

Supporting legal professionals in implementing social rights: first stocktaking

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Preface

Legal professionals in their daily work are facing issues regarding the European Convention on Human Rights. The provisions of the Convention are covering a huge spectrum of their daily legal work, either in civil matters, or in criminal cases, or even in administrative affairs. Especially the European legal professionals, when they are handling cases affecting labour law, have to implement apart from the European Convention on Human Rights, also the European Social Charter and the EU Charter of Fundamental Rights. These three basic legal instruments contain important provisions about labour rights and social rights.

The approach of the Convention is focused on specific articles, is more fragmentary and is based more on the interpretation (art. 11, 14). The Charter dedicates a wider complex of articles on labour and social affairs (art. 27 – 38). Furthermore the European Social Charter has a more strict labour and social character. The whole charter is dedicated to labour and social rights. Indeed the Charter corresponds to the European tradition of the greater protection of the weak side of the labour relation, the side of the employee.

In this presentation we will focus on the way that Council of Europe, the institution that has developed the Convention and the Social Charter, supports legal professionals in implementing social rights. And this will be done also under the light of the EU Charter of Fundamental Rights, as the majority of the member states of the CoE, Cyprus also, although still divided, are members of the EU.

The online course “Labour Rights as Human Rights”

HELP programme, among the other online courses, which are functioning as pilot courses with a tutor and a specific audience, has developed the online course on “Labour Rights as Human Rights”. This course has been developed thanks to the European Programme on Human Rights Education for Legal Professionals in the 28 EU countries, otherwise known as “HELP in the 28.”

Greece, i.e. the National School of Judiciary, was one of the 28 countries (National Training Institutions) of EU to be profited from the course. The whole course – in a pdf form more than 900 pages, as main text apart from the links to relevant jurisprudence and case law – was translated last November in Greek. The tutor had the burden to check the translation from the point of correct legal language.

The objective of the course

The course covers in an interactive way the European system of protection of labour rights. The course was designed by the group of experts to assist legal professionals in the implementation of the European Convention on Human Rights, the European Social Charter and the EU Charter of Fundamental Rights.

Another aim is for the legal professional to become familiar with the case law of the European Court of Human Rights, the Court of Justice of the European Union, and the decisions and conclusions of the European Committee of Social Rights. The knowledge of the above case law is not a mere knowledge, but it is above all an assistance for the legal professional to find the appropriate and binding legal text, so as to solve a case of the domestic law, a case of the daily work.

How course worked

“Labour rights as human rights” is a pilot course moderated by a tutor. Tutors are being chosen by the National Institutions from the pool of experts of the HELP programme. Experts have been certified by HELP programme, after certain training (ToT) and assessment¹.

In November we had in Thessaloniki (the city where the School is based) the kick off meeting of the course. HELP in the 28 gathered the 34 participants (24 judges and 10 lawyers) in the central auditorium of the School. Key note speaker was the emeritus professor and former Minister of Labour Ioannis Koukiadis. Koukiadis was also the Greek member of the international committee set by “troika” for the reforms on Greek labour law. The head of the School, Vice President of the Supreme Court Dimitris Kranis was there. The sessions were chaired by the member of the Supreme Court – labour division – Christophoros Kosmidis and the Judge of the Court of Appeals of Athens Eftichios Nikopoulos. From the CoE the Director of Human Rights Christos Giakoumopoulos opened the meeting. Mr Sebastian Mangrau was there to present the case law of the Court. Eva Pastrana with the speaker – the national tutor – chaired the round table. Participants there, in a discussion form, expressed their feelings, their intentions and wishes regarding the course.

The course lasted about 3 ½ months. Every ten days participants were studying a chapter from the course and then they were taking the knowledge test at the end of each course. The time needed was about 2-3 hours per week for the main text and to fulfil the test at the end of each chapter. If someone wished to review the links the time was more.

¹ Only in exceptional cases tutors are not chosen from the pool of experts of HELP programme. For the HELP trainers see: <http://www.coe.int/en/web/help/training-of-trainers>

In the end the participants had to pass the final test, so as to have the certification, signed by both the HELP programme and the National School of Judiciary. The course is now at its closure. Next week is the deadline of the final test.

Some statistics of the course

In the course they were registered 24 judges from the Courts of General Jurisdiction of Thessaloniki, Athens, Pireaus, Xanthi, Ioannina and Kalavrita. Among them they were 3 judges of the Court of Appeals of Athens. Apart from judges in the course were registered and 10 lawyers from the Bar Associations of Athens and Thessaloniki. With that synthesis of the group we had the opportunity to fulfill in a better way the main goal of HELP programme, as programme of legal professionals in general. Also we were in line with the guidelines of the Consultative Council of European Judges (CCJE). The Council has suggested in its no 16 opinion joint training for judges and lawyers on the themes of common interest, where appropriate. This joint training can improve the quality and efficiency of proceedings².

From the beginning of the course (mid November) an average of 25 people entered the course daily. Finally 34 users visited the course with more than 2.000 views. The final assessment was taken – up to now - by 26 users. All of them got the certification. The participants with the two best scores, will have the opportunity of a study visit to the headquarters of CoE and the Court in March.

A flavor of the course

The course was divided in eight chapters after a general introduction: 1. Right to work and employment relationship, 2. Working time, 3. Fair remuneration and protection of wages, 4. Termination of employment, 5. Equality and non discrimination, 6. Collective labour rights – information and consultation, 7. Freedom of association – the right to negotiate and 8. Occupational safety and health.

By reading the headings of the chapters is being understood that the whole range of the European labour and social law is covered. After the introduction about HELP programme and HELP methodology and the historical background, the key concepts were analyzed. The European system was examined as a part of the global system, as developed in the frame of International Labour Organization (ILO).

Some chapters contained videos, either with a historical aspect or with the form of an interview of an expert or a judge of the Court, about the matters of the course. The general idea was for each module to lay out firstly the learning objectives, then to have some introductory considerations, following the main text and as last to have the knowledge check.

²[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE\(2013\)4&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE(2013)4&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864&direct=true)

The basic legal instruments examined in the course were, as stated before, the European Convention on Human Rights, the European Social Charter and the EU Charter of Fundamental Rights. Participants were given the text of the above international legal conventions. The European Convention on Human Rights and the EU Charter of Fundamental Rights was examined in depth, regarding the specific provisions that they contained in text or through the interpretation, rights protecting the employees. The European Social Charter represents an essential component of the continent's human rights architecture. It also serves as a point of reference in European Union law. Labour rights as enshrined in the ESC are indeed human rights, and thus, deserve the highest level of protection.

Apart from the text of the Convention and the Charters, the main focus was given in the case law of the European Court of Human Rights, the Court of Justice of the European Union, and the decisions and conclusions of the European Committee of Social Rights. The main case law was delivered and explained. They were fruitful discussion in the forum of the course about the occasionally different positions of the Courts and the Committee, regarding the same social right.

The real gain was the study of the case law of the European Committee of Social Rights. The Committee has rendered important decisions on crucial aspects of European social law. Its judgements have a binding force. It was a common truth that the participants – judges of labour law and lawyers handling labour cases – were not familiar with the case law of the Committee. After the course they have been more familiarised with this case law and they can now resort to the material of the course and find out the proper decision, that they will afterwards apply it to solve their domestic case.

Due to the knowledge check the participants learned by heart the main principles of the European legal instruments of the social and labour law and the main case law of this field. The material after the closure of the course is free to them – and to other legal professionals. All of them can have access, to study the material and to copy the main points, so as to be assisted in their daily work, regarding labour and social rights.

Conclusion

HELP network raises the awareness of the Judiciary in the sensitive fields of Labour Rights and Social rights. Judiciary and in general the legal professionals are the main guardians of labour and social rights, especially now that we are facing a deregulation of the labour law, as we knew until today. HELP programme with the use of its tools, and especially with the use of on line courses, that are being tutored, manages to disseminate the protection of human rights, and in our case, the protection of labour and social rights. The on - going training of judges and lawyers regarding the current evolutions in the European labour and social law is the most helpful tool for the dissemination of the protection of labour and social rights. In the frame of the continuous training best practices could be exchanged among the participants and the up-to-date knowledge is guaranteed.

Currently, in times of economic crisis and austerity measures, the protection of labour and social rights becomes even more critical. Such protection, does not only improve the daily

lives of workers and their dependents, but has also a positive impact on employers and society at large, bringing legal certainty, social cohesion and stability. And HELP programme is doing a lot in that direction, by bringing legal professionals closer to labour and social rights, closer to human rights.