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The European Convention on Human Rights: the need to reinforce the training of legal professionals

Report[1]
Committee on Legal Affairs and Human Rights
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Summary

The Committee on Legal Affairs and Human Rights stresses the importance of solid training for law professionals on the European Convention on Human Rights, as interpreted by the European Court of Human Rights. This requires the Court's case law to be accessible in a language which law professionals in each State Party can understand.

The committee is of the view that the European Programme for Human Rights Education for Law Professionals, the "HELP Programme", is well placed to provide assistance with training on the Convention. This Programme is not intended to replace the efforts of specialist training bodies in each member State; but it can and does facilitate this task, for example by developing teaching materials or "training for trainers". In many jurisdictions, such training is in need of improvement, and member States are invited to ensure that the Convention and the Court's case law form an integral part of the basic and further training of law professionals.

The committee urges the Committee of Ministers to ensure that the HELP Programme be allocated appropriate funds to carry out its tasks effectively, and recommends the updating of its Recommendation Rec(2004)4 on the European Convention on Human Rights in university education and professional training, as well as the monitoring of its follow-up.

1. Reference to committee: Doc. 12843, Reference 3838 of 9 March 2012.

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A. Draft resolution[2]

1. The European Court of Human Rights (“the Court”), which is responsible for ensuring that the European Convention on Human Rights (ETS No. 5, “the Convention”) is correctly applied by the member States of the Council of Europe, plays a fundamental role in reinforcing democracy, the rule of law and human rights in those countries.

2. In order to improve the application of the European Convention on Human Rights as interpreted by the European Court of Human Rights, law professionals must receive better training in this area. Gaining knowledge of this kind requires the Court's case law to be accessible in a language which the law professionals in each State Party can understand.

3. The Parliamentary Assembly notes the wide diversity of systems for training law professionals in the member States, including in the human rights sphere. Some countries already provide basic and further training on the Convention and the Court's case law whereas others depend on the Council of Europe to set up suitable training and even to provide such training directly to professionals. Given the diversity of the legal systems and the training on offer, it would be unwise to propose standardised training for all member States.

4. The Assembly recalls the work already carried out by the Council of Europe in the training field, including Committee of Ministers Recommendation Rec(2004)4 on the European Convention on Human Rights in university education and professional training, which it invites the member States to implement.

5. The Assembly believes that the Council of Europe’s European Programme for human rights education for law professionals (“HELP Programme”) is well placed to provide assistance with training on the Convention as interpreted by the Court in all the member States requesting it.

6. The HELP Programme is clearly not intended to replace the efforts of the various law specialist training bodies in each member State to incorporate training on the Convention into their own law specialist training programmes. It must limit its input to helping member States introduce such training, by providing them with tools facilitating that task.

7. Co-operation with the HELP Programme may take the form of “training for trainers” for example, or assistance in devising human rights training modules making up part of basic or further training for law professionals, or regularly updated compilations of the Court's case law geared to priorities to be defined with the competent bodies in each interested country. Through the HELP Programme, the member States can also exchange their experiences in this sphere and foster good practices.

8. In the interests of subsidiarity and effectiveness, the HELP Programme will have to rely on regular co-operation with the different players involved in training law specialists (justice ministries, universities, specialised vocational training colleges, bar associations) and with civil society in interested member States.

9. The expertise available within the Court could usefully be exploited on an occasional basis, but without diverting too many resources from the Court's main task, which is adjudicating applications.

10. The Assembly therefore invites the member States to improve the training provided to law professionals on the Convention by:

10.1. ensuring that the Convention and the Court's case law form an integral part of the basic and further training they receive;

10.2. translating, insofar as possible, the case law of the Court into their national language(s);

10.3. calling on the services of the HELP Programme to meet their needs for co-operation in the training of law professionals on the Convention.

2. Draft resolution adopted unanimously by the committee on 30 January 2014.

B. Draft recommendation[3]

1. The Parliamentary Assembly, referring to its Resolution … (2014) "The European Convention on Human Rights: the need to reinforce the training of legal professionals" stresses the crucial importance of good training for law professionals on the European Convention on Human Rights (ETS No. 5) and the case law of the European Court of Human Rights.

2. The Assembly recommends that the Committee of Ministers:

2.1. ensure that the budget allocated to the HELP Programme is consistent with the task assigned to it, namely to provide different types of co-operation in the training of law professionals in all the member States requesting it;

2.2. update its Recommendation Rec(2004)4 on the European Convention on Human Rights in university education and professional training, and monitor its follow-up.

3. Draft recommendation adopted unanimously by the committee on 30 January 2014.

C. Explanatory memorandum by Mr Michel, rapporteur

1. Introduction

1.1. Procedure

1. The motion for a recommendation entitled “The European Convention on Human Rights: reinforcement and consolidation of the training of judges, law enforcement officials and lawyers” (Doc. 12843) was referred to the Committee on Legal Affairs and Human Rights on 13 March 2012. The committee appointed me rapporteur on 24 April 2012.

2. On 25 June 2013, the committee declassified an introductory memorandum and forwarded it to various organisations and experts for comment.[4] On 4 September 2013, the committee organised a hearing of four experts:

– Ms Christiane Schmaltz, training specialist on the European Convention on Human Rights, former ad hoc Judge at the European Court of Human Rights, Judge at the Schleswig-Holstein Court of Appeal, Kiel, Germany;

– Ms Galina Arapova, training specialist on the European Convention on Human Rights, Director of the NGO Mass Media Defence Centre, Russian Federation;

– Ms Ivana Roagna, Lawyer, training specialist on the European Convention on Human Rights, Italy;

– Mr Laurent Pettiti, Lawyer, Chairperson of the Committee on relations between the Council of Bars and Law Societies of Europe and the European Court of Human Rights, France.

1.2. The issues arising in the area of training for law professionals

3. The aforementioned motion for a recommendation notes that the European Court of Human Rights (“the Court”) had proposed to develop its own training programme for law professionals and concludes that “this is not a matter that should, as such, be undertaken by a judicial organ, in particular one that is struggling to keep up with its heavy caseload”. The motion furthermore points out that “training should be undertaken primarily at the level of the Organisation’s intergovernmental sector in partnership, where appropriate, with others”. I agree with the authors of the motion that law professionals should not be trained by the Court itself. We should therefore consider in what framework such training is to be provided: is the Council of Europe to be entrusted a key role in this area or should the Organisation content itself with acting simply as a co-ordinator or a clearing house for training activities for which the responsibility should be left to national bodies? I will therefore seek to answer this question with a view to suggesting the best solutions for law professional training that is more structured but nevertheless respects the characteristics of each country and more generally of their respective legal systems, necessitating different priorities.

4. Ideally, better training for law professionals will ultimately result in reinforced application of the Court's case law by courts in the member States as well as a reduction in the number of applications to the Court. Cutting the number of applications to the Court is vitally important. At several intergovernmental conferences held in recent years and in the resulting declarations (Interlaken,[5] Izmir[6] and Brighton[7]), the member States told the Court that it would not be given more resources but would have to use the procedural tools available to it (restrictive admissibility criteria, pilot-judgment procedure,[8] etc.) to manage the applications received and to be ruled on.

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4. The Secretariat received contributions from Ms Galina Arapova, Mr Leif Berg (European Court of Human Rights), Mr Grzegorz Borkowski, Mr Anton Burkov (Sutyajnik NGO) , Mr Jean-Paul Costa (International Institute of Human Rights), Ms Françoise Hampson, Ms Hanna Machińska, Ms Aude Magen (European Judicial Training Network), Mr Jim Murdoch, Ms Ivana Roagna, Mr Xavier Rosin (Ecole nationale de la magistrature), Ms Christiane Schmaltz, Ms Ana-Maria Telbis (European Human Rights Association), Ms Tatiana Termacic (HELP Programme) and Mr Patrick Titiun (European Court of Human Rights). These contributions were submitted in response to the introductory memorandum made public by the rapporteur on 18 June 2013.

5. High-level conference on the future of the European Court of Human Rights, Interlaken Declaration.

6. Ibid., Izmir Declaration.

7. Ibid., Brighton Declaration.

2. Context

2.1. The authority of the Court's case law

5. The case law of the Court – particularly the Grand Chamber's judgments of principle – provides an authoritative interpretation of the European Convention on Human Rights (ETS No. 5, "the Convention") by which all the Council of Europe's member States are bound. The Court's judgments, which have binding force under Article 46 of the Convention, constitute European supervision of the Convention's application which is incumbent firstly on national bodies.

6. While, in principle, the binding force of the Court's judgments applies only between the parties to the dispute, it is highly desirable that other States – their respective legislature, executive and courts – draw inspiration from judgments relating to similar problems elsewhere. Fortunately, more and more examples point to the fact that supreme judicial bodies, and also legislative and executive authorities, are taking account of the interpretative authority (*res interpretata*) of the judgments of the Court.[9] An expansion of this "good practice" would obviate a great many applications, but at the same time would require strong knowledge of the Court's case law within the decision-making bodies of each State Party.

2.2. Access to the Court's case law

7. The issue of the translation, publication and dissemination of the Court's case law is also of primary importance when discussing the training of law professionals. Of interest to note, in this context, is that the Court's case law is available via the Court website's HUDOC database, presented in more detail below. It is also published in a wide variety of outside publications, in many languages, ranging from ministerial bulletins and other official State publications, documents issued by NGOs and a host of academic and commercial sources, to a growing series of websites and blogs of variable quality.[10] But this is not, in most instances, carried out in any systematic or comprehensive manner. And although the use of only two official languages, English and French, can facilitate work in Strasbourg, for those who possess a good knowledge of only one of these languages, reception of the Court's case law is far from satisfactory at the domestic level, because although Grand Chamber judgments are rendered in both English and French, chamber judgments are often only issued in either English or French. National judicial and administrative institutions, practising lawyers, academics and the public at large should all be able to have (better) access to the most important Court case law in their respective languages.[11] Needless to add, if a State is required to translate a Court judgment as part of the "general measures" foreseen in the context of the execution of a Court judgment, by virtue of Article 46.2 of the Convention, it is the respondent State itself which must bear the cost of translation and ensure appropriate dissemination of the text. The crucially important question of translating the Court's case law is examined in greater detail below.

3. Issues that merit consideration

3.1. Why human rights training for law professionals is necessary

8. The training of law professionals is of paramount importance to ensure that Convention standards are firmly entrenched in the national law of member States. The perceived means of achieving this is often standardised training of judges, prosecutors and lawyers on the Convention's standards, as interpreted by the Court, taking into account the specific needs of each State. Often, a lack of appropriate training of the aforementioned law professionals leaves States ill-equipped and unable to correctly apply and integrate

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8. The pilot-judgment procedure before the Court is intended to deal with large groups of identical cases that derive from the same underlying problem. The Court hands down a solution that extends beyond the particular case and covers all similar cases raising the same issue. The resulting judgment is a "pilot judgment". The procedure is intended to help the national authorities to eliminate the systemic or structural problem highlighted by the Court as giving rise to repetitive cases.

9. For further information on the interpretative authority (res interpretata) of the Court's case law, see document AS/Jur/Inf (2010) 04.

10. See, on this and related subjects, a compilation of replies from member States in Committee of Ministers document CM(2008)52: CDDH Activity Report "Sustained action to ensure the effectiveness of the implementation of the ECHR at national and European levels" passim (in the context follow-up to the "2004 reform package" and Committee of Ministers Recommendation Rec(2002)13 on the publication and dissemination in the member States of the text of the Convention and of the case law of the European Court of Human Rights).

11. For further comments on this point, see the report "Guaranteeing the authority and effectiveness of the European Convention on Human Rights", Doc 12811, paragraphs 38-39 (Rapporteur: Ms Marie-Louise Bemelmans-Videc).

Convention standards. Proper implementation of the Convention at national level is essential to reducing the amount of applications brought before the Court, as well as the backlog of cases currently facing it,[12] not to mention the need to improve the speed and efficiency of justice within States.

9. That said, most of the experts and institutions we consulted agree that the training of law professionals is primarily the responsibility of the member States and must be provided by qualified law specialists within the legal system of the member State concerned who are also well versed in the Convention as interpreted by the Court. Training must be adapted to the legal system of each State and be incorporated in the vocational training systems operating in each country and for each legal profession (judges, prosecutors, lawyers). International experts may be used but only when they are familiar with the national legal system. However, the competent national institutions must themselves develop the necessary tools in order to provide such training, where applicable in co-operation with the Council of Europe's HELP programme.[13] Below I will examine how this kind of training, in principle an internal exercise, can benefit from co-operation with the HELP programme.

3.1.1. What the Council of Europe has said regarding human rights training for law professionals

10. On 12 May 2004, the Committee of Ministers adopted Recommendation Rec(2004)4 to member States on the European Convention on Human Rights in university education and professional training[14] which, while recognising the importance of publishing and disseminating the text of the Convention and the Court's case law at national level, states that "it is crucial that these measures are supplemented by others in the field of education and training, in order to achieve their aim". The recommendation reiterated the need to ensure adequate education on the Convention to law enforcement professionals, which would contribute to reducing, on the one hand, the number of violations resulting from insufficient knowledge of the Convention and, on the other hand, the lodging of applications which manifestly do not meet the admissibility requirements.[15] More specifically, professional training would facilitate better incorporation of Convention standards and the Court's case law in the reasoning adopted by domestic courts in their judgments; legal advice given to potential applicants by lawyers having adequate knowledge of the Convention would prevent applications that manifestly do not meet the admissibility requirements. A better knowledge of the Convention by law professionals would therefore contribute to reducing the number of applications reaching the Court.[16]

11. As far as the updating of Recommendation Rec(2004)4 is concerned, the Committee of Experts on the Reform of the Court (DH-GDR) has expressed its interest and the Steering Committee for Human Rights (CDDH) has expressed its willingness to carry out this work were it requested by the Committee of Ministers. However, it is regrettable that the CDDH considers that such work should not take priority over other activities.[17]

12. In the Brighton Declaration of April 2012, the member States expressed their determination to ensure effective implementation of the European Convention on Human Rights 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).[18]

4. Training for law professionals provided at national level

4.1. A few general remarks

13. In implementing Recommendation Rec(2004)4, member States provided the Committee of Ministers with information on the type of training offered to judges, lawyers, prosecutors and law-enforcement officials between 2001 and 2005.[19] This training varied from country to country and within the same State, but some trends were noted. Since the adoption of this recommendation, the majority of member States now appear to

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12. The Court states that due to the current backlog each case may have to wait at least a year before initial examination. "European Court of Human Rights – Questions and Answers" (page 10). See also the statistics: European Court of Human Rights, Statistics 1/1-31/10/2013.
13. The European Programme for Human Rights Education for Legal Professionals, funded by the Human Rights Trust Fund (HRTF).
14. https://wcd.coe.int/ViewDoc.jsp?Ref=Rec(2004)4&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864.
15. Ibid., paragraph 3.
16. Recommendation Rec(2004)4, Appendix, paragraph 9.
17. CDDH, Report of the 78th meeting, Strasbourg, 25-28 June 2013, paragraph 15.
18. http://hub.coe.int/en/20120419-brighton-declaration/.

have permanent training structures for judges and prosecutors. Some of the remaining challenges concern the absence of mandatory continuous training for lawyers. New methods in adult learning have also been developed, in particular based on the principle of open education that enables law professionals to learn what they think useful is useful to them. It also gives them a sense of responsibility for their education, which is facilitated through access to self-learning tools.

14. Most States also indicated that training on the Convention was provided by universities (at bachelor and/or master level) as part of courses on human rights, public international law, constitutional law, criminal law, etc. Some States also indicated that judicial and lawyers' training institutions provided some basic and further training on the Convention and the Court's case law to judges, lawyers and prosecutors, but this was not done in a uniform manner. What was striking in the information provided was that the Convention and the Court's case law rarely existed as a course in its own right and, more often than not, were provided within a wider context. Here, what is important to underline, is the fact that the case law is often not studied in any depth, even in courses relating to specific areas of law for which it is most relevant (constitutional law, civil and criminal procedure, family law, etc.).

15. One of our experts, Ms Roagna, who has a long experience as a Council of Europe trainer, said that in the "new" member States the training provided by the Council of Europe gave many law professionals their first insight into the Convention's standards. Ms Roagna added that in many European countries, the teaching of law at university level dispensed only very limited knowledge of the Convention, often in the form of options. Similarly, the vocational training for law professionals in most countries devotes only scant attention to the Convention. Ms Roagna noted that even seasoned professionals have only very limited knowledge and understanding of the Convention.

4.2. Examples of training on the Convention at national level

16. I would also like to look at a few examples of training provided at national level in two of the "old" member States (Germany and France) and two "new" States, namely Russia – the country which has the highest number of applications against it before the Court[20] – and Poland, to illustrate the type of training received by law professionals at national level. These examples show that training on the Convention and the Court's case law varies in the different member States and is generally inadequate.

4.2.1. Germany

17. One of our experts, Ms Schmaltz, said that the human rights training dispensed at universities in Germany should be more developed. As things stand, compulsory university classes do not include any module specially devoted to the Convention or the Court's case law. They do include "links to European law" pursuant to the law on the judiciary, but a look at the laws of the *Länder* (the federal States) which determine the subjects examined shows that, in this context, "European law" tends to cover above all the law of the European Union. After university and the first State examination, all future law professionals must undergo practical training ("Referendariat") lasting two to three years. But the Convention has only a diminutive role in the training, and only for those candidates who choose European or international law as their "selected subject group" in the second State examination validating practical training, in addition to the range of compulsory basic subjects which, in any case, constitute the vast majority of subjects examined. After the second State examination, which is compulsory for all future professionals, only lawyers are obliged to undergo further training, which is not therefore the case for judges and prosecutors. There is nevertheless a supra-regional training institution for judges and prosecutors offering further training courses on a voluntary basis.

4.2.2. France

18. Another of our experts, Mr Pettiti, told us that human rights training has been provided to lawyers in France since 1978. Certain universities have training programmes in which the Convention is taught. However, he believes that the quality of the training provided to French lawyers lacks consistency. The Paris College for barristers incorporated a human rights training programme, which was then dropped for several years, but there is now a new programme, introduced two years ago, which trains 1 700 lawyers each year in Paris with the aid of the HELP programme[21] and the Court's registry. This course – compulsory for trainee

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19. CDDH, Information submitted by member States with regard to the implementation of the five recommendations mentioned in the Declaration adopted by the Committee of Ministers at its 114th session (12 May 2004), pp. 169-240.
20. See page 6: www.echr.coe.int/Documents/Stats_analysis_2012_ENG.pdf.
21. For more details of this programme, see below.

lawyers – comprises two modules on the Convention and the Court's case law as well as the Court's structure and functioning. For practising lawyers, the *Délégation des Barreaux de France* (Delegation of the French bar association) organises courses on the Convention. Several training sessions are organised annually and each training session is attended by between 80 and 150 lawyers from all over France. However, Mr Pettiti said that the training provided to French lawyers on the Convention is not as substantial as the training they receive on European Union law.

19. Numerous training courses on the Convention and the Court's case law are available to members of the French judiciary. Where basic training is concerned, members of the Court visit the *Ecole nationale de la magistrature* (national college for the judiciary)[22] in Bordeaux and provide both theoretical and practical training (with workshops) lasting several days. For further training, there are several specialised training courses including a week-long course entitled “La CEDH: mode d’emploi” (“The ECHR: instructions for use”) which provides theoretical tools enabling judges to apply the Convention. It is attended by several dozen judges every year and reinforced by group training sessions organised annually at the Council of Europe and the Court.

4.2.3. Poland

20. Since 2012, a day-long basic training course in human rights has been taught to mixed groups of 50 judges and prosecutors. The Ministry of Justice is tasked with making regular proposals to the national college for judges and prosecutors for courses focusing on the Court's most recent case law, particularly that regarding Poland. Thanks to co-operation between the national college for judges and prosecutors and the HELP programme, each judge or prosecutor receiving this training is provided with manuals on the right to a fair trial, and the right to respect for private and family life and freedom of thought, conscience and religion as part of the European Convention on Human Rights. In addition to this basic training, it is foreseen to provide judges with more in-depth training to give them a good knowledge of the Convention and the Court's case law. The idea is for every Polish court to have two judges with an in-depth knowledge of European law (European Union law and the Court's case law) which they can then pass on to their colleagues.

4.2.4. Russia

21. Another expert, Ms Arapova, said that, in Russia, very few judges and prosecutors are capable of reading and working with legal texts in a foreign language, in this case English and French. Moreover, not all of them use the Internet (all courts have access in principle, but the judges' computers have no network connection), which limits opportunities for using online resources such as HUDOC and the material made available by the HELP programme. Owing to the size of the country and the resultant number of law professionals to be trained, considerable resources are required to have a real impact. Russia does not have a national training college for prosecutors. There is a Russian Academy of Justice, an institution providing training for lawyers and further training for judges but, given that very few Russian judges apply the Convention and the Court's case law in the cases they examine, it would appear that the training provided to judges by the academy is not adequate where the Convention is concerned. There have been a few local initiatives where regional courts have organised their own seminars for judges, their assistants and lay magistrates. Universities, NGO experts and lawyers are invited to provide training at these seminars, covering a range of issues raised by the Court's case law.

22. As for lawyers, there is also a lack of full, standardised basic training as regards the Convention. There are over 1 200 law colleges and universities providing basic professional training. Very few universities offer courses on human rights and the Convention, and most of those are in Moscow. In the majority of universities, law students receive a few short classes on the Convention and the functioning of the Court as part of an international law course. The expert believes that this is not enough for them to fully understand the role of the Convention and the Court's case law in the national legal system. Furthermore, they do not learn how to apply the Convention in practice or to read the Court's judgments or to understand the admissibility criteria. Very little information on these questions features in the other courses (such as civil law, family law or criminal law). It would be desirable, in the longer term, for the Convention's principles to be included in all fields of law studies, and in criminal law and criminal procedure as a priority.

22. www.enm-justice.fr/anglais/home.php.

5. The most relevant training provided within the Council of Europe

5.1. Training provided by the European Court of Human Rights

23. The Court receives delegations of judges, prosecutors and lawyers from Council of Europe member States on a regular basis. It runs training sessions comprising programmes lasting between one and four days, including at least three presentations by speakers from the Court and other sectors of the Council of Europe. The training sessions are organised at the initiative of partners in the member States, such as supreme courts and justice ministries as well as the permanent representations of Council of Europe member States. In order to provide the most comprehensive training possible on the Convention, the modules include attending a hearing, meeting the judge elected in respect of the participants' member State, information on the Court's database system and presentations on the Convention's main provisions as well as the main trends in case law. In 2012, the Court ran 47 training sessions along these lines for delegations from 21 States. The Court also organised 463 information visits for law professionals and students.

24. In 2012, with the support of the Human Rights Trust Fund,[23] the Court registry set up a Training Unit with the aim of providing law professionals with training on the Court's case law and promoting its dissemination. The unit is currently training law professionals from Albania, Armenia, Azerbaijan, Georgia, the Republic of Moldova, Montenegro, Serbia and Ukraine. The trainers working in the unit are selected from among the Court's judges, the registry's lawyers and retired judges. Two-day training visits to the Court include attendance at a hearing and a presentation of the Convention's main provisions. Training sessions were run with Albanian, Armenian, Azerbaijani and Serbian participants in 2012, and with Georgian, Moldovan, Montenegrin and Ukrainian participants in 2013.

25. The Court has also forged a partnership with the European Judicial Training Network (EJTN),[24] an organisation which develops training standards and curricula, co-ordinates judicial training exchanges and programmes and fosters co-operation between national training bodies in the European Union. The EJTN provides year-long training and short, four-day study visits to the Court for judges and prosecutors. The year-long training is intended to build on the training received at different levels. During their training, the judges and prosecutors are assigned to the Court registry with the main task of analysing and preparing applications relating to their jurisdiction. They assist lawyers in preparing more complex cases brought before the Grand Chamber. They participate in court hearings and may present applications. They also take part in research projects. In 2010, the EJTN began proposing study visits to the Court for judges and prosecutors to help them expand their knowledge of its workings and case law by participating in theoretical sessions and practical activities. Since 2007, 22 judges and prosecutors from eight European Union member States (Austria, Estonia, Germany, Hungary, Italy, the Netherlands, Poland and the United Kingdom) have spent a year training at the Court. In addition, since 2010, 291 judges and prosecutors from 22 European Union countries have taken part in a four-day study visit.

26. Also noteworthy are two programmes serving to both help the Court make up for its chronic lack of staff and train “national” professionals: the first is the “junior lawyers” programme for young lawyers who have just come through their national training system and are employed as lawyers in the Court registry for a set period (up to four years). The second is the programme of “secondments” of law specialists from certain member States for a limited period; these law specialists, many of them judges or prosecutors, work in the Court registry and have their wages paid by their country of origin. The beneficiaries of these two programmes gain in-depth knowledge of the Court's working methods and case law, which they can then use once back in their own country.[25]

27. Besides questions of training as such, there is the related issue of access to the Court's case law for law professionals in a language which they understand. In particular, there is an urgent need to improve this access in Council of Europe member States where the Court's two official languages (English and French) are not understood by law professionals. This aim is also in line with the Brighton Declaration (Articles 9.*c*.ii, *d*, *e* and *h*) and the previous declarations of Interlaken and Izmir. The Court has taken steps to improve access to its case law. The HUDOC database was improved in June 2012 to make it more accessible. Furthermore, on 9 September 2013, the Court issued new printed and electronic versions of the reports of its main judgments and decisions selected for their case law interest. However, they will be published in English and French only.

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23. www.coe.int/t/dghl/humanrightstrustfund/default_EN.asp.
24. www.ejtn.eu/en/.
25. The sometimes delicate question of these individuals' influence over decisions concerning their country, to which they will be returning, is considered by my colleague Boriss Cilevičs in the report he is preparing on the independence of the Court (see document AS/Jur (2013) 34, introductory memorandum declassified on 6 November 2013).

28. The Court also makes efforts to translate its case law. To date, 5 000 texts have been translated into 25 languages other than English and French and may be found in the HUDOC database. In 2012, the registry commissioned a large number of translations into Russian and, during 2013, it has had its texts translated into Bulgarian, Greek, Hungarian and Spanish. Governments, legal training centres, associations of law professionals, NGOs and other interested parties are invited to supply any translation of case law for which they hold copyright for inclusion in HUDOC database. In addition, in April 2012, the registry started up a three-year project with the support of the Human Rights Trust Fund, aimed at having key Court judgments translated and having them distributed to law professionals in Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, the Republic of Moldova, Montenegro, Serbia, "the former Yugoslav Republic of Macedonia", Turkey and Ukraine.

29. The Court has therefore made a considerable effort to translate its case law into languages other than English and French, but much remains to be done. In the meantime, the fact is that many law professionals do not know enough English or French to be able to exploit HUDOC. While some member States do translate certain judgments into their language, they usually limit this exercise to those directly concerning them. Consequently, many of the Court's judgments are not accessible to professionals in numerous member States.

30. One way of overcoming this problem might be to set up a database containing the judgments which the Court considers to be the most important. This database would have two sections for each member State. The first would contain the most important judgments concerning the whole of Europe and would be accessible within all the databases of all the States. The second would contain the judgments that are most important for the country concerned. The Council of Europe could ask the member States to translate all the database judgments concerning them into their national language(s). They would also be asked to ensure that these translations are available to all law professionals. Setting up a database along these lines would require serious commitment from the member States and they would have to be prepared to allocate the necessary human and financial resources to it.

31. Although the training laid on by the Court for law professionals enables the participants to gain knowledge of its case law and an understanding of how it works, which they can then use in their own countries, it clearly cannot provide training on a big enough scale owing to a lack of resources. The Court has a very substantial caseload, and its primary role is to ensure compliance with the Convention by adjudicating applications within a reasonable lapse of time. As the Court has limited resources available to it, Court activity *per se* has to be prioritised. That said, the Court's judges and lawyers have a legitimate role to play in "dialogue" – a term which I prefer to "training" – with their counterparts in national judicial institutions, including at the highest level of national courts. These activities give members of the judiciary an opportunity to discover the Convention's supervisory body from within and meet and dialogue with the main players in the system. The two aforementioned programmes in the Court registry should therefore be pursued, on a reasonable scale, which would also enable the Court to make up for its chronic lack of staff and the member States to benefit from having professionals with a good knowledge of the Court's working methods and case law.

5.2. Co-operation and training activities provided under the HELP Programme

32. The European Programme for human rights education for law professionals (HELP Programme) was launched in 2006 in the wake of the Third Summit of Heads of State and Government of the Council of Europe held in Warsaw in 2005, in response to the aforementioned Committee of Ministers Recommendation Rec(2004)4. The HELP Programme is tasked with meeting priority needs for training on the Convention for the 47 member States' law professionals by developing training tools and courses with a multidisciplinary approach.

33. The HELP Programme is based on the principle of open education, giving law professionals the opportunity to learn what they want, when they want, while giving them a sense of responsibility for their training and easy access to learning tools.

34. Since being set up, the HELP Programme has provided national training institutions with assistance in incorporating the Convention's standards into basic and further training programmes for judges, prosecutors and lawyers.

35. Training tools and resources have been made available to national training institutions and include training manuals, books on specific themes, Convention glossaries, standard curricula, presentations and practical case studies and themed courses on certain articles of the Convention. These tools have been translated into numerous languages and are accessible online free of charge on the HELP Programme site.[26]

The site may also be used for E-learning by law professionals for their own vocational development. It also features tools for use by national trainers to train colleagues. A HELP drafting committee has been set up to ensure that the tools developed are of a high quality and are up-to-date.

36. The HELP Programme has set up a peer-to-peer human rights training network between national training institutions, bar associations, relevant international professional associations, the Council of Bars and Law Societies of Europe (CCBE)[27] and the European Judicial Training Network (EJTN).[28] The aim of the HELP network is to promote exchanges of good practices and experience between those running basic and further training for law professionals. Furthermore, the HELP Consultative Board, made up of six representatives from different States, was elected by the HELP network for the first time in June 2013 with the aim of providing advice to the Secretariat of the HELP Programme.

37. The HELP Programme was substantially expanded in 2012, from 12 to 47 partner countries (all the Council of Europe's member States), and now targets lawyers as well as judges and prosecutors. The HELP website offers free online access to material and tools for training on the Convention. These include a database of training materials, a methodology manual for training on the Convention, Convention glossaries and online learning manuals and courses on the Convention. The material is now available in a number of languages, and training resources in a given language may be found on the corresponding national web pages.[29]

38. The HELP Programme was chiefly designed to deal with the subjects covered by the Convention. Other Council of Europe themes which supplement the Court's case law, such as child-friendly justice, social rights, family law, alternatives to detention, non-discrimination and freedom of expression on the Internet, are also covered by the Help Programme.

39. In 2012, 20 national pages were created with funding from the Human Rights Trust Fund. These provide training tools and information on various human rights training initiatives, in the respective national languages. In addition, contact persons have been appointed in 15 countries, with the role of providing law professionals in their country with detailed information and news on the HELP training tools available. Those contact persons also serve as a link between the Council of Europe and the training institutions and bar associations. In 2012, distance learning on topics such as family law and human rights, criteria for admissibility before the Court and alternatives to detention was laid on in 10 countries. In 2013, these courses, plus others on child-friendly justice and the prosecution of persons accused of sexual harassment of children, were launched in other countries. A total of 30 national training institutions for judges and prosecutors and 15 bars have directly benefited from the HELP Programme.

40. Although the HELP Programme was included in the priorities of the Secretary General of the Council of Europe for 2014-2015, it continues to run into funding difficulties. Between 60% and 65% of its main activities are funded by the Human Rights Trust Fund and the remainder by the ordinary budget of the Council of Europe. In 2013, the Human Rights Trust Fund granted €1 million to the HELP Programme. The sum of €1 200 000 targeted for 2014-2015 appears to pose a problem for the Fund. Moreover, the HELP Programme Secretariat consists of just four full-time staff. Given the tasks assigned to it, the resources available to this programme fall well short. Adequate funding should be earmarked, in the Organisation’s ordinary budget, to sustain this activity as a permanent feature.

5.3. The value of reinforcing the HELP Programme rather than creating a new Council of Europe training centre

41. The HELP Programme merits being consolidated as it has already shown its worth. Since its launch in 2006, the HELP Programme has constantly expanded the scope of its activities and developed the training it provides on the Convention to bodies training law professionals. Some aspects of the Programme such as the appointment of contact persons are very recent developments and need time and resources to achieve the impact hoped for in all the member States. The HELP Programme should also be better equipped to more heavily publicise the training and training tools on offer, which are still unknown to many potential partner organisations and law practitioners.

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26. http://help.ppa.coe.int/?lang=en.
27. www.ccbe.eu/index.php?id=12&L=0.
28. www.ejtn.net/en/.
29. www.helpcoe.org/.

42. Setting up a new Council of Europe training centre would bring no added value. The Convention is only to be applied in domestic law as a subsidiary measure, as national judges and prosecutors must first interpret and apply domestic law provisions in line with European requirements. The difficulties arise when a domestic provision and/or practice clashes with the provisions of the Convention as interpreted by the Court. This means that training at national level is a better way of eliminating these sticking points than training at the level of the Council of Europe, as it is a matter of reconciling the Convention and domestic law. Furthermore, setting up a training centre in Strasbourg would be particularly costly: in addition to substantial operating costs, the training courses would be very expensive to run. It would be necessary to finance the cost of law professionals' travel to Strasbourg as well as their subsistence expenses, which are unquestionably lower if those people are trained in their country of origin. The HELP Programme, on the other hand, better reflects the subsidiary ethos of the Convention, making it possible to establish a network of national professional training bodies and provide them, as well as individual professionals, with tools for training on the Convention which are easily accessible online.

6. Conclusion

43. The Court has continued to develop substantial and much-needed case law in recent years. While the large mass of work produced has kept the Convention relevant to modern-day life by adapting it to changing European societies, its ever-growing number of decisions are making European human rights law a highly technical and sometimes awkward instrument. This means that active efforts to train professionals on the Convention must be continued and that, once trained, they must be provided with a means of regularly updating their knowledge.

44. The training of law professionals is clearly the responsibility of the member States, which have established a great diversity of structures and courses geared to their own legal systems. In the spirit of subsidiarity on which the Convention is based, it is also primarily the job of the member States to ensure that law professionals who are currently training or already working have an adequate level of knowledge of the Convention, as interpreted by the Court. As we have seen, the methods and quality of such training varies greatly from country to country, and the examples I have given show that there is room for improvement. The competent bodies could make greater use of the tools already or yet to be created by the Council of Europe, particularly via the HELP Programme.

45. The HELP Programme merits being reinforced, including through the allocation of resources in the Council of Europe's ordinary budget, in keeping with the tasks assigned to it. Given its substantial caseload, the Court should continue to concentrate its limited resources primarily on its court activities as defined by the Convention. At the same time, continued “dialogue between judges”, including with the Strasbourg judges' peers in the highest national courts, can help to further improve the application of the Convention's principles by national judges on the basis of better mutual understanding.

46. To that end, Committee of Ministers Recommendation Rec(2004)4 should be updated as soon as possible to take account of new developments since its adoption.