
Declaration by the Committee of Ministers on the need to revitalise the criminal justice work of the Council of Europe with a focus on procedural rights under Articles 5 and 6

*(Adopted by the Committee of Ministers on 30 March 2022
at the 1430th meeting of the Ministers' Deputies)*

The Committee of Ministers of the Council of Europe,

1. recalling the member States' obligation to secure for everyone within their jurisdiction the rights and freedoms defined in the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, ETS No. 5), and to provide an effective remedy before a national authority for any violation of those rights and freedoms, and their obligations, as relevant, under the Council of Europe Conventions of relevance within the European Committee on Crime Problems (CDPC);
2. recognising that the work of the CDPC, as taken from its terms of reference (2022-2025), is instrumental in identifying priority elements for intergovernmental legal co-operation, proposing to the Committee of Ministers areas for action in criminal law and procedure, criminology and penology, by developing standard setting instruments, providing specific advice, collecting information, conducting activities in these areas and advising the Committee of Ministers on all questions within its area of competence. The work of the CDPC is, therefore, key to supporting national authorities, particularly law enforcement and others, to avoid and prevent human rights violations throughout the criminal justice system;
3. expressing its concern at the continued range and frequency of human rights violations occurring within criminal justice systems across Council of Europe member States and noting that in 2020 the European Court of Human Rights found more violations of Articles 5 and 6 than any other articles of the Convention;¹
4. recalling that the rights and principles enshrined in Article 5 and Article 6 of the European Convention on Human Rights are crucial for guaranteeing the right to liberty and security, maintaining the integrity of all criminal investigations and proceedings, and protecting the rights of individuals accused of criminal offences during pre-trial and court proceedings;
5. emphasising that the essential purpose of Article 5 is to prevent arbitrary or unjustified deprivations of liberty and that the fairness of proceedings enshrined in Article 6 is premised on the fact that the accused person must be tried by an independent and impartial tribunal, understands the charge against them, has adequate time and facilities for the preparation of their defence, is able to examine or have examined witnesses against them and obtain attendance and examination of witnesses on their behalf under the same conditions as witnesses against them, has access to legal counsel throughout proceedings and has the free assistance of an interpreter if they cannot understand or speak the language used in court;

¹ *Annual Report of the European Court of Human Rights (2020)*, pp. 159, 163, noting that out of a total of 871 judgments finding a violation, 287 judgments found a violation of Article 6 whereas 208 found a violation of Article 5. Available at https://www.echr.coe.int/Documents/Annual_report_2020_ENG.pdf. In 2021, out of a total of 1,105 judgments, Article 6 again accounted for the highest number of violations (344), with Article 5 violations being the third highest (306) (*Annual Report of the European Court of Human Rights (2021)*, pp. 181, 183).

6. considering the needs of those with certain vulnerabilities, such as those who do not fully understand the local language, where particular and additional safeguards may be needed to protect their rights;
7. emphasising that despite international awareness of the need for an effective, efficient and fair criminal justice system, member States should take all possible measures to reduce the risk of improper and unlawful attempts to bypass, undermine or ignore procedural safeguards by law enforcement, prosecution services and judicial bodies;
8. recalling also that the Secretary General's 2020 Strategic Framework of the Council of Europe calls for a renewed focus on the independence, efficiency and resilience of the judicial systems of member States, particularly in light of the impact that the Covid-19 pandemic has had on the criminal justice system;
9. welcoming and supporting the Sustainable Development Goals adopted by the United Nations, which, under target 16.3, calls to "Promote the rule of law at the national and international levels and ensure equal access to justice for all", and thus, encouraging all Council of Europe member States to make an active contribution to its implementation;
10. considering the particular barriers to justice for women and children, people from minority groups, elderly people and persons with disabilities as highlighted in the Council of Europe Gender Equality Strategy and referenced in the Declaration of the European Commission for the Efficiency of Justice (CEPEJ) on lessons learned by the judiciary during and after the Covid-19 pandemic, and the need to mainstream gender and remove such barriers throughout the work of the Council of Europe;
11. convinced that a comprehensive and integrated approach must lie at the heart of all efforts to bring criminals to justice in a manner that is in full conformity with the principles and obligations set out in the European Convention on Human Rights, as interpreted by the European Court of Human Rights;
12. stressing the need for member States to provide support and recognition to the relevant competent authorities responsible for supervising, investigating and ensuring accountability for any acts within the criminal justice system that could lead to violations of the European Convention on Human Rights, in particular Articles 5 and 6;
13. expressing the need, thus, to intensify efforts to guarantee the effective application of Articles 5 and 6 of the European Convention on Human Rights, as noted in the 2021 Report by the Secretary General of the Council of Europe and, to this end, calls on member States to:
 - a) respect the binding nature of the judgments of the European Court of Human Rights and recognise the overall importance of its jurisprudence and in particular with regard to the interpretation and application of national law in respect of Articles 5 and 6;
 - b) strengthen domestic legislative frameworks and current practices in light of the relevant standards of the European Convention on Human Rights and take vigorous action to prevent and combat violations by supporting the development of practical strategies, enhanced rule of law mechanisms and improving co-operation between criminal justice authorities, as appropriate;
 - c) draw upon existing Declarations by the Committee of Ministers of the Council of Europe, for example, the Brussels Declaration on the 'Implementation of the European Convention on Human Rights, our shared responsibility', and the decisions adopted by the Committee of Ministers in their 131st Session in Hamburg in May 2021 on 'Human rights in the Digital age'.
 - d) implement the Council of Europe Strategy for the Rights of the Child (2022-2027), in particular its section on child-friendly justice for all children, in the development and implementation of their national policies in this field;

- e) support the various Council of Europe bodies and institutions which, within their respective mandates, are able to contribute to the protection and promotion of Articles 5 and 6 of the European Convention on Human Rights, as well as other bodies active in this field, in particular, the Committee of Ministers, the Parliamentary Assembly, the Secretary General, the Commissioner for Human Rights, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the European Committee on Crime Problems (CDPC);
- f) protect and strengthen the application of the European Convention on Human Rights, in particular Articles 5 and 6, through the respect of the case law of the European Court of Human Rights in the implementation of measures within the scope of the European Conventions on International Co-operation in Criminal Matters, including, the European Convention on Extradition (ETS No. 24), the European Convention on Mutual Assistance in Criminal Matters (ETS No. 30), and other Council of Europe Conventions and standards in the areas of criminal justice and international co-operation;
- g) co-operate with other member States and the relevant bodies and institutions of the Council of Europe in ensuring compliance of national law and practice with the relevant standards of the European Convention on Human Rights, guided by a spirit of dialogue and co-operation.