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Creating Synergies and Learning from Each Other: Strengths and Weaknesses of Council of Europe Expert Bodies Monitoring Human Rights

CONFERENCE PROTOCOL

ON THE CONFERENCE IN GRAZ, 18-19 JUNE 2010

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I. CONFERENCE PROTOCOL

The Institute of International Law and International Relations at the University of Graz organized the conference on "Creating Synergies and Learning from Each Other: Strengths and Weaknesses of Council of Europe Expert Bodies Monitoring Human Rights" at the University of Graz, Austria, from 18-19 July 2010. The conference was part of a broader research project on Council of Europe (CoE) monitoring bodies and brought together experts from the CoE, representatives from the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT), the European Committee of Social Rights (ECSR), the European Commission against Racism and Intolerance (ECRI), and the Advisory Committee under the Framework Convention for the Protection of National Minorities (ACFC), as well as academics from the Human Rights Implementation Centre at the University of Bristol. The conference participants discussed similarities and differences, as well as strengths and weaknesses of the monitoring procedures of these four expert bodies and tried to stimulate potential synergies among these expert bodies.

1. Introductory session

In his introductory remarks, Christos **Giakoumopoulos** stresses that the research project and the conference are extremely timely as there is a reform discussion going on concerning the CoE monitoring bodies' work also in response to the entering into force of the Lisbon Treaty of the European Union (EU). He agrees with the definition of strengths of CoE monitoring bodies as defined in the background paper[1] as the ability to react to new challenges in the course of monitoring while the inability to do so may be regarded as a weakness.

Giakoumopoulos reports that recently there has been a meeting of the Chairs of the monitoring bodies with the Committee of Ministers (CoM), where, among others, questions regarding these bodies' working methods, procedures, and potential synergies were raised. One area of focus was the existing contacts with civil society. Furthermore, the quality of the dialogue between the expert bodies and national authorities was discussed with a view to sustaining and improving this dialogue, and with the aim to clarify the role of the political bodies involved. Further, the following questions were addressed: how to develop the dialogue between the monitoring bodies and the political bodies, and how to allow political bodies to learn from monitoring bodies. Finally, and due to the fact that the Lisbon Treaty will in future potentially enable the EU to start human rights monitoring, the issue of cooperation and/or synergies with EU bodies was on the agenda of the Chairs' meeting. As an important outcome of this informal group's meeting[2] it was decided to meet in regular intervals and to further discuss these important topics so that the persons involved may keep abreast of the reform process of the CoE monitoring. The CoM reacted to this meeting of the Chairs in a decision of 16/17 June 2010 stressing the importance of creating synergies among the monitoring bodies as well as the need to intensify the cooperation with the EU. During the first half of 2011 a renewal of the monitoring structures is envisaged. Therefore, the CoM raised certain questions to this informal group requesting a response for the first half of 2011.

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[1] In the context of this research project "strengths" of a monitoring body is understood as the ability to respond to challenges of different kinds, while "weaknesses" means that the monitoring body is unable to respond to those challenges.

[2] The Chairpersons of the monitoring bodies are not formally representing these monitoring bodies.

The questions raised are:

- How can the monitoring bodies contribute to the Interlaken Process?
- How can the monitoring bodies contribute to the reform of the CoE?
- How can the monitoring bodies coordinate their activities?
- How can the monitoring bodies bring their concerns to the attention of the political bodies (CoM and PACE) in order to enhance the implementation of their recommendations?

Giakomopolous underlines that this conference is also an appropriate forum to discuss these questions and to explore the possibilities for improvements. Finally, Giakoumopoulos stresses that the right persons are participating in the conference to discuss the topics on the conference agenda. More specifically, the given conference setting allows the participants to think outside the box, which is of particular importance.

2. Conference session I

Chair: Malcolm Evans

2.1. Discussion regarding membership issues

Möstl stresses in his introductory presentation of research findings that there are three issues which appear relevant for further discussion:
(1) The number of members of the expert bodies - is it an advantage or a disadvantage to have a small number versus a number where all member states have a seat?
(2) The appointment procedures – what are the legal requirements concerning independence and professional expertise and how does the practice of the appointment procedures guarantee an adequate membership?
(3) The question of whether external experts are involved in the monitoring work.

Evans underlines two issues in his opening of this session. First, the numbers of experts should always be considered in relation to other expertise available: Membership issues are not only about numbers of experts, but also about numbers of members of the secretariats, given mandates and functions. It seems that a balance between members, external experts and secretariat staff is essential. Secondly, the term "monitoring" is difficult to define. Evans raises the question about the definition of monitoring and whether all of the bodies consider themselves as monitoring bodies.

ECRI/Ahlund explains that ECRI is not based on a convention and therefore the number of members is not negotiable and a given fact to ECRI, something ECRI has to live with. Certainly, a large group of 47 members has advantages and disadvantages. There are advantages, such as the representativeness, the legitimacy, a broad perspective based on the variety of professions, as well as the ability to handle a massive workload. However, it is often difficult to handle a group of 47 members in a plenary. Therefore, country-by-country groups have been set up, and the ECRI Bureau was given a wide range of executive powers (e.g. the Bureau may formulate an urgent statement without approval of the plenary). Overall, the number of members is not really an issue for ECRI.

Kicker comments that country-by-country groups could probably serve as an example of best practice. E.g. a discussion of splitting up into chambers has taken place in the CPT as well, but has been abandoned by the plenary as a whole.

ACFC/Hofmann states that 18 members could be regarded as a maximum, as it is easier to have a discussion in such a smaller group. The small size of the secretariat however, is the bigger problem. The ACFC is not only a monitoring but also a standard-setting body, and the main work is done by an already overstretched secretariat. Not all members are equally qualified and equally available: out of 18, usually 9 members are really doing the job as required. The ACFC, more specifically the Bureau, would like to be more involved in the election procedure of new members (although there are informal ways of expressing an opinion on candidates). One idea could be to communicate the opinion of the Bureau by the Secretariat to the CoE hierarchy (Directorate of Monitoring), who would then be able to give guidance for the selection. A better selection in the appointment procedure would clearly help to solve membership issues: Ideally, it should be possible to strike a balance between gender, minorities etc. Furthermore, the member states should be encouraged to send secondments to the secretariats.

Hofmann proposes to widen the term of "external experts" so that it would also include the members of the secretariats (or even the external experts from ministries of respective countries).

As concerns the use of external experts, in the more narrow sense, the ACFC does not have a very convincing experience (draft report on the Russian Federation) and is carrying out its monitoring function solely by members together with the secretariat. External experts were involved in the drafting of thematic commentaries. A draft was made by the ACFC, which was then submitted to NGOs for comments (the ACFC follows a rather inclusive approach with the involvement of NGOs) – and at this stage external expertise was requested too.

CPT/Tugushi: Having 47 members on board is difficult, but the requirements of country visits make them necessary. The CPT has some 170 visiting days per year and this requires a sufficient number of members available to take part in visits. Having 18 members only would be a serious problem for the CPT. Additional external experts are used, depending on the necessities of a visit.

As regards the appointment procedures, there is room for improvement. The selection process of members is not perfect, as it has – like any selection process – to pass certain filters. There should be at least some kind of an interview of candidates that would allow assessing the language skills of members.

CPT/Nestorova: The convention setting up the CPT provides that the number of members should be equal to the number of contracting parties. Although there are advantages to working with a smaller group of members, a change in the number of members would require amending the convention. This, however, could start a long process with dangers linked with it. Some states take a long time to propose candidates or do not propose appropriate candidates. Nestorova proposes that candidates should be asked for a letter of motivation which could at least shed some light on their personal interest in and knowledge of the CPT's work. Interviews carried out with all the candidates, as it is part of the procedure of the election of judges, could be too time-consuming and costly. On the issue of experts, Nestorova points out that they have a double legitimacy: on the one hand, the Convention contains specific provisions concerning the use of experts, and on the other, experts bring "added value" to the work of the CPT (e.g. when dealing with forensic medical examinations,

when examining the manner in which investigations are being carried out, etc.). Because of the specificity of its field work, the CPT benefits from the involvement of professionals who know the system from within.

Kicker: What one could consider for ECRI and the CPT is, whether all of the expert bodies' members should be equally used for field work as part of their monitoring? Maybe some members could rather discuss the product of the field work in the plenary, while field work is carried out by dedicated experts. This proposal is based on the practical experience that there had been a certain number of members at least in the past who were not prepared to do field work and did not "function" very well on missions. This has – apart from the lack of a certain professionalism needed for a mission in the membership – also been a reason that one or two external experts were regularly invited for a mission.

ECRI/Stavros poses a question to the CPT: How are the delegations for on-site visits composed? Is it possible that the sub-groups are composed only by external experts? In ECRI it is two members plus one secretariat member.

CPT/Nestorova answers that according to the Convening setting up the CPT, as a general rule, visits are carried out by at least two members of the Committee. In practice, visiting delegations have usually consisted of five to six members, one to two experts and two members of the Secretariat. As regards work within the delegation, everybody contributes to the collecting of information and has a task assigned. There is no strict rule for the configuration of delegations.

ECSR/Swiatkowski: The ECSR is satisfied with the current number of members (15) which makes for an operational body. However, an increase to 18 members might be appropriate. This follows the pattern of the International Labor Organization (ILO), where the committee of experts is composed of 20 members, 4 each from the 5 continents. However, if 47 states were to ratify all the provisions of the ESC and the Collective Complaints procedure, this would certainly constitute a problem for the ECSR in terms of the workload.

As concerns the appointment procedure the governments present their candidates, which might always be regarded as problematic with regard to independence. The initiative of nominating candidates should therefore be moved from the government to outside sources. In practice, however, one can say that members of the ECSR are independent.

The ECSR in general does not need/ rarely used external experts. The members on the whole represent sufficient knowledge and experience in social rights. Language skills are not a problem for the ECSR. There have never been incidents that one member was not fluent in one of the official languages.

ECRI/Ahlund affirms that the appointment procedure could be improved for the ECRI as well. Firstly, the government is currently only required to present one candidate. One remedy for this would be to change the Statute and to ask states to present two or three candidates and then let ECRI have a say in the final selection. Secondly, the rules for re-appointments might be reconsidered, and thirdly, training could be provided.

Evans summarizes the discussion and indicates that the monitoring bodies have the feeling that "we have what we have and we simply have to cope with the difficulties, no matter, whether we want to recognise them as strengths and weaknesses."

Giakoumopoulos agrees that regarding the numbers of members little will change in fact. The monitoring bodies are often not very similar and sometimes some parameters are not even comparable. This is not by chance, but also because their subject matter is different and there is a certain, very specific logic behind each system. However, learning from each other is possible. Giakoumopoulos also reminds that the massive workload of the ECtHR did not change the number of members of the ECtHR. What may be learned from this is that the working methods might have to be changed. Indeed each committee has already developed its working methods and adapted in their own ways to meet the challenges of the increasing work load.

Opening up the conventions and proposing a revision of the treaties and statutes, could lead to a re-discussion of the mandates and consequently to unintended restrictions on the monitoring bodies work and would thus go in the wrong direction. Other means (e.g. working in chambers) are a better option.

When it comes to the appointment procedures of the expert bodies' members GRETA could serve as a good example. The convention itself regulates a complex system of nomination and classification of candidates that provides for the variety of expertise needed. However, it still needs to be seen whether this system will bring the expected results in practice.

External experts are used differently in the four committees. However, in none of the systems do they affect the legitimacy of the monitoring body. The use of external experts should not be deemed as a kind of "outsourcing".

Giakoumopoulos is of the opinion that it would not make a big difference if candidates would be elected by the Parliamentary Assembly instead of by the Committee of Ministers. It is also doubtful whether transparent processes in the member states would help to improve the appointment procedure. A checking of the candidates, however, is indeed missing. What could help is the establishment of a kind of "Selection Board" composed of members of monitoring bodies, judges, representatives of the academia, etc. This board could be entitled to decide on the validity of candidates. The board's decisions could then be transmitted to the Parliamentary Assembly, who would then elect the members taking into account the Selection Board's advice.

ECSR/Kristensen agrees with Giakoumopolous, but notes that election by the Parliamentary Assembly as provided for by the Turin Protocol would be preferable. He further states that the main problem at present is how the procedure unfolds in practice and not so much the body who finally decides about the appointment of members. For the ECSR, there is an exchange of views on the candidates in the GR-H, but at these meetings there is no in-depth consideration of the candidates (and only their CVs are available). It might be a good idea to ask for a letter of motivation, as proposed by Nestorova, that would explain why the candidate would like to be part of the Committee. The lack of appropriate appointment procedures has led to some cases, in which the basic rule of independence of members was not respected.

ECRI/Stavros comments on the various screening mechanisms and asks whether the introduction of a "Selection Board" would require a new legal basis?

Giakoumopoulos answers that the introduction of such a "Selection Board" should not require any legal changes.

ACFC/Hofmann points to the problem of what should be done when a country consistently provides candidates without having expert knowledge or proposes candidates who are not really available? According to Hofmann, this constitutes the real problem.

Evans summarizes that the conference participants are strongly asking themselves, whether the election system delivers what the expert bodies want. But what motivates someone to become an expert? It might even be the procedures that encourage people to become a part of an expert organ. Thus, one could turn the argument around and say that knowing the procedure and knowing about the dynamics behind it might make some qualified persons not want to be part of an expert body. Evans suggests that any reform of the appointment procedures should also encourage new people to join the expert body. Thus, the question should not only be “How may the defined procedure be used to get the ‘right’ candidates in the view of the expert body?”, but also “How may an expert body attract new and motivated people?”

2.2. Discussion regarding the sources of information used

Möstl refers in his introduction to the statement made in the background paper that the quality and reliability of the supervisory system may heavily depend on the (1) availability of information, (2) the quality of the information gained and (3) the question, if the information is sufficiently up-to-date. A distinction was made between the more proactive monitoring systems with on-site visits (CPT) and/or a formal inclusion of NGOs (ECRI and ACFC) in contrast to the more reactive system of the ECSR (receiving reports and complaints) and the question was raised whether the expert bodies could all benefit from “proactive” and/or “reactive visits” and a stronger inclusion of national NGOs, national monitoring bodies or other representatives of the civil society.

Evans comments that a rigid categorisation of “reactive” vs. “proactive” in the context of visits should be avoided, as, in his opinion, all visits should be regarded as a part of a whole continuum.

ACFC/Hofmann states that the ACFC has all the necessary means to collect information and explains that on-sight visits are absolutely necessary for the ACFC.

ECRI/Ahlund confirms that ECRI has all the information sources needed at its disposal and relies on a rather informal methodology. During the visits lots of sources are used. NGOs, e.g., are a valid source, and ECRI plays out the information gained from NGOs to governments by stating “We heard that….”. This is of course a very informal way of operating, but it works well in practice. The limit of imagination is the only limit for adapting its working methods for ECRI. Generally ECRI is pleased with the information they gain, but ECRI keeps learning.

ECSR/Swiatkowski explains that the ECSR bases its findings on the legal material available and the practice in the state concerned. Information practice comes from a wide variety of sources, but the primary source of information is certainly the governments’ reports. States are obliged to present these reports to the trade unions and employers’ organisations for a critical assessment and comments. It happens, from time to time, that certain doubts arise, whether a law or practice is correctly described in the reports. In such cases the ECSR will address further questions to the State concerned and/or it may seek information from other

sources, including for example trade unions and NGOs. These bodies, as well as NGO's may submit comments according to the Social Charter.

The ECSR also carries on a dialogue meeting representatives of governments, generally at the request of the state concerned. It happens, for example, that state representatives come to Strasbourg when the state, because of differences in the interpretation of the rather broad clauses of the ESC, is "unhappy" about the standards set by the ECSR.

Lantschner inquires, whether regular country visits would enhance the quality of information gained.

ECSR/Kristensen explains that the ECSR indeed receives information in areas where things "go wrong", for example from civil society sources. Unless such information can immediately be put to use in the reporting procedure, the ECSR can only wait for a Collective Complaint to be lodged. A procedure for conducting visits does not exist, although visits could possibly be useful in certain specific situations for information-gathering purposes.

CPT/Tugushi clarifies that the CPT secretariat has the main role in collecting information necessary for the preparation of the visit (documentary search, contacts with NGOs, etc.) and drafting the visit program. The visiting delegations of course have the unique opportunity of unlimited access to informants. The main sources are persons deprived of their liberty whom the CPT interviews and discussions with administrative personnel, as well as documents. The difficulty is to reflect upon and digest these pieces of information.

Giakoumopoulos states that visits have an enormous importance and advantage for all monitoring bodies. It usually depends on the subject matter, whether shorter or longer visits are needed. Country visits go beyond the purpose of merely collecting information, as they are part of the dialogue with the national authorities and could thus be regarded as "political active visits".

Developing rapid reactions on the part of the monitoring bodies is regarded as an important feature. The possibility to launch a certain process as a reaction when something "goes wrong" in a member state between the monitoring cycles is very important. This possibility provides the monitoring body with the ability to react promptly. Even the ECSR could do visits and link the visit to the collection of information.

2.3. Discussion regarding the inclusiveness of the monitoring procedures

Kicker poses the question raised by Evans before: What do we understand as monitoring work? Is it only field-work? Furthermore, could the task of fact finding be delegated to the national bodies? What role could NPMs have?

Evans wonders whether the CPT is involved in "monitoring" at all. Monitoring is a more permanent function that allows for constant observation of changes over time. This is of course in some way also a semantic issue: the CPT is "visiting". Reflecting about the term "monitoring", Evans asks whether it is correct to use this term for every CoE body present? Can one really speak of a monitoring body when it gives recommendations on the basis of visits?

ACFC/Hofmann describes his view of monitoring as: To establish facts and to draw conclusions on whether states have fulfilled their obligations, and providing

recommendations. He sees the task of the ACFC also in the establishment of a continuous dialogue, which in the case of the ACFC can be done by organising follow-up meetings. Recently these follow-ups have become less frequent. He proposes follow-up meetings also as a good occasion to facilitate the dialogue between state authorities and minorities. The ACFC tries to be inclusive in its monitoring by closely cooperating with NGOs etc. In terms of membership there are not many minority members represented in the ACFC.

CPT/Nestorova clarifies that the CPT is pretty constant in the overseeing process in some countries. In these more problematic countries, the CPT's work is more intensive and more likely to be considered as real "monitoring". Furthermore, under the surface, the CPT is not as exclusive as concerns other bodies, as it may seem. There is an inclusive process including regular exchanges with NGOs and a dialogue with state authorities, which adds to the constant monitoring.

ECRI/Stavros states that constant monitoring is not only about keeping track of information but also about having the possibility of taking an official position. The interim reports on three selected recommendations give ECRI the opportunity to do so. Likewise, the statements on urgent matters may be regarded as progress for constant monitoring. Additionally, ECRI organizes national roundtables after the publication of some country reports. It also organises seminars for national specialized bodies, i.e. bodies entrusted with the fight against racism and racial discrimination, every year. These national bodies can of course do some kind of more constant monitoring, but this cannot replace ECRI's work, as ECRI provides for the international perspective of monitoring.

ECRI/Ahlund says that ECRI qualifies as a constant monitoring agency. E.g., following the racism against Roma leads to another GPR on the Roma, because this was identified as a constant issue.

ECRI/Stavros explains that the CPT can only evaluate what they see when going to a country and after on-site visits the CPT may draw conclusions. For ECRI it is difficult to go to a country and "see racism". ECRI mainly carries out visits to discuss topics with national authorities and civil society.

CPT/Tugushi outlines the CPT's good partnership with national institutions, like NPMs, but explains that these bodies cannot replace the visits of the CPT. The CPT and NPMs can strengthen each other, but a lot depends on the quality of NPMs (some of them need training, and there are issues of independence).

ECSR/Swiatkowski regards the ECSR's monitoring as a mechanical process, which lies in a way in-between the other monitoring bodies' system. The ECSR "rules" like the ECtHR and functions as a watchdog of social rights. However, the outcome of these activities is important: the ECSR rules on special situations and Swiatkowski stresses that such a ruling function cannot be substituted by a national body.

ACFC/Hofmann explains that the ACFC has no specific national contact agencies, but that the ACFC cooperates with National Human Rights Institutions (NHRI). Further, there are meetings with academia (written exchanges and meetings during on-the-spot visits or follow-up seminars). Also the ACFC's work cannot be replaced by national bodies.

Lantschner inquires whether the ACFCs visits could be reduced, when there are national bodies that support the monitoring procedure.

ACFC/Hofmann explains that no formalised procedure exists in this regard. There is usually no contact institute that would collect data for the ACFC. This means that the ACFC would have to pay for such activities, for which there are no financial resources available.

Giakoumopoulos states that, from an institutional perspective, everything that is done under the CoE Directorate of Monitoring may be regarded as "monitoring". He further clarifies that the often stated "monitoring fatigue" frequently refers to the "political monitoring" carried out by different bodies established by the Committee of Ministers or the Parliamentary Assembly of the CoE only, and not necessarily to the treaty bodies' monitoring. The role of the Commissioner for Human Rights and his position lie somehow in between the "political monitoring" and the "treaty based monitoring".

3. Conference session II

Chair: Elina Steinerte

3.1. Discussion regarding publicity, transparency and confidentiality

Lantschner by way of introduction to the respective section of the background paper makes a distinction between publicity meaning when the products of the monitoring bodies get into the public domain and publicity meaning what is done to make this product known. In this context the availability of the reports in the national/minority languages is crucial but the question is raised whose is the initiative for such translations – NGOs, the state, or could the CoE have a more pro-active role. The need for a reform of the CoE website as expressed by the students is raised again.

Steinerte reflects upon the right balance between the principles of confidentiality and transparency. On the one hand, principle of confidentiality has an important role to play in aiding the dialogue between the states and monitoring bodies. It allows for more frank discussion of the problems encountered and more open search for possible solutions. On the other hand, the principle of transparency serves the important aim of accountability of both states and monitoring bodies. Also the timely publication of monitoring body findings allows the momentum not to be lost. Over the years however the meaning and perhaps even relevance of the principle of confidentiality has shifted. Thus, for example, if one examines the practice of the CPT, there is a clear change in the approach to the principle of confidentiality. Whilst initially the application of this principle was very strict, over the years the approach has become much more relaxed. Therefore a question can be asked if states parties to the ECPT these days would resist relaxing or even abandoning the principle of confidentiality in the text of the treaty through an amending protocol.

ECRI/Stavros explains that for ECRI transparency starts with the date of the adoption of the report. The prior process of collecting information and drafting the report in dialogue with the state concerned is confidential. ECRI does not negotiate with a state, but only gives the government the chance to correct data or mistakes. Governments do take the opportunity to make corrections. There are some particular situations that require confidentiality during the visits e.g. in order to deal with sensitive topics and approach vulnerable groups.

ECRI/Ahlund gives an explanation of when it is important to stick to confidentiality: Firstly, in order to protect sources of information (e.g. civil society) and secondly, to avoid premature conclusions: certain facts need to be checked before going public. In general, more publicity would be needed and welcomed. However, there are some examples of negative "publicity" as for example when Mr. Rasmussen (Denmark's then Prime Minister) put the ECRI report in the wastepaper basket live on the TV.

CPT/Nestorova agrees with Ahlund on the two reasons for confidentiality. The CPT has become much more open over the years. For example, there is a trend of trying to give interviews to journalists in order to get more publicity. This is, however, no violation of the rule of confidentiality, which is applied as strictly as ever. Nevertheless creating more awareness of the CPT‘s work is necessary. Nestorova also observes that the information regarding the CPT's work has become much more accessible. Some countries, for example Sweden, put CPT reports immediately into the public domain. In contrast, Russia constitutes the other extreme as this state is completely against any publication.

Kicker reports on the practice of the CPT to deliver the text of the immediate observations to the state authorities at the end of a mission in writing. Some countries – partly on the pressure of NGOs and civil society - have requested the publication of this immediate feedback given by the visiting delegation. This practice has the advantage that the most crucial findings of the CPT are published very quickly and may raise public awareness at an early stage. However, these immediate observations originate from the delegation and are missing reflection and the discussion and adoption by the Committee as a whole.

CPT/Tugushi explains that confidentiality was useful when the CPT was a new body. Now, most states understand that it does not make much sense to keep the CPT reports secret. He considers the publication of the first feedback of a delegation to the authorities as mentioned by Kicker, as inappropriate. Firstly, this is only a preliminary feedback, including more general statements, and secondly according to the convention only the state reports are the final product of the CPT's work.

The public statement of the CPT has nothing to do with a political statement. Generally, some facts are made public against the will of the parties and this is an important tool to lift confidentiality.

ACFC/Hofmann states that the publication of the ACFC's work some 12 years ago, when it started, has been a big issue also because minority issues at that time were considered as a very sensitive topic. The recent resolution of the CoM, allowing for an automatic publication of the opinions 4 months after their adoption, constitutes a positive evolution in this regard. Thus, a weakness in the working methods of the ACFC has been remedied. Previously, NGOs had demanded the opinion from the country as it is – in many countries – an official document in the sense of the respective freedom of information acts. The CoM slowly got publicity into it. The respective rule said: „unless the CoM decides otherwise“, which could mean that the CoM decides not to publish the opinion at all. The ACFC turned around the interpretation of this sentence in the sense that the CoM could also allow an earlier publication. Now, the publication may take place four months after the adoption of the opinion, unless the respective state explicitly contradicts this publication. The new procedure, however, does not prevent the state from publishing the opinion immediately, like the state report which is public once it is delivered.

It is important to have discussions with NGOs in the period of collecting information, but it is equally important to take the final decision on the view of the ACFC on specific issues in camera.

The translation of state reports and opinions into minority languages is a big problem for the ACFC. There is a lack of resources to do this on their own initiative. Therefore, the states should be obliged to translate the opinions, because so far not many states do translate the opinions in practice.

Lantschner wonders whether there was a controversial discussion within the CoM on the resolution on publication after four months.

ACFC/Akip confirms that there was a lively discussion. Therefore it was decided to first send a letter to the countries to inform them about this resolution. Two countries agreed to publication immediately, while others wanted a deadline to finalize their own comments. It now has become practice that the ACFC opinion and the comments by the government are simultaneously published as some sort of balance.

Aarino-Lwoff cautioned that the readability of the reports should also be taken into account when publicity is considered. The monitoring bodies' reports should not be too long and not be too complicated in their formulations.

ECSR/Kristensen explains that the ECSR has become more open and transparent over the last forty years, and especially during the last ten years. This is also due to the public hearings and presentation of arguments in the Collective Complaint's procedure. The reporting procedure has become increasingly open, since state reports are now published on the ESC website when they are received. Furthermore, trade union comments and shadow reports from NGOs contribute to transparency.

However, there is no reason for having an embargo of waiting four month until the publication of the ECSR's decision in collective complaints. This is mainly a political compromise, which is not useful and not understandable, especially for the complaining organizations. This leads to a situation, in which the complaining organizations cannot actively use the decision in their work for four month after they already received the decision.

Giakoumopoulos underlines that publishing the outcomes of monitoring activities as rapidly as possible is imperative for all expert bodies. However, if it is possible to achieve something with confidentiality, some transparency could be sacrificed - as long as this furthers the implementation. Generally, he says, the more monitoring documents are in the public domain, the better. However, it should also be acknowledged that not everything needs to be published immediately.

It was e.g. high time to increase the publicity of the ACFC opinions and this new procedure will also give more weight to the ACFC. The discussion in the CoM was actually not as difficult as expected – the timing was in fact well chosen. Now it would be more difficult to get such a resolution.

Steinerte summarizes that for each monitoring body there is the necessity to work within its rules/statues which also apply to the way how monitoring bodies utilise principles of confidentiality and transparency. Nevertheless, in practice the working framework of monitoring bodies over the years has evolved towards more publicity. Thus for example, the

change in the practice of the ACFC on this matter can be described as fairly radical shift in its approach towards the application of the said two principles

3.2. Discussion regarding the role of political bodies and other CoE bodies

Giakoumopoulos states that when discussing the question of when political backing is needed, a distinction has to be made regarding the role of the political bodies: On the one hand they act as purely political bodies and on the other hand they may perform tasks under a convention, such as in the case of the ACFC. The involvement of political bodies is useful when political issues are concerned, less for technical issues. For instance, the CPT's recommendation to build a prison in a certain country can be technical in the beginning and no backup by a political body might be needed. If there is, however, a continued opposition to build such a prison, then political backing might be useful.

Giakoumopoulos summarizes that there are indeed grey zones in this regard. If there is constant refusal by a state, political backing might be needed. Furthermore, it should also be taken into account that a government might even need the backing by an international body, in order to improve (and justify) the implementation in the state. In the case of Roma protection, for example, more external political support could trigger appropriate follow-up and implementation of the monitoring bodies' recommendations.

ECRI/Ahlund quotes from the background paper that "states might take criticism by its peers more seriously" and states that this indeed might be an advantage, but adds that states often refrain from criticizing other states, even when it is called for. In the UN human rights protection system, for example, countries form groups and blocks for tactical political reasons, and this has almost broken down the system. Thus, giving political bodies an increased role is dangerous and should be avoided.

ECRI/Stavros underlines that the question "when to include political bodies in the monitoring procedure?" is indeed an important one. For example, if an ECRI recommendation was not supported by the CoM, this would have a negative impact on other opinions issued by ECRI. The ECRI standards are not binding. Apparently for some monitoring bodies substantial political input is needed, for others not.

ACFC/Hofmann agrees and states that there should be no increased role of political bodies in relation to the ACFC. So far no important issue raised by the ACFC in its opinions was neglected by the CoM. Political backing is nice, but not essential any more.

ECSR/Swiatkowski explains that the ECSR is somehow between the two extremes of the ECtHR and other monitoring bodies present. He recalls that the ECSR produces two types of decisions (conclusions in the context of the reporting procedure and decisions in the context of the collective complaints procedure) and that the ECSR is a quasi-judicial body. The political role of the Governmental Committee is a given, the problem is that it does not in all cases use this role to give adequate follow-up to findings of non-conformity. The ECSR has to live with the political bodies. The ECSR and the Governmental Committee meet on a regular basis, and the dialogue is improving.

CPT/Nestorova is basically satisfied with the situation regarding the (non-)involvement of political bodies in the supervisory system of the CPT. The Parliamentary Assembly has played a useful role in supporting the CPT, in particular after the issuing of public statements

and when it comes to improving the membership of the Committee and ensuring that CPT reports are made public. She sees risks in increasing the political involvement of the CoM.

CPT/Tugushi states that one important strength of the CPT is its total independence of any political body. There are some exchanges with the Human Rights Commissioner from time to time, which is good. However, this cooperation could also be strengthened.

Kicker explains that the President of the CPT addresses the CoM annually in a hearing on the most striking issues and wonders whether this is also practice in the other three monitoring bodies? Would annual hearings of the presidents of the monitoring bodies in the plenary or the respective subcommittees of PACE be possible/advisable? What about the role of national parliaments? In Austria, for example, the CPT reports are not even discussed in the parliament and there is hardly any reaction in the media.

Giakoumopoulos identifies a certain reluctance of the monitoring bodies to engage more with political bodies.

As regards the involvement of political bodies, Giakoumopoulos explains that the political bodies do not water down the assessments of expert bodies, simply because the political involvement starts after the monitoring procedure. E.g., for the monitoring of the FCNM, the political body comes in after the opinion of the ACFC has been adopted and the opinion of the ACFC remains untouched. A political body of the CoE will never be able to change opinions of an expert committee, but in practice the CoM may only use weaker formulations in its outputs. For ECRI, the CoM is merely a letterbox - the same holds true for the CPT. The involvement of political bodies might be useful to improve the impact of monitoring bodies. Giakoumopoulos disagrees with Nestorova and sees a role for the CoM, for example, to back up the CPT's public statements. The CoM is currently too passive and could play a more active role in future.

Giakoumopoulos does not support the proposal that hearings of the monitoring bodies should take place <u>regularly</u> in front of the Parliamentary Assembly. A hearing before the PACE should not be a routine event. The Parliamentary Assembly should discuss the findings and most problematic issues raised by the monitoring bodies <u>only</u>. Should such discussion take place, it should be on a country-by-country basis or issue-by-issue and not on a body-by-body basis. Generally, the involvement of PACE is also very important. The ongoing reform process of the CoE monitoring might be a window of opportunity.

Steinerte summarizes the discussion noting that all of the monitoring bodies have to operate in a political environment. This is inevitable given that all of them have to operate with the system of the CoE and have close relationship with the political organs of the CoE. Moreover, the monitoring bodies also have to operate in a way that would facilitate good cooperation with the states parties. However this cooperation with both the CoE political bodies and states is vital. Good cooperation with states will facilitate the implementation of the recommendations whilst the CoE political bodies may lend the necessary political clout to the monitoring bodies when those face uncooperative states. It is however interesting to observe that the practice of the monitoring bodies over the years has once again evolved and less formal ways of interacting with the political organs of the CoE have been developed

3.3. Discussion regarding the bodies' assessment criteria

ECRI/Ahlund regarding the assessment criteria clarifies that apart from Art. 14 ECHR and the Add. Protocol Number 12 there are no other legal sources, so that ECRI is quite free to make up its own assessment criteria. ECRI's General Policy Recommendations (GPR) also serve as an important standard for the assessments. As long as ECRI applies the same criteria, ECRI is not breaking the rules. ECRI also has the possibility to extend its assessment criteria over time.

ACFC/Hofmann There are standards of interpretation developed by the ACFC. If states accept the assessment criteria they might end up as customary law. For example what does "substantial number" in relation to minorities mean? Is it 10% or 20% of the overall population? By repeating the ACFC's clarification, states get used to that percentage. However, there is nothing legally binding in these standards yet, but it is important to remind governments that the ACFC is working with a human rights treaty, the FCNM, which, as all human rights treaties, is a living instrument, which requires a dynamic interpretation. Hofmann does not think that the ACFC goes beyond its mandate. The ACFC has always managed to be correct on the facts.

The ACFC is also not faced with criticism concerning double standards. In fact, it is also clear that, for example, the living standards for Roma are different in various countries and therefore, the ACFC expects more from, e.g., Germany than from, e.g., Moldova, due to the different economic possibilities of the two countries.

ECSR/Swiatkowski states that the ECSR uses the standard methods of legal assessment. The general clauses in the Charter are therefore also used as assessment criteria. The ECSR tries not to introduce double standards, but in some cases proposals have been made to do so. However, the ECSR tries to maintain the higher standards and apply them equally to all states, even to those which are economically and socially in a different situation, such as for example. Germany and Moldova. The supervisory mechanism as a whole, however, leaves states with a chance and time to get adjusted to the higher standards.

ECRI/Stavros recalls that, according to the Vienna Convention, state practice, is relevant for treaty interpretation. In their practice within the CoM, CoE states seem to have already accepted a wide interpretation of some provisions. This is especially the case with the FCNM. As regards the allegations of double standards Stavros clarifies that ECRI perceives the states' compliance with ECRI's principles as an ongoing process. All four mechanisms under examination in this research want to reach the same standards in all states. ECRI makes different recommendations to different states (country specific differences) because the states are at different stages of this process. However, it is important to note that this does not lead to double standards as ECRI's ultimate goal is the same for all states.

CPT/Nestorova The CPT cannot be accused of using double standards. The CPT prioritises its recommendations as this is a step by step process during which the CPT identifies the most important issues for each country. Making recommendations in relation to all the CPT's findings would "overload the boat". The CPT also keeps on adding topics on its monitoring agenda (eg: separating smoking and non smoking prisoners) as it comes across new practices which may lead to violations of Art. 3 ECHR. Reports on newer member states might include more pages and more recommendations than reports on long-standing members.

Giakoumopoulos explains in relation to double standards that one has to acknowledge that the CoE monitoring bodies will never be able to "satisfy" all member states – this is part of the nature of the monitoring process. If monitoring bodies were to treat every state equal by, for example, submitting reports of only three pages for every country, the states would not be "satisfied" as well. The same holds true for allegations by states that monitoring bodies would go beyond the monitoring bodies' mandates.

Lantschner inquires whether the general output of the monitoring bodies has any impact on the countries. For example, are the ECSR's Digest of case law or the ACFC's thematic commentaries used when drafting national legislation?

ECSR/Kristensen responds that the ECSR's Digest of case law is very well perceived by states and is used as an integral part of the outline for the national state reports. There a number of examples of it being used by national authorities in the process of drafting new legislation. Thus, the Digest can be regarded as a good tool although it is perhaps still not sufficiently known by a wider audience. The Digest of case law is derived from the conclusions in relation to the state reports as well as from the decisions on collective complaints and can be regarded as a compilation of standards in so far as it is a faithful reproduction of the ECSR's interpretation of the Charter. However, it is a publication by the Secretariat and it is not formally adopted by the ECSR.

CPT/Nestorova explains that for most countries it is the CPT report that matters, and not so much the substantive sections of the CPT's annual reports. Some of these substantive sections are already out of date because the CPT's "jurisprudence" has evolved since they were published. Consequently, states care more about the recommendations made in the country visit reports, which may well go beyond the "standards" outlined in the substantive sections.

CPT/Tugushi confirms this statement by Nestorova.

ACFC/Hofmann explains that states have not started to refer to the ACFC's thematic commentaries. However, the ACFC uses them as a reference book in its opinions, but e.g. no German Landtag currently refers to the thematic commentaries when drafting a law.

Impact assessment is difficult for the ACFC as obviously for every monitoring body. One exception is Sweden: there it has explicitly been stated – in the parliamentary documents - that a new language law has been adopted as a reaction to the Language Charter and the FCNM.

ECRI/Stavros clarifies that ECRI's GPRs lay out what the government should achieve. However, civil society is sometimes also addressed (e.g. on racism in sports for example). The GPRs that address civil society are referred to by governments quite often. Some recommendations in the GPRs are very concrete, others are rather vague. Especially GPRs 2 and 7 have shown impact in the countries. It could be argued that these changes have taken place not because of ECRI's work but because of related EU regulations, but such changes could also be observed in non-EU countries.

Giakoumopoulos adds that the monitoring bodies' standards are also used by the ECtHR and by the national jurisprudence.

Steinerte summarizes the discussion on the question of "double standards", proposing that it might be useful to avoid the term "standard" in relation to the recommendations that the monitoring bodies give to states parties. By describing these recommendations as "standards" the monitoring bodies imply that all states must achieve something that is similar while in practice it is clear that the particular circumstances of each state party differ and thus the level of expectations of what can be achieved necessary differs as well. Thus by using a different term, like "tailored advice" the monitoring bodies would be able to avoid the accusations by states that "double standards" are applied.

4. Conference session III

Chair: Silvia Casale

Kicker introduces the topics as elaborated in the background paper and states that the research team gained evidence that each of the monitoring bodies had adjusted its working methods already. The question remains what can they learn from each other? Does the dialogue between the expert bodies and the state stagnate and if so what would be the appropriate means to give this dialogue a new momentum. Would a complaints system help to improve the level of information and the contact with civil society? What else can be recommended as best practice?

4.1. Discussion regarding the dialogue and compliance by states

ACFC/Hofmann locates a certain risk of fatigue in the dialogue between the ACFC and member states. An indicator for this is the declining number of follow-up seminars in member states. These seminars now need to be revitalized.

The ACFC ad-hoc contact procedure has not been used so far. It was discussed in relation to a case in Slovakia but it was then not necessary to conduct an urgent action, because an opinion was already elaborated addressing this issue. However, otherwise there would have been the necessity for an urgent action.

The following examples of good practice can be given in order to improve the dialogue with member states:

- high level of involvement of NGOs in the context of preparing opinions
- separate meetings with NGOs during ACFC country visits
- some states include comments of NGOs also when preparing their state reports
- indirect contact with NGOs to put pressure on the authorities to carry out follow-ups

The ACFC is thus a facilitator of the dialogue between the state authorities and the respective stakeholders.

ECRI/Ahlund agrees that there is also a real risk for the ECRI's dialogue to stagnate, or to become less effective. There have been negative developments and a climatic change in some of ECRI's working fields, e.g. with regard to the treatment of Roma in some countries. Furthermore, xenophobia also exists in very "tolerant" countries. The main question for ECRI is how to deal with persistent objectors, which are states that do not question the monitoring, but fail to comply with ECRI's recommendations. This is a real problem with no obvious solutions, but some approaches may be proposed:

- confidential dialogue with state authorities

- follow-ups with round tables (the press is invited in these discussions, which creates pressure on the government)

There is a problem with the use of references to best practices: This could easily result in a comparison of countries and this is a delicate issue, because ECRI would have to name countries.

CPT/Nestorova also confirms that the dialogue of the CPT may stagnate not only with new member states, but also with some longstanding parties in Western Europe. Two means of persuasion to achieve some progress vis-á-vis such states are used by the CPT, ad hoc visits and high-level talks. A change of government in these countries may be a new window of opportunity to achieve compliance, however, it could also lead to a hardening of policies.

The CPT's preventive mandate also means that the CPT should step in when a law is being drafted. Thus high level talks can be useful in the phase of the drafting processes. This is also a good example of an adaptation of the CPT's working methods.

CPT/Tugushi agrees that there is a stagnation of the dialogue in some countries. There is certainly a stagnation to be observed in a dialogue with a state, when the CPT is repeating a recommendation for, e.g., 9 years. It might also be due to different cultural approaches, why states do not comply. Finland, for example, like other Nordic countries, is more reluctant to adapt to newer standards. The problem is that the CPT concentrates on a country in which more problems occur and thus others might be neglected a bit, which may also lead to further stagnation in the dialogue.

ECSR/Swiatkowski expresses his view that for the ECSR no stagnation can be observed and no crisis in the dialogue with member states due to the following different factors:

- the ECSR has three instruments available (old and new Charter, as well as the system of Collective Complaints)
- there is an intensive process of persuasion to ratify the revised Social Charter and the Collective Complaints procedure
- there is also a process of persuading states to accept further provisions (the procedure on non-accepted provisions)

It is however true, that State reports often provide insufficient information.

Casale summarizes the discussion and states that for the ECSR the field of possible efforts is so broad that there is still no stagnation to be observed. The other three bodies see a certain risk of stagnation in their work.

ACFC/Hofmann remarks that with the definition of "stagnation of the dialogue" given by Swiatkowski, there would indeed be no stagnation for the other three monitoring bodies as well.

Giakoumopoulos notes that the ESC is the only instrument which had recently a series of new ratifications which is surprising given the economic crisis and which shows the importance of the ESC. Giakoumopoulos refers to the six steps of compliance as defined by MONEYVAL. This approach proved to be successful.

ECRI/Stavros explains that now it is still too early to tell, whether the interim follow-up is really successful, as the implementation of this procedure has not started yet. He outlines the procedure of how the recommendations are selected: At the end of the visit the government is

given a list of recommendations, from which the three most important ones are chosen together with the state's representatives. Some countries take these talks seriously, others do not. ECRI should maybe also engage in high level talks, but as for now ECRI is lacking the resources required to do so.

CPT/Nestorova states that for the CPT it would be impossible to issue three core recommendations. There are simply too many areas for the CPT to be covered: police, prisons, psychiatric establishments etc. Certain recommendations may get overlooked because each monitoring report contains some 20 pages of recommendations.

Steinerte inquires about the inclusiveness of other bodies in the monitoring procedures and wonders to what extent NHRI are used by the CoE bodies. She argues that they could potentially become good and strong partners for carrying out the monitoring task. They could, for example, provide information and influence the follow-up of the reports.

ACFC/Hofmann explains that the ACFC works with NHRI already. The ACFC's second cycle opinions contained a progress assessment in a separate section, and one on outstanding issues. In the third monitoring cycle the ACFC makes three main recommendations or three issues are highlighted in the opinions. This indicates to the state parties what are the most striking issues and that these topics should be taken into account, in case a state organizes a follow-up seminar. Some ideas could be borrowed from ECRI, although no debriefing meeting and following interim report will be done by the ACFC.

ECSR/Kristensen explains that the ECSR also faces a certain fatigue in the dialogue with the member states, especially when the ECSR is reiterating the same finding of non-conformity over and over again without the state taking any measures to remedy the situation. But fortunately, the Collective Complaints procedure functions as a safety net – at least in those countries that accepted this procedure. For the other states, ECSR held several high level talks and meetings with the governments to solve recurring problems and to encourage the acceptance of the Collective Complaint procedure.

Evans cautions that the output of all monitoring bodies is somewhat different. The status and standing of these various recommendations have to be taken into account. "We should be careful about how we describe what we are talking about: is it a simple recommendation with which the body wants to express something recommendable, or is it actually a recommendation with the intention to achieve compliance and conformity based on an obligation?" E.g. if the CPT issues a recommendation the non-compliance by the state concerned does not necessarily constitute a breach of an obligation. Furthermore, sometimes one gets the feeling that the monitoring bodies conduct "reciprocal monologues" instead of dialogues.

ECRI/Ahlund explains that the dialogue is not always meaningful, as there sometimes is no contact with the counterparts who "cause" the problem in a state. For example, in Hungary, the problem is the fundamentalist position on issues of freedom of speech of the Constitutional Court, but ECRIs counterpart in the dialogue is the executive branch of the Government. And if ECRI issues recommendations to the Hungarian court, the court would almost certainly reject those on the basis that it is independent and ECRI cannot interfere with the independent court. The executive branch of the Government authorities is aware of these

problems with the constitutional court, but cannot do anything about it. Thus, there is a difficulty based on the structure of the dialogue.

Casale suggests using the term "implementation" rather than "compliance".

Evans inquires which level would be the best one for high level talks. The high(est) levels might actually not always be the best solution (see the case of the Hungarian court). Thus, he suggests that multilevel talks would be a better option, where depending on the countries talks are held at the "right" levels.

CPT/Nestorova states that meetings with ministers (or their deputies) are common for the CPT. In some counties, the CPT has started to spell out the name of the actual person whom the delegation would like to meet, but even this is no guarantee that the delegation would meet the right calibre of interlocutor.

Judgements of the ECtHR can promote the recommendations of the CPT.

As concerns cooperation with NHRI, the CPT reports are usually not handed over to them and they may have access to the reports only after they have been made public.

Kicker reminds that the liaison officers for the CPT are in many states nominated in the Ministries of Foreign Affairs and are to be addressed in the first place. Kicker also points to the problem that changes in governments might constitute a problem for the monitoring bodies' dialogues, because also the highest level of civil servants in charge with whom the dialogue has been conducted will often change.

Kicker wonders, if addressing parliamentarians would be a solution. Political pressure should at least theoretically be exercised by the parliament.

ACFC/Hofmann explains that the ACFC is always meeting with parliamentarians. However, the results are mixed in this regard.

ECRI/Stavros states that ECRI also meets parliamentarians and confirms also for the ECRI that this has led to mixed results in practice.

Giakoumopoulos agrees that high level talks could be used in cases of stagnation and supports Evans proposal to conduct talks at the "right" level. The CPT has developed these confidential talks, but this instrument might be even more effective for other bodies, as the rule of confidentiality is not so strict for them.

Giakoumopoulos further notes that the right moment for high level talks has also to be taken into account by the monitoring bodies. This way the problem of changing governments and changing persons in charge (as outlined by Kicker) could be countered. The monitoring bodies have enough flexibility to do so and should look into the electoral calendars, in order to identify the right moments for starting these talks or monitoring visits.

Talking about recommendations and proper notions Giakoumopoulos states that the monitoring bodies are difficult to compare: How to compare a Digest of case law to recommendations? The ACFC also includes clear findings on breaches of obligation in its opinions.

Casale wonders if high-level talks could be combined with the follow up procedure.

CPT/Nestrova explains that, for example, in Russia an ad-hoc visit of a follow up nature combined with high-level talks was used. Thus, hybrid measures might be a tool for the CPT, when states consistently fail to cooperate.

Casale summarizes that it might be important for monitoring bodies to get the opportunity to talk to people from different levels.

4.2. Discussion regarding the flexibility and adjustment of working methods

ACFC/Hofmann explains that there is no complaints procedure available for the FCNM. If there were one, it would have to be a collective complaints system. The problem is that such a procedure would require an amendment of the FCNM, which is not advisable.

There are rapid reaction interventions available for the ACFC, but so far they have not been used yet.

As concerns focussing on specific issues the ACFC has to deal with all provisions of the FCNM and thus cannot simply leave out some issues. But if ECRI has a recent report, the ACFC could simply associate itself with the view of ECRI (and the other way round) by declaring that “the ACFC fully agrees with the findings of the ECRI report”. Generally, the cooperation between the ACFC and ECRI affords great opportunities and would not require legal changes.

The ACFC’s outcomes of follow-up meetings and high level meetings usually depend on the country. Sweden, for example, makes positive use of these meetings and uses them for the presentation of new legislation.

A high level of involvement of NGOs in follow-ups and throughout the monitoring is certainly a best practice of the ACFC.

ECRI/Ahlund is not in favour of considering a complaints procedure. ECRI should not become a judicial body, as this is the work of the ECtHR.

ECRI always meets with NHRIs as they are an important and good source of information. ECRI pushes for more resources and autonomy for NHRIs so that they could become institutions with more “teeth”.

ECRI does already concentrate on some selected topics. There are a number of fundamental issues that are raised in every report - even if this issue is not a problem in every country to the same extent.

It is a rather recent development that ECRI uses some type of rapid reaction mechanism. ECRI has so far issued three statements (concerning Russia in relation to the treatment of the citizens of Georgia; vis-à-vis Italy (Roma and Romanians), and Switzerland (minarets). Thus, to a certain extent ECRI can react to political developments immediately. Furthermore, there is also a certain flexibility for ECRI to make visits at the “right” time to react to developments in states. The country visit to Georgia could be named as an example in this regard. To sum up ECRI has enough flexibility for adapting its working methods.

ECRI has also accumulated best practices for improving the dialogue with member states. These are: the interim follow up recommendations, the confidential dialogue, and round tables. The latter became increasingly important and ECRI has had good experiences with them.

CPT/Tugushi explains that collective complaints procedures cannot be applied to the CPT. Although individual complaints do reach the CPT, these complaints cannot be handled in a formal complaints procedure by the CPT.

There is room for improvement for cooperation with national monitoring bodies. A new wave of NPMs can be observed, and the cooperation with NPMs should be strengthened.

The ECPT provides for sufficient flexibility for the CPT. Sometimes the CPT even goes beyond what was originally intended in the convention.

Among the best practices of the CPT which have already been mentioned are high level talks, which are a good development also with regard to trust building. All in all, the CPT has a well-developed communication strategy with state authorities. Furthermore, there are some good contacts with NGOs, who provide reliable sources for the CPT

CPT/Nestorova underlines that one of the best practices is cultivating links with the NGOs, but also stepping in early when a law is being drafted. It is important for the CPT to have a say already at that stage, so that the respective state authority may take the CPT‘s views into account. This is a good example of a proactive preventive action.

Kicker explains that in the event that the CPT receives complaints about a worrying situation the CPT may confront the state with this information and request detailed information. The response given by the state will form the basis for a decision on whether the committee needs to carry out an ad-hoc visit. This can be seen as a first warning and is laid down in the CPT's Rules of Procedure.

ECSR/Swiatkowski explains that the ECSR's complaints procedure is a perfect source of gaining information and for developing the role of civil society in ensuring the application of the Charter. The Collective Complaints are also a means of pressure. The experience with the Collective Complaints Procedure is thus a very positive one. However, to some extent the ECSR's hands are tied, because only 14 states have accepted this facultative procedure.

There can be no transfer of the ECSR's function as a quasi judicial body to national monitoring bodies.

Under the new system for presenting national reports there is a focus on specific thematic issues in different monitoring cycles.

The ECSR is continuously reviewing and revising its working methods, not least to cope with an increasing workload and lack of adequate resources.

Giakoumopoulos states that the complaints procedure and rapid reaction procedures point in the same direction. It is the essence of a complaints system that the monitoring body is enabled to receive information in any form (reports, letters) and that it has the capacity to process this information more or less rapidly, and then take actions. Besides the complaints system, there should be other means, which are less intrusive, e.g., round tables, “high-level visits” that can be used in a flexible manner. An effective use of these additional means presupposes that the monitoring bodies identify some issues to focus on and adopt a strategy in respect of these points.

Giakoumopoulos suggests 1) the meeting of the chairs where these points may be discussed (what does each body consider as next steps?) and 2) the Human Rights Commissioner could play an increased role.

4.3. Discussion regarding the mutual reinforcement of expert bodies and synergies

ACFC/Hofmann There is potential for further synergies and increased cooperation between ECRI and ACFC. The idea came up (during the informal dinner) that “country experts” could be developed and identified in both secretariats so that no double learning will be necessary. More specifically, an expert of the ECRI secretariat on country A could go on visit with the ACFC, and vice versa an expert of the ACFC secretariat on country B could go on visit with ECRI. ECRI could also focus more on states that have not ratified the FCNM.

ACFC/Akip agrees and states that it is possible to create synergies in the practical working methods without changing the conventions.

ECRI/Ahlund agrees with Hofmann and says that the conference helped to realise some common aspect that the ACFC and ECRI share**.**

ECRI/Stavros fully agrees with the possible cooperation with the ACFC. It is a good idea to rely on each other’s findings and experts and make reference to the ACFC as well. The way ECRI’s report on Poland deals with the issue of special measures to preserve minority identity follows the approach suggested earlier on.

Kicker recalls that national authorities sometimes have problems when two monitoring bodies carry out visits within a short period of time. Too short intervals between two monitoring bodies visits might negatively influence the quality of the dialogue. Thus, the question is how to facilitate a dialogue between the monitoring bodies concerning the timing of their visits.

Casale summarizes that proper timing is an important matter for creating synergies.

Evans recalls that there is a problem with the coordination of monitoring bodies within the CoE and with the coordination with UN bodies. At the UN level there are annual meeting of the chairs of the bodies and the Inter-Agency Coordination Committee. The UN bodies likewise do not want to be coordinated, but Evans notes a higher degree of “ignorance” between different UN bodies than is the case for CoE bodies. The purpose of these UN meetings is mainly to explain to the members what is going on within the various constituencies and inform each other on the aims and aspiration of the various members of the treaty bodies. The CoE bodies could instead conduct meetings and debate on common themes and jointly follow developments in one area, which could also influence the other bodies.

Casale indicates that there is a difference in the roles of the Human Rights Commissioner and the Special Rapporteur in the UN system.

4.4. Discussion regarding the relations with the EU and other international bodies

Casale opens the discussion by asking how the CoE bodies should deal with the EU, as the EU is increasingly showing a greater interest in monitoring?

CPT/Nestorova explains that the CPT tries to be as proactive as possible so that its work is not being duplicated in the EU. The CPT maintains contacts with the European Commission and the European Parliament and participates in discussions on various issues (e.g. safeguards during police custody, treatment of illegal migrants, etc.). What should be avoided is that the EU decides to "reinvent the wheel". There is talk of the EU acceding to the Convention setting up the CPT.

CPT/Tugushi adds that the CPT has also good contacts with the SPT and the special Rapporteur on Torture. Both institutions are important and an exchange is ongoing to avoid overlapping and double standards. There are some good contacts with the OSCE on many issues. The CPT's knowledge is used by the OSCE

ACFC/Hofmann states that minority issues have long been neglected within the EU. Therefore, the risk of overlapping might not be as high as for other bodies. There are some references to this issue in the Lisbon Treaty now, but still it remains to be seen what this will mean in the future practice of the EU. The ACFC had an impact during the enlargement process of the EU, where the states were instructed to use the ACFC opinions, but were not allowed to quote them.

Good relations already exist with the FRA. There might be further possibilities for cooperation. The ACFC is ready to assist the EU institutions, but it remains to be seen if the EU wants this.

There is an excellent working relationship with the OSCE (numerous conferences and lot of synergies).

There are some relations with the UN. The coordination with the Independent Expert on Minority Issues needs to be improved, as this body is also doing country visits. There are, however, informal proposals available.

ACFC/Akip adds that even without a formal cooperation, the ACFC uses the findings and conclusions from the monitoring bodies of ICCPR, CERD etc.

ECSR/Swiatkowski explains that the ECSR has a good relationship with the UN, ECtHR and ILO as far as labour rights are concerned. Swiatkowski hopes that the EU will ratify the Social Charter and points to a recent resolution of the European Parliament calling for EU accession to the Charter as a logical corollary to the accession to the ECHR.

ECRI/Stavros: The issue of standards is a big one, as the EU has legislated in ECRI's field (framework decision and two directives, which however do not cover all areas of discrimination that ECRI deals with). National networks of legal experts exist that report to the EU on the directives. ECRI's approach is, however, more holistic.

Now CERD and ECRI have one member in common. CERD does not cite the ECRI reports, but they unofficially use them. ECRI and UNHCR have good relations. UNHCR provides ECRI with information and attaches a lot of importance to ECRI's recommendations regarding the situation of asylum seekers. ECRI informs officially ODIHR of its findings, which the latter uses when designing its technical-assistance programs. There was also a good cooperation with EUMC (body that existed before FRA), now ECRI is looking for a new modus vivendi with FRA and tries to find ways how to rely on each others' findings.

Evans comments on the coordination of EU organs with the organs of the CoE. It would weaken the impact of monitoring bodies, when experts from different bodies arrive regularly

in member states talking about similar topics with the state authorities. Further, there is a problem of slightly different recommendations being made by different bodies. Also, double standards are already becoming an issue at national and regional level. Relative efficiency means that coordination could result in the abstention of the other monitoring body, forging the cooperative links that lead to a better implementation.

Giakoumopoulos comments on the internal CoE coordination and explains that the Human Rights Commissioner is not a monitoring body, but is the person who gives a face to findings of the monitoring bodies, while not substituting for them. However, when the Commissioner is working in the field, carrying out visits, he tends to substitute for monitoring bodies, which should be avoided. The "monitoring" process of the Human Rights Commissioner is by far less intrusive than the one of, e.g., the CPT and the Commissioner's findings are therefore more like prima facie impressions, than full assessments. Now the Human Rights Commissioner has the right to bring cases before the Court, which is an important feature.

The OSCE also launched a reporting procedure, but a distinction has to be made between binding obligations and encouraging statements. There is a tendency for national authorities to mix binding obligations with encouragements given by other bodies addressed to them. A meeting is planned with OSCE representatives to discuss further coordination and cooperation.

As regards the UN an increased level of cooperation can be observed. The dialogue is not institutionalized, and is based on desk to desk contact.

The EU shall accede to the ECHR and negotiations will start in July 2010. Discussions are ongoing regarding the accession to the ESC. As regards the ECPT, accession is an option, but it is still unsure, whether there will be detention centers run by the EU, where the CPT could do monitoring. However, FRONTEX may in future detain people and this could be an area for the CPT. The Stockholm Program also refers to prisons and detention. The ESC and the ECPT are expressly referred to in a recent European Parliament Resolution approving the Commission's mandate in the framework of ECHR accession negotiations.

ECRI is also referred to in this European Parliament Resolution, but the ECRI Statute does not foresee accession by the EU. As regards the FCNM, accession to the convention by the EU is not an issue, also because four EU states have not ratified the FCNM.

Even without accession, the participation of the EU in CoE monitoring could be enhanced, e.g. by giving the EU an observer or "participant" status in the bodies.

Casale summarizes the session and explains that there seem to be a lot of points of agreements and the CoE monitoring bodies' work intersects in various regards.

1. There are continuing efforts to improve the dialogue, but there is a constant risk of stagnation.
2. In terms of implementation, not all the bodies' expectations are met.
3. There are some points of agreement about the potential that is offered by using the follow up or prioritizing recommendations.
4. Each body has to be aware of the complexity of interlocutors and the questions which it needs to address.
5. There are concrete proposals for increasing the cooperation between ACFC and ECRI, which shows that opportunities might be there for others as well. These bodies demonstrate huge creativity and quite practical approaches.
6. When trying to stimulate synergies it is obvious that difficulties exist, not least due to the differences of the monitoring systems. Simply using working methods of other bodies and

combining them with the bodies' existing ones is difficult, if not impossible. All bodies need to work to maximum effect, but the fine-tuning of working methods looks different in practice. This seems to still be an open issue across the different bodies' systems.

7. There are synergies possible with the UN. For synergies with the EU, the issue is more complex. The political sensitivity has to be taken into account. Informal procedures might help to minimize damage, as there is a danger of monitoring overload.
8. There is a need to avoid duplication. Overlap, however, has not necessarily to be regarded as a negative feature of monitoring. Overlap is fine as long as there is a consistency of approaches. Thus, it is inconsistency that has to be avoided especially in terms of norms and (double) standards.

Giakoumopoulos summarises the main results of the conference.

1. Whatever reform proposals will be made as an outcome of this conference, they should leave the statutes and conventions of the monitoring bodies untouched, as opening them would be too risky. The working methods and internal rules of procedures may be adapted and this adaptation will not be too complicated and will not even take too much time.
2. Membership issues are indeed a problem. Therefore, the proposal can be made that there should be an external advisory body which could check the validity of CVs in order to ensure that all candidates on the list meet the legal and practical requirements. This advisory body could give advice to the respective electing body. As regards the number of members the creation of working groups/chambers is to be preferred over reducing the number of members.
3. Country visits by monitoring bodies are of enormous advantage. The committees get a clear picture of what is happening during these three to four days. Visits may be used to gather information, but could in future be used more intensively to have dialogues at various levels and thus promote compliance.
4. Confidentiality is important for the monitoring process and has to be balanced with transparency to some extent. Confidentiality can on the one hand facilitate the impact and the understanding of the monitoring bodies' concerns. Publicity, on the other hand, may trigger the dialogue with civil society. Certainly, there should be a time or stage of confidentiality, but as there is a need for public discussion any persisting confidentiality has to be avoided.
5. Political bodies do have a role in monitoring procedures. For political bodies it is important to have a clear distinction between the different responsibilities when acting as a treaty body or as a political body of the CoE. The CoM could give political backing to findings of monitoring bodies. The monitoring bodies' relations with PACE should be enhanced.
6. There are certain means to increase the dialogue with member states: visits, high level talks, seminars, follow-ups may be named as best practices. The monitoring bodies have sufficient flexibility to use these tools, but could in practice resort to them in an even more flexible manner.
7. The CoE monitoring bodies could increase their efficiency in terms of impact also by concentrating on some selected issues only or by focusing on the most important points. This international monitoring needs to be supplemented by effective national monitoring mechanisms.
8. As regard synergies with the national human rights structures it was found that each body should explore further how to increase dialogue as this is an important way to increase the impact of both, national human rights structures and international monitoring bodies.

9. As regards the relations of the CoE monitoring bodies with the EU, a window of opportunity can be observed. The EU does not have to reinvent the wheel by reinventing the monitoring mechanisms of the CoE. The CoE monitoring systems are quite independent. This level of independence will hardly be achieved by EU bodies. If the EU creates new bodies, it should be ensured that these new bodies do not replace the CoE bodies, but rather build on the existing CoE mechanisms.

II. ANNEX I: SUMMARY OF STUDENT'S SESSION

1. Answers to the students' questions addressed to the ACFC

On the ACFC's strategy to get new signatures/ratifications
Hofmann: There is no strategy to get new signatures. Currently a stagnation of ratifications can be observed. Eight countries are not expected to ratify the Framework Convention in the near future as the political position of these states is "frozen". There have been, however, three states (Bosnia-Herzegovina, Armenia and Serbia) who have ratified the Convention before even becoming members of the CoE.

On the number of expert members of the ACFC
Hofmann: 18 members are sufficient for the ACFC. Currently, there are two vacancies, as the Ukrainian member recently resigned. Besides the 18 members there are also additional members as well. They serve as a kind of ad-hoc member, who come in when a country is being discussed and the respective state does not have a regular member sitting in the ACFC in that moment. The rotation system works fine.

On various question on membership issues
Hofmann: As concerns membership and the problem of professional background and language abilities there have been cases of members with deficits in handling one of the two or both CoE languages. However, this is the responsibility of the CoM. As concerns the professional backgrounds, there have been cases in which states suggested persons who were not the best candidates. Experts come from a variety of backgrounds. In the beginning there was a majority of lawyers, but now about half of the members come from other disciplines (e.g. social scientists, linguists).

The independence of members is guaranteed. For example, there have been cases where two members became ambassadors at national level and these two members resigned. In the past the ACFC had some bad experiences with external experts (e.g., two external experts have been consulted for the drafting of the Russian report). Today, the ACFC has no formal cooperation with external experts, but meets experts and academics in the course of its country visit, which might also be regarded as receiving input from external experts.

On ad-hoc monitoring
Hofmann: The ACFC has not yet used the ad-hoc procedure. In one incident (regarding the situation in Georgia) it was considering doing it.

On shadow reports by NGOs
Hofmann: It has to be questioned, if it is political advisable to publish shadow reports by NGOs on the webpage of the CoE. Certainly, there is no legal provision that would prohibit the publication, but the question remains, which reports to publish, as not all shadow reports are as good in quality as they are expected to be.

Akip: Shadow reports are available on the website of NGOs. Thus, there is no need for publication on the CoE website.

On cooperation with other bodies

Hofmann: There is a good cooperation with the secretariat and expert committee of the Language Charter and with ECRI. The cooperation with the European Court on Human Rights (ECtHR) works well. Indeed the ECtHR started to refer to ACFC opinions. For example, the Grand Chamber mentioned the ACFC opinion in its judgment in D.H. v Czech Republic. While the EU used ACFC opinions in the Eastern European enlargement process, the cooperation with the EU (especially with the European Fundamental Rights Agency, FRA) could be closer and needs to be improved. Likewise, the cooperation with the United Nations (UN) could/should be improved as well.

On the delay between adoption and publication of opinions

Hofmann: The delays between the adoption and the publication of ACFC opinions have indeed been an area of concern. In the next cycles the opinions will be published four months after the adoption, as now there is a new possibility to do so.

On the thematic commentaries

Hofmann: The next thematic commentary will be on linguistic rights. It is currently being elaborated in close contact with the Committee of the Language Charter

On standard-setting

Hofmann: Some academics argue that the ACFC opinions could become customary law. This argument could also be developed for the other bodies' "standards".

On the rotation system in the election process

Akip: For the last election in May there were four baskets in which the names of the states parties per date were put. In the first basket all countries were put, which have not had a member for six years, in the second basket the countries who have not had a member for four years, in the third basket those countries who have not had a member for two years and in the fourth basket were those who got a member elected in the last round. In this order of priority, members are elected out of the baskets filled with state names. This also means that candidates of state parties placed in the first basket get elected automatically. Akip stressed that the rotation system works on a country-basis and not on a rotation system per person. This ensures a fair representation of the countries

On publication of meeting reports

Akip: Indeed, there is currently a backlog in publishing the meeting reports of the ACFC on the website, but they will be published soon.

2. Answers to the students' questions addressed to the ECRI

On ECRI's nomination procedure

Ahlund: The nomination procedure takes place on two levels. First, there is the nomination of the candidate by the national government. It is uncertain, whether there are harmonized procedures in the member states at this stage, but it should be noted that, e.g., this process is not very transparent in Sweden (the respective person was just asked). At a second level, the respective name of the candidate is submitted to the CoM. So far, no candidate has ever been rejected. Renewal of membership is possible and there are no limitations for renewal of the mandate.

On ad-hoc monitoring
Ahlund: The statement that "ad-hoc monitoring is not possible" is not entirely correct. ECRI's mandate does not prevent any ad-hoc monitoring, as the mandate is very open also in this regard. There have been urgent action statements on Russia, Italy and Switzerland, which also may be regarded as a kind of ad-hoc monitoring.

On cooperation with other CoE bodies
Ahlund: ECRI works closely with the ECtHR. In several cases the Court used ECRI's reports and, vice versa, ECRI also strongly used the Court's judgements.

On confidentiality
Ahlund: The procedure of the elaboration of the reports is confidential. The annual report of ECRI and the country reports are published of course. The whole procedure leading up to publication, however, is confidential.

On the adoption of ECRI's reports
Ahlund: After the country visit, a draft report is produced by the secretariat together with the rapporteurs. The draft report is distributed to all members of the plenary, for their written comments. The country-by-country working group, including the rapporteurs then examines these comments, after which amendments and positions taken by the group are presented and discussed in the plenary. Issues on which the plenary fails to reach a consensus are decided by voting. The next step is to present the report to the country in question for the confidential dialogue. At this stage, only factual mistakes which are corrected by the state are taken into consideration, but not opinions. This means that the state's comments strengthen the quality of the report rather than watering it down. It should also be mentioned that the reports are translated into the national language

Stavros: The confidential part of the dialogue strengthens the reports. ECRI has to collect a lot of information, since its reports cover a wide range of issues. Although it is very meticulous in its approach, minor mistakes may happen and the confidential dialogue allows the government to correct these mistakes.

On the interim follow-up
Stavros: ECRI reports cover a lot of matters, and ECRI does not want to limit itself in this regard. Generally, it has never been the expectation of ECRI that each country will comply with every comment in the report. However, the interim follow up is quite different in this regard, as ECRI insists more on implementation. Three recommendations are selected for which ECRI expects implementation. Three criteria are applied for choosing the three recommendations: first, these recommendations needs to be important; second, they need to be implementable within a period of two years; and third, the government is asked for its opinion on which issues the ECRI should focus on.
Comment Kicker: Obviously, the consultation with the government should have an impact on the question whether these recommendations would be implementable. It was, however, mentioned that not all states engage in this dialogue and from some governments no information has been provided about which issues the ECRI should focus on.

On ECRI standards
Stavros: Yes, ECRI's "standards" can be found in the General Policy Recommendations (GPRs). However the GPRs, do not address all the fields ECRI covers (e.g. there are no GPRs

on non-citizens) and also the annual reports of ECRI should be regarded as a source of standards.

On Kosovo
Stavros: The question, whether ECRI is competent for Kosovo is a difficult and mainly a political one (part of Serbia vs. independence). Furthermore, what about the break-away parts of Georgia? ECRI could not go there but ECRI tried to meet people who had fled the region. However, there are "black holes" in Europe, and this is a concern for ECRI.

Giakoumopoulos: Indeed monitoring Kosovo is a difficult problem as Kosovo was/is in a transitional period. The CoE has agreements with UNMIK concerning two monitoring bodies: ACFC and CPT. However, even though agreements exists, the detention centres might no longer be under the responsibility of UNMIK, so the open questions are: Who are the authorities and to whom should the recommendations be addressed? This is also a politically delicate question, as it is related to the issue of recognition.

Aarino-Lwoff: Remarks on the transparency of the appointment procedure and states that the public selection of candidates might not be the best solution. Rather, the problem (especially for small countries, where e.g. linguistic skills are much weaker) is that there often is a general lack of experts in the countries. Often there is no option to select candidates from a long list.

3. Answers to the students' questions addressed to the ECSR

On ratifications of the Social Charter
Swiatkowski: The ECSR monitoring started 40 years ago. There was a discrepancy identified in the figures given in the background paper with 14 ratifications of the Collective Complaints Procedure and only 12 in the students' presentation – this due to the fact that 12 states are bound by the procedure through ratification of the Protocol and a further two states are bound by it through the declaration made under Article D of the Revised Charter. The correct figure is therefore 14. There is a tendency of countries to hesitate with the ratification of the collective complaints procedure. Furthermore, out of 47 states, only Finland allowed national NGOs to lodge collective complaints. 43 out of 47 states have so far ratified either the 1961 Social Charter or the revised Social Charter. Not only the number of ratifications should be compared, but also the number of signatures should be borne in mind. The ECSR aims to persuade further countries to ratify the Charter, but sometimes the ratification process takes time. For example, in Poland six years passed by from signature to ratification and in the Ukraine this took even eight years.

On the a-la carte syetem
Swiatkowski: Concerning the scope of the Social Charter Swiatkowski emphasises that the à la carte-principle refers to the specific undertaking made by states when ratifying the Charter whereas the ECSR's mandate refers to the catalogue of the revised Social Charter and the 1961 Social Charter *as a whole*. Under Article 22 of the 1961 Charter the monitoring body has the possibility to encourage states to ratify more provisions which have so far been excluded under the à la carte-system (the procedure on non-accepted provisions). Admittedly there are certain Articles in the Charter which are not considered attractive by some member states, for example Article 13, the implementation of these obligations is considered as too expensive for the states.

On the function of the ECSR
Swiatkowski: The main function of the monitoring body is assessment and adjudication, thus a quasi-judicial function.

On membership issues
Swiatkowski: There is an informal requirement concerning the professional background of members. They should be professors of law or judges (candidates should be qualified in either of the two). Sometimes states make a public call. The candidates are nominated by governments, a procedure which is not independent from political influence at national level and thus constitutes a potential or at least symbolic weakness. Swiatkowski, however, stresses that members need to be independent and that the ECSR is very strict on this. For example, the former Austrian member, Professor Karl, resigned from ECSR when she was elected as a member of the Austrian parliament.

On the use of external experts
Swiatkowski: External experts were used once concerning the understanding of minimum wages under Article 4§1.
Kristensen: The ECSR rarely uses external experts. In fact the ILO participates in the work of the Committee in a consultative capacity, which leads to a continuous exchange of expertise (Article 26 of the Charter). He explains that the ECSR has a longstanding tradition for taking into account the work of other mechanisms such as the ECtHR but also the other three monitoring bodies under research.

On the assessment criteria
Swiatkowski: States report on different provisions during the monitoring cycles. There is no distinction between hard and soft provisions. Ad-hoc monitoring is possible only on the basis of the collective complaints procedure. As regards the assessment criteria, the Social Charter and ECSR's Digest of case law are extremely important. As this Digest is published online, the countries know the requirements of the ECSR.

On the state reports
Swiatkowski: The accuracy of reports depends on the countries and varies in practise. ECSR also uses different sources and has established a good cooperation with the ILO in Geneva and with NGOs. All countries are treated equally, regardless whether they are EU members or not.

On inclusiveness and contacts with other bodies
Swiatkowski: The ECSR follows an inclusive approach and is in contact with NGOs. The ECSR has close contacts with the ECtHR, the Commissioner of Human Rights, ILO, the European Court of Justice and others.

On binding nature of decisions by ECSR
Swiatkowski: As concerns the question whether the decisions taken by the expert body are binding, the question is raised: binding on whom? Swiatkowski stresses that the CoM is bound to the legal decision taken by the ECSR. However, not even the recommendations then issued by the CoM to the member states are legally binding *per se*. However, the ECSR is the sole body responsible for interpreting the Charter and its conclusions and decisions must reasonably be regarded as authoritative. As regards the relationship between the ECSR and the CoM it has to be noted that the CoM cannot change the legal assessment of ECSR but has

the possibility to not accept the findings for political reasons. As in international law in general, peer pressure and “shaming” effects play an important role.

On Kosovo
Swiatkowski: Kosovo has not been examined by the ECSR.

On urgent reaction mechanisms
Kristensen: As regards urgent reaction mechanism (i.e. accelerated procedure when needing an immediate response), Kristensen argues that the ECSR generally has to wait for a collective complaint to be lodged. Once a complaint is lodged the ECSR has the possibility of using an accelerated procedure if deemed necessary.

4. Answers to the students' questions addressed to the CPT

On appointment procedures
Tugushi: CPT members never participate in the election procedure of new members. There is a recommendation of the Parliamentary Assembly which proposes a public call at national level and other improvements of the selection procedure of candidates. There has been another PACE recommendation requiring mixed gender in the list of candidates which means that a list of candidates which only contains three female candidates or three male candidates is automatically refused and a new list has to be drawn up.

On membership issues and external experts
Tugushi: As concerns the number of members, arguments are brought forward that on the one hand the high number of 47 members is certainly a burden for the secretariat to handle and manage this big group and it is also a financial burden. However, the question is rather a theoretical one as the number of members is laid down in the Convention and it would need a change of the ECPT to alter it. When the decision was taken when drafting the Convention to have a member from each state party it was not considered that the members would go on missions but rather that the field work would be carried out by the secretariat and experts.

It appears that the CPT could operate with less members but this is also a question of the distribution of the heavy work load and the availability of members. The work for the CPT is not a permanent job for its members and has to be compatible with other jobs (there are no unemployed members). The different backgrounds are also an issue for the CPT. If there were fewer members there would also be less varied backgrounds. However, the more members the CPT has, the more resources are spent.

The linguistic ability of some of its members is a problem for the CPT and poor language skills sometimes influence the work of the CPT. There are seminars for newly elected CPT members, but the best training is to go on visits and see how more experienced members are working. Often the skills of members are developed in the field.

Nestorova explains that the higher the number of members, the less an individual member would go on visits and therefore learn. Regarding the legitimacy of external experts, Nestorova points to Art. 14 of the Convention according to which external experts are bound by the same obligations as members. In practice these external experts make important contributions to the field work, such as is needed for the assessment of police, prisons, psychiatric establishments etc. In fact, it should be noted that, if a monitoring body had no such specialists, the legitimacy of this body would be reduced. Thus, external experts add to

the legitimacy of the CPT. Currently, the CPT is in need of more members, experts with a professional background as police officers or prison directors.
Comment Kicker: Supports Nestorova's statement and confirms that the legitimacy of experts is indeed grounded in the Convention (Article 7 subpara. 2, as well as Article 14) and through the practical needs of the field work. Certain expertise is missing even among the extensive membership.

The problem of the high number of members is, however, that for the elected members there is no good chance to develop expertise in actually carrying out the field work if only one visit per year can be given to a member.

On the role of the secretariat
Tugushi: Tugushi stressed the role of the secretariat as a driving force of the CPT. Large parts of the CPT's work are done by the secretariat, such as providing material in preparation of visits, drafting of the reports, technical work. The secretariat also brings continuity in the CPT's work (members come and go), which is very important. Usually five members and two secretariat members participate in country visits.

On ad-hoc visits
Tugushi: Ad-hoc visits have the same legitimacy as periodic visits. There is only a difference in the timing: notifications for ad-hoc visits have to be made only a few days or hours before the visit. Ad-hoc visits are shorter, but often they are more demanding. A state may reject the visit in case of exceptional circumstances and may request to delay the visit, but has to justify this request. The state may also reject certain experts, but likewise, a justification is necessary to do so.
Comment Kicker: As concerns the comment made that the state has a possibility to reject a CPT visit, this is laid down in Article 9 of the Convention and has been used only once by South Ossetia rejecting a planned visit, after this autonomous region had declared its independence from Georgia. As concerns the fact that a state may reject an expert, this has also happened once in the early years of the CPT.

On relations with NGOs
Tugushi: CPT has very good relations with NGOs in the countries. The NGO input is there but usually not visible in reports. NGOs stay in touch with the CPT's secretariat, and thus the approach could be described as "between inclusive and exclusive" (thus not as exclusive as was described in the background paper).

On publication of reports
Tugushi: Fewer and fewer states are unwilling to publish the CPT reports. For example, Finland and Sweden publish the reports immediately. However, some states (e.g. Russia) remain a problem.

On relations with other bodies/institutions
Tugushi: The CPT follows the jurisprudence of the ECtHR, and the Court also refers to the CPT (e.g. regarding isolation). The CPT has its own jurisprudence group.

On public statements
Nestorova: Public statements are not a legal measure, and not even a political instrument.

III. ANNEX II: CONFERENCE PROGRAM

Friday | 18 June 2010

Location:	University of Graz, Universitätsstraße 15, 8010 Graz RESOWI-building A, 2nd floor, room number SZ 15.21
9:00-9:30	WILLIBALD POSCH (DEAN OF THE FACULTY OF LAW AT THE UNIVERSITY OF GRAZ): Opening of conference RENATE KICKER (UNIVERSITY OF GRAZ): Welcome and introduction CHRISTOS GIAKOUMOPOULOS (COUNCIL OF EUROPE, DIRECTORATE OF MONITORING): Comments on the aims and goals of the conference
9:30-10:30	**Introductory session** **Students' presentation: Overview of the four Council of Europe monitoring bodies** **Chair:** RENATE KICKER (UNIVERSITY OF GRAZ)
10:30-11:00	Coffee break
11:00-13:00	**Conference session I** **Topics: membership issues; sources of information and processing of information; inclusiveness of the monitoring procedure** **Chair:** MALCOLM EVANS (UNIVERSITY OF BRISTOL)
11:00-11:15	MARKUS MÖSTL (UNIVERSITY OF GRAZ): Introductory presentation of research findings
11:15-12:45	Statements by members of the ACFC, CPT, ECRI and ECSR and members of the secretariats followed by plenary discussion
12:45-13:00	MALCOLM EVANS: Summary and conclusions
13:00-14:30	Lunch reception by the Dean of the Faculty of Law, Prof. Willibald Posch
14:30-17:00	**Conference session II** **Topics: publicity, transparency and confidentiality of monitoring systems; the role of political bodies; assessment criteria** **Chair:** ELINA STEINERTE (UNIVERSITY OF BRISTOL) **Coffee break:** 15:30-15:45
14:30-14:45	EMMA LANTSCHNER (UNIVERSITY OF GRAZ): Introductory presentation of research findings

14:45-16:45	Statements by members of the ACFC, CPT, ECRI and ECSR and members of the secretariats followed by plenary discussion
16:45-17:00	ELINA STEINERTE: Summary and conclusions
20:00	Dinner

Saturday | 19 June 2010

Location: Romantik Parkhotel Graz, Leonhardstraße 8, 8010 Graz

Room: Salon Elisabeth

9:00-13:00 **Conference session III**

Topics: dialogue and compliance by states; mutual reinforcement of expert bodies; adjustments of working methods; relations with the EU

Chair: SILVIA CASALE (EUROPEAN NPM PROJECT ADVISOR)

Coffee break: 10:30-10:45

9:00-9:15	RENATE KICKER: Introductory presentation of research findings
9:15-12:15	Statements by members of the ACFC, CPT, ECRI and ECSR and members of the secretariats followed by plenary discussion
12:15-12:30	SILVIA CASALE: Summary and conclusions
12:30-13:00	CHRISTOS GIAKOUMOPOULOS: Concluding remarks
13:00	RENATE KICKER: Closing of conference

IV. ANNEX III: LIST OF QUESTIONS

1. Questions of conference session I

1.1. Questions regarding membership issues
- Do you deem the number of members appropriate for you expert body to carry out an effective monitoring in all Council of Europe member states?
- Which measures could address potential deficits in the appointment procedures of your monitoring body in the future?
- Where do you see the future role of external experts for the supervisory system of your expert body?

1.2. Questions regarding the sources of information and the processing of information
- Do the sources of information usually provide a sufficient and adequate basis for your monitoring work (especially in terms of availability of information, quality of information and being up-to-date)?
- What are the most useful sources of information for your monitoring body?
- Would you welcome the introduction of alternative systems of gathering information (e.g. state reports, on-site visits, others)?

1.3. Questions regarding the inclusiveness of the monitoring procedure
3.1. Do you think that your expert body would benefit from a stronger inclusion of national NGOs, national monitoring bodies or other representatives of the civil society?
3.2. If answered affirmatively, how could this be achieved and how could potential risks be overcome in this regard?

2. Questions of conference session II

2.1. Questions regarding the publicity, transparency and confidentiality of monitoring systems
- How can issues of publicity, transparency and confidentiality be balanced in a way that is conducive for an effective human rights monitoring? What can be learned from the experience of your monitoring body in this regard?
- Should your monitoring body promote its work more actively in the public and how could this be done?
- Would/does the translation of your monitoring bodies' outputs into national (minority) languages help to improve the publicity and transparency of your monitoring system.

2.2. Questions regarding the role of political and other CoE bodies
- In what cases and during what stages of the monitoring procedure would you welcome more/further backing by political bodies of the Council of Europe?
- Or would you rather perceive any further involvement as an infringement on the independence of your monitoring body?
- What could the Human Rights Commissioner or the Parliamentary Assembly do to reinforce the work of your monitoring body?

2.3. Questions regarding the assessment criteria

- What challenges do you currently face in developing/adapting the assessment criteria for you monitoring work? Do you risk going beyond your mandate by proposing too far reaching recommendations?
- What are the states reactions to more general standards, like ECRI's General Policy Recommendations, the ACFC's Thematic Commentaries, the CPT's "Substantive section in the Annual Report" or the ECSR's "Digest of Case Law"? Are these assessment criteria applied equally vis-à-vis the member states?
- How do you counter allegations of applying different assessment criteria in different countries (double standards)?

3. Questions of conference session III

3.1. Questions regarding the dialogue and compliance by states

- To what extent does the dialogue of your monitoring body and the Council of Europe member states risk to stagnate?
- What means to increase the compliance by member states exist for your monitoring body and which of them prove to be the most effective ones?
- Would some/all of the means mentioned above (urgent action procedures, high level talks, follow-up meetings) help your monitoring body to refresh the dialogue and ultimately improve the compliance by member states? What further proposals could be made?

3.2. Questions regarding the flexibility and adjustment of working methods

- Which of these four proposals (complaints procedure, national monitoring bodies, focus on some topics, rapid reaction intervention) do you deem necessary/appropriate for further adjusting the working methods of your monitoring body?
- Does the legal basis and the mandate of your monitoring body provide sufficient flexibility to introduce such modifications?
- What are further examples of "best practices" of your monitoring body that could be an informative model for adapting the working methods of other CoE monitoring bodies facing similar problems?

3.3. Questions regarding the mutual reinforcement of expert bodies and synergies

- Taking into consideration all the caveats mentioned above, how could the four monitoring bodies mutually reinforce their work?
- Where do you see potential for closer cooperation and synergies? At what stages of the supervisory systems would synergies be possible?

3.4. Questions regarding the relations with the EU

- How should your monitoring body position itself vis-à-vis the European Union in order to avoid duplication or overlap in the future? Does your expert body have any type of policy in this regard?
- How could your monitoring body react to the needs of the European Union and what would be the proper distribution of tasks in the future?
- What role do other supervisory systems (OSCE, UN) have in this regard?

IV. ANNEX IV: LIST OF PARTICIPANTS

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