

# THE COUNCIL OF EUROPE'S ROLE IN "BRINGING HUMAN RIGHTS HOME"

*Tatiana Termacic*

*Head of Support to Human Rights National Implementation Unit,  
Human Rights Policy and Development Department,  
Directorate of Human Rights,  
Directorate General of Human Rights and Rule of Law,  
Council of Europe*

## **Abstract**

Human rights education is an uninterrupted journey that should start in school, continue at university and throughout a professional career. This journey is indispensable because in order to be a reality for all those within the jurisdiction of the European Convention for the Protection of Human Rights and Fundamental Freedoms, human rights have to be effectively protected and implemented first and foremost at the national level. This is what is meant by "bringing human rights home". This article focused on the Council of Europe's efforts to support its member states in ensuring that the Convention for the Protection of Human Rights and Fundamental Freedoms is applied at the national level. This support is done through capacity development, mainly for legal professionals, and in the future, law faculties may be targeted as well.

**Key words:** teaching, Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms, HELP program.

The necessary precondition for achieving effective implementation of human rights at the national level is that those responsible for it are not only familiar with European human rights standards but also know how to apply them in concrete situations. This is especially true for the actors within the justice chain: judges, lawyers and prosecutors, for law-enforcement bodies and the administration in general. It is thus crucial that all these actors are well trained in the use of human rights standards in national proceedings.

Although it is the national authorities' responsibility to "bring human rights home" notably by ensuring adequate education and training on human rights in line with the subsidiary character of the supervision mechanism set up by the Convention, the Council of Europe has supported its member states in doing so through standards it set in this area and, more importantly, through cooperation work.

The first reference text is CM Rec (2004) 4 on the European Convention on Human Rights in university education and professional training which called on CoE member states to establish stable training structures which would incorporate human rights in their curriculum. It also invited them to integrate the Convention and its case law as a component of the common core curriculum of law, political and administrative science, as a component of the preparation programmes of examinations for access to the legal professions and of the initial and continuous education for judges, prosecutors and lawyers, as well as law enforcement bodies and personnel of immigration services.

This text has led to the development of the European Programme for Human Rights Education for Legal Professionals (the HELP Programme), the aim of which is precisely to ensure that the human rights training throughout the European space is of good quality and meets the specific needs of each category, be it judges, prosecutors or lawyers. It has become the platform for all human rights capacity development endeavours undertaken by the Council of Europe. I will come back to it later.

Since the Recommendation was adopted, some progress has been achieved. Thus, for example, all Council of Europe member states have now permanent training structures for judges and prosecutors. Also, new methods in adult-learning have also developed, in particular based on the principle of open education. But, some of the challenges remain and relate particularly to the absence of mandatory continuous training for lawyers and the still insufficient transversal approach of human rights training provided to legal professionals.

Because of these developments and the increased move towards new methods of training, such as distance-learning, the Committee of Ministers has decided to revisit this recommendation in 2015 either by updating it or by developing guidelines on best practices on human rights training for legal professionals.

The new document will look at the ways initial and continuous education for judges, lawyers and prosecutors should be carried out so as to ensure the implementation of paragraph 9.vi of the Brighton Declaration. A follow-up mechanism could be established to (self-) monitor the compliance of national training institutions and bar associations with their obligation to provide good quality training on human rights.

The second important reference text is the Council of Europe Charter on Education for Democratic Citizenship and Human Rights Education (CM Rec (2010) 7) which was developed over a period of several years with broad consultations. The Charter provides relevant definitions, outlines the objectives and principles, and describes relevant policies (ranging from policy development, curriculum support

and review and training of education professionals to democratic governance of educational institutions and research and evaluation). The Charter aims to promote a culture of democracy and human rights through education, which includes (but is not restricted to) the transmission of knowledge (e.g. about human rights standards and mechanisms). For example, the way a teacher treats marginalised children in class can have more influence on one's perception of human rights than a formal lecture on this subject.

In 2012, the Council of Europe examined the implementation of the Charter in its member states on the basis of governments' replies to a questionnaire. The main conclusions included the following: there is evidence of awareness across the countries of the Charter and understanding of its purpose and importance as a benchmark; there are mixed levels of support and promotion across countries for NGOs, youth organisations and other stakeholders; and there is only a moderate support and action concerning evaluation, research and monitoring of citizenship and human rights education. The next review cycle of the implementation of the Charter is foreseen in 2017. The Council of Europe is also supporting the implementation of the Charter, in cooperation with the European Union, through a pilot project scheme in which two to five states party to the European Cultural Convention can take part. In 2013, the three projects supported bring together eleven countries (including Russia) and focus respectively on training teachers, curricula and skills for promoting social cohesion, valuing diversity and handling differences and conflict. The network of European Democratic Citizenship/Human Rights Education coordinators (officially nominated by the states for liaison with the Council of Europe) is also an important tool for supporting the implementation of the Charter at the national level notably through reforms in schools curricula.

There is currently a gap between primary education and professional training because the Council of Europe has not so much been involved in looking at how human rights are taught in secondary schools and universities. This is, happily, progressively changing since a recent project implemented by the Directorate of Education aims at enabling European secondary school students to become familiar with the key principles of human rights law and how they are applied in practice.

Demands from universities are also growing because it is clear that even good initial professional training is often not sufficient to ensure that legal professionals or law enforcement bodies will acquire the reflex to think "human rights" if they have not had adequate training at university.

Of course, the expectation is that education on the Convention is fully incorporated into faculty and law programmes, not only as an independent subject, but also

horizontally in each legal discipline, such as criminal or civil law, so that law students, whatever their specialisation, are aware, when they graduate, of the implications of the Convention in their field.

Post-graduate studies specialised in human rights are still too rare and the initiative to create such a master's degree in Yekaterinburg can only be encouraged. Given the size of the Russian Federation and the development of new teaching methods, an on-line LLM might be a suitable approach.

Increased cooperation between the Council of Europe and some European Universities, such as the European Interuniversity Centre and the Venice International University, is under discussion but there are examples where strong links already exist. This is for example the case when moot court competitions take place in Strasbourg, such as the René Cassin or the European Human Rights Moot Court competitions. The Law Faculty of Glasgow also has had nearly a 20-year cooperation with the Council of Europe in the form of a yearly visit and a moot court in Strasbourg for the best students of the human rights course. Unfortunately, because of financial constraints, some key initiatives had to be stopped. This was the case, for example, with the Human Rights Law and Practice Programme that was carried out by Birmingham University for twelve years and led to the in-depth education on human rights of over 300 individuals from Central and Eastern Europe who later made a significant contribution to the implementation of human rights throughout Europe through their careers as Ministers of Justice, judges of the European Court of Human Rights and supreme courts, government agents or leading lawyers.

As to professional training of legal professionals, it is directly connected to the Brighton Declaration adopted in 2012, in which the High Contracting Parties explicitly expressed their determination to ensure effective implementation of the Convention at the national level by "providing appropriate information and training about the Convention in the study, training and professional development of judges, lawyers and prosecutors" (paragraph 9.vi).

HELP had been developed as a response to CM (2004) 4 to become the platform of all human rights capacity development endeavours undertaken by the Council of Europe.

The *first reason* for that relates to the numerous challenges which many of the Council of Europe's member states are facing today, including the economic crisis. At times the response to these challenges is seen as being used as a justification for disregarding the commitment to respect human rights at the national level. This is of course not acceptable and one of the ways to counter this tendency is to make sure that judges, prosecutors and lawyers are able to articulate and then properly apply

the requirements of human rights standards in these difficult situations. HELP is here to support them in fulfilling this vital role.

*Secondly*, there is a need to ensure that limited resources are used as effectively as possible, with no wastage and no overlapping. This can only be achieved if true collaboration takes place. HELP offers a platform where collaboration is the key word.

Training on the European Convention on Human Rights should be seen as providing both an immediate contribution to improving the skills and knowledge among legal professionals, and as making a longer-term investment with the aim of reducing the volume of cases currently being brought before the European Court of Human Rights, in line with the principle of subsidiarity.

The Council of Europe has been providing training on the Convention in a number of its member states for well over a decade. Indeed, for a long time, in some countries, the only training provided on the Convention was that which was undertaken by the Council of Europe. Fortunately, this situation now belongs truly to the past, and each member state has a stable national training institution entrusted with the training of its country's judges and prosecutors. Some of these national training institutions were established with the assistance of the Council of Europe. All of them are part of the HELP Network together with the Bar Associations of Europe, which constitutes a platform for peer-to-peer exchanges of sharing experiences on best practices as regards training and concrete implementation of human rights standards.

Undoubtedly, European judges, lawyers and prosecutors do use convention-based arguments in their judgments, submissions and decisions. However, it is also clear that, in far too many situations, the Convention and the case law of the Strasbourg Court have not been taken into consideration in situations to which they were clearly relevant. This is for example the case regarding the lack of effective investigations of allegations of ill-treatment and the lack of scrutiny of prosecutors' decisions on pre-trial detention, as well as in cases of excessive length of pre-trial detention.

Of course, for many national judges and prosecutors, the task of applying the case law of the Strasbourg Court can appear overwhelming because the principles of interpretation might seem alien to some national legal traditions. This appearance can equally discourage lawyers from making use of Convention-based arguments in their submissions.

It is exactly this difficulty that makes the provision of professional training on Convention standards and the translation and dissemination of the case law of the Strasbourg Court essential. Without them, it would be very hard to ensure that proper account of the Convention and its case law is taken in the deliberations and deci-

sion-making of national courts. The response to the challenge for legal professionals to follow the case law of the Strasbourg Court, which evolves quickly and expansively, is the HELP platform where they will be able to keep abreast of Strasbourg case law developments through easy available updates.

The aim of HELP is to ensure that human rights law becomes a compulsory element in the initial and continuous training for all legal professionals, be it as a separate course or mainstreamed throughout the curricula. To achieve this, a rich collection of training materials has been developed, available to all legal professionals who do not necessarily specialise in human rights, but who should acquire the reflex to refer to the Convention and other international sources in their daily work.

The HELP Programme was initially designed to mainly address the areas covered by the European Convention on Human Rights. However, it has become obvious over the years that HELP is intrinsically linked to specific themes complementing the case law of the Court and which are dealt with by the Council of Europe, such as child-friendly justice, social rights, family law, alternative measures to detention, anti-discrimination and freedom of expression in the internet area. Courses in these areas have been or will be developed and implemented together with the respective national training institutions. Their completion leads to the delivery of certificates issued jointly with the Council of Europe. This is certainly an incentive for the legal professionals.

HELP uses new forms of education, involving new methodologies. In particular, the principle of open education, which gives legal professionals the opportunity to learn about what they want to learn, when they want to do so, to give them the sense of responsibility for their education and have an easy access to self-learning materials. The underlying idea is to develop a strong sense of ownership of those who are getting trained, with tutors being available to observe and guide the learners rather than imposing a new way of thinking and working. For this reason, new technologies are also being used, such as blended and distance learning, including through multimedia. HELP should be perceived by those to whom it is intended as giving them the freedom of choice and direction that will promote a better quality of learning, with judges, lawyers and prosecutors being the drivers of their own enhancement.

The Parliamentary Assembly of the Council of Europe is currently looking at the role the Council of Europe should play in the training on human rights of legal professionals with a view to adopt a Resolution to member states and a Recommendation to the Committee of Ministers in early 2014. While it is not possible to anticipate the Assembly's conclusions, the Council of Europe is expected to continue to play a significant role in the future.

Ultimately, there should be no need for it to "bring human rights home" because the good quality training provided should generate domestic decisions that reflect the Strasbourg case law and member states will have the tools to provide good training on their own thanks to the legacy left by HELP. However, we too often see persistent patterns of non-compliant judgments which clearly indicate a gap between "good" training and "bad" decisions". The reasons are multiple and are often explained by reasons such as undue pressure from the authorities, influence of public opinion, an entrenched culture within the judiciary of giving priority to the protection of the state over the protection of human rights, bias against the members of certain social groups, peer pressure from other judges, linguistic barriers and lack of updates in the context of a constantly evolving case law.

The earlier in life human rights education starts, the earlier these obstacles will be removed.