



T +33(0)388413538 www.commissioner.coe.int press.commissioner@coe.int

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Ukraine: The independence and efficiency of the judiciary must be protected as a matter of priority

Kyiv, 25/11/11 – “The protection of the right to a fair trial should be central to judicial reform efforts” said the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, at the end of a week-long visit to Ukraine. “In order to guarantee this fundamental human right to everyone, courts must be independent, impartial, and efficient.”

A large proportion of the judgments against Ukraine delivered by the European Court of Human Rights have concerned violations of the right to a fair trial. The judgments point to certain systemic problems, which include excessive delays in court proceedings as well as non-enforcement of domestic judicial rulings.

The extensive resort to preventive custody – which can last for several years – continues to be a major human rights problem, which also worsens prison overcrowding. The Ukrainian authorities are now considering legislative amendments which would apply detention before final sentence in more limited circumstances than is presently the case.

The Commissioner noted with concern the uncertain situation with respect to the Supreme Court, which has been prevented from meeting in plenary and appears to be in a state of limbo. In addition, he expressed concern to his official interlocutors about the possibility to subject judges to disciplinary or criminal responsibility for taking decisions which may not be seen as “correct” by certain authorities.

“Independence and impartiality are fundamental principles in which justice should be grounded,” said the Commissioner; “If these principles are undermined, the system loses its credibility, which can be very damaging to the functioning of democracy.”

The Council of Europe has provided expert advice on the judiciary and the status of judges, criminal procedure and other legislative acts. The Commissioner urged the Ukrainian authorities to apply this advice in their ongoing legislative reform efforts.

For the first time, Commissioner Hammarberg visited the Autonomous Republic of Crimea, where he discussed human rights issues relating to the different ethnic and linguistic communities, including the Crimean Tatars, living in this area. “One of the most unique and valuable features of Crimea is its diverse, multi-cultural population. Efforts to promote tolerance throughout society, as well as a genuine dialogue between the authorities and all minority groups, are essential for preserving this heritage and avoiding discrimination or marginalisation.”

Press contact in the Commissioner’s Office:

Stefano Montanari, + 33 (0)6 61 14 70 37 stefano.montanari@coe.int;
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The Commissioner for Human Rights is an independent, non-judicial institution within the Council of Europe, mandated to promote awareness of, and respect for, human rights in the 47 member states of the Organisation. Elected by the Parliamentary Assembly of the Council of Europe, the present Commissioner, Mr

Thomas Hammarberg, took up his function on 1 April 2006