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"The role of legal professionals in defending human rights and preserving the human rights protection system"

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When I travel to different countries in Europe as part of my work, I speak about human rights with different interlocutors, including many who had their human rights violated. They often do not believe that these rights can be realized in practice.

Rights without enforcement are little more than hollow promises. But good human rights training of the legal profession (judges, prosecutors and lawyers) is a good place to start for keeping this promise.

In fact, well trained judges, prosecutors and lawyers that ensure proper enforcement of human rights in their domestic legal system perform two important and mutually-reinforcing roles: they protect individuals from concrete human rights violations and they preserve and strengthen the European human rights protection system as a whole.

1- Protecting individuals from concrete human rights violations

Preventing and remedying individual human rights violations is the first task of a well-trained legal community.

In practice, however, there are human rights which are comparatively more rarely enforced – or more difficult to enforce – than others, sometimes because of their more technical nature or because their scope is simply not fully understood.

The right to non-discrimination provides a very good illustration of this. My experience indicates that this is a right that is very commonly breached in most member states of the Council of Europe. However, instances of its enforcement in domestic courts are still relatively rare. This is due to a number of factors, including a certain lack of familiarity among the legal community about the actual scope of this right.

In the last decade, there has been a lot of work, both internationally and nationally to have adequate legal provisions to make non-discrimination a justiciable right. The Strasbourg Court has in parallel further developed its case-law on Article 14. It is now for you, the legal profession, to take the lead and help keep the promise of non-discrimination.

I have seen a number of cases in which good non-discrimination litigation has advanced the cause for equality at national level. For instance, in October 2012 a Regional Court in

Slovakia (Prešov) ruled that an elementary school in Šarišské Michaľany discriminated against pupils by creating separate classrooms for Roma and non-Roma children located on separate floors. As a result the school must put the children into mixed classes as from the coming school year.

At the same time, I also believe that the right to non-discrimination offers litigation potential that has remained untapped. One situation that comes to mind in this respect from my last visit to Italy, is the exclusion of Roma residents of segregated camps in the outskirts of Rome from participating in the assignment of social housing. It is important to keep in mind that provisions against direct and indirect discrimination can provide tools for addressing long-term inequalities, including when these are perpetuated by official policies.

Hate crimes and hate speech is another area where more awareness of the relevant ECHR standards is badly needed. With the economic crisis worryingly accelerating the rise of these phenomena further, there is a clear role to be played by the legal community in protecting both the rights of those who are targeted by hate (typically, ethnic and national minorities, LGBT, women, persons with disabilities etc.) and the fabric of our societies.

When I visited Greece last January to look at these question, not only was it apparent that training on hate speech, hate crimes and other provisions in force to fight against racism and discrimination was essential, but this need was also recognized by several representatives of the legal community I met, including the Deputy Public Prosecutor of the First Instance Court of Athens, who had been entrusted with special responsibility for prosecuting racist crime.

2- Preserving the European human rights protection system as a whole

When the legal community in a given country ensures the proper enforcement of European human rights law in its domestic courts, it is at the same time preserving and strengthening the overall human rights protection system in Europe.

This system rests on the subsidiarity principle, i.e. on the idea that rights enshrined in the ECHR must be implemented first and foremost at the national level. In other words, if we want our human rights protection system to continue to provide a model of excellence world-wide, our national judges, for example, must be more aware of their role as frontline ECHR judges and increasingly play that role in practice. There are still too many cases which come to the Strasbourg Court without having been properly dealt with by national courts.

Many violations of the ECHR come from deficiencies of the justice system itself (e.g. excessive duration of judicial proceedings, violation of fair trial guarantees, misuse of pre-trial detention, non-implementation of domestic judgments, etc.) or from the failure of the national courts to properly remedy violations. The role of the domestic legal community in addressing these shortcomings is only too obvious. Effective access to justice particularly by persons who are in an economically weak situation cannot be achieved without an efficient system of legal aid and legal advice.

I would like to stress, however, that in this endeavour you are not alone. With his institutions, monitoring bodies and assistance programmes, the Council of Europe can provide you with much support.

Indeed, one of the priorities I set when I took office as Commissioner for Human Rights just over one year ago is to work with those countries that generate the most cases before the European Court of Human Rights to address the structural causes leading to these complaints. This was the rationale for focusing on the excessive length of court proceedings during my visit to Italy in July 2012. My predecessor had already addressed other aspects of

the administration of justice with respect to Georgia, Russia, Turkey and Ukraine and I intend to continue the work on these issues.

On the basis of my country work, one important administration-of-justice area in which I see a continuing need for training is certainly the use of alternative measures to pre-trial detention. This is an issue on which my Office has worked extensively in Turkey and Ukraine, for instance.

I see my work on these areas related to the administration of justice as fully complementary to your work as a competent and well trained legal profession. I understand that working in partnership is one of the cross-cutting themes of this Conference. Clearly, a crucial aspect of this partnership is that between the national legal communities and international bodies and institutions, such as the one I represent.

Another facet of legal training that it is important to discuss and address relates to the apparent stigma that is sometimes attached to receiving such training. One aspect of this relates to the assumption, especially in "older democracies", that legal training is something that should be directed to countries where democracy has been established only more recently. This assumption should be reconsidered.

On some occasions, I have also registered a certain reluctance to training among the legal professions themselves, especially judges. Therefore I welcome that HELP is addressing this by revisiting some training formats into peer-to-peer exchanges or other opportunities aimed at sharing experiences in the concrete implementation of human rights standards.

Let me add here that during my visits, lawyers, prosecutors and judges have also sometimes mutually located at least part of the responsibility for the unsatisfactory application of standards on each other. In this sense, I find the invitation contained in the Declaration adopted by the Consultative Councils of European Judges and Prosecutors (CCJE and CCPE) a very pertinent one: "Where appropriate, joint training for judges, public prosecutors and lawyers on themes of common interest can contribute to the achievement of a justice of the highest quality. This common training should make possible the creation of a basis for a *common legal culture* (emphasis added)".[1]

Clearly, the commitments made by the member states of the Council of Europe in the 2012 Brighton Declaration to provide "appropriate information and training about the Convention in the study, training and professional development of judges, lawyers and prosecutors" should go some way towards addressing this sometimes lingering stigma.[2] I understand that the Steering Committee on Human Rights is currently preparing a toolkit to inform public officials about the State's obligations under the Convention.

Further consideration could also be given to strengthening the mandatory character of training in European human rights law, building on the Council of Europe Committee of Ministers Recommendation "on the European Convention on Human Rights in university education and professional training".[3]

[1] Bordeaux Declaration "Judges and Prosecutors in a democratic society" (Declaration jointly drafted by the working groups of the CCJE and the CCPE in Bordeaux (France) and officially adopted by the CCJE and the CCPE in Brdo (Slovenia) on 18 November 2009). See para. 10 of the Declaration and para 45 of the Explanatory Memorandum.

[2] Brighton Declaration, paragraph 9.

[3] Recommendation Rec (2004) 4 of the Committee of Ministers to member states on the European Convention on Human Rights in university education and professional training

A final aspect that I wanted to highlight is the impact of training. Obviously, any effort at providing good quality training to lawyers, prosecutors and judges, must aim at generating domestic decisions that reflect the Strasbourg Court case law. However, in the context of my country work I am sometimes confronted with persistent patterns of non-compliant judgments.

What goes wrong, then, between “good” training and “bad” decisions? It would be interesting to have your views on this aspect. Some answers which have been given to me in different national contexts include: 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; other forms of lack of impartiality, including established bias against the members of certain social groups; peer pressure from other judges; and lack of updates in the context of a constantly evolving case-law.

Clearly, the identification, in each specific national context, of the main obstacles that might prevent good training from resulting in good judicial decisions should be part and parcel of our training efforts.

This conference is dedicated to cross-cutting issues on human rights training. Let me conclude by saying that good co-operation between the different actors undoubtedly constitute an important cross-cutting issue. For you, this includes genuine openness to investing in increasing your knowledge of human rights standards even further. For me as Commissioner for Human Rights, it involves contributing to the identification of instances where human rights training is needed so that it can be met by the Council of Europe assistance programmes and HELP.