

Mr. President

Mr. Moderator

Esteemed Colleagues

It is a very special honour to speak today before you.

The Consultative Council of European Judges, since its first meeting in the year 2000, has shown its substantial prominence in promoting judicial independence and in defending the Rule of Law.

Your opinions are milestones in many of the issues that have involved the judiciary; the quality of your labours exemplify a distinctive advance in fundamental areas not only in the old Continent, but worldwide.

I am here in the capacity of President of the European Association of Judges, a branch of the International Association of Judges.

National associations from 43 countries in Europe presently comprise the EAJ. We are proud to be, by far, the biggest and most representative association of the judiciary in the old Continent.

Symbolically, we decided to maintain a 44th member: YARSAV, the Turkish Association of Judges and Prosecutors which was dissolved by the Government in tragic circumstances indicating that most of YARSAV's board members have been in prison for more than a year through long and agonizing months.

Its President, Murat Arslan, the winner of the Vaclav Havel Price, awarded, by the Parliamentary Assembly of Council of Europe, precisely for his commitment to the Rule of Law and Judicial Independence. He is the living personification of the "dark clouds" that are hovering in Turkey and in some European regions regarding the Judiciary; a recent survey conducted by the EAJ amongst its 43 countries shows that around 50% of the associations declared that the situation of Justice has worsened in the past 5 years and only 10% detected an improvement.

This is mainly due to tendencies to limit the independence of Justice through attempts to politicise the judicial councils and the courts, mainly in Bulgaria (with a cruel attack on the association of judges) and in Poland (where judicial independence is in peril with the attempt of the massive dismissal of judges and prosecutors). Budgetary constraints associated in some cases with salary decreasing (mainly in southern Europe –

like in Portugal, Greece, France and Belgium) are additional causes for the challenges to a judicial independent and security.

Moreover, corruption, which is a major challenge to democracy, remains a widespread phenomenon in some European countries.

The Turkish tragedy is represented by the dismissal of more than 4000 judges and prosecutors, and the detention of many hundreds of them. The judicial system in Turkey clearly illustrates the necessity to follow and implement the opinions of CCJE, namely the very first one, in 2001, which explains that a judge is, in the performance of his or her functions, no-one's employee. Opinion n° 8, from 2006, standing that the States must refuse to establish "tribunaux d'exception" or legislation incompatible with universally recognised rights in the context of administrative actions to prevent acts of terrorism or finally Opinion n°18 (2015), expresses, with precision, that "decisions of the legislative or executive powers which remove basic safeguards of judicial independence are unacceptable even when disguised."

After this brief incursion in the worrisome situation of judges especially in Turkey, let me directly address the topic of this conference.

The first important note is related with the immense responsibility of the judiciary in preventing judicial corruption.

International standards have been developed to support judicial integrity and the prevention of corruption in the Judiciary.

The Bangalore Principles on Judicial Conduct and the Universal Charter of the Judge, from International Association of Judges, approved in 1999 and to be revised this month in order to streamline and solidify its concepts, provides an excellent framework for judicial conduct.

With prescience, article 11 of the United Nations Convention against Corruption emphasizes the crucial role of the judiciary in combating corruption and recognizes that in order to play this role effectively, its members must act with integrity. Also the Doha Declaration, adopted at the UN Congress in April 2015, underlined the principles of judicial integrity and reaffirmed the commitment of States to "make every effort to prevent and counter corruption".

The judiciary must be in the vanguard each time we are dealing with questions about the integrity of public administration.

This is our indisputable duty: an absolute commitment towards professional ethics.

Adela Cortina, a well-known philosopher, emphasized that corruption - etymologically related with the idea of 'destruction' - is encouraged by the weakening of the so-called 'internal good', described as the reason that justifies the existence of any given profession. Since judges exist precisely to accomplish the essential goal of delivering justice to their fellow citizens, a commitment to integrity must form a genetic trace of our professional code.

On the other hand, exemplary ethical behaviour by the legal professionals, particularly judges, has an essential role to play in the legitimacy of the judicial system which is itself based on a bond of trust with the community.

Judicial integrity is fundamental to democracy because it implies an open debate about professional conducts, and inspires all of us to go beyond the mere obedience to functional duties, as prescribed by Law.

But Judicial integrity also strengthens and reinforces Judicial Independence because a judiciary susceptible to external pressures or susceptible to be influenced by other State Powers, or internally by judicial managers, fails in its pledge to Integrity.

In brief, impartiality depends on judicial independence but the last presupposes judicial integrity.

For that reason the IAJ and the EAJ have adopted since 2015, as a strategic pillar to their work, a commitment towards Judicial Integrity under the suggestive motto "Judges Against Corruption".

Since Judicial Integrity extends beyond state borders, perhaps it epitomizes the paramount subject to assimilate in the Globalization phenomena in an era of transnational laws and multilevel constitutionalism.

During the conferences and seminars organized by the IAJ in Latin America, there was a clear and strong demand for a greater variety of technical tools and resources to support the development and implementation of measures to strengthen judicial integrity.

Analysing each proposed sub-topic in more detail let me share some brief thoughts on these matters.

Judicial Integrity should be taught from day one of the training of judges.

If there exists a formal structure for judicial training it must create specific courses orientated to those topics. The Spanish Judicial School, working with the so-called “micro cases”, proved to be a valuable tool in that respect. In parallel it is recommended that there be the implementation of peer-to-peer Advisory Committees providing guidance and counsel, in a private, and even anonymous manner, for real life situations. One best practice example to point out in that context is the Commission of Judicial Ethics in Latvia. A dedicated confidential service is deemed an important professional tool to help judges proactively in resolving problems early and appropriately.

Also in this area the phenomena of social media presents new and difficult challenges.

The question is how to use social media not only in an institutional manner – Some judiciaries have now twitter accounts or Facebook as tools for immediate communication with civil society – but especially in the daily life of judges.

In recent years there have been recurrent examples of delicate situations due to social media activities by judges, in particular those of the younger generations, engaging in practices that could be seen as causing social discomfort and criticism sometimes leading, in the judicial framework, to disciplinary action.

The posting in Facebook or Instagram of photographs taken in social occasions with lawyers that worked in the same courts on cases of high public profile, the exchange of comments about judicial cases between judges, the publishing of harsh remarks about public figures, (in particular politicians involved in criminal proceedings, or even to fellow colleagues) are concrete examples of circumstances that caused public uproar and lead to the intervention of Court Presidents or Judicial Councils, for instance.

It is absolutely necessary to deal with such circumstances by creating guidelines that allow judges to better decide the respective stances and behaviours, also by implementing face-to-face judicial ethics workshops.

As a possible point of departure for an inevitable discussion on these topics, let me suggest three different circles of requirements to partake on social media. Those circles sometimes overlap and can be in some circumstances the same. In a nuclear, essential, circle, it must be clearly proscribed to comment, in any given manner, on judicial cases or judicial decisions, namely those which are still pending in court. Equivalently it should be assumed as inappropriate to disclose behaviour, conduct or comportment, in public or private life, that could conflict, or seen to conflict, with the

judicial requirement of impartiality, concerning any person, especially litigants or lawyers, involved on judicial cases.

In a second level it must be accepted that a judge, as any citizen, is entitled to a certain degree of participation on society. Common sense is the paramount consideration to define the measure of this involvement. The existence of peer-to-peer advisory bodies or training using real case scenarios are advantageous to better define the borders delimited, to some extent, with the culture and mentality of the respective country.

Finally in a more open level the participation of judges must be accepted as unrestricted; for example to participate in areas related with leisure times like all sort of different hobbies, photography, literature, art, must be freely recognized and admissible.

On the past decades efforts were provided in order to adopt Codes of Ethics in different countries. Perhaps it is time to move on to a different level, by trying to take the dust off some of these documents, properly aligned in shelves, and to delineate a more pragmatic approach.

The goal is to bring those ethical pledges into judicial daily routines; like the Questions & Answers (Q&A) proposed by the Swedish Association of Judges to deal with concrete doubts in practical situations.

With particular relevance on these topics allow me to highlight the Global Judicial Integrity Network, a project of UNODC, aimed to generate a platform to support judiciaries, namely, in the exchange of best practices, creation of a database of relevant resources; provision of peer-to-peer advisory services, training and other capacity-building support, etc.

The EAJ is providing assistance and constant support to this project in a manner also to demonstrate our total commitment to the fight against corruption in the judiciary.

The future existence of a Global Network that is easily accessible is a major factor to enhance Judicial Integrity worldwide; CCJE Opinion in this regard should constitute a nuclear catalogue of the guidelines to be inscribed in the future network.

That said a word of caution is required when analysing Judicial Integrity in these troubled times.

In different countries and regions it has been noticed that sometimes references to a more transparent judiciary, and declared measures to fight corruption, are, in fact, attempts from Governments to undermine judicial independence and to avoid the proper scrutiny of their own private or public misdoings.

In this sense it is also, in my personal opinion, crucial that the scope of any envisaged opinion, or recommendation, from CCJE denounces conditions that, in fact, paralyze judicial integrity. Let me emphasize that the 2016 Report of the IAJ's 1st Study Commission on measures to promote integrity and combat corruption within the judiciary specify two key threats to judicial integrity.

The first key threat relates to court resourcing manifested by inadequate working conditions for judges or inadequate resourcing of the court system in general with an excessive workload for judges.

The second key threat identified by the Study Commission relates to attempts by external parties to exert influence over the exercise of judicial functions. The politicisation of judicial appointments, for instance in Superior Courts but also in Presidents of the First Instance Courts, is a particular area of concern.

Judicial integrity will always profoundly depend on a robust judicial independence, aloof from political pressures or interference. Coincidentally in a very recent assessment during the 4th Evaluation Round, GRECO identified serious problems with respect to judicial independence and weaknesses in the structures separating the three branches of power.

Expanding Judicial Integrity will definitely depend on the prerequisite of guaranteeing judicial independence even if this assertion can be contrary to the real intentions of on-going reforms in some European countries.

Dear Colleagues

In our days there arises an impressive paradox between the amplified demand for Judiciary in our "liquid" societies, to use the well-known expression of Z. Bauman, and the customary political distrust towards the judiciary. In democracies the judicial power is, at the same time, both indispensable and unbearable; therefore our assignment must be the reaffirmation of a systematized rationality which, facing the novel issues of the present days, delivers robust responses for the consolidation of Rule of Law.

Judicial Integrity is a cornerstone, yesterday like today, for the future of judges.

The European Association of Judges is on the frontline on an international level regarding the more recent initiatives about Judicial Integrity. In that sense we are closely working with United Nations in its Global Judicial Integrity Network, again a future impressive tool for the judiciary worldwide, participating also with GRECO on this very week on the Conference about Lessons learned from Fourth Evaluation Round,

scheduled to take place in Prague, on 9 and 10 November 2017, under the motto “Go for Zero Corruption”.

Definitely the present commitment of Consultative Council of Europe Judges to analyse this topic in the near future, providing your standard brand of excellence, represents a guarantee for the judiciary and, in the end, for our democratic values and for Rule of Law.

EAJ want to publicly salute your initiative and expresses its willingness in cooperating in the manners CCJE found more suitable.

Your success will be the victory of all of us.

José Igreja Matos