

# HUMAN RIGHTS TRAINING CURRICULUM FOR INITIAL AND CONTINUOUS TRAINING OF JUDGES AND PROSECUTORS



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# **HUMAN RIGHTS TRAINING CURRICULUM FOR INITIAL AND CONTINUOUS TRAINING OF JUDGES AND PROSECUTORS**

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# List of acronyms

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<b>BiH</b>	Bosnia and Herzegovina
<b>CCEJ</b>	Consultative Council of European Judges
<b>CoE</b>	Council of Europe
<b>ECHR</b>	European Convention on Human Rights
<b>ECtHR</b>	European Court of Human Rights
<b>EJTN</b>	European Judicial Training Network
<b>EU</b>	European Union
<b>F BiH</b>	Federation of BiH
<b>HJPC</b>	High Judicial and Prosecutorial Council of Bosnia and Herzegovina
<b>JPTC</b>	Judicial and Prosecutorial Training
<b>OSCE</b>	Organization for the Security and Cooperation in Europe
<b>RS</b>	Republic of Srpska

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## Background information about the Project

The present work was developed within the framework of the Project “Initiative for Legal Certainty and Efficient Judiciary in Bosnia and Herzegovina – Phase II”. The Project has the overall objective of supporting the judicial reform in Bosnia and Herzegovina (BiH): it does so through a variety of actions, aimed at enabling that the case law database and case management systems used by the courts in BiH apply the same case classification methodology and use vocabulary and descriptors compatible with the European Court of Human Rights (ECtHR) in human rights cases; strengthening the case law departments; improving the efficiency of courts and ensuring better judicial protection for citizens, arising from ECtHR judgments and strengthening the capacity of national training institutions for judges and prosecutors and supporting the law faculties to provide human rights training.

The proposed human rights training plans presented in these pages, addressing both initial and continuous training of judges and prosecutors, represent one of the outputs foreseen to contribute to the overall attainment of the general and specific project objectives. Direct beneficiaries of this activity will be the Judicial and Prosecutorial Training Center (JPTC) of Republic of Srpska (RS) and the JPTC of the Federation of BiH (F BiH).

## Structure of the Report and methodology

This report is organized into two main parts. The first offers an overview of the system of initial and continuous training JPTCs render available to (perspective) judges and prosecutors. This review was based primarily on desk research, statistical and other official data as well as on the findings of interviews held with relevant stakeholders (the list of persons interviewed is included in the annex). This stage also encompassed - to the extent possible - the identification of the effectiveness of the training proposed. Based on the findings, specific recommendations are addressed to the beneficiary institutions to provide a roadmap also for future technical assistance. Recommendations are divided into two categories: general and human-rights specific. When drafting the recommendations particular attention was paid to formulating proposals that are practical, realistic, manageable, sustainable, and low-cost. Recommended actions, thus, do not require changes in legislation or the internal structure of the beneficiaries and they should be easily implementable by the JPTCs. It cannot be hidden, however, that the proper implementation of the curricula suggested (which are listed in the Annex and are attached to this report) might benefit from appropriate mentoring and support, so as to guarantee their proper implementation, particularly from a methodological perspective.

It is important to note that not all recommendations will apply equally to both JPTCs, as one or the other might already have in place procedures that comply with the suggested ones. Should this occur, however, the Recommendations would still need to be carefully considered and weighted, as they can prompt further reflections on the current practices and policies, so as to ensure that the measures in place correspond to the recommendations' rationale in practice and not merely in theory.

The second part consists in the provision of a set of human rights training plans, to be integrated in the initial and continuous training, which JPTCs should be able to provide on a permanent basis to their target groups. Each plan contains an indication of the learning objectives, topics and approximate duration and includes an indication of the training methodologies that could be functional to the attainment of the expected results. It goes without saying that the proposal represent the minimum that should be provided, also to fill the gap of the current University offer: in BiH, training on human rights is not a standard mandatory part of the curricula in law schools (undergraduate or master programmes).<sup>1</sup> There is thus an urgent need, at the outset, to ensure that all those attending the proposed courses have a basic yet solid understanding of human rights principles and concepts, so as to be able to fully appreciate more complex human rights themes. JPTCs should be able to increment the human rights training offer as deemed necessary by the circumstances, also in the light of the new case-law concerning BiH or topical issues related to legislative novelties.

<sup>1</sup> I. Krstić/M. Izmirlija, Studija o izučavanju ljudskih prava na javnim pravnim fakultetima u Bosni i Hercegovini, Council of Europe Publishing, Vijeće Evrope, juni 2021.

In the development of curricula (which are divided in “Basic” and “Advanced”) attention was paid as to ensure that the offer comprises a balance of online and in-person activities, also considering the resources available into local languages via the HELP platform of the CoE.

# PART I

## 1. Introduction

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Understanding judiciary as an ultimate guarantor of the democratic functioning of institutions at national, European and international levels, the question of the training of prospective judges and prosecutors before they take up their posts and of in-service training is of particular importance.<sup>2</sup> It is essential that judges and prosecutors, selected after having done full legal studies, receive detailed, in-depth, diversified training so that they are able to perform their duties satisfactorily.<sup>3</sup> The term *judicial and prosecutorial training*, as used in this document, comprises of initial training for the future and the newly-appointed judges and prosecutors, and continuous in-service training for acting (experienced) judges and prosecutors.<sup>4</sup> Human rights training, on the other hand, refers to an organized effort to transfer knowledge and develop skills and attitudes for promotion and protection of human rights<sup>5</sup>. Such training is also a guarantee of their independence and impartiality, in accordance with the requirements of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter ECHR).<sup>6</sup> In this work, this is contextualized with specific reference to the current arrangements for training of judicial professionals currently in place in BiH, while keeping in mind that in the European judiciary, training has become an integral part of professional life.<sup>7</sup>

A precondition for achieving an effective national implementation of human rights requires that all actors in the judiciary (judges, prosecutors and lawyers, but also future practitioners) are familiar with the ECHR and other human rights standards through focused and effective education and trainings, enabling them to apply such standards in concrete situations.<sup>8</sup> It is indisputable that the appropriate training of the judges and prosecutors partakes of its independence and its efficiency.<sup>9</sup> A vitally important task of any judicial training institution is to detect and to respect the real training needs of acting judges and prosecutors of any age, of any rank in the hierarchy, and of any degree of specialization.<sup>10</sup> The planning of an objectives-attaining and thus pertinent curriculum (training programme) necessarily requires a prior and thorough needs' assessment and analysis from diverse angles.<sup>11</sup>

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2 See Opinion of the CCJE N° 1 (2001), paragraphs 10-13 and Opinion N° 3 (2002), paragraphs 25 and 50. Available via link: <https://rm.coe.int/168070098d>

3 Opinion of the CCJE N° 4 (2003), para 3.

4 For comparison, see the definition provided in the Handbook on Judicial Training Methodology in Europe, Guidelines Issued by EJTN's Sub-Working Group "Training the Trainers", p. 2, "judicial training comprises initial training for future judges and prosecutors, induction training for newly-appointed judges and prosecutors, and continuous in-service training for acting (experienced) judges and prosecutors."

5 Similarly: A Manual on Human Rights Training Methodology, Office of the United Nations High Commissioner for Human Rights, 2000, p. 5. Available via link: <https://www.ohchr.org/documents/publications/training6en.pdf>

6 <https://rm.coe.int/1680747d37>

7 See: European Network for the exchange of information between persons and entities responsible for the training of judges (Lisbon Network) A NETWORK TO SUPPORT JUDICIAL TRAINING IN THE COUNCIL OF EUROPE MEMBER STATES, 2006, p. 2-3.

8 Council of Europe, Office of the Directorate General of Programmes, *Action Plan for Bosnia and Herzegovina 2018-2021*, 2018, p. : <https://rm.coe.int/bih-action-plan-2018-2021-en/16808b7563>

9 European Network for the exchange of information between persons and entities responsible for the training of judges (Lisbon Network), A NETWORK TO SUPPORT JUDICIAL TRAINING IN THE COUNCIL OF EUROPE MEMBER STATES, p. 2. Available via link: <https://rm.coe.int/a-network-to-support-judicial-training-in-the-council-of-europe-member/168076d2b0>

10 Handbook on Judicial Training Methodology in Europe, Guidelines Issued by EJTN's Sub-Working Group "Training the Trainers", p. 20.

11 Ibid.



## 2. Training of legal and judicial professionals in BiH

In BiH, access to the judicial professions (judges, prosecutors, courts' and prosecutors' assistants and interns) is regulated by the Law on High Judicial and Prosecutorial Council of Bosnia and Herzegovina<sup>12</sup>, entity Laws on Judicial and Prosecutorial Training Centres<sup>13</sup> and entity Laws on courts<sup>14</sup>. The basic requirement for appointment to judicial or prosecutorial post<sup>15</sup> is to have successfully passed the bar exam, which is open only to those holding a Law degree. The written part of the exam entails criminal and civil law, and the oral part includes criminal (substantive and procedural), civil (substantive and procedural), family, business, administrative and labour law, and finally, the constitutional system and organization of justice.<sup>16</sup> Human rights are not singled out as a separate topic in bar exams, but the ECHR is envisaged as part of the materials and legal sources.<sup>17</sup> The process of election and appointment to a judicial post is carried out in accordance with the principle that in essence follows the logic of vacant judicial and prosecutorial posts. The election process includes a mandatory written test for the first election to a judicial office and following successful completion of the test also an interview before an *ad hoc* committee consisting of HJPC members. For career advancement written test is not mandatory and includes only an interview before the members of the election committee. Experience has showed that the candidates who achieve the highest score on the test often do not get elected, and that interview plays the key role.<sup>18</sup> Currently, such processes do not appear to be sufficiently based on merit and rely extensively on ethnic criteria or other considerations, especially for presidents of courts and chief prosecutors, as pointed out in European Commissions' Progress Report for BiH 2020.<sup>19</sup>

Entity JPTCs<sup>20</sup>, the internal training structures of the Court of Bosnia and Herzegovina and of the Brčko District Judicial Commission are in charge to provide initial and continuous training to candidates as well as appointed judges and prosecutors in BiH, with the aim to ensure professional growth and advancing professionalism within the judiciary. Some programmes conducted by JPTC's are financed from donor funds. The centres operate as autonomous public institutions and conduct training for judges and prosecutors while cooperating with the judicial institutions in BiH, universities and other national and international organisations.<sup>21</sup> The JPTCs award annual certificates on the completion of any minimum advanced professional training requirements.<sup>22</sup> JPTCs award certificates if minimum training requirements are fulfilled and report to the High Judicial and Prosecutorial Council (HJPC).

The *Initial and Continuous Judicial and Prosecutorial Training Mid-Term Strategic Plan for 2017-2023*, that has been approved by HJPC, sets several strategic directions and accompanying strategic goals aimed at

- 12 Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina ("Official Gazette of BiH", No. 25/04, 93/05, 15/08 and 48/07.)
- 13 Law on Judicial and Prosecutorial Training Centre of F BiH ("Official Gazette of F BiH", No 24/02, 40/02, 59/02 and 21/03) and Law on Judicial and Prosecutorial Training Centre of RS ("Official Gazette of RS", No 34/02, 49/02, 77/02 and 30/07).
- 14 Law on courts F BiH ("Official Gazette of F BiH" no. 38/05, 22/06, 63/10 and 72/10) and Law on courts of RS ("Official Gazette of RS no. 114/04, 109/05, 37/06, 17/08, 119/08, 58/09 and 116/09).
- 15 In accordance with article 21. of the Law on HJPC, among basic requirements for appointment to judicial or prosecutorial office is that the person in question has passed a bar examination administered in BiH or in the Socialist Federal Republic of Yugoslavia.
- 16 Article 4. of Law on Bar Examination BiH ("Official Gazette of BiH", No. 33/04, 56/08, 62/11. Version in local languages available via link: <http://www.mpr.gov.ba/biblioteka/zakoni/bs/Zakon%20o%20polaganju%20pravosudnog%20ispita%20-%2033%20-%2004.pdf>
- 17 See: Programme of the Bar exam at State level, 15th of February 2019. Available via link: [http://www.mpr.gov.ba/biblioteka/podzakonski\\_akti/11\\_19.pdf](http://www.mpr.gov.ba/biblioteka/podzakonski_akti/11_19.pdf)
- 18 *Pravosuđe u BiH: stanje i perspektive* [Justice in BiH: Current State of Play and Prospects] by judge Branko Perić, commissioned by Transparency International BiH.
- 19 p. 19. Link: [https://ec.europa.eu/neighbourhood-enlargement/sites/default/files/bosnia\\_and\\_herzegovina\\_report\\_2020.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/default/files/bosnia_and_herzegovina_report_2020.pdf)
- 20 BiH consists of two entities, the Federation of Bosnia and Herzegovina (F BiH) and the Republic of Srpska (RS). Under the Constitution, the entities are constituent parts of BiH, and rights and powers are shared between the institutions of state and of the entities in accordance with the common principles of the federal State. See:
- 21 See: <https://advokat-prnjavorac.com/legislation/Decade-of-the-High-Judicial-and-Prosecutorial-Council-of-BiH.pdf>
- 22 [https://www.coe.int/t/dghl/cooperation/lisbonnetwork/membres/BH-prog\\_en.asp](https://www.coe.int/t/dghl/cooperation/lisbonnetwork/membres/BH-prog_en.asp)
- 23 <http://www.fbih.cest.gov.ba/index.php/dokumenti-centra?download=188:pocetna-obuka-i-strucno-usavrsavanje-sudija-i-tuzilaca-srednjorocna-strategija-za-period-2017-2020-godine>.

improving the efficiency and functionality of existing training system for judges and prosecutors, such as: (1) Revision of existing trainings for judges and prosecutors; (2) Initial training (differentiating and improving initial training for several categories, such as interns, associates and newly appointed judges); (3) Continuous trainings (affirmation of significance thereof, improvement of design of programme process, and adaptation of those to needs of judges and prosecutors); (4) Distance (e)learning (introduction and development of e-learning modules, training of trainers, evaluation of e-learning); (5) Evaluation of trainings (improvement and implementation of evaluation systems); (6) Educators (revision of selection criteria, improvement of evaluation system, improvement of TOTs); (7) Education materials; (8) Cooperation of relevant institutions; (9) Budget and resources management.

## 2.1 Initial training

JPTCs, under the supervision of the HJPC, provide initial training courses to those persons considering a career as a judge or prosecutor (e.g. courts' and prosecutors' assistants and interns) and continuous professional training for judges and prosecutors.<sup>24</sup>

Currently initial training takes place in several forms.

1. The first one is a modular system of initial training for prosecutorial and judicial *associates* and *advisors*<sup>25</sup>, who attend four modules each year for period of three years. Upon successful completion, they are awarded a certificate.<sup>26</sup> The scheme has been in practice since 2009. This program includes mostly seminars in procedural law (civil, criminal, enforcement, and administrative procedures), as well as the organization of justice and ethics, the ECHR and alternative dispute resolution (ADR). Substantive law is not represented in this initial training. Following the modular system of initial training, there is no obligation for the HJPC to appoint an associate/advisor who has successfully completed the training, since they need to participate in public competitive procedure.<sup>27</sup>

In 2020, this initial training was conducted for three generations of participants: Generation 2021/2023 (1st year - Modules I-IV); Generation 2020/2022 (2nd year - Modules I-IV); Generation 2019/2021 (3rd year - Modules I-IV).

Successful completion of the previous year's modules is a prerequisite for enrolment in the next one. The schedule of participants by seminars is done exclusively by the JPTCs on the basis of applications from the presidents of courts and chief prosecutors, and in accordance with the records of the JPTCs on the fulfilled conditions from the previous year. The modules from the first year (generation 2021/2023) are attended by legal associates and expert advisors who started working in judicial institutions in BiH in the second part of 2019, in 2020, as well as associates who will start working as of 1st of August 2021 (which were not covered by the Initial Training Program for 2020).<sup>28</sup>

2. From 2018, initial training is also conducted for *newly appointed judges and prosecutors*, which are up to one year of work experience in the judiciary. They are required to attend for a minimum of

24 Education is currently conducted in the forms of seminars, forums, round tables and other forms with the use of various methods and techniques in the field of knowledge transfer, such as case studies, trial simulation and video presentation. The creation of new distance learning modules in certain areas is underway.

25 In F BiH, there is a distinction between *legal associate* and *legal adviser*, the former being a law graduate who has passed the bar exam and later being a law graduate who has passed the bar exam and who has at least five years of legal experience. Legal advisers are being appointed to the Supreme Court as court staff (meaning all persons employed by the courts, not including the judges). In RS, distinction is made between a *legal associate* (a law graduate who passed the bar exam), a *higher legal associate for District courts* (a law graduate who passed the bar exam and who has at least three years of legal experience) and *legal associate for Supreme court* (a law graduate who passed the bar exam and who has at least five years of legal experience). Legal associates and advisors assist the judges in their work, draft judicial decisions, study legal issues, case law and legal literature, draft legal opinions and perform other professional activities independently or under the supervision and direction of the judge.

26 According to the entity Laws on courts, training of legal associates and higher associates in RS and legal associates and legal advisors in F BiH shall be carried out in accordance with the integral e established by JPTCs.

27 Additionally and optionally, the associates/advisors may attend trainings for judges and prosecutors, if the seminar is adapted to and relevant for the work they perform. See: D. Trlin, *Da li je Bosni i Hercegovini potrebna Pravosudna akademija?, Iustitia*, 3/2018, s. (47 i dalje) 47.

28 JPTCs of F BiH and RS, Training program for judges and prosecutors for 2021, p.10.

eight days within one year from the date of appointment. Judges and prosecutors attend several seminars together (ethics and integrity, ECHR and European Union (EU) Law), and following trainings are organized separately for judges (preparation for trial and hearing, decision making and sentencing techniques) and prosecutors (legality of evidence, conduct of investigations and joint investigation teams, drafting of prosecutorial acts and indictment representation skills).

Training for newly appointed judges and public prosecutors, as a special type of initial training, is planned in the part of the Work Program between continuous training and initial training due to the fact that, given the topicality of the topics, these trainings are attended by judges and public prosecutors who are not newly appointed, if they express an interest in participating in the seminars. According to the decision of the HJPC BiH, the president of the court / chief prosecutor is obliged to enable the judge / public prosecutor appointed to this position to attend the entire training program intended for newly appointed judges / public prosecutors no later than the first six (6) months after taking office. The training program for newly appointed judges and prosecutors covers a wide range of topics, including: presentation of the database of court decisions, court settlement, application of the law on misdemeanours, professional ethics of judges and prosecutors, protective measures in criminal proceedings, prosecutorial techniques, skills for drafting judgments in civil proceedings, human rights of LGBTI persons in BiH and mechanisms for their protection. In addition to the topics listed above, which they are required to attend, the newly appointed judges and public prosecutors will be able to attend all other trainings provided by the Program.

3. The third type of initial training is training for *interns and volunteer interns*, where JPTCs organizes several seminars complementing the internal training of interns and volunteer interns, to help them prepare for the bar exam. These training entail ethics and integrity and selected topics from civil law and selected topics from the criminal law. Entity Laws on courts provide legal basis for this type of trainings. According to the Initial and Continuous Training Programs for 2021 F BiH and RS<sup>29</sup>, the JPTCs training for interns and volunteer interns in judicial institutions in the F BiH and RS consists of educational activities/seminars on the topics of ethics and integrity and selected topics from civil and criminal law (mainly on methodology for drafting judicial decisions). Unlike legal associates and legal advisors, who are required to attend initial training, there is no established obligation of this kind for interns in judicial institutions in the FBiH, but is based on firm belief that participation in these seminars is useful for their further work and training.

## 2.2 Continuous training

In regards to continuous training, the HJPC determines the annual minimum level of education each judge and prosecutor should complete during the calendar year. According to the decision of the Council, the minimum education is **3 working days**. In accordance with the calendar of activities and with the consent of the president of the court/chief prosecutor, registration for participation in seminars is done. The JPTCs has established a database - records of seminar attendance. The JPTCs issues annual certificates of compliance with the minimum annual training for each judge and prosecutor.

According to information collected and documents reviewed<sup>30</sup>, the initial and continuous training of judges and prosecutors in BiH are implemented based on the *Annual Curriculum for initial training and professional development*, which is adopted by a Steering Board of JPTC's and approved by the HJPC. The curriculum is constructed based on proposals of the judicial community, international organizations<sup>31</sup> and strategic documents<sup>32</sup>. In the last several years the number of trainings has increased, and it is now approximately from 180 to 200 trainings per year.<sup>33</sup>

29 <http://www.fbih.cest.gov.ba/index.php/dokumenti-centra/category/9-programi-obuke?download=472:program-obuke-za-2021-godinu>; <http://www.rs.cest.gov.ba/index.php/site-administrator>

30 JPTC of F BiH/RS, Initial and Continuous Judicial and Prosecutorial Training Mid-Term Strategic Plan 2017-2020, 2017.

31 E.g. USAID, IRZ, OPDAT, OSCE, Council of Europe, etc.

32 E.g. Progress Report of European Commission, Strategy of development of the sector of justice, etc.

33 According to the information from the database of JPTC of F BiH, in 2014 117 educational activities/training were held; in 2015 131; in 2016 187; in 2017 179; in 2018 179; in 2019 208. In total, through all these years 1001 trainings were held.

The information provided in the publicly available curriculum is an important feature of the transparency and availability of information on judicial training for its end users. The manner in which information is presented may facilitate or complicate the process of applying for participation in trainings.<sup>34</sup> In BiH, curricula for initial training and continuous training are separate parts of integral document – *Training program for judges and prosecutors*. The training programs are drafted annually.<sup>35</sup>

The educators of the JPTCs are judges, prosecutors, professors of law and professors of other sciences, as well as other experts in the field relevant to the work of judges and prosecutors. Based on the expressed interest, with the attached biography, the selection of educators is made by the Board of Directors of the JPTCs. The list of educators is confirmed by the HJPC. According to available data, the HJPC has confirmed the list of 59 educators, and the process for selecting additional educators of the JPTCs is underway.<sup>36</sup>

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34 A. Knežević Bojović, *Comparative Analysis of Judicial Training Curricula*, 2016.

35 See: <http://www.fbih.cest.gov.ba/index.php/dokumenti-centra/category/9-programi-obuke>

36 <http://www.fbih.cest.gov.ba/index.php/o-centru>

### 3. The human rights component of JPTC's offer

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The document presenting the JPTC's training offer is structured as two sets of information, general information and more detailed information regarding the concrete programme of training (initial or continuous).

Firstly, a general information on overall structure of **initial** and **continuous** training is given, methodology and implementation of trainings and general timeframe. The second part containing more concrete information includes **basic information on initial judicial training** (different modules), including topics, potential attendees and specific dates on which the training will be held. Concrete information provided within training program in this regard vary among entities. General conclusion is that the document does not provide *detailed* information on topics, sources of law, the objectives of training (it does, however, sometimes include learning outcomes or, as is generally the case in RS, short description of the trainings' objectives, varying in extent) or key training methods. Materials (which are called modules) for initial training are available online, with open access to everyone.<sup>37</sup>

The **curriculum for continuous training** contains basic information, although details may vary depending on the course/training. In principle, the following information are provided: duration, potential attendees, occasionally planned number of attendees, precise topics included in training, the objectives of training and training methods. The choice of the **form of education/training**<sup>38</sup> will depend on the topic being covered, the number of participants in the education and their needs, financial resources, and the recommendations of the educators and co-organizers of the seminar.

Different topics pertaining to the human rights are incorporated in continuous training programs and materials for 2021, such as:

- *National interpretation of ECHR* (seminar, duration of one day, for judges of Constitutional and Supreme courts);
- *Novelties in the ECtHR jurisprudence* (seminar, duration of two days, for judges, associates and advisers)

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<sup>37</sup> <http://www.fbih.cest.gov.ba/index.php/edukativni-materijali/category/2-moduli-pocetne-obuke>

<sup>38</sup> **Conferences** are educational activities in which speakers (not just judges and prosecutors) present and discuss their work, consisting of several short and concise presentations (lasting a maximum of 30 minutes), which are usually accompanied by a discussion. In addition to presentations, conferences may also include panel discussion groups, round tables and workshops. Presentations can be in writing in the form of attachments to the conference proceedings.

**Round tables** are organized to analyze case law in several courts, exchange ideas, views, proposals, questions and answers, but also as a basis for designing the form and content of further education based on identified needs. The number of participants is usually 25-30, but can be up to 50. During the year, round tables will be held mainly with a work program and on an ad hoc basis.

**Consultations** involve a large number of participants (over 100) who discuss case law of general importance for a particular area of law, as well as the application of new legislative. Consultations with the participation of a large number of participants are planned when it comes to the interpretation and application of new and/or amended legislation. The participation of judges and prosecutors of all levels of justice in BiH is envisaged at the consultations.

**Seminars** are forms of training aiming to introduce a larger group of participants (up to 50) to a particular legal institute or professional skill. They can be instructive, with an emphasis on an *ex cathedra* approach, and advanced, which serve to deepen the knowledge acquired by participants in an earlier, instructive seminar, in which participants may be asked to participate more actively in the discussion.

**Workshops** are educational activities intended for a smaller number of participants (25 to 30), with an emphasis on an interactive approach and an active role of workshop participants.

**Courses** provide practical training for a small number of participants 10 to 20 (courses on the use of information and communication technologies, foreign languages - legal terminology, online, etc.).

**Specialized education/training** will be provided for judges and public prosecutors assigned to a specific type of report or a certain level of courts / prosecutor's offices for certain legal areas (eg first instance court judges, bankruptcy judges and judges in juvenile delinquency cases related to the law regulating this issue).

**Distance learning (e-learning)** is interactive online learning using electronic technology, attended outside the traditional training hall, at a time and place that suits the participant best with a previously scheduled short preparatory meeting at the Center.

- Trainings with COE
  - *Certain aspects of ECHR – advanced trainings on implementation of human rights and Convention* (targeting associates from Judicial documentation department of the Court of BiH and Supreme courts)
  - *Reasoning of judicial decisions in criminal and civil procedures* (two separate workshops, each in duration of two days)
- *Application of Law on protection against defamation in BiH* (duration of two days)
- Training with OSCE Mission<sup>39</sup>
  - *Jurisprudence of ECtHR in work-related discrimination and gender-based discrimination* (two seminars, duration of two days per seminar)
  - *Law on protection against defamation in BiH* (seminar, duration of one day)
  - *Freedom of expression* (seminar, duration of one day)
  - *Child marriages* (seminar, duration of one day)
- *Gender (in)equality – prejudices and stereotypes* (workshop, duration of three days for judges and prosecutors who have not previously participated in this training);
- *Domestic violence* (workshop for mixed group: judges, prosecutors, police, social workers, civil society; in cooperation with OSCE<sup>40</sup>)
- *Access to justice in environmental matters* (seminar, duration of one day, in cooperation with OSCE)
- *Members of vulnerable groups as witnesses* (seminar, duration of two days, in cooperation with OSCE)
- *Human rights of LGBTI persons in BiH and legal mechanisms of their protection – experiences from BiH and the region* (seminar, two days)

There is no additional and formal requirement for participation in the planned human rights training, i.e. there is no prerequisite of previous successful attendance to basic human rights training. Also, some of the planned training events are closed (upon invitation), others are open without additional requirements.

### 3.1 Impact of Covid-19 into the human rights training offer

According to the JPTC's annual reports for 2020, circumstances caused by the COVID-19 virus pandemic led to the suspension of the implementation of seminars for initial training of professional associates, trainee training seminars and their extension for 2021. Due to the impossibility of organizing trainings for judicial officials, JPTC F BiH had to rely on insufficiently used online training capacities. Despite the very difficult working conditions, the JPTCs have largely implemented the Initial and Continuous Training Program for 2020.

The realized part of the **initial training** program for newly-appointed judges<sup>41</sup> included a number of topics, primarily: The Relationship Between European Law and Domestic Law; Fundamental Postulates of the "Strasbourg" System of Human Rights Protection; Ethical Standards and Integrity of Judicial Office Holders; Preparation for the Trial and Conduct of the Procedure, as well as the Decision-Making for the newly appointed holders of judicial functions.

As for the topics covered in the framework of **continuous training** during 2020, many topics also had an aspect of human rights and freedoms, although it is difficult to determine the exact scope, because the annual reports contain short and summary narrative reports on each training. E.g. trainings included topics such as "Hate Crimes"; "The Art of Writing a Verdict in Criminal Matters with a Focus on Reasoning"; "Hate speech"; "Current issues from the practice of the Supreme Courts"; "Skills of writing and reasoning

<sup>39</sup> When a seminar is organized with the OSCE, trainers from the organization work along with those of the JPTCs'.

<sup>40</sup> When a seminar is being organized in cooperation with the OSCE, JPTCs are engaging their own educators/trainers.

<sup>41</sup> In F BiH, these trainings were attended by 22 judges, with 15 newly appointed judges completing all realized seminars from the Initial Training Program for newly-appointed judges.

a judgment in civil proceedings”; “Defamation”; “Whistle-blower protection”, etc. The descriptions of the seminar indicated that certain aspects of human rights were also covered.

A small number of trainings were explicitly focused on directly addressing issues related to human rights and freedoms, e.g. seminar realized in cooperation with the OSCE Mission to BiH “Fundamental Rights and Fundamental Freedoms” and “Protection against discrimination in BiH legislation and according to the European Convention on Human Rights and Fundamental Freedoms”. With the support of the AIRE Centre in London, JPTCs organized a seminar on “The right to a fair trial within a reasonable time in accordance with Article 6 of the ECHR”.

## 4. Main findings and recommendations

### 4.1 Content, duration, and intensity of judicial training

As stated in the European Commissions' Progress Report for BiH 2020, **training for judges and prosecutors remains insufficient**, lacking a regular and comprehensive training needs assessment. Significant improvements in the duration and quality of mandatory training are urgently needed. **Its content should** in a systematic manner **include more human rights topics**, particularly taking into account the current legal, political and economic situation (migrations, lack of trust in judiciary, high-profile corruption cases within judiciary, etc.). As the interviewees from JPTCs told us, JPTCs do not have the capacity to systematically determine the needs of prosecutors and judges, which falls within the competences of the HJPC, which has sufficient human and financial resources.<sup>42</sup> Feedback from heads of the judicial institutions would be particularly significant for proper, systematic and methodologically correct needs assessment. The JPTCs are observers to the European Judicial Training Network (EJTN), however they should benefit from the expertise within the network in a more proactive manner.

The **initial trainings** cover procedural topics, with a certain, but **insufficient representation of topics dealing with human rights**. Continuous training covers several topics related to human rights, but such **trainings are not specialized and graded**, nor has the gradation of training been coupled with adequate preconditions for accessing specific trainings, in order to increase their effectiveness.

The **registration** of individual judges and prosecutors for trainings is mostly done on a **voluntary basis**. The information we received<sup>43</sup> indicate JPTCs do not have a detailed insight into the processes in judicial institutions regarding the registration of judges/prosecutors for training. There are two common ways to register for a given training. In over 80% of cases, judges/prosecutors apply directly for certain trainings, with the approval of the heads of a particular institution. In the remaining 20% of cases the heads of judicial institutions (court Presidents and Chief Prosecutors) sign up, sometimes without prior consultation, judges and prosecutors from their institution. Such practice occasionally leads to situations in which judges/prosecutors are signed up for training they previously attended. This obviously also impacts the participants' motivation to attend and learn.

On the other hand, **there are examples of good practice, such as specialist training provided in the criminal justice system**, with two or three specialist seminars being organized for a continuous period of two years for a selected category of participants. However, there is a **lack of a long-term assessment of the effectiveness of training** in general (including specialist trainings), which could be carried out by the HJPC, according to its competencies and available resources.

The JPTC's annual report also provide an overview of perception, needs and opinions of judges and prosecutors as trainees.<sup>44</sup> To be more concrete, the annual tabular presentation of trainings in RS contains the comments of the trainees (judges and prosecutors) who gave a number of suggestions for a longer duration of seminars or for an increase in number of seminars on certain topics, as prerequisite for providing trainees with in-depth knowledge and improvement of their professional skills and performance. Report additionally contained proposals for better and greater use of online training opportunities, as well as a very concrete proposal to incorporate the topic "Protection of the right to

42 Law on High Judicial and Prosecutorial Council of Bosnia and Herzegovina, article 17.

43 Information obtained in the interview with A. Tabaković, associate of JPTC of F BiH 26th of April 2021.

44 The Annual Report for F BiH emphasizes that the JPTC F BiH continuously monitors the achievements in the education of the judiciary by the European Network of Judicial Education Institutions (EJTN). This work has influenced the Program in two directions: on the one hand, the existing trainings have been improved by closely monitoring the effects of trainings and improving the methodology of training, and on the other hand, serious attention is paid to separate thematic units and multi-year specialist trainings in the areas highlighted as obstacles on BiH path to the EU. Such multi-year specialist training approach is much needed in regard to human rights' topics.



work in the context of the ECHR (with practical examples before the ECtHR)". There were also general comments that the seminars should not cover a large number of topics, so that certain topics could be explored in more detail, especially by conducting a focused discussion with the trainees.

## 4.2 The role of training in the judicial career

The appointment and career advancement of judges and prosecutors can be used as a leverage to motivate judges and prosecutors to commit themselves to training in general and to human rights training in particular. In that sense, the HJPC has a broad responsibility, from the appointment/promotion of magistrates, training, judicial discipline, judicial ethics, complaints against the judiciary, performance management, administration of courts (but not financing of the courts) and proposing legislation concerning the judiciary.<sup>45</sup>

Criteria for access to the judicial profession<sup>46</sup> and in particular for promotions remain insufficient. This is a source of serious concern. In May 2020, by decision of the Court of BiH, the criteria on performance appraisal for all judges and prosecutors in force since January 2019, have been annulled. Currently the performance of judges and prosecutors is evaluated in accordance with the *Criteria for the evaluation of judges in BiH 2020*.<sup>47</sup> Elements of the evaluation of a judge's work include the realization of the orientation norm, statistical quality of decisions (percentage of revoked decisions in relation to the total number of confirmed, modified and revoked decisions by the higher court) and timeliness of the judge's work. Similar criteria are provided for the evaluation of prosecutors.<sup>48</sup>

The *Criteria* includes additionally so-called *special cases of evaluation*, which provide for the possibility of awarding additional points to judges who were educators and rated very good or excellent, as well as judges who showed willingness to accept additional work through e.g. mentoring system or have otherwise contributed to the work of the court or court department through participation in the preparation of the newsletter, cooperation through education and professional development (educational activities, publication of papers or books, etc.). Judges of the highest regular courts (Court of Appeal of Brčko District and Court of BiH and Supreme Courts of F BiH/RS) are also evaluated on the basis of the achieved orientation norm and timeliness of work, without statistical quality of decisions. These judges are not frequently included in training.<sup>49</sup> The introduction of a mentoring system can prove to be a successful approach to all courts in BiH (as it is currently implemented only in Zenica and Banja Luka as pilot projects), where newly-appointed judges work in courts under direct mentorship of senior holders of judicial offices, thus creating learning culture, but also promoting personal and professional development.

Evaluation on basis of standardization (a statistical criterion) has drawn serious criticism.<sup>50</sup> The most serious objection to the statistical type of evaluation is that, for example, prosecutors avoid complex cases and choose the easiest ones to meet the quota, which is why the effect of the current methods of evaluation are seen as negative. This problem is particularly acute in the area of criminal justice. Because of the focus on meeting quotas, criminal justice is predominantly engaged in prosecuting petty crimes

45 [https://vsts.pravosudje.ba/vstv/faces/pdfservlet?p\\_id\\_doc=74540](https://vsts.pravosudje.ba/vstv/faces/pdfservlet?p_id_doc=74540)

46 In addition to basic requirements (article 21. of the Law on HJPC), and as per article 43. of the Law on HJPC, in making decisions on appointment, the HJPC shall take into account, amongst others, the following criteria: (a) Professional knowledge, work experience and performance; (b) Capacity through academic written works and other professional activities; (c) Professional ability based on previous career results, including participation in organized forms of training; (d) Work capability and capacity for analyzing legal problems; (e) Ability to perform impartially, conscientiously, diligently, decisively, and responsibly the duties of the office for which he or she is being considered; (f) Communication abilities; (g) Relations with colleagues, conduct out of office, integrity and reputation; and (h) Managerial experience and qualifications, in relation to the positions of Court President, Chief Prosecutor and Deputy Chief Prosecutor.

47 Official Gazette of Bosnia and Herzegovina, no. 1/21.

48 *Criteria for the evaluation of prosecutors in BiH* (29th of December 2020). Official Gazette of BiH, no. 1/21. Available via link: <http://sluzbenilist.ba/page/akt/bYeNBtp4a94=>

49 There are few trainings for judges of Constitutional court and entity Supreme courts, including the round tables for discussion on topical issues stemming from jurisprudence.

50 *Pravosuđe u BiH: stanje i perspektive* [Justice in BiH: Current State of Play and Prospects] by judge Branko Perić, commissioned by Transparency International BiH.

in order to make statistics look good, while complex cases of war crimes, corruption and organized crime remain out of sight of the prosecuting authorities.<sup>51</sup>

### 4.3 The level of participation to training

Statistics also provide a good insight into the efficiency of the training system and its capacity to reach to judges and prosecutors. First, they point out that there was a discrepancy between the planned and realized number of trainings, both in terms of the number of trainings themselves, and in terms of judges and prosecutors who are/were planned to participate. A number of judges and prosecutors from one entity (F BiH/RS) also participated in educational activities that were implemented in accordance with the Training program of other entity (F BiH/ RS). However, the annual reports indicate a worrying trend that fewer judges and prosecutors are participating in continuing education than originally planned - calculated by multiplying the total number of judges by three (minimum number of days judges should spend on training annually).

Although there are judges and prosecutors who did not attend trainings at all or who did not meet the minimum annual quota, there are also judges and prosecutors who attended more trainings (days in trainings) than the minimum required. These are usually judges who have ambitions to advance. As the interviewees from JPTC F BiH told us, these judges submit a request for JPTC to issue a certificate on the number of days they spent on the trainings which they include in the documentation while applying for appointment/promotion, which is finally decided by the HJPC.

Below are some statistical data on realized trainings for 2020 in both entities<sup>52</sup>:

F BiH	
<b>Judges and prosecutors with 3 or more days of training</b>	<b>768</b>
Judges and prosecutors with 2 days of training	100
Judges and prosecutors with 1 days of training	34
Judges and prosecutors with 0 days of training	106
<b>In total:</b>	<b>1008</b>

RS	
<b>Judges and prosecutors with 3 or more days of training</b>	<b>370</b>
Judges and prosecutors with 2 days of training	31
Judges and prosecutors with 1 days of training	18
Judges and prosecutors with 0 days of training	36
<b>In total:</b>	<b>455</b>

<sup>51</sup> Ibid.

<sup>52</sup> As presented in JPTCs' Work reports for 2020.

## 4.4 Evaluation of trainings and education for judges and prosecutors in BiH

With the evaluation of a training, JPTCs determine whether the knowledge, skills and techniques gained in the trainings were applied in the workplace, and also whether the courts/prosecutorial offices as institutions gained positive results, in the long-term. For the JPTCs this means a way to found out if the training was an investment (and if so, to possibly estimate the return of the investment) or a cost.<sup>53</sup> JPTCs have several instruments measuring the effectiveness of the training:

- Evaluation forms, filled anonymously by participants;
- JPTC in cooperation with some international organizations began to do long-term evaluations-6 months after the training (e.g. with OPDAT);
- Test made immediately before and immediately after the training, done sometimes with equipment donated by the US Embassy in BiH;
- Measuring of impact of training in practice, concerning the adequacy of legal and other acts (e.g., after several trainings in the field of international legal help, the trainer from the Ministry of justice noticed the decrease in number of irregular requests for international legal help and assistance);
- Analyses of judicial and prosecutorial practice.

According to Opinion No. 4 of the Consultative Council of European Judges (CCEJ)<sup>54</sup>, the quality of trainees' results should be assessed, if such an assessment is necessary, because in some systems initial training is one phase of the recruitment process. This is not the case in BiH, so only evaluation of training by participants-professional associates/advisors is performed, and in the initial training for newly appointed judges/prosecutors, "entry" and "exit" tests are used, immediately before and immediately after the training (same knowledge quiz presented to the participants). There are also, instruments for assessment of judicial training in courts/prosecutorial offices, by Chief prosecutors and presidents of courts.<sup>55</sup> Overall, however, it seems that the level of evaluation of human rights training remains quite low. As currently JPTCs do not have internal capacity to conduct evaluations, a solution which would be desirable in the medium term, recourse to external evaluations seems the only possibility at the moment. Presence of external professionals would also eliminate possible doubts as to the impartiality of the process, thus making the overall results more acceptable by the stakeholders, initiating positive virtuous circle of change. External evaluation of the initial training should be provided, in the sense that by following the professional development and success in everyday work of judges in the early years after appointment, it will evaluate the effectiveness of initial training and will be able to make suggestions for its improvement.<sup>56</sup>

## 4.5. General recommendations related to training

Reports and statistics for the evaluation of the work of the judges and the courts, annually prepared, should contain data about the critical issues on which training should be focused<sup>57</sup>, such as case management, time management, budgeting, improvement of working techniques, public relations skills, communication techniques, legal research etc. **Court presidents and chief prosecutors need to be more involved in identifying the training needs of their staff.** The HJPC needs to strengthen the supervision of all judicial training activities based on the annual reports received from entity-level training centres, which should be more substantial and concrete in terms of identifying the needs of judges and prosecutors.

53 S.Forčić/A. Murtezić/D. Trlin, Professional Training in Bosnia and Herzegovina's Judiciary in the Light of the Principle of Effectiveness, 11 *Iustinianus Primus L. Rev.* 1 (2020).

54 Available via link: <https://rm.coe.int/1680747d37>

55 S.Forčić/A. Murtezić/D. Trlin, Professional Training in Bosnia and Herzegovina's Judiciary in the Light of the Principle of Effectiveness, 11 *Iustinianus Primus L. Rev.* 1 (2020).

56 Opinion no.10(2007) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the Council for the Judiciary at the service of society. Available via link: <https://rm.coe.int/168074779b>

57 Especially the problem with duration of procedures in certain disputes, the most common breaches of human rights, backlog of cases, infringements of the law which most commonly lead to annulment and modification of judicial decisions, changes in the legislation, legal gaps which cause differences in the interpretation of the law, the need for harmonization of the case law, disciplinary procedures and their outcomes. As stated in fn 18 para. 71. Opinion no.10 (2007) of CCJE.

Participation of judges and prosecutors in all continuous training activities should be promoted as a significant part of their professional activity. The legal and ethical duty and right of judges and prosecutors is to work on their own professional development through participation in the continuous training which should be understood as a lifelong learning process. Judges, during the performance of their duties, should, in particular, follow changes in national and international legislation and practice<sup>58</sup>, be in touch with social trends and become acquainted with alternative dispute resolution methods. The CCJE recommends that judges' participation in training programmes should be taken into account when considering their promotion.<sup>59</sup>

In parallel with substantive training, judges and prosecutors should benefit from managerial and other competence-based training functional to increase their efficiency. Heads of institutions should also receive specific training on how to identify and anticipate training needs of their staff. Implement a system of competence management for all judges and prosecutors within institution by presidents of the court or chief prosecutors (heads of institution), including the detection and promotion of concrete training needs as important part of regular and structured career development talks;

Although the appointment and promotion system is essential, it is not sufficient. There must be total transparency in the conditions for the selection of candidates, so that judges and society itself are able to ascertain that an appointment is made exclusively on a candidate's merit and based on his/her qualifications, abilities, integrity and sense of independence, impartiality and efficiency. Additionally, there might be conflicts between different functions of the HJPC, such as between appointing and training of judges, or between training and disciplinary matters, as well as between training and evaluation of judges. One way of avoiding such conflict is to separate the different tasks between various branches of the HJPC.

Additionally, **increased attention should be paid to online courses**, which offer a whole range of benefits, such as effectiveness, reduced costs, user comfort, personalized learning, the possibility to repeat trainings, etc. Participation should not be left to the leisure time of individuals, but considered in the overall workload. All judges and prosecutors should have **time to undertake training as part of the normal working time**, unless it exceptionally jeopardises the service of justice.<sup>60</sup> As the interviewed experts stated, there is currently a lack of motivation for the judges and prosecutors in terms of online courses, because they attend courses in their free time, after the end of the regular working hours.

#### 4.6 Specific recommendations related to human rights training

Although official documents emphasize the demands for reducing the duration of training and the related absences for prosecutors and judges, it appears to be necessary, taking into account the nature and long-term goals of human rights education and training, their duration and intensity to be increased. Depending upon the existence and length of previous professional experience, human rights training should be of significant length in order to avoid its being purely a matter of form. **Human rights trainings should contribute to deepening knowledge, but also developing skills** of finding and using available jurisprudence of national and international courts. As highlighted in the interviews, additional efforts are needed to improve the skills of reviewing relevant case law, as well as to encourage the use of materials prepared by the Department for Judicial Documentation and Education with a review of relevant ECtHR practice.<sup>61</sup>

58 Opinion No.9 (2006) of the CCJE.

59 Opinion no.10(2007) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the Council for the Judiciary at the service of society. Available via link: <https://rm.coe.int/168074779b>

60 Training as a part of the normal working life of a judge and a prosecutor is envisaged as one of the basic principles of judicial training by European Judicial Training Network. See [https://www.ejtn.eu/PageFiles/15756/Judicial%20Training%20Principles\\_EN.pdf](https://www.ejtn.eu/PageFiles/15756/Judicial%20Training%20Principles_EN.pdf)

61 Judicial Documentation Center BiH distributes and makes available the Newsletter on a monthly basis, which contains various categories of information, such as: News in the database of court decisions, Newly adopted laws of Bosnia and Herzegovina, Federation BiH, Republika Srpska, Brcko District BiH - changes, additions, corrections; Review of the case law of the European Court of Human Rights, Bulletins of case law, Legal Chronicle, Opinions of the Consultative Council of European Judges, etc.

### The following are summarized recommendations for human rights trainings:

- Lack of available data on methodological framework, relatively large number of applications against BiH before ECtHR<sup>62</sup> and general mistrust in judiciary<sup>63</sup> indicate the necessity for significant improvement of needs' assessment (TNA) and refinement of evaluation techniques for human rights training of judges and prosecutors in BiH. A valid tool in this respect is represented by the methodologies and tools included in the CoE work Assessment of the existing systems/mechanisms for evaluation and impact of human rights training published in 2021 and the Study on best practices in training of judges and prosecutors elaborated by EJTN that contains a specific section on TNA.
- Ensure more meaningful and substantive representation of human rights topics in the preparation materials for the bar exam at the state level, as well as entity levels.<sup>64</sup>
- The information on training disseminated by the JPTCs should be more specific and detailed, and should spell out clear learning objectives and content. In this way, end users can assess the relevance of the training for their work. This, facilitate self-selection of trainees and ensures the presence of highly motivated participants, who can actually contribute to the success of the initiative by bringing in their expertise and knowledge.<sup>65</sup>
- As human rights training must be learner-centered<sup>66</sup>, it should focus on relevance of human rights in the daily work of the judges and prosecutors.
- The existing human rights trainings should be more thorough and intensive in their presentation of the relevant ECHR standards, while ensuring continuity and a high degree of interaction with judges and prosecutors.<sup>67</sup>
- HJPC together with JPTCs should increase focusing on the concepts featured in the ECHR and the jurisprudence of the ECtHR, to cater to the needs of those judges and prosecutors who have not undergone entry-level trainings on the ECHR as a part of their education at the faculty, initial training for future holders of judicial offices or extensive continuous training on the ECHR that had already been delivered by JPTCs.
- The duration of the mandatory judicial training should be increased, so as to encompass of minimum 10 days of training, 25% of which on human rights (as solely human rights topics or incorporating the human rights component in other thematic trainings). This will also increase the cost efficiency of JPTCs, as investing in the targeted trainings saves costs long-term, making it an investment. Additionally, incorporating online courses as prerequisites in mandatory trainings is cost-efficient way of knowledge transfer;
- Participation in training and assessment of performances during training should not be taken into consideration in the course of the appraisal procedures;
- Initial training should encompass a human rights dimensions also in relation to basic competencies (for instance judge craft, managing caseload, preparation of hearings, ethics, code of procedure),
- When implementing human right trainings, JPTCs should consider the human rights dimension inherent in the choice of training methodologies, selection and evaluation of participants and donor coordination in the system.
- 
- Participation in a minimum number of human rights trainings per year should be compulsory;
- Participation to advanced human rights training should be open only to trainees who fulfil minimum requirements, whose achievement should be objectively established with the

62 [https://www.echr.coe.int/Documents/CP\\_Bosnia\\_and\\_Herzegovina\\_ENG.pdf](https://www.echr.coe.int/Documents/CP_Bosnia_and_Herzegovina_ENG.pdf)

63 European Commission, Bosnia and Herzegovina 2020 Report, p. 17-18.

64 Ministry of justice BiH adopted and published the *Program of the bar exam* at the state level in the Official Gazette of BiH no. 11/19 ([http://www.mpr.gov.ba/biblioteka/podzakonski\\_akti/11\\_19.pdf](http://www.mpr.gov.ba/biblioteka/podzakonski_akti/11_19.pdf)). Within the oral part of the bar exam, the subject of examination is the constitutional system and organisation of judiciary under which ECHR is enlisted as legal source, but without recommended literature specifically for ECHR or human rights in general. For F BiH: <https://www.fmp.gov.ba/bs/pravosudni-ispiti.html>; for RS: [https://www.vladars.net/sr-SP-Cyrl/Vlada/Ministarstva/mpr/Ispti/Pages/Pravosudni\\_ispiti.aspx](https://www.vladars.net/sr-SP-Cyrl/Vlada/Ministarstva/mpr/Ispti/Pages/Pravosudni_ispiti.aspx)

65 A. Knežević Bojović, *Comparative Analysis of Judicial Training Curricula*, 2016.

66 Including proper consideration different aspects of professional life of judges and prosecutors, such as motivation and professional needs (required knowledge, capacities, skills).

67 In an effort to objectively evaluate the effectiveness of existing and current human rights trainings of JPTCs, the methodological framework included different tools: Consultations with experts for analysis of the current human rights and human rights training contexts of potential participants, and to gain insight into trainees characteristics, particularly regarding prior knowledge and experience, and motivation of trainees; Desk review of existing documentation, aimed at assessing relevance of content of existing tools, materials and human rights training sessions.

- introduction of the grading system (needed prior knowledge/attendance statement on certain human right topic as a prerequisite for registration for training);
- Only successful participants (i.e. those passing the required post-training test and final case-studies) can be awarded a certificate of attendance (often needed to gain access to advanced trainings);
  - Introduce systematic training for trainers for judiciary – aimed at designating one person as a focal point for ECHR in concrete judiciary institution (court or prosecutorial office);
  - All appointees to judicial posts should have or acquire, before they take up their duties, extensive knowledge of substantive national and international law and procedure, including ECHR and jurisprudence of ECtHR;
  - Introduce the courses on the protection of human rights in cases of immigration, given the fact BiH faces a continuous influx of refugees and asylum-seekers;
  - Introduce, through the CoE'S Programme for Human Rights Education for Legal Professionals (HELP), online courses adapted to the BiH legal order, into the vocational and in-service annual training programmes of the JPTCs as well as in the studies of Law Faculties.
- Finally, it is recommended that the proposed human rights training plan and program attached to the report is primarily intended to be used for newly appointed judges and prosecutors, in order to ensure consistency in access to human rights education and training.

#### **Research tools:**

In an effort to objectively evaluate the effectiveness of existing and current human rights trainings of JPTCs, the methodological framework included different tools: Consultations with experts for analysis of the current human rights and human rights training contexts of potential participants, and to gain insight into trainees characteristics, particularly regarding prior knowledge and experience, and motivation of trainees; Desk review of existing documentation, aimed at assessing relevance of content of existing tools, materials and human rights training sessions.

# Annex

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## List of proposed curricula

### Basic

Introduction to the ECHR  
HUDOC and other research tools  
Principles of interpretation of the ECHR  
Equality and non-discrimination  
Procedural rights under the ECHR  
Victims' rights under the ECHR

### Advanced

Reasoning of judgments (civil and criminal)  
Women access to justice  
Migration and the ECHR  
Property rights under the ECHR  
Hate crime and hate speech

## List of people interviewed

Vera Bjelogrić, Chief of Judicial Documentation and Education Centre, HJPC  
Šejla Brković-Imamović, Associate of Judicial Documentation and Education Centre, HJPC  
Almir Tabaković, Associate of JPTC FBiH

## Overview of human rights course catalogue

NO.	DURATION	TYPE OF COURSE	TITLE OF COURSE	TARGET GROUPS	PREREQUISITES	METHOD OF GRADATION
<b>FIRST YEAR OF IMPLEMENTATION</b>						
1	1 day	<ul style="list-style-type: none"> <li>Initial and continuous training</li> <li>Mandatory course</li> <li>Fundamental course</li> </ul>	<b>Introduction to the ECHR</b>	Prosecutors and criminal judges (newly-appointed and in-position), judges in civil law cases (newly-appointed and in-position), also associates, advisors.	HELP online course on Introduction to the ECHR and the ECtHR (6 hours)	Open questions
2	1 day	<ul style="list-style-type: none"> <li>Initial and continuous training</li> <li>Mandatory course</li> <li>Fundamental course</li> </ul>	<b>Principles of interpretation of the ECHR (basic)</b>	Prosecutors and criminal judges (newly-appointed and in-position), judges in civil law cases (newly-appointed and in-position), also associates, advisors.	In-person courses Introduction to the ECHR (or equivalent)	Open questions
3	1.5 days	<ul style="list-style-type: none"> <li>Initial and continuous training</li> <li>Mandatory course</li> <li>Fundamental course</li> </ul>	<b>Principles of interpretation of the ECHR (advanced)</b>	Prosecutors and criminal judges (newly-appointed and in-position), judges in civil law cases (newly-appointed and in-position), also associates, advisors.	In-person courses Introduction to the ECHR (or equivalent), and Principles of interpretation of the ECHR (basic)	
4.	2 days	<ul style="list-style-type: none"> <li>Initial and continuous training</li> <li>Mandatory course</li> <li>Fundamental course<sup>68</sup></li> </ul>	<b>Procedural human rights</b>	<p>Prosecutors and criminal judges (newly-appointed and in-position), judges in civil law cases (newly-appointed and in-position), judges in administrative matters, also associates, advisors.</p> <p>Possible to organize and implement separately for prosecutors and criminal law judges, and civil law and administrative judges.</p>	<p>In-person courses Introduction to the ECHR and Principles of interpretation of the ECHR (basic and advanced) (or equivalent)</p> <p>HELP online course on Procedural safeguards in criminal proceedings and victims rights (11 hours) only for criminal judges and prosecutors</p>	Open questions

<sup>68</sup> Fundamental course designed to provide overview of the procedural human rights, other, more specialized courses, are envisaged as more detailed and in depth trainings on standards of procedural justice



NO.	DURATION	TYPE OF COURSE	TITLE OF COURSE	TARGET GROUPS	PREREQUISITES	METHOD OF GRADATION
<b>SECOND YEAR OF IMPLEMENTATION</b>						
5.	2 days	<ul style="list-style-type: none"> <li>Continuous training</li> <li>Mandatory course<sup>69</sup></li> <li>Advanced course</li> </ul>	<b>Equality and non-discrimination</b>	Primarily judges in civil law cases (newly-appointed and in-position), also associates, advisors	In-person courses delivered during first year (or equivalent) HELP online course on Antidiscrimination (8 hours)	Open questions
6.	2.5/3 days (1 day for common module, 1.5/2 days for specific module)	<ul style="list-style-type: none"> <li>Continuous training</li> <li>Mandatory course</li> <li>Advanced course</li> </ul>	<b>Reasoning of judgments</b>	Prosecutors and criminal judges, judges in civil law cases, also associates, advisors.	In-person courses delivered during first year (or equivalent) HELP online course on reasoning of judgments (10 hours)	Open questions
7.	2 days	<ul style="list-style-type: none"> <li>Continuous training</li> <li>Mandatory course</li> <li>Advanced course</li> </ul>	<b>Women's access to justice</b>	Primarily prosecutors and criminal judges, also associates and advisors. Additionally civil law judges, associates and advisors.	In-person courses delivered during first year (or equivalent) HELP online courses on Women's access to justice (10 hours) and Violence against women and domestic violence (12 hours)	Open questions
<b>THIRD YEAR OF IMPLEMENTATION</b>						
8.	1-2 days	<ul style="list-style-type: none"> <li>Continuous training</li> <li>Mandatory course</li> <li>Advanced course</li> </ul>	<b>Victim's rights</b>	Primarily prosecutors and criminal judges, also associates, advisors.	In-person courses delivered during first and second year (or equivalent) HELP online courses on Procedural safeguards and victims' rights in criminal proceedings (11 hours)	Open questions

<sup>69</sup> For judges deciding in discrimination cases.

NO.	DURATION	TYPE OF COURSE	TITLE OF COURSE	TARGET GROUPS	PREREQUISITES	METHOD OF GRADATION
9.	1.5 days	<ul style="list-style-type: none"> <li>Continuous training</li> <li>Mandatory course</li> <li>Advanced course</li> </ul>	<b>Hate crimes and hate speech</b>	Prosecutors and judges in criminal law cases, also associates, advisors	In-person courses delivered during first and second year (or equivalent) HELP online course on Hate crime and hate speech (5 hours)	Open questions
<b>ELECTIVE COURSES (AVAILABLE EVERY YEAR)</b>						
10.	Duration:	<ul style="list-style-type: none"> <li>Initial and continuous training</li> <li>Elective course<sup>70</sup></li> <li>Basic course</li> </ul>	<b>Property rights</b>	Primarily judges in civil law cases (including newly appointed), also associates, advisors	In-person courses delivered during first and second year (or equivalent) HELP online course on Property Rights (10 hours)	Open questions
11.	1.5 – 2 days	<ul style="list-style-type: none"> <li>Initial and continuous training</li> <li>Elective</li> <li>Basic course</li> </ul>	<b>Migration and human rights</b>	Prosecutors and criminal judges, judges in civil and administrative matters (including newly appointed), judges of the State court, also associates, advisors.	In-person course on principles of interpretation of the ECHR (or equivalent) HELP online course on Asylum and Human Rights (6 hours) and Trafficking and human rights (11 hours)	Open questions
12.	2.5 hours	<ul style="list-style-type: none"> <li>Initial and continuous training</li> <li>Elective</li> <li>Basic course</li> </ul>	<b>European human rights standards and case-law research skills</b>	Prosecutors and criminal judges, judges in civil law cases (including newly appointed) also associates, advisors	None	None

<sup>70</sup> For judges deciding in civil law cases on property rights.

## BASIC COURSES

NO.	DURATION	TYPE OF COURSE	TITLE OF COURSE	TARGET GROUPS	PREREQUISITES	METHOD OF GRADATION
1.	1 day	<ul style="list-style-type: none"> <li>Initial and continuous training</li> <li>Mandatory course</li> <li>Fundamental course</li> </ul>	<b>Introduction to the ECHR</b>	Prosecutors and criminal judges (newly-appointed and in-position), judges in civil law cases (newly-appointed and in-position), also associates, advisors.	HELP online course on Introduction to the ECHR and the ECtHR (total estimated duration 6 hours) not older than 4 years	Open questions
2.	1 day	<ul style="list-style-type: none"> <li>Initial and continuous training</li> <li>Mandatory course</li> <li>Fundamental course</li> </ul>	<b>Principles of interpretation of the ECHR (basic)</b>	Prosecutors and criminal judges (newly-appointed and in-position), judges in civil law cases (newly-appointed and in-position), also associates, advisors.	In-person courses Introduction to the ECHR (or equivalent)	Open questions
3	1.5 days	<ul style="list-style-type: none"> <li>Initial and continuous training</li> <li>Mandatory course</li> <li>Fundamental course</li> </ul>	<b>Principles of interpretation of the ECHR (advanced)</b>	Prosecutors and criminal judges (newly-appointed and in-position), judges in civil law cases (newly-appointed and in-position), also associates, advisors.	In-person courses Introduction to the ECHR (or equivalent) and Principles of interpretation of the ECHR (basic)	
4.	2 days	<ul style="list-style-type: none"> <li>Initial and continuous training</li> <li>Mandatory course</li> <li>Fundamental course<sup>71</sup></li> </ul>	<b>Procedural human rights</b>	Prosecutors and criminal judges (newly-appointed and in-position), judges in civil law cases (newly-appointed and in-position), judges in administrative matters, also associates, advisors. Possible to organize and implement separately for prosecutors and criminal law judges, and civil law and administrative judges.	In-person courses Introduction to the ECHR and Principle of interpretation of the ECHR (basic and advanced) (or equivalent) HELP online course on Procedural safeguards and victims' rights in criminal proceedings (11 hours) only for criminal judges and prosecutors	Open questions

71 Fundamental course designed to provide overview of the procedural human rights, other, more specialized courses, are envisaged as more detailed and in depth trainings on standards of procedural justice

NO.	DURATION	TYPE OF COURSE	TITLE OF COURSE	TARGET GROUPS	PREREQUISITES	METHOD OF GRADATION
<b>ELECTIVE COURSES (AVAILABLE EVERY YEAR)</b>						
5.	Duration: • Initial and continuous training • Elective course <sup>72</sup> • Basic course	• Initial and continuous training • Elective course <sup>72</sup> • Basic course	<b>Property rights</b>	Primarily judges in civil law cases (including newly appointed), also associates, advisors	In-person courses delivered during first and second year (or equivalent) HELP online course on Property Rights (10 hours)	Open questions
6.	1.5 – 2 days • Initial and continuous training • Elective • Basic course	• Initial and continuous training • Elective • Basic course	<b>Migration and human rights</b>	Prosecutors and criminal judges, judges in civil and administrative matters (including newly appointed), judges of the State court, also associates, advisors.	In-person course on Principles of interpretation of the ECHR (or equivalent) HELP online course on Asylum and Human Rights (6 hours) and Trafficking and human rights (11 hours)	Open questions
7.	2.5 hours • Initial and continuous training • Elective • Basic course	• Initial and continuous training • Elective • Basic course	<b>European human rights standards and case-law research skills</b>	Prosecutors and criminal judges, judges in civil law cases (including newly appointed) also associates, advisors	None	None

<sup>72</sup> For judges deciding in civil law cases on property rights.

## ADVANCED COURSES

NO.	DURATION	TYPE OF COURSE	TITLE OF COURSE	TARGET GROUPS	PREREQUISITES	METHOD OF GRADATION
<b>SECOND YEAR OF IMPLEMENTATION</b>						
1.	2 days	<ul style="list-style-type: none"> <li>Continuous training</li> <li>Mandatory course<sup>73</sup></li> <li>Advanced course</li> </ul>	<b>Equality and non-discrimination</b>	Primarily judges in civil law cases (newly-appointed and in-position), also associates, advisors	In-person courses delivered during first year (or equivalent) HELP online course on Antidiscrimination (8 hours)	Open questions
2.	2.5/3 days (1 day for common module, 1.5/2 days for specific module)	<ul style="list-style-type: none"> <li>Continuous training</li> <li>Mandatory course</li> <li>Advanced course</li> </ul>	<b>Reasoning of judgments</b>	Prosecutors and criminal judges, judges in civil law cases, also associates, advisors.	In-person courses delivered during first year (or equivalent) HELP online course on reasoning of judgments (10 hours)	Open questions
3.	2 days	<ul style="list-style-type: none"> <li>Continuous training</li> <li>Mandatory course</li> <li>Advanced course</li> </ul>	<b>Women's access to justice</b>	Primarily prosecutors and criminal judges, also associates and advisors.	In-person courses delivered during first year (or equivalent) HELP online courses on Women's access to justice (10 hours) and Violence against women and domestic violence (12 hours)	Open questions
<b>THIRD YEAR OF IMPLEMENTATION</b>						
4.	1-2 days	<ul style="list-style-type: none"> <li>Continuous training</li> <li>Mandatory course</li> <li>Advanced course</li> </ul>	<b>Victim's rights</b>	Primarily prosecutors and criminal judges, also associates, advisors.	In-person courses delivered during first and second year (or equivalent) HELP online courses on Procedural safeguards and victims' rights in criminal proceedings	Open questions
5.	1.5 days	<ul style="list-style-type: none"> <li>Continuous training</li> <li>Mandatory course</li> <li>Advanced course</li> </ul>	<b>Hate crimes and hate speech</b>	Prosecutors and judges in criminal law cases, also associates, advisors	In-person courses delivered during first and second year (or equivalent) HELP online course on Hate crime and hate speech (5 hours)	Open questions

<sup>73</sup> For judges deciding in discrimination cases.

## Training on Introduction the ECHR

**Duration of training:** 1 day

**Prerequisites:** HELP course on Introduction to the ECHR and the ECtHR (total estimated duration 6 hours). Participation to the online course can be assessed by the statement of accomplishment issued by the HELP at the end of the course (not older than 4 years). Full catalogue of HELP courses available at <http://help.elearning.ext.coe.int/#> Access to the HELP platform is subject to a registration procedure.

### **Overall Objective:**

Provide learners with the opportunity to discuss more in detail some aspects of the Convention system, including as applied at national level

### **Specific LOs:**

Define the application and positioning of the ECHR in the domestic legal system (knowledge)

Discuss the challenges inherent in the application of international human rights standards, including conflict with cultural and organizational values (attitudes/values)

Describe the role of the national judiciary in the definition of the subsidiary character of the ECHR system (knowledge, attitudes/values)

Apply national legislation to the notion of effective remedy for the purpose of art. 35 ECHR (knowledge, skills)

### **Topics**

- Application of the ECHR *ratione personae, temporis* and *loci* as applicable to the national legal framework
  - o The notion of victim of a human rights violation (direct and indirect victim)
  - o Restrictions in the application of the ECHR to certain categories or groups (i.e. aliens)
  - o Prohibition of abuse of rights (article 17 ECHR)
  - o Limitations on use of restrictions of rights (article 18 ECHR)
  - o Hierarchy of laws and position of the ECHR in the domestic legal order
  - o The doctrine of fourth instance under the ECHR
- The notion of effective remedy under article 13 ECHR as applied to the domestic legal order
  - o The issue of access to justice (including from a gender perspective)
- The position of the ECHR in the domestic legal system
  - o Hierarchy of laws
  - o Conflict between ECHR and the national legislation
  - o Binding nature of ECtHR judgments rendered against BiH and its consequences (i.e. reopening of proceedings...)
  - o Force of ECtHR judgments rendered against other CoE member states
- Sharing of experiences between participants in relation to the practical application of the ECHR
- Effect of an interim measure (Article 39 of the Rules of the Court) in the domestic legal system

**Gender perspective and non-discrimination:** Gender should be reflected throughout the course, but particularly when discussing the notion of victim and the access to justice in connection with article 13 ECHR.

## **Methodology:**

The trainer should start from the assumption that participants have already received a standard presentation/lecture on the system via the online course. The face-to-face event serves the purpose of enabling discussion and allow participants to share experiences and build skills. Lectures, therefore, should be limited to a minimum and more dynamic and engaging methodologies, such as those listed below, implemented.

- Poll: a survey might be launched some 10-7 days before the training with a view to collect the inputs from the participants as to the topics presented in the HELP course that that they would like to tackle during the face-to-face session;
- Scenarios: each of the topics and aspects related to the application of the ECHR at national level (including in relation to Article 39) can be presented. They can be used to highlight critical aspects that be discussed by participants, under the supervision of the trainer;
- Circle talk: can be used to share experiences amongst participants, who are invited to talk about good or bad (or at least dubious) examples of application of human rights law of which they have first-hand experience;
- Peer-teaching: in case some of the participants have a complex case they want to present, this can take the form of peer teaching that, contrary to the circle talk, must be well prepared in advance by the trainer;
- Role-play/role-reversal: this can be very useful to help participants reflect on their attitudes and behaviour, for instance putting on someone else's shoes (i.e. victim of an alleged discrimination interacting with the authorities denying any avenue of redress or hindering access to justice with an overly formalistic approach)

**Indicators of attainment of objectives:** to set a baseline, also for the purpose of collecting information about the general level of knowledge of participants to be used when defining training needs, a pre-training test, composed of multiple-choice questions should be administered. to establish the attainment of LOs, a post-training test, replicating the questions of the first, can be administered.

**Method of certification:** a pass/fail test, encompassing at least 2-3 open questions to be answered with bulletpoints or by referring to general concepts and principles should be included. The pass/fail test will be administered at the end of the training. The results and certificate will be communicated individually after the training.

## Training on Principles of interpretation of the ECHR (basic)

**Duration of training:** 1 day

**Prerequisites:** Course on Introduction to the ECHR. Participation to the in-person course can be assessed by the relevant certificate (not older than 4 years).

### **Overall Objective:**

Enable learners to develop the so called “human-rights reflex”, that is the capacity of legal and judicial professionals to see the human rights dimension in all cases they examine and to ensure that their decision are compliant with the State’s human rights obligations.

### **Specific LOs:**

Define the main principles of application used by the ECHR (knowledge)

Identify the human rights dimensions of real-life, ordinary cases (skills)

Apply the 3-step test in relation to qualified rights (skills)

Recognize the importance of a victim-centered approach mainstreamed into the judicial practice (skills, attitudes/values)

### **Topics**

- The ECHR as a living instrument
- Effectiveness of rights under the ECHR and their purposive interpretation, including in relation to enjoyment of rights by women and girls
- Positive obligations under the ECHR: how to measure the extent of the obligation? The Osman test
- Limitations of rights: the 3-step test in qualified rights
  - o Definition of interference
  - o Legality (including the autonomous meaning of law and the quality of law)
  - o Legitimate aim
  - o Necessity
  - o Democratic society
  - o Proportionality as ingredient of necessity
  - o Margin of appreciation
- Prohibition of discrimination as an overarching principle under the ECHR
  - o Non-discrimination and equality
  - o Affirmative measures
- Autonomous concepts under the ECHR

**Gender perspective and non-discrimination:** Gender should be reflected throughout the course, but particularly when discussing the notion of effectiveness of rights, articles 3 and 8 in respect of cases of domestic and gender-based violence, and non discrimination)



## Methodology:

The trainer should start from the assumption that participants have already received a standard presentation/lecture on the system via the online course. The face-to-face event serves the purpose of enabling discussion and allow participants to share experiences and build skills. Lectures, therefore, should be limited to a minimum and more dynamic and engaging methodologies, such as those listed below, implemented.

- Poll: a survey might be launched some 10-7 days before the training with a view to collect the inputs from the participants as to the topics presented in the HELP course related to the principles of interpretation of the ECHR that that they would like to tackle during the face-to-face session;
- Scenarios and case-studies: each of the topics and aspects listed above should be approached using short scenarios and case studies, to be worked either individually, in pairs or in small groups (depending on their) complexity). They should be elaborated on the basis of the ECtHR case-law having in mind the national legislation and the possible flaws and should not be limited to decisions rendered against BiH);
- Quizzes: quick quizzes (maybe using online tools like menti.com) can be used to question participants about their understanding of the various autonomous concepts. Pictures (i.e. displaying different relationships amounting to family) can also trigger discussion and help trainer illustrate notions;
- Algorithm: a handout illustrating the application of the 3-step test can be distributed to facilitate understanding;
- Role-play/role reversal: can be particularly effective to experience the themes of non-discrimination and effective enjoyment of rights;

**Indicators of attainment of objectives:** to set a baseline, also for the purpose of collecting information about the general level of knowledge of participants to be used when defining training needs, a pre-training test, composed of multiple-choice questions should be administered. to establish the attainment of LOs, a post-training test, replicating the questions of the first, can be administered.

**Method of certification:** a pass/fail test, encompassing at least 2-3 open questions to be answered with bulletpoints or by referring to general concepts and principles should be included. The pass/fail test will be administered at the end of the training. The results and certificate will be communicated individually after the training.

## Training on

### Principles of interpretation of the ECHR (advanced)

**Duration of training:** 1 day (1.5 day with moot court)

**Prerequisites:** Course on Introduction to the ECHR and Principles of interpretation of the ECHR (basic). Participation to the in-person course can be assessed by the relevant certificate (not older than 4 years).

#### Overall Objective:

Enable learners to apply the principles of interpretation to real cases.

#### Specific LOs:

Apply the principles of interpretation to real cases and with respect to different fields of law (skills)

Identify the human rights dimensions of real-life, ordinary cases (skills)

Recognize the importance of a victim-centered approach mainstreamed into the judicial practice (skills, attitudes/values)

#### Topics

- Conflict between national law and the ECHR
- Moral and physical integrity: article 3 vs. article 8 ECHR
  - o Torture, inhuman and degrading treatment under article 3 ECHR
  - o The notion of private life under article 8 ECHR
  - o Gender dimension of articles 3 and 8 ECHR: the case of domestic and gender-based violence
- Home and family life under article 8 ECHR
- Deprivation of liberty under article 5 ECHR
- Equality of arms under article 6 ECHR
- Property under article 1 Protocol no. 1 ECHR

**Gender perspective and non-discrimination:** Gender should be reflected throughout the course, but particularly when discussing the notion of effectiveness of rights, articles 3 and 8 in respect of cases of domestic and gender-based violence, and non discrimination)

#### Methodology:

This face-to-face training serves the purpose of enabling practical application of the principles of interpretation in various areas of practice. As the aim is to build skills, lectures should be limited to a minimum and more dynamic and engaging methodologies, such as those listed below, implemented.

- Scenarios and case-studies: each of the topics and aspects listed above should be approached using short scenarios and case studies, to be worked either individually, in pairs or in small groups (depending on their) complexity). They should be elaborated on the basis of the ECtHR case-law having in mind the national legislation and the possible flaws and should not be limited to decisions rendered against BiH);
- Quizzes: quick quizzes (maybe using online tools like menti.com) can be used to question participants about their understanding of the various autonomous concepts. Pictures (i.e. displaying different relationships amounting to family) can also trigger discussion and help trainer illustrate notions;
- Role-play/role reversal: can be particularly effective to experience the themes of non-discrimination and effective enjoyment of rights;
- Moot court: enabling participants to develop their legal arguing and debate skills and help

them sustain the opposite party's positions, thus having the possibility to invoke human rights protection.

**Indicators of attainment of objectives:** to set a baseline, also for the purpose of collecting information about the general level of knowledge of participants to be used when defining training needs, a pre-training test, composed of multiple-choice questions should be administered. to establish the attainment of LOs, a post-training test, replicating the questions of the first, can be administered.

**Method of certification:** a pass/fail test, encompassing at least 2-3 open questions to be answered with bulletpoints or by referring to general concepts and principles should be included. The pass/fail test will be administered at the end of the training. The results and certificate will be communicated individually after the training.

## Training on Equality and non-discrimination

**Duration of training:** 2 days

**Prerequisites:** In-person courses delivered during first year and HELP course on Antidiscrimination. Participation to the in-person and online courses can be assessed by the statement of accomplishment issued by the HELP at the end of the course or the certificate issued at the end of the in-person course (not older than 4 years). Full catalogue of HELP courses available at <http://help.elearning.ext.coe.int/#> Access to the HELP platform is subject to a registration procedure.

### **Overall Objective:**

Enable learners to identify different types of discrimination in different contexts and provide them with necessary knowledge and skills for applying discrimination test and special procedural provisions on burden of proof, while acknowledging potential obstacles encountered by victims of discrimination.

### **Specific LOs:**

Provide overview of the relevant legal, institutional and practical aspect of the topic (knowledge)

Define the role of judicial professionals in upholding human rights and the principle of non-discrimination (values/attitudes)

Discuss the approach of the ECtHR to discrimination complaints (knowledge/skills)

Identify the standards relevant in judicial response to discrimination cases and apply such standards (knowledge/skills)

### **Topics:**

- Prohibition of discrimination in international, European and national law
- Perspective of Private Law, Public Law and Human Rights Law
- Notion, forms and elements of discrimination
  - o Protected grounds (racial or ethnic origin, religion or belief, sexual orientation, disability, age)
  - o Substantive violations
  - o Direct/Indirect discrimination
  - o Margin of appreciation
  - o Standards and Burden of Proof
- Affirmative action/gender parity
- Employment discrimination and harassment (race, sex, age, disability)
  - o Employment
  - o Working conditions
  - o Maternity/paternity leave
  - o Harassment and sexual harassment
  - o Mobbing
- Marriage equality (sex, race, sexual orientation)
- Discrimination against Roma, SOGI (Sexual Orientation and Gender Identity) community and disabled community
- Gender-based violence as form of systemic discrimination
- Procedural aspects of discrimination cases

- o Special features of proceedings for protection from discrimination (competence, active and passive legal standing before the court, duration and calculation of deadlines for submitting special discrimination claims, interim measures, enforcement procedures)
- o Burden of proof
- o Participation of third parties (*amicus curiae*, joinder, intervenient)
- o Reasoning of judgments in discrimination cases
- o System of remedies in discrimination cases (appeal and revision)

**Gender perspective and non-discrimination:** Gender equality and non-discrimination should be reflected throughout the course. Particular attention should be paid to sexist speech, use of gender stereotypes, gender-based violence.

**Methodology:**

The trainer should start from the assumption that participants have already received a standard presentation/lecture on the notions and standards of equality and non-discrimination (article 14 ECHR). The face-to-face event serves the purpose of enabling discussion and tackle practical cases. Lectures, therefore, should be limited to a minimum and more dynamic and engaging methodologies, such as those listed below, implemented.

- Poll: a survey might be launched some 10-7 days before the training with a view to collect the inputs from the participants as to the topics presented in the HELP courses set as pre-requisite that that they would like to tackle during the face-to-face session. Participants can also be invited to share real cases that they would like to discuss.
- Scenarios and case-studies: Cases should be selected also considering, in addition to the national legislation, the ECtHR case-law (not be limited to decisions rendered against BiH). Some of the cases presented during the online course could be the object of more in-depth analysis;
- Role-play/role reversal: can be particularly effective to enable participants to feel the difficulties experience by victims of discrimination, who are often re-victimized by the system as they report discrimination;
- Moot court: enabling participants to develop their legal arguing and debate skills and help them sustain the opposite party's positions, thus having the possibility to invoke human rights protection.

**Indicators of attainment of objectives:** to set a baseline, also for the purpose of collecting information about the general level of knowledge of participants to be used when defining training needs, a pre-training test, composed of multiple-choice questions should be administered. to establish the attainment of LOs, a post-training test, replicating the questions of the first, can be administered.

**Method of certification:** a pass/fail test, encompassing at least 2-3 open questions to be answered with bulletpoints or by referring to general concepts and principles should be included. The pass/fail test will be administered at the end of the training. The results and certificate will be communicated individually after the training.

## Training on Procedural human rights

**Duration of training:** 2 days

**Prerequisites:** In-person course on Introduction to the ECHR and Principles of interpretation of the ECHR. Statement of accomplishment not older than 4 years. HELP online course on Procedural safeguards in criminal proceedings and victims rights – (total estimated duration 11 hours, successful completion of the online courses can be assessed by the statement of accomplishment issued by the HELP at the end of the course not older than 4 years). Note: prerequisite limited to criminal judges and prosecutors. Full catalogue of HELP courses available at <http://help.elearning.ext.coe.int/#> Access to the HELP platform is subject to a registration procedure.

### Overall Objective:

Enable learners to understand the plurality, scope and interconnectivity of procedural human rights and equip them with the skills necessary to implement it in both civil, criminal and administrative areas.

### Specific LOs:

Frame the procedural rights as part of the wider system of human rights as envisaged in ECHR (knowledge) and as a component of the quality of justice (attitudes/values)

Familiarize with the standards set by the case-law of the ECtHR (knowledge)

Define the role of judicial professionals in upholding procedural human rights (values/attitudes)

### Topics:

- Access to procedural justice
  - o Right to a fair trial
  - o Right of access to a court
  - o Fairness
- Administration of evidence
- Reasonable time
- Adversarial proceedings
- Equality of arms
- Reasoning of judicial decisions
- Legal certainty and divergent case law
- Specific guarantees pertaining to criminal and civil cases
  - o Public hearing
  - o Right to an effective remedy
- Victims' rights
- Child-friendly justice
- The environment and access to justice: Aarhus convention
  - o Right to information
  - o Right to participation
  - o Access to justice
- Access to justice for women
- Asylum and access to justice
- Procedural rights approach (Procedural fairness within substantive human rights with focus on procedural requirements within different rights envisaged in ECHR)

- o Duty of due diligence in relation to investigation and prosecution
- o Duty to hear an interested party before making a decision
- Integrated procedural review: Assessment of procedural justice elements within specific cases and analysis of quality of domestic decision making process
  - o Proportionality of the measure
  - o Reasonableness of the measure
  - o Principle of subsidiarity and margin of appreciation

**Gender perspective and non-discrimination:** Cases involving a gender-dimension and non-discrimination (such as female victims, specific procedural features in discrimination cases, formal and factual obstacles to access to justice) should be included. Special attention should be paid to the gender-sensitive/blind and discriminatory procedural practices, including wording of judgments and stereotypical or otherwise discriminatory judicial attitudes affecting the procedural justice.

**Methodology:** The trainer should start from the assumption that participants have already received a standard presentation/lecture on the article 6 ECHR standards and the structure of the ECtHR judgments. The face-to-face event serves the purpose of enabling discussion and allow participants to share experiences and build skills. Lectures, therefore, should be limited to a minimum and more dynamic and engaging methodologies, such as those listed below, implemented.

- Poll: a survey might be launched some 10-7 days before the training with a view to collect the inputs from the participants as to the topics presented in the HELP courses set as pre-requisite that that they would like to tackle during the face-to-face session. Participants can also be invited to share real cases that they would like to discuss.
- Scenarios, case-studies, key questions: most of the topics and aspects listed above should be approached using short scenarios, case studies and key questions, to be worked either individually, in pairs or in small groups (depending on their complexity). They should be elaborated on the basis of the ECtHR case-law having in mind the national legislation and the possible flaws and should not be limited to decisions rendered against BiH);
- Moot court: enabling participants to develop their legal arguing and debate skills and help them sustain the opposite party's positions, thus having the possibility to invoke human rights protection.

**Indicators of attainment of objectives:** to set a baseline, also for the purpose of collecting information about the general level of knowledge of participants to be used when defining training needs, a pre-training test, composed of multiple-choice questions should be administered. to establish the attainment of LOs, a post-training test, replicating the questions of the first, can be administered.

**Method of certification:** a pass/fail test, encompassing at least 2-3 open questions to be answered with bulletpoints or by referring to general concepts and principles should be included. The pass/fail test will be administered at the end of the training. The results and certificate will be communicated individually after the training.

## Training on Reasoning of judgments

**Duration of training:** 2.5/3 days (1 day for common module, 1.5/2 days for specific module)

**Prerequisites:** In-person courses delivered during first year and HELP course on reasoning of judgments (estimated duration 10 hours). Participation to the in-person and online courses can be assessed by the statement of accomplishment issued by the HELP at the end of the course or the certificate issued by the JPTCs at the end of the in-person course (not older than 4 years). Full catalogue of HELP courses available at <http://help.elearning.ext.coe.int/#> Access to the HELP platform is subject to a registration procedure.

### Overall Objective:

Enable learners to understand the scope of the right to a reasoned judgment as part of the fair trial under article 6 ECHR and equip them with the skills necessary to implement it in both civil and criminal areas.

### Specific LOs:

Frame the right to a reasoned judgment as part of the wider right to a fair trial under Article 6 ECHR (knowledge) and as a component of the quality of justice (attitudes/values)

Familiarize with the standards set by the case-law of the ECtHR (knowledge)

Define the role of judicial professionals in upholding human rights (values/attitudes)

### Civil

Identify situations in civil proceedings that are likely to place higher demand on the reasoning of a judicial decision and frame the frame the reasoned judgments obligations (skills)

Assess quality of reasoning of national judgments (skills)

### Criminal

Identify situations in criminal proceedings that are likely to place higher demands on the reasoning of a decision and apply the standards of the reasoned judgments obligation (skills)

Assess quality of reasoning of national judgments (skills)

### Topics

#### Introductory module

- Measuring the quality of justice: an overview (CoE, EU, CCEJ, ENCJ indicators, data, and reports, including EU justice scoreboard)
- The right to a reasoned judgment as an indicator of the quality of justice and a requirement of a fair trial under Article 6 ECHR
- Relevance of the right to a reasoned judgments is relevant for the purpose of
  - o Uniform application of the law
  - o Public confidence
  - o Legal certainty
  - o Parties to the proceedings
  - o Independence and the rule of law
- The role of justice professionals in upholding human rights: a shared responsibility



- Opinion No. 11 from 2008, CCEJ Opinion no. 11/2008 and the requirements of judicial decisions:
  - o The requisite of clarity
  - o Legal and factual issues
  - o Enforcement
- The requisite of clarity in appeal judgments
- Main and secondary pleas/arguments and related reasoning obligations
- Breach of the obligation to provide for a reasoned judgement and arbitrariness
- The importance of legal reasoning in instances of changes in the case-law changes
- Optional: adequate reasoning and the recognition of foreign judgments

### **Civil module**

- Review of the 3-step tests and the concept of margin of appreciation and its implications for decisions in civil cases
  - o The notion of interference
  - o Concept of legality
  - o Legitimate aim
  - o Necessity
  - o Proportionality
- Review of ECtHR standards in relation to
  - o family related issues (also in relation to the best interest of the child)
  - o freedom of expression
  - o education
  - o property
  - o privacy
  - o labour
  - o non-discrimination
- Review of ECtHR standards in relation to first instance decisions
  - o Admissibility of evidence
- Review of ECtHR standards in relation to appeal decisions
  - o Appeals on points of law

#### Appeals on facts

- Review of ECtHR standards in relation to enforcement
  - o Delay of execution
- Analysis, assessment and discussion of the quality of reasoning of national judgements selected by the trainer

**Gender perspective and non-discrimination:** Cases involving a gender-dimension (i.e. female victims) should be included. Special attention should be paid to the gender-sensitive/blind wording of judgments reviewed and recourse to stereotypes or otherwise discriminatory attitudes should be finger pointed.

### **Criminal module**

- Review of ECtHR standards in relation to pre-trial decisions
  - o Refusal to open or discontinuation of criminal proceedings
  - o Detention on remand
  - o Further investigation measures

- Review of ECtHR standards in relation to trial decisions
  - o Admissibility of evidence
  - o Decisions on the charge
  - o Decision on the sentencing
- Review of ECtHR standards in relation to appeal decisions
  - o Appeals on points of law
  - o Appeals on facts
- Review of ECtHR standards in relation to enforcement
  - o Delay of execution
  - o Suspension of execution
  - o Amnesty applications
- Analysis, assessment and discussion of the quality of reasoning of selected national judgements

**Gender perspective and non-discrimination:** Cases involving a gender-dimension (i.e. female victims) should be included. Special attention should be paid to the gender-sensitive/blind wording of judgments reviewed and recourse to stereotypes or otherwise discriminatory attitudes should be finger pointed.

### **Methodology:**

The trainer should start from the assumption that participants have already received a standard presentation/lecture on the article 6 standards and the structure of the ECtHR judgments via the HELP course on Reasoning of judgments. The face-to-face event serves the purpose of enabling discussion and allow participants to share experiences and build skills. Lectures, therefore, should be limited to a minimum and more dynamic and engaging methodologies, such as those listed below, implemented.

- Poll: a survey might be launched some 10-7 days before the training with a view to collect the inputs from the participants as to the topics presented in the HELP courses set as pre-requisite that that they would like to tackle during the face-to-face session. Participants can also be invited to share real cases that they would like to discuss.
- Scenarios, case-studies, key questions: most of the topics and aspects listed above should be approached using short scenarios, case studies and key questions, to be worked either individually, in pairs or in small groups (depending on their complexity). They should be elaborated on the basis of the ECtHR case-law having in mind the national legislation and the possible flaws and should not be limited to decisions rendered against BiH);
- Practical work: a selection of well and less well reasoned national judgments, at different stages of the procedure, should be identified by trainers and made available to participants that individually or in small groups, should be able to identify the strengths and weaknesses of each and reformulate them in line with the standards proposed. This can be a very time-consuming exercise as it can entail the review by the participants of a lot of documents. It is fundamental, however, in guiding participants in the developments of craftsmanship skills.

**Indicators of attainment of objectives:** to set a baseline, also for the purpose of collecting information about the general level of knowledge of participants to be used when defining training needs, a pre-training test, composed of multiple-choice questions should be administered. to establish the attainment of LOs, a post-training test, replicating the questions of the first, can be administered.

**Method of certification:** a pass/fail test, encompassing at least 2-3 open questions to be answered with bulletpoints or by referring to general concepts and principles should be included. The pass/fail test will be administered at the end of the training. The results and certificate will be communicated individually after the training.

## Training on Women's access to justice

**Duration of training:** 2 days

**Prerequisites:** In-person courses delivered during first year, HELP course on Access to justice for women and Violence against women and domestic violence (total estimated duration XX hours). Participation to the in-person and online courses can be assessed by the statement of accomplishment issued by the HELP at the end of the course or the certificate issued at the end of the in-person course (not older than 4 years). Full catalogue of HELP courses available at <http://help.elearning.ext.coe.int/#> Access to the HELP platform is subject to a registration procedure.

**Overall Objective:** to help legal professionals understand the legal and other barriers in accessing justice for women and girls; to enable authorities, justice sector professionals, and civil society apply new competences on the standards on access to justice of the Istanbul Convention, in order to remove obstacles to access to justice, while ensuring that the justice chain is gender responsive, particularly for women victims of violence in line with the Istanbul Convention and other European standards.

### Specific LOs:

Understand the key and advanced concepts related to violence against women and domestic violence (knowledge and attitudes/values)

Recognize common barriers to access to justice for victims of violence against women (knowledge, skills and attitudes/values);

Refer to the key international, European and national standards in everyday work while applying a gender sensitive and victim-centered approach in violence against women and domestic violence cases (knowledge, skills and attitudes/values)

Understand the importance of co-operation and co-ordination to ensure higher standards and greater efficiency in the judicial system and better measures targeting violent offenders (knowledge and attitudes/values)

### Topics:

- Introduction to the concept of women's access to justice
- International, European and national legal framework
  - o The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
  - o Convention on preventing and combating violence against women and domestic violence (Istanbul convention)
- Discrimination on the grounds of sex and gender and gender stereotyping
- Concrete mechanisms to improve women's access to justice
- Gender sensitive approach to the practice of law
  - o Understanding violence against women and domestic violence
  - o Framework
  - o Overcoming barriers and access to justice
  - o Criminal justice response
  - o Civil justice response
  - o Alternative dispute resolution

**Gender perspective and non-discrimination:** included as a core part of the course

**Methodology:** The trainer should start from the assumption that participants have already received a standard presentation/lecture on the article 6 standards, the structure of the ECtHR judgments and the standards of the Istanbul Convention. The face-to-face event serves the purpose of enabling discussion and allow participants to share experiences and build skills. Lectures, therefore, should be limited to a minimum and more dynamic and engaging methodologies, such as those listed below, implemented.

- Poll: a survey might be launched some 10-7 days before the training with a view to collect the inputs from the participants as to the topics presented in the HELP courses set as pre-requisite that that they would like to tackle during the face-to-face session. Participants can also be invited to share real cases that they would like to discuss.
- Scenarios, case-studies, key questions: most of the topics and aspects listed above should be approached using short scenarios, case studies and key questions, to be worked either individually, in pairs or in small groups (depending on their complexity). They should be elaborated on the basis of the ECtHR case-law having in mind the national legislation and the possible flaws and should not be limited to decisions rendered against BiH);
- Role-play/role reversal: can be particularly effective to experience the themes of non-discrimination and effective enjoyment of rights;
- Moot court: enabling participants to develop their legal arguing and debate skills and help them sustain the opposite party's positions, thus having the possibility to invoke human rights protection.

**Indicators of attainment of objectives:** to set a baseline, also for the purpose of collecting information about the general level of knowledge of participants to be used when defining training needs, a pre-training test, composed of multiple-choice questions should be administered. to establish the attainment of LOs, a post-training test, replicating the questions of the first, can be administered.

**Method of certification:** a pass/fail test, encompassing at least 2-3 open questions to be answered with bulletpoints or by referring to general concepts and principles should be included. The pass/fail test will be administered at the end of the training. The results and certificate will be communicated individually after the training.

## Training on Victim's rights under ECHR

**Duration of training:** 1-2 days

**Prerequisites:** In-person courses delivered during first and second year, procedural safeguards and victims' rights in criminal proceedings (total estimated duration XX hours). Participation to the in-person and online courses can be assessed by the statement of accomplishment issued by the HELP at the end of the course or the certificate issued at the end of the in-person course (not older than 4 years). Full catalogue of HELP courses available at <http://help.elearning.ext.coe.int/#> Access to the HELP platform is subject to a registration procedure.

### **Overall Objective:**

Enable learners to understand the victim-oriented approach and to recognize and apply the standards of victims' rights in assessing the procedural and outcome (criminal and civil) justice.

### **Specific LOs:**

Define the main principles of victims' rights as developed by jurisprudence of the ECtHR (knowledge)

Apply such principles to real cases and with respect to different fields of law (skills)

Identify the victims' human rights dimensions of real-life, ordinary cases (skills)

Recognize the importance of a victim-centered approach mainstreamed into the judicial practice (skills, attitudes/values)

Assess if the domestic legislation meet the standards of victim-oriented approach in cases of gender-based violence (knowledge and skills)

Recognize interplay of justice and a victim's right to protection against repeat victimization particularly in cases of gender-based violence

### **Topics:**

- Context for victims' rights in Europe
  - o Human rights-based concept of victimization
  - o Evolution of victims' rights in international, European and national law
- Victim status
- Victims' needs: multidisciplinary and professional free support services able to meet different general and personalized victims' needs
- Victims' rights in the CoE framework and in the EU Law
  - o Right to respectful treatment
  - o Right to protection
  - o Right to legal assistance and psychological support
  - o Right to access to justice
  - o Right to restoration
- Specific victims' procedural rights
  - o Right to information
    - Right of victim to know essence of the case
    - Scope of victims' rights to familiarize itself with case materials, ground of limitations, stages of procedure

- Right to make copy of case files and exceptions
- Lack of/access to information and guidance
- o Right to participation
  - Participation in persecution
  - Right of a victim to file the motion against the decision of prosecutor
  - The conclusion of a plea bargain
- o Right to access to justice
  - Conduction an investigation
  - Discontinuance and dismissal of a prosecution
  - Participation in sentencing
  - Compensation
- Problems concerning state compensation
- Problems concerning offender compensation (lack of financial means, difficulties in the enforcement of the compensation decision; lack of systems of compensation to the victims as a criminal sanction)
- Procedural obstacles (lengthy, complex and costly procedures discouraging victims from claiming compensation)

**Gender perspective and non-discrimination:** Cases involving a gender-dimension (i.e. female victims) should be included. Special attention should be paid to the cases of gender-based violence given the fact that inadequate state response (prevention and reaction to different forms of gender based violence) amounts to systemic discrimination.

**Methodology:** The trainer should start from the assumption that participants have already received a standard presentation/lecture on the article 6 standards and the structure of the ECtHR judgments. The face-to-face event serves the purpose of enabling discussion and allow participants to share experiences and build skills on specific victim-oriented access to justice. Lectures, therefore, should be limited to a minimum and more dynamic and engaging methodologies, such as those listed below, implemented.

- Poll: a survey might be launched some 10-7 days before the training with a view to collect the inputs from the participants as to the topics presented in the HELP courses set as pre-requisite that that they would like to tackle during the face-to-face session. Participants can also be invited to share real cases that they would like to discuss.
- Scenarios, case-studies, key questions: most of the topics and aspects listed above should be approached using short scenarios, case studies and key questions, to be worked either individually, in pairs or in small groups (depending on their complexity). They should be elaborated on the basis of the ECtHR case-law having in mind the national legislation and the possible flaws and should not be limited to decisions rendered against BiH);
- Role-play/role reversal: can be particularly effective to experience the themes of non-discrimination and effective enjoyment of rights;
- Moot court: enabling participants to develop their legal arguing and debate skills and help them sustain the opposite party's positions, thus having the possibility to invoke human rights protection.

**Indicators of attainment of objectives:** to set a baseline, also for the purpose of collecting information about the general level of knowledge of participants to be used when defining training needs, a pre-training test, composed of multiple-choice questions should be administered. to establish the attainment of LOs, a post-training test, replicating the questions of the first, can be administered.

**Method of certification:** a pass/fail test, encompassing at least 2-3 open questions to be answered with bulletpoints or by referring to general concepts and principles should be included. The pass/fail test will be administered at the end of the training. The results and certificate will be communicated individually after the training.

## Training on Hate crimes and hate speech

**Duration of training:** 1.5 days

**Prerequisites:** HELP course on Hate crime and hate speech (total estimated duration 5 hours). Participation to the online course can be assessed by the statement of accomplishment issued by the HELP at the end of the course (not older than 3 months). Full catalogue of HELP courses available at <http://help.elearning.ext.coe.int/#> Access to the HELP platform is subject to a registration procedure.

### **Overall Objective:**

Enable learners to identify cases of hate speech and hate crimes and define the response of the justice system, assessing its adequacy in real cases.

### **Specific LOs:**

Define notions of hate crimes and hate speech in human rights law (knowledge)

Assess the conformity of the national legislation vis-à-vis international standards (knowledge/skills)

Apply standards and national legislation to real cases (skills)

Recognize the importance of a victim-centered approach mainstreamed into the judicial practice (skills, attitudes/values)

### **Topics**

- Review of notions of hate crime, hate speech and discrimination
  - o The link between hate crime, hate speech and discrimination
  - o Understanding bias motivation
  - o Protected characteristics/grounds
  - o Victims and perpetrators of hate crimes and hate speech

### **Hate crime**

- The international legal framework and standards
  - o CoE instruments: ECHR (articles 2, 3, 14) and ECRI
  - o EU instruments: Race Equality Directive, Framework Decision on Racism and Xenophobia, Victim's Rights Directive
  - o OSCE and the fight against hate crimes
- Procedural obligations related to hate crimes
  - o Bias indicators: what are they? Where and how to look for them?
  - o Obligations to investigate any possible bias motive
  - o The importance of a victim-centered approach
- The response of the national legal and justice system to hate crime
  - o Substantive offence, penalty enhancement provision, general sentencing provision
  - o The role of judicial professionals vis-à-vis international standards in case of missing or insufficient national legislation
  - o ECRI General Policy Recommendation no. 15

### **Hate speech**

- Freedom of expression, offensive speech and hate speech under the ECHR

- o Hate speech and rights of others
- o Hate speech and public order
- o Special categories of speech under the ECHR
- Negationism
- Incitement to violence and hatred
- Incitement to hatred based on religion/blasphemy
  - o Relevant factors in assessing hate speech
- Context, political and social background
- Intention of speaker
- Speaker's status or role
- Content of expression
- Extent of expression
- Nature of audience
- Online hate speech in the case-law of the ECHR
- Effective responses to hate speech and the risks of misuse of hate speech regulations

**Gender perspective and non-discrimination:** Gender should be reflected throughout the course. Particular attention should be paid to sexist speech, use of gender stereotypes, gender-based violence.

### **Methodology:**

The trainer should start from the assumption that participants have already received a standard presentation/lecture on the notions and standards of hate crime and hate speech (that, for the Bosnian version, refers to 2015) via the online HELP course. The face-to-face event serves the purpose of enabling discussion and tackle practical cases. Lectures, therefore, should be limited to a minimum and more dynamic and engaging methodologies, such as those listed below, implemented.

- Poll: a survey might be launched some 10-7 days before the training with a view to collect the inputs from the participants as to the topics presented in the HELP courses set as pre-requisite that that they would like to tackle during the face-to-face session. Participants can also be invited to share real cases that they would like to discuss.
- Scenarios and case-studies: real cases of social messages, articles, judgments should be used as case studies, to be worked either individually, in pairs or in small groups (depending on their complexity), enabling participants to apply the theory they should have already obtained following the online course. Cases should be selected also considering, in addition to the national legislation, the ECtHR case-law (not be limited to decisions rendered against BiH). Some of the cases presented during the online course could be the object of more in-depth analysis;
- Multimedia: examples of hate speech taken from social or other media can be easily visualized;
- Role-play/role reversal: can be particularly effective to enable participants to feel the difficulties experience by victims of hate crimes, who are often re-victimized by the system as they report crimes;
- Moot court: enabling participants to develop their legal arguing and debate skills and help them sustain the opposite party's positions, thus having the possibility to invoke human rights protection.

**Indicators of attainment of objectives:** to set a baseline, also for the purpose of collecting information about the general level of knowledge of participants to be used when defining training needs, a pre-training test, composed of multiple-choice questions should be administered. to establish the attainment of LOs, a post-training test, replicating the questions of the first, can be administered.

**Method of certification:** a pass/fail test, encompassing at least 2-3 open questions to be answered with bulletpoints or by referring to general concepts and principles should be included. The pass/fail test will be administered at the end of the training. The results and certificate will be communicated individually after the training.



## Training on Protection of property under ECHR

**Duration of training:** 1 day

**Prerequisites:** In-person courses on Introduction to the ECHR and Principles of interpretation of the ECHR and HELP course on property rights (total estimated duration 10 hours). Participation to the in-person and online courses can be assessed by the statement of accomplishment issued by the HELP at the end of the course or the certificate issued by the JPTCs at the end of the in-person course (not older than 4 years). Full catalogue of HELP courses available at <http://help.elearning.ext.coe.int/#> Access to the HELP platform is subject to a registration procedure.

**Overall Objective:** Enable learners to understand the scope of the right to property and equip them with the skills necessary to implement it in civil and administrative cases.

### Specific LOs:

Familiarize with the key principles developed by the case-law of the ECtHR and their scope (knowledge)

Recognize the importance of protection of property rights in wider system of human rights (values/skills)

Define the role of judicial professionals in upholding human rights (values/attitudes)

Learn how to identify compliance and breaches of property law standards via following and applying the “six-step” test

### Topics:

1. The scope of the rights to property
  - a. The concept and characteristics of property (traditional concept of property, movable and immovable property, rights *in personam*, intellectual property)
  - b. Protection of legitimate expectations (future possession)
2. Three rules contained within article 1. of Protocol 1
  - a. the rule of peaceful enjoyment of possession,
  - b. the deprivation of property and
  - c. the control of the use of property (exclusions and limitations of protection of property)
3. Permissible interference with property
  - a. Justifying an interference with the property
  - b. The proportionality of interference with property (“fair balance” test)
  - c. The procedural requirements of article 1 Protocol 1
4. Interaction between Article 1 of Protocol No. 1 and other ECHR Articles
5. Forms of reparation of interference with property

**Gender perspective and non-discrimination:** Gender should be reflected throughout the course. Special attention should be paid to the women’s property rights as means of economic empowerment.

## **Methodology:**

The trainer should start from the assumption that participants have already received a standard presentation/lecture on the system via the online course. The face-to-face event serves the purpose of enabling discussion and allow participants to share experiences and build skills. Lectures, therefore, should be limited to a minimum and more dynamic and engaging methodologies, such as those listed below, implemented.

- Poll: a survey might be launched some 10-7 days before the training with a view to collect the inputs from the participants as to the topics presented in the HELP course related to the principles of interpretation of the ECHR that that they would like to tackle during the face-to-face session;
- Scenarios and case-studies: each of the topics and aspects listed above should be approached using short scenarios and case studies, to be worked either individually, in pairs or in small groups (depending on their) complexity). They should be elaborated on the basis of the ECtHR case-law having in mind the national legislation and the possible flaws and should not be limited to decisions rendered against BiH);
- Moot court: enabling participants to develop their legal arguing and debate skills and help them sustain the opposite party's positions, thus having the possibility to invoke human rights protection.

**Indicators of attainment of objectives:** to set a baseline, also for the purpose of collecting information about the general level of knowledge of participants to be used when defining training needs, a pre-training test, composed of multiple-choice questions should be administered. to establish the attainment of LOs, a post-training test, replicating the questions of the first, can be administered.

**Method of certification:** a pass/fail test, encompassing at least 2-3 open questions to be answered with bulletpoints or by referring to general concepts and principles should be included. The pass/fail test will be administered at the end of the training. The results and certificate will be communicated individually after the training.

## Training on Migration and human rights

**Duration of training:** 1.5 day – 2 days with moot court

**Prerequisites:** In-person course on principle of interpretation of the ECHR and the HELP courses on Asylum and Human Rights (total estimated duration 6 hours) and Trafficking and human rights (total estimated duration 11 hours). Participation to the online course can be assessed by the statement of accomplishment issued by the HELP at the end of the course (not older than 3 months). Full catalogue of HELP courses available at <http://help.elearning.ext.coe.int/#>

Access to the HELP platform is subject to a registration procedure.

### Overall Objective:

Enable learners to understand the shared responsibility in protecting human rights of the migrants entering a country as part of mixed migration flows, thus including adult and children who are asylum seekers, economic migrants, potential victims of smuggling and trafficking.

### Specific LOs:

Learn about the mixed migration flows in BiH and Europe (knowledge)

Define the framework of the protection offered to migrants by the ECHR (knowledge)

Distinguish deprivation of liberty as opposed to limitation of movements (knowledge)

Identify the standards applicable to the detention of migrants (skills)

Discuss the application of alternatives to detention of migrants vis-à-vis national legislation (skills)

Assess compatibility of national legislation with ECHR standards (skills)

List positive obligations of the State vis-à-vis vulnerable migrants (knowledge, skills)

Discuss the human rights dimensions of return and repatriation (skills)

Recognize the importance of a victim-centered approach mainstreamed into the judicial practice (skills, attitudes/values)

### Topics

- Overview of and data about mixed migration flows in BiH and in Europe
- Scope of application of the ECHR to non-nationals
  - o Article 1 ECHR (*ratione loci*)
  - o Legitimate limitations (*ratione personae*) such as article 16 ECHR and Article 1 Protocol no. 7 ECHR)
- Vulnerable migrants: unaccompanied minors or minors travelling with adults, women and girls victims of gender-based/domestic violence
  - o Positive obligations to identify and protect
  - o Access to procedures and reception conditions
- Trafficking and the ECHR
  - o Substantive obligations to prevent harm

- o Obligations to carry out an effective investigations in cases of trafficking
- Prohibition of collective expulsions of aliens (article 4 Protocol no. 4 ECHR)
- Deprivation of liberty vs. restriction of movements
  - o confinement in transit zones
  - o reception centers
- Immigration detention (article 5.1 lett. F)
  - o General principles
  - o Vulnerable individuals
  - o Procedural safeguards (article 5.2)
- Alternatives to detention
- Expulsion and extraditions
  - o Standards applicable in cases when deportation raises article 2 and 3 situations in the country of destination
  - o Removal to a third country
  - o Procedural safeguards
  - o Cases related to national security
  - o Extradition
  - o Right to the protection of family life
- Article 39 Interim measures
  - o Applicability
  - o Effect

**Gender perspective and non-discrimination:** Gender should be reflected throughout the course, but particularly when discussing issues related to vulnerable categories of migrants and victims of trafficking. Data presented at the outset should be gender-disaggregated.

### **Methodology:**

The trainer should start from the assumption that participants have already received a standard presentation/lecture on the standards applicable to asylum seekers (the Bosnian edition is of 2017) and to trafficking cases via the online HELP courses. The face-to-face event serves the purpose of enabling discussion and allow participants to share experiences and build skills. Lectures, therefore, should be limited to a minimum and more dynamic and engaging methodologies, such as those listed below, implemented.

- Poll: a survey might be launched some 10-7 days before the training with a view to collect the inputs from the participants as to the topics presented in the HELP courses set as pre-requisite that that they would like to tackle during the face-to-face session. Participants can also be invited to share real cases that they would like to discuss.
- Scenarios and case-studies: each of the topics and aspects listed above should be approached using short scenarios and case studies, to be worked either individually, in pairs or in small groups (depending on their complexity). They should be elaborated on the basis of the ECtHR case-law having in mind the national legislation and the possible flaws and should not be limited to decisions rendered against BiH);
- Games: such as those aiming at establishing points in common between migrants and participants as to the choices that are driving migrants's projects (i.e. health situations, insecurity, lack of rights and freedoms...);
- Storytelling: with a view to emphasize the human rights dimensions of migration and migrants, the trainer should make extensive use of storytelling, aimed at knowing the stories behind each migration project and enable participants to understand the importance of treating each migrant individually and help participants connect with them, their lives and stories, identifying those

- aspects that might be important in the decision-making process they are subject to.
- Role-play/role reversal: can be particularly effective to enable participants to feel the difficulties experienced by migrants who, without even basic knowledge of the language, enter a country, are asked to comply with rules they are not familiar with and are afraid of being sent back to their countries of origin.
  - Moot court: enabling participants to develop their legal arguing and debate skills and help them sustain the opposite party's positions, thus having the possibility to invoke human rights protection.

**Indicators of attainment of objective:** to set a baseline, also for the purpose of collecting information about the general level of knowledge of participants to be used when defining training needs, a pre-training test, composed of multiple-choice questions should be administered. To establish the attainment of LOs, a post-training test, replicating the questions of the first, can be administered.

**Method of certification:** a pass/fail test, encompassing at least 2-3 open questions to be answered with bulletpoints or by referring to general concepts and principles should be included. The pass/fail test will be administered at the end of the training. The results and certificate will be communicated individually after the training.

## Training on

## European human rights standards and case-law research skills

**Duration of training:** 2.5 hours

**Prerequisites:** basic computer knowledge (self-assessment)

### **Overall Objective:**

Provide learners with the opportunity to develop confidence and skills to research European human rights standards and case-law

### **Specific LOs:**

Familiarize participants with ECHR resources available, with emphasis of those available in own languages (knowledge)

Develop practical research skills (skills)

Expand on number of resources to be used in daily work (skills)

Apply research skills to a concrete case (skills)

### **Topics:**

- Non-HUDOC resources available in the ECtHR's website (factsheets, case-law analysis, research reports, study guides, case-law information notes, Court talks and other videos)
- HUDOC and its research functionalities (including multiple filters)
- Non-ECtHR HUDOC and their functionalities

**Gender perspective and non-discrimination:** n.a.

### **Methodology:**

- live demonstration: if possible, participants are invited to use their own devices when attending the training so as to replicate the demonstration as showed by the trainer;
- case-study: a case study, touching on a controversial issue, is to be presented to participants. They will have to guide the trainer in the identification of the most efficient research path to collect updated information on the human rights standard applicable (identification of key words, sequence of research...)

**Indicators of attainment of objective:** none. Should all participants have own devices when attending the training, a non-graded competition on how to search for a given topic, the research linked to the decision of one or more case studies can be organised.



The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

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