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The rights stuff

6 October 2008

Victoria Prais

Victoria Prais travelled to Armenia to train newly qualified judges on the ins and outs of Article 5 of the European Convention on Human Rights – and found encouraging signs that the legislation is making an impact.

In June this year I was invited by the Council of Europe to train Armenian judges in criminal procedure under the European Convention on Human Rights (ECHR) and related extradition issues. The training was to be co-sponsored by the Association of Armenian Judges.

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.

I had worked in Kosovo for the UN peacekeeping mission and was used to life in a tough environment. But I was pleasantly surprised to feel entirely safe walking around the city on my own. The cityscape is what you might expect to find of an ex-Soviet republic: grand marbled buildings, an aptly named Republic Square and imposing statues of famous Armenians. The people, however, were wonderfully warm and hospitable.

Armenia is a constitutional republic with a population of approximately 3.2m. I arrived following a turbulent six months for the country. The new president, Serge Sarkisian, was inaugurated on 9 April following presidential elections. Post-election violence in March had earlier led to a 20-day state of emergency being declared.

Armenia joined the Council of Europe in January 2001 and ratified the ECHR in April 2002. My remit was to train a group of first-instance judges on the general principles of Article 5 of the ECHR, which provides for the right to liberty and security of person. The judges had been recently appointed and their knowledge of the ECHR ranged 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 is a three-tier court system in Armenia, introduced on 1 January this year, that includes courts of first instance, the Court of Appeal (criminal and civil), the Court of Cassation (similar to the House of Lords) and a specialist economic court.

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. Some 30 per cent 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 ECHR. The judges expressed concern, however, that making a decision to detain a fugitive in his or her absence breached the terms of Article 5. We examined the case law from the European Court of Human Rights for guidance.

I was greatly encouraged by the judges' enthusiasm. I found them 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 and terrorism – my current area of specialisation at the Treasury Solicitor's Department. The judges were particularly interested to know how they could implement the principles into their own domestic legislation so as to be compliant with the ECHR.

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.

Victoria Prais is a lawyer at the Treasury Solicitor's Department specialising in terrorism and national security cases

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