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**European network for the exchange of information between persons and entities
responsible for the training of judges and public prosecutors**

(LISBON NETWORK)

NINTH PLENARY MEETING

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Website of the Lisbon network: www.coe.int/lisbon-network

**The judge as the first guarantor of the implementation of international law in the
domestic legal order**

Corpus of Council of Europe law which a judge must know and implement

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The founder member states of the Council of Europe conceived the rule of law and the definition of fundamental human rights as essential guarantees for the restoration of democracy and the preservation of peace following the tragedy of the Second World War.

Just as the European Union's law is aimed at enhancing integration of citizens and enterprises in a harmonised living and working community, human rights and the case-law of the European Court of Human Rights allow the emergence of a social model that safeguards individuals from all forms of oppression and tyranny.

From a legal standpoint, two key principles guarantee the effectiveness of the harmonisation and integration measures implemented by the international institutions:

- the primacy of international legislation over conflicting rules of national law;
- the principle that national courts ordinarily have jurisdiction regarding compliance with their state's international commitments.

However, if the courts are to be able fully to assume the responsibility thus conferred on them, judges' training must ensure that they acquire the level of proficiency needed to perform the difficult task of comparing sometimes contradictory laws of different levels.

The need for appropriate training has been underlined by the Consultative Council of European Judges (CCJE) in the opinions it has issued to the Committee of Ministers (I).

It is also necessary to determine those legal instruments of the Council of Europe which national judicial training institutes should obligatorily cover, so as to inculcate a knowledge of them and the ability to interpret them (II).

I. The CCJE's opinions

In its Opinion No. 4 (paragraphs 43 to 46) the CCJE already pointed out that:

- whatever the nature of their duties, no judge can ignore European law;
- European law must be included in the initial and in-service training programmes proposed for judges;
- the Lisbon Network should play an essential role to this end;
- an effort must be made to improve coordination and harmonisation of the training programmes and methods aimed at judges.

Underlining the importance of judges' role as the guarantors of respect for and proper implementation of the international and European treaties to which their states are parties, Opinion No. 9 (2006) clarifies the positions adopted in the earlier opinion on a number of fundamental issues.

1 - Providing national judges with information and documentation on all relevant international and European legal instruments is absolutely essential

This requires that:

- European law should be included in the training curricula from university on;
- a good knowledge of international and European law should be one of the criteria for appointment to judicial office;
- judges' in-service training should accord appropriate importance to training in international and European law, which to be effective should also entail international co-operation between national judicial training institutions;
- information on international and European law, including decisions by international and European courts, should be made available to judges on a regular basis;

- judges should be encouraged to learn foreign languages.

2 - Dialogue between national and European judicial institutions must be promoted

To this end, the CCJE's Opinion No. 9 recommends:

- fostering the holding of conferences and seminars, in particular on specific themes;
- promoting study visit programmes hosted by international courts or by other national judicial institutions;
- encouraging national judges to make use of websites and data bases set up by other national judicial institutions and by international ones.

3 - It must be ensured that the national courts apply international and European law

In this connection, the CCJE has drawn attention to the fact that, like the legislative and executive branches of power, the judiciary is bound by the rule of law.

This means that national judges must ensure respect for international and European law, the very purpose of which is to promote observance of the rule of law.

They must ensure that national law and practice are consistent with international and European law, reduce as far as possible the differences in application of the principles of international and European law and take special care to ensure respect for the case-law of the European Court of Human Rights and consideration of Council of Europe recommendations.

This last point is important, as it brings us to the question of knowledge of the Council of Europe's legal instruments.

II. Knowledge of the Council of Europe's legal instruments

The Council of Europe's body of law is particularly impressive, since it corresponds inter alia to two hundred Conventions and several hundred recommendations issued by the Committee of Ministers to member states and accordingly concerns virtually all spheres of individuals' daily lives.

Strangely, despite the breadth and diversity of this legal corpus, national judges, like other state authorities, frequently have scant knowledge of its substance and scope, sometimes to the point that they present certain measures or reforms as innovations when they have long been recommended by the Council of Europe. It is therefore necessary to promote inclusion of the Council of Europe's legal acquis in training programmes for judges. The size of this body of law nonetheless makes it unrealistic, and doubtless pointless, to aim to cover all aspects of it.

It is preferable to select a number of key instruments that should systematically be included in the national judicial training institutes' curricula, while the remainder of the Council's legal corpus can be addressed in two ways:

- training in use of the Council of Europe website, so that consulting this site becomes second nature for national judges;
- themed training sessions, during which certain specific Council of Europe instruments could be studied. For example, in-service training sessions on court practice in civil or criminal matters could provide an opportunity to examine the Council's various recommendations on these subjects.

Apart from these activities, how should the key instruments to be systematically included in

judicial training institutes' curricula be selected?

This would seem to be an area where the Lisbon Network should play a fundamental role by formulating proposals and coordinating the action taken, since it is not possible to give each national training institute a free hand as regards the importance it attaches to training in implementation of the European legal instruments.

The training programme should be decided, and dispensed at least in part, at Council of Europe level.

It is naturally impossible to imagine that a training course for judges would not include detailed coverage of the rules of the European Convention on Human Rights, as interpreted and applied by the Court in Strasbourg.

If the training sessions had to be confined to only one instrument, the ECHR can be seen to be indispensable, especially since it is in fact the starting point for all the other instruments subsequently adopted in more specific fields.

The ECHR sets out to establish a European democratic order, not just regarding the conduct of judicial proceedings but also well beyond the judicial sphere, in all areas of life within society where citizens must be afforded protection against infringements of their fundamental freedoms and rights.

Although it goes without saying that the ECHR is a key instrument, the evidence shows that in practice it is not always systematically studied and that the conclusions drawn from it in the European case-law are not necessarily known or, worse, rapidly overlooked by national institutions, whether judicial or not.

Only by making the rational study of the Convention part and parcel of training programmes can the temptation to adopt an insular attitude be combated and the open-mindedness required by the Convention law's primacy be nurtured.

In addition to detailed study of the ECHR, training should focus on the Council of Europe treaties or other instruments which illustrate or complement its application in specific fields.

For example, the need to safeguard individuals against threats to their physical integrity and human dignity (Articles 2 and 3 of the ECHR and the Court's related case-law) justifies the concurrent study of other legal instruments of the Council of Europe, such as the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the Convention on Action against Trafficking in Human Beings, the recommendations, resolutions or other instruments concerning the treatment of offenders and the instruments of various origins dealing with the protection of children and other vulnerable individuals.

Similarly, a study of the Convention provisions on deprivation of liberty (Article 5) can be linked with that of other instruments, including those laying down guidelines for the conduct of criminal proceedings, the conditions of enforcement of sentences, the transfer of sentenced persons, extradition, the handling of offenders and the rights of detainees.

Although treaties have special status among these instruments in that their ratification makes them directly binding on the national courts, the very need for such ratification leads to differences in their geographical scope, which would justify their specific study solely by judges of states that have decided to incorporate these instruments in their positive law.

The ECHR is not outmoded, and training activities aimed at judges should also focus on the most recent instruments adopted under the aegis of the Council of Europe in response to

developments in modern society.

Since judges themselves have to contend with these developments, training courses encompassing the study, for instance, of the Convention on Human Rights and Biomedicine and its additional protocols, the instruments on personal data protection and the combat against cybercrime and those dealing with action to be taken to counter serious forms of, sometimes organised, crime, will enable judges to find sources of up-to-date information and of inspiration in fields of key importance.

Apart from studying the ECHR and the related instruments, it would be desirable also to raise awareness of the entire range of Council of Europe standards, and of the relevant bodies, concerned with the justice system's functioning.

The recommendations and resolutions on legal aid, the independence of the judiciary and the efficiency of justice, the European Charter on the Statute for Judges, the CCJE's opinions and the CEPEJ's studies on the quality of justice are also part of the Council's acquis which judges should be aware of when performing their duties in Europe.

These few introductory comments show the extent of the work to be done within the various national judicial systems to ensure that judges give consideration as a matter of course to the legal principles recommended for some sixty years now by the Council of Europe.

The active involvement of this organisation and its subordinate bodies in the training of national judges is a prerequisite if the latter are to develop the "European awareness" that their new responsibilities call for.