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EFFECTS OF THE ECONOMIC CRISIS ON THE ENJOYMENT OF HUMAN RIGHTS

Expert brainstorming
Council of Europe, Strasbourg, 19 November 2012

Summary of discussions

Opening remarks by the Commissioner

The economic crisis and austerity measures affect the enjoyment of human rights in a broad way and will provide a key context for the Commissioner's work for a long time. So far, no single approach has been applied in country monitoring although the visit to Portugal had a special focus on the crisis. The Commissioner has also discussed austerity with reference to the functioning of national human rights structures (NHRS). As most human rights themes have a crisis angle, there is a need to explore a variety of possible frameworks and working methods. Topics for possible issue papers and partners for cooperation should be identified. The Commissioner's interaction with other international organisations, especially the EU, provide further opportunities for influencing decision-making. While non-discrimination and the role of NHRSs are obvious issues the Commissioner is working on, there is also a need to inject a human rights perspective into the budgetary process. It is best to avoid overlap with other sectors of the Council of Europe.

Non-discrimination and vulnerable groups

- So far the crisis has seemed like a wasted opportunity from the perspective of human rights work: it has not resulted in a fundamental reassessment of the conditions leading to the crisis or its effects on poverty and discrimination. Austerity measures lack a participatory approach.
- Disaggregated data are needed for prioritising between different vulnerable groups. States should be encouraged to collect more comprehensive statistical data.
- Both quantitative and qualitative data are needed. Budgetary allocations do not as such result in expected outcomes. Participatory survey methods and subjective views on deprivation are necessary. The impact may take a long time to be visible in statistics,
- Compound and cumulative effects of austerity should be explored: multiple identities and discrimination can result in highly individualised results: e.g. the effects on older, migrant and single parent women.
- There may be no need to prioritise among the groups. Instead, the focus could be on the provision of a minimum protection floor for all vulnerable groups followed by broader measures against discrimination as far as resources are available. Positive measures remain relevant.
- Not only groups but also geographical areas can constitute a framework for setting priorities.
- The crisis can help bring the situation of vulnerable groups to spotlight (e.g. poverty).
- Children, young people and immigrant single mothers may require particular attention.

- Effects of the crisis go beyond the vulnerable groups: e.g. the working poor.
- A human rights approach to inequality should go beyond inequalities with regard to conditions and link them to disparities in policy efforts.
- Public authorities often work without an adequate non-discrimination framework.
- Public procurement of services should apply an equality/human rights framework among quality criteria and not simply the lowest cost principle.
- The social and economic rights principles of non-retrogression and realisation with maximum available resources should be made relevant in the provision of public services.
- Human rights awareness among politicians should be increased: yet it is not always clear how much space is still left for real decision-making especially if the revenue side is not considered.
- The need for human rights compliance of international financial actors such as the EU, World Bank and IMF should be highlighted.
- The crisis provides an opportunity to make a clearer link between social and economic rights, and civil and political rights.
- A more holistic view into the crisis and its effects is needed: causes, consequences and responses have to be gauged from a human rights perspective to enable effective measures including the revenue side and financial regulation.

Impact on human rights protection system and role of NHRs

- In addition to NHRs, many other national bodies are essential for human rights implementation including judicial mechanisms, parliamentary HR committees and administrative bodies in charge of budgetary oversight.
- NHRs often have a bridging role between national, regional, and international levels: for austerity measures national governments appear to be more accountable to international organisations than the parliament or civil society. The Commissioner can play a role in accountability.
- In principle NHRs could have a substantial role in screening austerity measures both *ex ante* and *ex post*, but in practice they often don't have such a role.
- NHRs' role could be critical in plugging human rights into decision-making on austerity: ensuring sufficient participation in the budgetary process, in raising awareness on policy implications and alternatives, and in monitoring the implementation of policies.
- Yet NHRs are facing several threats and obstacles hindering a positive role:
 - Lack of funding
 - Mergers
 - Government interference in independence
 - Inability to function effectively in a proactive manner
 - Governments can view human rights as impediments/red tape to economic development
 - NHRs' role in fiscal policy can be de-prioritised
 - Constitutional amendments and policies limiting the role of judicial review
 - Cuts in legal aid impede access to justice and push lawyers to commercial litigation
 - The mandates of NHRs vary substantially between CoE countries, as well as the data they are able to access. How can the gaps be addressed?
- NHRs need guidance on social and economic rights and the principles of their implementation.
- It would be useful to have an international forum for building the capacities of NHRs by exchanging good practices and piloting NHRs' monitoring of austerity measures.
- Next year is the 20th anniversary of the Vienna Declaration and Action Plan. This could provide a good opportunity to push for national human rights action plans.
- Systematic work for human rights by different authorities is essential for the human rights compliance of austerity measures and good governance. Relevant partners include: auditors, statistical offices, government budget departments, and local authorities.
- Proactive human rights compliance can result in savings as remedies after findings of international monitoring reports and judgments can be very costly (cf. Christie Commission report from Scotland).
- Benchmarks for the progressive realisation of social and economic rights should be set at the national and local levels to ensure relevance.

Budgetary screening and impact assessment

- Governments should take human rights into account when making budgetary decisions in the first instance. Both budgeting outcomes and the process should be scrutinised from a human rights perspective.
- The ICESCR, including the principle of progressive realisation through maximum resources available, can function as a framework for human rights budget screening. The revenue side should be considered as well.
- Maximum available resources have not been used when budget allocations have not been spent but have been returned.
- Governments should consider in advance whether implemented austerity measures are temporary or permanent.
- A long-term budgetary analysis of possible changes in allocations would be helpful although final outcomes should be measured as well. This requires taking into consideration inflation, GDP changes and regional comparisons.
- Disproportionate cuts affecting people with low income should be identified (e.g. effects on welfare, housing rights and the rights of children). Distributional effects on the population should be measured.
- When focusing on vulnerable groups it is important to establish 1) who bear the burdens of taxation, and 2) who benefit from budget allocations.
- Identify positive, neutral or negative effects on rights and set red flags for minimum core obligations (define essential services).
- International indicators can be used: e.g. does budgeting meet the WHO recommendation that minimum of 5% of GDP is used in health care expenditure?
- Social indicators related to demographics, equity, self-sufficiency, sustainability, health and social cohesion can be useful. Participatory approaches in measuring individual well-being and trust are important.
- Efficiency is one concern: some budgetary resources are wasted or the process manipulated.
- Guidance on human rights compliant budgeting should be given to parliamentarians, treasury officials and national auditors.
- Transparency and participation in the budgetary process should be improved. Bottom-up approaches are useful. Consultation should be meaningful and not simply “tick-box” exercises.

Next steps to be taken by the Commissioner

How can awareness of relevant human rights standards be enhanced? How can country monitoring be tailored to be more systematic? How can the Commissioner best engage with NHRs and international organisations? How to get the most added value of budgetary analysis, including the revenue side, to human rights work? Should there be issue papers? Could the work of the Commissioner address issues of decentralisation and outsourcing of responsibility in human rights protection?

- Country monitoring can be tailor-made for each country following the Commissioner's focused approach. For some countries such as Spain the crisis approach should be more visible.
- After several visits, the comparative experience could result in a more systematic framework with recommendations which could be published as an opinion/recommendation or an issue/position paper.
- A general issue paper on a human rights compliant approach for responding to the economic crisis would be extremely useful for NHRs and human rights advocacy organisations. The issue paper should give guidance on the relevant standards and implementation of social and economic rights and the role of NHRs in responses to the crisis. The interdependency of rights should also be stressed.
- The principles of participation, transparency and accountability would need clarification from a human rights perspective. Aarhus Convention, ICRPD, FCNM and Lund Principles are relevant.
- Further ratifications of the revised European Social Charter and collective complaints procedure should be encouraged.
- The ECHR can be applied in the crisis context in a strategic way: right to property, non-discrimination and minimum subsistence levels (Article 3) are useful.

- It is likely that the European Group of NHRIs will provide guidance to NHRs on human rights budgetary screening.
- Human rights comments and media interventions on central issues from the crisis angle can be made to raise awareness. The relevance of state revenue and taxation for the implementation of human rights could also be highlighted.
- The Commissioner can engage with EU institutions. EU has a central role in managing the crisis and mitigating its effects through funding to fields such as disability, housing, and asylum. EU is obliged to carry out fundamental rights impact assessments on its activities.
- Systematic approach to human rights implementation (Commissioner's 2009 Recommendation) is also relevant for mitigating the effects of the crisis. Member states should be encouraged to develop and implement human rights action plans and mainstream human rights in the regular work of central and local authorities. Human rights responsibilities should be taken into account when services are outsourced and decisions on public procurement taken.
- The Commissioner could expand his engagement with academic human rights institutes, advocacy organisations and think-tanks to improve knowledge and share good practices on the theme. The European Anti-Poverty Network and the European Disability Forum could be useful partners among others.

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