

JUDGE FOR YOURSELF

Judge for Yourself

РЕСПУБЛИКА АРМЕНИЯ
ПРАВИТЕЛЬСТВО

REPUBLIC OF ARMENIA
GOVERNMENT

Victoria Prais is a lawyer with the Treasury Solicitor. In June 2008 she was invited by the Council of Europe, as an international Human Rights expert, to train Armenian Judges in Yerevan. The training was co-sponsored by the Association of Armenian Judges on the subject, 'Criminal Procedure under the European Convention on Human Rights' and related extradition issues. Victoria shares her experiences with LINK Magazine.

As a lawyer with a background in International Human Rights law I was very excited to be offered such an opportunity and soon found myself on my way to the Southern Caucasus!

Armenia is a constitutional republic with a population of approximately 3.2 million. Serge Sarkisian was inaugurated as President on 9 April 2008 following presidential elections were held in February 2008. (There was post election violence in March 2008 leading to a 20 day State of Emergency which was eventually lifted on 21 March 2008). The President is the head of state.

Armenia joined the Council of Europe on 25 January 2001 and ratified the European Convention on Human Rights (ECHR) in April 2002. There is great focus on encouraging new member states to develop good practices in the domestic application of human rights standards and ensuring that domestic legislation is ECHR compliant.

Liberty and security

My remit was to train a group of first instance judges on the general principles of Article 5 of the ECHR. Article 5 provides for the right to liberty and security of person. The judges had been very recently appointed and their knowledge of the ECHR varied from non-existent to fairly competent. My training focused on such issues as the lawfulness of detention, the right to bail and the provision of safeguards for those in detention. I delivered the training alongside the Head of the International Law Department from the General Prosecutor's Office of Ukraine, who focused on extradition issues under Article 5. There were also talks by national experts who gave an overview of the Armenian constitution and domestic legislation.

There is a three tier court system in Armenia, including courts of First Instance, the Court of Appeal (criminal and civil) and the Court of Cassation. In addition, there is a specialist economic court. The new judicial system was introduced on 1 January 2008. The courts of First Instance investigate all civil, criminal, military and administrative offence cases. The Court of Cassation is akin to the UK House of Lords in setting legal precedent for the lower courts; the court also rules on the constitutionality of legislation.

Unwelcome discoveries

I soon discovered, as the training progressed, that some of the current practices and procedures fell far short of being compliant with Article 5. Pre trial detention for example, is a real problem. The law provides that a suspect may not be detained for more than 12 months but some defendants were in pre trial detention for three or more years.

Convictions in absentia also raised problems for the judiciary. 30% of detainees are in fact fugitives and wanted persons. Such convictions are not per se inconsistent with Article 5 and do not conflict with the provisions of the Convention. The Judges expressed concern however that making a decision to detain a fugitive in his/her absence breached Article 5. We examined the case law from the European Court of Human Rights for guidance.

Interested and receptive

I found the Judges on the whole to be interested and receptive to the training and they were keen to understand the general principles and jurisprudence of the ECHR. I was asked many probing questions on both ECHR jurisprudence and the implementation of Article 5 in the UK. (My second talk focused on Article 5, Control Orders & Terrorism which is my current area of specialisation at Treasury Solicitor) They were particularly interested to know how they could implement the principles into their own domestic legislation so as to be compliant with the ECHR. I was greatly encouraged by their enthusiasm!

The training was a real personal challenge and at times I felt quite daunted at the prospect of training Judges on the ECHR. I tried to read as much as I could, prior to my departure, about Armenia and in particular the legal system and the current human rights situation in the country. I found the U.S. State Department Reports to be a useful starting point for my research.

Nervous and excited

I was both nervous and excited about going to Armenia. I had no real prior expectations of what the country would be like and indeed whether it would be safe or not. I had worked in Kosovo for the UN Peacekeeping mission and was used to life in a tough environment but I was not sure what would await me in Armenia. I was pleasantly surprised. I felt entirely safe walking around the city on my own and found the Armenians to be wonderfully warm and hospitable. The cityscape is what you might expect to find of an ex-Soviet republic: grand marbled buildings, an aptly named Republic Square and big, imposing statues of famous Armenians! I was fortunate enough to be given a tour round the city by one of the local interpreters who gave me a more personal insight into Armenian life.

Burgeoning democracies

I am very pleased that I took part in this training exercise. I think it is vitally important that as lawyers we share our knowledge and experiences with legal practitioners in transitional countries. The rule of law is fundamental for a functioning democratic society and is something to be cherished at all costs. If we can help burgeoning democracies to build a society with human rights at its core then I believe that we are performing an important and valuable function.

I would definitely take part in another training course elsewhere in the Caucasus or in another part of the world. It's exhausting but well worth it!

So what is the future for the Armenian legal system? Changes do need to be made to ensure compliance with European human rights standards. These changes will not happen overnight and progress will be incremental and take time. But the will is there to forge ahead and the human rights discourse has started. I hope to return in the not too distant future to see what progress has been made!