it is more difficult to summarise monitoring results because the conclusions of GRECO evaluations are textual, i.e. there is no simple classification of countries by degree of compliance. As in the case of money laundering, the picture that emerges is one of overall progress, especially in legislation, but also one of important remaining areas of weakness that require attention and lagging enforcement of legislation. Countries where GRECO reported significant progress were *Azerbaijan*, *FYROM*, *Serbia*, and *Moldova*. *FYROM* and *Serbia* were beneficiaries of regional economic crime projects over the evaluation period, but only *Moldova* could be said to have received support in the form of a major, country-based JP (Swedish Sida co-funded the project), MOLICO (2006-2008); beneficiaries who were interviewed during the in-country visit considered the project of good quality in both its anti-corruption and anti-money laundering aspects. One concrete innovation is that now, all draft legislation is assessed for “corruptibility” and changes are suggested. However, the field visit revealed deep frustration among all persons interviewed with the continuing high level of corruption in *Moldova*. It should be noted, in passing, that MOLICO experienced significant management problems, but these are not strictly relevant to answering this EQ. In *Serbia*, due to the lack of institutional memory among Serbian beneficiaries on past JPs, it was difficult to get additional perspectives on the impact of these regional JPs. *Turkey*, which also benefited from a country JP aimed at corruption, received a less favourable report from GRECO.

Based on this evidence, it is difficult to state with confidence that JPs made a major contribution to improving compliance with countries' international commitments to fight corruption. It can be said with more confidence, though, that, as in the case of money laundering, JPs contributed to stronger institutional capacity in the fight against corruption (Indicator I-412). This occurred via assistance in legislative drafting, training of law enforcement officials and members of the judicial system, dissemination of international good practice, encouragement of regional approaches to what is a cross-border problem (in the case of money laundering), etc. The caveat to this statement is that a single, consistent definition of what capacity-building is to entail does not seem to be used across the EC/CoE JPs, making it therefore difficult to capture ‘capacity building’ and whether it has succeeded.

Assessments based on monitoring body reports can be complemented by the perceptions of EUDs. The majority of EUDs that responded to the survey reported that there has been some or significant improvement of the situation related to increased compliance with conventions. No EUD assessed the

situation to have deteriorated. When it comes to the impact that JPs had on the situation in the country, nearly two-thirds of the EUDs stated that the JPs improved the situation to a high or some extent. Also, overall, the contribution of non-financial cooperation, too, was rated as positive.

Figure 14: EUD survey results: Increasing compliance with conventions relating to the fight against corruption, money laundering, organised crime and trafficking



Scales			
Change in situation		Impacts of JP and non-JP cooperation	
Significant improvements	5	Very high extent	5
Some improvements	4	High extent	4
No change	3	Some extent	3
Some deterioration	2	Low extent	2
Significant deterioration	1	Very low extent	1
Do not know, Not applicable, No answer	0	Do not know, Not applicable, No answer	0
Note: Countries that provided no information for impacts in both JP and non-JP cooperation under this JC are not shown			
Source: EUD survey			

Overall, monitoring reports and country case studies suggest that there has been some improvement in compliance with major conventions against money laundering and corruption, and that there has certainly been improvement in the institutional capacity to meet international commitments. Isolating a contribution to improved compliance is more difficult; there are examples of case study countries with large JPs where there was no improvement and also of countries with relatively small participation in JPs where there was significant improvement. That many problems remain in the area of corruption is in part a function of legislative gaps, but even more so one of failure to enforce existing legislation. Case studies report some contribution of JPs, especially to institution strengthening to fight money laundering, corruption, organised crime, and trafficking. In the areas of corruption and money laundering, which we have covered in greater detail, it is important to recognise the independent contribution of the monitoring process, including significantly its peer-to-peer element.

#### 4.1.1 I-411 Countries acceded to and comply with the provisions of the relevant legal instruments in the area of corruption, money laundering, organised crime, and trafficking

A number of data constraints limit the scope and depth of our assessment of this Indicator. Accession to major conventions is naturally not a problem, and this information is given in the accompanying two tables. We limit ourselves to key conventions in the area of money laundering/financing of terrorism and corruption. More difficult is assessing monitoring results and, more difficult still, estimating the contribution of JPs and other forms of cooperation to changes in compliance.

In the case of money laundering, MONEYVAL performed comprehensive horizontal (i.e., inter-country) assessments of the second and third rounds of country evaluations, published in 2007 and 2010, respectively. Unfortunately, the two assessments are comparable to each other only with great difficulty. In the accompanying table, we present results for case study countries from the third round of evaluations, as well as results from the subsequent progress reports following up on recommendations to correct non- and partial compliance.

Subject to these limitations, the picture given in the table is one where there was still, following JP interventions, a substantial degree of non-compliance and partial compliance in a number of countries. This may be a negative factor for impact but it is, at the same time, a positive one for project relevance – these interventions were needed. In some countries, such as *Serbia* and *Russia*, significant progress was noted. In all other countries except *Bosnia and Herzegovina*, at least some progress was observed, but further efforts were called for. *Moldova*, *Russia*, *FYROM*, and *Serbia* were beneficiaries of country JPs addressing money laundering, and the countries of South-East Europe were beneficiaries of CARDS regional projects which treated money laundering under the umbrella of economic crime.

Table 4: Ratification and compliance, money laundering and the financing of terrorism

Country	Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (CETS141)	Convention CETS 198 <sup>33</sup>	Monitoring results	JPs related to Money Laundering / Financing of Terrorism?
Armenia	Ratified 24/11/2003	Ratified 02/06/2008	The Third Round Mutual Evaluation MONEYVAL Report (2009) found Armenia to be Compliant with 6 of the 40 FATF recommendations, Largely Compliant with 17, Partially Compliant with 12, and Non-compliant with 4. One Recommendation was held to be not applicable. Regarding Core Recommendations, Armenia was found to be Largely Compliant with R 1 (Money laundering offence), Partially Compliant with R5 (Customer due diligence), Largely Compliant with R10 (Record keeping), Largely Compliant with R13 (Suspicious transaction reporting), Partially Compliant with Special Recommendation II (Criminalize terrorist financing), and Largely Compliant with Special Recommendation iv (Suspicious transaction reporting). In its analysis of the Second Progress Report, the MONEYVAL Secretariat noted "satisfactory progress" on Core Recommendations" but stated that additional action was still required.	No
Azerbaijan	Ratified 04/07/2003		The Third Round Mutual Evaluation MONEYVAL report (2008) found Azerbaijan to be Compliant with 1 of the 40 FATF Recommendations, Largely Compliant with 5, Partially Compliant with 17, and Non-compliant with 16. One Recommendation was held to be not applicable. Regarding Core Recommendations, Azerbaijan was found to be Non-compliant with R.1 (Money laundering offence), Non-compliant with R5 (Customer due diligence), Partially Compliant with R10 (Record keeping), Largely Compliant with R13 (Suspicious transaction reporting), Partially Compliant with Special Recommendation II (Criminalize terrorist financing), and Non-compliant with Special Recommendation iv (Suspicious transaction reporting) The First Progress Report (December 2009) noted "comprehensive legal reforms" addressing most concerns and "significant progress in creating an effective institutional framework." This report, while adopted in Plenary, was prepared by the Government of Azerbaijan and not analysed by the MONEYVAL Secretariat. However, in December 2009 the MONEYVAL Secretariat withdrew its public statement of December 2008 warning financial institutions against the suspicious nature of transactions with Azeri institutions.	No
Moldova	Ratified 30/05/2002	Ratified 18/09/2007	The Third Round Mutual Evaluation MONEYVAL report (2008) found Moldova to be Compliant with 3 of the 40 FATF Recommendations, Largely Compliant with 5, Partially Compliant with 19, and Non-compliant with 10. 3 Recommendations were found to be not applicable. Regarding Core Recommendations, Moldova was found to be Partially Compliant with R.1	Programme against corruption, money laundering and terrorist financing in

<sup>33</sup> Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism



Country	Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (CETS141)	Convention CETS 198 <sup>33</sup>	Monitoring results	JPs related to Money Laundering / Financing of Terrorism?
			(Money laundering offence), Non-compliant with R5 (Customer due diligence), Partially Compliant with R10 (Record keeping), Partially Compliant with R13 (Suspicious transaction reporting), Partially Compliant with Special Recommendation II (Criminalize terrorist financing), and Non- Compliant with Special Recommendation iV (Suspicious transaction reporting). In its analysis of the Second Progress Report (April 2011), the MONEYVAL Secretariat noted "steady progress" on Core Recommendations.	Moldova (MOLICO Moldova) (2006-2009)
Russia	Ratified 02/08/2001	Signed 26/01/2009	The Third Round Mutual Evaluation MONEYVAL report (2008) found Russia to be Compliant with 10 of the 40 FATF Recommendations, Largely Compliant with 10, Partially Compliant with 17, and Non-compliant with 1. Two Recommendations were found to be not applicable. In its analysis of the Second Progress Report (September 20), the MONEYVAL Secretariat reported "steady progress."	Project against money laundering in the Russian Federation (MOLI RU) (2002-2005) Money laundering and financing of terrorism (MOLI RU follow up) (2005-2006) Fight against money laundering and terrorist financing in the Russian Federation (MOLI RU II) (2006-2010)
Bosnia and Herzegovina	Ratified 30/03/2004	Ratified 11/01/2008	The Third Round Mutual Evaluation MONEYVAL report (2009) found Bosnia to be Compliant with 3 of the 40 FATF Recommendations, Largely Compliant with 12, Partially Compliant with 14, and Non-compliant with 10. One Recommendation was found to be not applicable. Regarding Core Recommendations, Bosnia was found to be Partially Compliant with R.1 (Money laundering offence), Non-compliant with R5 (Customer due diligence), Largely Compliant with R10 (Record keeping), Largely Compliant with R13 (Suspicious transaction reporting), Partially Compliant with Special Recommendation II (Criminalize terrorist financing), and Largely Compliant with Special Recommendation iV (Suspicious transaction reporting). In its analysis of the first Progress Report (April 2011), the MONEYVAL Secretariat noted "no or little progress" regarding Core Recommendations and the in its analysis of the second Progress Report (September 2011), found that a national Action Plan had not yet been approved by Government.	CARDS –Criminal Commentaries (2003-2005) CARDS – South East Europe – Police and Economic Crime (2004-2007) Support to the prosecutors' network in South-East Europe (2008-200) Project against cy-

Country	Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (CETS141)	Convention CETS 198 <sup>33</sup>	Monitoring results	JPs related to Money Laundering / Financing of Terrorism?
				bercrime in South-East Europe (200-202)
<b>FYROM</b>	Ratified 19/05/2000	Ratified 27/09/2005	The Third Round Mutual Evaluation MONEYVAL report (2009) found FYROM to be Compliant with 2 of the 40 FATF Recommendations, Largely Compliant with 11, Partially Compliant with 15, and Non-compliant with 10. Two Recommendations were found to be not applicable. Regarding Core Recommendations, FYROM was found to be Partially Compliant with R.1 (Money laundering offence), Non-compliant with R5 (Customer due diligence), Partially Compliant with R10 (Record keeping), Partially Compliant with R13 (Suspicious transaction reporting), Partially Compliant with Special Recommendation II (Criminalize terrorist financing), and Partially Compliant with Special Recommendation IV (Suspicious transaction reporting). In its analysis of the second Progress Report (September 20), the MONEYVAL Secretariat noted "some progress" but drew attention to continuing problems in effective implementation.	Development of operational capacity to combat money laundering (MOLIMK) (2004-2006) CARDS South-East Europe – Police and Economic Crime Support to the prosecutors' network in South-East Europe (2008-2010) Project against cybercrime in South-East Europe (200-2012)
<b>Serbia</b>	Ratified 09/10/2003	Ratified 14/04/2009	The Third Round Mutual Evaluation MONEYVAL report (2009) found Serbia to be Compliant with 1 of the 40 FATF Recommendations, Largely Compliant with 19, Partially Compliant with 16, and Non-compliant with 3. One Recommendation was found to be not applicable. Regarding Core Recommendations, Serbia was found to be Largely Compliant with R.1 (Money laundering offence), Partially Compliant with R5 (Customer due diligence), Largely Compliant with R10 (Record keeping), Largely Compliant with R13 (Suspicious transaction reporting), Partially Compliant with Special Recommendation II (Criminalize terrorist financing), and Largely Compliant with Special Recommendation IV (Suspicious transaction reporting). In its analysis of the second Progress Report (December 200, while noting several areas in which there had been no concrete steps, the MONEYVAL Secretariat noted positive steps and recalled that Serbia had scored relatively well on the Core Recommendations at the time of the Evaluation.	Project against economic crime (2005-2008) Project against money laundering and terrorist financing and economic crime in Serbia (MOLI) (200-2013) CARDS South-East Europe – Police and Economic Crime Support to the prosecutors' network in South-East Europe

Country	Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (CETS141)	Convention CETS 198 <sup>33</sup>	Monitoring results	JPs related to Money Laundering / Financing of Terrorism?
				<p>Project against cybercrime in South-East Europe (200-2012)</p> <p>Strengthening the capacities of the Directorate for Confiscated Property Management and improvement of the system for search, seizure and confiscation of the proceeds of crime in Serbia (200-2013)</p>
<b>Turkey</b>	Ratified 06/10/2004	Signed 28/03/2007	Not a MONEYVAL member.	No

Source: Ratification and signatures as of 31/12/2001 according to <http://conventions.coe.int/Treaty/Commun/ListeTraites.asp?CM=8&CL=ENG>

In the area of corruption, GRECO monitored two themes in its most recent round, the incrimination of bribery and the financing of political parties. The following table provides excerpts from the Conclusions section of GRECO's third round country reports in the area of bribery. As in the case of money laundering, material presented on the web does not permit the discussion of previous evaluation rounds. However, a number of themes emerge repeatedly:

- The need to cover all public officials and both active and passive bribery.
- The need to cover bribery in the private sector.
- The need to abolish the requirement of dual criminality for offences committed abroad.
- The need to cover trading in influence.
- The need to monitor carefully the defence of effective regret in order to prevent abuse.

In some countries, (*Azerbaijan, FYROM, Serbia, Moldova*) the GRECO reports signal that significant progress has been made in complying with the Conventions.

Countries benefiting over the evaluation period from country JPs targeting corruption were *Moldova, Russia, and Turkey*. Significant progress in compliance was registered in *Moldova*, the GRECO report was more critical in *Turkey*, and no report is available for *Russia* on the website referenced. In South-East Europe, corruption was treated under the umbrella of regional JPs aimed at strengthening capacity to deal with economic crime. Two JPs dealing with corruption were initiated at the end of the evaluation period in *Serbia*.

Table 5: Accession and compliance, corruption Theme I: Incrimination of bribery

Country	Criminal Law Convention on Corruption (CETS173)	Civil Law Convention on Corruption (CETS 174))	Monitoring results	JPs specifically aimed at corruption or containing corruption components
Armenia	Ratified 09/01/2006	Ratified 07/01/2005	<p><u>GRECO third evaluation report, December 2010</u></p> <p>The most obvious deficiencies in Armenian legislation are that both the provisions on bribery in the private sector and in the public sector do not sufficiently criminalise the request for a bribe and the acceptance of an offer of a bribe, as required by the Convention, and that the provisions on commercial bribery do not cover all persons who direct or work for private sector entities.</p> <p>While the sanctions for these offences, in both the private and public sector, are by and large considered to be of an adequate level, it is nevertheless recommended to raise the sanctions for active bribery of public servants and active commercial bribery, as well as bribery in sports, so that the limitation period is consequently increased, to ensure that law enforcement bodies have sufficient time to investigate these offences.</p> <p>Furthermore, Armenia is urged to lift the reservation it has made in respect of Article 12 of the Convention and to consequently criminalise trading in influence in line with that Article.</p> <p>As regards jurisdiction, despite comprehensive provisions which allow Armenia to assume jurisdiction over bribery and trading in influence offences committed abroad by foreigners, Armenia can only assume jurisdiction over similar offences committed by Armenian nationals (and Armenian officials/public servants) in another country if these offences are also a crime in that country. Armenia is consequently urged to abolish the requirement of dual criminality regarding the offences of bribery and trading in influence.</p> <p>Moreover, the possibility provided by the special defence of effective regret to exempt an offender who voluntarily reports the offence should be reviewed, in particular to clarify the conditions under which someone who has committed a bribery offence can be exempted from liability or punishment and to reduce the risks of abuse.</p> <p>The main challenge in fighting corruption lies with the effective application of legislation. In this regard, concerns are raised about the understanding of the corruption-related provisions and the level of proof required in bribery cases. Armenia is therefore urged to continue its efforts to train practitioners in the law, including on the use of evidence based on objective factual circumstances.</p>	<p>Eastern Partnership corruption bridge (started 2010)</p> <p>Council of Europe Facility (started 2010)</p>
Azerbaijan	Ratified 11/02/2004	Ratified 11/02/2004	<p><u>GRECO third evaluation report, October 2010</u></p> <p>The 2006 amendments to the corruption provisions of the Penal Code can be considered an important step towards bringing the legislation of Azerbaijan into line with the standards of the Criminal Law Convention on Corruption). However, further significant amendments are required in order to remedy the remaining shortcomings. At present, the concept of "official" used by the relevant bribery provisions does not cover all civil servants and public employ-</p>	<p>Eastern Partnership corruption bridge (started 2010)</p> <p>Council of Europe Facility</p>

Country	Criminal Law Convention on Corruption (CETS173)	Civil Law Convention on Corruption (CETS 174))	Monitoring results	JPs specifically aimed at corruption or containing corruption components
			<p>ees at central and local level. The offer and the promise of a bribe as well as the acceptance of an offer or a promise do not constitute completed crimes. The criminalisation of trading in influence shows several lacunae – partly identical to those identified in the bribery provisions – and private sector bribery is not penalised in respect of any person working in private sector entities.</p> <p>As concerns nationality jurisdiction, Azerbaijan is urged to abolish the requirement of dual criminality regarding the offences of bribery and trading in influence. Moreover, the possibility provided by the special defence of effective regret to exempt the bribe-giver who voluntarily declares the offence should be reviewed in order to limit the risks of abuse.</p> <p>Finally, current corruption provisions do not ensure the full coverage of foreign and international officials and of domestic and foreign jurors and arbitrators. Azerbaijan should reconsider its position concerning the reservations made to the Convention in this respect and, furthermore, become a Party to the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191). It is to be regretted that six years after the entry into force of the Convention in respect of this country, Azerbaijan remains one of the GRECO member States to have entered nearly the maximum number of reservations allowed under the Convention.</p> <p>Given that a revision of the Penal Code is currently under way, the present report and its Above all, the main challenge with regard to fighting corruption in Azerbaijan lies with the effective application of legislation. This calls for a more determined use and stricter enforcement of the relevant criminal provisions in practice.</p>	(started 2010)
<b>Moldova</b>	Ratified 14/01/2004	Ratified 17/03/2004	<p><u>GRECO third evaluation report, April 2011</u></p> <p>The Moldovan legal framework for the criminalisation of bribery and trading in influence has been amended on several occasions with the aim of aligning the national legislation with the standards of the Criminal Law Convention on Corruption (ETS 173) and its Additional Protocol (ETS 191).</p> <p>Despite these commendable efforts, several deficiencies remain which need to be addressed. In particular, the concept of “persons holding positions of responsibility” used in the relevant bribery provisions does not cover all civil servants and public employees and does not ensure coverage of foreign and international public officials or foreign jurors and arbitrators.</p> <p>In addition, active and passive bribery offences in the public sector lack consistency and clarity; among other things, they do not take sufficient account of the advantages given or promised to a third party or through an intermediary, or situations where a public official acts outside the scope of his or her official powers.</p> <p>The criminalisation of bribery in the private sector – which does not cover <i>any</i> person working in private sector entities – and trading in influence – which is criminalised only in its</p>	<p>Support to the National Anti-corruption Strategy (PACO Moldova) (2005-2006),</p> <p>Programme against corruption, money laundering and terrorist financing in Moldova (MOLICO Moldova) (2006-2009)</p> <p>Eastern Partnership corruption bridge (started 2010)</p>



## Evaluation of Commission's cooperation with the Council of Europe – PARTICIP GmbH

Country	Criminal Law Convention on Corruption (CETS173)	Civil Law Convention on Corruption (CETS 174))	Monitoring results	JPs specifically aimed at corruption or containing corruption components
			<p>passive form – reveals several lacunae, partly identical to those identified in the public sector bribery provisions.</p> <p>Moreover, the possibility provided by the defence of effective regret to exempt bribe-givers who voluntarily report the offence should be reviewed in order to limit the risks of abuse.</p> <p>Given the seriousness of the problem of corruption in Moldova, it is crucial to close any loopholes in the legal framework. In this context, the authorities are encouraged to implement their plans, currently under consideration, to amend the offences of bribery and trading in influence, and the present report and its recommendations should be seen as a timely contribution to this reform process.</p>	Council of Europe Facility (started 2010)
Russia	Ratified 04/10/2006		No report available.	<p>Harmonisation Russian anti-corruption legislation with international standards (RUCOLA) (2004-2005)</p> <p>Development of legislative and other measures for the prevention of corruption (RUCOLA 2) (2006-2007)</p>
Bosnia and Herzegovina	Ratified 30/01/2002	Ratified 30/01/2002	<p><u>GRECO third evaluation report, May 2010</u></p> <p>Bosnia and Herzegovina has made some efforts to align its penal legislation with international anticorruption standards in the recent years. However, a key shortcoming of the system is the lack of harmonisation of the four existing Criminal Codes in the country (State level, Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District).</p> <p>As a matter of priority, it is essential that legislation is fully aligned in Bosnia and Herzegovina: incriminations and sanctions should be identical across the national territory. Such a move would no doubt strengthen legal certainty for the benefit of practitioners and the public at large and thus help making legislation work more effectively in practice.</p> <p>In addition, all Criminal Codes share a number of deficiencies when compared with the provisions of the Criminal Law Convention on Corruption (ETS 173) under review. In particular, it must be ensured that the offences of active and passive bribery in the public sector cover all acts/omissions occurring in the exercise of a public official's duties, whether or not within the scope of his/her official competences.</p> <p>The definition of foreign and international officials is to be expanded since at present it only</p>	<p>CARDS – South-East Europe – Police and Economic Crime (2004-2007)</p> <p>Support to the prosecutors' network in South-East Europe ((2008-2010)</p> <p>CARDS – South-East Europe – Police and Economic Crime (2004-2007)</p>

Country	Criminal Law Convention on Corruption (CETS173)	Civil Law Convention on Corruption (CETS 174))	Monitoring results	JPs specifically aimed at corruption or containing corruption components
			<p>covers those persons serving in Bosnia and Herzegovina.</p> <p>The lack of court decisions concerning private sector bribery results in conflicting interpretations of the existing provisions and their scope, to the extent that it is doubtful whether private sector bribery is indeed covered by national law.</p> <p>Likewise, active trading in influence needs to be criminalised. The possibility of returning the bribe to the bribe-giver, who declares the offence to the competent authority before it is uncovered, should be abolished in order to limit any risk of abuse.</p> <p>Leaving the abovementioned deficiencies in the legislation aside, the main challenge in fighting corruption in Bosnia and Herzegovina lies with the effective application of legislation. Statistics show rather alarming data on prosecution and adjudication of this type of offence: most cases end up in acquittals or suspended sentences.</p> <p>It is important that an assessment of the impact of the obstacles affecting the implementation of bribery and trading in influence provisions be undertaken and concrete measures be put in place to address the problems identified. Furthermore, it is crucial that a more proactive approach to the detection, prosecution and punishment of corruption be pursued in Bosnia and Herzegovina.</p>	
FYROM	Ratified 28/07/1999	Ratified 29/11/2002	<p><u>GRECO third evaluation report, March 2010</u></p> <p>The criminal legislation of “the former Yugoslav Republic of Macedonia” provides an effective basis for the investigation, prosecution and adjudication of corruption offences. With recent reforms of the relevant provisions of the Criminal Code, the country has shown a serious will to meet the requirements of the Criminal Law Convention on Corruption (ETS 173) and its Additional Protocol (ETS 191). Moreover, the transposition of the Council of Europe standards in this area goes in tandem with a significant number of successful prosecutions of both active and passive bribery, which show that the authorities are taking determined steps to tackle corruption.</p> <p>There are, however, several aspects of the law which fall short of the standards under review. In particular, it must be ensured that the offences of active and passive bribery in the public sector cover all acts/omissions in the exercise of the functions of a public official, whether or not within the scope of the official's duties.</p> <p>Furthermore, the range of possible perpetrators of private sector bribery is narrower than foreseen by the Convention and therefore needs to be extended.</p> <p>Likewise, shortcomings exist in relation to the trading in influence offence; in particular, under current rules, active trading in influence (the promising, giving or offering of an undue advantage to the influence peddler) is not criminalised.</p> <p>Moreover, the legal basis for nationality jurisdiction is to be reviewed in order to abolish the requirement of double criminality regarding the offences of bribery and trading in influence</p>	<p>CARDS – South-East Europe – Police and Economic Crime (2004-2007)</p> <p>Support to the prosecutors' network in South-East Europe ((2008-2010)</p>

Country	Criminal Law Convention on Corruption (CETS173)	Civil Law Convention on Corruption (CETS 174)	Monitoring results	JPs specifically aimed at corruption or containing corruption components
			<p>and to extend jurisdiction to domestic public officials and members of domestic public assemblies of “the former Yugoslav Republic of Macedonia” who are not at the same time nationals, as well as to nationals who are, at the same time, officials of international organisations, members of international parliamentary assemblies or judges/officials of international courts.</p> <p>Finally, the possibility provided by the special defence of effective regret to exempt the bribe-giver, who, if solicited by the public official, declares the offence before it is uncovered, should be reviewed in order to limit the risks of abuse.</p>	
<b>Serbia</b>	Acceded 18/12/2002	Ratified 09/01/2008	<p><u>GRECO third evaluation report, October 2010</u></p> <p>Following a series of legislative amendments, the Criminal Code of Serbia is largely in line with the Criminal Law Convention on Corruption (ETS 173).</p> <p>Nevertheless, a limited number of quite specific deficiencies need to be addressed. In particular, it must be ensured that the offences of active and passive bribery in the public sector cover all acts/omissions occurring in the exercise of the function of a public official, whether or not within the scope of his/her official competences.</p> <p>Furthermore, it should be clarified that private sector bribery covers all persons who direct or work for – in any capacity – private sector entities as intended by the Convention.</p> <p>The legal basis for nationality jurisdiction is to be reviewed in order to abolish the requirement of dual criminality and to extend jurisdiction over corruption offences, committed by foreigners abroad, but involving officials of international organisations, members of international parliamentary assemblies and officials of international courts who are, at the same time, Serbian nationals.</p> <p>In addition, the possibility to return the bribe to the bribe-giver, who declares the offence before it is uncovered, should be abolished in order to limit any risk of abuse.</p> <p>Further steps need to be taken to fully align Serbian legislation with the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191), notably, by ensuring that foreign arbitrators and jurors are fully captured by the relevant bribery/trading in influence provisions.</p> <p>While the criminal legislation of Serbia provides a sound basis for the investigation, prosecution and adjudication of corruption offences, its effectiveness in practice needs to be increased. More must be done to secure convictions not only for petty bribery, but also high-level corruption in the public sector.</p> <p>The authorities also need to remain alert to related problems, other than traditional bribery, such as trading in influence and corruption in the private sector; very few investigations have been launched to date in respect of these offences.</p>	<p>CARDS – South-East Europe – Police and Economic Crime (2004-2007)</p> <p>Project against economic crime (2005-2008)</p> <p>Support to the prosecutors' network in South-East Europe ((2008-2010)</p> <p>Strengthening the capacities of the Directorate for Confiscated Property Management and improvement of the system for search, seizure, and confiscation of proceeds of crime in Serbia (started 2010)</p> <p>MOLI (2010-2013)</p>

Country	Criminal Law Convention on Corruption (CETS173)	Civil Law Convention on Corruption (CETS 174))	Monitoring results	JPs specifically aimed at corruption or containing corruption components
			<p>It would appear that the authorities, aware of the problem, have already embarked upon concrete measures to ensure more rapid and effective criminal investigations in this field (e.g. establishment/ reinforcement of specialised anti-corruption structures within law enforcement agencies, planned amendments to the Criminal Procedure Code). In this respect, efforts need to be pursued and further developed, including by raising the awareness of law enforcement authorities regarding the content of the existing incriminations of corruption.</p>	
Turkey	Ratified 29/03/2004	Ratified 17/09/2003	<p>The Turkish legal framework for the incrimination of bribery and trading in influence is quite complex and contains several deficiencies in relation to the requirements established under the Criminal Law Convention on Corruption (ETS 173).</p> <p>First and foremost, the narrow concept of bribery offences excludes corrupt behaviour without an agreement between the parties or without a breach of duty by the public official. Therefore, the explanatory notes of the legislator, legal doctrine and the jurisprudence of the Court of Cassation refer to a large number of other criminal provisions in order to complement the unnecessarily narrow bribery offences. On this basis, it would appear that legal practitioners are able to fill some noticeable gaps and to secure a non-negligible number of convictions for corruption. However, the current system is not fully comprehensive and coherent and doubtless warrants a thorough review to fully transpose the relevant Articles of the Convention into Turkish criminal law, in order to clearly signal what kind of conduct constitutes bribery.</p> <p>In addition, bribery of foreign and international officials is criminalised only in its active form and in the context of international commercial activities. The same lacunae exist with regard to bribery of foreign jurors and arbitrators as defined by the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) – to which Turkey should, as soon as possible, become a Party.</p> <p>Bribery in the private sector is penalised only in respect of a very limited number of entities with public participation or “acting in the public interest”. Trading in influence is supposedly addressed – but only in its passive form – by the offence of “qualified theft by deception”, which falls short of the standards set by the Convention.</p> <p>Finally, the possibility provided by the special defence of “effective regret” to exempt the briber who declares the offence before the commencement of investigations from punishment, needs to be reviewed in order to limit the risk of abuse.</p>	Project on ethics for the prevention of corruption in Turkey (2007-2009)

Source: Ratification and signatures as of 31/12/2001 according to <http://conventions.coe.int/Treaty/Commun/ListeTraites.asp?CM=8&CL=ENG>

#### 4.1.2 I-412 Strengthened and more effective capacity of domestic institutions to apply and implement the provisions of the relevant legal instruments

Not every country examined participated in JPs covering every aspect (corruption, money laundering, organised crime, trafficking). However, we have found examples of interventions in each of these areas scattered across countries.

We begin with the ENPI region by surveying JPs. There were no JPs, either country-specific or multi-country in the region dealing with **trafficking** or **organised crime**; however, there were significant interventions addressing **corruption** and **money laundering**:

- In *Armenia, Azerbaijan and Moldova*, a multi-country JP<sup>34</sup> which started in 2010 aims to align the **anti-corruption** and good governance reform processes to CoE and EU standards. Any impact will occur after the evaluation period.
- In *Moldova*, two country JPs<sup>35</sup> dealing with **corruption** and **money laundering** contributed to capacity building by providing expert opinion and trainings to investigators, judges and prosecutors. According to the MOLICO final report, through the project, two preventive measures were implemented in the area of the fight against corruption, namely, corruption-proofing and risk assessment methodologies. The same report also notes that “as a concrete result of corruption proofing activities, 317 draft laws were reviewed. Out of 3,684 recommendations made by MOLICO for removing identified risks, the Parliament accepted and integrated 1,916 amendments.” Under its anti-corruption component, the JP also organised over 100 training events involving more than 4,000 participants. According to the MOLICO evaluation report<sup>36</sup> of 2009, “the CCCEC’s<sup>37</sup> capacities have been considerably strengthened through the development of the corruption-proofing and the corruption-risk assessment methodology”, and similarly for the anti-money laundering component the evaluation report concludes that, “the impact is tangible and strong: a functioning Financial Intelligence Unit (FIU) and sound legislation have been created to provide the basis for international cooperation in the framework of the Egmont Group, a member of which Moldova has become as a result.” Stakeholders interviewed during the in-country visit in Moldova corroborated this positive assessment of the impact of MOLICO. The project experienced significant management problems, however, the substantive aspect of the project was rated high by all concerned.
- In *Russia*, two JPs<sup>38</sup> were implemented in the area of **money laundering**. Both JPs aimed to strengthen the capacity of the anti-money laundering system through the provision of trainings for the Committee for Financial Monitoring, reinforcement of the “International Training and Methodology Centre for Financial Monitoring” and provision of expert legal advice. As highlighted in the case study, the JPs have mostly achieved the expected results; however, law enforcement regulators and supervisors were not trained since the project staff was not able to engage these institutions directly. The JP *Harmonisation of Russian Anti-corruption Legislation with International Standards* (RUCOLA) was active in 2005-2006 and aimed at strengthening the capacity of the State Duma to fight corruption. The follow-up project, *Development of Legislative and Other Measures for the Prevention of Corruption* (RUCOLA-2) (2006-2007) was designed to strengthen implementation of the two CoE conventions against corruption (ratified 2006). Again, the partner institution was the Anti-Corruption Commission of the State Duma. Through the project, expertise of GRECO experts was mobilised and a broad range of recommendations were made.

In the pre-accession countries analysed, joint CoE-EC efforts resulted in some positive effects in the form of strengthened and more effective capacity of domestic institutions to apply and implement the provisions of the relevant legal instruments:

- In *FYROM, Serbia and Turkey*, a multi-country JP<sup>39</sup> began late in the evaluation period with the overall objective to enhance the ability of countries of the region to prevent and control **cybercrime** by strengthening the capacities of criminal justice authorities to cooperate effec-

<sup>34</sup> Eastern Partnership – corruption bridge project (2010)

<sup>35</sup> Support to the National Anti-corruption Strategy (PACO Moldova) (2005-2006), Programme against corruption, money laundering and terrorist financing in Moldova (MOLICO Moldova) (2006-2009)

<sup>36</sup> Project against Corruption, Money Laundering and Terrorism Financing in Moldova (MOLICO), Evaluation Report, June 2009

<sup>37</sup> Centre for Combating Corruption and Economic Crime

<sup>38</sup> Project against Money Laundering in the Russian Federation (MOLI RU) (2002-2005), Fight against money laundering and terrorist financing in the Russian Federation (MOLI RU II) (2006-2010)

<sup>39</sup> Project against Cybercrime in South-East Europe (cyber@SEE) (2010-2012)

tively. Activities include technical advice, studies, assessments, conferences, workshops and preparation of training materials. Any impact will be experienced after the evaluation period. FYROM was beneficiary of the MOLI-MK project dealing with **money laundering**. The Macedonian Criminal Code was modified to incorporate **human trafficking** in 2002, a national commission was established, and a budgeted national action plan is in place. FYROM was a beneficiary of PACO, which included some components addressing trafficking in human beings. In 2011, the U.S. State Department ranked FYROM as a Tier 1 country, indicating excellent compliance with international standards and commitments in the area of human trafficking. In *Serbia*, the in-country phase was unable to make stronger links between JPs and increased capacity due to the lack of memory on these JPs inside beneficiary institutions.

- One multi-country JP<sup>40</sup> which has been implemented in *Bosnia and Herzegovina, FYROM and Serbia* aimed at strengthening the capacities of the CARDS countries to develop and implement regional strategies. This happened, for instance, through training institutions in the countries of the region to deliver training themselves in issues such as **trafficking** in human beings, smuggling and illegal migration based on standards and benchmarks in line with EU policies and practices. In *FYROM*, PACO contributed to the passage of legislation relating to and institution of a Witness Protection Programme, and the EC monitoring report following a visit in 2007 noted some successes in the fight against **organised crime**. PACO also disseminated situation reports on economic and organised crime and provided training on investigative techniques.
- Another multi-country JP<sup>41</sup> focused on strengthening capacities of the CARDS countries to develop and implement judicial co-operation against serious **crime** and, according to the end-of-project report, contributed to better, more efficient and more frequent co-operation between the Prosecutor's Office of *Serbia* and the other countries of the region. In *Serbia*, stakeholders interviewed during the in-country visit, confirmed the impact this project (*Support to the Prosecutors' Network in South-East Europe/PROSECO*) had on their institutions' capacity to cooperate with counterparts in the region on corruption and organised crime issues. In this context, they highlighted the importance of the facilitation role of the Council of Europe for networking events across the region,
- *Serbia* benefitted from three JPs addressing **money laundering**: *PACO Serbia* (December 2005-May 2008), and, at the very end of the evaluation period, *MOLI/Serbia and Building up capacities of the Directorate for Managing Seized and Confiscated Assets and Support for the Development of a system of Detecting, Seizing, and Confiscating Proceeds from Crime, and Its Key Institutions in Serbia* (both 2010-2013). *Serbia* also participated in a number of multi-country JPs aimed at organised crime. PACO was active in drafting legislation and providing expertise to promote harmonisation with international standards. Specifically, it contributed to drafting the Law on the Agency for Prevention of Corruption and trained over 200 representatives of the Financial Intelligence Unit (FIU). Moreover, the project worked with different institutions on increasing their capacity to prevent money laundering. More recently, the JP *Building up the Capacities of the Directorate for Managing Seized and Confiscated Assets and support for the Development of a System of Detecting, Seizing, and Confiscating Proceeds from Crime, and Its Key Institutions* in *Serbia* aims at strengthening institutions and will perform a comprehensive impact analysis of current legislation to identify needs for harmonisation. Early in the evaluation period, law faculty reform supported by CARDS trained judges and prosecutors to deal with serious **crime**. *Bosnia and Herzegovina* was also a beneficiary of the 2008 *Support to the Prosecutors' Network in South-East Europe JP (PROSECO)* which aimed to enhance cross-border cooperation. Both projects produced training manuals and good practice guides. The CARPO Project (2004-2007), complemented PROSECO by applying the same regional approach to police officials. Just at the end of the evaluation period, *Serbia* became a beneficiary of the *Project against Cybercrime in South East Europe*.
- In *Bosnia and Herzegovina*, there were no JPs directly addressing **corruption** or **money laundering**. However, *Bosnia and Herzegovina* has participated in the MONEYVAL monitoring process. *Bosnia and Herzegovina*, like *Serbia*, was a beneficiary of the PROSECO and CARPO projects, as well as PACO. PACO also contained components addressing **human trafficking**.
- In *Turkey*, the JP Ethics for the Prevention of **Corruption** in *Turkey*, implemented in 2007 and 2009, aimed at strengthening the capacity for corruption-prevention by producing a series of

<sup>40</sup> CARDS – South East Europe – Police and Economic Crime (2004-2007)

<sup>41</sup> Support to the Prosecutors' Network in South-Eastern Europe



studies which analysed the area systematically for the first time. 120 trainers were trained on ethical principles and conduct which are set out by the Council of Ethics for Public Service Regulation. A training package and implementation guide were produced. No JPs specifically addressing **money laundering, organised crime, or trafficking** were implemented in Turkey during the evaluation period. However, Turkey has made progress in international cooperation aimed at curbing organised crime (including drugs trafficking).

To summarise, there is evidence that there was a contribution to the strengthening of national institutional capacities in at least some of the areas covered by this EQ in all countries covered by case studies. Assistance came in the form of training of stakeholders from the judicial system, assistance in legislative drafting, provision of expertise, participation in monitoring mechanisms such as GRECO and MONEYVAL, and, in the case of multi-country projects, addressing the capacity to deal with cross-border and international aspects of the problem areas. Progress has been made in harmonisation, and domestic institutions have been put in a better position to effectively implement the provisions of the relevant legal instruments. Progress in implementation, as discussed under Indicator I-411, has been mixed, but in the two areas treated in that Indicator, money laundering and corruption, some achievements have generally been registered.

#### 4.2 JC4.2 Improved prevention and deterrence of corruption, money laundering, organised crime and trafficking

The JC is assessed through four indicators investigating whether improved prevention and deterrence of corruption (Indicator I-421), money laundering (Indicator I-422), organised crime (Indicator I-423) and trafficking (Indicator I-424) has taken place, and whether EC-CoE cooperation has contributed to the change in situation. It is to be distinguished from Indicator I-411, which examined compliance with international commitments by the fact that this Indicator looks at actual levels of criminal activities in the form of corruption, money laundering, organised crime, and trafficking. Here, as opposed to Indicator I-411, we look at organised crime and trafficking, as well as money laundering and corruption.

Statistical data are, to say the least, scarce and difficult to interpret. All four involve criminality and the underground economy. An increase in prosecutions can mean that the underlying problem is getting worse, a negative judgment, or that authorities are taking the problem more seriously or have improved capacity to address it, positive ones. In order to evaluate convictions data, it is necessary to look below the "headline number" to ask whether the persons convicted were big fish or small fry. In general, we have not analysed the statistical data that are available. Nonetheless, the information below serves as a useful complement to the information presented under Indicator 411.

More specifically, regarding **corruption** (I-421), improvements in the Transparency International Index of Perceived Corruption were recorded in six of eight case study countries (albeit very slight ones in *Armenia* and *Azerbaijan*). The two countries experiencing deterioration were *Bosnia and Herzegovina* and *Russia*. Even countries that experienced improvement remain highly corrupt, generally held to correspond to an Index of five or less. In the area of money laundering, we have documented compliance improvements in most countries (*Bosnia and Herzegovina* being an exception) but also that, in most countries, there continue to be problems of non-compliance and partial compliance with FATF recommendations. As shown in the table below, only Moldova and *Russia* benefited from major country JPs addressing corruption over the evaluation period. Some new programmes have come into operation in 2010 but cannot be expected to have made a contribution over the evaluation period. In the pre-accession countries, two large regional projects in the CARDS region did not exclusively address corruption, but included it under the umbrella of economic crime. In *Turkey*, there was a large country JP against corruption. This is not a systematic database, but it is possible that the JPs in *Moldova* and *Turkey* made some contribution to the progress observed. More generally, the GRECO monitoring system, by engaging governments over the long term, has contributed to progress against corruption in the countries covered, albeit with the problems remaining described in Indicator I-411.

Table 6: *Transparency International Index of Perceived Corruption, early and late in the evaluation period*

Country	Ca. 2000	Ca. 2010	Observation	JPs specifically aimed at corruption or containing corruption components
Armenia	2.9	2.6	No change	Eastern Partnership Corruption Bridge Project (started 2010) Council of Europe Facility (started 2010, succeeds Corruption Bridge Project)
Azerbaijan	2.0	2.4	No change	Eastern Partnership Corruption Bridge Project (started 2010) Council of Europe Facility (started 2010, succeeds Corruption Bridge Project)
Moldova	2.1	2.9	Improvement	Support to the National Anti-corruption Strategy (PACO Moldova) (2005-2006), Programme against Corruption, Money Laundering and Terrorist Financing in Moldova (MOLICO Moldova) (2006-2009) Eastern Partnership Corruption Bridge Project (started 2010) Council of Europe Facility (started 2010, succeeds Corruption Bridge Project)
Russia	2.7	2.1	Deterioration	Harmonisation of Russian Anti-Corruption Legislation with International Standards (RUCOLA) (2004-2005) Development of Legislative and Other Measures for the Prevention of Corruption (RUCOLA 2) (2006-2007)
Bosnia and Herzegovina	5.5	3.2	Deterioration	CARDS – South-East Europe – Police and Economic Crime (2004-2007) Support to the Prosecutors' Network in South-East Europe ((2008-2010)
FYROM	2.7	4.1	Improvement	CARDS – South-East Europe – Police and Economic Crime (2004-2007) Support to the Prosecutors' Network in South-East Europe ((2008-2010)
Serbia	2.8	3.5	Improvement	CARDS – South-East Europe – Police and Economic Crime (2004-2007) Project against Economic Crime (2005-2008) Support to the Prosecutors' Network in South-East Europe ((2008-2010) Strengthening the Capacities of the Directorate for Confiscated Property Management and Improvement of the system for Search, Seizure, and Confiscation of Proceeds of Crime in Serbia (started 2010) MOLI (2010-2013)
Turkey	3.2	4.4	Improvement	Project on Ethics for the Prevention of Corruption in Turkey (2007-2009)

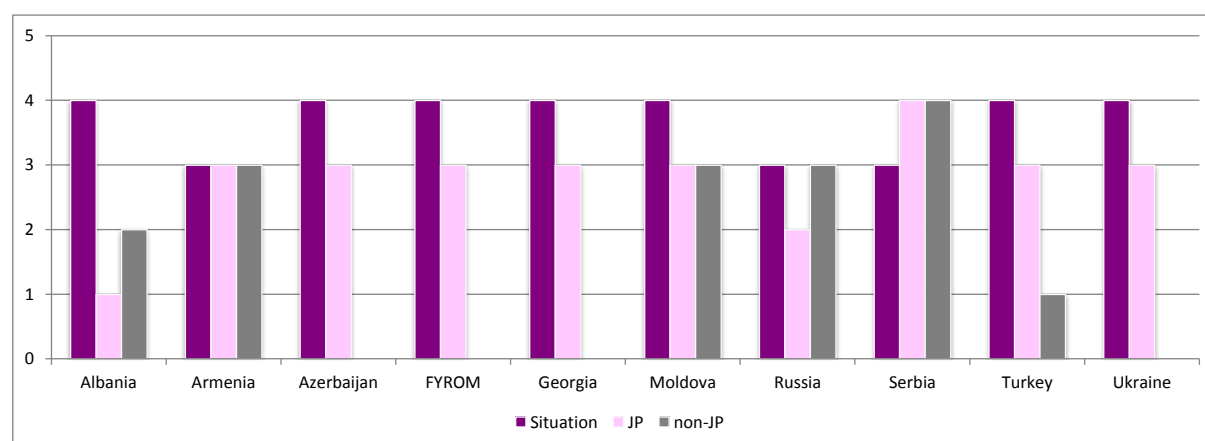
For **money laundering** (I-422), we have not attempted to analyse the limited and generally untrustworthy statistical data available. In assessing Indicator I-411, we found significant progress in compliance with FATF recommendations in *Serbia* and *Russia*, significant worsening of the problem in *Bosnia and Herzegovina*, and some progress, but many remaining problems in the remaining case study countries. It is noteworthy that in all ENPI countries, the information available points towards a positive development in the area of money laundering. The main tool in the fight against money laundering remains MONEYVAL monitoring, and the disruption of international financial ties and investment that follows negative findings. However, in four cases (*Moldova*, *Russia*, *FYROM*, and *Serbia*) country-specific JPs made some contribution to progress in the form of capacity building and institution strengthening.

No information on trends in **organised crime** (I-423) was found, however, it is acknowledged that this continues to be a problem in all the case study countries. JPs related to organised crime were found

only in three pre-accession countries (*Bosnia and Herzegovina, Serbia and FYROM*) and these were regional projects. Of those countries, only Serbia was included in the field phase. Stakeholders attributed an impact on their ability to prosecute organised crime where it has an international dimension to the regional JP linking prosecutors from the region (PROSECO), and there is a statistical upwards trend in such prosecutions. Likewise, very little information has been available on JP implementation addressing **trafficking** (I-424) and, as discussed under Indicator I-411, GRETA monitoring activities are just getting underway. Among the case study countries in the ENPI East region, no JP could be identified which has specifically addressed the problem of trafficking, even though it was identified as a prevalent problem in two countries (*Azerbaijan and Russia*). Regarding the pre-accession countries, a multi-country JP<sup>42</sup> for *Bosnia and Herzegovina, Serbia and FYROM* (also including Albania, Croatia, Montenegro and Kosovo) has included in its project outputs a training strategy on trafficking in human beings, smuggling and illegal migration, but no information is available on its implementation.

The discussion above can be supplemented by EUD perceptions. The results of the EUD survey show that the majority of EUDs that responded to the survey, feel that there have been some (*Armenia, Azerbaijan, FYROM, Georgia, Moldova, Turkey, Ukraine*) or significant (*Serbia*) improvements of the situation related to prevention and deterrence of corruption, money laundering, organised crime and trafficking, due to the implementation of JPs. Only for two countries the EC-CoE contribution has been low (*Russia*) or very low (*Albania*).

Figure 15: EUD survey results: Contribution of EC-CoE cooperation to prevention of corruption, money laundering, organised crime and trafficking



Scales			
Change in situation		Impacts of JP and non-JP cooperation	
Significant improvements	5	Very high extent	5
Some improvements	4	High extent	4
No change	3	Some extent	3
Some deterioration	2	Low extent	2
Significant deterioration	1	Very low extent	1
Do not know, Not applicable, No answer	0	Do not know, Not applicable, No answer	0

Note: Countries that provided no information for impacts in both JP and non-JP cooperation under this JC are not shown

Source: EUD survey

#### 4.2.1 I-421 Change (decrease) in corruption levels

Actual corruption levels are notoriously difficult to measure, but indices such as Transparency International's Corruption Perceptions Index (CPI) are broadly cited. In several case study countries (*FYROM, Serbia, Turkey, Moldova*) there have been apparently significant improvements in the index over the evaluation period. In *Russia and Bosnia and Herzegovina*, there were significant deteriora-

<sup>42</sup> CARDS - South East Europe - Police and Economic Crime (2004-2007)

tions. In other countries, there were no changes. (Overview of TI CPI change in case study countries over the evaluation period is presented above.)

- *Armenia* is part of a small multi-country JP<sup>43</sup> under the Eastern Partnership to enhance anti-corruption and good governance the JP only started in 2010 and is therefore not part of the evaluation period. Generally, *Armenia* remains a highly corrupt country (with almost no change in Transparency International Corruption Perceptions Index from 2.9 in 2006 to 2.6 in 2010<sup>44</sup>) despite implementation of GRECO recommendations. Anti-corruption officials interviewed reported meticulous implementation of international standards, but were silent on the actual extent of corruption. Independent civil society representatives, and members of the international donor community, were unanimous in identifying corruption as an endemic problem. The police and judiciary were reported to be among the most corrupt institutions, the latter despite recent salary increases.
- *Azerbaijan* remains a deeply corrupt country with almost unchanged scores in the Transparency International Corruption Perceptions Index (from 2.0 in 2002 to 2.4 in 2010), but according to some sources such as the World Bank, there were improvements in the corruption situation towards the end of the evaluation period. This cannot be related to JPs because, as in the case of Armenia, the only intervention is the recently-started Eastern Partnership Project.
- In *Moldova*, several JPs have been implemented to address corruption, most importantly MOLICO, which dealt with corruption as well as money laundering. However, the large number of implemented activities seems to have not (yet) contributed to a change in corruption levels. The Transparency International Corruption Perceptions Index improved from 2.1 in 2002 to 2.9 in 2010. Based on the World Bank Worldwide Governance Indicators, there has been a slight decrease in the control of corruption in 2000-2009. During the field mission, there was unanimity among all persons interviewed, whether from the anti-corruption agency, independent civil society, or the donor community, that corruption has not improved – a major source of frustration with the new government. The sole exception was representatives of the judiciary, who pointed to the fact that there were few if any complaints of corruption against judges. The judiciary was judged to be the most corrupt institution; however, bribes were also reported to be common in education and health.
- In the *Russian Federation*, there was deterioration in the Transparency Corruption Perceptions Index from 2.7 in 2002 to 2.1 in 2010. After the ratification of two conventions, it is clear that further steps will have to be taken to ensure that the RF complies with its respective obligations, implements the convention standards effectively and further improves and starts to consistently implement the existing anti-corruption legislation to achieve a change in corruption levels.
- For *Bosnia and Herzegovina*, the case study, by drawing on various internationally-respected surveys, identified deterioration with regard to corruption since 2002, despite the fact that Bosnia and Herzegovina ratified the Civil and Criminal Law Conventions against Corruption at the beginning of the evaluation period and has continuously taken part in GRECO monitoring exercises since then (see Indicator I-711). The Transparency International Corruption Perceptions Index deteriorated from 5.5 in 2002 to 3.2 in 2010. There were no JPs specifically aimed at corruption in Bosnia and Herzegovina.
- In *FYROM*, the two Council of Europe conventions against corruption (1999 and 2007) have been ratified, and a national programme for elimination of corruption has been in place since 2003. However, 11% of the population reported experience with corruption according to a 2011 State Statistical Service survey. The EUD identified some improvement in the area of corruption, money laundering, organised crime and trafficking for which, to some extent, they expressed the view that JPs contributed and the Transparency International Corruption Perception Index significantly improved from 2.7 in 2005 to 4.1 in 2010. However, the U.S. State Department has continued to express concern about corruption in FYROM and FYROM's remains well in the danger zone. UNODC, in a study financed by the EC, found that among Western Balkan countries, the largest average bribe (144% of a monthly salary) was in FYROM.
- *Serbia* has in place a legislative and institutional anti-corruption framework, and there is political will to address corruption. Thanks to this, Serbia has steadily improved in the Transparen-

<sup>43</sup> Eastern Partnership – corruption bridge project (2010) in Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Ukraine

<sup>44</sup> In this and following paragraphs, [http://www.transparency.org/policy\\_research/surveys\\_indices/cpi](http://www.transparency.org/policy_research/surveys_indices/cpi)

cy International Corruption Perceptions Index, from 2.3 in 2003 to 2.8 in 2005 to 3.5 in 2010. Serbia also made progress on the World Bank Worldwide Governance Indicators' Control of Corruption Index. Stakeholders interviewed for JPs implemented during the evaluation period had no institutional memory of these projects and were therefore unable to confirm the extent of the contribution of these JPs to progress. Overall, corruption and economic crime still remain major issues for public policy.

- *Turkey* has made progress in developing a comprehensive anti-corruption strategy, but challenges remain. The Transparency International Corruption Perceptions Index has shown improvement since 2002, from 3.2 to 4.4. It is possible that the major JP *Ethics for the Prevention of Corruption in Turkey*, implemented between 2007 and 2009 had some impact. The Turkey country case study cites the EUD sector management as being of the view that the greatest impact may not be the training provided, but the fact that it financed academic studies that will serve as the foundation for two new JPs in the corruption area launched in 2011. However, the academic studies were small-scale and the training is reported to have been of extremely high quality. Overall the country case study described assessing the impact of the project based on desk phase information as “problematic” and pointed out that the impact of the project has to be interpreted in light of the many other forces operating, both in domestic politics and international pressure, regarding corruption. No further information was gathered during the country field mission.

In summary, in some case study countries there have been improvements in perceived corruption, but in others including *Bosnia-Herzegovina*, *Russia*, *Moldova*, and *Armenia*, there have been none. Even in countries where there has been improvement, corruption remains a significant problem; all countries remain in what Transparency International considers systemic corruption (a Corruption Perception Index lower than 5). GRECO monitoring has played an important role, providing an entry point for JPs helping to draft legislation and strengthen institutions for the fight against corruption. The fact that improved laws and institutions have not translated into sweeping reductions in corruption is arguably due to a lack of political will to fully deploy the weapons available to fight it. Political and economic changes – for example, in *Russia*, where there has been an apparent worsening of perceived corruption despite two significant JPs directly attacking the problem, or in *FYROM*, where there was an apparent improvement despite the fact that there was no JP – is a reminder that corruption is a complex phenomenon determined by many factors.

#### 4.2.2 I-422 Change (decrease) in levels of money-laundering

While, as with other areas of illegal activity, quantitative data on levels of money laundering are difficult if not impossible to obtain. Even prosecutions data may be unreliable, as these may refer to small scale, own-account money laundering offenders, not to the professional money launderers for profit that are the most important source of the problem. While levels of money laundering may not be known, compliance with international standards and commitments has improved in a number of cases study countries, as found in assessing Indicator I-411. Some of this can be safely attributed to the effect of JPs. In *Serbia*, in the case of the MOLI project (which commenced in 2010 and is therefore somewhat outside of the evaluation period), stakeholders were clearly able to point out the link between the project activities and the monitoring through MONEYVAL, and the usefulness of the project was confirmed both by the police and the Ministry of Finance. In *Moldova*, which benefitted from MOLICO, persons interviewed did not regard money laundering as a serious problem at present. The same was true for *Armenia*. More broadly, MONEYVAL has been an extremely effective tool for promoting compliance with international standards applicable to money laundering. Statistical estimates of the prevalence of money laundering, or its trend over time, have not been found. The general picture provided by the MONEYVAL horizontal evaluation of the third round of country evaluations, is that there has been significant progress, but that further efforts are required.

#### 4.2.3 I-423 Change (decrease) in levels of organised crime

The data issues raised for money laundering are even more serious in the area of organised crime. Among ENPI countries, *Armenia*, *Azerbaijan*, and *Russia* did not benefit from JPs aimed specifically at organised crime. Moreover, for this indicator only limited information could be gathered for the pre-accession countries (*Bosnia and Herzegovina*, *Serbia*, *FYROM* and *Turkey*). Only three case study countries (*Bosnia and Herzegovina*, *Serbia* and *FYROM*) implemented JPs which directly dealt with organised crime.

- In *Bosnia and Herzegovina*, there are no crime statistics publicly available; however, according to the EC's “Bosnia 2010 Progress Report”, the presence of organised criminal networks and their attempts to infiltrate the legal economy remain cause for concern. There was some improvement, as relevant conventions have been ratified, and there is increased cooperation



between the Prosecutor's Office and prosecutors in neighbouring states. The EC's 2010 Progress report on Bosnia and Herzegovina concluded that BiH had started to address organised crime, but that there were recurrent challenges.

- No information has been found on change in levels of organised crime in *Serbia*. PACO – the Project against Economic Crime in the Republic of Serbia (2005 – 2008) provided training on money laundering and terrorist financing, and initiated work on cybercrime, as well as assisting with legislative drafting and MONEYVAL/GRECO compliance. Serbia benefited from a number of multi-country JPs specifically aimed at organised crime. Among these were PROSECO (see above) and CARPO. The Ministry of *Interior's Financial Investigation Unit report favourably on their experience with regard to JP "Strengthening the capacities of the Directorate for Confiscated Property Management and Improvement of the System for Search, Seizure and Confiscation of Proceeds from Crime 2010-2013"*. The project is reported by the Unit as having built upon the results of the previous JPs such as the "CARDS Regional Police Project" (CARPO – 2004-2007), and the "Project against Economic Crime and Money-Laundering in Serbia (PACO-Serbia – 2005-2007)" and interlocutors produced handbooks from earlier projects as evidence of on-going use of outputs from earlier JPs. The FIU attribute the 300 Million Euro temporarily confiscated over the past 3 years to the 2 Million Euro project.
- No information has been found on the prevalence of organised crime in *FYROM*, although news reports continue to highlight the problem, as well as steps taken to address it. It may be presumed that PACO contributed to progress to some extent as the GRECO evaluation report notes that FYROM authorities cited specific JPs<sup>45</sup> as triggers for various implementation measures undertaken though further training and oversight remain a necessity.
- For *Turkey*, there are no confirmed statistics on trends available, but reports indicate that organised crime remains prevalent. No country JP dealt specifically with organised crime.

In sum, JP efforts specifically targeting organised crime were limited to countries in the South East European region. A number of large regional programmes provided training and capacity building, with special emphasis on the importance of cross-border cooperation to address what is a cross-border problem. Organised crime continues to be a problem and, practically by definition, it is not a problem that can be precisely quantified and tracked over time. However, it is likely that in the countries benefiting, these regional JPs strengthened capacity to deal with the problem.

#### 4.2.4 I-424 Change (decrease) in levels of trafficking

The same caution on the lack of precise data applies. Prosecutions are also not a reliable indicator, as an increase can mean either that the problem is getting worse or that the problem is being taken more seriously by the authorities. The implementation of the Convention is monitored by CoE's Group of Experts on Action against Trafficking in Human Beings (GRETA). In part because GRETA is a relatively new monitoring body, only limited information could be found on the impact of JPs addressing trafficking. Moreover, as the Convention only came into force in 2008, there have been few JPs.

Among the case study countries of the ENPI, no JP specifically addressed the problem of trafficking, even though it was identified as prevalent in three countries (*Azerbaijan, Moldova, and Russia*).

- In *Armenia*, not a country seriously affected by human trafficking, according to the case study the problem is on the decline. There have been high-profile prosecutions, and potential victims are more aware of the risks they run; however, it is not possible to attribute these changes to the implementation of JPs. Armenia has ratified the 2005 Convention on Action against Trafficking in Human Beings. Over the evaluation period, Armenia fluctuated between Tier 2 and Tier 2 Watch List (the latter corresponding to the risk of being downgraded to Tier 3) over the evaluation period in the U.S. State Department's rating system.
- In *Azerbaijan*, even though trafficking is a pressing issue, and Azerbaijan has ratified the Convention, no JPs have been implemented addressing this issue. Efforts have been undertaken such as a National Action Plan against Trafficking in Human Beings, which was approved in May 2004 (modified in 2009), and a law was adopted in June 2005.<sup>46</sup> Moreover, in 2010, the Council of Europe Convention on Action against Trafficking in Human Beings was signed, rep-

<sup>45</sup> CARDS - South East Europe - Police and Economic Crime (2004-2007) and Development of Operational Capacity to Combat Money Laundering (MOLI-MK) (2004-2006)

<sup>46</sup> Action against trafficking in human beings: prevention, protection and prosecution. Proceedings of the regional conference, Athens, Greece, 5-6 December 2006 Organised by the Gender Equality and Anti-Trafficking Division, Directorate General of Human Rights and Legal Affairs of the Council of Europe, Directorate General of Human Rights and Legal Affairs, Strasbourg, 2007, EG-THB-SEM 5



resenting some progress in the area of non-financial cooperation. However, the country does not comply with international standards, and the enforcement efforts are considered uneven by the U.S. State Department, which in the last years of the evaluation period downgraded the country from Tier 2 to Tier 2 Watch List, commenting that only the existence of a national action plan prevented it from being classified as a Tier 3 country.

- Also in *Russia*, despite the fact that human trafficking has been identified as a significant problem, no trafficking-specific JP was implemented. At the time of writing, Russia has not ratified the 2005 Convention against Trafficking in Human Beings.<sup>47</sup> From 2004-2011, Russia's ranking as a U.S. Department of State Tier 2 Watch List country was unchanged.

Among pre-accession countries, there have been significant actions concerning trafficking:

- The project "CARDS - South East Europe - Police and Economic Crime" (*Bosnia and Herzegovina, Serbia and FYROM*, also including Albania, Croatia, Montenegro and Kosovo) produced a training strategy on trafficking in human beings, smuggling and illegal migration as one of its outputs.
- *Bosnia and Herzegovina* ratified the Council of Europe Convention on Action against Trafficking in Human Beings in 2006. According to the EC's "Bosnia 2010 Progress Report"<sup>48</sup>, the number of identified victims and investigations related to human trafficking increased, but Bosnia and Herzegovina continues to be a country of origin, transit and destination for trafficking in women and girls. However, according to the ranking of the U.S. State Department, Bosnia and Herzegovina progressed from Tier 3 (the most deficient ranking) to Tier 1 (conforming to international good standard) over the evaluation period.<sup>49</sup> The regional PACO JP may have contributed, but there was no country-specific intervention in the area of trafficking.
- There has been no contribution through country-specific JP implementation in *Serbia*, either. According to OSCE data and confirmed by ASTRA<sup>50</sup>, the level of persons transited through Serbia decreased in 2008/2009. The same report, however, also cites an increase in cases of internal trafficking, and in the numbers of children who are being victims of trafficking.<sup>51</sup> In contrast, other sources report a decline in the overall numbers of victims of trafficking from 2009 to 2010, but do not provide specific figures.<sup>52</sup> According to the MONEYVAL 2009 monitoring report, the number of convictions for human trafficking increased from 23 to 174 between 2006 and 2008. The country field mission did not engage with the issue of trafficking.
- For *FYROM*, there are no data on levels of trafficking available nor are data available on number of victims or prosecutions. Consequently, it is difficult to say whether JPs such as PACO have contributed to improvement. However, the U.S. State Department in its 2011 annual report cited "significant strides" in the government of FYROM's fight against trafficking in human beings, not least being the arrest of 25 suspected traffickers and conviction of 21 in 2010. Having assisted a peak of 45 victims of trafficking in 2002, the International Organisation for Migration (IOM) assisted only two in 2011.
- *Turkey* serves as a trafficking route for multiple drugs<sup>53</sup> and over many years, the UNODC has highlighted high levels of human trafficking to and through Turkey. There is no indication that the drug trafficking problem is improving, as Turkey acted as the conduit for 75-80% of the heroin exported from Afghanistan to Europe. The IOM highlights that Turkey is primarily a destination country for human trafficking, the majority being women originating from the former Soviet Union. Even though the situation seems to be problematic, there was, over the evaluation period, no country-specific JP dealing specifically with trafficking in all its forms. Nevertheless, Turkey progressed from a U.S. State Department Tier 3 rating at the beginning of the evaluation period to a rating of Tier 1 at the end, indicating significant progress.<sup>54</sup> The EU, in a monitoring report for 2010, gave a mixed review, praising stiff sentences handed down to traf-

<sup>47</sup> <http://www.eu-russiacentre.org/our-publications/column/russia-council-europe-convention-action-trafficking-human-beings.html>

<sup>48</sup> [http://ec.europa.eu/enlargement/pdf/key\\_documents/2010/package/ba\\_rapport\\_2010\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ba_rapport_2010_en.pdf), p. 59.

<sup>49</sup> <http://www.state.gov/documents/organization/142981.pdf>

<sup>50</sup> See "Trgovina Ljudima u Srbiji – Izveštaj za Period 2000 – 2010", Belgrade 2011, at [http://www.astra.org.rs/wp-content/uploads/2008/07/palermo-2010-SRP-web.pdf\\_paragraphs\\_144\\_to\\_149](http://www.astra.org.rs/wp-content/uploads/2008/07/palermo-2010-SRP-web.pdf_paragraphs_144_to_149).

<sup>51</sup> See OSCE Report "Trafficking in Human Beings in Serbia", no year, at <http://www.osce.org/serbia/25183>.

<sup>52</sup> See State Department "Trafficking in Persons Annual Report 2011" at <http://www.state.gov/g/tip/rls/tiprpt/2011/164233.htm>.

<sup>53</sup> US State Dept Narcotics Report for 2011

<sup>54</sup> <http://www.state.gov/documents/organization/142984.pdf>

fickers, but calling for further legislative and enforcement efforts to comply with the CoE Convention. This EQ was not the focus of the in-country phase in Turkey, and no additional information was therefore gathered to refute or corroborate these findings.

Overall, it is not possible to isolate and identify any impact or contribution of CoE-EC JPs in the area of trafficking. We have mostly found evidence having to do with trafficking in human beings. Here, a number of countries covered by case studies have experienced improvements (*Turkey, FYROM, Bosnia and Herzegovina, and Serbia*) although we have cited ambiguities in interpreting evidence. This is some evidence that improvement is possible regardless of JPs, and is a reminder that in human trafficking, there are many players exerting pressure – not least the U.S. State Department, which has taken a leading stance against the problem. In *Russia*, and *Azerbaijan*, the situation remained about the same as it was at the beginning of the evaluation period, and *Azerbaijan* is in danger of being downgraded to a U.S. State Department Tier 3 country. Only one JP explicitly devoted to trafficking in human beings was identified, and it was limited to producing a training curriculum.

## 5 EQ5: To what extent has the cooperation with the CoE, in particular via the channelling of funds, contributed to strengthening the rule of law as it relates to legal systems and access to justice?

### 5.1 JC 5.1 Increased transparency, efficiency, and effectiveness of the legal system

The criterion of increased transparency, efficiency, and effectiveness of the legal system was assessed based on two indicators:

- Introduction of reforms in substantive and procedural law including supplementary regulations (I-511);
- Reduction of backlogs and delays through improved case management (I-512);

Reforms leading to improvements in the transparency, efficiency, and effectiveness of the legal system are complex, and take time, sustained efforts, and above all political commitment to be achieved. Some contribution of the joint EC-CoE action towards these efforts was found for these two indicators, mainly achieved through implementation of joint programmes. However, many countries remain well short of their international commitments. Overall, apart from some perspectives gained in field visits, analysis is limited to review of project reports, with no corroborating evidence in the form of ROM reports or external evaluation.

Some evidence of EC-CoE involvement in **reforms of substantive and procedural laws** (I-511) has been found in most case study countries. In the countries of the South Caucasus (*Armenia, Azerbaijan, and Georgia*), there were some results in the form of laws being drafted. However, in the first two countries, despite statutory reforms, both systems of justice have been the subject of international criticism for, e.g., lack of independence of the judiciary, failure to respect the principle of equality of arms, systematic bias of judicial proceedings in favour of the prosecution, etc. In *Moldova*, support to judicial reform was supported over the evaluation period, with three consecutive JPs over the decade contributing to reform preparations and law drafting, even though not all recommendations were eventually accepted by the Moldovan authorities. Comments on draft laws were also the main contribution to reforms in *Serbia* and *Bosnia and Herzegovina*, contributing to the National Judicial Reform Strategy and Criminal Justice Strategy respectively. In *Bosnia and Herzegovina*, implementation of laws is problematic. Serbia has experienced massive legal reform over the evaluation period, but it is difficult to estimate the contribution of joint EC-CoE programmes because so many other donors were active in the area. In *Turkey*, capacity building was provided to the MoJ staff to draft legislation compatible with European standards and some examples are identified of this capacity being applied. In *Russia*, long-term EC-CoE engagement in legal reform is slowly bearing fruit in the form of a new drive to reform the appeals process. A number of reform steps were instituted in *FYROM*, albeit with relatively little support from EC-CoE JPs. The OSCE and EC (in its progress report) identify continuing problems in the judicial system. In *Armenia*, the JP *Access to justice* provided expertise for revision of the Civil and Criminal procedure codes and, prior to this, the JP *Support to justice reform* provided expertise on constitutional changes. Many sources of evidence report, however, that the judiciary remains highly dependent on the presidential party.

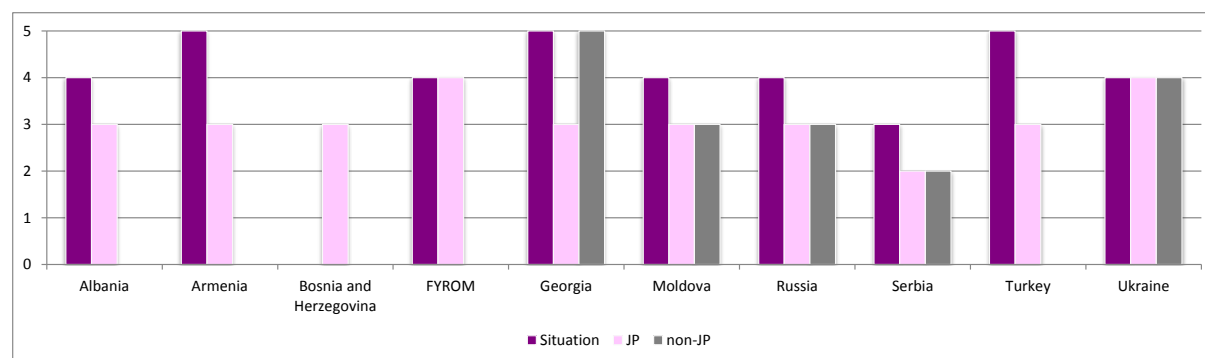
Less evidence of EC-CoE involvement in **reduction of backlogs and delays** specifically through support to improved case management (I-512) was found. One JP specifically dedicated to case management was implemented in *Turkey* (2007-2009). While a new strategy for case management was

implemented in five pilot courts, likely leading to more efficient case management, the JP was unable to introduce necessary legislative changes within its time frame and the project work plan was adjusted accordingly. Problems with the efficiency, transparency and effectiveness of the court system persist in Turkey. In *Armenia*, an EC-CoE JP helped to put in place an online system for case-tracking.

JPs appear to have been most effective when linked to the presence of CoE Offices and when accompanied by strong local ownership by key institutions (typically for this EQ Ministries of Justice or specialised agencies). This local ownership has evolved over time and successive JPs. In *Moldova* the *Democracy Support Programme* (2010-2011), saw CoE support strategy formulation, the operation of working groups to discuss drafts, public debate, and dissemination. An EU Advisor attached to the Ministry, viewed government ownership of this JP as being much stronger than that of the predecessor Justice Reform JP. Similarly in *Turkey* a series of justice system JPs have seen growing proactive Turkish ownership. Despite effective delivery and strong ownership by implementing state institutions JPs generally lacked inputs from rights-holders and their representatives, and therefore lack focus on root causes, the optimum assistance required and impact (as opposed to activity or outputs) achieved.

In the EUD survey (results presented in Figure 16), the Delegations were, in general, positive about the development in their respective countries in the area of transparency, efficiency, and effectiveness of the legal system with none rating the situation as being one of "some deterioration" or "significant deterioration" with *Armenia*, *Georgia* and *Turkey* suggested as showing significant improvements. The response from Armenia is of interest because it is diametrically opposed to the finding of the case study and field visit, which is that despite international support including an EC-CoE JP specifically addressing judicial reform, there has been little progress in major areas of judicial reform (such as the independence of judges, or the public perception of the judiciary as a corrupt institution) None of the three EUDs reporting significant improvement considered the contribution of JPs as "very high" or "high." High contribution of JPs to the development of the indicator was reported in *Ukraine* and *FYROM*, together with 'some improvements' in the indicator. Notably, EUD *Georgia* considers the contribution of non-financial EC-CoE cooperation as 'very high', and stresses the expertise provided by the Venice Commission in this respect.

Figure 16: EUD survey results: Impacts in Increased transparency, efficiency, and effectiveness of the legal system



Scales			
Change in situation		Impacts of JP and non-JP cooperation	
Significant improvements	5	Very high extent	5
Some improvements	4	High extent	4
No change	3	Some extent	3
Some deterioration	2	Low extent	2
Significant deterioration	1	Very low extent	1
Do not know, Not applicable, No answer	0	Do not know, Not applicable, No answer	0
Note: Countries that provided no information for impacts in both JP and non-JP cooperation under this JC are not shown			
Source: EUD survey			

Overall, the impression left by the two Indicators examined is that **there have been examples of progress**, in the form of new laws passed, reform plans adopted, case management systems piloted, etc., but that **all of the judicial systems examined have yet to meet the applicable international**

**obligations.** JPs have made some contribution, as non-financial cooperation through groups such as CEPEJ and the Venice Commission, but ultimately, effective judicial reform is subject to two constraints. The first of these is resources: with some exceptions, judicial systems are operating without sufficient financial, human, and physical resources. This leads to backlogs and delays, opening the door to corruption, and impairs the quality of justice and the reputation of the judicial system. The second is political commitment, where the Soviet era legacy of a judiciary subordinate to the executive, a prosecution operating at a vast advantage over the defence, and inadequate attention to civil and administrative law is still present

### 5.1.1 I-511 Reforms in substantive and procedural law including supplementary regulations introduced

In most of the case study countries there was some progress, supported by the EC-CoE joint programmes, in reform of legislation aiming at increased transparency, efficiency and effectiveness of the legal system during the evaluation period. However, as judicial and legal reform is a complex and long-term process, and in some cases has not been whole-heartedly embraced by the governments, many countries still fall far short of meeting their international obligations.

EC-CoE joint programmes supported legislative reform in various ways, often by providing expertise on draft laws, facilitating in-country expert discussion on different elements of reform, or by building capacity of stakeholders to be able to provide comments on draft legislation regarding its compliance with CoE standards. It is difficult to reach strong conclusions on the impact of support provided, especially when project final reports, as they often do, only provide lists of activities undertaken and expertise provided. However, it is sometimes acknowledged in the final reports of the JPs that recommendations made by CoE experts were not fully taken into account in the final texts, and that room for improvement remains. A few specific examples can be cited: (more details are included in the box at the end of the section):

- In *Armenia*, the on-going *Access to Justice* JP supports reform of the justice sector through improving the efficiency of the judiciary. The JP *South Caucasus democratic stability* (2002-2004) provided expertise on the independence of judges, and the status of the High Judicial Council. Such work may have contributed to the judicial reform of 2008, which introduced a number of improvements such as the putting in place of an administrative law court to review the decisions of public bodies. Under the *Access to Justice* JP, CoE expert advice assisted the Ministry of Justice in preparing an e-Notary system to streamline notary procedures, drafting legislation and CoE has issued a bid for tenders for provision of hardware and software. Another tangible result linked to this JP is revision of the Criminal Procedure Code and Civil Procedure Code, which involved expert inputs, round tables to ensure transparency, and preparation of a concept paper identifying gaps and suggesting responses. Cooperation with the Ministry of Justice in this process was reported in field visit discussions to have been excellent, and the Ministry of Justice is interested in continuing the work by producing a Commentary. In general, the EU Delegation and the Ministry were impressed with the quality of the expertise provided. However, the overall state of the judicial system in Armenia remains poor, which has led to the EU identifying judicial reform as an ENPI priority. The ECtHR has delivered adverse Article 6 (right to a fair trial) judgments and the Commissioner for Human Rights has made a number of criticisms. While lawyers are in theory independent professionals, in fact, they are subject to pressure from the prosecution and the independence of judges, while in theory independent, routinely favour the prosecution. Acquittals in criminal cases are extremely rare.
- In *Azerbaijan*, the JP *South Caucasus democratic stability* (2002-2004) was also active. The final project report identified contributions to drafting an action plan on judicial independence and the establishment of joint CoE-government working groups, ultimately leading the amendments to the Law on Lawyers being adopted in 2004. However, as reported in the country case study, in 2010 the U.S. State Department identified a long list of generalised flaws in the administration of justice, including failure to respect cornerstones of the rule of law such as equality of arms, the presumption of innocence, and the independence of the judiciary.
- In *Moldova*, support to judicial reform was sustained throughout the evaluation period with the provision of three consecutive JPs containing legislative reform components. The projects provided assistance and expertise on many aspects of the reforms, especially on draft legislation. JP final reports state that many of the recommendations were accepted, leading to significant improvements of the final texts, while in other cases the acceptance was more limited (no precise details were given).

- In *Russia*, in response to a number of adverse ECtHR judgments, reform of the judicial reform system was identified by judicial and executive authorities, as well as by the Council Of Ministers of the CoE, as a priority area for reform. In response to this, the JP *Strengthening the rule of law, human rights, and educational standards (Russia VII)* (2004-2005) organised a major seminar in Strasbourg in 2005. Late in the evaluation period, draft laws reforming the appeals process were working their way through the Duma. The JP *Introduction of the appeal in the Russian Federation* (2010-2013) is providing support to implementation, monitoring, and assessment of the recent reforms and ensuring conformity with European standards, however, any impact of this JP is likely to be discernable only after the evaluation period.
- In *Bosnia and Herzegovina*, the country case study identified a number of significant new laws, but reports that implementation is often problematic. The JP *Commentaries on new criminal legislation* (2003-2005) provided support to the criminal justice reform strategy and to the meeting of post-accession obligations. However, no evaluation report is available as to whether the expertise provided had a lasting impact.
- In *Serbia*, there have been massive changes in procedural and substantive law over the last decade in view of aspirations to EU membership. The JP *On the implementation of the National Judicial Reform Strategy* ((2007) provided expert assessments to ensure that legislation was in conformity with European standards. The recommendations of CoE experts were incorporated in final texts. Attribution of impact to the JP is practically impossible, since some 15 donors were working concurrently on the National Judicial Reform Strategy (NJRS). Opinions on the success of the NJRS are mixed and, according to Freedom House's 2011 report on Serbia, the judiciary remains a weak component of democratic development. Serbia is one example of a jurisdiction where overlapping focus of multiple donors and implementing actors, makes it difficult to estimate the contribution of joint EC-CoE programmes, especially in the absence of post-JP impact evaluation.
- In *FYROM*, while a number of JPs dealt with money laundering, police and economic crime, and cybercrime, JP engagement with judicial reform *per se* was limited. The *Strategy for Justice System Reform* was adopted in late 2004. The Law on Criminal Procedure was amended in 2004 and the Law on Civil Procedure in 2005, aiming to accelerate procedures and promote court protection of the rights of citizens and legal entities. Constitutional amendments adopted in December 2005 sought to reinforce the independence of the judiciary and the Academy for Training of Judges and Public Prosecutors was founded in 2006. The formation of elite teams of prosecutors, judges, and investigators to deal with organised crime and corruption is reported to have significantly diminished the problem of "ethnic corruption" (toleration of illegal activities on the grounds of ethnicity). However, an OSCE survey from January 2010 found that two thirds of judges surveyed felt pressure from political parties and the EC's 2010 progress report found lack of progress in implementing measures to increase judicial independence and reduce political party pressure. The report concluded that the current system is not in compliance with European standards. Other problems include the legal rights of ethnic minorities and the large backlog of cases.
- In *Turkey*, the key issues highlighted by the ECtHR include prolonged pre-trial detention and the excessive length of proceedings. Heavy workloads, inadequate facilities, and under-budgeting are common, leading to inefficiency and ineffectiveness. There are, in addition, issues of the independence and impartiality of the judiciary, although the EC's 2010 Progress Report cites some progress in the area. Strengthening the rule of law and access to justice was a key component of a number of JPs which with the new 2005 Penal Code are seen as a key contribution to acknowledged improvements in the justice system since 2000. *Judicial modernisation and penal reform* (2004-2007) focused on strengthening capacities through the development of the justice Academy and training Ministry of Justice staff to increase their ability to review draft laws and ensure compatibility with European norms. *Support to the court management system in Turkey* (2007-2009), also discussed under Indicator I-512, sought to improve the efficiency and effectiveness of the court system. In the context of this JP, data entry by the relevant MoJ Statistics Directorate which previously took ten months is reported in field visit discussions as being completed in one month.<sup>55</sup> The final report notes a number of important results achieved, but shortcomings, as well. A number of innovations implemented in pilot courts through this JP are identified as having positive impact on court procedures (and

<sup>55</sup> However, reference was also made in field discussions to a range of other court automation and capacity building projects that took place in parallel during 2000-2010.



potentially judicial independence). These include introducing new positions (Court Managers, Judicial Assistants) and court “Front Offices” and “restricted zones.” Extending these is a matter of resources and continued judicial support, but legislative changes now provide for such Front Offices. These reforms appear to be benefit from targeted use of study visits with interviews of managers and participating institutions suggesting consideration given to participants, study visit content, objectives etc. as something that has improved over time. The report concludes that the sustainability was dependent on Ministry of Justice commitment to implement the new court management system. Regression is also evidenced with a quadrupling (to over 63,000) in cases opened under anti-terror legislation and Penal Code terrorist related provisions. This development highlights that the more efficient case management, better trained judges, new courts etc. can be undermined by politically-motivated prosecution. The project evaluation report was critical of weakness in indicators of success and unrealistic expectations. *Enhancing the role of the supreme judicial authorities (2010-2012)* builds upon earlier JPs with the objective of enhancing the senior judiciary, Sees he EUD has, however, reported a favourable view of the value added of the project.

- Sustained efforts have also been provided in *Ukraine*, with two consecutive JPs providing legal expertise in support of the reforms of the judiciary, most notably on the draft laws on the Judiciary and the Status of Judges. According to the ROM report of the project, the recommendations on the laws were accepted only to a limited extent.

Overall, at least some evidence of the EC-CoE joint programme involvement in the area of substantive and procedural law has been found in all case study countries. There has been some progress in some countries, to which the expertise provided by JPs may have contributed. CEPEJ assessments have also been an important source of CoE engagement with judicial reform. The following box discusses findings of the impact of selected JP support to legislative reforms in more detail.

**Box 8: Judicial and legal reforms in Joint Programmes**

Strengthening the judicial system in South Caucasus was one of the components of the *South Caucasus democratic stability JP*, implemented 2002-2004 in Armenia, Azerbaijan and Georgia. As it was the case with many JPs especially in the first half of the evaluation period, a relatively modest programme budget (2.5 million EUR) was further spread over many programme components (a total of 10 in this JP), and multiple countries. Even so, the evaluation<sup>56</sup> (2005) of this JP found some results in the area of judiciary at the country level:

- *Armenia*: A climate of cooperation and communication which fostered the adoption of legislation achieved – the drafting of five acts was achieved; Development of some essential judicial institutions; Principles of judicial education elaborated.
- *Azerbaijan*: The overall impact was assessed as modest, and incomplete in character. However, the project contributed to improving or introducing the relevant laws and making a start on institutional reforms.
- *Georgia*: The project facilitated the creation of the High Judiciary Council and facilitated the drafting of the necessary law (at that time yet to be submitted to Parliament) for the setting up of a School of Magistrates. However, practical changes to the reform of the judiciary had not yet begun.

The government of *Serbia* is implementing the National Judicial Reform Strategy (NJRS), a key document adopted in 2006, the implementation of which is foreseen to last until 2012. The four guiding principles of the Strategy are: judicial independence, transparency, accountability and efficiency. However, various international actors (EC and Freedom House among others) raise concerns about some aspects of the reforms. The EC-CoE JP “*On the implementation of the National Judicial Reform Strategy*” (implemented in 2007) provided expertise to support the NJRS, in order to ensure that the legislation regulating the judiciary is compatible with the CoE standards and practices. Some recommendations of the CoE experts were incorporated in the final texts but no exact assessment of their contribution is available. The NJRS has been judged by international observers as a mixed success, as a result of which donors are now taking a more systematic approach to justice sector reform through a Multi-Donor Trust Fund. According to Freedom House’s Nations in Transit 2011 Report on Serbia, “*the judiciary remains a particularly weak component of democratic capacity and practice*”.

In *Turkey*, judicial modernisation was a component of a JP running in 2004-07 (together with penal reform), with the aim of the improvement of the efficiency of the judiciary. The focus of this component was on strengthening capacities, through the development of the justice academy, but also through training of the Ministry of Justice staff to increase their ability to review draft laws and ensure compatibility with European norms. Seven judges were selected to study European law at EU universities. However, no arrangements were made to ensure their further impact in the system, as the final report (2007) states “*It remains to be seen whether the 7 judges will continue to work at the General Directorate for the European Union and use the expertise they have acquired in the drafting of new legislation and regulations. It also remains to be seen whether they will be appointed as trainers at the Justice Academy as originally intended in the project.*” In formulating the JP, no plans were made to

<sup>56</sup> Evaluation of the South Caucasus EC/CoE Joint Programme; ITAD, Final Report 2005



*actually measure the impact of the enhanced capacity.*

In an ongoing JP *Enhancing the role of the supreme judicial authorities* (2010-2012) the objective is to enhance the respective roles of the Higher Courts and of the High Council of Judges and Prosecutors as the superior judicial authorities in the accession process and in the adoption of European high judicial standards. It is too early to assess any impacts of this project. However, the EUD notes that the feedback received from the target participants demonstrates that the Courts started revising some of their previous judgements following the discussions at those study visits. The EUD thus deems the added value in this regard to be considerably high.

In *Moldova*, a component of the JP on *democratic stability* (2001-2003) aimed at supporting the Reform of the judicial system and training of the judiciary. The results were the adoption and partial implementation of an Action Plan for judicial and legal reforms, draft legislation on organisation and powers of court clerks, draft legislation on enforcement of court decisions and draft amendments to the law on the prosecution system. This JP was later followed up by JP *Support to continued democratic reforms* (2004-2006), also with a component of judiciary reform, which delivered expertise used in the process of improving and perfecting the judicial legislation (four main laws of judicial organization and the draft law on the National Institute of Justice). According to the final report, the recommendations were generally but not exhaustively taken into account. The JP *Increased independence, transparency and efficiency of the justice system* (2006-2010) continued with the support to the judiciary reform. A permanently updated database of the Moldovan legislation and drafts being considered by the Moldovan authorities was created. The database includes most of the CoE recommendations and other documents related to the judiciary in general. Important laws, normative acts or amendments to the existing judicial legislation were assessed as to their compliance with European standards, in particular the principle of independence of the judiciary, free access to justice, corruption resistance, relevance and sustainability etc. As admitted in the final report, despite CoE's efforts, sometimes the response of the authorities to experts' findings and recommendations remained limited; on different occasions the Moldovan authorities were reluctant to submit relevant and important draft legislation for CoE expertise prior to its consideration and adoption by the Moldovan Parliament.

In *Ukraine*, JP *Improving independence of the Judiciary* (2006-2007) supported the process of bringing the legal framework on the judiciary in line with European standards, the improvement of the process of selecting and appointing judicial candidates according to CoE standards, the development of transparent and objective disciplinary liability procedure, and improvements of legislation on the training of judges. The mode of operation was mainly of provision of legal expertise and recommendations, and support to training of judges. While no final report of the project is available, the ROM report of 2007 before the project's end notes that "*Legal advice, though provided extensively, has been the most sensitive to political situation which has remained unstable for the most of the project duration. Effectiveness of assistance in this area as well as its impact could have been higher in a more favourable political context. Draft laws on introducing changes to the two basic laws 'On Judiciary' and 'Status of Judges' have past the first reading before dissolution of the Parliament. While it was acknowledged by the beneficiaries that the project assistance has led to improvement of the draft laws, an opinion was also expressed that recommendations on these two laws have not been incorporated to the desirable extent.*" Follow-up JP *Transparency, independence and efficiency of the judicial system and increased access to justice* (2008-2011) continued supporting the development of legal framework on judiciary, after the constitutional crisis of 2007, when the reform process was interrupted. Expertise on draft legislation and other legislative initiatives in relation to judicial reforms was provided. Expertise was also provided in the area of ethical standards for judges and prosecutors. The ROM report of 2010 concludes that "*project advice was timely and helpful for the members of the Presidential working group charged with the elaboration of the Law on the Judiciary and Status of Judges, which was then adopted in summer 2010. However, the independent opinion and advice provided by the project experts did not always coincide with the formal opinion of the Ukrainian policy makers. As a result, recommendations on the above mentioned law were accepted only to a limited extent. Adoption of other laws considered by the project is still pending.*"

In *Russia*, the JP *Strengthening the rule of law, human rights and educational standards (Russia VIII)* (2004-2005) facilitated discussions on administrative justice to debate the legal aspects of judicial reform and notably the setting up of administrative courts in the country, and on the supervisory review procedure ('nadzor') towards a reform in line with the requirements of the ECHR. The ongoing JP *Introduction of the appeal in the Russian judiciary system* (2010-2013) aims at supporting the reform aimed at introducing the appeal instance in the courts of general jurisdiction through the development of relevant legislation and the provision of assistance in the structural reforms.

### 5.1.2 I-512 Backlogs and delays reduced through improved case management

Backlog and delays lead to decrease of the confidence in the justice system and may also lead to increase in corruption in the form of bribing court administrators or judges or resort to illegal routes for addressing grievances.

Some EC-CoE JPs contained components aiming at improving the management of cases and enhancing the efficiency of the system.

- In *Turkey*, the JP *Support to court management* (2007-2009) was referred to in discussing Indicator I-511. In the course of the project, a needs assessment was prepared in collaboration with the Ministry of Justice, as was a draft strategic plan. According to the project final report,

the implementation of several of the Strategy Plan proposals required numerous amendments to laws. Although the CoE expressed its readiness to provide the necessary expertise in the drafting phase and an initial team was established within the MoJ, it was not possible to amend the relevant legislation in the timeframe of the JP. The MoJ and the CoE Project teams agreed to redefine the scope of project implementation and to concentrate mainly on activities which did not require changes of legislation. Five pilot courts were selected for implementation of the strategy, in which judicial staff members were trained, and the new court management system started to be implemented. Also trainers were trained to deliver training on the new court management system. According to the final report, the evaluation reports received from the pilot courts have shown that the presence of these new professional figures was assessed positively by the implementers. However, no quantified results in the backlog and case management in the pilot courts were given; although some indicators were defined (length of trial, average case load, etc.), no base data were collected and they were not further measured in the course of the project. Problems with the efficiency, transparency and effectiveness of court proceedings still exist despite possible contributions of the JP. It is acknowledged in end of project report that sustainability of results depends primarily on MoJ political commitment to continue and consolidate the implementation of new court management system, though sometimes slow, steps taken are reported in field visit discussions as having led to greater buy-in to key changes to working methods among senior judiciary. Reports highlight continuing problems of human resources, infrastructure, and the sub-optimal use of ADR to relieve caseload. In *Ukraine*, the JP *Improving independence of the Judiciary* (2006-2007) contained a component aiming at improving case management, consisting of reviewing the current situation, provision of expertise for strategy making, and contribution to continuous training of court administrators. While there is no final report available, the ROM 2007 report notes that activities had been implemented according to the plan. The follow-up JP on *Transparency, independence and efficiency of the judicial system and increased access to justice* (2008-2011) also targeted the administrative organisation of courts and case management by providing expertise in organisational, legal and technical areas of case management, including promoting transparency through support to establishing system of random assignment of cases. ROM 2010 reports that “*Assistance in such areas as court management, computerisation of courts, exposure to European practices by means of training and study tours was absorbed well and is likely to yield positive changes.*”

- In *Moldova*, in the framework of the *Increased independence, transparency and efficiency of the justice system* JP (2006-2010), activities were implemented to strengthen the capacity of auxiliary court personnel (court clerks, judges' councillors, registrars, etc.). According to the project report, these activities contributed to a comprehensive training needs assessment for these professions and the preparation of training curricula for trainers. The final JP report makes reference to tangible progress, but independent confirmation has been impossible. Field visit discussions saw lawyers complain of the low level of remuneration and significant payment backlog. Much of their work, some complained, consisted of facilitating bribes in order to dispose of cases, rather than the legal analysis and argument for which they were trained.
- In *Armenia*, case management has been improved by the construction of a web-based system for tracking cases as they progress – hearings, the filing of writs, etc. The JP Reform of the justice system contributed to developing the system, which has made the justice system more user-friendly to participants. A huge backlog of cases has developed in the Administrative Court, according to persons interviewed during the field visit, but the majority of these cases are trivial “parking ticket” cases. In the civil and criminal law courts, the problem is not so much backlog as the slow progress of cases.

JPs relevant to this EQ commonly addressed efficiency of the court system through support to legislative reform. In *Russia*, the CoE was involved in reforms of the civil and criminal procedure laws, assisting drafting and evaluating the draft of the 2010 law which provides for compensation for violation of the right to trial within a reasonable time or the right to the execution of the decision within a reasonable time. Generally, the CoE was satisfied with the law. Whether it will reduce the back log of cases and delays remains to be seen. In *FYROM*, where most cases brought to the ECtHR concern the length of proceedings and the Commissioner for Human Rights, the U.S. State Department, and the EC in its accession progress report have all highlighted the issues of backlog and delay. The country case study cites some reports that the situation regarding backlog may be improving, but it remains a problem and the average duration of civil cases actually increased between 2008 and 2009. In *Serbia*, the EC 2010 progress report found that backlog remains a matter of concern, with the reduction in the overall number of judges and prosecutors by 20-25% as of the end of 2009 have worsened the effi-

ciency of the court system. In *Bosnia and Herzegovina*, the EC's 2010 progress report cited case backlog as one of the most acute problems facing the judiciary, and court proceedings are slow. The problems persist despite various measures instituted with donor support. No information on backlogs and delays was found in the *Azerbaijan* case study. In *Armenia*, both the Commission for the Efficiency of Justice (CEPEJ) and the American Bar Association have drawn attention to poor infrastructure. Transparency International, citing lack of resources of all kinds, reported that the Law on Civil Procedure guarantees that civil matters will be heard within a reasonable time, but there is no definition of "reasonable" and delays are the rule. Under the Access to justice JP, expertise was provided to revise the civil procedure code (post-evaluation period) and the Ministry of Justice has expressed interest in commissioning a Commentary.

In countries where no specific EC-CoE activities were implemented to directly address the issue of case management, a number of JPs should in principle contribute to reducing backlog, e.g. Peer-to-Peer strengthening of the Ombudsman's Office could in principle mean that cases more appropriate to that institution are filed there as opposed to being taken to court. In Armenia, during the country field visit the Ombudsman took particular pride in the fact that the number of complaints settled by his office had steadily risen.

To summarise, backlogs and delays continue to be a problem in all the countries surveyed. In *Turkey*, *Ukraine*, and *Moldova*, JPs directly addressing the problem were implemented. Field mission discussions bear out observations in various monitoring reports by CoE & EU of some progress.<sup>57</sup> The actual scale of such contribution is not readily verified in the context of multiple actors and 'drivers' of change and more particularly the general absence of base-lines, SMART qualitative/quantitative indicators for on-going impact monitoring and post-project impact evaluation.

## 5.2 JC5.2 Improved access to justice

The criterion of improved access to justice was assessed based on two indicators:

- Improved availability of free legal assistance (I-521);
- Increased use of Alternative Dispute Resolution (ADR) (I-522).

No JP implemented during the evaluation period had enhanced access to justice as an explicit project objective. However, several JPs in principle should have contributed to this or laid a foundation, through raised awareness (including groups that historically have been denied access to justice) and enhanced capacity of specific stakeholders (e.g., of lawyers and institutions such as Ombudsmen's Offices). Access to justice is also enhanced by reduced backlogs and delays in the justice system (see above).

A key aspect of access to justice (and a state obligation under the ECHR) is the **provision of legal aid** in criminal cases, and in civil cases of particular complexity and gravity of outcome. While CEPEJ evaluation reports suggest that provision is formally available in all jurisdictions, for criminal legal aid at least, monitoring bodies (CoE, UN, etc.) have noted failure by all case study states to effectively meet this obligation. Gaps include absence of specific legislative provision in some jurisdictions and in all countries inadequate resourcing and limited oversight of legal aid provision.

EC-CoE JPs included support to the preparation of draft laws on legal aid in Russia and Bosnia and Herzegovina. In Armenia, despite some ten years of support in the area, the legislative basis for legal aid remains uncertain. In Moldova, consecutive JPs have supported the expansion of legal aid, and the last of these, *Increased independence, transparency and efficiency of the justice system* (2006-2010), supported effective implementation of the 2007 Law on Legal Aid. In Ukraine, the EUD reported that a law on legal aid was passed with the support of expertise provided by a JP, but no information has been found on the successful implementation of that law.

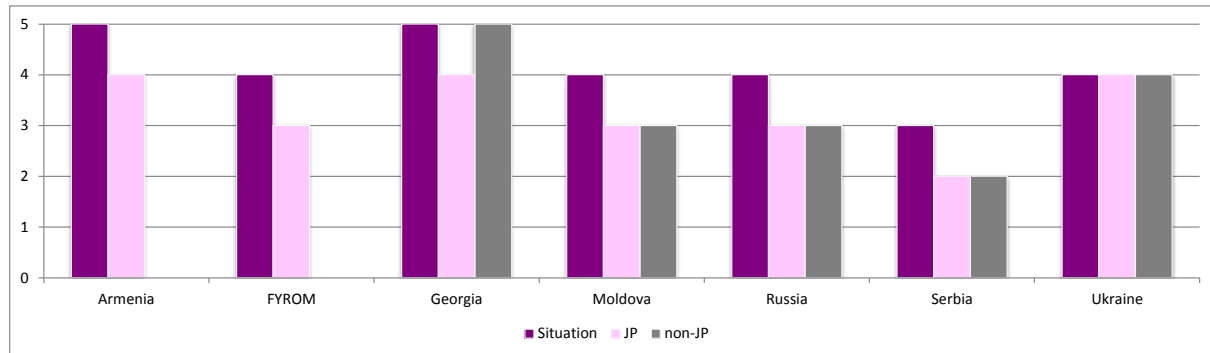
The evidence of specific JP contributions to **increased use of ADR** is also limited with a range of actors active on the issue in several jurisdictions, OSCE, UN, etc. In *Moldova*, the JP *Increased independence, transparency and efficiency of the justice system* contained components promoting the expansion of ADR and some progress was reported in the project final report. In *Ukraine*, two JPs spanning 2006-2011 were described by ROM reports as having made significant contributions to the

<sup>57</sup> Progress made needs to read against the January 2012 visit report of CoE Commissioner for Human Rights noting "some long-standing, systematic dysfunctions in the domestic justice system adversely affecting the enjoyment of human rights and fundamental freedoms in Turkey, as well as the public's perception of the system's effectiveness, independence, and impartiality." - "Administration of justice and protection of human rights in Turkey", 10 January 2012, CommDH(2012)2.

use of ADR and medication in four pilot regions. In all countries in the region, the work of CEPEJ encouraged the development of ADR.

Five EU Delegations responding to the survey question on access to justice ticked the “Do not know” or “not applicable” box. The remaining EUDs, as in the case of JC 5.1, were positive about the general developments in the area, with no delegation of the view that access to justice has deteriorated. Delegations in *Armenia* and *Georgia* are of the opinion that there have been ‘significant improvements’ in the area of access to justice, together with “high extent” of EC-CoE JP contribution.

Figure 17: EUD survey results: Impacts in Improved access to justice



Scales			
Change in situation		Impacts of JP and non-JP cooperation	
Significant improvements	5	Very high extent	5
Some improvements	4	High extent	4
No change	3	Some extent	3
Some deterioration	2	Low extent	2
Significant deterioration	1	Very low extent	1
Do not know, Not applicable, No answer	0	Do not know, Not applicable, No answer	0
Note: Countries that provided no information for impacts in both JP and non-JP cooperation under this JC are not shown			
Source: EUD survey			

In summary, some evidence has been found that, in some countries such as *Moldova* and *Ukraine*, EC-CoE support to increasing the availability of free legal aid and promoting ADR improved access to justice. However, both remain weak in most countries surveyed and, in one case (*Armenia*), sustained support for expansion of legal aid appears to have had little effect. When combined with the continuing problems of backlog and delay identified, it appears that the impact of EC-CoE Joint Programmes on access to justice has been limited. Some steps forward have been identified, such as the putting in place of an administrative court in Armenia to review the decisions of public bodies, and the preparation of draft laws on legal aid in Russia and Bosnia and Herzegovina. These, like the continued engagement of CEPEJ, are evidence of a sustained process of improving access to justice, but implementation remains subject to resource constraints and political will.

### 5.2.1 I-521 Improved availability of free legal assistance across the board, including to vulnerable and sensitive groups (increased budget, increased number of providers, increased take-up)

Legal assistance is an important element in providing access to justice to all citizens, by ensuring equality before the law, the right to counsel and the right to a fair trial. As such, the EC and CoE have worked in several countries in support of the establishment of the systems and promoting its use.

- In *Armenia*, free legal assistance is guaranteed under the constitution but, the number of public defenders is reported to be only seventeen, and all the evidence gathered indirectly supports the conclusion that legal assistance continues to be under-supplied, underpaid, and under-utilized even when it is available. Two EC-CoE JPs contained components of support to the availability of legal aid. *South Caucasus Democratic Stability (2002-2004)* implemented in *Armenia*, *Azerbaijan* and *Georgia*, assessed the situation in the region with regards to legal aid, and provided recommendations. In Armenia, early in the evaluation period, a baseline appraisal of the situation was prepared along with recommendations. Amendments to the law on

lawyers were prepared and appraised by the project experts. A draft law on legal aid was subsequently submitted to the National Assembly of Armenia, but it is not known whether this was passed. Under the JP *Access to justice in Armenia* (on going) special emphasis is given to support to the Chamber of Advocates to strengthening public defenders .

- In *Azerbaijan*, CoE expertise on legal aid was provided early in the evaluation period under *South Caucasus democratic stability* (2002-2004). No information was found in desk review on the extent to which this has had an impact.
- In *Moldova*, the JP *Democratic stability* (2001-2003), in the framework of its cooperation with the Bar Association, organised an expert meeting for the development of a legal aid system and a follow-up expert visit to strengthen the system of legal aid and discuss the legislation on lawyers. The JP *Support to continued democratic reforms* (2004-2006) also contributed to putting the draft law on legal aid on the agenda and raising awareness for the importance of this law by organising working group meetings, study visits, and expert meetings. The JP *Increased independence, transparency and efficiency of the justice system in Moldova* (2006-2010) focussed on the reform of the judiciary, and contained a component regarding free legal aid. According to its final report of May 2010, the Law on the state guaranteed legal aid was adopted in July 2007 with the Project's support and entered into force on 1 July 2008. The JP provided permanent assistance to the MoJ and Legal Aid Council with a view to ensuring a proper implementation of the law; IT equipment for the legal aid administration bodies and organised activities facilitating the setting up of a monitoring system for assessment of legal aid services. Finally, training for legal professionals and NGOs was provided under the project. No evaluations assessing the impacts of these projects have been found.
- In *Ukraine*, aspects of legal aid provision were included in the JPs *Improving independence of the Judiciary* (2006-2007) and *Transparency, independence and efficiency of the judicial system and increased access to justice* (2008-2011) by providing expert assistance on the legislative framework for free legal aid. It has been noted by the EU Delegation that "*The EU and CoE joint efforts resulted in the adoption of the Unified Judicial Law of 2010 and the Law on Free Legal Aid of 2011 among others*". No information has been found regarding the effective implementation of the law.
- In *Turkey*, legal aid was addressed only tangentially, through training on the right to a free trial through JPs such as *Judicial modernisation and penal reform: Support to the court management system* (2004-2007). A legal aid system exists, but it is not regarded by stakeholders as being effective, nor is it made accountable through regular monitoring, which has resulted in widespread dissatisfaction among all stakeholders in the judicial system. The EU accession Progress Report for 2010 states that access to legal aid is limited and that a large number of prison inmates do not receive and do not even know that they are entitled to legal aid.

In *Russia* a federal law on legal aid has been introduced, but no JPs in the area were implemented and no further information has been found. In *Bosnia and Herzegovina*, a draft law on access to legal aid has been tabled but not, as of this writing, passed. In *FYROM*, no JPs in the area were implemented. A legal framework for legal aid became operational in 2010, but appears to be confined to criminal cases. In *Armenia*, little or no progress can be reported despite support provided for a number of years. In *Ukraine*, the EUD reported a significant contribution to progress. In *Moldova*, project final reports give a positive assessment of impact, but no corroborating evidence such as evaluation reports has been found.

### 5.2.2 I-522 Increased use of Alternative Dispute Resolution, including mediation

Alternative dispute resolution (ADR) constitutes an important complement to litigation in civil and commercial matters. Given the workload of traditional courts, different forms of ADR, including mediation, are key achieving more equitable and affordable access to justice.

Beyond awareness raising on the concepts and models, evidence of EC-CoE contribution in this area has been limited, as this issue has only rarely been the primary focus of the JPs.

- In *Moldova*, the JP *Increased independence, transparency and efficiency of the justice system* (2006-2010) according to its final report, contributed to the completion of the legal framework in the field of mediation, notably the drafting of the regulation of the mediation council, the Code of Ethics of mediators, the regulation concerning the disciplinary responsibility of mediators, the regulation concerning the registration of the mediator's offices and the regulation concerning the mode of certification of the mediator's activities. This has likely contributed towards an operational system of alternative dispute resolution, but no evaluation or ROM report has been found. According to persons interviewed during the field mission, judges often infor-



mally encourage or require litigants to arrive at a negotiated settlement, but formal mediation is rare.

- In *Ukraine*, a component of the JP *Improving independence of the Judiciary* (2006-2007) provided technical assistance in order to improve ADR to respond to an increasing demand for justice. This was done by provision of expertise on the current legal framework and assessment of its compliance with CoE recommendations on ADR, recommendations for draft legislation and facilitating expert discussion on the issue. The ROM report of 2007 notes “*Assistance in the development of legislation in the area of ADRM has been well absorbed and has resulted in drafting of two laws.*” In a follow-up JP *Transparency, independence and efficiency of the judicial system and increased access to justice* (2008-2011) further support to ADR system was provided in promoting mediation in criminal matters and ADR in commercial and administrative matters. The ROM 2010 reports that “*Good results have been achieved in the introduction of mediation in four pilot regions. Monitoring conducted by a subcontracted local NGO shows positive tendencies towards the use of alternative dispute resolution methods.*”
- In *Bosnia and Herzegovina*, the JP *Support to the Centres for Judicial and Prosecutorial Training in BiH* (2003-2005) included a seminar on mediation. A legal and institutional framework for mediation is in place and the number of disputes settled via mediation is reported to be rising. However, the backlog of unresolved cases remains high.
- In *Turkey*, there has not been a JP promoting ADR, however, the European Commission for the Efficiency of Justice (CEPEJ) has worked to enable better implementation of recommendations of the Council of Ministers in this field. . UNDP and the EC (through other aid channels) have also been active in promoting the development of ADR.
- In the case of *Serbia*, a Roma Mediator Training Programme began in 2011 and does not fall within the evaluation period. ADR is not employed in *Azerbaijan*, although CEPEJ reports that judges sometimes try to facilitate amicable settlement.
- In *Armenia* field visit discussions identify formal institutions for ADR in specific areas, such as media and banking, but no information was gathered on actual application.
- There are structures for mediation in *FYROM* and a number of donors, including the EC, World Bank, USAID, and others have supported development in the area. There was no JP over the evaluation period, but CEPEJ has worked to enable better implementation of relevant Council of Ministers recommendations.
- In *Russia*, the federal law on mediation was introduced in 2011.

Overall, while ADR has not been a focus of much EC-CoE joint action. While some results have been achieved including greater awareness and some new structures under-utilisation of ADR remains problematic in the countries covered.



## 6 EQ6: To what extent has the cooperation with the CoE, in particular via the channelling of funds, contributed to establishing stronger democratic institutions and practices at central and local level?

### 6.1 JC 6.1 Strengthened democratic institutions and processes in the area of democracy

The criterion of strengthened democratic institutions and processes in the area of democracy was addressed through five Indicators:

- Executive power subject to parliamentary scrutiny via committees, inquiries, regular reporting requirements, etc.;
- Legal and practical barriers to free and independent media (including internet) reduced;
- Legal and practical barriers to establish political parties reduced;
- Increased opportunities of participation and mobilisation of independent civil society in the political processes;
- Legal and practical barriers to register NGOs reduced and existing level of tolerance of operations led by non-registered civil society organisations.

Overall there is little evidence that EC-CoE cooperation through JPs significantly strengthened democratic institutions and processes. On some issues at hand, there was only limited support provided, in other cases, in the absence of programme impact monitoring and evaluation (as distinct from reporting delivery effectiveness of activities and delivery of outputs) there is no evidence so far that EC-CoE support brought about the intended impacts. Better use of evaluation might have filled this gap, provided evidence of impacts, and generated lessons learned to be applied in future work.

EC-CoE support addressing **parliamentary scrutiny of the executive power** has not been a priority of most JPs. Examples of JP activity relevant to this criterion include support provided to *Armenia* and *Azerbaijan*, mostly through capacity building of public officials in “*Ukraine and South Caucasus – Promoting the Democratic Process (2005-2008)*”. This JP was not influential enough to avert these countries from being characterised by deficits in democratic institutions and strong concentration of power with the executive branch. In *Serbia*, while progress has been made in consolidating democracy in recent years, the contribution of the two JPs targeted at strengthening parliamentary institutions was limited.

Regarding **media freedom**, JP activity and non-financial cooperation has taken place in the majority of countries under review, though not always explicitly linked to the objective of strengthened democratic institutions and processes. The main activities were training and other capacity building of media professionals and public authorities, provision of legal expertise on draft laws and other legal issues, and facilitation of public and expert discussion on media freedom topics. A significant number of relevant persons have been trained and provided with information. However, no credible account has been found as to what extent these newly acquired skills and knowledge is or even can be applied in their work. Assistance to legislative reforms in the context of media freedom has been provided extensively especially in *Armenia*, *Azerbaijan* and *Serbia*. While some progress on some issues has been noted, the main obstacle to successful implementation seems to have been the unwillingness of authorities in many countries to proceed with desirable legal reforms and provide genuine media freedom. Overall, in addition to some partial results such as the drafting of laws from the above activities, the main success of the EC-CoE support may have been in keeping media freedom on the agenda in countries where journalists face significant risks in pursuing their daily work.

There is no evidence so far on EC-CoE cooperation specifically addressing issues of **legal and practical barriers to establish political parties** in the countries reviewed.

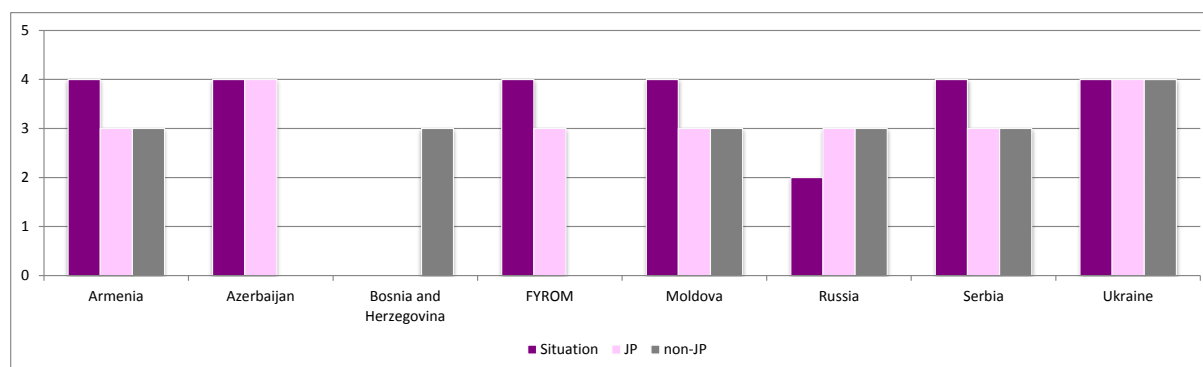
In the case of Joint EC-CoE cooperation towards more **participation and mobilisation of independent civil society in the political processes**, joint EC-CoE support includes support to the network of civil society leaders across five countries in JP “*Setting up and Developing the Civil Society Leadership Network*” (2008-2009), which aimed at contributing to building both stronger civil society leadership; to a lesser extent, it established some regional ties between country representatives in *Armenia*, *Azerbaijan*, *Georgia*, *Moldova*, and *Ukraine*. This may have contributed to increasing the opportunities of civil society participation in the political process. In most countries reviewed, however, civil society remains dependent on donor financing, thus making them vulnerable to the criticism that they represent foreign interests. They are, in many cases, active in service delivery as opposed to advocacy, monitoring or other activities key to ensuring proper functioning of democratic systems. These factors, plus a lack of political will, weaken the potential impact of types of interventions provided by EC-CoE

Joint Programmes. Independent civil society representatives complain, in addition, to being systematically excluded from cooperation with all relevant parties: Government, the CoE, and the EU.

No JPs in the countries under review were specifically devoted to **legal and practical barriers to register NGOs** and tolerance of **operations by non-registered civil society organisations**. Support relating to civil society on specific issues is dealt with under other respective Indicators (e.g., human rights generally and specific issues such as minorities, election monitoring etc) and includes some observations relating to NGO freedom of action.

The findings above from country case studies have been confirmed to some extent by the survey to EUDs conducted during the desk phase. When asked about the results and impact of EC-CoE cooperation on democratic institutions and processes in the country, EUDs did not give a very positive judgement, as shown in the figure below. Between 2000 and 2010, some improvements in democratic institutions and processes were identified in most of the countries (*Albania, Armenia, Azerbaijan, FYROM, Kosovo, Moldova, Serbia and Ukraine*). *Georgia* was the only country where significant improvements were reported by the EUD, while some deterioration was noted in *Russia*. At the same time only the EUDs in *Azerbaijan and Ukraine* assess the JPs as having had a high impact in strengthening democratic institutions and processes. In the case of *Azerbaijan*, this positive assessment is in strong contrast to the findings of the country case study.

Figure 18: EUD survey results: Impacts in Strengthening democratic institutions and processes



Scales			
Change in situation		Impacts of JP and non-JP cooperation	
Significant improvements	5	Very high extent	5
Some improvements	4	High extent	4
No change	3	Some extent	3
Some deterioration	2	Low extent	2
Significant deterioration	1	Very low extent	1
Do not know, Not applicable, No answer	0	Do not know, Not applicable, No answer	0
Note: Countries that provided no information for impacts in both JP and non-JP cooperation under this JC are not shown			
Source: EUD survey			

### 6.1.1 I-611 Executive power subject to parliamentary scrutiny via committees, inquiries, regular reporting requirements, etc.

To varying degrees, parliamentary scrutiny of executive power in the countries reviewed is an issue in need of reform. Between 2000 and 2010, EC-CoE JPs addressing parliamentary scrutiny of the executive power were implemented in several countries. In *Armenia* and *Azerbaijan*, in the framework of the JP *Ukraine and South Caucasus – Promoting the Democratic Process (2005-2008)* visits to the Council of Europe were organised in order for public officials to become acquainted with the functioning of European institutions, European standards and norms (see details in Box 9). According to the CoE final project report, these training visits improved public officials' knowledge of CoE norms and standards, organs and services and working methods. Furthermore, the project report notes that these study visits allowed for an active exchange of views between the representatives of the CoE and public officials on current issues of pluralist democracy, human rights and rule of law in their respective countries. However, the case studies for both *Armenia* and *Azerbaijan* note that despite support from the CoE (Venice Commission, the Commissioner for Human Rights, and the Parliamentary Assembly)

and some EC supported JPs, the countries remain characterised by concentration of power in the executive. In Armenia, parliament still does not exercise effective scrutiny over the Executive.

In *Serbia*, the EC (EAR) project “*Support to the Belgrade Fund for Political Excellence*”, which ran from 2005 to 2008, included components (implemented in cooperation with UNDP Serbia) on strengthening the capacity of parliamentary committees. The project also carried out a number of activities (in cooperation with other donors) to strengthen the role of the Serbian parliament overall. The end-of-project report did not offer any assessment of results, which makes any attempt at judging likely impact difficult; while the in-country visit to Serbia was unable to come to any more substantial, additional insights.

A JP between EAR and the Council of Europe PACE in “*Support to Parliamentary Institutions*” (2005-2009) in *Serbia and Montenegro*, aimed to support the Serbian parliament to increase its capacities on the rules of procedure, including administrative procedures. It also provided *ad hoc* expertise on legal harmonisation in the context of the Stabilisation and Association process. Further, it tried to address the lack of knowledge of parliamentarians on European standards. Specifically, the project focused on the work of parliamentary committees, through provision of European expert advice on approximation of Serbian legislation to European legislation. A ROM report (2009) reported a visible impact of the project in that it helped the target groups to better organise their day-to-day workload. However, the prospects of these changes being sustainable were judged by the report to be modest, as this would require longer engagement and more permanent funding, which the State budget did not provide at the time. The Serbia case study cites a PACE document to the effect that, despite improvements, parliamentary committees are still weak. The in country visit to Serbia did not yield significant further insights; although there was anecdotal evidence that the project had been well received by beneficiaries. Overall, while Serbia has made substantial progress in consolidating democracy in the recent years, we find it difficult to attribute this to JP activities. .

*Box 9: Armenia and Azerbaijan: The JP Ukraine and South Caucasus – Promoting the Democratic Process (2005-2008)*

In *Armenia*, representatives of the Ministry of Foreign Affairs, the Ministry of Justice and the Presidential Administration visited the Council of Europe in order to become acquainted with the functioning of European institutions and exchange. The programme of the visit dealt with the specific needs of the Armenian officials in respect of the CoE-EC joint cooperation programmes as well as the CoE-Armenia co-operation programmes, which are aimed to assist the country to fulfil its post-accession commitments. The goal of these training visits was to improve the Armenian public officials' knowledge of CoE norms and standards, different entities and Directorates and CoE working methods improved. It is expected that the Armenian officials will be able to better apply the European principles in their daily work and act as multipliers of these.

In *Azerbaijan*, study visits to Strasbourg for public officials were organised to acquaint them with European standards and norms. The delegations included high-level officials, among them the Prosecutor General, three heads of departments from the Presidential administration, deputy ministers of justice and deputy minister of the interior. The final report concludes that the study visits improved the public officials' knowledge of CoE norms and standards, organs and services and working methods. In addition to their informational part, they allowed for an active exchange of views between the representatives of the CoE and the public officials on current issues of pluralist democracy, human rights and rule of law in their respective countries.

However, the final report does not provide supporting evidence for the claims of the JP's results.

Source: JP final report

In *FYROM*, project reports are not specific, as to whether parliamentary oversight was a theme in trainings delivered in the *Democracy through Free and Fair Elections* (2003-2006) and *Leadership Benchmark and Best Practices* (2007-2009) JPs. The EU Progress Report 2010 identified some strengthening of the Parliament, and changes in procedures, introduced in September 2010, should make it easier for opposition parties to put issues on the parliamentary agenda; however, FYROM remains classified as a "flawed democracy" in the 2010 Democracy Index of the Economist Intelligence Unit.

No JPs in *Moldova*, *Turkey* and *Russia* addressed parliamentary scrutiny of the executive; in *Moldova*, stakeholders consulted during the in-country visit confirmed that, despite the change in government, Parliament is exercising very little effective control over the Executive. Representatives of independent civil society, some quite close to government, expressed frustration that the new, more progressive government is failing to live up to its own democratic standards.

Overall, addressing the democratic balance of powers by strengthening the scrutiny of the executive by other parts of the system has not been a specified JP objective over the last decade. Support to parliament was provided mainly in *Serbia* through two JPs, and while some results have been noted, it is difficult to ascertain their contribution to Serbia's democratic progress. *Armenia* and *Azerbaijan*, two other countries where there was direct support to strengthening parliaments, remain countries with a high concentration of power in the executive.

## 6.1.2 I-612 Legal and practical barriers to free and independent media (including internet) reduced

CoE action funded by the EC has tried to reduce legal and practical barriers to free and independent media (including internet) through JPs, as well as through non-financial cooperation:

### 1) Joint Programmes

EC-CoE Joint Programmes implemented between 2001 and 2009 in *Armenia, Azerbaijan, Serbia, Russia and Turkey* included at least one media component. These JPs mainly aimed to provide awareness-raising/capacity building, as well as to assist legislative reforms related to public service broadcasting.

Despite implementation of these programmes, there is very little evidence that **awareness-raising and capacity building** (mainly via trainings) has really contributed to reducing legal and practical barriers to free and independent media. Available evidence does not provide much by way of findings on impact, while in some cases, project reports point to a number of problems being faced during implementation, partly due to rather weak programme preparation:

- In *Armenia and Azerbaijan*, training programmes on media techniques in pluralist and democratic societies were organised for management and staff of TV and radio (journalists, producers, camera-operators and picture editors) in 2002 in the framework of the JP “*South Caucasus Democratic Stability*”. This JP’s evaluation report of 2005<sup>58</sup> concludes with respect to the media component of the JP:
  - In *Armenia*, “[t]he impact of the project was limited and did not address the key issue of freedom of expression. A newsroom was created. Training sessions increased awareness of European best practices. Some specific skills were learnt.” Citing specific weaknesses “*The project had not been properly researched prior to implementation, [l]ack of collaboration between the Authorities and the mass media, [i]n the training, the link between this project and human rights and democracy was not established or made clear, [n]o feedback from participants after training sessions, [t]rainers did not provide hand outs or printed information, TV workers were not always free to attend training sessions.*” Media licensing remains intensely politicised. The in-country visit gathered mixed information with regards to media freedom. The reduced use of defamation lawsuits against journalism is welcome, and was to some extent supported by the increase media professionalism training provided by the regional media Joint Programme.
  - In *Azerbaijan*: “*There has some initial progress towards creation of self-regulation and independence as a result of the JP. However, overall the independence of the media has actually weakened. The quality of journalism has been reduced.*” Citing specific weaknesses: “*Efficiency of training is reduced as journalists do not have the facility/environment to apply their knowledge, [r]eluctance of Azerbaijan Government to embrace notion of full freedom of the media.*” Corroborating the negative assessment of media independence, the Azerbaijan case study cites international NGO studies and reports of the CoE Commissioner for Human Rights to the effect that media freedom has deteriorated and the safety of journalists was increasingly threatened over the evaluation period.

The examples of Armenia and Azerbaijan clearly illustrate the limitations of training, even when of high quality, where the political will to embrace freedom of the press is absent.

- Training in media was also part of the *JP Ukraine and South Caucasus – Promoting the democratic process* (2005-2008). According to the final report, in *Armenia* 86 journalists were trained in European standards and practices in media field. For *Azerbaijan* the final report states “*The public service broadcasting council was not willing to cooperate on an activity to improve their professionalism. In order to multiply the effect of the limited number of activities available for training of the journalists, a conference on journalism training for training professionals from the region was organised to compare best practices in teaching media ethics.*” For Georgia the assessment of the results were also not positive: “*No major improvements in the administrative and technical structure of the Georgian public television could have been achieved due to the lack of commitment of the public television to the training; a first training was not very well attended; the second scheduled training was then cancelled.*”

<sup>58</sup> Evaluation of the South Caucasus EC-CoE Joint Programme, ITAD, 2005

- In a regional JP “*Freedom of expression and information and freedom of the media*” (2008-2009), representatives of public authorities in Armenia and Azerbaijan have been provided with information on CoE standards on freedom of expression, with special attention given to the broadcasting regulatory authorities. The publication “Case-law concerning Article 10 of the European Convention on Human Rights” was translated into Azeri and Armenian, printed and distributed to the relevant public institutions to allow them to better apply CoE standards in their daily work. In addition, in Azerbaijan journalists were trained in the use of new media, while in Armenia media professionals and police officers took part in seminars on how to work together while respecting the right to freedom of expression. A regional component of the JP gathered 30 participants in total from all JP countries (4) for a seminar on best practices in journalism. No follow-up monitoring of results appears to have been undertaken.
- In *Moldova*, the barriers to free and independent media was one of the key subjects of EU-Moldova and CoE-Moldova dialogues in 2001-2009. In general, media freedom has improved. The once widespread use of defamation lawsuits to intimidate journalists has been reined in. However, there is still a fair amount of self-censorship, and, according to NGO representatives interviewed, the intimidation experienced by investigatory journalists is no less now than pre-2009. Nonetheless, according to the Centre for Investigative Journalism, the volume of investigative journalism has increased despite the high number of legal actions brought against journalists. Training of investigative journalists had been one component under MOLICO, as did other donors (such as USAID’s Millennium Challenge Fund).

The recent revocation of a TV license has become the focus of considerable dispute. In fact, the allocation of broadcasting licenses has always been and continues to be non-transparent. Complaints still abound related to respect for the presumption of innocence, protection of children, and IP violations. The ownership of print media is also non-transparent, and there are numerous indirect subsidies (e.g., in distribution, where there is a *de facto* government monopoly).

Freedom House’s 2011 *Nations in Transit* report finds that the freedom and independence of media has declined in recent years and other sources have recently highlighted concerns, including the UN Special Rapporteur on the freedom of expression and opinion and Human Rights Watch with regard to the new 2010 Electronic Communication Law.

- In *Russia*, one component of the “*Joint Programme to Strengthen Democratic Stability in the North Caucasus*” (2001-2004), was related to media, including facilitation of access to relevant information and documentation in the field of promotion of human rights and the rule of law. However, this programme ran into problems with implementation and did not have any significant influence on the situation. Problems included lack of access to the region, due to security concerns and delays in the opening of the CoE’s regional Information Office, transportation of participants in the region, in particular for Chechen participants to exit the Republic and enter another, difficulties or even refusals.<sup>59</sup> Nationwide, Russian television broadcasters remain under tight control and violence against journalists has continued, and web sites have been bought by pro-Kremlin business interests.
- From the case study on *Turkey*, the JP with the most significant media element “*Initiative with Turkey to Enhance the Ability of the Turkish Authorities to Implement the NPAA*”<sup>60</sup> did not focus on media freedom *per se*, but involved the media in activities that typically see interference with their freedom and independence. JP activities involved awareness-raising on torture; and “freedom of expression”, with leaflets, TV spots and posters produced and translation and dissemination of key ECtHR judgement extracts. The JP did not measure or follow-up on its actual impact on media freedom/independence, but JP implementation difficulties (concerning the participating media’s freedom to determine the content of the JP broadcast and print materials without State editorial control) suggest on-going deficiencies regarding free and independent media in Turkey. As documented in the country case study, Turkey’s record on free and independent media has been harshly criticised by international NGOs, UN mechanisms, the European Parliament, the EC (through the Commissioner for Enlargement), the CoE Commissioner for Human Rights, and the ECtHR. There are clearly deep political issues regarding media freedom in Turkey which need to be addressed if activities such as training and capacity building are to have much effect.

<sup>59</sup> Case study *Russia*

<sup>60</sup> *National Programme for the adoption of the Community acquis*



The situation regarding EC-CoE JPs' activities aimed at **assisting legislative reforms** is comparable to that regarding awareness raising and capacity building reviewed above.

- In *Armenia*, *Azerbaijan* and *Ukraine*, the component aiming at improving media legislation in the framework of the JP "*Ukraine and South Caucasus – Promoting the Democratic Process*" (2005-2008), can be regarded as unsuccessful:
  - In *Armenia*, the JP aimed at completing the process of bringing the Armenian media legislation in line with the relevant CoE standards did not succeed, mostly due to unfavourable political conditions (see details in Box 10).
  - In *Azerbaijan*, similarly, activities aimed at improving Azerbaijan's media legislation did not achieve any results, also due to the unwillingness of the authorities (see details in Box 10).

**Box 10:** *Armenia and Azerbaijan: JP Ukraine and South Caucasus – Promoting the Democratic Process (2005-2008)*

In *Armenia*, the project "*Promoting the Democratic Process*" (2005-2008) was the first concrete engagement of the CoE via JPs in the area of media freedom. This project attempted, but did not succeed, in completing the process of bringing the Armenian media legislation in line with the relevant CoE standards. According to the project final report, "*In the course of the project, it was not possible to complete the process of bringing the Armenian media legislation in line with the relevant Council of Europe standards. On the early stages of the Programme, the Armenian authorities were unwilling to submit draft legislation for CoE legal appraisal before its adoption. However, after a change in the political climate in late spring 2008, the authorities showed more cooperativeness and expressed willingness to further develop their media legislation, taking into account the recommendations of the Council of Europe legal appraisal organised under this Programme.*"

In *Azerbaijan*, the media component of this JP aimed at creating a legal and regulatory framework for independent broadcast media; promoting balanced coverage of news and current affairs in public and private media; and promoting communication and understanding between the authorities and media professionals. However, the final report states that "*An expertise on amendments of the Azeri Law on Radio and Television Broadcasting was organised under the ordinary budget of the Council of Europe in 2007. Regrettably, in course of the Programme, the Azeri authorities did not answer the many invitations from the Council of Europe to follow-up this expertise (as well as an earlier Council of Europe expertise on the Law on Public Television) with further consultations. Therefore, activities that aimed at improving Azerbaijani media legislation could not have been carried out, and no results can be reported in this issue.*"

In *Ukraine* the objective to bring the legislation into line with European norms and standards was not achieved even partially, owing to difficult political situation. The final report notes that "*As regards the work on legislation in media field, it is important to point out the difficult political situation in Ukraine during 2006 and 2007, with two Parliamentary elections in March 2006 and in September 2007. In particular, the political crisis in 2007 had an important negative impact for the realisation of the above-mentioned specific objective.[...] As a result, though a number of legal appraisals were carried out and their recommendations discussed with the authorities, the list of media laws, which need to be adopted and implemented properly, remains the same as in the 2005 description of the Action.*"

Source: JP final report

- In strong contrast to the above, the final report of the follow-up JP, "*Freedom of Expression and Information and Freedom of the Media*" (2008-2009), is fairly positive about its achievements in the area of media legislation and freedom in *Armenia* and *Azerbaijan*: in *Armenia*, the revised amendments of the Law on Television and Broadcasting were adopted by the Parliament taking into account the comments of the CoE experts. In *Azerbaijan*, debate was facilitated among stakeholders on regulation of online media initiatives. However, the ROM reports are more critical in their assessment, when both *Armenia* and *Azerbaijan* final (2009) ROM missions graded the JP impact prospects as 'C'. See more details in the following Box 11. In *Armenia*, despite intense provision of expertise and criticism from the CoE, there is little sign that barriers to free media have been effectively addressed. NGOs continue to be concerned about media freedom and existing media coverage of elections has been highly biased. Journalists are subjected to violence and harassment with apparent impunity. The ECtHR has found Armenian licensing policy to be in contravention to ECHR Article 10 (freedom of expression). In *Azerbaijan*, while opposition parties publish some newspapers, all media with mass market penetration are tightly under the control of the ruling party, as is (in the case of print media) the distribution network.

**Box 11:** *Armenia and Azerbaijan: Freedom of Expression and Information and Freedom of the Media (2008-2009)*

The objectives of this JP, implemented 2008-2009 in four countries (*Armenia*, *Azerbaijan*, *Georgia* and *Moldova*) were to:



- Bring the legislative framework in all four target countries in line with the CoE standards, in particular as regards defamation, broadcasting regulation and media diversity;
- Enable public authorities to apply CoE norms of relevance to freedom of expression in their daily work;
- Improve the independence and quality of the media.

According to the project final report, in *Armenia*, on the request of the Armenian Parliament, written expertise on amendments to the Law of the Republic of Armenia on Television and Radio Broadcasting on 1<sup>st</sup> September 2008 was provided by two CoE experts. An expert meeting with ten participants was held for three days in December 2008. Draft amendments to the Law of the Republic of Armenia on Television and Radio Broadcasting and regulations were largely agreed upon in order to make the law compliant with PACE Resolutions 1609 and 1620, as well as with the European Convention on Transfrontier Television and related standards. The amendment to the Law on Radio and Television passed on 11<sup>th</sup> September 2008, which introduced a moratorium on licensing until 2010, was also discussed and further action in co-operation with the CoE was agreed upon. Other project activities included a seminar on police and the media with 29 participants for two days 2009, a partial spectrum audit carried out by a CoE expert in February-March 2009, and an expert opinion provided on the request of the Armenian authorities to confirm or otherwise that the position of refusing to offer any further analogue television licences, prior to the introduction of digital television, was technically defensible. This analysis was undertaken insofar as it touches on the PACE Resolutions. Further expert meetings and exchanges between Armenian and CoE experts ensued in the context of the transition to digital television. At the invitation of the Armenian Parliament, two CoE experts took part in parliamentary hearings on the migration to digital TV in Armenia. The hearings brought together 20 participants including members of Parliament, representatives of the Government as well as representatives of the Armenian TV and radio industry. One of the experts presented his report on the utilisation of the UHF spectrum in Armenia.

On the basis of these consultations and the provision of CoE expertise, amendments on the Law on Television and Radio adopted in 2010 were aligned to Council of Europe standards.

In a separate strand, under the project expert comments on amendments to the Civil Code of the Republic of Armenia on defamation, 15 May 2009, the comments aim to assist the Armenian authorities in aligning the draft legislation with CoE standards regarding freedom of expression and information. The project oversaw the translation and dissemination of a booklet "Case-law concerning Article 10 of the European Convention on Human Rights" in June 2009.

The final ROM report for Armenia (2009) states "*The project is able to make only the very initial contribution to the freedom of expression through changes in legislation, by an attempt to establish dialogue between authorities and media, as well as by trying enhancing their knowledge on Council of Europe norms and standards. Even with recent amendments the legal framework still bears a range of risks for effective and transparent media regulation. There is still a need to improve the overall legislative framework and its implementation mechanisms in longer term.*"

In *Azerbaijan*, according to the final report of the project, a round-table on broadcasting legislation was organised. It emphasised the need for transparency and public discussion in the process of drafting media-related legislation. The reform of the defamation law in Azerbaijan was addressed during another round-table gathering different stakeholders and interested parties. As regards the regulation of online media, a conference held in Azerbaijan brought together relevant stakeholders and launched a dialogue on the ways of integration and application of democratic values and principles by new media initiatives. It has also addressed the question whether there is a need for new specific standards and regulation in this field.

Moreover, 18 journalists learned how to create independent online news and blogs. Such skills are important and useful especially in a country where "traditional" broadcast and print media are directly or indirectly controlled by the authorities.

The final ROM report for Azerbaijan (2009) notes that "*the project is implemented in a complex environment, in which the policy makers have resources and mechanisms to control media. It is unreal to expect that they will easily relinquish this. In this regard, the set of expected results and planned activities given in the Description of Action are not fully relevant for the country. [...] The project did not make a direct contribution to the achieving the project purpose, as no tangible results were delivered. However, project activities enabled to attract attention of policy makers and society to media freedom issues. [The project] only promoted the Council of Europe standards of freedom of expression and media by means of provided conferences, seminars, trainings, roundtable discussions on relevant topics by and translating booklets on these issues into Azeri. An indirect effect of the project implementation is that the freedom of expression and media issues are kept at the agenda of the media sector of the country.*"

Source: JP final report, ROM reports

- In *Serbia*, relevant legal reform (i.e. the Public Information Law) was not completed in the framework of the "*Joint Initiative between the EU and the CoE to Adapt the Legal Framework in the Media Field*" (2001-2002). The project final report notes the contribution of CoE experts to the adopted Serbian Broadcasting Law in 2002. Other relevant legal reform (i.e. the Public Information Law) was not achieved as planned, owing to the difficult political context at the time, and the reluctance of the relevant Serbian authorities to cooperate or assume responsibility in the process. The project also provided training activities for public prosecutors and judges on the not yet adopted legislation. No independent corroboration of the relatively posi-

tive final report has been found; Freedom House's 2011 Nations in Transit Report found deterioration in media freedom. This includes passage of a 2009 Law on Public Information which was found unconstitutional on account of the disproportionate fines called for, and a 2010 Law on Electronic Communications which threatens investigative journalism and the protection of media sources.

- The JP "*Support to Promote Freedom of Expression and Information and Freedom of the Media in Serbia* (2006-2008), addressed issues of the legal framework of the media. The JP final report states that visible progress has been made in the alignment of the Serbian legal framework with CoE standards. A draft Law on the Unlawful Concentration and Publicity of the Ownership of Public Media was issued by a dedicated Working Group, and specific CoE expertise was provided through the project. The JP also worked towards Serbia's signing and ratifying the European Convention on Transfrontier Television (ECTT).<sup>61</sup> Media interlocutors met in the field mission confirm (without always being able to recall the precise detail of the JPs) that the JPs *Media in Serbia* 2001-2002 and *Support to Promote Freedom of Expression and Information and Freedom of Media in Accordance with CoE/EU Standards* (2006-2009) were important contributions at a time when media awareness of the precise content of the right to free expression was not widely known. Legal and practical barriers to free and independent media (including internet) reduced. In particular, they attribute to these JPs<sup>62</sup> the fact that in their experience, judges are familiar with ECtHR jurisprudence concerning Serbia and they are confident that certain past misinterpretation of the permissible limitation of free expression (e.g. in the context of defamation of politicians) does no longer happen. If stakeholders express any negative comments on JPs it is that they were insufficient and that 'CoE seems to have moved on from Media as a priority' and that there is new generation of journalists and new media problems (media concentration; state aid etc.) that require CoE support. The long-awaited draft law on media strategy has seen journalists and NGOs in Serbia criticise the draft for allowing continued state ownership of media and for what they say are inadequate safeguards against political interference regarding media content. The Protector of Citizens has highlighted as a specific concern abuse of freedom of expression, particularly of internet sites expressing racism, xenophobia, incitement to national, racial and religious hatred and intolerance, particularly towards Roma. The JP *Media in Serbia* was designed and implemented by the CoE HQ, so no detailed information on its impact is available from CoE Belgrade Office.

CoE identifies as JP related impacts the contribution (including through JP publications) to debate on transparency and media ownership, the European Convention on Trans-frontier television being ratified by Serbia, though the draft Law on Transparency and Ownership in the Media was not adopted.

See also the comment on recent trends in Serbia above.

- In *Turkey*, there have been multiple calls, from the European Parliament, from the OSCE, from the European Commission (specifically, DG Enlargement), from the U.S. State Department, and the CoE (including decisions of the ECtHR) on the situation of media freedom, including the internet. No JP had media freedom as a main focus, although the JP *Initiative to Enhance the Ability of the Turkish Authorities to Implement the National Programme for the Adoption of the Community acquis* (2002-2004) produced awareness raising material and disseminated translations of key ECtHR decisions. In *FYROM*, where no relevant JPs were implemented, international assessments of media freedom are relatively positive, although the 2010 EU Progress Report noted political pressure and threats against journalists in the form of libel judgments. In *Bosnia and Herzegovina*, where there were also no relevant JPs over the evaluation period, the EC's 2010 Progress Report finds a deterioration in the situation, with reports subject to intense pressure, as well as physical intimidation and death threats. Freedom House's 2011 Nations in Transit Report documents a slight improvement over the evaluation period. For Russia, see the comment given under Indicator I-611.

In sum, in some case study countries there have been intense joint EC-CoE efforts to address media freedom through JPs providing expertise on related legislation, trainings of media professionals and authorities, and facilitation of debate on important topics. However, there is little evidence of substantial direct impacts of these actions on reducing barriers of media freedom and independence. EU Progress Reports, the CoE and specialised sources such as the Global Press Freedom Index of Re-

<sup>61</sup> Case study *Serbia*

<sup>62</sup> The difficulty of attribution arises even here given that CoE Office produces and circulates "European Court of Human Rights – Selected judgements" outside of JPs.

porters Without Borders confirm that in none of the case study countries, the legal and practical conditions necessary for media freedom in line with international standards are in place, and that in some, the situation has significantly deteriorated over the evaluation period.

## 2) Non-financial cooperation of the EC and CoE

CoE field offices reports highlighted the existence of CoE-EC (DG INFSO) joint work on media issues, taking the form of non-financial cooperation at the country level (see detailed description in the following Box 12). Through this type of cooperation, the CoE and the EC supported **reforms on media-related legislation** in most of the Balkans countries (*Albania, Bosnia and Herzegovina, FYROM, Kosovo, Montenegro, Serbia*), including electronic media (as for example in *Albania, and Montenegro*).

Furthermore, numerous round-tables, conferences, workshops and seminars were organised in order to **inform national media stakeholders** on European audiovisual standards (*Albania, FYROM, Serbia*), independence of the media (*Bosnia and Herzegovina*), on corruption in the media (*Ukraine*) as well as to discuss challenges faced by the broadcasting sector and media legislation reform (*Armenia*). The following Box 12 exemplifies the multitude of joint EC-CoE activities taking place in the area of media legislation and standards at country level.

However, as discussed above, media freedom and independence has not improved significantly in any of the case study countries, and democratic deficiencies persist. The EC-CoE cooperation on the provision of legal expertise and maintaining a debate on issues of media freedom is noted especially in the Balkans countries, where presumably, the likelihood of achieving at least partial results could be higher as the countries try to fulfill their obligations in the EU accession process.

### Box 12: EC-CoE non-financial cooperation in the field of media

#### Western Balkans

In 2003 the EC, in collaboration with the CoE, launched an initiative to raise the level of **information on European audio-visual standards** in the region and to support policy reform. A first seminar took place in March 2004 in *Serbia* (Belgrade) and was conceived as an exchange of information on European standards and the state-of-play of media policy in each of the Western Balkan countries. A follow-up seminar took place in the *FYROM* (Skopje) in November 2004 and focused on the role of the broadcasting regulatory authorities within an effective and stable regulatory system.

Building on the results of these two seminars, the EC pursued the dialogue with the relevant stakeholders in the region with a new seminar in 2005. The seminar focused on two concrete challenges faced by the broadcasting sector in the Western Balkan countries: the transformation of state television companies into genuine public service broadcasters and the development of local content in the context of the European objective to promote cultural diversity in the audio-visual media.

Fundamental principles governing the democratic functioning of the media are essential elements of the Copenhagen criteria and the Stabilisation and Association Process conditionality. The Stabilisation and Association process and the Stabilisation and Association Agreements between the Western Balkan countries and the EU when signed, are the means of the Western Balkans countries to begin preparing themselves for the demands of the perspective on accession to the EU. In the Stabilisation and Association process European standards regarding media are systematically addressed in parallel with the progressive alignment process with the EC audio-visual acquis.

The exchange of experience among the different authorities allowed the reinforcement of the “networking effect” among the different players in the region.

- The EC and the CoE jointly reviewed the **draft broadcasting legislation** of the *FYROM, Kosovo and Albania* in 2005.
- In *Albania*, the CoE and the EC, in partnership with the Albanian Parliament, are implementing the joint Action Plan aimed at reforming the Albanian broadcasting legislation. In this context, the EC has presented three sets of comments in cooperation with the CoE on the Albanian **draft law on Electronic media** that is currently in the Albanian Parliament.
- In 2008, a round table discussion on the harmonisation of the **broadcasting legislation** with the European standards was organised in accordance with the Joint Action plan on the broadcasting system in *Albania* agreed between the National Assembly of Albania, the CoE and the EC.<sup>63</sup> In 2009, the CoE and the EC delegation in Albania, in the framework of the joint action plan between the CoE, EC and the Albanian Parliament on the drafting of new legislation on audio-visual broadcasting, organised a technical roundtable bringing together relevant Albanian stakeholders. The CoE and EC experts who revised the draft law highlighted their comments/analysis on the new legislation and its compliance with European standards.<sup>64</sup>
- In *Bosnia and Herzegovina*, a CoE expert meeting in 2004 on the **draft Law on the Public**

<sup>63</sup> DPA/Inf(2008)30, Report from the Council of Europe Field Offices and other Structures, October 2008

<sup>64</sup> DPA/Inf(2009)40, Report from the Council of Europe Field Offices and other Structures, November 2009

**Broadcasting** System and a draft Law on the Public Broadcasting Service of Bosnia and Herzegovina gathered CoE experts, drafters of the Laws and parliamentarians, to review in detail all the provisions of the draft laws. They discussed the most important issues, such as the specific structure established by the draft Law on the Public Broadcasting System, consistency between the System Law and Service Law, funding of RTV, etc. In the light of comments made by the CoE experts, a Joint CoE/EC report was prepared and forwarded to the Minister and Parliament.<sup>65</sup> In 2008, the EC with the CoE and OSCE organised a Workshop on the **Independence of Media and Telecoms Regulatory Authorities** in Sarajevo.

- In *Montenegro*, the Head of the OSCE Mission and CoE SRSG addressed in 2007 a media forum “*European practices and Montenegrin experience in transformation of Public Service Broadcasting*” organised by CoE, OSCE, and the House of Media. CoE and EC declared readiness to provide further support to transformation of Public Service Broadcasting process in Montenegro through recommendations and drafting proposals.<sup>66</sup> The CoE and the EC have supported *Montenegro* in its media reform in 2009. The EC and the CoE presented joint comments on the Montenegrin draft law on **Electronic Media**.
- In *Serbia*, the CoE met in 2006 with the OSCE Mission to Serbia and the EC Delegation in Serbia regarding current media legislation amendments.<sup>67</sup>
- The EC invited media stakeholders of the *Western Balkans countries and Turkey* and the CoE to a seminar on the **audio-visual media services directive** and the digitalisation of television, which took place in Istanbul in 2008.

#### Other countries

In *Moldova*, on the occasion of the World Press Freedom Day, embassies of EU-countries as well as CoE, OSCE and EC Delegation issued a joint statement on the situation in the Moldovan media. Regret was expressed that no substantial progress in the media reform has been noticed over the last year and particularly in transforming Teleradio Moldova into a truly independent, unbiased Public Service Broadcaster.<sup>68</sup>

Two Joint Statements of the Heads of Missions of the CoE, the EC and the OSCE as well as heads of the bilateral diplomatic missions on the Reform of the Broadcasting Sector and Baskan (Governor) Elections in ATU Gagauzia were released in 2006.<sup>69</sup>

A joint statement by a number of Embassies and Heads of Missions of the CoE, the EC and the OSCE, concerning the worrying trends in the media sector including the ability of media to report and comment freely during the forthcoming general local elections, was released in 2007. It also emphasised the necessity of full implementation of the international standards on media freedom, so that the citizens receive free and unfettered views of all sides in the election campaign.<sup>70</sup>

In *Ukraine*, the RSG made in 2007 introductory remarks at a round table on corruption in the media. The roundtable, arranged under the Action plan for media of the CoE and in co-operation with the EC, provided a thorough and intensive discussion on the theme. Around 30 Ukrainian journalists took part, including the initiator of the journalist action group “We are not for sale”. Among conclusions was the need for journalists to openly call the phenomenon by its proper name, corruption, and to organise themselves better in defence of the profession. Suggestions were made that the Ukrainian Commission on journalistic ethics become more active.<sup>71</sup>

In 2008, the RSG made introductory remarks at the conference “*Media development in Europe and Ukraine: Milestones of current agenda*” organised with the support of the EC. He welcomed the media community's own initiative to highlight problems of corruption and to make efforts to develop objective, investigative journalism. The purpose of the conference was to help Ukraine prepare priorities for the media for the near future including on European policy and challenges.<sup>72</sup> The DRSG made opening remarks at the high-level policy meeting on media legislation reform in Ukraine. The event was co-organised by the EC, the OSCE Project Co-ordinator, the CoE, and International Media Support (NGO). The meeting was attended by the OSCE Representative on Freedom of the media. The participants, representatives of governmental and non-governmental sector in Ukraine discussed the establishment of the public service, and the implementation of a number of laws.<sup>73</sup>

In *Armenia*, the CoE, in co-operation with the OSCE, the EC and the Yerevan Press Club NGO, organised in 2008 a “*Media Diversity in Armenia*” conference with the participation of media representatives, public officials, deputies, representatives of civil society and international community to discuss media legislation reform, the role of the public broadcaster to ensure diversity of opinion, and the tasks of media owners and journalists to achieve true plurality in electronic media.<sup>74</sup>

Source: CoE field offices reports, Information on EC-CoE cooperation in Western Balkans mainly from DG INFSO

<sup>65</sup> SG/Inf(2004)22, Reports from the Council of Europe Field Offices and Other Outposts, June 2004

<sup>66</sup> DPA/Inf(2007)45, Report from the Council of Europe Field Offices and other Structures, November 2007

<sup>67</sup> DGAP/Inf(2006)33, Report from the Council of Europe Field Offices and Other Outposts, September 2006

<sup>68</sup> DGAP/Inf(2006)19, Report from the Council of Europe Field Offices and Other Outposts, May 2006

<sup>69</sup> DGAP/Inf(2007)2, Report from the Council of Europe Field Offices and Other Outposts, December 2006

<sup>70</sup> DGAP/Inf(2007)14, Report from the Council of Europe Field Offices and Outpost, March 2007

<sup>71</sup> DPA/Inf(2007)45, Report from the Council of Europe Field Offices and other Structures, November 2007

<sup>72</sup> DPA/Inf(2008)11, Report from the Council of Europe Field Offices and other Structures, March 2008

<sup>73</sup> DPA/Inf(2008)11, Report from the Council of Europe Field Offices and other Structures, March 2008

<sup>74</sup> DPA/Inf(2008)23, Report from the Council of Europe Field Offices and other Structures, July/August 2008



All of the comments in the previous section about lack of progress in most countries reviewed also apply here. Overall, legal and practical barriers to free and independent media remain an underlying problem in all the countries examined, ranging from political pressure, misuse of litigation, physical violence and intimidation, even death threats. This situation remains despite some JPs involving media actors in delivering programme or as primary beneficiaries of JP outputs. In summary, while both JPs have been implemented and non-financial cooperation has taken place in the countries under review, there is limited evidence that barriers to free media have been effectively directly reduced by this support.

### 6.1.3 I-613 Legal and practical barriers to establish political parties reduced

There is no evidence from the Desk Phase of EC-CoE cooperation addressing issues of legal and practical barriers to establishing political parties in the countries reviewed. Problems of legal and practical barriers to political parties can be largely linked to political issues, as highlighted in *Turkey* in the context of concerns about separatism as opposed to need for awareness raising or enhanced technical capacity. Progress in reduced legal thresholds for registering political parties is identified over the period of the JPs assessed (including a 2001 law in *Turkey* and a 2009 law in *Russia*). However, practical barriers impeding the establishment of political parties are more varied, including issues of education, and media access and confidence in the democratic process. In that context, a number of JPs concerned human rights awareness-raising. Even if establishment is legally permitted, some political parties face a variety of barriers to functioning on an equal basis with others, as in the case of *Armenia* and *Azerbaijan* where documented barriers include impediments to opposition political parties holding public events. In the first of these countries, the role of political parties is somewhat marginal. In *Russia*, all but the largest political parties have difficulty in registering. No significant barriers to establishing political parties are reported in *Bosnia and Herzegovina* or *FYROM*. However, Bosnia and Herzegovina is an example of a jurisdiction where numbers of registered political parties can be high and yet the democratic system represents entrenched discrimination. No additional information was gained on this indicator during the field phase in any of the visited countries.

### 6.1.4 I-614 Increased opportunities of participation and mobilisation of independent civil society in the political processes

Joint EC-CoE cooperation in support of enhanced participation and mobilisation of independent civil society in political processes has been found to be a central focus of few JPs; however, some JPs feature components aimed at strengthening NGOs.

In *Azerbaijan* and *Armenia*, the JP *South Caucasus Democratic Stability* (2002-2004) aimed at contributing to the development of state-society relations by organising events bringing together key players (i.e. representatives of relevant national ministries, local authorities and local and national NGOs). The following box shows the main topics of these events.

**Box 13:** *Azerbaijan and Armenia: South Caucasus Democratic Stability (2002-2004) – topics of seminars*

Baku (Azerbaijan), 27-28 November 2002, 25 participants, 2 days; main topics :

- NGOs as a link between the citizen and public authorities;
- Creating the foundations of an effective NGO;
- Ways and means of action of NGOs in a democratic society;
- The role of NGOs in influencing policy making.

Masally (Azerbaijan), 24-25 April 2003, 35 participants, 2 days; main topics :

- NGOs as a link between the citizen and local authorities;
- The contribution of NGOs to the development of local democracy, neighbourhood democracy – the role of NGOs in encouraging and facilitating public participation, the role of NGOs in facilitating citizens' access to information, the participation of NGOs in the management of public services, the participation of young people in public life at the local level and the role of youth NGOs;
- NGOs, local authorities and local executive powers were well represented.

Baku (Azerbaijan), 4-5 June 2004, 25 participants, 2 days; main topics:

- Co-operation between NGOs and public authorities on human rights education and social rights and issues;
- Local and national authorities as well as NGOs were well represented.

Tsakhkadzor (Armenia), 25-26 June 2003, 30 participants, 2 days; main topics:

- NGOs as a link between the citizen and public authorities;
- Creating the foundations of an effective NGO;
- Ways and means of action of NGOs in a democratic society, the role of NGOs in influencing policy making, (specific attention to the local authority level)

Tsakhkadzor (Armenia), 2-5 April 2004, 25 participants, 2 days; main topics:

- Co-operation between NGOs and (i) the Ministry of Foreign Affairs (ii) Parliament (iii) Local Self-Governments.

Source: JP final report

The evaluation report of this JP, carried out in 2005<sup>75</sup>, concluded with regard to the State-Civil Society development component of the JP:

- For Armenia: *“There were no measurable or tangible outcomes, however it did enable: Some participation by stakeholders and active participation by local government bodies. Also it provided a forum for open discussions on the issue.”*
- For Azerbaijan: *“No impact or changes took place as such, however: A useful dialogue established between the parties (Government and NGOs). Conditions were created for public discussion on the issue.”*

The evaluation report summarises the country-specific situation regarding civil society as involving: *“...very limited opportunity for establishing a civil society in the European sense. Capacity building to move this process forward has taken place, although due to the weakness of the NGO sector in Azerbaijan, it is very dependent on donor grants. In our view, this component needs to be given a higher priority, as any reforms of legislation in terms of compatibility with European standards will not have any real effect if civil society remains undeveloped and unable to demand and support the reforms.”*

Some results are reported to have been achieved in the framework of the JP *“Setting up and developing the Civil Society Leadership Network”* (2008-2009) implemented in five countries (*South Caucasus, Moldova, and Ukraine*). The objectives of this JP were to strengthen the capacity of civil society leaders so as to enable them to advocate for democratic policy changes by improving their knowledge of European democratic processes, standards and values; to enhance organisational and communication skills, and to promote networking, cross-sector and cross-border partnership. Each member of the network participated in three training sessions and most of them also in the final alumni conference (Final report 2010). The *Armenia ROM report* (2009) praised the project for producing concrete outputs and institutional strengthening at the national level, but was more cautious regarding the putting in place of a lasting international network. The case study on *Armenia* confirmed that the role of civil society has expanded in the country. However, in recent years, the government has attempted to control civil society by tightening rules regarding the registration and reporting of civil society organisations. Interviews conducted in the framework of the in-country visit pointed out that there has been no trend towards increasing involvement of independent civil society in the political process; by contrast, there has been an increase in the presence and weight of GONGOs. Freedom of assembly has been curtailed following the disturbances of March 2008, and, although some changes have been made in accordance with the advice of the Venice Commission, the current law is more restrictive than the one that preceded it. At the heart of the problem is that there is no domestic public or private financial support for civil society in Armenia; all support comes from international donors or from the highly politicised Armenian diaspora. As a result, government tends to regard civil society as more responsive to foreign priorities than national ones.

Regarding the JP, the *Azerbaijan ROM report* (2009) assessed that: *“24 influential civil society leaders from Azerbaijan have received substantial knowledge and skills through participation in the project events. Topics and contents of the project seminars were evaluated by Azeri participants as very interesting and appropriate. [...] Active involvement of Azeri participants in the work of thematic sub-groups during seminars led to sharing experiences on hot political and social issues and generation of ideas for addressing these issues. This endeavour has resulted in the initiation of four joint projects funded by different donors and being already in the process of implementation by Azeri NGOs in collaboration with CSLN members from Armenia and Ukraine. Thus, the project has contributed to continuous involvement of Azeri project participants into the solution of political and social problems facing different target groups in the country”*.

The final regional ROM of 2009 concludes with respect to the JP's impact prospects (in all five countries): *“The project contributes to the achievement of this objective through the same 120 civil society leaders of the five countries, who received substantial knowledge and acquired valuable skills and have a good potential to be involved in the solution of political, social, cultural and other problems in their countries. At the same time, they have not been formed yet as an actor at the regional level to be involved in the solution of these problems in the region.”*

In *Moldova*, in general, the period after April 2009 has seen a major expansion in the influence of NGOs, in part simply because many members of the new government have a civil society background.

<sup>75</sup> Evaluation of the South Caucasus EC-CoE Joint Programme, ITAD, 2005



In *Turkey*, JPs involved civil society in programme activities (such as detention monitoring, human rights awareness raising) which contributed at least to mobilisation and opportunities for increased civil society involvement in political processes. Turkey does not suffer from a problem common in other jurisdictions of donor financial support for civil society focusing on service delivery and avoiding more sensitive human rights activities of advocacy/monitoring/litigating etc. Insofar as the JPs facilitated civil society participation in activities such as human rights monitoring, advocacy, awareness raising etc., the Turkey case study highlights that opportunities for such engagement by civil society seem to have expanded. However, NGOs active on particular topics (notably minorities) continue to face constraints that go beyond permissible regulation allowed by international law standards. Similarly, awareness raising and advocacy in Roma I and Roma II JPs in *FYROM* involved mobilisation and participation by civil society and NGOs, though in the absence of post-JP evaluation, the continuation and impact of civil society on Roma issues is a matter of conjecture.

In principle, supporting state institutions to better implement changes required to comply with their obligations should see increased civil society involvement in political processes. Post-JP evaluation is necessary to assess whether participation in JP activities results in meaningful influence in political processes (as opposed to mere service delivery by CSOs on behalf of the state). Such evaluations have not been carried out.

To note in addition that, as shown in the case study, this indicator seems not relevant for the context of *Serbia*, which has historically, a strong civil society that has engaged with relevant topics as they emerge in the public debate.<sup>76</sup>

In sum, while support to civil society was not the primary objective of JP activities, there is some evidence that joint EC-CoE support to the network of civil society leaders across five countries, may have contributed to increasing the opportunities of civil society participation in the political process in that it is reported as having contributed to build both stronger civil society leadership and established some regional ties between country representatives. Otherwise, longer term (though unmeasured) impacts include the legitimisation of the role of NGOs in political life. The CoE end-of-project report for Joint EC/CoE *Initiative with Turkey to Enhance the Ability of the Turkish Authorities to Implement the National Programme for the Adoption of the Community Acquis* (NPAA) refers to NGOs appreciation for EC and CoE authority providing “a ‘privileged’ space for NGOs to exchange views and meet one another.

### **6.1.5 I-615 Legal and practical barriers to register NGOs reduced and existing level of tolerance of operations led by non-registered civil society organisations**

No JP in the countries under review was specifically devoted to the issue of NGO registration or activities by non-registered civil society organisations. It is not clear if NGO involvement in JPs in countries where registration is required is limited to registered NGOs. In *Armenia*, registration of NGOs is not onerously difficult, but takes considerably more time than registering a for-profit entity. In *Moldova*, several attempts to control NGOs were made during 2001-2009, and particularly in April 2009. The registration of NGOs today is not a major problem. The process takes much longer than registering a company, but the discrepancy is due to the level of modernisation of services. As this EQ was not part of the focus of the *Turkey* field phase, no additional information has been gathered; with respect to *Serbia*, see remark above.

Support of significance to civil society on specific issues has been dealt with under the respective indicators (e.g. I-614 above and in EQ3).

## **6.2 JC6.2 Improved electoral legislation and practice**

The criterion of improved electoral legislation and practice was assessed through the use of six indicators:

- Electoral legislation corresponds to European standards, management bodies and their personnel politically independent;
- Capacity building of electoral management bodies; trained staff in place;
- Adequate election complaints procedures and guidelines in place;
- Active involvement of independent NGOs in elections monitoring;
- Capacity building of the media on the democratic electoral process;
- International electoral observation missions give positive reports on conduct of elections.

<sup>76</sup> See, for example Freedom House Nations in Transit 2011 Report on Serbia, at <http://www.freedomhouse.org/images/File/nit/2011/NIT-2011-Serbia.pdf>.

Overall, electoral legislation and practice has been an area of sustained attention of the EC-CoE joint programmes in the case study countries over the evaluation period.

With regard to improvements in **electoral legislation**, co-financing the work of the Venice Commission through *Democracy through Free and Fair Elections* in 2003-2006 supported the provision of legal expertise through reviews and recommendations on electoral legislation for broad number of CoE countries, and the creation of CoE electoral legislation database. The JP *Support to Free and Fair Elections* (2008-2010) targeted the countries of the *South Caucasus* and *Moldova* and also delivered large numbers of expert opinions and further legal assistance in the context of various elections carried out in these countries, leveraging Venice Commission advisory work. In general, there is evidence that some important improvements in electoral legislation were achieved in the countries targeted. In the case of *FYROM*, for example, GRECO has lauded the 2004 Law on Financing of Political Parties for “*a commendable general emphasis on transparency and a number of strong features*”. In other cases, for example Azerbaijan, political will to implement reformed legislation has been lacking. In Armenia, independent civil society organisations are critical not only of electoral legislation and practice, but of the Venice Commission itself.

The capacities of **electoral management bodies** to implement reformed elections legislation featured in trainings and workshops in two regional JPs in countries of the *South Caucasus* and *Moldova* usually in the framework of specific pre-election attention given to countries perceived to be under risk of experiencing election irregularities. These activities have likely contributed to strengthening the capacities of the electoral administration in *Azerbaijan*, *Georgia* and *Moldova* through provision of specific expert assistance to the CECs, as well as through targeted trainings for the members of lower election commissions, and might have contributed to elections being carried out closer to international standards. However, as election observation reports show, elections in these countries are still subject to criticism on multiple accounts, demonstrating that capacity building does not necessarily result in impact is not effective when political commitment to free and fair elections is weak.

The dissemination of the international standards and international experience regarding **electoral disputes** has been a part of support to free and fair elections in *Azerbaijan*, *Georgia* and *Moldova* by the facilitation of discussion and training on international standards. Nevertheless, the issue of electoral disputes remains problematic in all these countries. Post-election violence in Armenia and Moldova speaks to the popular view of the electoral process. The support provided might have had some indirect impact in awareness raising within the electoral management bodies and judges dealing with disputes.

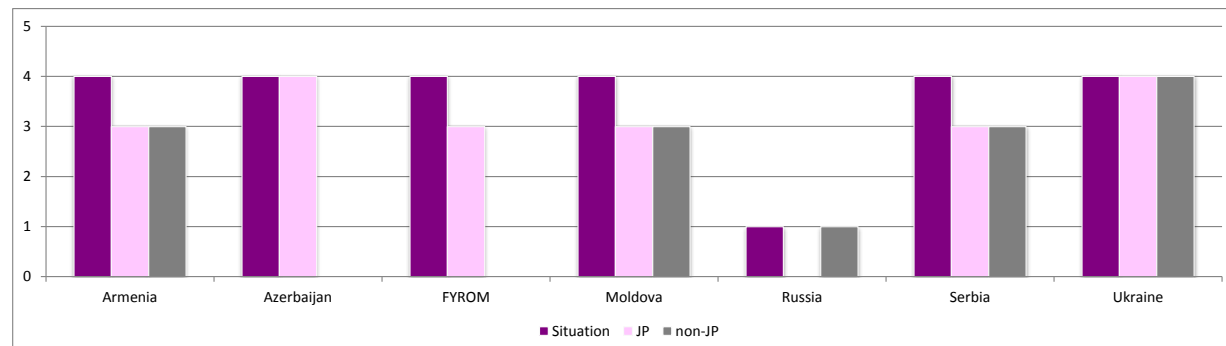
Support to **NGOs election monitoring** does not feature as a central element of JPs in the case study countries. Non-financial EC-CoE cooperation influencing the involvement of independent NGOs in elections monitoring, has been found *Georgia* and *Ukraine*. NGOs are active in elections monitoring in all countries, a substantial share of these, however, are closely associated with ruling political parties.

A number of multi-country JPs addressed the issue of **media capacity building** in the desk study countries in the period under evaluation. These activities might have had some impact in countries where the general political situation allows for initial steps towards impartiality and independence of media, such as *Georgia* or *Moldova*, even though according to independent media monitoring the situation in these countries is far from ideal, and challenges still lie ahead. In Georgia and Moldova the monitoring of media coverage was also a part of the JP, which allowed for discussion of its results with stakeholders. On the other hand, in *Armenia* and *Azerbaijan*, media are strongly controlled by authorities, and these countries receive highly critical reviews of the media coverage of the election process by independent monitors. In the latter country, harassment of and violence against journalists continue to pose serious problems. In these cases the impact of EC-CoE efforts in media professionals' capacity building was limited by the personal and professional risks faced by journalists. However, in Armenia, increased professionalism was credited with contributing to a decline in the use of defamation lawsuits against journalists.

In summary, while some progress in different aspects of election process have been noted in numerous countries over the evaluation period, the overall record is still mixed at best for most countries under review, with various irregularities and violations still being a common occurrence. The joint EC-CoE action supported the different aspects of free and fair elections especially in the countries of *South Caucasus*, *Moldova* and *Ukraine* over the evaluation period, including long-term dialogue with countries regarding their electoral legislation, targeted pre-election “packages” election monitoring and post-election reflections on the process. While it may seem that this cooperation has had only limited tangible results and impacts, it is acknowledged that democratic transition is a long-term and complex process, and changes are bound to be incremental. The value of sustained monitoring and political pressure for improvements is difficult to quantify but is generally recognised.

We can complement the assessment from case study countries with the results of the EUD survey. Figure 19 gives an overview of the results and impact of EC-CoE cooperation in Electoral legislation and practice, as perceived by the EUDs. High JP impact in this area together with some improvements in overall situation was reported by *Azerbaijan* and *Ukraine*. *Russia* notes significant deterioration in situation together with practically no attention given to this problem in EC-CoE cooperation.

Figure 19: EUD survey results: Impacts in improved electoral legislation and practice



Scales			
Change in situation		Impacts of JP and non-JP cooperation	
Significant improvements	5	Very high extent	5
Some improvements	4	High extent	4
No change	3	Some extent	3
Some deterioration	2	Low extent	2
Significant deterioration	1	Very low extent	1
Do not know, Not applicable, No answer	0	Do not know, Not applicable, No answer	0
Note: Countries that provided no information for impacts in both JP and non-JP cooperation under this JC are not shown			
Source: EUD survey			

### 6.2.1 I-621 Electoral legislation corresponds to European standards, management bodies and their personnel politically independent

Between 2003 and 2010, two multi-country JPs have been implemented in case study countries in support of free and fair elections. Delivered during 2003-2006, the purpose of the multi country project “*Democracy through free and fair elections*”<sup>77</sup> was to analyse key aspects of European electoral law and to assist national authorities in improving the quality of electoral legislation and practice. Activities implemented by the Venice Commission included the reviews and recommendations of electoral legislation for multiple countries (including *Armenia, Azerbaijan, Moldova, Albania, Serbia, Croatia, FYROM, and Turkey*), and provision of opinions on draft electoral legislation. European electoral standards were disseminated through seminars and workshops. A database on electoral legislation (“VOTA”) was created. As no final report for the JP is available, no further information on results achieved by these activities can be retrieved. A CoE interim report reported positive assessment of JP workshops on elections by participants. With regards to the expert opinions on legislation, the interim cautioned that “*legislation on which opinions were provided (by the Venice Commission) in the framework of the JP has not yet been revised and such a process may take several years. This makes a precise evaluation impossible in the short term*”, and that “*The recommendations on the electoral law and the electoral administration, which were not requested by national authorities, were taken into account very seriously at high level in Albania but raised less attention in Moldova and Azerbaijan. However, the authorities do not always take into account all the Venice Commission’s remarks.*” With regards to assumption underlying the JP’s approach, the same report continues: “*An assumption was that the Parliamentary Assembly and/or the CLRAE would regularly provide observation reports on elections. The number of these reports, in particular those in which the assistance of the Venice*

<sup>77</sup> This JP was targeting “*Council of Europe Member States, especially those which are members of the CIS, as well as countries of South Eastern Europe*” (JP interim report, 2004)

Commission was mentioned, was lower than envisaged; this made the number of recommendations by the Venice Commission lower. [...] An assumption was that national authorities would request the opinion of the Venice Commission. The limited number of requests led to a limited number of opinions." No JP activity was specifically aimed at Turkey, and no Venice Commission opinions were delivered, but the improved Electoral Code and practice in recent elections may have benefitted in some degree, FYROM does not appear to have sought any opinion from the Venice Commission relating to election legislation and procedures until 2010. At the time the project Interim Report was produced (2004) no changes in FYROM were reported.

The JP "Support to free and fair elections" (2008-2010), aimed assisting the countries of South Caucasus and Moldova in conducting 2008-2009 elections in line with the democratic standards, through legal appraisals of the electoral legislation (other components of this JP are discussed under following Indicators of this JC). The strategy of the project was to leverage Venice Commission advisory work by legislative drafting and capacity building. The final report (2010) states with regards to the expertise on electoral legislation "On the basis of these recommendations, the electoral legislation of the beneficiary states was significantly improved, with the exception of Azerbaijan where a number of important issues have still to be addressed." In particular, the report, with some caveats, attributes the following achievements to the expertise provided by the JP:

- In *Armenia*, the Election Code of the Republic of Armenia could provide a good basis for democratic elections, if implemented in good faith. However, independent NGO representatives interviewed during the field mission were harshly critical of the Venice Commission's advice regarding the opening of the elections register (the list of persons who have voted) and pre-campaign finance. In the first case, the Venice Commission advised that opening the register would violate the right to privacy of those who chose not to vote. NGO representatives argue that, given the massive diaspora and the fact that Armenians abroad routinely fail to register at the local Armenian consulate, failure to open the register to scrutiny make possible widespread vote fraud.
- In *Azerbaijan*, some progress has been made, but a number of crucial issues have still to be considered, including the fundamental issue of composition of election commissions.
- In *Georgia*, amendments adopted in 2009 and 2010 were in general assessed positively, even if some issues have still to be reconsidered (including delimitation of election districts and complaints and appeals).
- In *Moldova*, amendments proposed in 2010 improved the Election Code and should enhance the quality and integrity of the election process. They also have the potential to increase the level of public trust in the institutions of government. If implemented in good faith and with the necessary political will, the amendments should resolve many of the issues that have arisen in prior elections related to the administration and conduct of elections.
- In *Serbia*, recent parliamentary and early presidential elections (May 2012) were widely judged to having been free and fair.<sup>78</sup> There have been no JPs dealing with election issues specifically, so no specific JP-related statements can be made with regards to Serbia.

More details on expertise provided are listed in Box 14 below.

**Box 14:** *Support to Free and Fair Elections (2008-2010) – Support to electoral legislation*

According to the JP final report, the following support was provided in the area of electoral legislation in the framework of the project:

*Armenia*

- Joint Opinion with OSCE/ODIHR on the Election Code of the Republic of Armenia, October 2008 (CDL-AD(2008)023) - This opinion underlined that a number of improvements were still necessary in the electoral legislation and practice, especially concerning complaints and appeals and the balance in the composition of election commissions.
- Preparation of a joint informal opinion on the revision of the Election Code (This informal opinion should lead to a formal opinion on a draft revision of the Election Code in 2011)

*Azerbaijan*

- Joint Opinions on electoral legislation, March and June 2008 (OSCE/ODIHR-Venice Commission CDL-AD(2008)011) – The Opinion concluded that although the adopted amendments addressed some previous recommendations of the OSCE/ODIHR and the Venice Commission, some of the new amendments were problematic. In addition, several previous recommendations remained unaddressed or insufficiently addressed, in particular the fundamental issue of the composition of election

<sup>78</sup> See, for example, OSCE/ODIHR statement of 7 May at <http://www.osce.org/odihr/90335>.

commissions.

#### Georgia

- Legal assistance mission to the Election observation mission by PACE (January 2008) - The Venice Commission experts advised the PACE Delegation and commented on the draft observation report by PACE
- Joint Venice Commission - OSCE/ODIHR Opinion on the Election Code of Georgia, January 2009 (CDL-AD(2009)001) – The conclusions underlined an overall improvement resulting from the latest amendments. Nonetheless, a number of provisions in the current law remained problematic, or were considered as insufficiently specific. Therefore, the Venice Commission and OSCE/ODIHR suggested further reform of the election code, preceded by an open and transparent consultation process.
- At the request of the Parliament of Georgia, the Venice Commission carried out an assessment of the Law amending the Law of Georgia on political unions of citizens (CDL-AD(2009)033).
- Meeting of the Election Code Working Group, Tbilisi, 4 July 2009 – Venice Commission took part on 4 July 2009 in a meeting of the Election Code Working Group, in charge of preparing the revision of the Election Code. The Venice Commission delegation pointed out some important recommendations to be implemented in the future revised Election Code.
- Joint Venice Commission – OSCE/ODIHR opinion on the amended Election Code of Georgia, June 2010 (CDL-AD(2010)013) – This opinion concluded that, overall, the amendments made to the Election Code of Georgia in December 2009 and March 2010 constitute an improvement. Nonetheless, a number of provisions in the current Code were of serious concern or raised questions due to the fact that the text of the Code was ambiguous or insufficiently clear in some areas.

#### Moldova

- Joint Venice Commission – OSCE/ODIHR Opinion on the April 2008 amendments to the Electoral Code of Moldova, October 2008 (CDL-AD(2008)022) – The opinion focused on the extent to which the amendments have addressed previous recommendations (see in particular CDL-AD(2007)040), and assessed the amendments against OSCE commitments and international standards for democratic elections. The amendments introduced in 2008 were not comprehensive, and have not addressed most of the previous recommendations. While some of the amendments brought about technical improvements to the organisation of the electoral process, some of the amendments represented a notable step back. The European Court of Human Rights, quoting a number of Venice Commission documents, stated clearly that such an incompatibility goes against Article 3 of the Additional Protocol to the European Convention on Human Rights (see *Tanase and Chirtoacă v Moldova* judgment of 18 November 2008).
- Legal assistance mission to the PACE Election Observation Mission of the Parliamentary Elections in Moldova, Moldova, 3 participants, 2-6 April 2009 – The Venice Commission delegation prepared a memorandum to the attention of the PACE Delegation, underlining the provisions of the Election Code and other recommendations to be taken into consideration by the PACE Delegation during the voting day. The Venice Commission Delegation advised the PACE Delegation and commented on the draft observation report by PACE.
- Legal assistance mission to the PACE Election Observation Mission of the Parliamentary Elections in Moldova, Moldova, 1 participant, 26-31 July 2009 – The Venice Commission expert prepared a memorandum to the attention of the PACE Delegation, underlining the provisions of the Election Code and other recommendations to be taken into consideration by the PACE Delegation during the voting day.
- Opinion on the legislation on draft amendments to the electoral code of Moldova (CDL-AD(2010)014), March-June 2010 – In March 2010, draft amendments to the electoral code of Moldova were prepared and submitted to the Venice Commission for opinion. In a Joint Opinion with OSCE/ODIHR. The Commission concluded that, if adopted by Parliament, the proposed amendments would improve the Election Code and enhance the quality and integrity of the election process.

Source: JP final report 2010

The joint informal opinion on the revision of the Electoral Code<sup>79</sup> in *Armenia*, a part of the above mentioned JP, provided comments on the proposals of the working group on reforms of the election code within the National Assembly of Armenia, which stemmed from the challenges during the February 2008 elections. Following this informal opinion, the Venice Commission and OSCE/ODHR issued a joint final opinion on the Electoral Code of Armenia<sup>80</sup> in May 2011. This opinion welcomed a number of positive amendments made to the law, which address previous recommendations. With regard to the election commissions' independence, it states that, “[t]he new composition of election commissions, which shifts from a partisan to a nonpartisan model at the level of the CEC and the CSECs, is a step towards a fully independent and impartial election administration. In particular, the strong limitation of the President of the Republic's discretion in the appointment of the CEC is a positive development.”

<sup>79</sup> Joint informal comments on the recommendations of the national assembly working group on reforms to the election code of Armenia, CDL-EL(2010)003

<sup>80</sup> CDL-AD(2011)032



The opinion still suggests further improvements, and emphasises that “*legislation alone cannot guarantee that members of election commissions will act professionally, honestly and impartially. Full and proper implementation of the existing and possible new provisions on electoral commission formation and administration remains crucial.*” However, civil society representatives consulted during the field phase are strongly of the view that much of the Venice Commission's advice has been misguided given the specific circumstances of Armenia. Public mistrust in the whole electoral process increases resulting in general voter apathy and reluctance to bring election-related complaints to electoral commissions and courts.

For *Azerbaijan*, the opinion provided in the course of this JP<sup>81</sup> in June 2008 on the amendments to the Electoral Code stated that “[t]he adopted amendments have addressed some previous recommendations of the OSCE/ODIHR and the Venice Commission. This is a positive development. However, some of the new amendments are problematic. In addition, several previous recommendations remain unaddressed or insufficiently addressed.” With regards to the issue of election commissions, it notes “One area of concern is the composition of election commissions. No changes in the composition of election commissions have been introduced by the amendments. A Round table on Election Commission composition co-organised by the Council of Europe and IFES took place in Baku on 9 November 2007. Different proposals on the composition of election commissions were discussed. However, the amendments do not take into account any of the proposals.”

The joint opinion on the draft working text amending the election code of *Moldova*<sup>82</sup> gives a mixed review of the proposed amendments by noting that they “*demonstrate a genuine effort by the Moldovan authorities to address the shortcomings reflected in previous Joint Opinions and Final Reports of OSCE/ODIHR Election Observation Missions. They would represent a major improvement to the Code if they were to be adopted by Parliament. However, the draft amendments do not address some previous recommendations that are essential.*” Regarding the independence of the election commissions, the previous recommendation to reconsider the possibility of recalling election commission members is on the list of past recommendations that have been fully or partially addressed by the draft amendments. However, a previous recommendation to include adequate provisions to guarantee that all parliamentary parties have at least a minimal representation on commissions and to enable the participation of parties that have a strong regional presence had not been acted upon. In *Moldova*, electoral legislation and practice was a matter of major concern in the PACE Resolutions. The April 2009 post-electoral protests reflected the lack of trust in national institutions managing the electoral process.

Overall, substantial amount of legal expertise was delivered by the CoE (Venice Commission) in the framework of JPs seeking to support free and fair elections. The VOTA database of European electoral legislation is available online<sup>83</sup>, and is being updated<sup>84</sup>.

The follow-on JP *Support to Free and Fair elections in the South Caucasus and Moldova*, implemented in 2008-2010, provided large numbers of expert opinions and further legal assistance in the context of elections carried out in the countries. The opinions and expertise of the Venice Commission are a unique and unparalleled source of recommendations in the matters of electoral legislation, as is its ability to engage governments in on-going dialogue and incremental improvements of electoral laws. The final report to JP *Support to free and fair elections (2008-2010)* states that the Venice Commission's assistance to target countries has been leveraged by Joint Programmes: “*These programmes enabled activities aimed at improving electoral law and practice in these states to be developed. Over time, they were reoriented according to needs; in particular, the legislative drafting – as well as standard-setting – no longer seemed to be the first priority, whereas the dissemination of the principles of the European electoral heritage became essential, through the organisation of capacity-building activities. EU grants enabled the Venice Commission to develop electoral activities in a larger scale than previously, in particular by involving greater number of local actors.*” Nonetheless, as the case of Armenia illustrates, the advice of the Venice Commission is not uncritically accepted by civil society.

This legal support to electoral legislation was further complemented by support to election management, media and civil society, which is discussed in separate indicators of this JC. Details on countries' reports from observation missions are given in I-626.

We give a brief summary of the situation in countries where no JPs related to election legislation were implemented. In *Russia*, as evidenced by the flaws in local elections of 2010 and parliamentary elec-

<sup>81</sup> Joint opinion on the draft law on amendments and changes to the electoral code of the republic of Azerbaijan, CDL-AD(2008)011

<sup>82</sup> CDL-AD(2010)014

<sup>83</sup> <http://www.venice.coe.int/VOTA/en/start.html>

<sup>84</sup> It also still informs the users on the home page that “*This database was created within the framework of the joint programme between the Venice Commission and the European Commission*”.

tions of late 2011, election commissions are dominated by the ruling party. Election commissions in *Bosnia and Herzegovina* and *Turkey* appear to be in line with these countries' CoE commitments, however, it is to be noted that the Turkish Commission only reversed its decision to ban Kurdish candidates after violent protests.

To conclude, most case study countries experienced an improvement in electoral legislation over time, even though implementation is not always strong and in some countries such as Armenia, Azerbaijan and Russia, the independence of electoral commissions is problematic. The Venice Commission provided reviews and opinions in a number of countries, and JPs subsequently leveraged this advice by financing the drafting of legislation and, as legislation was put in place, the subsequent need for capacity building, which is the subject of the next indicator. The respected the Venice Commission is not universal.

### 6.2.2 I-622 Capacity building of electoral management bodies; trained staff in place

Capacity building of electoral management bodies has been a strong component of two already-discussed JPs aiming at improving electoral legislation or electoral practice.

In the JP "*Democracy through Free and Fair Elections*"<sup>85</sup> (2003-2006), two activities with relevance to this indicator were implemented, according to the interim report of 2004<sup>86</sup>.

- A multi-lateral seminar organised by the Venice Commission and UniDem (Universities for Democracy) on "*European standards of electoral law in the contemporary constitutionalism*", in co-operation with the Constitutional Court of Bulgaria. This seminar combined such issues as constitutional justice and electoral systems. Participants from a number of European countries including most central and eastern European countries as well as judges from constitutional courts and members of central election commissions attended the seminar.
- Workshops on the holding and supervision of elections (electoral training workshops): held in *Azerbaijan* (targeted at future trainers of members of electoral commissions; following this seminar, the Central Election Commission organised local training workshops for members of electoral commissions), *Ukraine* (two seminars; targeted in particular members of territorial electoral commissions, representatives of candidates, representatives of non-governmental organisations involved in the electoral process and local authorities), and *Moldova* (electoral training workshop). According to the interim report, the choice of country where the seminars were organised was based on the needs and requests made by national authorities.

As no final or evaluation report for the JP is available, no further information on results achieved by these activities has been retrieved. The Interim Narrative Report of the JP made a careful distinction between raising awareness and creating genuine willingness to hold free and fair elections. In electoral reform, the success of CoE activities, including JPs, ultimately depends on the commitment of national authorities to uphold the commitments they have made.

In the framework of the JP "*Support to Free and Fair Elections*" (2008-2010), aimed assisting the countries of the *South Caucasus* and *Moldova* in conducting 2008-2009 elections in line with democratic standards, assistance was provided to the Central Election Commissions of three of the target countries (*Armenia, Azerbaijan, Georgia and Moldova*). According to the final report "[t]he capacities of the electoral administration in three of the target countries (*Azerbaijan, Georgia and Moldova*) have been significantly enhanced through provision of specific expert assistance to the CECs as well as through targeted trainings for the members of lower election commissions on the amended national electoral legislation and on the principles of the European electoral heritage. Internationally recognised election experts were seconded to the CECs of *Georgia and Moldova*, which resulted in improving, *inter alia*, the latter's technical and managerial capacity and working methods." There was no comment regarding Armenia (see below), where independent NGO representatives expressed the view that the Central Elections Commission is essentially under the control of the ruling political party. Further details are provided in the following box.

**Box 15:** *Support to free and fair elections (2008-2010) – Capacity building of electoral management bodies*

In the framework of the multi-country JP *Support to free and fair elections* (2006-2008) the following capacity building has been provided to the electoral management bodies, according to the final report:

- In *Azerbaijan*, in the context of preparations to the Presidential Elections of October 2008, on 15-18 July

<sup>85</sup> Targeting "Council of Europe Member States, especially those which are members of the CIS, as well as countries of South Eastern Europe" (JP interim report, 2004)

<sup>86</sup> Final report for this JP not available

2008, the Venice Commission organised two training seminars targeting some 250 representatives of the territorial election commissions. 130 additional persons were trained on complaints and adjudication of election disputes.

- In *Georgia*, from 28 April to 25 May and from 29 May to 9 June 2008, the Venice Commission seconded a high-level international expert to assist the Central Election Commission on legal and technical issues before, during and after the Parliamentary Elections of May 2008. At the request of the Central Election Commission of Georgia, a Venice Commission election expert carried out a mission of assistance to the CEC from 14 to 30 April 2010 in the context of the upcoming local elections. He offered technical assistance on the mode of operation/decision-making of the CEC, as well as legal assistance - on the implementation of the Election Code, in drafting instructions and decrees, on the schedule for the preparation of the upcoming elections.
- In *Moldova*, in the context of the Parliamentary elections of April 2005 and at the request of the Central Election Commission of Moldova, the Venice Commission seconded an international expert in electoral matters from 17 March to 9 April 2009 who assisted the electoral administration on legal and technical issues. The final report notes that the CoE expert "*faced some problems, considering that sometimes the willingness of the CEC to implement proposals for changes in the procedures was lacking.*" In the context of the 29 July 2009 repeat Parliamentary elections, a Venice Commission election expert assisted from 15 July to 5 August 2009 the Central Election Commission in preparing the repeat elections on the legal and technical aspects of the electoral process.

Source: JP final report

A conference was organised with the Association of European Election Officials in Yerevan in September 2009 attracting 100 participants from *Armenia, Azerbaijan, Georgia, and Moldova*, including a delegation of the Venice Commission. The conference aimed at considering a number of issues of interest for electoral management bodies, and in particular judicial protection of the electoral process and application of sociology to the electoral process. An expert meeting on electoral registers took place as part of the conference.

No JPs addressed capacity building for election officials in *Russia*. In Turkey, all election administration bodies above the level of the polling place itself include or consist of judges. In *FYROM*, the lack of qualified support staff for electoral administration has been raised by the OSCE and Venice Commission, the latter of whom provided training on organising elections. In Bosnia and Herzegovina, the OSCE's final report on the 200 elections noted a positive trend in the availability of trained staff in place on the municipal level.

In summary, two major regional JPs contained aspects of capacity building for the electoral management bodies. These have likely contributed to strengthening the capacities of the electoral administration in *Azerbaijan, Georgia and Moldova* through provision of specific expert assistance to the CECs as well as through targeted trainings for the members of lower election commissions on the amended national electoral legislation and on the principles of the European electoral heritage. In general, capacity to organise and carry out elections has improved in the countries looked at here, and EC-CoE JPs deserve some of the credit, as do independent bodies such as the Venice Commission and projects financed by other donors active in the field. As we have noted, however, availability of trained staff, like the existence of a sound legislative framework, is no guarantee of free and fair elections unless backed up by political commitment.

In *Armenia*, no information found in the field mission would suggest that the EU supported the CoE in strengthening electoral management bodies (Indicator 6.2.2) or helped to strengthen election complaints procedures (Indicator 6.2.3), which are held to be ineffective by both the OSCE and the PACE in their election observation reports. It is broadly acknowledged that the Central Electoral Commission, which in turn appoints lower-level Commissions, is under the dominance of the President. It is the President who appoints the members of the central electoral commission upon the recommendation of the President of the Chamber of Advocates, the President of the Cassation Court and the Ombudsman for a 6-year office term. The CEC then appoints the members of the territorial electoral commission and the latter have a right to appoint two members in precinct commissions. The rest of the members of precinct commissions are appointed by parliamentary factions, one member by each. The NGO community is critical of the election complaint mechanisms and believe that both electoral commissions and the administrative court have taken a purely formal approach in regard to many election-related complaints. The knowledge of election law and practice among electoral commissions all levels is an issue of huge concern with several members being totally unaware of their rights and duties in examining electoral disputes.

According to the website of the Central Electoral Commission ([www.elections.am](http://www.elections.am)), 54 local NGOs monitored the 2012 parliamentary elections in Armenia (Indicator 6.2.4). While the CEC believes this to be a great achievement, independent civil society representatives interviewed are of a very strong opinion that most of these organizations are government supported NGOs that did not record the genuine election situation. One particular NGO – It's Your Choice – specializing in electoral monitoring is

increasingly perceived as corrupt since a number of its members were reported as obstructing the process of voting or engaging in activities other than observation, including campaigning for the Republican party and co-operating with its proxies. The positive impact of the EU-CoE Media Joint Programme on the capacity of the media to cover the democratic electoral process has been noted above. The EU also sponsored through the OSCE a media training activity or freedom of expression and election law and practice.

### 6.2.3 I-623 Adequate election complaints procedures and guidelines in place

The issue of adequate procedures and guidelines for dealing with election complaints has been dealt with in the JP *Support to free and fair elections* (2008-2010) implemented in the *South Caucasus* and *Moldova*, aimed at support to elections, both on the level of legislation (recommendations for amendments, discussed in I-621), and by provision of training/capacity building. Over the course of the JP, 130 professionals in *Azerbaijan*, 30 judges in *Georgia* and 80 judges in *Moldova* were trained in the area of electoral complaints and the adjudication of electoral disputes, especially on the international standards and international experience as regards electoral disputes. For details see the following Box 16.

Nevertheless, as can be seen from the opinions of the Venice Commission on electoral legislation, and from international election observation missions, the treatment of electoral disputes remains problematic. For *Azerbaijan*, the Venice Commission noted<sup>87</sup> “[a]nother area of concern is the adjudication of complaints and appeals. Although several amendments have been adopted which create groups of experts to make findings and recommendations to election commissions on filed complaints, it is not clear that this additional structure will ensure the fair, efficient and timely adjudication of complaints and appeals filed to protect electoral rights. The true test will be when the new structure is implemented and whether the new structure does in fact provide effective remedies to correct wrongs.” In *Armenia*, the Venice Commission found that the elections complaints procedure was *ad hoc* and required systematisation.<sup>88</sup> This tallies with reports from civil society representatives during the field mission, who reported that the process for registering election complaints is onerous

Regarding *Georgia*, the most recent joint opinion of the Venice Commission and OSCE/ODIHR<sup>89</sup> on the election code found that shortcomings in the processes for resolving electoral complaints and appeals still remain on the list of unaddressed previous recommendations.

In *Moldova*, some improvements have taken place. According to the Venice Commission's opinion<sup>90</sup> on draft amendments to the election code in *Moldova*, the previous recommendation “to define clearly powers and responsibilities of various bodies responsible for the review of complaints and appeals so as to avoid conflicts of jurisdiction” is one of those that have been fully or partially addressed by the draft amendments. On the other hand, the recommendation “to remove the possibility for annulment of an entire list if it falls under the minimum of candidates because individual candidates have been de-registered” had not been addressed.

#### Box 16: *Support to free and fair elections (2008-2010) – Election complaints procedures*

In the framework of the multi-country JP *Support to free and fair elections* (2006-2008) the following activities were implemented in the area of election complaints procedures according to the final report:

##### *Azerbaijan*

- Seminars for specialised complaints and appeals bodies and judges on electoral disputes, 21-26 August 2008, Baku, 130 participants - the Venice Commission, in co-operation with the Central Electoral Commission of Azerbaijan and IFES, organised two training seminars on the complaints and appeals procedures for the members of the expert groups created at the level of territorial election commissions. These activities were organised in the context of preparations to the October 2008 Presidential Elections.

##### *Georgia*

- Seminar for judges on electoral disputes, 30 participants, Tbilisi, 7 May 2008 – The main objective of this activity was to discuss the electoral complaints and appeals procedures and to ensure that judges, when dealing with electoral disputes, are able to apply European standards efficiently.

##### *Moldova*

- Seminar for judges on electoral disputes, Chisinau, 80 participants, 24-25 November 2008 – The seminar

<sup>87</sup> Joint opinion on the draft law on amendments and changes to the electoral code of the republic of Azerbaijan, CDL-AD(2008)011

<sup>88</sup> Joint Opinion on the Election Code of the Republic of Armenia adopted by Venice Commission at 76<sup>th</sup> Plenary Session, 17-18 October, 2008.

<sup>89</sup> Joint opinion on the draft election code of Georgia, CDL-AD(2011)043

<sup>90</sup> CDL-AD(2010)014



was organised for the attention of the judges of the Constitutional and Supreme Courts as well as from the administrative and appeal courts from all over the country as part of early preparations to the Parliamentary elections of 5 April 2009.

Source: JP final report

In *Turkey*, public confidence in the highest elections body, the SEB, is high, but there is no judicial recourse (save to the ECtHR) following an SEB ruling. It is not known whether the JP “*Democracy through Free and Fair Elections*” (2003-2006), from which Turkey benefitted, provided any support to the country in this area. The same goes for *FYROM*, where the election complaints procedure does not appear to be a subject of concern.

The dissemination of international standards and international experience regarding electoral disputes has been a significant part of support to free and fair elections in *Azerbaijan*, *Georgia*, and *Moldova*. It is possible that some support was provided in *Armenia*, *Turkey*, and *FYROM*. The issue is one where challenges remain in most countries, including the three that received the most targeted support from JPs. In some cases, as pointed out by the Venice Commission, legislative change is needed, and some of this may have been supported as discussed under Indicator I-621. The facilitation of discussion and training on international standards may have had indirect impacts by raising awareness and broadening perspectives on the issue among professionals dealing with electoral complaints.

#### 6.2.4 I-624 Active involvement of independent NGOs in elections monitoring

There has been some support provided in the area of NGOs in elections monitoring in the framework of the JP *Support to Free and Fair Elections* (2008-2010) implemented in the *South Caucasus* and *Moldova*. Activities were organised for NGOs, or NGOs were at least among the target stakeholders, according to the final report (see details in the box below). However, these activities seem to have been marginal, and are unlikely to have had much direct impact on any increase in NGOs involvement in elections monitoring.

Box 17: *Support to free and fair elections (2008-2010) – Support to NGOs*

In the framework of the multi-country JP *Support to free and fair elections* (2006-2008) the following activities were implemented for or in cooperation with NGOs, regarding election monitoring:

##### *Azerbaijan*

- Round table on the Use of Administrative Resources in Elections, 25 September 2009, Baku, 50 participants – organised as part of early preparations to the Parliamentary elections of 2010, to initiate reflection on one of the major shortcomings, which marred the previous election campaigns. Representatives of the authorities, several political parties and NGOs attended the seminar as well as representatives of academia.
- In co-operation with the NGO “Coordinating Advisory Council for Free and Fair Elections”, a series of 7 round tables were conducted in 7 regions of Azerbaijan (Ganja, Lenkeran, Khachmaz, Balaken, Agstafa, Gazakh, Goychay) throughout July-August 2008. The Round tables focused on women’s political rights, participation in public life and individual voting rights (versus family voting). 30 participants, including youth, women, students and media representatives, attended each round table.
- In April 2010, in the context of preparation of Parliamentary elections of November 2010, a series of three seminars were conducted in the regions of Balaken, Lenkaren and Khachmaz to encourage women’s participation both as voters and as candidates. These were implemented in co-operation with a local NGO and enjoyed a very good level of co-operation.

##### *Georgia*

- Workshop on holding and supervision of election, 20 participants, Tbilisi, 6 May 2008 – the Venice Commission organised, in co-operation with the Georgian Young Lawyers’ Association (GYLA), a workshop on the holding and supervision of elections for the attention of the NGOs involved in election observation.
- Meeting of the Election Code Working Group, Tbilisi, 4 July 2009 – The Election Code Working Group included representatives of political parties, international organisations, international and local NGOs observing the meeting, as well as the Central Election Commission (overall some 25 participants)

Source: JP final report

In *Azerbaijan*, the case study finds that there are a number of independent NGOs, as well as GON-NGOs, involved in elections monitoring, and offers an overview of their activities. Some of them might have benefitted from the JPs’ activities organised for and with NGOs regarding election monitoring and participation.

While no EC-CoE action has been found, other desk study countries noted good involvement of NGOs in election monitoring, sometimes with the support of other donors. In *Armenia*, a wide range of local NGOs were actively involved monitoring the 2007 Parliamentary elections with the supported of a



USAID-financed civil society development project.<sup>91</sup> How many of these were GONGOs is unknown, and during the field visit, independent NGO representatives expressed concern over the growing number and power of GONGOs, including their prominent place among NGOs supported by the EU. In *Bosnia and Herzegovina*, a number of NGOs have been actively involved in the last pre-election process; in particular, the highest, since 2000, voter turnout has been partly attributed to a “Get the Vote Out” campaign by a number of organisations. The BiH Helsinki Committee for Human Rights engaged in the monitoring of hate speech and demagogic language during the election campaign.<sup>92</sup> In *Turkey*, JPs did not involve the issue of NGO election monitoring, and election law limits monitoring to representatives of political parties and independent candidates. NGOs who had applied for accreditation have seen their applications rejected. NGOs were involved in other aspects of elections in other ways, such as voter education. The OSCE has noted that NGOs have shown little interest in becoming active in elections monitoring, a disinterest that the OSCE ascribes to widespread public confidence in the elections process. It remains to be seen to what extent NGOs accurately apply “free and fair” standards set down in international and CoE instruments. The case study on *FYROM* found that in the March 2009 presidential and municipal elections, over three quarters of polling stations had domestic non-party observers present.

Regarding EC-CoE cooperation at country level other than JPs, some evidence was found in the reports from CoE field offices of activities aimed towards working with NGOs in election matters. Such cooperation could also influence and favour (indirectly) the involvement of independent NGOs in elections monitoring, as the examples of *Georgia* and *Ukraine* illustrate:

- In *Georgia*, Technical Working Group (TWG) meetings, including relevant NGOs and international organisations (OSCE, EU, CoE, NDI, USAID, UNDP), were organised in 2003, with the aim to develop a Common Strategy for support to the electoral process and to prepare a set of specific proposals for TWG action.<sup>93</sup>
- The Kyiv Regional NGO Congress, supported by the EC, the Dutch Government and the CoE, was held in 2007 in *Ukraine*. The participants, NGO representatives from CIS countries, discussed the role of NGOs, i.e. the development and consolidation of democracy, NGOs and elections public monitoring and voter education as a factor of the quality of democratic transformations. A final joint resolution was adopted.<sup>94</sup>

However, there is no evidence of any subsequent effect of these events on the involvement of independent NGOs in elections monitoring in these countries.

In summary, while NGOs were considered in interventions in support of free and fair elections, these activities do not seem to have been large in scope and probably did not bring any significant effect in independent NGO election monitoring in the countries concerned. In at least one case study country, *Turkey*, NGOs are not legally permitted to monitor elections but this does not appear to have damaged the credibility of elections. For *Serbia* and *Russia*, no JPs related to this Indicator were found.

### 6.2.5 I-625 Capacity building of the media on the democratic electoral process

Capacity building of the media reporting on elections has been a part of two JPs supporting democratic processes.

Two relevant JPs were *Ukraine and South Caucasus – Promoting the Democratic Process (2005-2008)* and *Support to Free and Fair Elections (2008-2010)*. In the framework of *Ukraine and South Caucasus – Promoting the Democratic Process (2005-2008)*:

- In *Armenia*, under this JP, a number of activities were implemented to support the capacity of media in their coverage of the February 2008 presidential elections, including trainings, workshops, a conference, a study visit, and a handbook on media coverage of elections (see details in Box 18). Overall, the activities implemented in Armenia were assessed positively by the JP final report. However, some limitations were noted – regarding the workshop on election coverage for public TV staff the report reads “*All participants seemed enthusiastic but most had no power or authority to influence how elections and news are covered by H1.*” In addition, activities planned for after the elections to allow media reflection on how elections were presented, had to be cancelled in view of the post-election violence. As the country case study notes, there has been a large amount of capacity building provided by the CoE and oth-

<sup>91</sup> <http://www.advocacy.am/en/?nid=9&id=153>

<sup>92</sup> See Bulletin of the BiH Helsinki Committee for Human Rights (*Glasnik Helsinškog Odbora BiH*), January 2011, Number 15, see <http://www.bh-hchr.org/Publikacije/Glasnik15.pdf>, p. 21 (in Bosnian).

<sup>93</sup> SG/Inf(2003), Reports from the Council of Europe Field Offices, February 2003

<sup>94</sup> DPA/Inf(2007)45, Report from the Council of Europe Field Offices and other Structures, November 2007

ers to media representatives concerning election coverage and media freedom. Much of this was provided in the context of preparations for the February 2008 presidential election. Yet, observers including representatives of the media themselves admitted that coverage of the campaign was highly biased. Concerns over infringements of freedom of expression, persist. So while the JP might have generated some benefits, it did not achieve the ultimate objective of unbiased coverage of the election campaign and process in accordance with international standards. More recently, a regional media JP is credited by persons interviewed during the country field mission with increasing the professionalism of media, which in turn contributed to a decline in the use of defamation prosecutions to harass journalists.

- In *Azerbaijan*, a training workshop was organised on media coverage of elections in April 2006. The final report notes that participants showed strong commitment but were not very optimistic regarding media freedom in Azerbaijan. Print and broadcast media are overwhelmingly controlled by the ruling party and harassment of and violence against independent journalists remains common.
- In *Ukraine*, seminars for journalists were organised before the 2006 parliamentary elections to raise awareness on the CoE standards regarding fair, impartial and balanced coverage of election campaigns. The final report remarks that while participants were keen on applying the CoE standards in their work, many "*considered that financial and editorial independence would be a precondition for them to be able to do so in practice*".

**Box 18:** *Capacity building of media on the democratic electoral process*

In the framework of the multi-country *JP Ukraine and South Caucasus – Promoting the Democratic Process (2005-2008)*, the following activities were implemented to build the capacity of media:

*Armenia*

- Two training workshops for editors and managers from the public-service broadcaster on the independent and professional coverage of news and current affairs, Yerevan, Armenia, 31 July to 2 August 2007, 28 participants
- Study visit for members of the Armenian National Commission on Radio and Television (NCTR) to the Communications Regulatory Authority (CRA) of Bosnia and Herzegovina, Sarajevo, Bosnia and Herzegovina, 15 to 18 October 2007, 5 participants
- Workshop on election coverage for the managers and journalists of the public television of Armenia, Yerevan, Armenia, 13 and 14 November 2007, 22 participants
- Conference on "Media and elections, the democratic responsibility of the media", Yerevan, Armenia, 14 November 2007, 30 participants (representatives of the media - managers, journalists, anchors; representatives of the authorities - parliamentarians, ministers; and members of the National Commission on Radio and Television)
- Training seminar for managers and senior journalists "Organisation and management of the media election coverage", Tshakadzor, Armenia, 16 to 17 November 2007
- Training seminars for media professionals on reporting on elections, Alaverdi, Jermuk, and Yerevan, Armenia
- Workshop for the members of the National Commission on Radio and Television on the monitoring of broadcasters during election campaigns, Yerevan, Armenia, 29 January 2008, 20 participants
- Drafting, translation into Armenian and publication of a practical handbook on the professional media coverage of elections – 500 copies were distributed to journalists, journalism training institutions and other interested parties

*Azerbaijan*

- Training workshop on media professionalism and media coverage of elections for editors and senior journalists, Baku, Azerbaijan, 8 and 9 April 2006, 30 journalists and editors

*Georgia*

- Training workshop for the management and staff at the Georgian TV and Radio Broadcasting, Tbilisi, Georgia, 25 and 26 October 2006, 15 participants
- Participation of Georgian experts in the regional seminar "Media freedom and ethics: a European dimension in the professional education and training of journalists", Baku, Azerbaijan 29 and 30 November 2006, 4 participants (2 journalism trainers and 2 members of the monitoring board of the Georgian public-service broadcaster)
- Workshop on practical tools for news coverage, 19 and 20 December 2007, Tbilisi, Georgia, 12 participants (journalists from the public television)
- Code of Conduct for Georgian broadcasters - assisting a group of local experts headed by the Georgian National Communications Commission (GNCC) with the drafting of the Code of Conduct for Georgian Broadcasters

*Ukraine*

- Regional seminars for editors and journalists from print media on media coverage of elections; Vinnitsa, Chernigov and Donetsk, Ukraine

- Participation of Ukrainian experts in the regional conference "Media freedom and ethics: a European dimension in the professional education and training of journalists", 29 and 30 November 2006, Baku, Azerbaijan, 6 participants
- Study visit for members and staff of the National Council of Television and Radio Broadcasting of Ukraine to Austria, 18 and 19 December 2006, 5 participants

In the framework of the multi-country *JP Support to free and fair elections (2008-2010)* the following activities were implemented to build the capacity of media:

#### *Azerbaijan*

- Training seminar on the professional coverage of election, city of Guba (Azerbaijan), 20 participants, 12 - 13 July 2008
- Television debate on the professional media coverage of election campaigns, Baku, 28 July 2008
- Translation into Azeri and publication of the Council of Europe manual on fair and balanced elections reporting, July 2008
- Training seminars on the professional coverage of election campaigns, towns of Masally and Novhkani, August 2008
- Conference on the role of the media in a democratic society, Baku, 50 participants, 26 August 2008
- Training seminar on the professional coverage of election campaigns, town of Novhkani, 20 participants, 30 - 31 August 2008

#### *Georgia*

- Training seminars on the professional coverage of election campaigns, Tbilisi, 20 participants, 7 and 8 March 2008; Tbilisi, 15 participants, 14 and 15 March 2008; Tbilisi, 15 participants, 17 and 18 March 2008; Batumi, 22 participants, 18 and 19 April 2008
- Training seminars for producers and political journalists at the Georgian Public Television, Tbilisi, 10 participants, 28 and 29 March 2008; 10 participants, 30 March 2008
- Translation into Georgian and publication of the Council of Europe "Practical handbook on the professional media coverage of elections"
- Conference on the democratic responsibility of the media during election campaigns, Batumi, 30 participants, 30 May 2008
- Television debate on the professional media coverage of election campaigns, Tbilisi, 26 June 2008

#### *Moldova*

- Conference on the democratic responsibility of the media during election campaigns in Chisinau, 50 participants, 1 December 2008
- Working session with Teleradio-Moldova (TRM) staff members, 18 participants, Chisinau, 10 – 11 February 2009
- Study visit to France for Teleradio-Moldova political debates staff, Paris, 6 participants, 26 – 28 February 2009
- Teleradio - Moldova staff training and coaching, 33 participants, Chisinau, 2-14 March 2009
- Teleradio-Moldova political debates staff training and coaching: Follow-up on the occasion of the Election Day, 10 participants, Chisinau, 5-6 April 2009
- Working sessions on the rules to be observed regarding media coverage of elections, 20 participants, Chisinau, 19 January 2009

*Source: JP final report*

In the framework of the follow-up *JP Support to Free and Fair Elections (2008-2010)*, further activities were carried out in support of impartial media coverage of elections.

- In *Azerbaijan*, in addition to multiple trainings and other activities for media professionals (see Box 18 for details), independent monitoring of the media coverage during the presidential election campaign, from 1 July 2008 to 15 October 2008 was carried out. The monitoring was conducted by the Union of Journalists (Yeni Nesil) of Azerbaijan under the guidance of a CoE expert. The JP final report notes that "*The report concluded that, overall, the media failed to provide equitable coverage of the candidates and parties standing for Presidential office. The election coverage did not meet Council of Europe standards in this field. [...] Throughout the monitoring period, the majority of media outlets did not manage to maintain satisfactory or even minimum standards of pluralism in their content. On the majority of television channels monitored, there was a marked absence of diversity in coverage. These broadcasters restricted their reporting to extensive coverage of official activities of YAP (the ruling party) ministers and the incumbent President.*"

The JP final report 2010 also stated that through the JP, media professionals were equipped to report on elections in an impartial, balanced and fair manner, although a number of them expressed doubts as to whether the political climate and the lack of political and economic independence of most media outlets would allow them to use their newly acquired skills in practice.

At a more general level, the country study for *Azerbaijan* notes that IREX, a USAID-supported organisation specialised in media, has expressed the view that Government essentially controls access to mass media. The capacity of journalists in Azerbaijan has been assessed as satisfactory, but the freedom to apply that capacity is limited, which supports the findings of the media monitoring quoted above.

- Similarly in *Georgia*, after various capacity building activities for journalists were carried out (see details in Box 18), the media coverage of the parliamentary elections from 1 March 2008 to 31 August 2008 was monitored and analysed, and also revealed a number of shortcomings. According to the JP final report, the results were published in Georgian and in English as a book entitled *"Effects/impacts of media - leading television and election campaign in Georgia"*, which was distributed to stakeholders and was intended as a basis for discussions on the issue. The monitoring was also followed by a conference and a television debate, during which the results of the monitoring were discussed. The actual results of the monitoring conducted in the framework of the JP are not available, but the results of OSCE/ODIHR media monitoring<sup>95</sup> provide the following picture: *"Despite the pluralistic media environment, most outlets remain under strong influence from their owners and political patrons. [...] The media in general provided voters with a diverse range of political views, thus allowing them to make a more informed choice on election day. Public TV, in particular, offered the electorate a valuable opportunity to compare parties and candidates through talk shows, free-of-charge presentations, news reporting of the campaign, and televised debates, including one between the UNM and the United Opposition. [...] However, the campaign news coverage lacked balance on all monitored TV stations apart from public TV, with the UNM receiving the most coverage on almost all stations. Most monitored TV channels, including public TV, devoted significant and favourable coverage to activities of the authorities."*
- In *Moldova*, the assistance provided focused on building the capacity of the public broadcaster TeleRadio Moldova's staff in moderating political media debates. In total, some 30 staff members in charge with moderation of media political debates were trained and coached during two weeks before the elections as well as on Election Day, according to the JP final report. In March 2009 two CoE experts assessed the media coverage of electoral campaign on radio and television channels. According to the final report, one of the suggestions was for the election campaign to be covered in the news programmes, which had not been set out in the draft regulation. The CEC confirmed that these recommendations led to the remodelling of the final version of the regulation on media coverage of elections. The final report assesses that *"this represents a real progress regarding the diversity and accuracy of information provided to Moldovan citizens. Nevertheless the distinction between official news and electoral propaganda remains highly problematic."*

In addition, monitoring of the media coverage of the Parliamentary elections campaign, 6 June – 29 July 2009 in Moldova was carried out in the framework of the JP. According to the final report, the monitoring concluded that *"all of the media failed to propose proper background information and voters' education. The July 2009 election campaign was aggressive and polarised."* The findings of the monitoring were discussed at a Round Table, which brought together representatives of the "Media Monitoring Committee", media and regulatory agencies organisations, local monitoring organisations and politicians.

In the *FYROM*, international observers in the 2011 general election note that a majority of broadcasters followed partisan editorial policies and lacked critical analysis, and contrary to legal obligations, public television significantly favoured the governing parties. This is contrary to the Broadcasting Council rulebook as provided by the Electoral Code.

According to the case study on *FYROM*, the JP *Free and Fair Elections* interim report makes no reference to activities focusing on capacity building of the media on the democratic electoral process, though project indicators for the JP did include media coverage of the dissemination of principles of electoral law and practice, which may have contributed to later positive developments such as the revision of the Electoral Code.

The case studies on *Bosnia and Herzegovina*, *Russia*, *Turkey* and *Serbia* did not report on any EC-CoE joint cooperation specifically addressing this area, while in most of these countries the situation in media coverage of elections still raises concerns of international observers, and has not, for the most part, improved over the last years:

<sup>95</sup> Georgia, parliamentary elections 21 May 2008; OSCE/ODIHR Election Observation Mission Final Report, 9 September 2008

- In *Bosnia and Herzegovina*, Freedom House report and the OSCE Mission to BiH frequently highlighted their concerns with regards to political interference in the media landscape. Also, lack of professionalism of journalists and weak self-regulation was raised after the 2010 elections.<sup>96</sup>
- In *Turkey*, a number of OSCE/ODIHR NAM interlocutors expressed concern over a perceived deterioration of the media environment, cases of prosecution of journalists in connection with their professional activities, pressure on media outlets and journalists, and self-censorship among Turkish media. Concerns were also expressed that the restrictive legal provisions continue to be frequently used to limit freedom of expression.

To summarise, a number of multi-country JPs addressed the issue of media capacity building in the desk study countries in the period under evaluation. These activities might have had some impact in countries where general political situation allows for initial steps towards impartiality and independence of media, such as *Georgia* or *Moldova*, even though according to independent media monitoring the situation in these countries is far from ideal, and challenges still lie ahead. In *Georgia* and *Moldova* the monitoring of media coverage was also a part of the JP, which allowed for discussion of its results with stakeholders.

On the other hand, in *Armenia* and *Azerbaijan*, media are strongly controlled by State authorities, and these countries have been harshly criticised by independent monitors for the media coverage of the election process. In these cases, the EC-CoE efforts in media professionals' capacity building probably had no direct tangible impacts on media freedom, as journalists mostly would not have the opportunity to apply international standards in their work without facing repercussions in their professional status and personal security. However, there may be indirect effects, as suggested by media representatives' view that some of the recent decline in the use of defamation lawsuits against journalists can be attributed to greater professionalism of reports, some of which may be due to capacity built through JPs.

#### 6.2.6 I-626 International electoral observation missions give positive reports on conduct of elections

Most desk study countries, have been receiving at best mixed reports from international observation missions with regard to the conduct of elections:

- In *Armenia*, election observers, including local NGOs, documented scattered voting irregularities. Parliamentary and presidential elections have been subject to international criticism since 2003, as was the 2005 Constitutional referendum<sup>97</sup>. The parliamentary elections of 2007, the presidential elections of 2008, and the municipal elections of 2009 all received a mixed review from international observers, which included the OSCE/ODIHR, the CoE through its Parliamentary Assembly, and the European Union through the Parliament. Crass fraud was not observed; however, observers commented critically on the entire process from media coverage of the campaign through the complaints procedure. Perhaps the final judgment is that of the Commissioner for Human Rights echoing the findings of the Venice Commission that, while progress had been made in amending the elections law to conform to European standards, there was no evidence of the good will needed to implement the law in the spirit in which it was intended. The Congress of Local and Regional Authorities criticised the following local elections of September, 2008, citing a tense atmosphere, lack of transparency, and low voter turnout<sup>98</sup>. NGO representatives interviewed during the field mission were highly critical of Venice Commission expertise related to campaign finance and the opening of the elections register (the list of persons who voted), claiming that the Commission's advice, while suited for a Western European context, opened the door for mass fraud in Armenia. They expressed surprise at the initially mild international reactions to the 2008 presidential election
- In *Azerbaijan*, the OSCE/ODIHR Election Observation Mission (EOM) preliminary report on the 2010 Parliamentary elections concluded "*while the 7 November parliamentary elections [...] were characterized by a peaceful atmosphere and all opposition parties participated in the political process, the conduct of these elections overall was not sufficient to constitute mean-*

<sup>96</sup> See Freedom House report 2011 and OSCE MBIH, Follow-Up Report on BiH Media and Media Regulation under Pressure, 23 September 2010, at [http://www.oscebih.org/documents/osce\\_bih\\_doc\\_2010092417401856eng.pdf](http://www.oscebih.org/documents/osce_bih_doc_2010092417401856eng.pdf).

<sup>97</sup> EU Armenia Country Strategy Paper 2007-2013

<sup>98</sup> Congress of Local and Regional Authorities Recommendation 255 (2008) Local elections in Armenia (observed on 28 September, 2008)



*ingful progress in the development of the country.*" This conclusion was joined in by the OSCE Parliamentary Assembly, the Parliamentary Assembly of the CoE (PACE), and the European Parliament, who had participated in the EOM. The OSCE/ODIHR Final Report included over 20 concrete recommendations on how to lift the restrictions that still characterize Azerbaijan's electoral environment.<sup>99</sup>

- In *Bosnia and Herzegovina*, according to the OSCE's election observation mission's final report<sup>100</sup> the "2010 elections [...] were generally conducted in line with OSCE and CoE commitments, but certain key areas require further action. While the legal framework provides a satisfactory basis for the conduct of democratic elections overall, it contains ethnicity-based limitations to the right to stand. This is in violation of the European Convention of Human Rights and a legally binding decision of the ECtHR, as well as OSCE commitments."
- FYROM held national presidential and municipal elections in March and April 2009 were monitored by OSCE. OSCE reported that the elections met most commitments and other international standards but also stated that intimidation of voters, particularly public sector employees, was still a problem. Political parties operated without restriction or outside interference. The 2010 EC Progress Report notes that the government acted on ODIHR/OSCE recommendations following the 2008 and 2009 elections and established a high-level steering committee with four working groups on electoral administration, elimination of voter intimidation, amendments to the electoral code, and updating the voters list. 2011 elections were generally positively reviewed, although GRECO identified continuing problems with political party financing, the subject of recommendations made in 2008 and identified as early as 2008. In general, there has been an improvement in conformity to international standards.
- In *Russia*, the electoral system continues to deteriorate, allowing the authorities to control the outcomes of elections while depriving citizens of an important opportunity to hold public officials accountable. On March 14, 2010 regional and local elections were held in 76 of the federation's 83 regions and were marked by irregularities, including the misuse of absentee ballots, vote buying, and bussing-in of voters, according to the election monitoring NGO, GOLOS. In 2008 the country held presidential elections, for which observers from the PACE stated that the elections were not free or fair. GOLOS reported massive, widespread violations, as with the Duma elections held in 2007. The OSCE representative on freedom of the media reported numerous media freedom violations during the parliamentary and presidential elections. In the statement<sup>101</sup> regarding the latest elections in December 2011 the OSCE/ODIHR pointed out that "The contest was also slanted in favour of the ruling party as evidenced by the lack of independence of the election administration, the partiality of most media, and the undue interference of state authorities at different levels. This all did not provide the necessary conditions for fair electoral competition." Statistical analysis has confirmed the presence of anomalies that can only be explained by widespread ballot-box stuffing.
- In *Moldova*, 2009 elections were deeply flawed, leading to violence and, eventually, to the downfall of the government.
- In *Turkey*, the constitutional overhaul as a result of September 2010 referendum and related reforms have led to an improved electoral system though on-going tensions prevail around reforms linked to parties representing minorities and the balance of central versus local autonomy. The OSCE was relatively positive in its monitoring reports on elections in 2007 and 2011.
- In *Serbia*, the spring 2012 elections have been widely assessed as being free and fair, and in compliance with international best practices and standards.

JPs in support of electoral legislation reforms, election complaint procedures, capacity building of electoral administration, media, and NGOs have been discussed in the respective Indicators under this JC above.

Ways of (indirectly) impacting on correct conduct and final positive assessments of elections can be found in the non-financial EC-CoE cooperation arena at country level, as the following examples highlight (reports from CoE Field Offices):

<sup>99</sup> See: OSCE/ODIHR reports - <http://www.osce.org/odihr/elections/azerbaijan> , the Parliamentary Assembly of Council of Europe's reports - [http://assembly.coe.int/ASP/Doc/ATListingThesaurus\\_E.asp?DescID=5454](http://assembly.coe.int/ASP/Doc/ATListingThesaurus_E.asp?DescID=5454).

<sup>100</sup> <http://www.osce.org/odihr/74612>, p. 1.

<sup>101</sup> Statement of preliminary findings and conclusions, International election observation, Russian Federation, State Duma Elections – 4 December 2011, OSCE/ODIHR

- In the *FYROM*, available documents for the JP *Democracy Through Free and Fair Elections* do not specify which activities (including seminars on topics such as “the organisation of elections by an impartial body and “European standards of electoral law in the contemporary constitutionalism” FYROM representatives took part in, making it difficult to infer a specific contribution of the JP to an acknowledged improving situation as regards the conduct of elections..
- In *Moldova*, a Joint Statement of Heads of Missions of the CoE, the EU, the OSCE among others, was released in 2006. It called for a proper application of the CoE and the OSCE recommendations including the Law on Elections, implementation of the principles of freedom of expression based on the informed choice and freedom of assembly, refraining from use of administrative resources, and providing unrestricted access of registered observers to all balloting areas and vote-tallying procedures.<sup>102</sup> As illustrated by the flawed 2009 elections, the Statement evidently had little effect.

To summarise, in a number of countries benefitting from JPs, such as *Armenia*, *Azerbaijan*, and *Moldova*, elections continued to be criticised by international observers. In several countries where JP involvement was at most marginal, such as *Turkey* and *FYROM*, international observers have given moderately positive reviews. In *Bosnia and Herzegovina* and *Serbia*, where no JPs were present, elections were found to be generally in line with international standards despite problems identified (the first case) and fully free and fair (the second case). In *Russia*, as evidence by recent turmoil following the December 2011 elections, international observers continue to be highly critical of elections.

### 6.3 JC6.3 Improved local and regional governance and practice

The criterion of improved local and regional governance and practice has been addressed through four Indicators:

- Level of knowledge and technical familiarity with the applicable international standards set forth in the European Charter of Local Self-Government;
- Increased use of elections to select Local Governance Bodies;
- Level of Local Financial Autonomy/ fiscal policy;
- Type of administrative control from the Centre towards the Local Authorities.

The area of local governance received some support of joint EC-CoE action in desk study countries, usually as part of broader democratisation programmes, with the exception of *Serbia*, where specific JPs dedicated to local governance were implemented, and where beneficiaries were able to highlight the contribution made by these JPs for advancing local self-governance reform.

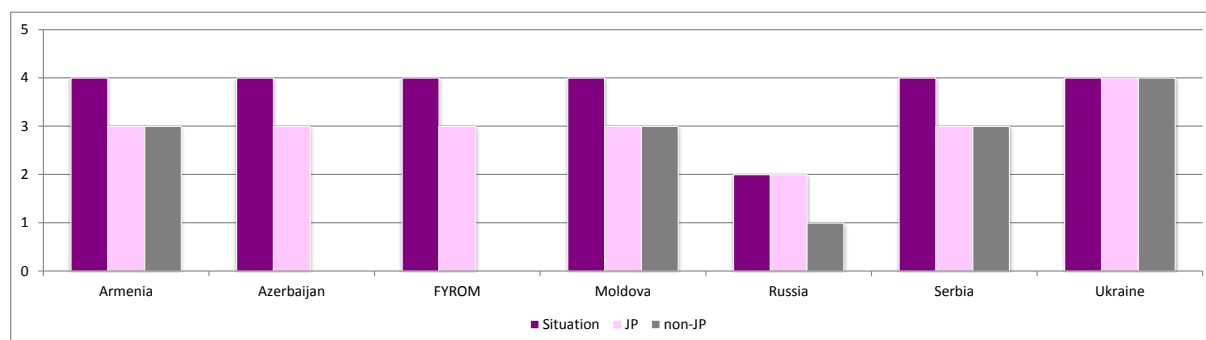
Support has been provided to legal reforms on decentralisation and local self-governance in most of the case study countries, for instance *Serbia*, *Moldova*, *Russia*, *Armenia*, and *Azerbaijan*. Overall, little evidence of impact has been found in this area of action. Assessments are either not available on the extent to which legal and technical assistance provided was reflected in final legislation, or the assessment of impacts is generally not positive, owing first and foremost to the lack of political will to implement such reforms (*Armenia*, *Azerbaijan*). *Russia* is an example of a country where, despite provision of legal expertise and the drafting and enactment of legislation, there has been significant backsliding over the evaluation period: direct elections of regional governors has been abolished, state bodies are allowed temporary takeover of some local government powers, and elected mayors of cities may be dismissed. The overall picture that emerges is that, despite progress on legislation in many countries, local authorities remain dependent on central government transfers for most of their budgetary resources, which are inadequate to effectively carry out the responsibilities that have been assigned to them in line with decentralisation.

Similarly for the different aspects of local governance covered with individual indicators, no evidence of direct contribution of the EC-CoE joint actions have been found except for *Serbia*.

Complementary to evidence from the case studies are the responses to the EUD survey. Figure 20 presents the overview of EUDs opinions on the change in the situation in their respective countries and on the impacts of EC-CoE cooperation. Most report some improvement, with the exception of *Russia*, which reports some deterioration. High JP impact was noted only by the EUD *Ukraine* together with some improvements in the overall situation, while other EUDs report some extent of JP impact.

<sup>102</sup> DGAP/Inf(2006)36, Report from the Council of Europe Field Offices and Other Outposts, November 2006

Figure 20: EUD survey results: Impacts in improved local and regional governance and practice



Scales			
Change in situation		Impacts of JP and non-JP cooperation	
Significant improvements	5	Very high extent	5
Some improvements	4	High extent	4
No change	3	Some extent	3
Some deterioration	2	Low extent	2
Significant deterioration	1	Very low extent	1
Do not know, Not applicable, No answer	0	Do not know, Not applicable, No answer	0
Note: Countries that provided no information for impacts in both JP and non-JP cooperation under this JC are not shown			
Source: EUD survey			

### 6.3.1 I-631 Level of knowledge and technical familiarity with the applicable international standards set forth in the European Charter of Local Self-Government

The European Charter of Local Self-Government was opened to signature as a Convention by the member states of the CoE on 15 October 1985, and entered into force in September 1988. The purpose was to establish common standards for measuring and safeguarding the rights of local authorities. The Charter commits the parties to applying basic rules guaranteeing the political, administrative and financial independence of local authorities. It provides that the principle of local self-government shall be recognised in domestic legislation and, where practicable, in the constitution. Local authorities are to be elected on the basis of universal suffrage. Local authorities, acting within the limits of the law, are to be able to regulate and manage public affairs under their own responsibility in the interests of the local population. Consequently, the Charter considers that public responsibilities should be exercised preferably by the authorities closest to the citizens, the higher level being considered only when the co-ordination or discharge of duties is impossible or less efficient at the level immediately below. To this end, it sets out the principles concerning the protection of local authority boundaries, the existence of adequate administrative structures and resources for the tasks of local authorities, the conditions under which responsibilities at local level are exercised, administrative supervision of local authorities' activities, financial resources of local authorities and legal protection of local self-government. The principles of local self-government contained in the Charter apply to all the categories of local authorities.<sup>103</sup>

There have been some activities implemented in support of the awareness and technical familiarity of international standards in local governance, even though the extent of these activities has been limited and in some cases probably only contributed to increased awareness. Some components of JPs to this effect have been identified in several of the countries reviewed:

- In the *FYROM*, the development of decentralised governance is one of the key priorities with respect to reforming the political system according to the Ohrid framework agreement which concluded the 2001 conflict. Constitutional amendments subsequently passed in 2001 gave more authority to local governments. The passage of these amendments set the general framework for the decentralisation process. With this, Macedonia is moving into line with European standards and has aligned itself with the European Charter of Local Self-Government.

<sup>103</sup> <http://conventions.coe.int/treaty/en/Reports/Html/122.htm>

The majority of the framework is in place however, there are still gaps and no legal framework exists for regional policy and regional development. The JP “*Leadership Benchmark and Best Practice Programme*” (2007-2009) aimed at developing leadership and best practices in local governance, included some coverage of the European Charter of Local Self-Government. The CoE end of programme report asserts that “*the Programme established a solid basis for follow-up activities to be carried out by the government bodies, domestic stakeholders, international donors and implementing agencies.*” The EU Progress Report also noted progress in the area, and the JP may have made some foundational contribution but in the absence of post project evaluation it is difficult to assess long term impact (beyond feedback of participants).

- In *Serbia*, Decentralisation and local self-governance reforms have suffered a setback due to the global economic crisis and the pace of future reforms is uncertain, as there are widely diverging public views on the issue (which by some is seen as threatening territorial integrity and is therefore to be rejected in principle).<sup>104</sup> One JP in the area was implemented from 2000-2006 and two JPs have been implemented since 2006 (see Box 19 for details). They aimed at strengthening the institutional framework and building capacities for local government, as well as consolidating the legal and institutional framework for local self-government in line with the European Charter of Local Self-Government. The JPs specifically aimed at assisting the Serbian authorities in the approximation of their legal and institutional framework in line with the standards of the European Charter of Local Self-Government. Stakeholders met during the field phase pointed out the usefulness of both projects, specifically in preparing and facilitating the passing of relevant laws and bylaws for local self-government. The Law on Communal Police adopted in 2009, and the Law on the Legal Status of Local Self-Government Staff adopted by the Government in March 2012, as well as a Draft Law on Local Elections examined by the Venice Commission, and recommendations submitted to the Ministry are identified by CoE Belgrade as a specific impact of these JPs. Media interlocutors also comment favourably on involvement of media in local self-government JPs as contributing to enhanced networking of local government actors and media.

**Box 19: Serbia: Strengthening Local Self-Government**

A European Agency for Reconstruction-CoE JP “Strengthening Local Self-Government in Serbia” was implemented in 200-2006. The project final evaluation reported that the project successfully built capacity, although it was difficult to attribute this to the JP, as there were seven other EAR programmes in operation at the same time.

A JP on “*Strengthening Local Self-Government in Serbia*” was implemented by the CoE from July 2006 to December 2008. The JP consisted of two projects:

- Strengthening the Institutional Framework for Local Government*
- Building Local government Capacities*

The JP was aligned with, and supported the implementation of the Serbian government’s National Work Programme for Better Local Government, as well as the Serbian Public Administration Reform Strategy. Expertise was provided to the drafting of four basic laws: the Law on Local Self-Government; the Law on Local Elections; the Law on Territorial Organisation; and the Law on the City of Belgrade. These four laws were adopted in December 2007, though the JP’s final report does not indicate whether, or to what extent, the expertise was incorporated into the final version of the laws.

An on-going programme (2009 to 2012), “*Strengthening Local Self-Government in Serbia, Phase 2*”, aims, inter alia, at consolidating the legal and institutional framework for local self-government in line with the European Charter of Local Self-Government, and interim reports available point to substantial deficiencies in the existing legal framework governing local self-government.

Sources: *Case study Serbia*

- For *Turkey*, the Congress of Local and Regional Authorities (CLRA) in 2005 acknowledged signs of commitment to a substantial institutional change by the Turkish government as regards modernisation of local and provincial government, including a substantial reform programme of legislative change. In 2011, a report by the ECLSG Monitoring Committee reported that progress on the reforms called for in 2005 had been slow. It may be that awareness of the European Charter of Local Self-Government in some quarters is higher than in other state parties in that it has featured as part of ideological debate on the situation of Kurdish regions. JP

<sup>104</sup> Freedom House Nations in Transit, 2011 Report on Serbia, at <http://www.freedomhouse.org/images/File/nit/2011/NIT-2011-Serbia.pdf>.



engagement with local government represented such a small proportion of the overall engagement that it is unlikely to have had a major impact beyond awareness raising, especially if there continues to be strong emphasis on central authority. Some JPs also engaged local authorities in the context of human rights and specific contexts such as detention monitoring (as opposed to the ECLSG context).

- In *Moldova*, two consecutive JPs containing some components of support to local governance were implemented. In the framework of JP *Democratic Stability (2001-2003)* and *Support to continued democratic reforms (2004-2006)* (see further details in Box 20). They supported the development of the legal basis for decentralisation by providing recommendations on draft laws, but it has not been assessed to what extent the recommendations were taken into account in final texts. The second of the JPs also contributed to the development of National Training Strategy for Local Government, but it is not clear to which extent that strategy was implemented.

**Box 20: Moldova: Support to the development of local government**

In the framework JP *Democratic Stability (2001-2003)* a component aimed to support the development of local government.

Activities implemented: Meetings of the working group on the Moldovan legislation on local self-government; Assistance in the revision of the law on local public finance and of the law on the status of the local elected representatives of Moldova; Conference on decentralisation in Moldova: recent developments and future trends" (on the basis of the conclusions of the working groups on legislative reforms).

The final report notes: "*Because of an initial lack of political will from the Moldovan authorities, the cooperation for strengthening local democracy was seriously delayed. CoE's pressure at the highest level on the Moldovan government and Parliament to develop concrete cooperation eventually succeeded and essential legislative reforms were passed in cooperation with CoE's experts. The initial delays did not allow implementing the whole of the programme. It was decided to focus on legislative reforms.*"

The JP *Support to continued democratic reforms (2004-2006)* contained a component on strengthening local democracy, with three objectives:

- Implementation of the legal Action Plan (Developing Legal and Institutional Framework)
- National Training Strategy and a Best Practice programme for local government
- Promoting institutional dialogue (State-local authorities)

An evaluation of the first objective was carried out. It reports that "*At the time of the evaluation, the consistence of the texts of law adopted in Parliament with the recommendations formulated by the CoE is still to be assessed because the final texts have not been transmitted to the CoE, yet. A few local NGOs express the opinion that some key elements of the recommendations issued by the CoE experts are not contained into the final texts of the adopted laws. A final judgement on this key element can be only provided by the CoE following legal expertise.*" And further notes that, "*The process leading to the release of the recommendations for the reform was able to mobilise adequate technical competencies at the national level; however it was not able to properly involve a large umbrella organisation that carried out a similar exercise almost in parallel, financed by some of the major donors in the field.*"<sup>105</sup>

Source: JP final report, Evaluation report 2007

- In *Russia* no JP dealt with matters related to technical familiarity with the applicable international standards set forth in the European Charter of Local Self-Government, which Russia ratified in 1998. However, the Russian Government has made important efforts to align itself with the ECLSG and made progress in cooperation with the associations of local authorities, in implementing the new legislation on local self-government and the new structures that derive from it, in modernising local and regional government in the Russian Federation and in training local administrators and local elected representatives to exercise their new functions. The JP *Russian Federation VI (Strengthen federalism, regional and local democracy and regional Human rights protection mechanisms)* (2003-2005) contained a component on support to draft legislation on local authorities, in conformity with European standards. However, as the evaluation report notes, "*It is hard to assess the effectiveness of the CoE's contribution, however, because the texts of the legal expertises were confidential.*"<sup>106</sup> As we note below in discussing Indicator I-632, despite international commitments and progress on legislation and structures described above, the de facto overall trend in Russia is toward increasing centralisation, not de-centralisation, of power.

<sup>105</sup> Ex-post evaluation of the EC-CoE Joint Programme "Moldova: support to continued democratic reforms 2004-2006", Final report, June 2007

<sup>106</sup> Evaluation of the Russia EC/CoE Joint Programmes, Human European Consultancy, 2005



- The EC has acknowledged in its “*Bosnia and Herzegovina 2010 Progress Report*”<sup>107</sup>, that “both Entities have legislation that is largely in line with the European Charter for Local Self-Government.” However, Freedom House *Nations in Transit 2011* points out that “Local governance in BiH remains at the mercy of the higher levels of government and party hierarchy. Local self-government (LSG) legislation is in place, but it is often ignored in higher legislation. As a consequence, LSG units lack the necessary funds to serve their local communities.”<sup>108</sup> There is no direct indication in Bosnia and Herzegovina on the level of knowledge about international standards despite the numerous efforts undertaken since 2009 by several donors. These efforts included the training of officials, the alignment of municipalities’ reform process in accordance with the ECLSG and further support municipal capacity building in compliance with the Charter.<sup>109</sup>
- In *Armenia* and *Azerbaijan*, the JP *South Caucasus democratic stability* (2002-2004) contained a component on strengthening local democracy. According to the final report, specific action plans setting out the priorities and timetable for the reform of local self-government legislation were agreed in 2003 with the authorities. The evaluation report<sup>110</sup> of the JP provides the following assessment of this component’s impacts:
  - Armenia: “*Although a number of activities have been successfully carried out, no tangible impact has been achieved at this stage.*” Weaknesses: “*There was a lack of political will to implement the project and the project [was] basically carried out by the resources of the NGO*”
  - Azerbaijan: “*Although there was a two-fold aim, i.e. legislation and capacity building, only very limited progress made towards improving the legal base. No training was carried out.*” Weaknesses: “*Lack of political will to implement the project. Relevant issues discussed by CoE but could not get concrete results during time available. Low sense of ownership by government and local authorities.*”

In principle, EC-CoE cooperation other than JPs could also contribute to familiarity with standards. According to the reports from CoE Field Offices, in *Kosovo*, the Congress of Local and Regional Authorities of the CoE and the EU Committee of the Regions, in partnership with the EC and the Stability Pact for South-eastern Europe, co-organised a conference on the “*Role of EU Regional and Local Authorities in the Process of Democratic Consolidation in the Western Balkan Regions*”, in Pristina in 2005. The conference, which was widely reported and brought together key actors such as Bajram Kosumi, Prime Minister, Presidents of Municipalities of Kosovo and elected representatives of the EU and the Western Balkans, highlighted the need for dialogue between the different communities in the region.<sup>111</sup> However, there is no evidence of any influence on the level of knowledge and technical familiarity with the applicable international standards set forth in the European Charter of Local Self-Government in Kosovo.

In summary, the progress in decentralisation and alignment with the European Charter of Local Self-Government differs across the CoE countries. The most sustained support to local governance has been provided in *Serbia* and *Moldova*, with two subsequent JPs in each country (in Moldova however, the local government aspect was only one component of the JPs). There was significant progress in *Russia*, where no JP was implemented, but the de facto trend, as described in assessing the next Indicator, is negative, at least as regards local-level democratic processes. While a few EC-CoE JPs aimed at strengthening the local governments in accordance with the European Charter of Local Self-Government have been identified, there is little evidence on their impact regarding the knowledge and technical familiarity with its standards, or JPs actual impact on legislative change. They may have had some “foundational” impact in the form of increased awareness of European standards.

### 6.3.2 I-632 Increased use of elections to select Local Governance Bodies

EC-CoE joint cooperation related to the use of elections to select local governance bodies has materialised in only one case study countries:

<sup>107</sup> [http://ec.europa.eu/enlargement/pdf/key\\_documents/2010/package/ba\\_rapport\\_2010\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ba_rapport_2010_en.pdf), p. 11.

<sup>108</sup> See Freedom House, *Nations in Transit 2011: Bosnia and Herzegovina*, at <http://www.freedomhouse.org/images/File/nit/2011/NIT-2011-Bosnia.pdf>, p. 127.

<sup>109</sup> 2011 Report on the Local Governance Sector by the Donor Coordination Forum of BiH [www.donormapping.ba/pdf/local-governance-sector.pdf](http://www.donormapping.ba/pdf/local-governance-sector.pdf)

<sup>110</sup> Evaluation of the South Caucasus EC-CoE Joint Programme, ITAD, 2005

<sup>111</sup> SG/Inf(2005)14, Reports from the Council of Europe Field Offices, and Other Outposts, June 2005

- In *Russia*, on 13 September 2004, President Putin announced that he was abolishing direct elections for regional governors. Governors would henceforth be appointed by regional assemblies from a list of candidates proposed by the President. The re-centralisation of resources and administrative functions which has taken place since 2000 seems to have led to the weakening of local self-government. If this trend is not reversed, the relationships between the regions and local government will continue to be problematic and incompatible with Russia's international commitments. As stated above (I-631) the JP *Russian Federation VI (Strengthen federalism, regional and local democracy and regional Human rights protection mechanisms)* (2003-2005) contained a component on support to draft legislation on local authorities, in conformity with European standards but, as the legislative expertise provided is confidential, it is impossible to judge how effectively the project shaped legislation passed.

In summary no evidence has been found in the desk study countries of EC-CoE support, which would contribute to increased use of elections to select Local Governance Bodies.

### 6.3.3 I-633 Level of Local Financial Autonomy/ fiscal policy

Among the case study countries, EC-CoE joint cooperation related to local financial autonomy has only taken place in *Serbia*, where two JPs have been implemented in this area. The JPs aimed at “improving the assignment of tasks to different levels of government, in accordance with the principle of subsidiarity, and on establishing a balanced, transparent, and stable assignment of revenues to local authorities, in accordance with European standards for local government finance” and “strengthening the financial arrangements for local government and support to fiscal decentralisation”. There are a number of other international efforts in the area of local self-government reform (generally as well as on specific aspects such as community policing),<sup>112</sup> but stakeholders interviewed during the field mission confirmed that the involvement of the CoE had been key in advancing reforms. JP activities included work on the Law on State Property, which is widely seen to return a degree of financial autonomy to the local level.

In *Moldova*, the evaluation<sup>113</sup> of JP *Support to continued democratic reforms* (2004-2006) found that “During 2005 and 2006 the “Coalition for fiscal de-centralization”, an umbrella grouping of 44 NGOs, organizations of local administrators and academy institutions carried out a large study on the possibility of introducing in Moldova a system of fiscal decentralization. The study was conducted in cooperation with the Ministry of Finance, and funded by USAID, the Fiscal Decentralization Initiative of the OECD, the Open Society Institute and the Soros Foundation. The [expected result] under evaluation – in spite of some efforts in this sense, did not achieve the objective to coordinate or exploit synergies with this initiative, nor involve any of the organizations working on this study. This methodological drawback brought with it some political resistance made by the Ministry of Finance to the work financed by the CoE. A more efficient involvement of the local Programme Manager would have helped prevent this shortcoming of the project.”

In *FYROM*, the JP *Leadership Benchmark and Best Practices* (2007-2009) formed capacity at local level, but did not directly deal with fiscal matters. The EU Progress Report 2010 reports some improvements in local capacity in the areas of property tax management, human resources, and financial control. However, there is still a substantial degree of budgetary control exercised by central government. In *Bosnia and Herzegovina*, local governments remain short of cash and dependent on higher-level budgetary decisions, effectively weakening the force of decentralisation legislation that has been adopted. The same situation prevails in *Russia*, where the fiscal dependence of local authorities on transfers from central government increased over the evaluation period. In *Turkey*, financial autonomy of local governments is very limited despite a new law on municipal revenues enacted in 2005. No relevant information was found in *Armenia* and *Azerbaijan*.

In summary, there have been few JPs actively addressing the problem of local fiscal autonomy and no evidence has been found in the case study countries of EC-CoE support, which would directly influence the level of local financial autonomy / fiscal policy. In most countries examined, local resources remain insufficient to deal with the decentralised authority that has been legislated, and in *Russia*, the dependence of local governments on transfers from the central budget has actually increased over the evaluation period.

<sup>112</sup> See an overview over ongoing and past projects on <http://www.drzavnauprava.gov.rs/article.php?id=994>.

<sup>113</sup> Ex-post evaluation of the EC-CoE Joint Programme “Moldova: support to continued democratic reforms 2004-2006”, Final report, June 2007

**6.3.4 I-634 Type of administrative control from the Centre towards the Local Authorities**

In *Serbia*, the JPs helped to shape the vision of the Serbian authorities of their distribution of competences between the central and the local level governments, although no governmental strategy on decentralisation has been adopted. No further evidence of support to the strengthening of local governance and change in type of administrative control from the centre towards the local authorities than the findings described in I-631 to I-634 has been found.

## 7 EQ7: To what extent have the implementation modalities of Joint Programmes employed by the CoE been appropriate to help achieving EC objectives related to human rights, rule of law, and democracy?

### 7.1 JC 7.1 Degree to which CoE implementation has reflected best practice of programme cycle management

We assessed this JC on the basis of four Indicators: CoE competence in PCM at headquarters and in the field, the quality of logframes in project documents, the flexibility of logframes and their adaptation to meet changing circumstances, and the good use of Steering Committees.

Relating to the first two Indicators, our findings are essentially negative. The CoE has historically been an organisation oriented towards sector expertise, not project management skills, and many cooperation staff have picked up project management on the job. All the way from project formulation through evaluation, **project management has been identified as a comparative disadvantage** of CoE compared to other organisations.

Project intervention logic, specifically logframes, has been strongly criticised by past JP evaluations and EC ROM reports. Specific criticisms include **failure to distinguish between activities and results / impacts**, which combined with failure to properly design and apply Objectively Verifiable Indicators, made it difficult to compare actual to expected results. This led the team, in its synthesis of past evaluations, to write that JPs were often not really programmes, or even projects, but rather bundles of related activities. Sometimes, especially earlier in the evaluation period until about 2007, activities were not even related to each other, as limited budgets were spread across a large range of focal areas instead of being targeted on a few areas where tangible results could be achieved.

In general, evidence suggests that **project management by decentralised CoE field staff was more effective than project management from Strasbourg**. This is presumably one reason for the current decentralisation effort.

The one Indicator which was favourably assessed was the **CoE's ability to successfully adapt to changing circumstances**, despite the fact that mid-term reviews were not routinely carried out. Sometimes changes in design were necessary already at the beginning of the implementation, due to the relatively long time between project formulation and its actual start.

Experience with Steering Committees has been mixed. There has sometimes been confusion over the exact role and extent of the authority of Steering Committees, with governments sometimes under the impression that SCs had decision making authorities while donors including the EC were operating under a different impression. While virtually all JPs had a Steering Committee and Strasbourg programme officers were usually able to attend one SC meeting per year, there were delays in the formation of some SCs and others met only infrequently or were not completely representative of stakeholders.

#### 7.1.1 I-711 CoE HQ JP project managers and country office staff well-versed in PCM

On the general issue of CoE implementation of PCM, evidence from a range of sources – CoE Headquarters interviews, field interviews, the EUD survey, the EEAS survey, the synthesis of past JP evaluations, and document review – has suggested that PCM has been weak overall. On the specific question of the level of competence of CoE Headquarters and country office staff, we have less evidence. The observed weakness could result from a lack of competence, or the weakness of institutional structures and procedures. We do know that a brochure on PCM (specifically, the logframe approach) in English and French has been published early in the evaluation period following the first evaluation of the JP Russian Federation programme), but we do not know with what effect. We are also aware that the CoE staff has undergone PCM training at various points during the evaluation period. EUDs rated project management at the CoE country level higher than management / back-stopping from Strasbourg.

The CoE is an organisation in which staff has historically been judged on sector expertise rather than skills in project management. As the CoE has increasingly moved towards project implementation over the evaluation period, it would not be surprising if there were a period during which PCM was amateurish. This came out in answers to EQs 1 and 2, where evidence was adduced that CoE project implementation was often perceived by EC cooperation staff as slow, bureaucratic, and generally not up to the standard set by organisations that have long specialised in implementation. This is related to our discussion of the comparative advantages and disadvantages of the CoE, where concrete implementation skills decidedly fell into the latter category. This is corroborated by responses to the EEAS sur-

vey, where some EUDs cited delays and the need for the CoE to better understand decentralised management.

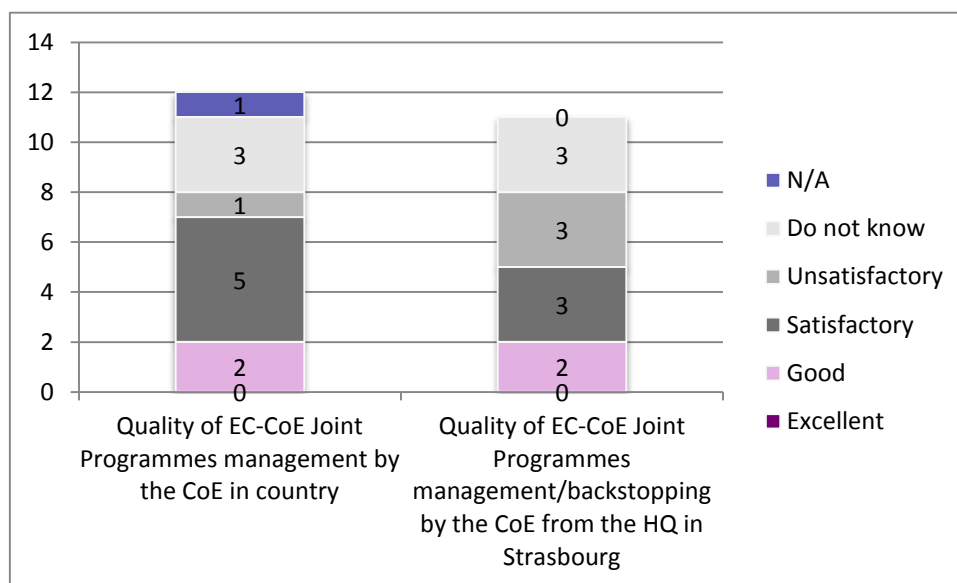
In general, evidence suggests that decentralised management has been identified as superior to management centralised in Strasbourg.

#### 7.1.1.1 Evidence

We addressed this Indicator mostly using the surveys to EUDs (both the one conducted by the evaluation and the responses available of the EEAS survey), and information gather in the interviews the filed.

EUDs responding to the survey (e.g., *Moldova, Kosovo*) considered the management of JPs by CoE field representation as of higher quality than the management/backstopping of the HQ in Strasbourg. The latter pointed to a clear improvement in management due to decentralisation to the field office. A number of EUDs reported issues with project management (*Turkey*) and reporting (*BiH*). However, some EUDs were satisfied overall (*Russia*) or reported improvements (*Kosovo*). Overall, as shown in the chart below, there was higher satisfaction with field office management than with management / backstopping from headquarters.

Figure 21: EUD survey results: Perception of EUD staff of the quality of JP management

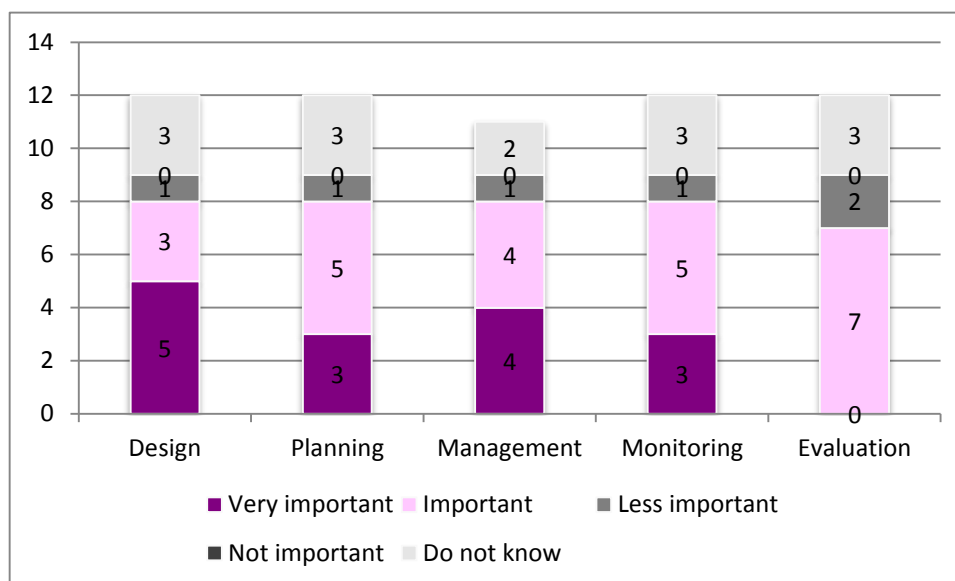


Source: EUD survey

In looking at this Indicator, we also considered EUD responses on how they viewed their own input into JP PCM. Most regarded their input throughout, from design through evaluation, as being important and beneficial. Yet, this must be put in the context of the finding from the synthesis of past JPs that PCM was one of the weakest points of JPs, and nowhere weaker than in project design and project evaluation.



Figure 22: EUD survey results: Perception of EUD staff of the Delegations' impact on JPs



Source: EUD survey

The EEAS survey leaves a mixed impression. In *BiH*, the EUD felt it was insufficiently involved in regional projects (BiH 2008). EUD *Georgia* (2008) also felt that JPs were managed essentially without EUD input. By contrast, EUD *FYROM* (2008) reported that it was well informed of developments and participated in Steering Committee meetings. Information sharing with CoE concerned not only project management issues but more general sectoral ones, as well. EUDs *Russia* (2008), *Turkey* (2010), and *Ukraine* (2010) were also broadly satisfied with their participation in JP management. *Turkey* (2010) did comment, however, that the CoE needed to better understand the Decentralised Implementation System. Regarding CoE project management, EUD *Ukraine* (2008) noted that, while the CoE respected its contractual obligations, it was at times slow in getting projects operational within the frame of three first months allowed by a regular contract for "inception phase" activities. CoE procedures were described as excessively bureaucratic and formalistic, and implementation of activities rather cumbersome.

In the *Synthesis Report* 2009 of the EEAS survey (we do not have individual EUD responses for that year) a number of Delegations criticised the quality of CoE project proposals, finding them to be dependent on the expert retained. There tended to be a focus on self-justifying activities. The synthesis noted that EC/EU and CoE approaches to project design and implementation can be quite different, especially in pre-accession countries, as the EU focuses on harmonisation with the *acquis*, while the CoE stresses wider institutional processes. This is another example of the differing approaches of the EC and CoE, the first concentrating on concrete impacts and the second on on-going process and engagement.

The field missions generally confirmed the mixed views of the desk research, and the fact that the need to focus on aspects of the PCM is increasingly recognised by the CoE as an important part of their reform.

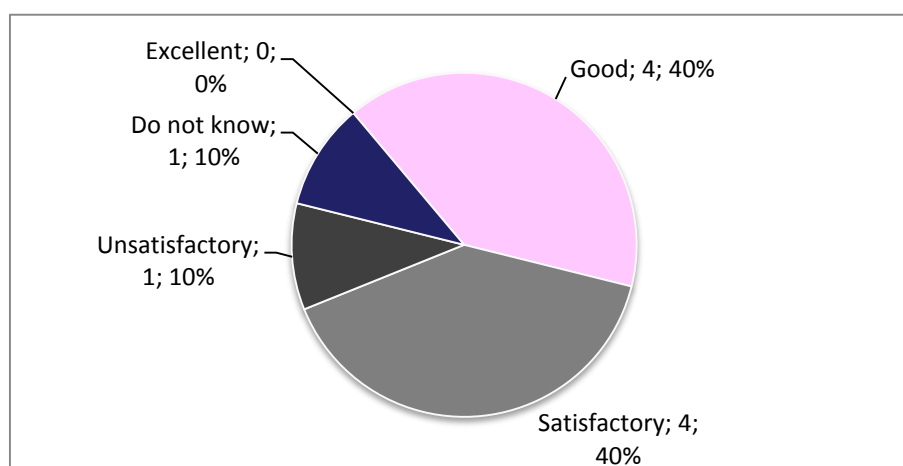
- In *Turkey*, while JP managers reported receiving PCM training some years ago, new managers are assumed to have PCM experience on appointment. Some EUD staff expressed frustration at being "pushed to micromanage" to address weaknesses in CoE project management capacity.
- In *Moldova*, in general, the atmosphere in the sectors covered by the CoE is increasingly competitive, and the CoE field staff interviewed were acutely aware of the need to improve project cycle management across the board, including better capacity in the field and at HQ. The outlook is favourable because the Country Office Director was formerly working in a major CoE-EU JP and his Deputy was formerly an EUD programme officer.
- In *Armenia*, problems identified did not have to do with quality of PCM skills, but with lack of local management and poor communications between CoE headquarters and the CoE Country Office.
- In *Serbia*, a number of stakeholders, including the CoE country office themselves, acknowledged that the procurement rules had changed since the early JPs and with the transition to IPA, and that there was work necessary to understand and apply these new rules. The CoE

country office, possibly as a result of the on-going reforms in the organisation, was also not entirely confident about the division of tasks between the field and HQ level on programming and project design.

### 7.1.2 I-712 JP Project documents contain well-formed logframes

As in assessing Indicators elsewhere in this JC, there are some divergences in opinion. Despite some objections expressed regarding the quality of project design (above), the strong majority of EUDs (80%) considers the design of EC-CoE joint projects as at least "satisfactory" and 40% consider it to be "good." Yet, the synthesis of JP evaluations presented in Annex 2 was extremely critical of logframes, finding that most evaluations found serious flaws in logframe design, that logframes were not appropriately updated and adapted to changing events, that Objectively Verifiable Indicators were not properly identified and used, etc. Below (see following box), we back this up with brief summaries of findings from a number of evaluations that cite, among other things, logical confusion regarding activities, results, and outcomes; failure to properly involve stakeholders, failure to focus project resources on a few well-defined, attainable goals, etc. While several projects stand out as having had good intervention logic structures, the overall impression reinforces the point that has emerged repeatedly from different sources; that the CoE is activity-, rather than output-oriented, and that it concentrates on process and engagement, not on concrete impacts as defined by the EC.

Figure 23: EUD survey results: Perception of EUD staff of the quality of EC-CoE joint programme design



Source: EUD survey

The interviews in the field confirmed the awareness of the field staff of the importance of stronger project design.

- In *Moldova* CoE field staff recognises improve project cycle management across the board including tighter logical frameworks with more objectively verifiable indicators.
- For *Turkey* JPs objectives are framed accurately in terms of the applicable law, and are linked to relevant national policy documents (e.g. the Judicial Reform Strategy) which identify the problems to be addressed. Desk review of JP logframes highlighted generally underdeveloped indicators (for the most part limited to outputs/activities), with limited or no focus on standard PCM issues such as means of verification, risk mitigation etc. Field visit highlighted an awareness of this pointing to logframes being designed by partner institutions with limited CoE input. Delays, for whatever reason, between JP design and commencement is specified as a source of pressure to commence activities preventing remedying of M&E deficiencies in JP logframe. The fact that inception phase reports were not a standard feature of JPs in Turkey during 2000-2010 is acknowledged as being a weakness by CoE personnel.

#### Box 21: Project design of JP: Synthesis of findings from analysing JP evaluations and ROM reports

Poor project design is a major weakness of JPs. This has been found in the synthesis of past JP evaluations (see Annex 2) and in specific documents related to JPs, such as evaluation reports and ROMs. Examples of the latter include:

- *Fostering a culture of Human rights – Ukraine and South Caucasus (2006-2009)*: The ROM 2008 pointed out that the project had nine components, leading to dilution of resources and lack of focus. Project design was characterised as "activity driven," with insufficient attention to outputs. Many components

and many activities implied that the workplan had to be constantly revised and re-designed in the dynamic environment.

- *Moldova Support to continued democratic reforms (2004-2006)*: The 2007 evaluation report found that while two Project Purposes were related to each other and germane to the overall project objective, two others were not. A narrower focus would have increase efficiency, improved chances for sustainability, and simplified management. Elsewhere the report found that the logframe was acceptable overall but criticised the treatment of Expected Results. In addition, it was not the result of a participatory process.
- *Programme against corruption, money laundering and terrorist financing in Moldova (MOLICO Moldova (2006-2009))*: This project was subjected to four rounds of EC ROM (reports prepared by the same monitors each time) – 2007-2010. According to the ROM reports, the quality of project design was improved substantially during the course of the project duration: it was graded C-C-B-A in this sequence. The improvement was the result of revising the logframe to clarify the hierarchy of objectives and the addition of Objectively Verifiable Indicators. The flexibility encouraged local ownership and, according to the 2010 ROM Report, the programme design had reached the stage where it could serve as a model for subsequent programmes.
- *Access to justice in Armenia (ongoing)*: The ROM 210 called for a thorough revision of the logframe.
- *Freedom of expression and information and freedom of the media (2008-09)*: The ROM 2009 found the logical framework satisfactory overall though suffering from some technical flaws, such as confusion between immediate objectives but rather long-term targets. The OM suggested that there is a tendency, in JPs, to define modest specific objectives that can be met by specific project interventions.
- *South Caucasus democratic stability (2002-2004)*: According to the evaluation report Armenia Country Note 2004, the activities set forth in the JP were never tied to broader outcomes or outputs to be achieved, implying that the blame for this confusion must be shared among project partners, experts, beneficiaries, NGOs etc. Because of the absence of explicit specific or operational objectives, it was not possible to distinguish between expected and achieved results. In the final evaluation report, it was pointed out that the JP projects were not even “project” strictly speaking, but sets of managed activities like training events.
- *Network of Schools of Political Studies (2006-2008)*: The EC evaluation (2007) found that relevance was reduced because of the failure to put in place an overall intervention logic from the beginning, which also made it difficult compare actual with expected results.
- *Setting up and developing the Civil Society Leadership Network (2008-2009)*: The ROM 2009 was satisfied overall with the project's intervention logic. It pointed out, however, that the bulk of project resources were devoted to one component, making it doubtful whether the other two were viable.
- *Combating ill-treatment and impunity in South Caucasus, Moldova, and Ukraine (2009-2011)*: The intervention logic itself was found by the ROM 2010 to be of good quality, but the ROM questioned whether it could realistically be applied in five countries undergoing very different political dynamics.
- *Emerald network (2008-2011)*: Judging by the ROM 2009, this project had one of the best overall logframe matrices.
- *Azerbaijan – Penitentiary reform (2005-2006)*: Again, the ROM 2006 found that the intervention logic was strong, but in this case, predicted that the short duration of the project would make it inconsistent with its ambitious goals.
- *Azerbaijan - Ukraine and South Caucasus – Promoting the democratic process (2005-2008)*: The ROM 2006 found that this project was virtually indistinguishable from other CoE activities in the country, resulting in a low sense of ownership and a low own-impact.

There are also examples of projects where there was an undoubted failure to focus resources on a few clearly defined, attainable goals. For example,

- *South Caucasus democratic stability (2002-2004)*. The total budget of Euro 2.5 million for 3 countries and 3 years is meant to cover ten project lines: promotion of European standards for human rights protection, promotion of the European social charter, promotion of the framework convention for the protection of national minorities, promotion of freedom of expression & information, strengthening the judicial system, strengthening policies in the criminal field while respecting individual rights, strengthening local democracy, improving access to social protection for vulnerable groups, education for a democratic society: policies and practices, and development of state-society relations. Taking an admittedly simplistic approach, this amounts to less than Euro 30,000 per theme per country per year.
- *Ukraine and South Caucasus – Promoting the democratic process (2005-2008)*. The total budget Euro 1.5 million for 4 countries and 3 years is meant to cover eight components: elections, legislation, media, social affairs, public officials, civil society, civil society and public authorities; School of Political Studies. This is less than Euro 20,000 per component per country per year. Not surprising the project Final Report found this extreme fragmentation to compromise coherence, visibility, and the achievement of tangible results.

It seems that the CoE has taken this lesson into account while designing new JPs, and since 2007 the CoE generally opted for more consolidated thematic projects.

### 7.1.3 I-713 Timely mid-term reviews and adjustment of logical framework and implementation

While logframes were held to be of low quality and project implementation was often regarded as not of the best standard, a number of project-related documents reported that there had been a successful process of adaptation during the course of the project. Failure to call for and implement timely mid-term reviews were not identified anywhere as a problem, although monitoring generally was held to be weak.

One of the stronger conclusions of past JP evaluations as synthesised in Annex 2 is that JP intervention logic was often weak, starting with low-quality logframes (including the absence of meaningful indicators of results) and marked by an inability to properly revise logframes in the face of evolving events. Yet, sources other than evaluations paint a much more positive picture regarding the ability of JPs to be adjusted and revised based on changing context. For example:

- *Programme against corruption, money laundering and terrorist financing in Moldova (MOLICO Moldova) (2006-2009)*: We noted in discussing Indicator I-712 that the logframe was very successfully adapted during the course of the project. The project final report (2009) also stated that the project team also proposed a number of changes to the work plan which were adopted by the Steering Group, in order to successfully meet the changing needs of counterpart institutions.
- *Access to justice in Armenia (ongoing)*: The Interim Report October 2010 cited the importance of flexibility and reported that initially planned activities were being re-scheduled to reflect the fact that the legislative process was taking longer than anticipated.
- *Freedom of expression and information and freedom of the media (2008-09)*: According to the ROM 2009 the project work plan was frequently updated, with positive effects for project flexibility and continued relevance, but undermining the purpose of a work plan in the first place.
- *Fostering a culture of Human rights – Ukraine and South Caucasus (2006-2009)*: When the originally planned training-of-trainers / cascade seminars approach was found to be ill-adapted to a country in the midst of large scale judicial reform, the training strategy was abandoned and thematic seminars for judges were substituted instead (project final report 2009).
- *Setting up and developing the Civil Society Leadership Network (2008-2009)*: The project final report 2010 reported that project components, work plan, and budget were adapted throughout the project to reflect the changing situation and respond better to needs.
- *Moldova Support to continued democratic reforms (2004-2006)*: The 2007 evaluation report praised the project's ability to adapt implementation of the legal action plan on local government to a rapidly changing institutional environment and to re-focus cooperation as needed.

In sum, few JPs received full mid-term reviews or, if so, we have not obtained them. However, adaptations to changing circumstances appear to have been relatively commonplace, and were reflected positively in some ROM reports of the JPs.

Absence of mid-term reviews was also confirmed at country level, together with some positive examples of JPs adaptability, especially due to the fact that sometimes a substantial amount of time passes between project formulation and actual start, which requires changes already from the beginning of implementation. For instance in *Turkey*, CoE staff report that in the case of the Education JP 25% of planned project objectives had been attained by the time the project commenced (e.g. civic education had been introduced as a compulsory subject in the curriculum). In some cases changes include personnel in partner institutions as well as actual institutions themselves e.g. on the Ethics JP in Turkey the Prime Minister's Inspection Board was the planned the beneficiary but the establishment of the Ethics Council meant a change was required. The use of project inception phases (reported by CoE in Turkey as not having been consistently utilised during 2000-2010) can help alleviate this but in itself is not a substitute for addressing weakness earlier at project design stage both as matter of project efficiency and also to address a identified capacity gaps in project design.

### 7.1.4 I-714 Mandate appropriately used by JP Steering Committee (regular meetings, appropriate composition, recommendations implemented, etc.)

From the evidence found, it appears that all projects had steering committees, but there was sometimes confusion as to their role – were they ultimate decision making bodies, or merely advisory? -- and a consequent feeling that their full potential had not always been realised.

The synthesis of past JP evaluations described experience with JP Steering Committees as "mixed", and the following excerpt from evaluation reports, final reports, and ROMs also shows varied experience.



- *Programme against corruption, money laundering and terrorist financing in Moldova (MOLICO Moldova (2006-2009))*: The project final report 2009 pointed to differing views of the function of the Steering Group. The CoE, i.e. project management, was of the view that the Steering Group had the authority to approve project work plans. Donors questioned whether this and in some instances reversed decisions of the Steering Group by not approving that the budget was spent for specific activities.
- *Access to justice in Armenia (ongoing)*: As above, the ROM 2009 points to the need to clarify the role of the Steering Committee and to ensure closer liaison with the partners (including the donors). Here the problem seems to have been not that donors overrode SC decisions, but that donors expected that the SC, with their full inclusion, would be the decision making body, not project management. The ROM suggested inclusion of the Ministry of Economy (the responsible agency for EU assistance and ENPI Action Plan).
- *South Caucasus democratic stability (2002-2004)*: According to the project evaluation report Armenia country note 2004, there was again confusion over whether the Steering Committee was an advisory body or a decision-making one. Government was dissatisfied because, after (competing) agencies had argued in favour of their priorities, it expected the SC to make the final decision. To quote the country case study, “*The processes for jointly working out and agreeing the overarching and strategic objectives for the Programme between the CoE and Armenia have been weak. The meetings of the Steering Committee were intended to perform this task. However, their role in practice has been limited.*”
- *Network of Schools of Political Studies (2006-2008)*: Here, there was no Steering Committee to oversee project implementation, and one of the recommendations of the EC 2007 evaluation was that such a SC be instituted in the future.
- *Setting up and developing the Civil Society Leadership Network (2008-2009)*: The project final report (2010) reported that the Steering Committee worked well. It is to be pointed out, however, that its only task was to meet in the margin of training activities to review current activities and identify future themes for training. It functioned more as a coordination group than a project Steering Committee per se.
- *Combating ill-treatment and impunity in South Caucasus, Moldova, and Ukraine (2009-2011)*: The ROM 2010 regretted that, while a Steering Committee including all five beneficiary countries was meant to be set up during the Inception Phase, in fact, the Steering Committee first met 21 months into the project and no representative of civil society was included.

More examples came also from the country missions.

- In *Serbia*, several JP stakeholders have confirmed that the JP Steering Committee meetings convene regularly and are the forum which discusses changes to the log-frame. SC meetings are also reported to gather the right level of stakeholders from the appropriate institutions.
- In *Turkey*, observations made by stakeholders include that Steering Committees foster JP ownership, are useful for bringing institutions together, which in some cases tend to compete, and some suggestion that CSOs are not invited to join later Steering Committees if they are too ‘challenging’ in their participation.
- In *Moldova*, CoE field staff interviewed were aware of the need to ensure more effective use of steering committees. Steering Committees were not well defined as to goals, levels, etc., and progress reports were often not available until Steering Committees met.
- In *Armenia*, the role and function of the Access to Justice Steering Committee was reported to be unclear until well into project implementation.

## 7.2 JC 7.2 Quality of reporting, monitoring, financial management by JPs and quality of evaluation of JPs

It has come through clearly from all evidence sources – interviews at the CoE Headquarters, past JP evaluations, and even from the nature of the CoE reform and re-organisation – that **monitoring and evaluation were judged to be the weakest point of JPs** (Indicator I-721). At CoE Headquarters, the evaluation function was tied to programme formulation and implementation, leading the CoE in 2010 to set up a separate evaluation unit reporting directly to the Secretary General. This unit has been significantly strengthened and has embarked on a series of country programme evaluations, but it must be realised that these changes are in response to weaknesses encountered over the evaluation period. We have said, in assessing Indicator I-712, that **project logframes and the associated Objectively Verifiable Indicators were weak in ways that made effective monitoring and evaluation very difficult**. A number of JP evaluations were cited. With evaluations ad hoc and weak, there is little



evidence that findings were effectively fed back into the project formulation process, an aspect of PCM which has also been found to be weak (Indicator I-722). The main response of the CoE has been to put in place a Directorate General for Programme which should take responsibility for coordinating JPs.

The failure to adhere to good evaluation practice over the evaluation period was out of step with good international development practice and was at odds with CoE's strategic desire to become a more competitive implementing agency.

**Financial management** (Indicator I-713), as well, **has been found to be relatively weak**. There have been issues of slow disbursement of funds leading to delay in implementation and one project subjected to an independent audit was heavily criticised for its financial reporting procedures. Another project fell (admittedly post-evaluation period) into disarray over an issue related to the procurement of premises for a school that had been designed and supported by a JP. No particular issues were raised regarding project progress reports apart from occasional delays and some reservations about the format followed. However, the evaluation team found that, for its own purposes, project reporting placed too much emphasis on enumerating activities and not enough emphasis on assessing results. The CoE's annual *Activity report* and JP scoreboard meetings in Brussels were both effective summary approaches to reporting.

### 7.2.1 I-721 CoE subjected JPs to timely, high quality monitoring and evaluation

Monitoring and evaluation were among the weakest aspects of CoE project implementation, in significant part because project design made it very difficult to engage in meaningful M&E. Among other points that emerge, logframes made it difficult to compare actual achievements with expected results, and project reports tended to be inventories of activities delivered. Even at output level, documentation such as lists of participants was sometimes difficult for project final evaluators to find, training participants' evaluation questionnaires had been lost, etc. Final independent evaluations were not routinely carried out for JPs. Some JPs were subjected to EC ROM monitoring missions, sometimes repeatedly. The EC itself bears some of the blame for poor PCM, as it continued to support JPs even when ROM reports and those evaluations that exist often criticised PCM.

One of the strongest findings to emerge from the synthesis of JP evaluation reports in Annex 2 was that both monitoring and evaluation of JPs was poor over the evaluation period. JP final evaluation reports (where available) themselves find that monitoring and evaluation was weak during the project cycle. Examples are:

- *Moldova Support to continued democratic reforms (2004-2006)*: The 2007 final evaluation report found that collection of feedback from training participants was "wrongly organised" and that results were never processed. While there were 300 participants (judges and prosecutors) in training events, project management was able to provide the evaluators with only a handful of questionnaires. Basic information such as lists of participants were difficult to secure. The specific conclusion was that it was very difficult to thoughtfully assess performance against Expected Results.
- *South Caucasus democratic stability (2002-2004)*: In the Azerbaijan country note of the 2005 evaluation, it was stated that JP design did not allow for follow up evaluation of activities implemented by CoE experts. Internal monitoring took no account of impact and sustainability. No project progress reports were foreseen.
- *Freedom of expression and information and freedom of the media (2008-09)*: The final report (June 2010) states that there was an interim evaluation in Strasbourg and final assessment meetings at the end of the project, but does not elaborate.
- *Ukraine and South Caucasus – Promoting the democratic process (2005-2008)*: The project description (2004) describes a relatively full set of evaluative activities, however, the final report (2008) merely notes that a foreseen evaluation exercise was cancelled and resources released were re-allocated to the implementation of project activities.
- *Support to free and fair elections – South Caucasus and Moldova (2008-2010)*: The project description, dating perhaps from 2008, states that an external evaluation by an independent consultant "can be envisaged if required by the EC". This confirms the generally ad hoc approach to evaluation at the CoE during the evaluation period.
- *Network of Schools of Political Studies (2006-2008)*: Here, to judge by the project final report (2008) monitoring and evaluation appear to have been adequate. Questionnaires filled in by seminar participants were used by Schools' directors and project managers to design future activities. A more general evaluation of the annual programmes was made by both the directors and the CoE Secretariat at the end of each Summer University.

- *Fostering a culture of Human rights – Ukraine and South Caucasus (2006-2009)*: In February 2008, according to the project final report, a project Steering Committee meeting was used as an opportunity for a mid-term review of project progress.

In response to the realisation that evaluation was essentially ad hoc, the CoE has, in its reform and re-organisation, significantly reformed and strengthened the evaluation function at CoE Headquarters, Greater human and financial resources have been allocated, and a programme of planned evaluations is now in place. All these steps are in response to the ad hoc and scattered nature of the evaluation process over the evaluation period.

Field missions confirmed the fact that JPs were not systematically subjected to evaluations. Projects were generally not designed based on Results Based Management principles, hence, internal monitoring was weak and impact assessment almost impossible.

### 7.2.2 I-722 Evaluation recommendations fed back into project cycle

No evidence has been gathered, but it is clear from the weakness of monitoring and evaluation that there was little opportunity for lessons learnt to be incorporated into future JP design. As pointed out in the JP evaluation synthesis, weak programme design, inadequate logframes, poor definition of Objectively Verifiable Indicators, and concentration on activities rather than results and outputs were characteristic of JP design, dooming from the start any possibility of systematic incorporation of lessons learnt. It was pointed out in CoE Headquarters interviews that, now that the evaluation function has been strengthened, the challenge will still be to ensure that results are actually used.

In *Turkey*, two JPs (not falling within the 2000-2010 timeframe) have been subject to external mid-term evaluation. Apart from best practice and accountability principles, these evaluation reports highlight the utility of external evaluation as a contribution to lessons identification (lessons learning depends on follow-up, management and partner responsiveness, allocation of resources, etc.), and fostering a culture of accountability and scrutiny in a sector (justice), where it is not instinctively welcomed or understood. For example, Court of Cassation is reported by CoE managers as having only screened their decisions and found 25 cases that reflected ECHR jurisprudence after the mid-term evaluation had reported lack of impact in this respect. To some degree the fact that JPs designed and delivered during 2000-2010 did not incorporate or budget for external impact evaluation has made it more difficult but not impossible to get buy-in from partners on the principle now.

There is acknowledgement among CoE & EUD in *Turkey* that the process of CoE reconfiguration has been a factor impacting on the effectiveness of JPs. A view expressed is that lessons learned are not adequately being transferred from HQ to country office with a hope and expectation that this would change with the new CoE Programming Directorate. As it represents a departure from past practices, the external mid-term evaluation of the JP *Enhancing the Role of the Supreme Judicial Authorities in respect of European Standards* was reviewed (despite falling outside the 2000-2010 timeframe). The report offers a number of useful suggestions (and concrete suggestions for indicators to measure impact), which if acted upon systematically (e.g. though a documented response and plan of action from the JP Steering Committee), can help address some identified PCM weaknesses. It can also help foster an understanding of the need, rationale and utility of external evaluations.

We have stated at several points that the CoE, in developing its capacity as an implementing agency, failed to live up to its responsibility to adhere to good Results-based Management practice, especially regarding evaluation, and that this has adversely affected its attractiveness as an implementing agency.

### 7.2.3 I-723 JPs implemented with high quality of financial management: timely disbursement, application of EU procurement rules, internal monitoring and quality assurance mechanisms in place, etc.

As found by the synthesis of past JP evaluations, most evaluations took issue with financial management procedures of the CoE. There were frequent delays in implementation due to the slow disbursement of funds. The most serious problems encountered were those in *Moldova*. In the *Programme against corruption, money laundering and terrorist financing in Moldova (MOLICO Moldova (2006-2009))*, delays in project reporting and changes in Council of Europe procedures in the course of project implementation led SIDA to request an audit of the MOLICO project (implemented by Ernst and Young in February 2009). The findings were highly critical. They included the opinion that financial reports prepared were "non-transparent," making it impossible to accurately assess costs and how money had actually been spent for the accounting period. Project financial reports, in the auditors' opinion, did not provide an adequate basis for analysing costs compared to budget. The CoE rejected this finding and cited another SIDA audit which pointed out that accrual accounting was resource-

intensive and did not permit frequent reporting. There was also criticism of the way in which invitations to tender had been implemented.

The field missions found a re-iteration of similar concerns at the EUDs.

- In *Turkey*, grave EUD concerns are expressed with regard to some CoE JP budget preparation (in particular inconsistencies in core costs in parallel JP proposals). This problem appears to have resulted in delay in commencement of several JPs in 2011. CoE managers' position is that these issues have now been addressed by a change to unit costing. Three different financial audits of CoE Office activities were reported as having taken place in 2010 but the field mission did not allow time to explore this financial management in detail.
- In *Moldova*, with respect to the above mentioned issue of MOLICO, both the CoE country office and EU Delegation reported that the issue is now behind them. The general view among stakeholders and beneficiaries was that financial management was chaotic.
- In *Armenia*, the Access to Justice JP was severely disrupted by procurement problems related to obtaining premises for the school. The situation is still being worked out, but the delays and confusion surrounding the incident have damaged the EUD's confidence in the CoE as a reliable implementation partner.

#### 7.2.4 I-724 Progress reports are timely and of high quality

EC Headquarters cooperation officials reported that CoE reporting was sometimes slow and not well suited to EC requirements (at the same time, CoE cooperation officials cited the heavy and bureaucratic EC reporting requirements) Yet there was no sign of dissatisfaction with progress reports in EUD survey responses. In a review of project documentation, a number of reports were found that stated that project reporting was either delayed or not up to good standard. For its own part, the evaluation team found that project reporting placed too much emphasis on enumerating activities and too little on synthesising the material into succinct estimates of results, strong points, and weak points.

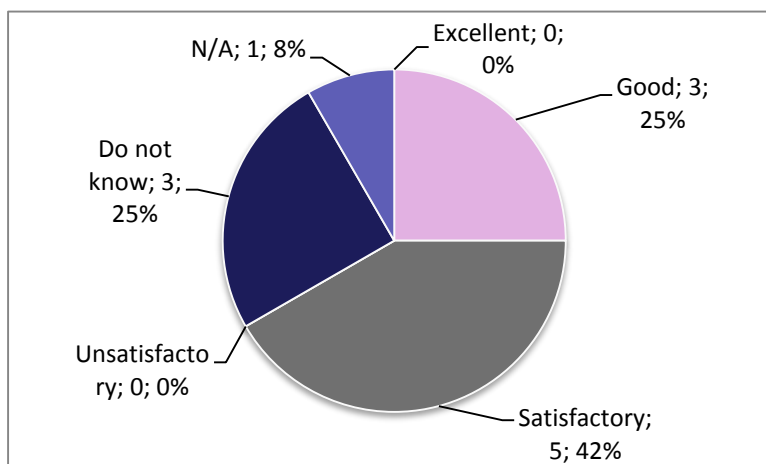
A strong point of progress reporting was the CoE annual *Activity reports* issued by the Directorate General of Human Rights and Legal Affairs. These presented, in user-friendly form, short summaries of recent activities and achievements in JPs. Also very effective in this regard were Scoreboard meetings in Brussels.

In sum, it is not possible to reach a strong conclusion related to this Indicator. Most EUDs were satisfied with JP reporting, EC Headquarters staff expressed some reservations, as did CoE Headquarters staff, but because they found reporting requirements heavy. HQ level reporting mechanisms such as Activity Reports and scoreboard reports were highly effective.

##### 7.2.4.1 Evidence

A question on the EUD survey directly dealt with this Indicator. Most EUDs (two thirds) considered progress reports to be either "good" or "satisfactory." Some EUDs had no opinion, but none ranked progress reports as "unsatisfactory." In the EEAS survey, both *Turkey* (2008) and *FYROM* (2008) commented that the quality of CoE progress reporting had improved.

Figure 24: EUD survey results: Perception of EUD staff of the quality of progress/monitoring reports



Source: EUD survey

Document review reveals contrasting opinions of CoE reporting:

- *Programme against corruption, money laundering and terrorist financing in Moldova (MOLICO Moldova (2006-2009))*: The Ernst and Young February 2009 audit described above found that reporting to SIDA and the EC was late and did not contain needed financial information stipulated in the agreement with SIDA. The finding was disputed by the CoE. The project final evaluation report (2009) made the rather mild finding that more detailed reporting on the project's actual progress and impact would have reflected better on the project's good work.
- *South Caucasus democratic stability (2002-2004)*: The Azerbaijan country note of the 2005 evaluation found that both the local CoE office and direct beneficiary organisations used filing systems that were not up to good practice. The evaluators found it impossible to use project related documents such as training material, lists of participants, etc., and had to rely almost entirely on interviews with stakeholders.
- *South Caucasus democratic stability (2002-2004)*: The Armenia country note of the final evaluation (2004) called for improvements in reporting systems, but found that, overall, reports were adequate for ensuring accountability in individual activities.
- *Freedom of expression and information and freedom of the media (2008-09)*: The project final report (June 2010) states that interim and final reports were provided as called for contractually and, at the end of each activity, the CoE project manager provided a synopsis and, if appropriate, an evaluation of the activity based on reports by experts and local partners.
- *Peer to Peer – Setting up an active network of independent non-judicial Human Rights Structures in the non-EU CoE members (2008-2009)*: The project final report (2010) identifies delays in reporting caused by transfer of the project within the CoE and loss of the project manager.
- *Emerald network (2008-2011)*: The ROMs 2009 and 2010 found that project reporting respected EC requirements, but was not in line with the PCM approach in structure and content. In particular, progress reporting was activity- rather than results-oriented.

In general, the progress reports available to the evaluation team show the same shortfalls as already discussed on multiple places above – namely focus on listing activities rather than progress on achieving results, which ties directly to the design of the projects, which mostly did not comply with the standards of results based project management.

At country level, similar perceptions were reported.

In *Turkey*, some delays in filing of JP progress reports was reported by EUD as well as issues of their weakness in going beyond noting activities (this is presumed to be linked to lack of capacity/emphasis on situating JP activities in their wider context).

In *Moldova*: CoE officers interviewed themselves admitted that, prior to the strengthening of the country office, reporting was weak.

### 7.3 JC 7.3 Appropriateness of relationship between JP management needs, CoE headquarters human resources, and field presence

As the number of JPs has expanded, CoE Headquarters staff have been stretched thin, although one project visit per year appears to be the norm. As we have stated at several points, increasing reliance on consultants rather than staff has been identified as an issue. In assessing Indicator I-711, we found that EUDs were generally more satisfied with support from CoE field office than from Headquarters, and we have seen that a key goal of the on-going CoE reform and re-organisation is to shift the balance of staff and resources from Headquarters to the field. **Recruitment for the field** (Indicator I-732) **was not identified as a major problem**, apart from delays and attrition problems that are not unique to the CoE. It is clear from CoE interviews that, historically, a successful career path at the CoE was Headquarters based, and efforts to shift staff into the field are likely not to be without difficulty. Based on what could be learned of the proposed changes, it is likely that at the level of Deputy Head of Office (and certainly below) significant external recruitment will be needed. The closely related Indicator I-732 also examined the CoE's capacity in the field. Here, we identified instances in which there was confusion about the division of labour between CoE field offices and Strasbourg Headquarters. While there were success stories, the overall message that emerged was that the **stronger the country office, and the more responsibility was devolved to them, the better JP implementation**. In at least one field-visit country, the EUD has stated that local management will, in the future, be regarded by them as a condition for working with the CoE. The need to strengthen the capacity of local staff to operate independently suggests less than optimal vertical coordination, and one of the rationales for putting in place the Directorate General of Cooperation is to improve **coordination between Direc-**



**torates General, which was generally weak** over the evaluation period (Indicator I-734). Indicator I-735 provided another opportunity to re-affirm the concern over increasing reliance on external temporary consultants rather than staff although, it must be recognised that recruiting short-term experts is often easier than recruiting staff. Over the evaluation period, the CoE took steps in its human resources policy to reduce the number of project staff who make the transition to become permanent headquarters staff, a step that can be easily understood from the standpoint of promoting dynamism, but also makes it relatively more attractive to work as a freelance expert.

### 7.3.1 I-731 JPs receive backstopping from appropriate CoE HQ experts

Most evidence gathered so far on this Indicator has been from CoE Headquarters interviews, where cooperation staff reported that, while stretched thin, they were usually able to attend one project Steering Committee meeting per year. However, as discussed under EQs 1 and 2, there is growing concern, expressed in the EUD survey and particularly in EC Headquarters interviews that the CoE, over the evaluation period, increasingly came to rely on short-term consultants.

In its response to the EEAS survey, EUD *Turkey* (2010) criticised the fact that, rather than being selected from CoE Headquarters, project management staff in-country was recruited via newspaper advertisements, a practice that did not guarantee the needed level of expertise and sector familiarity. EUD *Serbia* (2008) cited poor information flow between CoE Headquarters staff managing the project and the team implementing in the field, as a result of which, the Programme Manager in the field was not able to fully represent the position of CoE Headquarters.

As shown in discussing Indicator I-711 above, respondents to the EUD survey generally rated the quality of management from CoE field staff as higher in quality than management / backstopping from CoE Headquarters.

See also Indicator I-733 for support from CoE field staff.

Based on evidence, JPs received adequate HQ backstopping.

### 7.3.2 I-732 Vacant field positions are filled in a timely fashion

We have not found much evidence in the EUD survey, EEAS survey, document review, and the synthesis of past JP evaluations, but what evidence we have found points in one direction: while the quality of experts recruited by the CoE is high, recruitment is often slow; it is difficult to recruit staff, as opposed to consultants, and attrition is high.

### 7.3.3 I-733 JPs are adequately provided with Team Leader and support staff support in the field, as well as support from CoE country offices

Despite delays in recruitment and high attrition, JPs were generally provided with adequate Team Leader and support staff in the field. Better recruitment might have increased the capacity of the latter.

A number of project-related documents referred to either confusion or inappropriate division of labour between CoE field staff and CoE Headquarters, suggesting that CoE field staff were not used as effectively as they could have been. In general, as suggested as well in Indicator I-711, there was a higher degree of satisfaction with, and preference for, de-concentrated local management to management from Strasbourg. While there were examples of success cited, these concerned projects where local staff had the capacity and institutional mandate to engage stakeholders and make decisions without depending on Strasbourg. In one regional project where there were CoE field offices in two countries and no CoE field offices in three others, results were found to be superior in the countries with field office representation.

#### 7.3.3.1 Evidence

A number of EUDs cited good CoE field staff and close cooperation with EUDs as factors promoting JP success. These included EUD *Kosovo*, which drew attention to permanent presence in the field, EUD *Georgia*, which cited the high quality of staff, and EUDs *BiH* and *Ukraine*, which cited close cooperation. However, asked what factors tended to hamper project success, a number of EUDs also mentioned delays in recruiting staff: these included EUDs *Moldova*, *Kosovo*, and *Turkey*. *Moldova* and *Georgia* also criticised remote management.

#### Box 22: *Examples of successful and unsuccessful management*

Project document review came up with examples both of successful and unsuccessful examples:

- *South Caucasus democratic stability (2002-2004)*: Overall management of this JP was from Strasbourg. The Azerbaijan country note of the 2005 project evaluation found problems in the division of labour between Strasbourg and the local CoE office, which was not involved even in the scheduling, let alone



preparation, of JP events. Most of events/activities related questions were discussed and agreed by CoE directly with counterparts and the local CoE office received insufficient notice. This situation reduced the quality of day-to-day management: limiting supervision and discouraging the systematic collection of information and documentation.

- *Freedom of expression and information and freedom of the media (2008-2009)*: In this JP, again, project management was from Strasbourg, save in Georgia, where management from the CoE local office significantly improved capacity according to the ROM 2009.
- *Moldova support to continued democratic reforms (2004-2006)*: The project evaluation report 2007 noted that only one of the Expected Results was managed locally, and expressed the view that some of the delays encountered were due to the fact that there was an absence of local project management that could facilitate dialogue with key partners.
- *Programme against corruption, money laundering and terrorist financing in Moldova (MOLICO Moldova (2006-2009))*: Here, the 2009 evaluation reports was very positive, ascribing project impact to the excellent cooperation between long-term resident experts and Moldovan counterparts.
- *Access to justice in Armenia (ongoing)*: As in Moldova, the ROM 2010 found that there was a need to strengthen the capacity and profile of local staff to consult with partners and the Steering Committee in in planning and performance review.
- *Schools of Political Studies (2006-2008)*: The EC evaluation (2007) found that the project had benefited from stable management from CoE Headquarters throughout the project and good support from staff in CoE country offices.
- *Setting up and developing the Civil Society Leadership Network (2008-2009)*: According to the project final report (2010), there was a clear and effective division of labour between CoE headquarters, which took overall responsibility for implementation, and local partners, who drafted programmes of activities, proposed speakers and pre-selected participants which were finalised in consultation between the local partners and with Strasbourg.
- *Combating ill-treatment and impunity in South Caucasus, Moldova, and Ukraine (2009-2011)*: According to the Armenia ROM 2010, the project suffered from the fact that project coordination and management were based in CoE Headquarters and in the country offices in Tbilisi and Kiev, with no institutional support in Yerevan. This weakened the relationship between the project and the EUD in Yerevan. The same point was made in the Azerbaijan ROM 2010. The regional offices in Tbilisi and Kiev had little contact with the other three countries and, perversely, the two countries where there was a local management presence were the two where capacities were most developed. The result was that project partners were unable to benefit from a constant dialogue with the project.

In *Moldova*, it emerged in meetings on all sides that, prior to the opening of the CoE field office, project management from Strasbourg was not satisfactory. One beneficiary pointed out that, as generalists, Strasbourg programme managers did not always have the technical competence required in an area. According to the CoE Office head, the EU Delegation complained of poor PCM and reporting. The breakthrough came with the Democracy project, which was entirely managed in Chisinau. Going forward, only in exceptional cases will projects be managed from Strasbourg. In *Armenia*, the local project team functioned well, but could not undertake major financial decisions which depended on Strasbourg.

Similar problems were encountered with regional JPs before the CoE Country Office was strengthened. With management from Strasbourg, sometimes activities were undertaken without fully informing the CoE office, let alone the EU Delegation. This problem has been addressed, with the CoE Deputy Head of Office in weekly contact with regional JP managers. At the same time, proposal writing and project formulation remain in Strasbourg. In *Armenia*, the presence of a national project officer for the regional media JP ensured good management.

Overall, there was only one identifiable conclusion: that JPs tended to be more successful when management was decentralised than they were when management was from Strasbourg. No systematic problems with the quality of Team leaders or support staff were identified.

#### 7.3.4 I-734 Strong horizontal (inter-directorate) and vertical (HQ-field) coordination at CoE

During CoE Headquarters interviews, it was explained that one reason for putting in place a Directorate General for Programme was in response to a perceived lack of communication and coordination across DGs in the past. This led, in addition to duplication, to failure to mobilise cross-cutting expertise and to explicit synergies. The point that insufficient inter-DG communication at Headquarters led to duplication was also made in our synthesis of JP evaluations. Some evaluations found that there was need for a layer exclusively devoted to management at CoE Headquarters. In general, there was no clarity on the precise division of functions between CoE country offices and CoE Headquarters, leading to confusion (see, for example Armenia ROM 2009).

In short, the evidence is that performance on this Indicator was weak over the evaluation period and that, at the end of that period, major steps were put in place to address the weakness.

### 7.3.5 I-735 Appropriate mix of temporary and permanent CoE staff; in-house and outsourced expertise

These issues have been discussed in the process of answering EQ 1, and only brief points will be made here. Multiple sources of evidence – EC Headquarters interviews, CoE Headquarters interviews, the EUD survey, and findings from the field – have drawn attention to the fact that the CoE, over the evaluation period, came increasingly to rely on short-term external consultants rather than long-term staff. There is an unspoken, but widely shared view that this is in response to budgetary pressures. Reliance on short-term consultants dilutes the CoE's reputation as a unique repository of expertise because the same experts are available for hire by other implementing agencies in an increasingly competitive and well-integrated market. While dangers of staff ossification are recognised, the replacement of long-term staff by consultants does not promote the accumulation of in-house capacity, it has an impact on institutional culture and "house view," and makes it more difficult to incorporate lessons learned. It may also lead to an unhealthy disconnect between cooperation staff, temporary and dependent on external funds, and other areas, more prestigious and supported by own-budgetary resources. Having said this, the quality of consultants deployed (while that deployment can be slow) is generally held to be high. This has been particularly the case when consultants have been mobilised from the corps of experts who are involved in the work of monitoring bodies.

Similar views were also reported from the field. In *Turkey* the delivery of substantive JP inputs is largely outsourced to independent experts, many of whom have long familiarity with CoE norms and mechanisms and experience working in transitional contexts relevant to Turkey. The CoE Office in Ankara benefits from a number of staff having previously worked in key local institutions (e.g. MoJ). In some cases these experts were available for long term presence but for the most part their inputs were short term. The balance of long and short term expertise seems appropriate but more systemic evaluation of their inputs would help confirm this and possibly may identify ways of enhancing contributions. Management of JPs seems to fall to small number of staff given their scale with the result that day-to-day management, administration and reporting is likely to impede more strategic networking, advocacy etc. In-house substantive capacity seems low given the complexity and scale of JPs and the increase to 30 staff does not necessarily address this given volume of Project activity. In particular, formal designation of responsibility for cross-fertilisation between JPs, lessons learning, sectors/thematic strategy etc appears to be something that would have added value to JPs. The high percentage of CoE Office staff whose positions are project-dependent means that JPs are delivered in relative isolation from relevant activities of other actors (especially those involving donors, CSOs).

In *Moldova* and *Armenia*, there was overall satisfaction with the quality of technical expertise mobilised. However, in both countries, inadequate management capacity in the field led to serious project implementation difficulties in flagship projects. In the case of *Moldova*, while substantive results were satisfactory, financial management was found to be chaotic. The EUD expressed satisfaction, however, with the situation following the increase in CoE field office staff capacity. The situation is still tenuous in *Armenia*, where the EUD holds inadequate Country Office and poor communications with Strasbourg project managers for a major disruption in the flagship Access to Justice project. The EUD expressed the view that, absent local project management in the future, it would support partnering with other implementing agencies.

## 7.4 JC 7.4 Mechanisms and processes for incorporating lessons learned and ensuring sustainability in place

Since we have already found that evaluation was the weakest link in the PCM chain until recent reforms were initiated, it is clear that **mechanisms and processes for incorporating lessons learned were weak**. Indicator I-741 deals with provisions for ensuring sustainability, and our finding is that **project logic and approach were not based on sustainability considerations**. Projects tended to be bundles of related activities (often, as discussed elsewhere, far too many, endowed each with insufficient resources, and with no focused vision), in which the relationship between activities, outputs, and impacts was not clearly articulated. Part of this reflects the CoE's comparative disadvantage, over the evaluation period, in PCM approaches. Part of it also reflects, however, a genuine **difference in the orientation of the EC and CoE, a difference that makes for some degree of complementarity**. The EC, with its commitment to transparency, bases its performance assessment on concrete improvements in citizens' lives. DG DEVCO, grounded in development assistance and in tune with international best practice, is especially influenced by the tenets of Results-based Management. The CoE, while in no way opposed to such impacts, is more process and long-term engagement oriented. This explains, in part, the activity-based approach to JPs that is evidenced over the evaluation period. Even

in what was widely acknowledged to be one of the most successful and respected areas of CoE cooperation, legislative reform, it is clear that the passage of a new law is in and of itself an impact in the CoE's eyes, even when implementation is weak.

An important part of the sustainability issue is political will on the part of the government. In synthesising the results of previous JPs, it appeared that governments' level of enthusiasm and commitment to implementing CoE reform advice was stronger in the wake of accession than in the later years of the evaluation period. The hypothesis suggested is simply that, with the passage of time, governments became more attuned to the fact that failure to meet commitments is likely to give rise to criticism and some level of discomfort, but that the CoE's willingness to inflict real, as opposed to moral, sanctions is limited save in the most egregious cases (e.g., Belarus). There are exceptions such as MONEYVAL, but the sanction there is imposed by international financial markets, not the CoE itself. The clearest expression of the sustainability issue was given by the CoE Headquarters official who remarked "*MSs get out of cooperation what they wish to put into it.*"

The **short duration of JPs** – typically two years – is another **negative factor for sustainability**, especially when the issues dealt with are as structurally entrenched and as politically controversial as those within the CoE's remit. The short duration is, presumably, related to the relatively small amount of money involved. The move to fewer, larger projects that is part of the CoE reform will help with this, but even large JPs are small when compared to other donor interventions. Broad cooperation, including monitoring and the work of the Parliamentary Assembly, involve long-term, peer-to-peer relationships and may be more successful in the sustainability dimension than one-off JPs.

Sustainability planning was especially weak where training was involved. As discussed at a number of points, training appears to have been seen as something of a universal solvent, to be administered whether its necessity, or the chances of its giving rise to sustainable impacts, had been established or even questioned. This may have particularly affected the sustainability of regional JPs, which concentrate heavily on training.

Indicator I-742 asked to what extent there was sharing of JP lessons learnt and results among CoE Directorate Generals and among EU DGs. No evidence that there was such sharing was found.

Information on Indicator I-743, handover of results to local stakeholders was mixed between countries. In some cases, problems were encountered, in others, not.

#### **7.4.1 I-741 Existence of sustainability plans and sustainability roadmap to ensure that lessons learned are assimilated and programme results outlive the life of the programme itself**

The synthesis of past JP evaluations is almost everywhere pessimistic on the subject of sustainability. It starts by querying national ownership and commitment. As one CoE Headquarters official pointed out in an interview "What countries get out of cooperation largely depends on what they put in." In the case of JPs (like other forms of development cooperation) incentives are sometimes perverse. These include the strategic desire to be seen as eager to reform, material benefits to project participants, etc. More than mere "stakeholder consultation" is needed to address these problems, and in the case of the CoE, there are several exacerbating factors. One is that the fact that beneficiary countries are MSs is a double-edged sword; on one hand, it gives the CoE moral and political clout, but on the other hand, it limits to some extent how aggressive the CoE is willing to be. A second is that the ultimate constraining factor is political will, and a reform process defined largely in terms of training, capacity building, institution building and legislative reform (the justice sector would be a good example) cannot deliver impacts if the essential political will is not present or if the political dynamic is such that a commitment that was politically acceptable previously runs into an unexpected roadblock. Lack of adequate resources (itself in part a question of political will) can also impair sustainability (judicial sector reform in *Moldova*). However, there are also examples where salaries are adequate but true reform is still lacking (justice sector reform in *Armenia*).

Weak programming and design issues have been raised in looking at many Indicators, not only in this EQ, but in EQs 1 and 2, as well. These include poor use of the logframe approach, an orientation towards activities rather than outputs and results, insufficient use of Objectively Verifiable Indicators, and poorly carried out consultations with national stakeholders. We have at several points stated flatly that failure to live up to international good practice in impact evaluation as it moved in the direction of becoming a development implementation agency weakened the attractiveness of the CoE to the EU as an implementing partner.

Project monitoring has been found to be weak, e.g., in many legislative reform projects (an area of strength for the CoE and one for which beneficiaries have had high praise), it has been impossible to verify the link between advice provided and actual legislation enacted.

Training interventions were very positively evaluated early in the evaluation period but, towards the end, the need for a strategic approach to training was increasingly found to have given way to repetitive, ill-focused, insufficiently justified training. Elsewhere we commented that the emphasis on training seemed old-fashioned; it was broadly regarded as a good thing regardless of whether the need for it had been rigorously established, or even questioned. This was indirectly corroborated by one CoE Headquarters official who had worked in a country office (referring to Government): “*They were drowning in training.*” Much training was dissipated when the fundamental institutional and legislative reforms required to give it scope for application failed to materialise. Evaluations did not provide evidence to judge the sustainability of institution building.

All of this suggests that prospects for JP sustainability have often been poor. However, the judgment of poor sustainability needs to be supplemented by two comments. The first, often repeated in this evaluation, has to do with the differing approaches of the EC and CoE to impacts, which lie at the heart of sustainability. The CoE, as described elsewhere, is a process- and engagement-based organisation that responds to MS governments, not MS taxpayers (as is the case for the EU). A law passed is an impact in the CoE; if implementation is poor, this simply provides the rationale for a further cooperation project. All this suggests that, while the definitions may be the same on paper, the CoE has a softer interpretation of sustainability than does the EU. The second point, not unrelated, is that we have spoken here of JPs. In the area of broader cooperation, impacts may be more subtle, but have greater staying power. For example, monitoring work involves peer-to-peer communication between experts sharing a common professional culture and can have lasting impact by integrating national experts into a European or global network. The work of bodies such as the Parliamentary Assembly brings MS officials to Strasbourg for extended periods of time, with potential for changing attitudes and learning about new opportunities for improvement.

To summarise, most evidence has been negative on project strategy, logical structure, and PCM, especially evaluation, so it would be surprising if sustainability had been systematically ensured. Early in the evaluation period, which is to say earlier following accession to the CoE for most of the countries under evaluation, there was more enthusiasm for JPs than in the later years of the evaluation period. This suggests that initial commitments flagged, perhaps as countries realised that shortcomings in meeting commitments would not lead to drastic actions. The political will to sustain impacts, to utilise capacity formed, and to implement reforms enacted, was not always present.

At the programming stage, lack of stakeholder consultations, and duplication due to poor coordination at CoE headquarters, have been identified. There have been exceptions though, such as *Turkey*, where the State institutions were in charge of project formulation. The lack of involvement of civil society was everywhere noted. Projects have too often been activity- rather than result oriented, as a result of which, for example, in the later years of the evaluation period, some countries had been saturated by training but more was yet on offer.

On a more positive note, JPs, as well as other form of cooperation, have fostered ongoing engagement in a continuing process of monitoring adherence to commitments and responding with cooperation activities. Engagement of governments with the CoE, including peer-to-peer contacts through monitoring and participation in the Parliamentary Assembly, have lasting impacts at the individual level.

Findings at the country level brought some more illustrative examples of the above analysis:

- In *Serbia*, apart from continuity provided by some CoE staff, there appears to be lack of systematic lessons learning from one JP to another, and details of JPs managed by HQ are not in the knowledge of the Serbia office established since 2001. Field discussions saw some concerns expressed regarding sustainability of JPs and there is some sense that active engagement by CoE with stakeholders during JP delivery is not sustained after JPs end. Regional JPs administered from Strasbourg did not seem to benefit from Serbia Office presence at fora that relate to such JPs; for example, there is an absence of CoE from bi-annual Roma Action Plan Working Group meetings, where the Ministry of Human Rights suggests that CoE invites are not taken up due to capacity issues. This may be due to capacity pressures and the need to focus on current JPs. However, a general CoE office presence at such meetings would both enhance impact of past and future JPs, and could also serve as a means of contributing to CoE and EUD strategy formulation, programming etc. While links between JP activities and outputs and permanent CoE frameworks (monitoring mechanisms and treaty reporting etc) provide a certain degree of continuity, JPs are not accompanied by sustainability plans (linked to weak emphasis on M&E). The challenge to identify lessons from JPs several years past (except insofar as some individuals involved remain in their various positions) is indicative of this.

- In *Turkey*, the field mission discussions suggest a distinct lack of sustainability plans and formal mechanisms for gathering and documenting lessons learned and incorporating them into future programming. A difficulty identified is that at project conclusion end of activities (sometimes after necessary extensions) coincides with managers' contract ending. This has in some cases at least curtailed dissemination of results documenting of lessons learned for the benefit of follow-up projects. To some degree this is alleviated by CoE Office memory of some personnel, including staff rolling forward from one JP to another, and (during 2006-2010) the relative small scale of the CoE Office.
- In *Moldova*, the main concerns expressed regarding sustainability related to the possibility that the CoE's work in the Ministry of Justice may be interrupted for a significant period of time as a follow-on project goes out to competitive bid instead of being directly awarded to the CoE. Government expressed the fear that this might lead to a loss of progress in implementing reform.
- In *Armenia*, no evidence was found of sustainability planning. The specific problem of the School of Advocates, discussed under the next Indicator, arose not so much from a lack of planning as from inadequate local management capacity.

#### 7.4.2 I-742 Systematic dissemination of results of JPs among CoE Directorates and EC DGs

No information specific to this Indicator has been obtained. However, the fact that a key goal of the CoE re-organisation is a signal that dissemination has been less than optimal in the past. The new CoE evaluation unit has been engaged in a systematic effort to gather together all past JP evaluations and has found this a challenge, another piece of indirect evidence that results were not well disseminated. In Brussels as well, no evidence was seen of close coordination and information sharing from DG to DG. The sharing of CoE results with Brussels DGs through, for example, Activity Reports and Scoreboard Reports, is good.

#### 7.4.3 I-743 Smooth handover of project results to Local Stakeholders in Beneficiary Countries

Some evidence relating to this indicator has been gathered during the field missions, which suggest that the handover of project results to national beneficiaries did not represent a major problem over the evaluation period, especially for single-country JPs, with the exception of *Armenia*.

In *Serbia*, the handover of project results appears to work best where JPs are linked to an identified institution and strong local ownership, e.g. in the context of financial crime. However, for regional JPs and JPs that are more a series of ad hoc events with an array of participants this is less evident – though outputs such as translated materials are reported as being utilised post-project (e.g. with respect to media/freedom of expression). It is expected that CoE Headquarters restructuring will mean that, with appropriate resources, going forward, more sharing of lessons learned can take place, allowing for lessons from regional JPs to be transferred to country context, for example.

In *Turkey*, the strong local ownership of JPs, use of Steering Committees etc means that handover of project results is not problematic, though resources to take results forward are in some cases problematic.

In *Moldova*, the Support for democracy programme was able to support continuation of activities in the Ministry of Justice during a sector budget support hiatus. Government has expressed concern that the time-lag associated with a competitive bidding process may have impacts on sustainability (Government would prefer that the CoE be given a direct award in order to continue its work).

Serious problems of continuity and handover arose in *Armenia* and have been alluded to at several points. The School for Advocates, supported by the Access to Justice JP, found itself without premises due to difficulties with the EUD blames squarely on inadequate CoE project management and, in particular, poor communication between Strasbourg and the field. While an interim solution has been found, the EUD is dissatisfied and concerned that sustainability may be seriously impaired.

### 7.5 JC 7.5 Degree to which EC political visibility has been ensured

**EC visibility** in CoE JPs is in some senses an intractable problem. The similarity between the two organisations, the confusion between the Council of Europe and the Council of the European Union, and the similarity of the organisations' logos defy efforts to solve the problem. These **structural problems** are much more important than issues of whose logo comes first, the order of speakers at JP events, etc., which are trivial in comparison. In responding to the survey, EUDs often expressed dissatisfaction with CoE visibility strategy. One EUD pointed out a problem that presumably was encoun-



tered elsewhere, as well, namely that the JP was merged, in beneficiaries' eyes, with the rest of the CoE's engagement with the country.

Despite these problems, half of EUDs felt that final beneficiaries and beneficiary country government officials were **aware of the EU's involvement to at least some extent** – and that visibility among these stakeholders was higher than among EU MSs and other donors. Moreover, there was a strong feeling among EUDs that the **visibility situation had improved** between the early part of the evaluation period and the end.

Evidence from field missions was mixed, but EU visibility did not emerge as a burning issue at any EUD. Size of country might be a factor – some problems of visibility were identified in Turkey and Serbia, but not in Armenia or Moldova.

The evidence seen so far does not permit a strong conclusion, except that visibility is an issue that will never go away and requires constant attention. Guidelines related to obvious procedures such as putting the EU logo on the project office door were no doubt followed in JPs as everywhere else. The actual impact of such guidelines on visibility is to be doubted, but there is some evidence from the EUD survey that beneficiaries were aware of the role of the EC. Nonetheless, EUDs generally identified EC visibility as a weak point of JPs.

### 7.5.1 I-751 Wide range of communication tools used to promote EU political visibility

Evaluations of past JPs, responses to the EUD survey, and responses to the EEAS survey have all identified EU visibility as a weak point of JPs. None of this evidence directly refers to the range of tools used, but the impression left is that these have been largely traditional – logos, web pages, invitations to events, etc. As we report in more detail in the next Indicator, one of the challenges is that the organisations are so similar in beneficiaries' minds that it is difficult to get across the fact that the EC has played separate roles. This, rather than failure to respect EC guidelines on visibility, would appear to be most to blame.

#### 7.5.1.1 Evidence

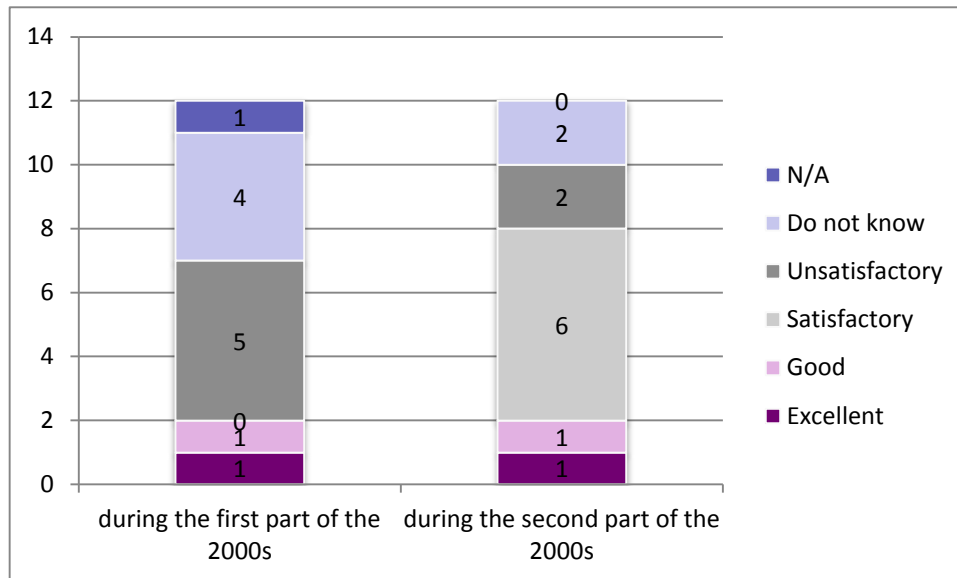
Most evidence concerns the level of visibility itself, not the tools used to achieve it, but the impression left is that visibility is mostly perceived in traditional terms: logos, invitations to events, order of speakers, etc.

Evaluations generally say visibility to be a weak point of cooperation with the CoE. For example:

- *South Caucasus democratic stability (2002-2004)*. The Azerbaijan country note of the 2005 evaluation found that no effective distinction was made between JP events and events arising from the bilateral relationship between the CoE and Azerbaijan. Not only diminish visibility, it also caused practical difficulties for the evaluation itself, as it was difficult to disentangle impacts. The note described the visibility strategy as “weak,” with the result that few government officials were aware of the role of the EC and project impact was “marginalised.”
- *Moldova Support to continued democratic reforms (2004-2006)*. The project final evaluation report 2007 stated that all called-for visibility measures were implemented but that it was simply impossible, at the lower beneficiary level, to get across the difference between the EU and the CoE.
- *Network of Schools of Political Studies (2006-2008)*. The EC project evaluation (2007) found that the fact that a senior EC representative attended the Strasbourg Summer University guaranteed EU visibility.

Note, however, that these are all region-level JPs, and may not be representative. EUDs responding to the survey generally saw visibility as a weak point of cooperation with the CoE. For example, EUD *Moldova* felt that guidelines were not strictly adhered to, EUD *Turkey* felt that the visibility strategy was shallow (focusing on media involvement in events), and EUD *Azerbaijan* found visibility materials lacking. There does appear to have been improvement over the evaluation period, however, as there was a drop in the number of EUDs describing visibility as “unsatisfactory” and a corresponding rise in the number regarding it as “satisfactory” between the two halves of the decade. Among the countries noting improvement were *Russia* and *Turkey*.

Figure 25: EUD survey results: Perception of EUD staff of the change in the visibility of EC-CoE JPs in the evaluation period



Source: EUD survey

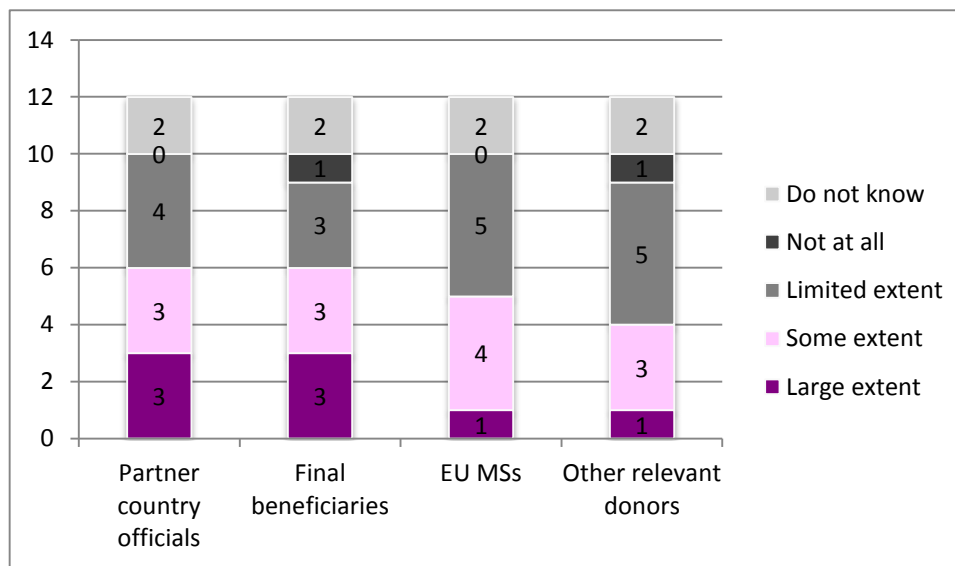
Responses to the EEAS survey were almost all more negative than responses to the EUD survey implemented by this evaluation. *FYROM* (2008) reported that there was little national appreciation of EU funding of regional JPs, *Russia* (2008) saw need to arrive at a common view on application of guidelines, and *Serbia* (2008) reported that guidelines were not respected. Even EUD *Ukraine* (2008), which ranked visibility as “excellent” in its response to the EUD survey, cited problems ensuring full visibility for the EC.

During field missions, no problems were identified with the basic application of the visibility guidelines, such as the use of EU logo or the mention of the source of funding on project-related materials. In *Turkey*, the EUD reports a lack of consistent promotion of EU visibility in CoE oral presentations, while acknowledging that written JP materials are clear as to the source of funding. In *Armenia*, the EUD Communications Officer developed a standard template for visibility that was adhered to by CoE.

### 7.5.2 I-752 Overall level of overlap of the CoE and EU image decreased, stakeholders recognise different forms and functions of the two organisations

Ensuring that beneficiaries perceive the difference between the two organisations is a challenging task. The confusion between Council of Europe and European Council (which also gives rise to difficulties of translation) and the similarity of the two organisations' logos are only the beginning of the problem. However, the EUD survey suggests that EU visibility among partner country officials and final beneficiaries is higher than among other donors and EU MSs. This is corroborated by the 2009 Synthesis Report of the EEAS survey, which reported that there had been an improvement and reduction in the number of complaints regarding visibility between 2008 and 2009.

Figure 26: EUD survey results: Perception of EUD staff of EU visibility with different JP stakeholders



Source: EUD survey

In *Turkey* there was some degree of confusion (among state and non-state actors) identified during the field mission regarding the precise nature and role of the Council of Europe, European Commission and the EUD.

In *Serbia* field discussions suggested that knowledge and understanding of the JP's among some major local stakeholders is limited to those actively involved in JP delivery. This may, in part, be due to passage of time and challenges recalling JPs, but it seems to be more fundamental than this. The pool of stakeholders met in the field visit all evidenced strong awareness of the distinct nature of CoE and the EU, but it is not possible to state to what degree this is attributable to JPs as opposed to media coverage etc.

In *Moldova*, knowledge among beneficiaries of the two distinct institutions was adequate.

In *Armenia*, beneficiaries as well as civil society representatives were strongly aware that the two organisations had differing identities and that, in the case of JPs, one financed while the other implemented.

### 7.5.3 I-753 Level of knowledge and understanding of the JP's among Major Local Stakeholders in the Partner Countries

Findings on this Indicator are mainly based on the interviews with stakeholders in the field.

In *Turkey* overall, the level of knowledge and understanding of the JPs among key local stakeholders (beyond implementing partners) was found to be weak, in particular with civil society actors who (given their areas of focus) should be expected to be aware of JPs. To some degree the passage of time may explain this knowledge gap but in the case of recent and current JPs there is a need for greater communication so that rights-holders (via representative NGOs etc) are more aware of capacity building and other reform commitments of duty-bearers. In principle this should enhance impact (& project M&E) by ensuring that intended JP outcomes are factored into such civil society monitoring as takes place.

In *Serbia* in general, field discussions suggested that knowledge and understanding of the JP's among some major local stakeholders is limited to those actively involved in JP delivery.

In *Moldova*, the basics of visibility – logos, etc. – were scrupulously observed, but that is generally the case. In general, though, beneficiaries were often unaware of the EU financing of the CoE trainings from which they benefitted. To some extent this is because the EU Delegation itself is a fairly recent arrival in Chisinau and is still extremely small. While knowledge of current JPs was relatively strong, and very strong among beneficiaries, knowledge of past JPs was poor.

In *Armenia*, no specific information was gathered. Knowledge of the EU and CoE as institutions was general, as was familiarity with their activities. The ability to identify specific JPs was, however, limited to beneficiaries and, in the case of past JPs, was very limited.

## 8 EQ8: To what extent has the cooperation with the CoE, in particular via the channelling of funds, helped to enhance complementarity and synergies between the EC and the CoE?

### 8.1 JC 8.1 Degree to which CoE country strategies were aligned and coordinated with the EC country strategies

We approached this JC on the basis of three Indicators: identification of similar strategic priorities in CoE and EC strategy documents (Indicator I-811), identification of common needs and application to cooperation (Indicator I-812), and CoE contribution to high-level EU strategy setting (Indicator I-113),

A rigorous comparison of strategic country priorities between the CoE and EU in the areas of human rights, rule of law and democracy was not possible because of the **unavailability of country strategy documents on the CoE side for most countries**. In *Ukraine* and *Armenia*, for which the CoE Action Plans were available to the evaluation team, priorities in the key areas were aligned with the EU priorities for the countries, in fact, most of the funding for CoE cooperation in this area came from the EU. In general, Strasbourg and Brussels interviews suggest that the **main strategic priorities of the EC and CoE at country level are relatively well aligned**. Exceptions to alignment of priorities may occur in instances where, as reported, JP formulation is done quickly and on the basis of availability of funds. In Ukraine, there appears to have been relatively good communication between the EU Delegation and the CoE as the CoE was elaborating their Action Plan, whereas in *Armenia*, the Action Plan (essentially a list of projects that the CoE wishes to fund) was far advanced before the EU Delegation saw it.

How aggressively the CoE pursues its priorities with government is an issue that we discuss under JC 8.5, where some evidence is advanced that EUDs feel the CoE is proceeding at their own pace rather than that expected of the EC.

The lack of CoE strategy documents also makes it difficult to analyse Indicator I-812. In some countries, there **appear to be mechanisms for the CoE and EC to coordinate strategy, but these are for the most part informal**. Concerns raising donor (EU)-driven programmes have been raised. However, as discussed under I-222 and I-812, the EU makes extensive use of the outputs of CoE monitoring bodies as well as reports such as those from PACE, the Commissioner for Human Rights, and the Venice Commission, in its analysis of country needs, and consultations between the organisations at country level are common (e.g., in *Moldova*). It is possible that, in most cases, a tighter coordination process would not greatly change cooperation programmes.

#### 8.1.1 I-811 EU and CoE Country strategic documents identify similar priorities in the areas of human rights, rule of law, democracy

The evidence base relating to this Indicator has been affected by the fact that while EU strategic documents regarding external cooperation are publicly available for all countries, including policy documents, country strategies, indicative programmes and operative action programmes, comparable documents are not published by the CoE, and during interviews in Strasbourg these were referred to as "internal". The institution of public Action Plans (to be produced by the Directorate General for Programme) is a relatively new feature designed to improve coordination across various forms of cooperation. Thus, only one document of this type was available to the evaluation team at the Desk Phase – the CoE Action Plan for Ukraine 2008-2011<sup>114</sup>, which is published online.<sup>115</sup> The CoE AP for Ukraine 2008-2011 identifies six areas of cooperation:

- (i) Protection and promotion of human rights; the priorities identified in this area are a) strengthening capacity to implement ECHR; b) combating ill-treatment and impunity; and c) media legislative framework, professional code of ethics, and dialogue between media, state and civil society.
- (ii) Rule of law; the priorities identified are a) signature and/or ratification CoE legal instruments; b) independence and functioning of the judicial system; and c) fight against corruption, organised crime and terrorism.

<sup>114</sup> <https://wcd.coe.int/ViewDoc.jsp?id=1317485&Site=CM>

<sup>115</sup> The following, CoE Action Plan for Ukraine 2011-2014, "A Partnership for Reform" is also available. This however does not concern the period under evaluation.  
[http://www.coe.int/portal/c/document\\_library/get\\_file?uuid=24875c00-6299-4c4f-9bd5-ad47a56d5f1e&groupId=10227](http://www.coe.int/portal/c/document_library/get_file?uuid=24875c00-6299-4c4f-9bd5-ad47a56d5f1e&groupId=10227)

- (iii) Elections; the priorities identified are a) electoral legislation and practice; and b) public discussions on international standards
- (iv) Promoting the democratic process, civic participation and good governance at local and regional levels; the priorities identified are a) local democracy; b) civil society; and c) human capacity building.
- (v) Promoting Social Cohesion; the priorities identified are a) European Social Charter; b) European Code of social security; c) Social cohesion awareness-raising; d) citizens' and patients' participation in the decision-making process affecting health care; e) Labour migrants; f) Council of Europe Disability Action Plan; and g) National Plan for Roma.
- (vi) Intercultural Dialogue, Culture, Education, Youth and Sport; the priorities identified are: a) Intercultural dialogue through education; b) Protection and promotion of cultural and natural diversity; c) Youth policies; and d) Sport.

The Rule of Law priority is the one that received the highest budget allocation in the CoE AP – total of 16,5 mil €, constituting 65% of budget for the four year action plan. EU funding through JPs has funded about 80% of the Action Plan implementation.

When we in turn compare this with the priorities of the EU in Ukraine for the same period, we find similar priorities identified in the key areas of CoE implementation, especially for the area of Rule of Law. The EU-Ukraine Action Plan<sup>116</sup>, adopted in February 2005, establishes democracy, rule of law, human rights and fundamental freedoms as one of the priority areas for action. The Revised EU-Ukraine Action Plan on Freedom, Security and Justice<sup>117</sup>, adopted in 2007, further details the areas of cooperation in justice and home affairs, including corruption and money laundering, reform of the judiciary, detention and imprisonment.

The ENPI Ukraine Country Strategy Paper 2007-2013<sup>118</sup> outlines three priority areas:

- Priority Area 1: Support for Democratic Development and Good Governance
  - Sub-priority 1: Public administration reform and public finance management
  - Sub-priority 2: Rule of law and judicial reform
  - Sub-priority 3: Human rights, civil society development and local government
  - Sub-priority 4: Education, science and people-to-people contacts/exchanges
- Priority Area 2: Support for Regulatory Reform and Administrative Capacity Building<sup>119</sup>
- Priority Area 3: Support for Infrastructure Development<sup>120</sup>

Context, justifications, specific objectives and expected results for these priority areas and sub-priorities are further developed ENPI Ukraine National Indicative Programme 2007-2010<sup>121</sup>. The indicative budget for the NIP implementation is 494 mil €, with 148 mil € (30%) allocated for Priority area 1.

Even though the priorities of the two organisations for cooperation with Ukraine are aligned, it is difficult to classify the CoE Action Plan for Ukraine 2008-2011 as a strategic document in the usual/EU sense. The document contains relatively little in terms of situation analysis based on which the priorities for cooperation would be identified. The AP also refers in fairly general terms to issues identified by the CoE monitoring bodies in the country to form a base for the identification of priorities. However, the analysis of these issues is often missing or inadequate – for instance in justifying priority one (human rights) the AP reads: *“Ukraine is one of the countries with the highest number of applications to the ECtHR. Typical issues of concern are: the length of proceedings in civil and criminal cases, non-execution of domestic judicial decisions, violations of the requirement of legal certainty and judicial independence, length of pre-trial detention and detention-related problems (quality of premises, medical care, etc.). Because of this, the capacity to implement the Convention must be strengthened. Efforts to train key professional groups on the ECHR must be continued.”*<sup>122</sup> The conclusion that training of key professionals is the solution to the problems identified through monitoring is not substantiated

<sup>116</sup> [http://ec.europa.eu/world/enp/pdf/action\\_plans/ukraine\\_enp\\_ap\\_final\\_en.pdf](http://ec.europa.eu/world/enp/pdf/action_plans/ukraine_enp_ap_final_en.pdf)

<sup>117</sup> [http://ec.europa.eu/world/enp/pdf/action\\_plans/ukraine\\_enp\\_ap\\_jls-rev\\_en.pdf](http://ec.europa.eu/world/enp/pdf/action_plans/ukraine_enp_ap_jls-rev_en.pdf)

<sup>118</sup> [http://ec.europa.eu/world/enp/pdf/country/enpi\\_csp\\_ukraine\\_en.pdf](http://ec.europa.eu/world/enp/pdf/country/enpi_csp_ukraine_en.pdf)

<sup>119</sup> Sub-priority 1: Promoting mutual trade, improving the investment climate and strengthening social reform; Sub-priority 2: Sector-specific regulatory aspects

<sup>120</sup> Sub-priority 1: (non-nuclear) Energy; Sub-priority 2: Transport; Sub-priority 3: Environment; Sub-priority 4: Border management and migration including re-admission related issues

<sup>121</sup> [http://ec.europa.eu/world/enp/pdf/country/enpi\\_nip\\_ukraine\\_en.pdf](http://ec.europa.eu/world/enp/pdf/country/enpi_nip_ukraine_en.pdf)

<sup>122</sup> CoE Action Plan for Ukraine 2008-2011, p. 4



by any arguments or analysis, and as discussed in EQs 3-6, training is not necessarily the solution in all contexts.

The priority areas are very wide, and in a sense cover all areas in which CoE is globally involved. This is narrowed down not by strategic analysis of the country needs, but by listing projects which will be implemented under the individual areas and the projects' objectives. The individual projects' objectives, together with the funding planned, then give the overview of the actual priorities – Rule of Law projects account of 65% of the budget of planned activities, while the smallest area, Elections, only constitutes 1%, and three other areas account to less than 10% of the total AP budget each. In this sense, the Action Plan resonates with the tendency we have identified in programme formulation and evaluation to think in terms of bundles of activities rather than in terms of an overarching strategy.

In an answer to the EEAS survey from 2008, the EUD Ukraine noted its contribution to the CoE AP, indicating some process of priority harmonisation between the organisations thanks to constant dialogue coordinating and harmonising on-going and future activities, specifically citing involvement in elaboration of the CoE Action Plan.<sup>123</sup>

However, out of the total 43 projects proposed in the AP, more than a half (25) projects were already on-going when the Action Plan was adopted.<sup>124</sup> This may imply continuity of priorities between the subsequent Action Plans (AP 2005-2008 is briefly referred to in the document, but in its absence it cannot be assessed to what extent the priorities changed). With only general discussion of country needs, it is difficult to avoid the conclusion that priorities were based on activities being (and to be) implemented, and no the other way around.

The internal CoE evaluation of the AP Ukraine preparation process<sup>125</sup> also suggests that strategy planning in the CoE has not been sufficiently formalised, and that cooperation activities pursued by operational DGs were not necessarily based on a set strategy: *"The evaluators were not able to retrieve any formalised procedure detailing the various processes, roles and responsibilities for the preparation of the Action Plan. The process seemed to follow a consolidated practice, but was never formalised and shared with internal and external stakeholders. The operational Directorates Generals mentioned that the criteria for retaining/discarding proposals were not always clear."*

Some findings from the CoE field offices reports point towards consultative processes having been carried out in establishing frameworks for cooperation, but the findings here are also quite limited:

*"Staff members from the Directorate of Strategic Planning, together with the SRSG, held on 18 July [2005] several meetings with the Armenian authorities (Central Electoral Commission, Ministry of Justice, Ministry of Foreign Affairs, Office of the Prosecutor-General, Human Rights Defender) and representatives of the international community (Ambassadors from EU States, OSCE) to develop a framework for co-operation between the Council of Europe and Armenia with a view to bringing legislation and practice into line with CoE statutory commitments and European (CoE/EU) standards."*<sup>126</sup>

During the field phase, the evaluation team acquired another CoE country programme related to the period under evaluation, the Armenia Co-operation Programming Document 2009-2011<sup>127</sup>. The structure and content of the document is similar to the Ukraine AP (above), with country analysis and ties to CoE monitoring findings in different areas arguably somewhat stronger. This document presents 25 projects, 13 of them already on-going at the time of the adoption of the programme. Similarly as for Ukraine, the priorities identified in the CoE Armenia programme are broadly in line with EU priority areas for the same period, as presented e.g. in ENPI Armenia Country Strategy Paper 2007-2013<sup>128</sup> or ENPI Armenia National Indicative Programme 2007-2010<sup>129</sup>.

<sup>123</sup> EEAS survey to the EUDs, Ukraine 2008

<sup>124</sup> Evaluation (2011)4 DRAFT Evaluation Report on the Council Of Europe Action Plan for Ukraine 2008-2011, Phase I: Preparation Process, Council of Europe, Directorate of Internal Oversight, June 2011

<sup>125</sup> Evaluation (2011)4 DRAFT Evaluation Report on the Council Of Europe Action Plan for Ukraine 2008-2011, Phase I: Preparation Process, Council of Europe, Directorate of Internal Oversight, June 2011

<sup>126</sup> SG/Inf(2005)17, Reports from the Council of Europe Field Offices and Other Outposts, July, August 2005

<sup>127</sup> DSP(2009) 6 Eng rev2, DRAFT Armenia Co-operation Programming Document 2009 – 2011, 16 October 2009; and DSP(2009) 6 Eng rev2 corr, DRAFT Armenia Co-operation Programming Document 2009 – 2011 corrigendum, 16 November 2009

<sup>128</sup> Main Priority Areas include: Strengthening of democratic structures, of the rule of law; Strengthening of respect for human rights and fundamental freedoms; Encourage further economic development, enhance poverty reduction efforts and social cohesion

<sup>129</sup> Priority area 1: Support for strengthening of democratic structures and good governance: Sub-priorities: Rule of law and reform of the judiciary; Public administration reform, including local self-government / public finance management /public internal financial control and external audit/ fight against corruption; Human rights, fundamental freedoms, civil society, people to people contacts

Evidence from CoE Headquarters interviews, presented above in answering EQs 1 and 2, generally supported the view that there are good lines of communication between CoE field staff and EUDs. In addition, we identified the major input into EU strategic planning of CoE monitoring reports. Combined with evidence from Ukraine, this suggests that, in general, country priorities of the two organisations are reasonably well aligned.

The CoE has also developed follow-up Action Plans for both Ukraine (2011-2014) and Armenia (2012-2014). These documents fall well beyond the period for this evaluation; a couple of points are however noted. First, the CoE is moving away from internal documents to documents that are published and promoted. Second, these two documents are strikingly different in their form, suggesting that the CoE has not adopted a unified approach to the country programming documents. The AP for Armenia (2012-2014) is a list of 19 projects planned or on-going in the key CoE areas (similar to the previous Armenia AP format). Justification for these projects is provided through further unspecified reference to CoE conventions, monitoring reports and other documents, and/or through reference to partner country requirements. This list of projects is followed by a table summarising the funding needed and already secured to implement them. The EU Delegation in Armenia characterised the Action Plan (2012-2014) as a “shopping list.” By contrast, the Action Plan for Ukraine (2011-2014) discusses the Ukrainian reform agenda, the CoE action in Ukraine, and sets out general objectives for the AP within the key sectors of intervention without presenting specific projects to be implemented. Similarly to Armenia AP, information on secured and additional required funds is also presented, suggesting that a list of projects drafted under this AP already exists, even if it is not present in the AP itself.<sup>130</sup> In addition, the Ukraine AP financial information also contains a budget for an evaluation of the AP (under ‘secured’ funds), which is not present in the Armenia AP.

In summary, a rigorous comparison of strategic priorities of cooperation for CoE countries between the CoE and EU in the areas of human rights, rule of law and democracy over the evaluation period was not possible, due to the unavailability of these documents on the CoE side for most countries<sup>131</sup>. In Ukraine and Armenia, where CoE Action Plans are available, the priorities in the key areas are aligned with the EU priorities for the countries, and for the large part, the funding for AP in these areas is actually coming from the EU.

It is not possible to generalise based on limited number of documents available.. The available documents, Strasbourg interviews, interviews from the field and the incorporation of CoE monitoring into EU strategic planning suggest, however, that alignment is likely to be adequate. Exceptions may be found in cases where there was ad hoc, hasty formulation of Joint Programmes in response to EU requests (the Bosnia penitentiary JP may be an example of this).

Moreover, it is important to read this Indicator analysis in conjunction with that in I-832 and I-835 on whether EU and CoE strategic priorities are merged on an equitable basis in JPs. In analysing that Indicator, we present evidence that several EUDs feel that, in effect, the CoE has lost sight of the fact that it is meant to be promoting EU policy priorities with EU financing, not CoE policy priorities with EU financing.

### **8.1.2 I-812 Level of identification of common needs and strategic application of results to cooperation**

Analysis of this indicator, like the one preceding it (I-811), is weakened by the fact that we lack extensive evidence of the way the CoE identified country needs (apart from normal monitoring) and applied such analysis to strategies of cooperation at country level during the evaluation period. We do know, in general, that cooperation priorities are set in dialogue with government (the CoE cannot tell a country what programmes it needs), and that an attempt is made to ensure that cooperation followed from monitoring and that the overarching goal is helping countries to meet their commitments to European standards. As we established in I-222 (EU and CoE consult in the process of producing country assessments and monitoring reports), there is evidence that there is consultation between the two organisations in the production of country assessments. To some extent, the EC participates in monitoring, but Strasbourg Headquarters interviews revealed a desire that this participation be strengthened. Monitoring reports of various CoE bodies enter EU analysis of country needs, as evidenced by abundant citation in EU strategic documents, and have a strong impact on cooperation priorities. This can be illustrated in the case of Ukraine.

<sup>130</sup> The AP merely states: Total number of projects: 51; Total Action Plan Budget: € 22 041 375

<sup>131</sup> A reference to another similar document - Azerbaijan: Draft Co-operation Programming Document for 2009-2010, DSP(2009)7 – can be found e.g. in GR-DEM(2009)7 9 June 2009, but the actual document is not publicly available. It is likely that other country programmes for the latter years of the evaluation period were developed by the CoE, but they were not available to the evaluation team.

The EU-Ukraine Action Plan<sup>132</sup> adopted in 2005 frequently refers to the various standards and legal instruments of the CoE and other CoE action, such as recommendations of monitoring bodies and even EC-CoE Joint Programmes:

- *Continue the reform of the prosecution system in accordance with the relevant Council of Europe Action Plan (and supported by the European Commission/ Council of Europe Joint Programme);*
- *Enhance training of judges, prosecutors and officials in judiciary, administration, police and prisons, in particular on human rights issues (and supported by the European Commission/Council of Europe Joint Programme);*
- *Join the Council of Europe Group of States Against Corruption (GRECO) and implement relevant recommendations, including a revision of the Ukrainian national strategy for the fight against corruption;*
- *Promote adherence to and ensure implementation of core UN and Council of Europe Conventions and related optional protocols;*
- *Further improve and enforce the legal and administrative framework for freedom of media, taking into account relevant Council of Europe recommendations.*

The Revised EU-Ukraine Action Plan on Freedom, Security and Justice<sup>133</sup> of 2007 also highlights the priorities for ratification and implementation of important CoE conventions, and further refers to the recommendations of various CoE bodies:

- *Ratify and implement the Council of Europe Convention of 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data;*
- *Implement of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime as well as the UN Convention for the Suppression of the Financing of Terrorism*
- *Ratify and implement the Criminal Law Convention of the Council of Europe, Additional Protocol to the Criminal Law Convention and UN Convention against Corruption*
- *Continue to cooperate within the Moneyval committee of the Council of Europe to ensure continuing high standards in the mutual evaluation process of all members and in typologies work;*
- *Implement the new anti-corruption strategy substantially reducing the level of corruption along the lines recommended by experts of the Council of Europe;*
- *Review the appointment system for the Constitutional Court in line with the recommendations of the Council of Europe's Venice Commission;*
- *Take decisive steps in reform of the prosecution system in accordance with the relevant Council of Europe Action Plan;*
- *Encourage Ukraine's reform of its penitentiary system in line with the European Prison Rules (Council of Europe Recommendation No. R(87)3 of 12 February 1987 in the amended version of 11 January 2006) and take decisive steps to address the issue of ill-treatment of persons in law enforcement custody.*

In turn, the CoE Action Plan for Ukraine 2008-2011 refers to the Revised EU-Ukraine Action Plan on Freedom, Security and Justice in its section on the 'Rule of Law' priority. The CoE AP refers to one of the overall objectives of the EU document "*Continue work with Ukraine to ensure the application of the principles of rule of law, independence and efficiency of the judiciary including access to justice and good governance.*", and specifically to the area of Justice: "*This revised Action Plan sets out a number of agreed areas and objectives for co-operation and implementation, which includes justice issues. It further develops Point IV Justice and the actions which should be undertaken in order to solve the problems of the judiciary in Ukraine.*"

However, evidence does not indicate that there is active collaboration between the two organisations identifying a shared strategic approach to the cooperation process. In the case of Ukraine, the findings suggest that the EU uses CoE outputs and consultations with the CoE extensively in setting priorities in the relevant areas. It then seeks to achieve set objectives by funding specific programmes and projects, some of which are implemented by the CoE. This suggests a healthy input from the CoE to EU priority setting. However, while for the EU the CoE is one of many implementing agencies, for the CoE the funding from the EC represents the bulk of resources available for the priority/country. This may

<sup>132</sup> [http://ec.europa.eu/world/enp/pdf/action\\_plans/ukraine\\_enp\\_ap\\_final\\_en.pdf](http://ec.europa.eu/world/enp/pdf/action_plans/ukraine_enp_ap_final_en.pdf)

<sup>133</sup> [http://ec.europa.eu/world/enp/pdf/action\\_plans/ukraine\\_enp\\_ap\\_jls-rev\\_en.pdf](http://ec.europa.eu/world/enp/pdf/action_plans/ukraine_enp_ap_jls-rev_en.pdf)

lead to CoE strategy for cooperation being activity (funding) driven more than based on its own analysis of needs, as discussed above (I-811) in the case of Ukraine.

To complete the circle, the evaluation of the preparation process of the CoE AP Ukraine<sup>134</sup> noted that the EU made use of the CoE AP progress reports: “*The progress reports on the Ukraine Action Plan informed the [EU] Association Agenda priorities and discussions.*” (No further details provided). However, caution is needed here, because we have already alluded to the sentiment, revealed in Strasbourg interviews, that JPs are sometimes driven by last-minute EU requests based on the unexpected availability of funds. A theme that emerged repeatedly in Strasbourg was also that, as part of the reform and re-organisation, cooperation should become less donor (EU) driven (fairly clear evidence that it is regarded as currently too donor-driven), in order to serve MS interests better. Part of the background to this, although not prominently mentioned, is that countries sometimes welcome JPs when they are available, even though their commitment to the actual objectives is weak.

This documentary evidence has been complemented by the responses of the EUDs in the survey and in the field. Five EUDs reported that there are mechanisms for coordinating strategies between the EC and the CoE in the area of human rights, rule of law, and democracy. Most of the times these mechanisms involve other donors present in the country, as well, in the context of donor coordination meetings. On the other hand, the same number of Delegations reported no mechanisms for strategy coordination between the EC and CoE. Turkey reports that in the absence of strategy coordination, CoE monitoring reports are a source of valuable information for strategy making. Two Delegations did not have any knowledge on the matter. CoE Headquarters interviews revealed concern about weak EUD capacity, especially in political affairs, as well as high turnover; however, it must also be remembered that, over the evaluation period, the field capacity of the CoE itself was a source of concern (now being addressed via reform and reorganisation).

At country level, the EUD Armenia expressed disappointment for the lack of their inclusion in the preparation of the above-mentioned current CoE-Armenia Action Plan (2012-2014). The small size of the CoE field presence in Armenia may also have limited the degree of strategic coordination possible. In Moldova, as well, the EU Delegation starkly contrasted the high degree of current communication and coordination with the relative dearth before the strengthening of the CoE Country Office.

Reports from the CoE field offices confirmed various coordination meetings with EU Delegation representatives taking place throughout the evaluation period, often with the presence of other donors.

In summary, in some countries, there are reported to be active mechanisms for strategy coordination; in others there are not. Evidence points to this process not being formalised and strategic. Concerns raising donor (EU)-driven programmes have been raised. However, the EU makes good use of CoE analysis in setting its own priorities, and it is possible that, in most cases, a tighter coordination process would not greatly change cooperation programmes.

### 8.1.3 I-813 CoE contributes to high-level EU strategy setting regarding cooperation goals in the areas of democracy, rule of law, and human rights in countries targeted by cooperation programmes

As discussed in I-222 and I-812, the EU makes extensive use of the outputs of CoE monitoring bodies as well as reports such as those from PACE, the Commissioner for Human Rights, and the Venice Commission, in its analysis of country needs, and consultations between the organisations at country level are common. No further evidence of direct contribution of the CoE to EU strategy setting has been found.

## 8.2 JC 8.2 Degree to which cooperation between EC and CoE has facilitated complementarity of JPs with EC other external assistance programmes

JP project documents often refer to other programmes and projects in the area, and there is evidence of adequate **communication and coordination among donors in the field**, but this is a different issue than complementarity between different EC programmes. Several EUD survey responses paint a positive picture of coordination between different EC programmes. This would concern only programmes for which the EUD is responsible so, for example, does not tell us much about coordination of the multi-country **regional EC-CoE JPs** that have played such an important role. Since they were formulated in Brussels and Strasbourg and managed from Strasbourg, it is not surprising that there was little coordination either with country-level EU-CoE Joint Programmes or with other EC-funded external assistance programmes. The presence of a CoE project manager responsible for the country-

<sup>134</sup> Evaluation (2011)4 DRAFT Evaluation Report on the Council Of Europe Action Plan for Ukraine 2008-2011, Phase I: Preparation Process, Council of Europe, Directorate of Internal Oversight, June 2011



component of a regional JP was helpful. In *Armenia*, the field mission found that there was perhaps complementarity between EU-CoE JPs and other EU interventions, but this was serendipitous, not planned, with one focused on training and the other on policy advice. In *Moldova*, the Support for democracy JP was able to interact well with EC sector budget support to the Ministry of Justice.

### 8.2.1 I-821 JP project documents refer to other external assistance programmes

JP documents refer in many cases to other programmes implemented in the thematic area by other donors, including the EC, often in general terms. The CoE also refers to its presence in donor coordination meetings in the sectors where it is involved in implementation. However, it is one thing to name other active projects/programmes when designing the JP, and another to actually ensure coordination, avoid overlap, and encourage strategic cooperation between programmes. As the progress report for on-going JP *Access to justice in Armenia* notes: “*Many other judiciary projects funded by various donors are currently being carried out in Armenia. It is one of the challenges to keep track of their work, exchange information and ideas to avoid overlapping and increase their impact and visibility. Co-operation with others allows to make the donors’ voice more heard.*” We also found (e.g., EQs 3, 5, and 6) that the multiplicity of donors active in countries such as Bosnia makes it difficult to assess impact. It presumably also raises issues of coordination, complementarity, and synergies.

However, the responses from the EUDs in the survey allay this concern to some extent by suggesting that the EUDs themselves ensure the complementarity of JPs to other programmes being implemented in the sector.

*“When agreeing on joint activities, a careful analysis is done on what the EC is implementing or will implement as well as what other donors are currently undertaken in the fields concerned.”* (EEAS survey, Russia 2008)

*“It can happen that issues addressed through bi-lateral projects between Turkey and individual European countries are addressed in projects financed by the EC and implemented with the CoE. To avoid this we seek to improve information flow between the EC and the CoE as well as the EC and other European countries with a view to receive more regular and timely information on project activities and outputs.”* (EEAS survey, Turkey 2008)

Such coordination can of course only be done for JPs for which EUDs are responsible, which would in most cases be the JPs implemented solely in one country. Substantial evidence has not been found regarding the way regional JPs have been ensuring their coordination with other programmes. Some scattered examples of multi-country project coordination are given in the accompanying box, but this is not systematic evidence. Some field missions indicated that, since regional programmes are essentially conceived and managed in Brussels and Strasbourg, both EUDs and CoE Country Offices are often not well informed. This can lead to incidents of confusion, as when a regional JP event is held and the EUDs / CoE Country Offices are not informed until the last minute, or receive no meaningful briefing.

#### Box 23: Examples of JP coordination with other external assistance projects

*South Caucasus Democratic stability (2002-2004) – Azerbaijan evaluation country note*

The evaluation of the JP identified problems in JP coordination with other programmes in Azerbaijan: “*The necessity to coordinate the efforts of these organizations with those undertaken by CoE/EC was not addressed in project documents which did not allow the effect and impact of the work done to be more than moderate. Besides, it resulted in planning/designing the similar activities as other donors did within the same intervention area. This factor led to many duplications/overlap especially in criminal and judicial fields’ reforms on one hand, and minimization of the effect and impact of the inputs of the donors on another hand.*” (Evaluation report 2005)

*Programme against corruption, money laundering and terrorist financing in Moldova (MOLICO) (2006-2009)*

The evaluation report found that the coordination of the JP with other programmes was fairly successfully managed: “*Coordination with other donors and international organisations on the ground appears to have been generally good, with a few initial problems with regards to the US-funded Millennium Challenge Country Threshold Programme (CTP) having been resolved quickly; eventually, the project even had a number of joint events and activities with CTP. There might have been scope for more regular, informal contacts with other organisations working on related areas. For example, UNDP is working, through EUBAM, with some parts of the law enforcement sector (including on anti-corruption measures), representatives of which have also been trained in the corruption-risk analysis methodology, and there might have been scope for a regular updating of the colleagues from UNDP on MOLICO activities in this field.*” (Evaluation report 2009)

*Support to free and fair elections – South Caucasus and Moldova (2008-2010):*

*“In all countries concerned the election assistance is coordinated within the international community and the civil society with a view to adding to complementarities and avoiding overlapping of action. The CoE activities proposed under the present project will be coordinated with actions planned by other organisations active in election field, e.g. OSCE, USAID, IFES. Some joint activities can be envisaged, especially with OSCE and IFES. The Special Representatives of the Secretary General in the capitals will keep the EC Delegations (or EC similar*



structures, e.g. *Europa House in Baku* informed of the CoE action for coordination and synergy purposes.” (CoE Project description 2008)

The field missions brought some other examples of coordination in the field.

- In *Serbia* JP project documents do not generally make reference to other external assistance programmes and examples were identified in the course of the field visit of some apparent weakness in ensuring information-sharing with OSCE in particular as a key actor working in similar sectors – with some acknowledgment that this communication is an area that can be enhanced across all actors.
- In *Moldova*, there have been excellent relations between the EU Del and the CoE since the strengthening of the latter's in-country presence. An example given was the Democracy project financed by the Stability Instrument. The breadth of the project, involving 10-12 national beneficiaries / partners, reflected the entire range of problems that emerged post-April 2009. This was an EU flagship project, and the EU was extremely happy with the results. One good example of synergies between programmes has been the Democracy Support Programme, which allowed the CoE to provide support for justice sector strategy at a time when EU SBS was not able to finance this. While the CoE JP has provided support for a strategy, upcoming EC SBS to Justice will facilitate implementation by raising judicial salaries in an effort to discourage corruption.
- In *Turkey*, while interviews suggest that early JPs laid a foundation for and willingness among State institutions to engage in later programme interventions with other actors, including Twinning, other examples of projects (including with MoI and MoJ) lack what one assumes should be useful synergies with JPs.

### 8.2.2 I-822 JPs undertake joint activities with other EC projects / programmes

Very limited evidence has been found on joint activities of EC-CoE JPs with other EC projects/programmes.

In *Ukraine*, the UPAC<sup>135</sup> JP in co-operation with the Main Civil Service Department of Ukraine and SIGMA (joint OECD/EU initiative “Support for Improvement in Governance and Management”), organised a round table on “Legislation on civil service and conflicts of interest.” CoE and SIGMA experts, representatives of the Main Civil Service Department and other relevant Ukrainian institutions as well as of international anti-corruption projects called for the adoption of regulations regarding conflicts of interest that will include provisions on prevention, management and resolution of conflicts of interest as well as on protection of rights of persons reporting conflicts of interest and liability. The participants developed detailed recommendations.<sup>136</sup>

The regional JP Emerald network (2008-2011) in the sector of environmental protection noted in its progress report of 2011 that cooperation is being pursued with programme titled “Analysis for ENPI countries on social and economic benefits of enhanced environment protection”. According to the report, further contacts, with the intermediary of DG EuropeAid, were foreseen in 2011 to plan in details the practical terms of the cooperation between both Actions.

The field missions have not identified further examples of EC-CoE JPs having undertaken joint activities with other EC programmes. In *Armenia*, the Access to Justice Joint Programme and the EU's project to place advisors in Ministries and other institutions operated quite separately.

Overall, there is little evidence of joint activities being organised between programmes.

### 8.3 JC 8.3 Degree to which joint EC-CoE cooperation activities are aligned with government, EU and CoE priorities

There is **no fundamental divergence between CoE and the EU in policy goals and priorities**, and most reports from the field suggest that there is **adequate coordination and consultation between the two organisations**. The in-country situation and beneficiary needs are generally taken account of in project formulation (I-831). That said, there are sometimes issues of donor (EC-) driven cooperation, but this is true in all international cooperation, not just EC-CoE Joint Programmes. Beneficiary governments everywhere are overly accommodating of the offer of assistance when it is available. We have also cited evidence that JP design is sometimes hasty and ad hoc.

<sup>135</sup> UPAC Project aimed at strengthening Ukrainian institutions' capacities in their anti-corruption efforts. The project was jointly funded by the European Commission and the Council of Europe (2006-2010)

<sup>136</sup> DPA/Inf(2009)04, Report from the Council of Europe Field Offices and other Structures, December 2008

As our analysis of EQs 3, 4, 5, and 6 makes clear, there have frequently been problems of **lack of government commitment** to the needed reforms promoted by JPs, raising the issue of how critically government priorities – as evidenced by past actions, not words – were assessed.

In reviewing EQs 3, 4, 5, and 6, one is struck by the sheer **volume of training delivered**, and by the fact that many assessments continue to call for yet more training. Is all of this really responding to needs, especially given often weak political commitment? A single blanket answer to this question would be reckless and distorting, but at least it deserves to be asked on a case-by-case basis. Precisely what does the CoE mean by “institution strengthening” and “capacity building,” of which a similarly enormous amount has been delivered? Is there a definition on paper that could be used to assess JP results? If so, the evaluation team has not seen it.

Based mostly on EQs 3, 4, 5, the intellectual basis for JPs reviewed is reminiscent of 1980s-1990s public sector managerialism, in which simply training government officials to act more in line with standards and good practice should tangibly improve the situation. In many cases, that is true (and some JP results confirm it). But in many cases, we have remarked that training delivered was unlikely to be effectively applied in the political and institutional context. It may be replied that, even in these cases, there is undoubted awareness-raising that is laying the foundation for future progress. But this, too, is a claim that can, and should be, objectively planned for at project formulation and assessed by evaluation.

To summarise, JPs examined virtually always justified their existence one way or another, whether by a general statement of relevance or a detailed situation analysis. **Usually, relevance was clear because projects arose from long CoE-country engagement and dialogue, including monitoring and ECtHR decisions.** The fact that most countries considered still fall short of European standards and CoE commitments on a range of issues helped to ensure relevance. However, observed **shortcomings in the implementation of reforms in many cases, suggesting that actual government priorities for JP activities do not always correspond to the actual reform needed**, leave the impression that risk assessment was not a strong point of project design.

### 8.3.1 I-831 Appropriate consideration of in-country situation and beneficiary requirements of joint EC-CoE cooperation activities in the country

In general, most the ROM reports for JPs conclude that the JPs are relevant for the country situation and needs. In evaluations, as well, relevance has not emerged as a problem. It has to be kept in mind that, as brought out in answering EQs 3, 4, 5, and 6, most case study countries still fall short of European standards in most substantive areas covered, although there are examples of complete compliance. Relevance was enhanced by the fact the projects grew out of long-term engagement and dialogue between CoE and governments, including monitoring and ECtHR decisions. CoE field office reports reviewed give comprehensive accounts of meetings held with government officials, as well as the EUD and other donors.

A fairly typical 2010 project description (from *Peer to Peer II* programme) reflects the tone: *“For all countries concerned, in particular those whose accession to the Council of Europe is rather recent, needs have already been identified on the occasion of dialogue with the Council of Europe bodies and their reports. The need to reinforce national preventive action as well as non-judicial remedies against human rights violations has crystallized, in an overall effort to “repatriate” the protection of human rights and rendering recourse to the international level really subsidiary. Non EU member States have accessed the Council of Europe rather recently and the volume of complaints from most of these countries to the Court is still relatively low, but bears a huge potential for growth. Strengthening of national human rights structures in these target countries will amount to preventive action, reinforce the ability of national actors to better protect people’s rights domestically and, as a consequence, favour the long-term effectiveness of the ECHR.”* The 2010 ROM Armenia report says of the JP *Combating ill-treatment and impunity in South Caucasus, Moldova, and Ukraine (2009-2011)*, *“During the past years Armenia was often condemned by the ECtHR for violation of Article 3 (prohibition of torture) and Article 6 (right to fair trial). Legislative gaps and reluctance to admit problems underline the sensitivity of the issue of ill-treatment and impunity. This project aims at encouraging the Government to address ill-treatment and impunity by reinforcing the institutional system and operational framework. As such, there is no doubt that the relevance of this project is high, and addresses clearly identified needs.”*

The problem of donor-driven JPs has been flagged above. This however does not necessarily have to signify their irrelevance with respect to country needs or beneficiary requirements, as the EU (the main CoE donor) follows its priorities set out in strategy documents based generally on thorough analysis of country needs. Problems can arise in operationalizing the priorities under specific JPs if these are prepared under time pressure, as discussed already above. In many cases, the important factor in the

success of implementation has turned out to be the political will to implement reforms, commitment which in our analysis of EQs 3, 4, 5, and 6 has not infrequently been found to be lacking.

In some JP reports, there is a long and very detailed discussion and analysis of the situation in the specific issue the JP is dealing with. This is especially true for the JPs dealing with economic crime, less so for JPs in the area of human rights or democracy. Sometimes the 'situation assessment' is actually a part of the JP – an expert assessment together with set of recommendations on how to proceed forward on the issue. For example, the Description of Action for the JP *Programme against corruption, money laundering and terrorist financing in Moldova (MOLICO)* (2006-2009) has comprehensive sections on country background situation in the sector including, description of legal framework, institutional environment, EU and other donors' strategies and activities. The 2009 evaluation report found that "... the Council of Europe has gone through a lengthy, exhaustive, and inclusive process of determining the areas of intervention, as well as making sure that all stakeholders were consulted and heard, and that their needs were fed back into the project document. At the design stage, use was made of the reports by the Group of States against Corruption (GRECO) and the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL), and the project objectives and outputs were tagged to recommendations made by GRECO and MONEYVAL."

In many other JPs, the justification for the relevance of the project was not nearly so detailed. In the case of *South Caucasus Democratic Stability* (2002-2004), the evaluation Armenia Country Note (2004) was less positive. It found that relevance was assured by the fact that needs were aligned with Armenia's CoE accession commitments and that local institutions were given the chance to propose fields of activity. However, it went on to characterise as a "serious weakness" the lack of in-depth discussions on overall strategy objectives, needs- and risks analysis, and consideration of implementation issues. The overall South Caucasus JP evaluation (2004) stated, "[T]here is a general perception that the projects were designed without proper country level participation and that the projects although part of a programme are not properly linked – displaying a lack of wholeness. Projects are designed to achieve short-term aims, whereas a longer-term vision is needed."

Many projects achieved relevance by directly supporting implementation of CoE and ENP Action Plans (e.g., *Ukraine and South Caucasus – Promoting the democratic process* (2005-2008) in the case of Armenia, according to the 2007 ROM Armenia). *Support to free and fair elections – South Caucasus and Moldova* (2008-2010) justified its relevance on the grounds of the upcoming February 2008 presidential elections.

In some cases, CoE reporting requirements triggered a JP; for example, Armenia missed the deadline for its first national report on the Revised Charter and the deadline was extended to permit it to benefit from assistance in report preparation provided by *Fostering a culture of Human rights – Ukraine and South Caucasus* (2006-2009).

In a review of EQs 3, 4, 5, and 6, one is struck by the volume of training, capacity building, and institution strengthening delivered. But, as we have often seen, these may not lead to effective implementation of reforms when political will is weak, financial resources are not available, or institutional culture stands in the way. There does not appear to be an explicit institutional view of precisely what is meant by "capacity building" and "institutional culture" within the CoE. In a related observation, while project activities may be justified on grounds of "awareness raising" even when concrete impacts are not in evidence, then the fact that awareness raising will lay the foundation for future progress deserves to be considered at both project formulation and evaluation stage, with risks identified at the former and the real likelihood of future progress assessed at the latter.

The field missions generally confirmed the desk analysis, in that most JPs' objectives can be linked to the countries' commitments related to their CoE accession, and therefore are relevant to their needs.

- In *Serbia*, with JPs framed in terms of CoE standards (including treaties ratified by Serbia) they are relevant to Serbia's legal obligations (subject to observations regarding gender). Field discussions did not cover specific JP needs assessment processes but relevance to specific needs (awareness raising to technical capacity support) of institutions and sectors involved was generally confirmed.
- In *Turkey*, JPs with objectives that are framed against CoE legal norms are by definition in line with priorities of the EU and Turkey. All JPs during 2000-2010 addressed priority reform areas in Turkey (as might be expected given the extent to which local institutions have ownership of project design). At the same time local ownership may also explain certain gaps in coverage (gender, socio-economic rights, minorities) of themes and groups no less of a priority in terms of needs and legal obligations
- In *Moldova*: an EU priority was Justice sector reform. In the context of the Democracy Support Programme, as stated above, the CoE supported strategy formulation, the operation of work-

ing groups to discuss drafts, public debate, and dissemination. The DSP marked, according to an international expert attached to the Ministry, a great improvement over the predecessor Justice Reform project, in which there was little sense of government ownership. In some senses, though, this project was an exception, in that the beneficiary was pro-active and knew precisely what form of support he wished to have. The project also benefitted from the fact that it took directly into account the results of monitoring activities in anti-torture and anti-corruption.

- In *Armenia*, the lead JP Access to Justice was done in the context of a justice sector reform in which the training of judges, lawyers, and prosecutors had been identified as a need.

To summarise, JPs examined virtually always justified their existence on way or another, whether by a general statement of relevance or a detailed situation analysis. Usually, relevance was clear because projects arose from long CoE-country engagement and dialogue, including monitoring and ECtHR decisions. The fact that most countries considered still fall short of European standards and CoE commitments on a range of issues helped to ensure relevance. However, problems of donor-driven JPs have been identified and, as our analysis of EQs 3, 4, 5, and 6 makes clear, there have frequently been problems of government commitment to the needed reforms promoted by JPs.

### 8.3.2 I-832 Appropriate consideration of EU and CoE priorities in cooperation activities in the country

This indicator overlaps to some extent with Indicator I-811 as it deals with EU and CoE priorities. Among other things, analysis reveals some strikingly negative views elicited in the EEAS survey. *Serbia* (2008) commented that outputs of CoE sector dialogue and findings of CoE expertise were not systematically shared during JP implementation. *Turkey* (2010) reported that joint analysis and sectoral dialogue was limited and that CoE sometimes takes for granted that their policies are known and does not always express considerable interest for the EU Turkey accession programme and political priorities but is rather focused on their own priorities, which occasionally gives the impression that the EU is financing CoE programmes.

*Albania* (2010) saw the CoE as favouring their own agenda (and visibility) when implementing JPs. The specific issue here was that the CoE was overly neutral (i.e., accommodating of government and offering a margin of appreciation wider than that afforded by DG ENLARG) in anti-corruption cooperation. This issue took on the proportions of a dispute and led to correspondence between the EUD and Strasbourg. It raises the issue (related to synergies and complementarity) of who, in EC-CoE cooperation, holds the carrot and who holds the stick. Without having interviewed any of the principals in depth, the impression is that the EUD Tirana felt that the EU held the carrot, in the form of accession, and that the CoE should wield the stick in activities financed by the EU. The CoE apparently relied on the argument that its comparative advantage, as discussed in addressing EQ 1, lies in long-term engagement and dialogue with MSs, not in compelling them to take action. The incident was serious, and it deserves to be explored whether it was not the tip of the iceberg of a deeper divergence of role perception between the two institutions. Clearly feelings were bruised and confidence was eroded, as in the case of the breakdown of joint trans-border television standard setting (alluded to above under EQ 2). In both *Armenia* and *Moldova*, civil society representatives expressed the view that neither the EU nor the CoE was pressuring governments, via either positive or negative incentives, to live up to their CoE commitments.

Project document review and CoE field office reports not surprisingly also list multiple examples of consultation, coordination, etc.

In summary, analysis of this Indicator needs to be taken in the context of Indicator I-811. The EU and the CoE have no fundamental divergence in terms of goals and priorities, and there is good evidence of consultation and coordination. The problem of donor-driven projects is present, but it is always present in international cooperation. The issue raised by this Indicator, taken in context, is not one of divergent goals, but rather one of what role each institution should play. Evidence from two EUD survey responses corroborated the impression gained more generally from interviews that, while the CoE favours long-term engagement and dialogue with its MSs, the EU expects tangible, near-term results from the cooperation programmes that are implemented by the CoE with its financial resources. "They are spending our money on their agenda" is the clear implication of the language used. The fact that there has been limited progress in many countries on the issues identified in the analysis of EQs 3, 4, 5, and 6 imposes the question: "How much progress is enough progress?"

This raises issues that go to the heart of the relationship between the two European institutions. Under EQs 1 and 2, we mentioned the often-heard refrain in CoE headquarters interviews: "We are not just another implementing agency; we are a major international organisation with a unique intellectual and moral heritage, as well as an unparalleled relationship of trust with our MSs." Yet the relationship of



trust, the commitment to long-term engagement, may weaken the CoE's ability or willingness to deliver near-term results through JPs. This weakens the appeal of the CoE as an implementing partner. At the same time, whether through the possibility of accession or the advantages of being in the European Neighbourhood, the EU has a strong bargaining position in CoE member countries.

#### 8.4 JC 8.4 Degree to which EU-CoE cooperation has enhanced synergies between the organisations

These issues have essentially been dealt with in other EQs. We looked at coordination in standard setting (Indicator I-841), coordination in normative activities such as monitoring (Indicator I-842), and strengthening the *acquis* in countries benefitting in joint cooperation.

There has been only a **limited amount of joint standard setting** and, as evidenced by the example of cross-border television, this has not always been successful. However, there has been **success in mutually reinforcing standard setting**; for example, the EU may set a stricter standard than the CoE through a Directive, which then serves as the basis for a CoE Optional protocol for those non-EU MSs who wish to adopt the stricter standard. The EU participates as an observer in all CoE standard setting. EU participation in CoE monitoring has been limited (e.g., Legal Services represents the EC in the Venice Commission and work has long been underway to pave the way for the EU to join GRECO).

The **EU *acquis* and CoE standards overlap and all joint cooperation activities are designed to improve compliance with CoE standards**, so the third Indicator can really only be addressed by taking into account all the impact questions (EQs 3,4 5, and 6). There we have identified areas of considerable progress and of very little progress. Overall, the impression is one of progress across a broad front, but that most countries still fall short of European standards in most areas. The reasons include lack of political commitment, lack of resources, and the difficulties of shifting institutional and political culture (as an example of the latter, we cited the persistence of the “deviance control” mentality in law enforcement). Particularly in accession countries, but to some extent in ENP countries, as well, **the role of the CoE as arbiter of compliance**, of gatekeeper to the EU, has **created synergies between the two organisations**. However, perhaps more interesting than “synergies” (a term that is difficult to define) is the simple question of whether the two organisations have worked well enough together that they have been able to achieve results that could not have been achieved working apart. Here, the answer is assuredly “Yes,” and we presented evidence above that, **due to improved high-level political relations are now considerably better** than they were before (say, mid-way through the evaluation period). What is now **needed is to translate improved high-level political relations into better relations at the mid- and lower levels**, something the CoE is attempting to do by increasing its field capacity.

##### 8.4.1 I-841 Coordination in standard setting

This Indicator has essentially been covered by I-223. To quote, *“While joint standard setting was limited over the evaluation period, there was been generally good coordination and cooperation on the setting of mutually reinforcing standards. For example, the EU has taken CoE standards as the basis for stricter Directives, which then opens the door to the CoE to take the Directive as the basis for an Optional Protocol. Possibilities were also developed for the EC, through its global cooperation programme, to encourage the adoption of CoE standards in non-European countries. The EU helped to promote the Budapest convention against cybercrime in Tonga, which had become a hotbed of cybercrime, and to use CoE standards in Vietnam, where European banks were being targeted by cybercriminals.”*

##### 8.4.2 I-842 Coordination in normative activities

This has also essentially been covered by Indicator I-223. The need to avoid overlapping monitoring (“monitoring fatigue”) was noted, however, as was the sentiment expressed in Strasbourg interviews that closer involvement of the EC in CoE monitoring exercises would have advantages. Also discussed were the advantages of mutually reinforcing standards, the dangers of “standards shopping,” and the need for better coordination to avoid unfortunate occurrences such as the breakdown of joint standard setting in the case of trans-border television.

##### 8.4.3 I-843 EC-CoE joint cooperation activities strengthened *acquis* in enlargement countries

The *acquis* and CoE standards overlap and essentially all cooperation activity, especially that through JPs, are meant to bring Third Country CoE MSs up to full compliance with EU standards as embodied in, e.g. the ECHR, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, FATF recommendations the case of money laundering, etc. The review of



JPs, and non-financial cooperation, in EQs 3, 4, 5, and 6 has found abundant evidence of strengthening, but also evidence that most countries benefitting from JPs remain short of European standards in most areas. The important issue, raised above, of whether the CoE was overly gentle in its implementation of EC-financed JPs was raised above and cannot be answered at this stage.

Examples of JPs that specifically mention *acquis* in their documents are *Initiative to enhance the ability of the Turkish authorities to implement the National Programme for the adoption of the Community acquis* (2002-2004), *CARDS - South East Europe - Police and Economic Crime* (2004-2007), *Project against cybercrime in South-East Europe* (2010-2012), *Judicial Modernisation and Penal Reform Turkey* (2004-2007), and *Support to the prosecutors' network in South-East Europe* (2008-2010).

## 8.5 JC 8.5 CoE value added

The definition of value added is sometimes vague. Here we will take it as simply meaning that, by cooperating with the CoE, the EU was able to obtain results superior to those that could have been obtained cooperating through any other partner. This we discuss in terms of exploiting the CoE's comparative advantage (Indicator I-851) and achieving impacts that would not otherwise have been possible (Indicator I-852).

In EQs 1 and 2, we found that the **CoE's comparative advantage consists of two pillars: its ability to mobilise expertise related to the sectors in which it specialises and its long-term engagement with its MSs**. Under EQs 1 and 2, we mentioned the often-heard refrain in CoE headquarters interviews: "We are not just another implementing agency; we are a major international organisation with a unique intellectual and moral heritage, as well as an unparalleled relationship of trust with our MSs."

Yet, it is precisely as an implementing organisation that the CoE has financed, and is hoping to increasingly finance, its engagement with MSs. We also found evidence that the **CoE's comparative disadvantage is as an implementing agency**, where it was perceived over the evaluation period to be old-fashioned and slow. Corroboration of this was found in the JP evaluations reviewed and synthesised by the evaluation team, in which PCM was characterised as weak, from project formulation through evaluation. The latter was especially weak, often due to failure to define effective objectively verifiable indicators of progress, making it impossible to judge project results. Project final reports often simply list activities and outputs (number of persons trained, etc.) rather than results and impacts that would be more in line with good practice PCM. We recognise that important steps have been taken, towards the end of the evaluation period, at the CoE to address these problems, though the scale and reach of programme activities require significant resources to be allocated. A strong point (stronger in some areas than others) is that cooperation can be based on the CoEs unparalleled expertise and authority in monitoring.

Field missions generally confirmed the assessment of the CoE's strengths and weaknesses (not quite the same thing as comparative advantage / disadvantage, but close enough) as assessed in the Desk report. Yet the ability to make strong statements is weakened by the absence of regular impact evaluations to date.

While there are steps in place to address implementation issues, the **uniqueness of the CoE must be understood in light of the fact that it is, in effect, competing with other implementing agencies for the same pool of expertise**. Again, the CoE's monitoring role gives it an edge, because often the experts mobilised will have been part of the monitoring effort or will otherwise have been engaged in CoE non-cooperation activities. Finally, in reviewing Indicator I-852, we come up against the ambiguity of the **CoE's long-term engagement with its MSs**. As recognised by EU Delegations, this gives the CoE **unique authority on the one hand, but it may make it more deferential to governments** than other implementing partners (e.g., NGOs) would be. This ambiguity needs to be considered project by project, sector by sector, and country by country; it would be reckless to make a single sweeping judgment. The **determining factor will often be the political will** of government to conform with its international commitments. We have found countries and areas (media freedom in *Azerbaijan* and conditions of detention in *Armenia* come to mind) where this will was more often than not, weak. In other areas, such as money laundering, it appeared to be much stronger. The main difference here is that the sanction for failing to conform in the first cases mentioned may be no more than constant criticism from the CoE, and that countries realised shortly after accession that the penalties for failure to live up to commitments is unpleasant, but not necessarily fatal. In the area of money laundering, the sanction is applied by international financial markets. It is swift, merciless, and cannot be avoided.

In closing, we also, above, drew attention to the fact that the **EC and CoE have differing interpretations of impact**. The EC is concerned with tangible improvements in citizens' lives, as well as concrete progress on accession issues. For the CoE, impact is more process- than outcome oriented, and

may consist of continuing and deepening the long-term engagement with the governments who are its principal interlocutors.

More generally, the lack of regular, independent impact evaluation in JPs has weakened the CoE's ability to exploit its comparative advantage. It has also, by making it more difficult for the CoE to credibly assert its unique qualities, made it more difficult for CoE to compete as an implementing agency. The current institutional reform aims to address these issues.

### 8.5.1 I-851 Cooperation with the CoE in the key areas of cooperation benefits from CoE comparative advantage

We have discussed these issues in EQ 1 and EQ 2, finding that the CoE brings to the table its ability to mobilise expertise, its long-standing engagement with its MSs, and its ability to tie cooperation to monitoring. We also found that the CoE's comparative disadvantage was as an implementing agency, where it is perceived to be slow and old-fashioned and there is evidence from evaluations and other sources that PCM is weak at all stages. We also discussed the on-going reorganisation and reform of the CoE, which is in significant part designed to streamline and strengthen its work as an implementing agency in the aim of expanding this line of activity and thereby becoming more relevant to MSs.

The field missions identified some illustrative examples of CoE's comparative advantage in the EC-CoE cooperation at country level.

- In *Serbia*, the comparative advantage of CoE engagement in Serbia has included its early engagement with Serbia in the aftermath of its international isolation, the value of its normative frameworks and mechanisms is also highlighted by interlocutors, JPs on issues involving regional approaches as well as engagement with status-sensitive institutions are also mentioned.
- In *Turkey*, discussions confirmed that beneficiary institutions view the JP relationship with CoE as one of peer-to-peer and do not feel patronised in this relationship. Views expressed include that they (Turkish State institutions) feel they can "drive the project". Others speak of "messages delivered via the Council of Europe are more powerful than those delivered via a single partner state". This is particularly important in sectors (e.g. Justice) where the culture is described as having "a tradition of change from the top down" with individuals within a hierarchical system wait for a signal that it is acceptable to apply new methods and new reasoning.
- In *Moldova*, the CoE's status permitted it to advocate for change in a sector (Justice) that has proven highly resistant to change.
- In *Armenia*, through the Peer-to-Peer and media regional JPs, the CoE was able to integrate relatively progressive forces, in the form of media and the Ombudsman's office, into regional networks where they benefitted from knowledge exchange.

At the same time, one must guard against the temptation to merely assume CoE comparative advantage. The absence of independent impact evaluation to date has been striking. At the same time comparative advantage can be diminished or lost. These would include:

- failure to adequately signal that the State's legal obligations are to reform in line with applicable standards and not just to organise human rights activities,
- failure to accompany an increase volume of activity by adequately resourced emphasis on advocacy, networking, etc. relevant to, but separate from JP activities.

In the case of *Turkey*, the constraints of CoE Office status in Turkey may not have been adequately tested and there is at least a perception that more can be done even without a change in status. A German embassy supported initiative by the Human Rights Joint Platform for monitoring implementation of ECtHR decisions and Child Rights Observatory by the International Children's Center are more recent examples of activities that that can (if CoE engages) enhance the impact of JPs.

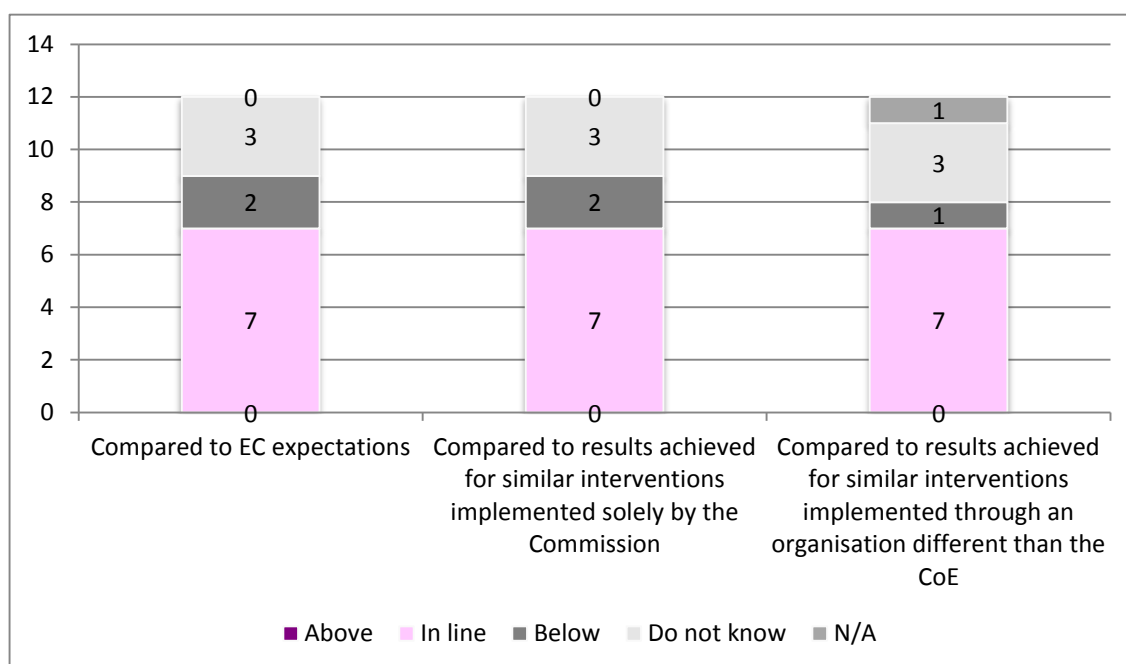
### 8.5.2 I-852 Impacts achieved through EC-CoE cooperation are greater than those that would have been possible in cooperating with other agents/institutions

The definition of value added is sometimes vague. Here we will take it as simply meaning that, by cooperating with the CoE, the EU was able to obtain results superior to those that could have been obtained cooperating through any other partner. EQs 1 and 2 have covered most of these issues by discussing CoE comparative advantage (a source of expertise, its special relationship with its MSs, political and moral authority, long-term engagement and dialogue) with its comparative disadvantage (need for improvement in project implementation). In this EQ, we have also raised the nice issue of whether one aspect of the CoE's comparative advantage with its MSs – its long-standing relationship with MSs – may also work against it as a partner, by causing it to show more deference to governments than other implementing partners (e.g., NGOs) would.

We have drawn attention to the greatly improved high-level political dialogue between the two institutions in the later years of the evaluation period, suggesting that this problem, if real, may now be more susceptible to resolution. Rather than re-stating issues, it is more effective to turn to EUD survey results. EUD responses on the expertise issue were already covered under EQ 2. Not yet discussed, however, is EUDs' general impression of the level of results delivered by JPs. The question asked was, **“Overall, how would you assess the results achieved by the Joint Programmes implemented in the period 2000-2010 in the country?”**

The majority of EUDs regarded the results of the EC-CoE joint programmes as “In line” with EC expectations (see Figure 27). No EUD regarded the programmes as achieving results above expectations. The same is true for the performance of the JPs compared to the results achieved by programmes implemented by the EC itself or through an organisation different than the CoE.

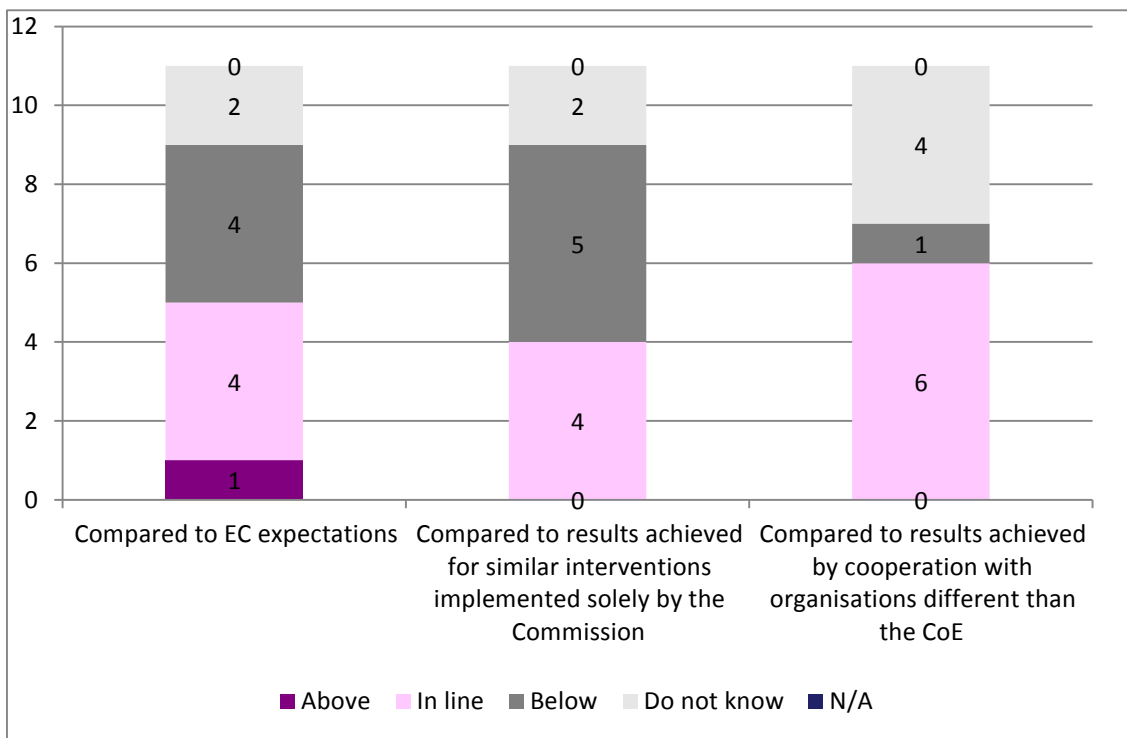
Figure 27: *EUD survey results: Overall JP results compared to expectations and other implementing modalities*



Source: EUD survey

When asked, regarding non-financial cooperation, **“Overall, how would you assess the results achieved by other forms of EC-CoE cooperation carried out in the period 2000-2010 in the country”** EUDs were somewhat less favourable, as illustrated in Figure 28.

Figure 28: EUD survey results: Overall result of EC-CoE non-financial cooperation compared to expectations and other implementing modalities



Source: EUD survey

The issue of value added was also addressed by the question, “**In your view, what are the 3 main factors that have enhanced the achievements of EC-CoE cooperation activities in the country?**” When discussing the main factors adding value to the EC-CoE cooperation, the Delegations mostly mentioned 1) the fact that the respective countries are members of the CoE, and 2) specific CoE expertise in certain areas.

When asked, “**In your view, what have been the main factors that hampered the achievements of EC-CoE cooperation activities in the country?**”, the most common reason cited was a lack of political will to embrace reforms and the controversial areas in which the CoE works. However, some of the negative factors mentioned by the EUDs are internal to the CoE. This is for example the fact that the EUDs are not always satisfied with the way the CoE pursues its objectives towards the partner government. In *Albania*, not surprising in view of the incident related above, but also in *Russia*, EUDs mentioned the reluctance of the CoE to take a tougher approach towards MSs, strengthened in the latter case that Russia is a major contributor towards the CoE’s budget. Yet, opinions on the impact of country membership in the CoE were not always in the same direction. In responses to the EEAS survey, the Russia EUD itself (2008) cited “opportunities and leverage” adhering to Russia’s status as a CoE MS. *Turkey* (2010) and *Ukraine* (2010) were also positive on the special role of the CoE as an international organisation to which governments had made formal commitments. EUD *BiH* (2010) specifically cited CoE value added: “*We believe that there is certain added value in working with the CoE in selected sectors as the CoE is politically well accepted by the beneficiaries. In the field of education there is a clear added value as the CoE is involved in several networks and institutions for Higher Education in Europe and can provide very good experts when implementing projects. Thanks to similar experience in other countries in the region, the CoE will be involved in the International Monitoring Operation of the Census, to be co-financed by the EU and a contribution agreement with the CoE will be signed once the census law is adopted. The joint project on prison reform was considered as very successful by the beneficiaries on all sides in BiH.*”

At country level, the missions brought some more insights into the advantage of working with the CoE.

- In *Moldova*, taken as a whole, the special role and status of the CoE did allow for impacts that would have been difficult to obtain otherwise. A concrete example given above was support provided to the Ministry of Justice.
- In *Serbia*, there is some suggestion that in recent years visibility of the CoE office has been reduced, with other actors (UN agencies, OSCE) having a higher day to day profile. The extent, to which this affects JP impact, if at all, is not clear. More detailed post-JP documentation of impact and lessons learned as well as in-country time and analysis would be needed to as-

sess whether impacts achieved through EC-CoE cooperation are greater than those that would have been possible in cooperating with other agents/institutions.

- In *Turkey*, assessment also remains problematic in the absence of systematic impact measurement, but there is a consensus that at least in early years there was a lack of political space for other implementers. While Strasbourg CoE placements were perhaps uniquely possible through CoE-led JPs, and CoE led JPs offered a range of jurisdictions for Turkish institutions to access (an advantage over Twinning models), CoE norms and mechanisms do not *necessarily* require CoE-led project delivery. Sustainable impact requires accuracy of substantive content but also methodological best practice in project design, delivery and M&E. Moreover, weaknesses with regard to equality/non-discrimination (specifically, the absence of gender aspects) highlight that CoE-implemented programmes do not necessarily mean core CoE norms are addressed comprehensively. The 'snapshot' gained from desk review of projects and brief field visit in Turkey suggests a need for on-going progress.

In summary, the CoE adds value through its mobilisation of expertise (up to the problem of increasingly competing with other implementers for the some pool of expertise) in fields where it has recognised authority... Its long-standing engagement with its MSs cuts both ways, giving it unique leverage at the same time that it may lead to a more deferential attitude. EUDs have replied in both senses to the relevant questions asked in the surveys and in the field. Finally, the CoE's ability to exploit its comparative advantage, or even to firmly establish it and thereby strengthen its role as an implementing agency, has been weakened by poor PCM, and especially by the absence of regular independent impact evaluation. The on-going reform aims to address these issues.