

New Challenges for European Lawyers

Introduction

Thank you for the invitation.

It is an honour and a pleasure for me to be invited to share, in this HELP conference, in a panel of such brilliant and important friends and Colleagues, the experience of the introduction of HELP Courses within the training programmes accredited by the CNF, for the continuous training of Italian lawyers.

It is an honour for me, and a great responsibility, to be invited here to represent colleagues who have chosen to protect human rights in the courts.

In preparing this presentation I was trying to find metaphors or some quotes that could allow me to express our experience on the HELP project and, at the same time, allow me to capture your attention, without sounding too rhetorical or self-celebratory.

And that is how I found not one, but three quotes, each with a different sense and meaning, that can describe the three parts of my report:

1. Judicial training after the pandemic
2. The role of lawyers
3. The role of institutions

Judicial training after the pandemic

In describing this topic, I was inspired by this quote from Nassim Taleb, the author of 'The Black Swan', and his concept of 'antifragility', which I now quote in full.

"Some things benefit from shocks; they thrive and grow when exposed to volatility, randomness, disorder and stressors; and they love adventure, risk and uncertainty. (...) Since there is no word for the exact opposite of fragile, let us call it antifragile. Antifragility goes beyond resilience or robustness. Resilient resists shocks and remains the same; antifragile improves."

What better quote to describe the experience of the HELP project in Italy?

This experience, the introduction of the HELP training programme within the continuing education projects of the Consiglio Nazionale Forense, was born during the first lock down.

You all remember the terrible images of March 2020, when the world, including all the activities that until then had been carried out for judicial training, seemed to freeze.

It was precisely in that context that, thanks to the support of the Consiglio Nazionale Forense and thanks to the practical help of Valentina Boz (to which I wish to extend my personal thanks) and the entire HELP group, the lawyers of my country demonstrated their antifragility.

The project to introduce the first three HELP courses in MOOCs (Massive Open Online Courses) into the training programme (I would like to remind you that Italian lawyers have maintained their continuing education obligations even during the hardest phase of the pandemic) was implemented through a platform with specific links for Italian lawyers, in compliance with the Training Regulations of the Consiglio Nazionale Forense.

All the administrative procedures were completed for the recognition of the first three HELP courses (later increased to six and finally to 13), and the news was disseminated by sending a Circular to all the Local Bars and Law Societies.

The project immediately got a great feedback and the statistics were immediately encouraging, and, progressively, there was an exponential growth in the number of registered participants.

I just want to emphasise that the HELP project already seemed to be adequate to immediately meet, in all its four pillars, the challenges proposed by the judicial training strategy 2021-2024:

- 1) The 'Training Substance';
- 2) The target audience (Training Audience);
- 3) The Training Methodology;
- 4) The shared responsibility between the EU and National and International Institutions.

But, at this point, I want to take a step back and explain how these results were possible to achieve and what the legal, regulatory and cultural substratum that made all this possible.

The Role of Lawyers

I want to start with this quote from one of the most famous Italian lawyers, Professor Piero Calamandrei, an anti-fascist, partisan, Europeist, President of the Consiglio Nazionale Forense after the Second World War and one of the authors of the Italian Constitution.

"Montesquieu said that the judge must be the voice of the law.

I think that the lawyer must be something more: in all countries, the role of lawyers is increasingly assuming a social dimension: the lawyer is increasingly acquiring a position in society that is not only of a private nature, but also of public authority.

In Italy we are seeing a very exciting experience.

At the highest level of the Republic is the Constitutional Court, whose function is to cancel laws that are contrary to the constitution.

But the Court cannot proceed ex officio: the exception must be raised in the context of a trial.

Now, it is in fact the lawyers are the most active in discovering the laws that are contrary to the constitution and in promoting the transformation of positive law towards the goal indicated by the constitution itself."

This speech, delivered at the plenary session of the 16th Congress of the 'Union Internationale des Avocats', held in Paris in July 1956, is still very relevant: just add to the word 'Constitution' the word 'Charter of Fundamental Rights' or the word 'European Convention on Human Rights' and, this speech, seems to be written today.

Through the lawyer, the two litigants present the legal case to the magistrate to be decided, and a lawyer trained in human rights or EU law allows the question to be fully addressed.

And this is why, in Italy, starting from the period following the Lisbon Convention, also through the reform of the professional law and of the Code of Deontology, a slow, constant, hard but unstoppable process has started.

In other words, the new Code of Deontology of Italian Lawyers now requires a specific duty of competence that also includes knowledge of the Convention on Human Rights and European Union Law, in order to verify whether the ordinary law respects them or not.

Article 1 of the Code of Ethics states, in fact, that "the lawyer, in the exercise of his or her ministry, shall ensure that the laws are in conformity with the principles of the Constitution and the European Union Law and that the same principles are respected, as well as those of the Convention for the Protection of Human Rights and Fundamental Freedoms, for the protection and in the interest of the assisted party."

This is a turning point of enormous significance legally, but also politically.

Someone has called this function of the lawyer a 'social function', an almost 'political' function of the role that the lawyer plays, because human rights, protected by the European Convention, invest all the main sectors of the life of persons and society, from civil and social rights to those of equality, non-discrimination, solidarity and justice, also under the aspect, (particularly felt and delicate in my country), of access and effective protection of rights.

The role of the Institutions

This is the third and last quote, which is actually not really a quote but the Preamble of the ECHR

"The Governments signatory hereto, being members of the Council of Europe...

Reaffirming their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the Human Rights upon which they depend;"

After two years of a pandemic, and in the middle of a war, we can fully understand the meaning of words like these, and the significance of the relation that exists between justice and peace.

Because there cannot be Justice without Peace.

But, on the other hand, (and we see this with cruel and oppressive governments), there can be no Peace without Justice and without respect for the fundamental freedoms that belong to our traditions.

Legal Traditions, " common heritage of political traditions, ideals,"... again the preamble of the ECHR!

When we read in Article 4 of the ECHR that: " No one shall be held in slavery or servitude." we hear the echo of Article 1 of the Declaration of the Rights of Man and of the Citizen of 1789: "Men are born and live free and equal in rights"!

When we read that 'Everyone has the right to liberty' ... but this is the Habeas Corpus of the Magna Charta Libertatum of 1215!

And, finally, when we read, still in the preamble of the ECHR, that: "it is primarily the duty of the High contracting parties, in accordance with the principle of subsidiarity, to ensure respect for rights and freedoms" we hear an echo of the Constitutiones Melphitanae that Federico II of Svevia, in 1220, in the deep South of Italy promulgated to give life to an extraordinary organisation of the State that crossed national borders, and which had the purpose of bringing the Order back to unity, preventing local laws or "consuetudini", or, more tangibly, the arrogance of local power, from conflicting with the 'Constitutiones'.

These passages, these voices that seem so distant, are instead so relevant in this season of passages and transitions, which brings us from the nationalisms and sovereignisms of a few years ago, to the ideals of new supranational entities, stronger and more authoritative in the global context.

From a Union of laws and institutions to the embryo of a New Europe, sovereign and authoritative, home of Fundamental Rights and Freedoms, "Common Heritage of Traditions and Ideals".

Rights, Fundamental Freedoms, Justice, Peace, Ideals.

I cannot avoid emphasising the relevance of these words that, not by coincidence, were written after a tragic period and, in conclusion, I would like to say this: every Italian lawyer, but also every European lawyer, is aware of the role he or she plays within the system of the system of Justice and is ready to accept the new challenges, verifying that the national law is respectful of the ECHR and EU law.

If, as Calamandrei used to say, the Constitution (but the same is true for the ECHR, or the Charter of Fundamental Rights of the European Union) is a point of arrival (which must be reached by political action, but, if this does not happen, by judicial action) we must be sure, and you can be sure, that there will be an army of over a million lawyers ready to fight this battle in every court, even the smallest and most distant, with the only weapons at its disposal:

Law and Reason.