

Online Transnational Training Workshop on:

Accountability and Freedom of Expression of Magistrates and Attorneys in Europe

17 June (13.45 - 18.00 CET) and 18 June (13.30 - 17.30 CET) 2021

Host: **Centre for Judicial Cooperation (CJC)** | European University Institute (EUI)

Introduction

What is the transnational training about?

This Transnational Training Workshop will discuss why accountability is important for ensuring the rule of law and how it can be ensured while preserving the freedom of expression of magistrates, as well as their independence and impartiality. Justice reforms in several Member States have also impacted on the system of disciplinary, civil and criminal liability of magistrates, raising issues of disguised external political pressures on the magistrates. While disciplinary actions should serve to strengthen the rule of law, they can also be used to break it. The Court of Justice of the European Union and the European Court of Human Rights have increasingly dealt with questions regarding the compatibility of domestic accountability systems with provisions in the EU Treaties, EU Charter of Fundamental Rights and the European Convention of Human Rights (e.g. C-564/19, C-585/18, C-624/18, and C-625/18, C-83/19, C-127/19 and C-195/19, C-355/19; *Baka v Hungary*, *L.P and Carvalho v Portugal*), and several other cases are pending before these Courts on the compatibility of magistrates' accountability mechanisms with European principles of judicial independence. This workshop looks at the most recent European standards on *de iure* and *de facto* accountability of legal professions (in particular, judges, prosecutors and attorneys), and freedom of expression as resulting from: the case law of the European Court of Justice of the EU and the European Court of Human Rights; European primary and secondary law; and Council of Europe instruments.

The following issues will be addressed during the training, in light of the most recent practice from the EU Member States: evaluation, promotion, and removal of magistrates; disciplinary, civil and criminal actions against judges and prosecutors; freedom of expression of magistrates, including the freedom of judges of interacting with the Court of Justice of the EU under Article 267 TFEU, and freely expressing their views on the CJEU preliminary rulings; challenges faced by domestic courts, prosecutors and attorneys in ensuring the respect of CJEU standards on disciplinary, civil and criminal sanctions against magistrates; standards necessary to ensure that accountability mechanisms fulfill both responsibility and public trust, without endangering independence and impartiality.



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The Transnational Training Workshop aims to support judges, attorneys and prosecutors to foster cooperation by providing knowledge on the substantive and procedural tools on accountability, independence and impartiality as offered by the overlapping EU and Council of Europe based standards.

The training is offered within the European Commission's funded project TRIAL - TRust, Independence, Impartiality and Accountability of judges and arbitrators safeguarding the rule of Law under the EU Charter (Horizon 2020, project no. 853832, JUST-JTRA-EJTR-AG-2018). The TRIAL Project provides training activities and tools for judges, lawyers, prosecutors, and arbitrators on the European rule of law, mutual trust, judicial independence, impartiality and accountability (see the dedicated website [here](#)).

Programme

17 June (13.45 - 18.00 CET) Accountability of Magistrates and Attorneys

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| 13.45 - 14.00 | <i>Welcome Address and Introduction of the TRIAL Workshop</i>
Gábor Halmai , Scientific Director of the TRIAL Project, Professor of Comparative Constitutional Law EUI |
| 14.00 - 15.15 | Setting the Scene - Why Accountability is Important? The Other Side of the Coin to Ensure the Rule of Law? (Open access session)
<i>Moderator:</i>
Gábor Halmai , Scientific Director of the TRIAL Project, Professor of Comparative Constitutional Law EUI |
| 14.00 - 14.15 | Understanding Social Legitimacy of the Judicial Power in Times of Constitutional Reckoning
Tomasz Koncewicz , Professor of European and Comparative Law University of Gdansk |
| 14.15 - 14.35 | The Heterogeneous Systems of Accountability of Magistrates in Europe: Accountability to Whom, For What and in Which Way?
David Kosař , Associate Professor Masaryk University |
| 14.35 - 15.00 | Judicial Accountability and the East - West Divide
Edith Zeller , President of the Association European Administrative of Judges |
| 15.00 - 15.15 | <i>Questions and Answers</i> |
| 15.15-16.45 | Panel: A European Perspective on Accountability and Independence of Judges, Prosecutors and Attorneys (Open access panel)
<i>Moderator:</i>
Aida Torres Pérez , Professor of Constitutional Law Pompeu Fabra University |
| 15.20 -15.40 | Of Codes of Ethics and Conduct: Discussing Transparency and Accountability of Magistrates and Attorneys
Elaine Mak , Professor of Jurisprudence Utrecht University |
| 15.40 - 16.00 | Standards of Accountability and Independence of Magistrates and Attorneys in the Jurisprudence of the CJEU
Michal Bobek , Advocate General Court of Justice of the EU |
| 16.00 - 16.20 | Standards of Accountability and Independence of Magistrates and Attorneys in the Jurisprudence of the ECtHR
Saša Zagorc , Professor of Constitutional Law and Human Rights University of Ljubljana |
| 16.20 - 16.30 | <i>Questions and Answers</i> |
| 16.30 - 16.40 | <i>Break</i> |

16.40 - 18.00 **Hypothetical Case on Accountability and Disciplinary Proceedings** (Closed session for participants of the TRIAL project)

Discussion in three parallel Working Group sessions:

WG 1 – Moderator

Marcin Michalak, Assistant professor, Department of European Law and Comparative Legal Studies | University of Gdansk

WG 2 – Moderator

Raluca Bercea, Professor at Law Faculty | West University of Timisoara

WG 3 – Moderator

Madalina Moraru, Research Fellow | CJC

Conclusions of the Working Groups in the Plenary Sessions

18 June **(13.30 - 17.30 CET) - Accountability and Freedom of Expression of Magistrates and Attorneys (Closed session for participants of the TRIAL project)**

13.30 *Moderator:*

Gábor Halmai, Scientific Director of the TRIAL Project, Professor of Comparative Constitutional Law | EUI

13.35 - 14.00 Presentation of the E-learning Materials on Accountability of Magistrates and Attorneys

Madalina Moraru, Research Fellow | CJC

Mariavittoria Catanzariti, Research Associate | CJC

14.00 - 14.10 *Questions and Answers*

14.10 - 14.30 **Setting the Scene:** The Right to Freedom of Expression of Magistrates and its Challenges for Judicial Independence and Accountability

Viktor Vadász, Judge at Metropolitan Court Budapest and Member of the National Judicial Council

14.30 - 14.40 *Questions and Answers*

14.40 - 15.40 **Roundtable Session: Current Challenges to the Exercise of Freedom of Expression of Magistrates and Attorneys and the Role of the Media**

Moderator:

Tiago Fidalgo de Freitas, Executive Coordinator and Associated Research Fellow | CIDP – Lisbon Centre for Research in Public Law

Giulio Vigevani, Professor of the Law on Information and Communication | Università degli Studi di Milano-Bicocca

James MacGuill, First Vice-President of the Council of Bars and Law Societies of Europe (CCBE)

Julia Laffranque, Director of Programmes of ERA (European Law Academy), Former President of the Consultative Council of European Judges (CCEJ) and Judge at the Supreme Court of Estonia

Petros Alikakos, Representative of the European Judicial Training Network (EJTN)

Nuria Diaz Abad, Former President of the European Networks of Councils for the Judiciary (ENCJ), Member of the Spanish Judicial Council

João Miguel, Director of the Centre for Judicial Studies, justice at the Supreme Court of Justice, former agent of the Portuguese State at the ECtHR, former President of the CCPE, former EuroJust member, and former prosecutor

Questions and Answers

15.40 - 15.50 *Break*

15.50 - 17.20 **Hypothetical Cases on Freedom of Expression of Magistrates**

Discussion in three parallel Working Group sessions:

WG 1 Moderator

Mariavittoria Catanzariti, Research Associate | CJC

WG 2 – Moderator

Raluca Bercea, Professor at Law Faculty | West University of Timisoara

WG 3 – Moderator

Federica Casarosa, Part-time Professor | CJC

17.20 - 17.30 *Concluding Remarks*

Gábor Halmai, Scientific Director of the TRIAL Project, Professor of Comparative Constitutional Law | EUI

Participants

Petros Alikakos	European Judicial Training Network (EJTN)
Raluca Bercea	Law Faculty, West University of Timisoara
Michal Bobek	Court of Justice of the EU
Federica Casarosa	European University Institute, CJC
Mariavittoria Catanzariti	European University Institute, CJC
Nuria Diaz Abad	European Networks of Councils for the Judiciary (ENCJ); Spanish Judicial Council
Tiago Fidalgo de Freitas	CIDP – Lisbon Centre for Research in Public Law
Rita Gião Hanek	CIDP – Lisbon Centre for Research in Public Law
Gábor Halmai	European University Institute
Tomasz Koncewicz	University of Gdansk
David Kosař	Masaryk University
Julia Laffranque	ERA (European Law Academy), Consultative Council of European Judges (CCEJ); Supreme Court of Estonia
James MacGuill	The Council of Bars and Law Societies of Europe (CCBE)
Elaine Mak	Utrecht University
Marcin Michalak	University of Gdansk
João Miguel	Centre for Judicial Studies
Madalina Moraru	European University Institute, CJC
Aida Torres Pérez	Pompeu Fabra University
Viktor Vadász	Metropolitan Court Budapest, National Judicial Council
Giulio Vigevani	Università degli Studi di Milano-Bicocca
Saša Zagorc	University of Ljubljana
Edith Zeller	Association European Administrative of Judges