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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

Mini-conference
on “Social Rights”
in the framework of the
7th meeting of the Joint Council
on Constitutional Justice
Tirana, 27 June 2008

SYNOPSIS

In the framework of its 7th meeting (Tirana, 26-27 June 2008), the Joint Council on Constitutional Justice held a mini-conference on the topic of social rights on 27 June.

Following introductory presentations by Judge Gotzev (Constitutional Court of Bulgaria), Ms Baptista Lopes (Constitutional Tribunal of Portugal) and Ms Stressec (Adviser, Constitutional Court of Croatia) on the respective case-law of their courts, the liaison officers from 27 constitutional courts and equivalent bodies discussed various aspects of social rights as applied in constitutional justice.

A distinction was made between more recent constitutions, especially in the new democracies, which often explicitly refer to social rights whereas some older constitutions do not have a catalogue of social rights. Nonetheless, such rights had been identified by the courts, sometimes by linking them to other rights, such as the right to equality. While the existence of social rights could sometimes be identified by the courts, they would usually not be in a position to fix a specific level of welfare payments, since this falls within the competence of the legislature or government. Some extreme examples were discussed, which showed how these powers had tried to implement social rights as being directly enforceable against the state.

It was pointed out that typically civil and political rights required restraint or non-interference from the side of the state, whereas most social rights demand intervention (regulation or payments) by the State. Consequently, the implementation of these rights depends on the financial capacity of the State, which in turn is linked to the general prosperity in society. A paradox was identified to the extent that this prosperity could be undermined by taxation, which would be necessary to raise funds for the implementation of social rights.

A number of participants insisted that the level of welfare payments varied necessarily from country to country and that no general standards could be applied in this respect.

Nonetheless, the examples from the case-law of various courts showed that social rights were not only mere programmatic declarations, but were also capable of judicial enforcement (so-called "justiciability of social rights"). The application of the principle of proportionality was seen as a means, which allowed the courts to apply strict judicial standards even in a complex field such as that of social rights.