

*Session 7.3*

*Training for Judges on Fundamental Rights*

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- 1 I am always speaking on trainee judges and prosecutors. For members of the common-law system I agree it might seem strange that judges and prosecutors are trained together but I will explain why that is, in the Austrian system.
- 2 What I will present to you today is why and how the curriculum for this training on human rights was developed in Austria. When I was a trainee judge, about twenty years ago, we had theoretical training but only on strictly judicial issues. We had no training on soft skills. We had no training on fundamental rights. We had a lot of training in civil law, procedural law, enforcement law but, for example, no internet law. This has changed since then, thank God, and thanks to engaged and enthusiastic people like yourselves. In Austria we have developed a quite advanced training program for trainee judges and prosecutors.
- 3 My presentation today is divided into five or six points. In the first part I will explain to you how one becomes a judge in Austria, how the system works, the role of the Ministry of Justice, the length of the training, and so on. After that I will give a short overview of how initial and ongoing training is organised and by whom, in Austria. The next step will be, why the training on human rights was developed, and who it was that developed the training. In Austria we have considerable experience in this training so I can tell you the obstacles we encountered in development, and what we have changed in the light of our experiences. I will tell you about the main tools in this curriculum and the difference between our training programs and others, and about our practical experience.
- 4 How does one become a judge or a public prosecutor, in Austria? For quite a time prosecutors and judges learned the same way. In Austria you must study at university for four or five years, depending on how quick you are, how intensely you study, how you engage yourself in the study. After the university degree you start with the training on the job. This training on the job, at court, is obligatory not only for judges and prosecutors but also for lawyers and notaries. So at this stage, these four professions are studying the same things.
- 5 They start with the training on the job at court. During this time, nine months, you change about every three or four months to another court. You work in district courts, higher courts and courts of appeal, in criminal and civil law matters. After this nine months you have to decide if you want to go further, to the career of a judge or a prosecutor, or if not you leave the court. If you stay there, or if you want to stay there you have to pass quite a hard exam, and a written and oral hearing. The decision as to who will become a trainee judge lies with the Minister of Justice. The basis of this decision is, on the one hand, the exam and, on the other hand, references from the judges you have worked with. These references are very, very important. You have to pass a psychological test as well. After you have passed this exam, you have to work for another about three-and-a-half years in court, training on the job. Judges and prosecutors are still together at this stage. During this time of about three-and-a-half

years, you work at district courts and courts of appeal, but also you have to work for six months in a lawyers' office, and for six months in a prosecutors' office, and you also work for NGOs, for example a victim support unit. You have to work for at least one month in a prison. So, you get a quite general education during this period of about four years.

- 6 During these four years you have not only training on the job but theoretical courses. The guidelines for these courses are organised by the Ministry of Justice. The practical organisation is done by the four courts of appeal in the four regions of Austria. They decide on the details, on the trainers, on the methodology, and so on.
- 7 After this period of four years you have the next exam, which is quite a hard one, and also a written and oral hearing. If you pass this exam you can apply for a job, and now you decide if you will apply for a job as a judge or if you will apply for a job as a prosecutor. Then the career path splits, of course.
- 8 During the training period for judges and prosecutors, these four years I have just described, the training is obligatory. For judges and prosecutors there is a general obligation to participate at training seminars but within this general obligation the judges and prosecutors are, of course, free to choose the seminars they want to attend. Such training is organised by different bodies. One of the main bodies organising training for judges and prosecutors is the Ministry of Justice, and this is the Department I work in, developing training programs for judges and prosecutors. One body, that also develops training, is the Austrian Association of Judges. Since they have no money the training they develop is paid for by the Ministry of Justice.
- 9 This group, the Austrian Judges Association, has a subgroup and this subgroup deals with fundamental rights. The subgroup had the ambitious goal of developing training modules for the initial training period in order to reach future magistrates and prosecutors with the very important subject of human rights. The Ministry of Justice supported this from the very beginning and provided financing for it.
- 10 One important issue in the developing of this curriculum was the cooperation with NGOs. Since we have the experts for the cases at hand, being our colleagues, we also wanted to find experts for the human rights side. This is why we decided to cooperate from the beginning with human rights experts whom we found within three NGOs in Austria. They are the Boltzmann Institute for Human Rights, in Vienna, the European Training and Research Centre for Human Rights and Democracy, in Graz, which is in Styria, and the Austrian Institute for Human Rights in Salzburg. These three bodies provided their know-how and their lecturers. With this team of practitioners and human rights experts we developed a handbook that contains an extensive general overview with the rulings of the European Convention on Human Rights but also a selection of Austrian cases and the relevant Austrian Supreme Court Rulings. This handbook will be used by all the lecturers and serves as a manual for all possible questions concerning human rights and the judiciary, but also containing selected cases which the lecturers may use at their own discretion.
- 11 Some of our magistrates still tend to think that human rights is something that concerns mainly the relationship between the government and the individual, and not necessarily every sitting judge or prosecutor. Awareness of judicial actions that might collide with human rights is rather higher among our criminal law colleagues because

in these matters, you obviously have to deal more with human rights interferences. After the human rights group within the Association of Austrian Judges decided to offer human rights training for future magistrates, a first round-table meeting was called in order to define the detailed content and methods of the seminar. It soon became clear that this meeting at the appropriate juncture in the training should be three consecutive days. The main aim of the human rights training is to provide theoretical knowledge regarding human rights and, perhaps more important, to apply this knowledge to practical cases so that future judges and prosecutors are enabled to identify situations in which human rights issues are at stake.

- 12 To accomplish this goal, prosecutors and judges in different fields, for example family law, civil/commercial law and criminal law, together with the representatives of the NGOs, were invited to take part in the preparation of the handbook. The judges were asked to prepare cases from their everyday work practice that they found most appropriate for the seminar. At first sight it seemed easy to find human rights related cases for prosecutors and judges dealing with criminal affairs, as the human rights conflict potential appears more obvious in cases where, for example, questions of personal freedom are concerned.
- 13 In the initial discussion among the family law judges it soon became clear that the human rights issues arise also in many cases in their field, especially under the aspect of protection of family- or private life, but also in ordinary civil law cases not only the obvious question of Article Six of the European Human Rights Convention, which guarantees a fair trial to everybody, are concerned. For example, problems of the protection of private life under Article Eight of the European Human Rights Convention and cases of video surveillance of private households is used to obtain proof for another court proceeding. Other possible cases, for example discrimination in the labour world, where Article Eight is concerned, could also pertain to human rights issues.
- 14 After collecting a number of everyday cases, we held a second round-table meeting to decide upon the most significant constellations for the human rights seminar. Together with the representatives of the NGOs we decided to create two different categories of training cases. We prepared a limited number of complex cases suitable for group work within the seminar, or even for preparation beforehand. We also chose smaller cases that will help to serve as examples for the theoretical training, providing a basis for discussion among the participants. The judges taking part in developing the handbook were asked to prepare the facts of the cases and determine the solution according to the Austrian legal background. The representatives of the NGOs then enriched the cases with information on the relevant human rights issues and sketched a methodological approach for solving the case, using that information.
- 15 This collaboration of the judges and the NGOs linked the judges' knowledge of dealing with everyday cases under the Austrian legal regime with the human rights experience and the approach of the NGOs, and proved to be a fruitful interaction.
- 16 The next step was that the NGOs finalised the theoretical part of the handbook, together with the practical short cases and the cases for groupwork, and they were collected together in an appendix to the handbook. The content of the handbook is quite a lot. It has a historical part on the development of human rights. Then there is

a section about the legal basis in Austrian law and international human rights law. The last part is examples and cases and solutions for the cases.

- 17 Because this module was the first in Austria, in a very new way to organise seminars for trainees, we held a three day train-the-trainer seminar in December 2007. For this seminar we did not only invite the future lecturers, magistrates and NGO experts but also some trainees, to get feedback from the group we want to reach. Therefore, the Ministry of Justice invited a number of trainee judges and future trainers together with the representatives of the NGOs, and the judges involved in the preparation of the handbook. In this Train-the-trainer pilot seminar in December 2007 a short overview of the training content and methods was given and also the draft version of the handbook was handed out to the participants. After a short introduction to the theoretical background we proceeded directly into the presentation and discussion of some of the prepared cases.
- 18 In order to practise the planned tandem system, which means that the cases were also presented by a member of the judiciary together with a representative of the NGO. It should be mentioned that this was highly important for the future trainers of both sides as it soon became clear that there were indeed slightly different approaches in presenting theory and practical cases. These different approaches led to intense discussion amongst the judges and NGOs which clearly demonstrated the importance of the pilot seminar for the actual training to come. Nearly half of the participants of the train-the-trainer seminar were future judges, the main target group. They were encouraged to give their feedback on the seminar structure, the cases and the methodology. As the last half-day of the train-the-trainer seminar was reserved for discussion, all participating groups and the NGOs, the members of the judiciary and the future judges, were able to give their critical opinion.
- 19 The main results of the discussion were that the trainee judges asked mainly for shorter and simpler cases, that will occur in their future careers as judges and prosecutors, so that they will be able to deal with them in the right way. The future trainers [sic] emphasised the importance of well-structured cases and clear solutions to provide consistent results for future seminars. Here you can see how trainee judges think and how judges and prosecutors think, the one wanting easy cases and the other wanting structured cases. All of the participants pointed out the importance of the well-prepared cooperation among the tandem trainers.
- 20 After the train-the-trainer seminar the handbook was completed by the members of the judiciary and the NGOs, and distributed to the future trainers. In April 2008 the first human rights training for future magistrates took place in Graz, in Styria, and since then about eight seminars have taken place.
- 21 I mentioned that we immediately found out that the three-day module would be the best for this training. During the three-day seminar, the following topics are covered: legal sources and dogmatic principles, specific matters of interpretation of human rights cases, commensurability and interpretation of national law according to human rights principles. One point should be typical: Austrian cases and procedures that might collide with human rights, for example proceeding on stalking, or provisional matters, especially in the area of Austrian law against domestic violence, confiscation of goods etc.

- 22 To continue, criminal procedural law and potential human rights conflicts, civil procedure law and potential human rights conflicts, and an important point should be the databases of the European Union and the Council of Europe, the ECHR and Article Six and its consequences for civil and criminal procedures.
- 23 The first seminar we held, we divided it into six half-days. The first and the second half-day were reserved for introduction to the topic, of course, by means of a brainstorming exercise in small groups. It included questions such as, where are we as judges and prosecutors confronted with fundamental rights issues in our daily work? Providing an overview of the legal bases, examination of cases in two small groups and comparative presentation of the results before the entire group. The third half-day was reserved for discussion of questions concerning procedural law, such as the initiation of judicial review or ordinances and laws for their constitutional nobility by the constitutional court, or the preliminary ruling procedures before the European Court of Justice. The fourth and fifth half-days were reserved for exploration of those fields of procedural law which regularly led to interference with fundamental rights, and discussion of selected cases. The first half-day was devoted to criminal law, the second half-day to civil law. The sixth half-day was reserved for a comprehensive interdisciplinary presentation of Article Six of the European Convention on Human Rights, focusing on the question as to which areas the Article has an impact on criminal and civil procedural law, like, keeping minutes, translations, consulting hours, and so on.
- 24 During the entire seminar we worked with the tandem system, as I already explained, meaning that we have always one lecturer from the judiciary and one expert from an NGO working with human rights. This is a rather extensive and complex system but by applying it we can make sure that we have the experts for the actual Austrian cases and the experts for the human rights issues always right there to ensure a high level of quality of teaching. We had to fight a lot in the Ministry of Justice to get the money for this tandem system. Also, these models are not organised centrally but regionally in the four different venues of Austria. We do not have one fixed staff of people who travel from venue to venue, but employ our regional judges and prosecutors, and the NGOs I mentioned before are situated in different regions of Austria. We do this because they enjoy a higher credibility, and really know the people they are training. By working like this we also ensure a bigger pool of experts and can spread the know-how through all the courts districts, and since they all work with the handbook the same level of education is guaranteed.
- 25 Since April 2008, as I said, we have done about eight seminars which means that about 160 trainee judges have attended this seminar. We get a great response. I think it is a great success, this seminar, but we have already changed the agenda a little bit. It is a work in progress. For the last seminar, for example, we invited interpreters to present their experience in court interpretation as it collides with human rights issues.
- 26 The matter of cost is quite interesting. I do not know how it will be next year but for the time being the six or seven representatives from the NGOs cost us 2,000 Euros for the whole three-day seminar, including the preparation of the handbook. You can see this is not too much. You can see that it is important also for them to work with the judiciary and the future judges. It cost approximately 4,000 Euros for the accommodation for trainers and trainees. This is why we do not do the seminar in seminar rooms in courts, or whatever, because we think it is important that the group

stays together for the whole three days, throughout the whole seminar. It makes it much more intense and for this theme I think this is an important consideration.