

**Kyiv Recommendations
on the Content and Methodology of Judicial Training
on the Implementation of the European Convention on Human Rights, case-law and execution of
judgments of the European Court of Human Rights**

Considering the statutory aim of the Council of Europe, composed of all like-minded countries of Europe, to achieve a greater unity between its members, to uphold common heritage of their peoples and the values that are a true source of individual freedom, political liberty and the rule of law, which form the foundation for all genuine democracy;

Considering that the aim of the European Convention on Human Rights (“ETS No. 5, the Convention”) is to ensure a common understanding and observance of the human rights guaranteed;

Underlining, in particular, the binding nature of the judgments of the European Court of Human Rights (“the Court”) in the cases to which a state is the party and also the *erga omnes* and *lex interpretata* effect of the Court’s case-law, based on the requirements of Article 46 of the Convention;

Recalling the subsidiary character of the supervision mechanism set up by the Convention, which implies, in accordance with Article 1, that the rights and freedoms guaranteed by the Convention are to be protected initially at domestic level and applied by national authorities; and that their respect should be secured by a system of effective remedies, under Article 13 of the Convention, and, in particular, the important role of judges in this respect, including in order to provide redress where violations are established;

Recalling in this respect that the Convention is since the early 2000’s incorporated as domestic law in all Council of Europe member States;

Underlining the urgent need of better safeguarding and realising the ideals and principles which are their common constitutional and legal heritage, *inter alia* by carrying out activities in the field of human rights and fundamental freedoms and by strengthening the capacity of the domestic judiciary to ensure deep incorporation of these values into their domestic legal systems;

Having regard to the crucial role of the national judges in the application of the Convention and the case law of the Court, as well as in the execution of the Court’s judgments, with a view to ensuring compliance with the Convention and preventing future violations of human rights;

Recalling that the right to education enshrined in Article 2 of Protocol No. 1 to the Convention concerns, besides elementary, secondary and higher education also specialised courses, thus the holders of this right are also adults, or indeed any person wishing to benefit from the right to education;

Having in mind the Recommendation CM/Rec (2010)12 of the Committee of Ministers on judges: independence, efficiency and responsibilities; the most recent Recommendation CM/Rec(2019)5 of the Committee of Ministers stressing the importance of training in the Convention system, and not only in the case law of the Court, in the university education and professional training; the *Magna Carta of Judges* (fundamental principles) adopted by the Consultative Council of European Judges; the Parliamentary Assembly Recommendation 2039 (2014) on the European Convention on Human Rights: the need to reinforce the training of legal professionals, and most importantly judges; as well as the Brussels (2015) and Copenhagen (2018) Declarations adopted at the respective high-level conferences, emphasising the importance of the training of the judiciary on the Convention;

Recalling that judicial training complements the university level legal education of future judges, laying the foundation for comprehensive knowledge and systematic approach of the Convention system;

Underlining that adequately resourced and holistic initial and continuous judicial training is essential to building an area of effective protection of human rights in Europe;

Noting the Consultative Council of European Judges’ Opinion N° 20 (2017) on the role of courts with respect to the uniform application of the law, including the role of judicial training as a tool of unity and predictability of judicial practice;

Noting also the 2017 Manila Declaration of Judicial Training Principles and best practices of countries that developed and implemented national standards of judicial education;

Taking into account the diversity of practices, approaches and organisational structures of member States as regards initial and continuous judicial training and noting the principles of subsidiarity under the Convention;

Noting the importance of incorporating into the domestic training curriculums of the schools of judiciary comprehensive training courses on the Convention and the case-law of the Court, as well as on the role and

functioning of the Committee of Ministers of the Council of Europe in the supervision of execution of the Court's judgments;

Wishing to learn from the diverse experiences in the member States and to promote relations among judicial training institutions of different member States in order to foster the development of a common judicial culture;

Participants to the high-level International Conference on "Protection of human rights through judicial education: best Practices and improvement of standards" approved these recommendations:

Principles for judicial training on the system of the European Convention on Human Rights

Training offer and objectives

1. Training on the topic of the Convention system and the European Social Charter, and, in particular, on the case-law of the Court and the requirements of the execution of Court's judgments and their effective integration in the national legal system, should be an integral part of the training programs for future judges (initial training) and in-service judges (continuous training).

2. National institutions for judicial training should ensure high quality comprehensive and targeted initial and continuous training on the system of the Convention, in line with the needs and expectations of the judiciary.

3. Judicial training on human rights should respond swiftly to new developments and challenges, taking into account the social and legislative context.

4. National institutions for judicial training should put in place a system for the regular assessment of the training needs of the different target groups and for the regular update of the training topics which should evolve with changes in the Court's case-law and guidance given to the member States in the execution of Court's judgments, with special focus on complex, systemic and structural problems identified by the Court, which require changes to the domestic judicial practices or re-opening of the proceedings in individual cases.

5. National institutions for judicial training should recognise initial and continuous training as both a right and a responsibility of the judiciary of value to their normal work; they should thus strive to facilitate the removal of any obstacles to participation in initial and continuous judicial training, in particular by reducing the caseload during training participation; allocation of sufficient resources for judiciary's training needs; ensuring replacement for judges-trainers or participants in training; providing timely and sufficient information about the training programmes available; recognising and rewarding participation in training and providing sufficient funding for training, including at decentralised locations.

Appointment of trainers

6. National institutions for judicial training should enhance the effectiveness of judicial training by ensuring that it is provided by specialist lecturers and trainers, having good knowledge of the Convention system and practical experience in the implementation of the Court's judgments.

7. Training of judges should, as a rule, be judge led, involving judges representing all levels of jurisdiction. Experts and highly skilled specialists from outside the court system should be involved in the elaboration of courses and in teaching.

8. The appointment of trainers from outside the judiciary should take into account the need to avoid potential conflict of interest or any undue influence on independence and impartiality of the judiciary.

9. National institutions for judicial training should strive to create networks of coordinators and mentors on human rights training and adequately disseminate the results of their work.

Training topics

10. National institutions for judicial training should ensure that judicial training institutions adapt their training programmes, activities and methodologies, to cover all the developments in the system of the Convention that should be integrated into training on national law and should be taught in a practical way. Judicial training programmes should also include, alongside the knowledge of the law, the development of relevant legal skills and non-legal "soft" skills, including analytical and critical thinking.

11. In member States which do not have comprehensive courses on European human rights law offered at university level, the national institutions for judicial training shall ensure that comprehensive courses on the Convention system, detailing the principles of operation of the Convention institutions, the role of the Court and of the Committee of Ministers in enforcement of rights under the Convention, focusing

on interaction of the State and the Convention institutions in execution of Court' judgments, are offered to future judges and judges in office.

12. Specific training topics should focus on the content of the rights guaranteed by the Convention, as interpreted by the Court in its case-law, notably vis-à-vis the specific state, and shall cover most topical issues, which arguably could and potentially may result in repetitive applications to the Court (as, notably, safety of journalism, right to privacy, freedom of thought, religion and association, as well as the "core rights" under the Convention – the right to life, the prohibition of torture and fair trial), including the necessity of ensuring the right balance between the requirements of foreseeability and proportionality. These topics rights should focus on the interconnection between these rights and the domestic legal instruments aimed at their implementation.

13. Topics related to execution of judgments should focus on necessary general and individual measures required by the judgments of the Court; they should also concern training on the working methods of the Committee of Ministers of the Council of Europe and the practices of the states in implementation of judgments, as well as soft law recommendations assisting in implementation of the case-law of the Court and of the Convention.

14. The content of training courses and materials should be updated periodically, taking into consideration the nature of the Convention as a living instrument, to allow judges to keep abreast of new developments of the Court's case law and Committee of Minister's practice on execution of Court's judgments.

Training activities

15. National institutions for judicial training should encourage the use of the most appropriate learning and training methods, taking into account the national context and the specific needs and expectations of the different categories of the judiciary. These methods should include blended learning and international exchanges and internships. They should be supplemented by courses on the use of available IT tools, video conferences and databases.

16. The training curricula should allow a timely reaction whenever a need for training in a specific area or for a particular category of judges arises.

Training methodology

17. National institutions for judicial training should strive to ensure that theoretical knowledge is combined with instruction and practical assignments on how to apply it in practice, in particular, by using (inter)active training methods, Socratic methods or moot court exercise methods, so that each judicial training beneficiary can successfully apply it in his daily work.

18. Given the importance and benefits of self-learning, as well as the IT tools and on-line learning platforms available, national institutions for judicial training should encourage participation in distance learning courses and facilitate the use of available resources (Council of Europe and Court's websites, HUDOC-EXEC and other information sources).

19. National institutions for judicial training, in which the training of judges is decentralized, should ensure the coordination of education, including the provision of standardized nature and unity of training programs and the level of teaching. It should be sufficiently flexible, maintaining the standards and necessary level of coordination.

Follow-up of training activities

20. National institutions for judicial training should put in place a follow-up system to assess the judicial training's impact on the participants' daily work sometime after the training, when it could reasonably be expected that the participants had worked on a number of relevant cases. The results of training programme evaluations should be fed back into the training cycle, in order to improve the quality of future judicial training activities.

Council of Europe training resources and HELP platform

21. National institutions for judicial training shall promote easy access and facilitate use of the existing Council of Europe training resources, including the HELP platform and its specific topical programmes, through providing assistance to the judiciary in obtaining access to such resources and explaining how these resources could be best used for the benefit of the judiciary.

Annex: Excerpts of best practices identified to date in the member States participating in the Conference

Training offer and objectives

In *Portugal*, initial training on the Convention system is provided to judges according to their learning needs and supplementing human rights courses taught in universities. The curriculum contains an overview on the Court rules of procedure, on the execution of the Court's judgments and on interpretation rules (margin of appreciation; proportionality, autonomous concepts *etc.*), with focus on the most relevant Articles with respect to Portugal, namely Articles 3 to 10 and 13 of the Convention and Article 1 of Protocol 1 to the Convention.

In *Poland*, the training offered to judges in the Convention system includes the Court's case-law and the role of judges in the implementation of Court's judgments and it emphasizes the principles of subsidiarity and proportionality.

In *Republic of Moldova*, the national training institute trains, besides judges, also court staff and other legal professionals. Trainers apply learning by doing methods (*e.g.* moot courts in initial training) and blended learning and it includes international and bilateral cooperation, internships and a final exam (written and verbal testing).

Appointment of trainers

In *Latvia*, trainers in the Convention system strive to choose the most relevant information and keep it up to date, to always make the aim of their activities clear and reachable and to adapt the methodologies to trainees' needs.

In *Hungary*, all trainers are full time employees of the judicial system; they are mainly judges, but also other legal professionals and psychologists. Their aims include improvement of judges' problem solving and soft skills and they provide special trainings for specific needs (*e.g.* presentation skills).

Training topics

In *the Netherlands*, judicial training focuses on fostering professionalism, ethics, respect of rule of law, cooperation and communication within the magistracy and it includes development of social skills, aiming to create open judicial organisations.

In *Romania*, initial judicial training on human rights is compulsory and it includes Convention standards, Court's case-law against Romania (the list of cases is updated each year, so trainers are aware of the newest developments). Continuous training takes a more in-depth approach, targeted to judges' needs, by specialised conferences and seminars.

In *Georgia*, initial training of judges depends on their previous experience and it includes HELP courses and the most relevant topics for Georgia (*e.g.* investigation skills for hate crimes, election disputes resolution *etc.*).

Training activities

In *Italy*, in order to make human rights courses fully effective in practice, a network of specialised judges in the Convention system was created in the local courts and results are already visible as since the creation of the network there has been a radical change in how domestic judges implement Court's judgments.

In *Bulgaria*, a project for the creation of a forum of judges, prosecutors, investigating magistrates and experts with in-depth knowledge and skills in applying fundamental rights is ongoing. Members of the Forum will take part in training activities on fundamental rights and will provide expert support to their colleagues in their day-to-day work, when there is a need for specialised expertise in the field.

Training methodology

In *Azerbaijan*, initial training for judges is provided both in classroom and on the job. It includes internships and it aims at shifting from deductive to interactive methods of teaching (*e.g.* role plays to give judges multiple skills).

Follow-up of training activities

In *Ukraine*, judicial training is based on the Council of Europe Recommendations on professional training. Training is usually well received by beneficiaries and results are already visible (*e.g.* Court's judgments are frequently applied and quoted by domestic judges in their reasoning).