



European Network of Councils
for the Judiciary (ENCJ)

Réseau européen des Conseils
de la Justice (RECJ)

Mr Filippo Donati, President of the ENCJ,
**Contribution to the EU-level conference on
“Initial training of justice professionals serving the rule of law”**
22-23 February 2022, Bordeaux, France

Workshop topic: **“The rule of law training versus training on ethics, mismatch of the concepts”**

Ladies and gentlemen,

I am very grateful that I have been invited to participate in the workshop aiming at debating on the training of justice professionals on ethics, its diversity depending on the profession, as well as the extent to which the training on ethics contributes to the creation of rule of law culture, being one of the elements of this fundamental principle.

My name is Filippo Donati, I am the ENCJ President. The ENCJ is the body which unites all Councils for the Judiciary, or similar autonomous bodies, of the EU Member States and represents them in the EU. Central to the mission of the ENCJ is the reinforcement of independent, yet accountable judiciaries in the European Union to guarantee access to fair, independent and impartial courts. To this end the ENCJ is working systematically to develop standards and guidelines for the governance of the judiciary.

Today, I would like to speak to you about **the rule of law training versus training on ethics, mismatch of the concepts. I would like to start with some general remarks.**

Traditionally, the role of a judge is to apply the law or resolve conflicts by the implementation of the law. The duty to act lawfully guarantees against any arbitrary behaviour on the part of judge.

Nevertheless, in our European societies, the judge's role has evolved: it is no longer confined to being "the mouthpiece of the law"; the judge is also, to a certain extent, a creator of law, which requires responsibilities and ethical rules consistent with this evolution.

The society is changing, and this has an influence on the role and position of the judiciary. New challenges for judges and prosecutors are emerging.

Moreover, our societies are demanding more transparency in the functioning of the public bodies. Society's expectations of judges call for a reflection on judicial ethics.

I believe that we should ask ourselves some following questions:

- What makes a good judge?
- Should a judge/prosecutor follow ethical rules? If yes, which ethical behavioural rules should apply?
- How can we give an adequate support to judges and prosecutors?
- Do we believe ethics are trainable? What should be the objective of the training?

Let's start answering the first question - what makes a good judge? We might have different ideas on the qualities of a good judge.

I personally do believe that the core values that make a good judge are independence, impartiality and integrity. However, before discussing the qualities of a good judge, we should focus first on judicial appointments.

Why is the appointment process of judges important?

First, the manner of appointment is important to safeguard judicial independence. In a country where there is a political involvement in the appointment procedure the neutrality of the judiciary is endangered.

According to the Venice Commission Rule of Law checklist¹, the judicial appointment is a starting/reference point for assessing the degree of respect for the rule of law.

The Venice Commission states that "choosing the appropriate system for judicial appointments is one of the primary challenges faced by the newly established democracies, where often concerns related to the independence and political impartiality of the judiciary persist" (CDL-AD(2007)028).

However, even in some democratic countries, judicial appointments are subjected to interferences from other state powers. The examples of appointments show that whether the independence of the judiciary is respected depends very much on the political situation. Different countries' constitutions and other laws provide for different requirements, but it is crucial to ensure that the best candidates are selected. Judges in politicised courts face increasing pressure to decide cases in a way that suits executive branch best, therefore they are more likely to decide cases ideologically, disregarding all moral and ethical standards.

An objective and transparent appointment process is an important element to keeping and gaining public trust in the judiciary.

Second, the right persons have to be selected and appointed. Judicial appointments should only be based on merit and capability. Selection competencies should include intellectual and personal skills of a high quality, as well as the proper work attitude and the ability of the candidate to express itself. The ENCJ standard in this regard is that personal skills include skills such as the ability to assume responsibility in the performance of his/her duties as well as qualities of equanimity, independence, persuasiveness, sensibility, sociability, integrity, unflappability and the ability to co-operate. There should be an effective process in place for assessing whether candidates possess the relevant personal skills.

Once appointed raising awareness for judicial ethics is a continuous process.

Judicial ethics consist of common values essential to the judicial role (such as Independence, integrity, impartiality, reserve, and discretion, diligence, respect and the ability, to listen,

¹ Available at: [default.aspx \(coe.int\)](http://default.aspx(coe.int))

equality of treatment, competence and transparency) and personal qualities of the judge that need to be demonstrated such as wisdom, loyalty, a sense of humanity, courage, seriousness and prudence, an ability to work and an ability to listen and to communicate effectively. Judges need to be (made) aware that his/her professional behaviour, private life and conduct in society have an influence on the image of justice and public confidence. Behaviour outside of the courtroom can also be at issue.

In 2019, the ENCJ asked judges through a survey across Europe ² if they thought that judges in their country adhered to the ethical standards. The issues included in the survey concerned the adherence of judges to ethical standards, while the other two aspects are about the way the judicial authorities address judicial misconduct and judicial corruption. The results of the survey showed some important aspects of the accountability of the judiciary.

As to the behaviour of judges, the results showed that the differences among judiciaries are relatively small. The country average was 6% of respondents disagreeing with the proposition that judges adhere to the ethical standards.

Upholding and promoting judicial ethics have to be seen as part of the accountability. The judiciary must be accountable and comply with ethical guidelines. Once a judge has been appointed, judicial ethics for judges guide the judge on the moral obligations arising out of his position. They serve to emphasize the common, founding values of the judge's work, preventive principles and personal qualities and to respond to the public's expectations. Judicial ethics should also be regarded from the perspective of the positive ethics through the dissemination of rules and values to guide judges in their actions. For this purpose, a code of conduct and ethics should be drawn up by judges or a Council for the Judiciary.

Training on ethics

In addition, besides having codified rules on ethics I believe that there are some ethical rules which should be a topic of continuous awareness raising for instance through training or intervention and dialogue between peers.

One must agree that magistrates are used to being in courts.

A magistrate must appreciate that it is a process of continuous education and that it should be reminded of the high ethical standards that one is expected to maintain. While following the established practices is generally well accepted, attending seminars and workshops on the ethics of judges and prosecutors and sharing ideas with fellow magistrates could also provide a valuable opportunity for sharing of experiences and learning from each other. Therefore, a magistrate must stay updated not only on the changes in the laws, but also to keep update on judicial ethics.

The aim of providing training on ethics does not mean a judge should be partial. When judges function in their judicial capacities, they are bound to act impartially, without revealing their personal feelings. Instead, judges should see that the trainings help them to be reminded of the highest ethical standards.

What happens if the judiciary is not accountable?

² See figure 32 and 33 of the report, available at : [Data ENCJ 2019 Survey on the Independence of judges.pdf \(amazonaws.com\)](https://amazonaws.com/Data%20ENCJ%202019%20Survey%20on%20the%20Independence%20of%20judges.pdf)

A judiciary that is not accountable to society will not be trusted by society and will thereby endanger its independence and the rule of law. Therefore, every judge should be accountable, should follow ethical principles that should be laid down in codes of judicial ethics. Those codes should inspire public confidence in judges and the judiciary.

Training on rule of law

Besides participating into initial trainings on EU law and judicial ethics, judges could also benefit from trainings on the rule of law.

By taking part in trainings provided at national and EU level, the judges and prosecutors knowledge on the key elements of the rule of law, and their practical implications in the professional and private lives should increase.

Trainings of judges and prosecutors helps to achieve a wider knowledge on how to protect and uphold the rule of law values in their every-day work. In particular, awareness of individual guarantees that a judge and a prosecutor can apply in their work in order to reinforce the rule of law, such as integrity, independence, competence, appropriate appointment or disciplinary procedures.

A changing society calls for a resilient judiciary and resilient judges. Judges that can withstand external pressure whilst at the same time have the ability to adjust to the changing needs of society. The performance of the courts is a crucial element in a functioning society.

What can the judges themselves do in the case of serious breaches of the Rule of Law? Judges should be aware of the standards of judicial ethics and see judicial ethics as a last resort for defending judicial independence on their own.

On the individual level resiliency also means the ability of a judge to cope with stress resulting from isolation, workload pressures, safety and security concerns, highly emotional cases, public scrutiny, and media pressure. Training and other instruments should provide for coping mechanisms for judges. Judges need to be offered training to deal with these issues both when entering their career but also continuously.

At a recent ENCJ event quite a number of Councils raised the issue of a need to look at working conditions for judges and mindfulness. Another recent concern is that the attractiveness of a judicial career seems to be decreasing. Setting up programmes that acknowledge the challenges for judges could address these issues and contribute to a resilient judiciary.

On the European level dialogue and interaction between judges is key to discover which values are shared and which practices can be commonly implemented to enhance trust in the administration of justice in Europe.

More than ever before, the Judges in Europe need to support each other and voice solidarity. The Judiciaries of Europe share a common responsibility to uphold the fundament of our common EU legal order, especially the Rule of Law and the independence of the Judiciary within that order.

The European Commission strives to promote effective justice in terms of independence, quality and efficiency as a condition for upholding the Rule of Law. The training of judges is an indispensable element of promoting and enhancing the quality of justice. European co-operation between judicial authorities and the judiciaries is of high importance in maintaining

the conditions necessary to enable the rule of law to prevail in member states. It needs continuous support by the EU Institutions.

The EU is a Union of shared values. This also applies to the judiciaries. Each judge needs to have a thorough understanding of these shared values in the field of justice. To achieve this objective, ENCJ will continue its cooperation with EJTN to promote training issues such as judicial ethics and knowledge of justice systems of other Member States.

Thank you for your attention.