

Council of Europe HELP course on Data Protection and Privacy Rights

Background and key concepts

People can easily become victims of data protection violations brought on by the widespread use of information and communication technologies by public and private bodies. Web-based activities, direct marketing, and video surveillance account for most violations. Even when remedies exist in civil, criminal and administrative law, enforcement is not always ensured.

The right to privacy and personal data are protected both by the legal instruments developed by the Council of Europe (CoE) and the European Union (EU). Article 8 of the European Convention of Human Rights (ECHR) guarantees the right to respect for private and family life, home and correspondence. The wording of Article 7 of the EU Charter of Fundamental Rights (EU Charter) is almost identical. In addition, the EU Charter explicitly mentions in Article 8 the right to data protection, considering it as a fundamental right in itself.

The two rights –privacy and data protection- are not absolute and may be subject to limitations. Any restrictions with regard to these rights must be made in accordance with the law, pursue legitimate aim(s) and be necessary in a democratic society.

In 2014, a research by the Fundamental Rights Agency (FRA) on access to data protection remedies in the EU concluded that the effectiveness of protection and redress mechanisms was considerably low. To counteract this, the FRA recommended enhanced training of legal professionals in those fields.

The HELP course on Data Protection and Privacy Rights addresses this need and offers a comprehensive curriculum which covers in an interactive way the key concepts, the legal framework of the CoE and the EU (directly applicable at national level), the case law of the European Court of Human Rights (ECtHR) and of the Court of Justice of the European Union (CJEU) and specific areas of data protection. One of the key reference materials to develop this course has been the [Handbook on Data Protection](#) developed jointly by the EU FRA and the CoE together with the Registry of the ECtHR.

Existing case law on data protection and privacy rights covers topics such as medical sector, media (traditional and non-traditional), development of new technologies (i.e. GPS, drones, CCTV), e-communication and marketing, and workplace surveillance.

Learning objectives

By the end of this course you will be able to:

- ✓ understand the scope of the right to data protection and the right to privacy (differences and similarities) as well as their restrictions
- ✓ understand what legal instruments concerning data protection and the right to privacy are available under the CoE and EU legal systems (including the CoE Convention 108 modernised and the EU General Data Protection Regulation –GDPR)



- ✓ understand the role of European actors (including the ECtHR and the CJEU as well as several bodies which develop soft law)
- ✓ refer to the relevant legal framework in your everyday work, as a legal professional in the EU

To achieve this goal you will have the opportunity:

- ✓ to put into practice the scope of the right to data protection and the right to privacy as defined in the EU Charter, the ECHR and the Council of Europe Convention 108+
- ✓ to learn about case law of the ECtHR and the CJEU
- ✓ to carry out exercises to identify situations of potential violations of the rights to Data Protection and Privacy and interdependencies between the CoE and EU systems of protection

The course is also designed:

- ✓ to strengthen your individual role as legal professional in human rights protection, as European standards on data protection and privacy rights have to be primarily upheld at national level and only, if relevant, during international litigation

Course outline (Ten modules).

- I. **Basic knowledge** about the right to privacy and data protection. You will learn what are the legal instruments available on the European level, what is the role of different institutions and what are the key concepts, rules and principles.
 1. Legal framework
 2. Key concepts
 3. Key principles
- II. **Thematic Areas:**
 4. Data Protection and Privacy Rights (DP/PR) - **health data**
 - ✓ Protection of medical data as sensitive data (regulatory framework, main principles, jurisprudence)
 - ✓ Challenges related to electronic medical records
 - ✓ Anonymisation and pseudonymisation in health, clinical trials
 - ✓ New technologies, wearables, internet of things in health sector
 5. DP/PR and **media** (traditional & non-traditional)
 - ✓ Balancing freedom of expression and the right to privacy
 - ✓ Special role of media, protection of journalistic sources of information
 - ✓ Challenges related to online media (managing online newspapers' archives, restrictions of access to media content via search engines, liability for the third- party content, journalistic use of unverified Internet sources)
 - ✓ Personal data protection and media (journalistic exemption)
 6. DP/PR and **e-communications & marketing**
 - ✓ Confidentiality of electronic communications
 - ✓ Privacy policies, cookies regime
 - ✓ Profiling, selling of data
 - ✓ Spam
 - ✓ Data retention
 - ✓ Cyber security
 7. DP/PR and **new technologies**
 - ✓ Surveillance technology (CCTV, drones, GPS etc.)

- ✓ Internet of things, cloud computing, big data
8. DP/PR in the **workplace**
- ✓ Notion of privacy in a professional field
 - ✓ Surveillance of communication in a workplace, processing employees' data (consent as a basis for processing?)
 - ✓ Protection of whistleblowers
 - ✓ Professional secrecy
- III. **Enforcement:**
9. **Administrative, criminal and civil remedies**
- ✓ Data subjects' rights
 - ✓ Legal remedies available to victims of violations of the right to privacy/data protection (civil, criminal and administrative law regimes) and sanctions for breaches
 - ✓ Role of Data Protection Authorities
10. **International data flows** (principles of transferring data to third countries, Safe Harbor and other grounds for transferring data.

Data Protection and Privacy Right in the European system of human rights protection– overview

Some of the key provisions relevant to Data Protection and Privacy Rights from the EU and the CoE systems are presented below.

<u>CoE system</u>	<u>EU system</u>
ECHR – Article 8	Charter of Fundamental Rights – Articles 7 and 8
Convention 108+	GDPR, Directives
ECtHR jurisprudence	CJEU jurisprudence
Soft law by CoE institutions	Working Party 29 opinions
	European Data Protection Supervisor opinions

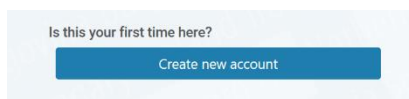
Target audience

This free on-line course is primarily addressed to legal professionals (judges, prosecutors, lawyers or senior court staff) but can be also useful for national data protection authorities and other persons working in the field of data protection and privacy rights.

Development of the course

The course has been developed under the EU-funded Programme “HELP in the 28”. It has been updated in 2019. The course has been developed using the HELP methodology.

Access the free online course



If you don't have yet a HELP account, you can create one here: <http://help.elearning.ext.coe.int/login/signup.php>. It only takes 2 minutes.

You can then click here to access the course directly: <http://help.elearning.ext.coe.int/course/view.php?id=1664>