

# HELP course on Gathering and Use of Evidence in Counter Terrorism Cases

## Course brief

### Background

The **Council of Europe (CoE) Programme for Human Rights Education for Legal Professionals (HELP)**<sup>1</sup> is aimed at supporting the CoE member States in implementing the European human rights standards at the national level, focusing on the European Convention on Human Rights (ECHR), other key CoE instruments, and since 2015, EU law. This is done by raising the capacities of legal professionals to apply those instruments in their daily work. The objective of HELP is to provide high quality education on human rights to judges, lawyers and prosecutors throughout Europe. Law enforcement authorities such as police and prison staff are also targeted by HELP. Thanks to HELP courses, legal professionals can better protect human rights on a national level and keep up to date with the ever-evolving standards and case law of the European Court of Human Rights (ECtHR). HELP courses specifically designed for EU countries increasingly incorporate relevant EU laws.

HELP is:

1. the only pan-European Network of national training institutions for judges, prosecutors and lawyers in the 47 CoE Member States.
2. an e-learning platform with free on-line courses on human rights.
3. a human rights training methodology for legal professionals.

### The HELP in the EU Project

The joint EU-CoE project 'European Programme for **H**uman Rights **E**ducation for **L**egal Professionals in the European Union' (**HELP in the EU**)<sup>2</sup> supports legal professionals from EU Member States in acquiring the knowledge and skills on how to effectively and coherently apply European fundamental rights standards at the national level, mainly referring to the EU Charter on Fundamental Rights (the Charter), the European Convention on Human Rights (ECHR), the (revised) European Social Charter (ESC) and relevant EU and Council of Europe Law. Furthermore, they will become familiar with the relevant European jurisprudence. It also reinforces the HELP Network of National Institutions (NTI's) and Bar Associations (BA's) in the EU; and through the use of cross-border trainings – which bring together legal professionals from a number of EU Member States - increases mutual trust and exchanges between EU practitioners.

### The HELP course on Gathering and Use of Evidence in Counter Terrorism Cases

Recent years have seen the highest number of terrorism related deaths in Europe in more than two decades. An estimated 5000 EU nationals have joined terrorist organisations in countries experiencing conflict such as Syria and Iraq. The majority of the terrorist suspects implicated in the recent terrorist atrocities in the EU were European citizens, born and raised in our societies. However, as the Council of Europe points out, the operations conducted by a number of states in the context of the so-called "war on terrorism" in recent years have shown that a wide range of human rights are affected by counter terrorism measures.



<sup>1</sup> For more information on HELP please visit HELP's website: [www.coe.int/help](http://www.coe.int/help)

<sup>2</sup> For more information about the EU-CoE HELP in the EU project, please go to <https://www.coe.int/en/web/help/help-in-the-eu>

Forfeiting human rights in the fight against terrorism is a grave mistake and an ineffective measure that may help the cause of the terrorists.

It is a fundamental requirement of international human rights law that a fair trial depends on a fair and impartial investigation conducted in full compliance with legal and human rights standards. This becomes crucial in the collection and use of evidence in terrorism cases. Convictions are rendered unsafe due to several reasons, among which:

- The use of torture to procure confessions (see *Al Nashiri v. Poland* and *El Haski v. Belgium*)
- Breaches of the respect for private and family life during surveillance (see *Szabó and Vissy v. Hungary*) and interception of communication (see *Klass and Others v. Germany*)
- The use of secret evidence (see *In Nedim Şener v. Turkey* and *Şik v. Turkey*)
- Racial profiling: a study by the Institute of Race Relations found that hundreds of Muslims have been arrested under terrorism powers before being released without charge.

The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism 2005 (also known as CETS 198 or the Warsaw Convention) aims to facilitate international co-operation and mutual assistance in investigating crime and seizing the proceeds thereof. However it also sets out the rights of the requested party to restrict the use of the information they provide and to keep information confidential. The Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism 2015 (or the Riga Protocol) aims to further strengthen the efforts to prevent and suppress terrorism in all its forms, while respecting human rights and the rule of law. Similarly, the EU Counter-terrorism strategy 2005 commits to combatting terrorism globally, while respecting human rights and allowing its citizens to live in an area of freedom, security and justice.

It is crucial that the judiciary is informed about these complexities so they can effectively maintain the balance between security and human rights.

The development of the considers the involvement and work of relevant CoE departments, especially the Council of Europe Counter-Terrorism Committee (CDCT), particularly the *CODEXTER database on ECtHR case law relevant for counter-terrorism*. The present course has synergies with the course on Radicalisation Prevention, developed under the Eu-CoE HELP Radicalisation prevention project.

The course is based on the CoE and EU framework, namely Articles 3, 5, 6, 8, 10 and 14 of the ECHR and CETS 198 2005, Article 4, 6, 7, 8 11, 21 and 47 of the EU Charter and EU Counter-Terrorism strategy.

The course was finalised in **January 2019**.

**Course outline**

- ✓ Traditional investigation techniques
- ✓ Special investigation techniques
- ✓ Judges and prosecutors' role
- ✓ Due process/fair trial guarantees/procedural safeguards in evidence gathering
- ✓ Transnational dimension

Video



Judges and prosecutors' role  
b. Use of evidence (Admissibility and Assessment)

