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JUDICIAL ACADEMY

REPUBLIC OF SERBIA
MINISTRY OF JUSTICE

EUROPEAN UNION'S SUPPORT TO THE JUDICIAL ACADEMY

Annex 8

MANUAL FOR JUDICIAL ACADEMY MENTORS

MANUAL FOR JUDICIAL ACADEMY MENTORS

INTRODUCTION

The following work is the output of the task developed in 2017 under Component 3.3 of the project “Enhancing Educational Activities and Improvement of Organizational Capacities of the Judicial Academy” funded by the European Union, managed by the Ministry of Finance of the Republic of Serbia and implemented by the British Council in consortium with the International Foundation for Administration and Public Policies of Spain (FIIAPP).

The description of this Component 3.3 is as follows “Prepare a ‘Manual for JA Mentors’ in order to improve their working methodology, especially with regard to transfer of knowledge and assessment of students, and support the Judicial Academy in organizing the promotion of the Manual through seminars and workshops”

For purpose of this report, the following legal texts and documents have been taken into account:

- Law on Judges; Ministry of Justice (“Official Gazette of the RS”, No. 116/08, 101/10, 88/11 and 106/2015).

- Law on the Judicial Academy (“Official Gazette of the RS” No. 104/2009 and 32/14 decision CC).

- Law on Public Prosecution (“Official Gazette of the RS” No. 116/08, 104/2009, 101/2010, 78/2011 –sd Law 101/2011, 38/12 - decision CC 121/201, 101/2013, 111/2014 –decision CC and 117/2014).

- Rules on Criteria for Selection of Lecturers and Mentors at the Judicial Academy

- Technical Paper. Training for Serbian Judges and Prosecutors on Ethics and the Prevention and Detecting Corruptions. Assessment and Recommendations (2014)

- Guidelines for Initial Training of Judges and Prosecutors (EU Leonardo da Vinci Partnership Project 2011)

- Equal Treatment Bench Book (Judicial College UK , 2013)

- EJTN Handbook on Judicial Training Methodology in Europe (2016)

PURPOSE OF THE MENTOR MANUAL

The importance of this manual is related to the fact that judges' initial training in Serbia primarily consists of an internship, in which the role of the mentor obviously is crucial.

Article 25 of the Law of Judicial Academy states that initial training shall imply organised acquisition of practical and theoretical knowledge and skills, understanding the role and basic principles of actions of judges and deputy public prosecutors for purpose of independent, professional and efficient performance of the office of a judge in a misdemeanour and basic court and that of a deputy public prosecutor in a basic public prosecutor's office.

The Serbian Law on the Judicial Academy designs a well-balanced judges' initial training system which fulfills European standards in two ways:

a) first, the law establishes an entrance exam in the Judicial Academy, that means, in judges' and prosecutors' initial training. This exam is based on objective criteria, as is the general rule in European continental law countries.

b) second, it foresees an on-the-job training in courts and public prosecutors' offices.

In this second aspect, the Serbian system differs from the model applied in certain European countries (France, Spain, Poland, Portugal…) whose judicial initial training takes place within the premises of a big institution in which the trainees receive courses and, sometimes, lectures. The Serbian system is close to the one applied in some other countries (Germany, Austria, The Netherlands …) in which for reasons related either to territorial size or to tradition (or to both), the education of futures judges and public prosecutors consists mainly of an internship that is condcuted in the workplace with the indispensable help of a mentor who is himself a senior judge or public prosecutor.

On the other hand, mentoring, or internship, is a methodology especially suited for training in competencies. We can briefly recall that competencies should be understood as combination of knowledge, skills and attitudes, needed to carry out a specific (or a complex) task in a certain context in view of reaching specific results.

Knowledge should be understood as a set of facts, concepts, ideas, principles, theories and practices, related to a field of practice, work or study; skills can be considered as a series of capabilities, learned or acquired through training, needed to perform actions by applying knowledge; and attitudes can be understood as the physical, mental or emotional capacites necessary to perform a task.

In case of Serbia, admitted trainees have already proven their legal knowledge on the entrance exam and, therefore, initial training –mentorship- has to concentrate on the two other components of judicial competencies as described above – skills and attitudes. This does not mean, of course, that there is no room for the acquisition of legal knowledge during judicial initial training. If a gap in this field is detected, for instance, if a new law comes into force, the focus might change to acquisition of knowledge, but it cannot be the main goal of mentorship.

Since aquisition of competencies is the goal of professional initial training, mentoring should be considered as the most adequate learning methodology for judges' and public prosecutors' initial training. And it becomes also evident that the mentor plays a crucial role in it, especially when it comes to skills and, even more, to attitudes.

Indeed, a practising judge or public prosecutor is especially well positioned to transmit future judges and public prosecutors the skills they need to perform their duties because those skills are precisely their everyday professional tools. Only a "plus" of teaching talent is required. And, regarding attitudes –the third component of "competencies"- only this kind of mentor, namely, only judges and public prosecutors, can possibly transmit them to their future colleagues because those professional attitudes inevitably involve values and, as we have known since Aristotle's Nicomanchean Ethics, if there is any chance for virtue transfer (and the values that they imply), it is by way of example.

All this implies that every senior practitioner is not at the same time a good mentor. Only those judges and prosecutors who are ready for an intense professional contact with young and naturally inexperienced colleagues should be selected for this task. Furthermore, mentor must have the didactical skills to be able to motivate and encourage trainees.

It is also obvious that a judge or a prosecutor strugglging with his regular workload is not a suitable mentor. Guiding the trainee during a period of several weeks or even several months through the intricacies of procedural rules and matters of judicial administration requires indeed an important investment in time and reflection. Remuneration for mentoring should never be the main incentive to undertake this kind of training at the workplace.

And finally, a good mentor should have compentence and capacities for objective assessment of performance of the trainee in a form of a written report submitted at the end of the internship, as these reports become later on an important part of the overall evaluation of the performances of the future judge or prosecutor. The mentor has to be close to the mentee but, at the same time, in a balanced and difficult position, he/she should be able to objectevily evaluate him/her because the final decision about the lifetime appointment might depend, amongst others, on proper assessment of mentors during an internship.

The Manual for Judicial Academy Mentors is designed to help an experienced judge or prosecutor to train trainees of the Judicial Academy, that is, train his/her future colleagues.

A mentor should always bear in mind that he will become a model for young judges and prosecutors who will develop their work habits and a judicial or prosecutorial style based on his/her example and this imprint will probably remain in them for future years and maybe even for rest of their careers.

HOW TO USE THIS MANUAL

The enclosed manual is intended to be a practical tool to assist mentors in professional training of mentees. It is intended to help mentors give answers to the most important questions and challenges that their future colleagues might face.

This manual seeks to include the kind of information that might provide certainty to all participants -mentors and mentees-, regarding the development of the initial training through time and its evaluation. It contains tools, such as, the evaluation of the mentors by the mentees, directly connected with the improvement of the training.

It is divided into four sections:

a) First section has a clear institutional component. Its intention is to define the mentoring scheme focusing on the Mentor and his functions, Coordinator and its functions, Mentor' Day, work environment and procedure in situations of mentorship crisis (unavailability, absences of Mentor…).

b) Second section deals with main issues in mentoring and advices on how to deal with them. It provides assistance to mentor on how to teach oral and written skills;

how to communicate ethics; it contains a brief description of the portfolio and its function; and an explanation on evaluation, its purpose, goals and objectives.

c) Third section is divided in four parts; each one refers to the different phases of mentoring that future judges and prosecutors must go through: the criminal court, the civil court, the prosecutor's office and the misdemeanor court. Each one of these parts contains a short narrative about the contents of each stage of the mentorship and a checklist including the topics to be covered in each one of them. It also consists of related topics belonging to the field of judicial ethics and the recommendations for the mentor in view of helping him/her transmit correspondent values, together with the documents necessary for that purpose.

d) Fourth section refers to the last initial training period which takes place in commercial courts, on duty courts, family courts, and, additional time in prosecutor’s office.

In each one of its parts, this Manual contains also the documents and instructions needed to fill in the portfolio and the evaluation questionnaires.

Together with its permanent parts, the Manual also contains removable components that should be changed for each generation of new trainees: the evaluation sheets and the specific cases included as examples or basis for reflection.

This manual should be used as an open text, as a set of suggestions and proposals that practice and experience will surely complete and overcome.

THE ROLE OF MENTOR

The main goal of mentoring is to guide and support new judges and prosecutors during the initial training. The mentor plays a crucial role in ensuring that the learning acquired by the trainee is effective and focused on the competences that judges and prosecutors need to demonstrate. The mentor should facilitate the professional development of future judges and future prosecutors in hands-on and practical way demonstrating the relevance of the issues taught.

Mentors maintain a primary responsibility for assisting new judges and prosecutors by familiarizing them with pertinent topics, including the parameters of the judicial and prosecutor mentoring programme, employment procedures and policies, ethical considerations, and tips for getting by in a judicial community. The mentor's approach must be adjusted to accommodate different personality types and learning styles of future judges and prosecutors.

A successful mentoring programme promotes public confidence in the integrity and impartiality of the judiciary.

The mentor must be a guide, coach and a role model for the mentee so he/she has to exhibit an appropriate job behaviour, attitudes and social skills and introduce mentee to leaders in the profession.

The mentor provides mentee with support, encouragement, listening ear, constructive feedback and suggestions for improvement and shall exhibit professionalism, ability to plan and organize, good communication skills and good coaching skills

A mentor is responsible for maintaining confidence, sharing knowledge, skills and information in order to stimulate acquisition of knowledge as well as to assist mentee in their overall mastery of job.

A mentor must be understanding, supportive, trustworthy, empathetic, open-minded, reform-minded and committed and he/she has the responsibility to bring to attention any ethical issues (such as conflicts of interest) that may arise during a mentoring relationship at the earliest opportunity.

The mentor must observe job performance of the mentee and offer corrective feedback.

Thus, mentor's role can include the following tasks:

- Providing information about the bench, policies and protocol, sharing his/her knowledge about how to work more efficiently.

- Listening, questioning and gathering information from the trainee about their existing competences.
- Supporting the process of learning and personal development
- Encouraging the trainee to take responsibility for his/her own development
- Supervise daily work of mentees
- Give the mentee feedback using the competence framework, if necessary challenging inappropriate behaviour or prejudices
- Report any trouble that might appear in the course of initial training to the coordinator
- Reports on evaluation of mentee’s work

MENTOR COORDINATOR

The mentor coordinator role is essential part of the Judicial Academy mentorship programme. This person will encourage, guide and support the mentor judge and prosecutor during his/her duties and he/she will be in permanent and close contact with the mentees. He/she must be motivated and dedicated and will be entrusted with a variety of responsibilities.

His/her functions are:

- To act as intermediary and liaison with the Judicial Academy in every task related to the mentorship, both for mentors and trainees.

- To coordinate the work of all mentors in his/her responsibility, in collaboration with the Judicial Academy.
- To be the point of contact with the Judicial Academy and to coordinate with mentors the seminars that the mentees must attend during the mentorship and the organization of the remaining external activities.
- To oversee personally learning process of each trainee in his/her responsibility, taking particular care in provision of training in issues regarding professional ethics.
- The mentor-coordinator shall manage issues related to material resources in order to ensure that the mentee has appropriate material resources to perform his or her activities in the workplace with dignity.
- To notify the Judicial Academy of any changes in the implementation of the mentoring program and the reasons thereof.
- To supervise the filling in of the questionnaires by the mentors and to send them out to the Judicial Academy, in order to ensure that they are completed in accordance with the guidelines established in each case with a view to ensuing application of uniform evaluation criteria.
- To monitor the documents included in the Portfolio for purpose of the final evaluation.

Although mentors have been appointed based on their experience and personal qualities, there will be rare occasions when the mentoring relationship either fails to develop positively or deteriorates after a particular event. The mentor-coordinator will attend both, mentor and mentee, and help them find a convenient solution. If this is not possible, coordinator will propose to the Judicial Academy a change of mentor.

Measures should be taken in order to make sure that the coordinator is available for his or her duties, taking into account that he or she has to make compatible the work

as a judge or public prosecutor, the functions of mentor and the task of coordinator. A reduction of cases allocated to the coordinator is advisable.

In order to ensure the achievement of these aims, the mentor-coordinator will arrange at least the following meetings:

Meetings

WITH MEMBERS OFJUDICIAL ACADEMY

Before starting the mentorship

The coordinator will meet with the Director and Staff of the Judicial Academy to present them the initial training plan and at this point each mentee will be allocated to the mentor.

After each evaluation

The coordinator will meet with the JA Director and Staff to report the results of the evaluation and to discuss any concerns or changes that need to be made.

At the end of mentoring

The coordinator will meet with the JA Director and Staff to analyse final results of the mentoring program assessment and the results of the questionnaires wherein the mentees are assessing their mentors. They will also analyse all documents included in the Portfolio.

Yearly

-The mentor coordinator will organize the Mentor' Day each year, in agreement with the Judicial Academy.

WITH MENTORS

Each mentor-coordinator in Belgrade will meet with all mentors in his/her responsibility.

Each mentor-coordinator in Nis will meet with all mentors in his/her responsibility.

Each mentor-coordinator in Novi Sad will meet with all mentors in his/her responsibility.

At the beginning of the mentoring

Once the mentorship training starts, the mentor-coordinator will hold a meeting with mentors in his/her responsibility to find out about their needs, expectations and objectives as well as to make acquaint them with the teaching program, its objectives and the evaluation system. He/she will also solve doubts about the Manual for Judicial Academy Mentors.

Before the evaluation

Mentor-coordinator should ensure that all questionnaires have been duly completed (middle and final evaluation questionnaire filled in by the mentors and the mentor assessment questionnaire by the mentee).

After the evaluation

Mentor-coordinator will share with each new mentor of different stages of the mentorship the evaluation questionnaire filled in by the previous mentors evaluating the mentee.

WITH MENTEES

Once the mentorship training starts, the mentor-coordinator will hold a meeting with the trainees in his/her responsibility to find out about their needs, expectations and objectives as well as to acquaint them with the teaching program, its objectives and the evaluation system.

On this initial meeting, the coordinator will distribute questionnaires for first and second self-assessment to the mentees.

The First self-assessment questionnaire filled in by the mentee during the second week of each internship is send to the coordinator.

At the end of each internship, the coordinator will collect, in a closed envelope, the questionnaire filled in by the mentee concerning mentor´s performance (questionnaire for the mentee) and the second self-evaluation questionnaire filled in also by the mentees that serves to measure their progress during the mentorship.

Mentor-coordinator will meet privately with the mentees in case there are any problems in their relationship with the mentor or an obstacle that might hinder normal development of the mentorship.

PANEL OF COORDINATORS

1 mentor-coordinator at the Basic Court - Criminal Division Belgrade

1 mentor-coordinator at the Basic Court - Civil Division Belgrade

1 mentor coordinator at the Prosecutor´s Office Belgrade

1 mentor coordinator at the Misdemeanour Court Belgrade

1 mentor coordinator in Novi Sad (judge)

1 mentor coordinator in Novi Sad (prosecutor)

1 mentor coordinator in Nis (judge)

1 mentor coordinator in Nis (prosecutor)

ADE CIVIL	s:
ADE CRIMINAL	s:
ADE PROSECUTORIAL OFFICE	s:
ADE MISDEMEANOUR	s:

AD (PROSECUTOR)	s:
AD (JUDGE)	s:
ROSECUTOR)	s:
JDGE)	s:

MENTOR'S DAY

The Judicial Academy of Serbia will organize Mentor's Day every year.

Mentoring in Judicial Academy of Serbia has come of age; there is serious evidence that it provides added value to the training.

Throughout this day, mentors and experts in mentoring share their views and knowledge on mentoring futures judges and prosecutors.

The reason lies in growing demand for knowledge about the mentoring methodology about evidence-based work.

This event will last one day and will be divided in two parts:

1. In the first part, educational sessions will be provided by experts in mentoring methodologies and experts in adult learning.
2. In the second part, a workshop will be organized where mentors can share experiences and problems they experienced in transferring oral and written skills, ethics as well as problems related to evaluation. This workshops aims to encourage reflection of followings dimensions:

- Study your teaching methods for purpose of personal improvement (re-examine them regularly)
- Question your personal theories and beliefs (critical analysis)
- Consider alternative perspectives and possibilities (learning conversations)
- Continue to improve your teaching (professional learning)
- Enhance the quality of your teaching (effective practice)
- Maximise the learning potential of trainees (inclusive practices)
- Try out new strategies and ideas (innovation)

A whole day filled with mentoring!

WORKING ENVIRONMENT

Physical environment and place of employment of the trainees

A trainee must have a place located close to that of the mentor. In case the same mentor works with several mentees, they must located close together to have access to the same physical environment, so that they would be able to share gathered professional experience.

The acquisition of legal knowledge and judicial skills in different spheres of the jurisprudence requires that the mentee is from the beginning included in the same

panel where their mentor is serving so that the latter could obtain direct impressions about the work of mentees, their ability to weigh up the facts to the case, to discuss the subject of the trial and to prepare for the hearings.

During their initial period, the trainees may take advantage of his proximity to the mentor and consult the latter on a range of administrative and professional issues.

The educational function performed by the mentor requires a permanent and fluid communication with the mentee. He/she should have easy access to the mentor for any questions.

Therefore, the right place to locate the mentee, whenever it is possible, is in the mentor's office. In case material circumstances prevent this, another location must be found that allows an easy access to and consultations with the mentor and that presents the material conditions necessary for the mentee so that he/she can discharge their corresponding functions with dignity.

In the course of the trial, the mentee should be placed besides mentor, so that he/she can receive instructions and panel's comments, while he must use appropriate attire for this purpose.

Time for undertaking mentoring activities

The mentee must comply with the judicial and prosecutorial laws determining the schedule of assistance in the judicial body or the prosecutor's office. Generally the assistance is scheduled from Monday to Friday from 7.30 h to 15.30 h every week. The mentee must accompany the mentor in all steps of the proceedings even when they fall outside of working hours.

Vacations: Each mentee will be entitled to 25 days and one or two additional days of annual leave depending on their professional background to be enjoyed in accordance with the guidelines of the Judicial Academy and the needs of the service.

Also, the mentees are entitled to some free days which are determined by the Judicial Academy.

Leave of absence, unavailability of the mentor or transfer of the mentor to another position

It is not necessary to initiate administrative measures or issue orders in cases where mentor is unavailable for up two weeks. In such case, the mentor will communicate the issue to the coordinator and the coordinator, after consulting the mentee, will find another mentor for this short period. In that case, one mentor can attend two mentees.

In case of prolonged absence of the mentor, reassignment to another court or resignation from the mentorship program, the coordinator must propose solution by summoning the Judicial Academy, which in turn appoints a new mentor. The new mentor should conduct a meeting with the mentee and should carry on with the process of training and assessment of knowledge and skills acquired by the mentee in performance of judicial duties. It is strongly recommended that the said meeting be also attended by the outgoing mentor.

It is crucial that:

- The coordinator is informed in due course of such a change in order to minimize the period of time during which the mentee is to work without mentor.
- Judicial Academy is informed as soon as possible in order to request the assistance of coordinator and forward to the newly appointed mentor all the relevant materials and documents for concluding a contract and for facilitation of the preparation process.
- Other judges assist and cooperate in the process of mentorship, until appointment of a new mentor.
- The new judge or prosecutor selected as the new mentor should go through a mentorship training course in the Judicial Academy.
- The mentor should make himself available even when he/he is absent, by giving the mentee their phone number and e-mail address.
- Such cases should be resolved as quickly as possible.

<u>Crisis during the mentorship</u>

No conflicts or crisis situations were observed in the first generations of mentees. The commitments undertaken by mentors bind them to use much tact and sensitivity when working with their younger colleagues and to trying to inspire the same kind of attitude toward themselves.

If, in spite the above measures, a crisis emerges in the relationship between the mentor and the mentee, one which cannot be overcome and which is detrimental to the mentee’s training, it must be brought to attention of the coordinator and the

Judicial Academy, who are bound to assist the mentor and the mentee in speedy resolution of the situation. If this proves impossible, a new mentor must be appointed in the manner and with the effect described in the previous case (leaves of absence and unavailability of the mentor).

ORAL SKILLS (MOCK TRIAL/SIMULATIONS)

GOALS

The main objective is to familiarize the trainee judges and prosecutors with different interview techniques relevant to the conduct of a hearing, oral requisitions or chairing of hearings.

The mock trail provides opportunity to discover a communicational dimension of trial, introduces futures judges and prosecutors to the complex courtroom dynamics that occurs in the trial process. Just like in a real trial, multiple courtroom challenges are raised simultaneously.

By participating in Mocks Trials, trainees are introduced to complex trial dynamics that occurs in a courtroom and to the skills needed to respond to them and conduct a fair and efficient trial. These skills include controlling the conduct of attorneys and other trial participants, focusing and directing the trial process and dealing with “acting out“ defendants, difficult witnesses, for instance. The judge is also given tools needed to respond to and deal with issues of justice that pertain to race and gender, bias and judicial ethics, preserving principles like impartiality, equality, respect and other.

The trainee works not only with the procedural framework regarding the treatment at the hearing but also with the basic rules of the interview, such as: objectivity, establishing a relationship with the defendant and the parties, listening, ensuring a professional attitude, preventing incidents, all in view of ensuring a just and relevant judicial process in accordance with Article 6 of the European Convention on Human Rights

If it is possible, each mock trial should be filmed to enable the trainee to identify the strengths and weaknesses for purpose of “debriefing“.

PREPARING MOCK TRIAL (Mentor guidance)

Before the hearing: preparing roles in the judicial process

Mentor will be looking for the following types of behaviour:

The mentee should obtain and read all relevant paperwork prior to the mock trial and read all relevant statements and reports as required for the hearing

The mentor and the mentee should check the court files with special attention to the names of the parties representatives and witnesses (if known) to identify whether there is a conflict of interest on account of prior knowledge, potential bias or other disqualifying factors.

The principle of an unbiased and impartial court will thus be protected. Relationships and knowledge that could risk compromising these principles should be taken into account. How such issues could be resolved without compromising the rest of the court or the rights of any of the parties.

Checking to identify unusual or potentially complex cases and then seeking clarification about procedures to be adopted and principles to be followed.

Discussing and agreeing with the mentee on a suitable distribution of tasks and agreeing practicalities before entering the courtroom.

What documents will provide the information and guidance needed for the day’s sitting: relevant bench book, national and local guidelines or protocols. When and how these documents should be use to aid decision-making.

The range of practical and procedural issues that should be considered at various stages in the proceedings: preliminary applications and processes (e.g. reporting restrictions and who must be/can be present in the courtroom).

The role of the Prosecution Office, Police, Defence, Victim and Witness services, prisoner escort service, should also be addressed.

Performance criteria

Mentor will be looking for the following types of behaviour:

Focusing mentee's attention on what is going on in the court room and demonstrating communication skills needed to encourage participation in view of effective communication. These communications skills are:

Empathy

(Empathy is the quality of relating to other people's feelings, perspectives, and world view. Empathy involves finding some common ground upon which to establish a relationship with another person.)

Judges can adopt the following approaches to establish empathy:

- Asking questions to court participants that indicate an interest in their position
- Relating events to court participants' lives
- Acknowledging not only the facts of a case, but people's emotional responses to cases or court events
- Conveying a sense of caring, compassion, and respect for all court participants
- Acting in a trustworthy, credible manner
- Being aware of their own biases and predetermined ideas.

Respect

(Effective communication and a problem-solving approach are characterized by judicial respect for the dignity of all people in a courtroom. Respect is dynamic: a judge's respect for a defendant can in turn generate that defendant's respect for the judge and courtroom. This mutual respect can be the foundation on which to create a judge-defendant relationship that in turn can positively encourage a defendant's progress and outcomes).

To foster mutual respect in their courtrooms, judges can use the following techniques:

- Speak slowly, clearly and loud enough to be heard by everyone
- Refer to defendants as "sir" or "ma'am", or by title and name, rather than by first name, the word "defendant", or by case number

- Pronounce names correctly; when in doubt, ask court participants for guidance in pronouncing names
- Speak in words and tones that convey concern for the defendant as a person, without pity, disdain or obvious condescension
- Refrain from rushing or interrupting court participants
- Refrain from sarcasm
- Have high expectations: hold defendants accountable for their words and actions; expect them to be on time; refuse to accept excuses, or inconsistent information
- Treat all participants consistently and fairly, allowing all defendants and observers to see that they are treated "the same as everybody else"
- Pay attention to body language: sit up straight; make and maintain eye contact with defendants while they speak and while speaking to them
- Encourage dialogue rather than making speeches
- Model appropriate language and behaviour

Active listening

(By actively listening to people in their courtrooms, judges give participants a sense of voice and the opportunity to tell their stories. A judge's active listening enhances participants' sense of fair procedure and thus fosters the court's credibility and relevance, making it more likely that people will respect court decisions and orders. Active listening also involves engaging with the offender. It may also involve listening for what's not said and, where appropriate, inquiring about obvious gaps or inconsistencies in his or her testimony)

Judges listen actively when they:

- Give participants the opportunity to speak, listen attentively, refrain from rushing speakers, and seldom interrupt.
- Ask clarifying questions and make comments that acknowledge they want to know about and understand a person's position
- Refer to that person's position in their reasons for judgement
- Repeat a litigant's last few words to reinforce that they are listening and that they understand what the litigant is saying
- Acknowledge and validate the victim's experience when this is communicated to the court
- Invite the victim to speak
- Listen for and address "cognitive distortions". Avoid passive language that may prevent offenders from taking responsibility for their actions, require offenders to recount what happened in their own words: to force them to take ownership of the event and minimize chances of their later denying a problem, judges can request that a defendant admit that he or she committed the offence and explain what happened.

- Read verbal and non-verbal cues, such as facial expressions, body language, and/or tone of voice that could signal a participant's discomfort, confusion, or emotional state.
- Maintain active, attentive body language: eye contact, upright posture, focusing on the speaker.
- Ask court participants if they have any questions.
- Show that they are listening by taking notes, asking questions or paraphrasing.

Non-coercion

(A person is more likely to succeed when she or he is internally, rather than externally, motivated. Participants in the court who perceive that their choices are non-coerced tend to function more effectively and with greater satisfaction than those who feel coerced, and may respond negatively)

Invoking the following stances will also help judges to reduce the sense of coercion:

- Favouring positive pressures, such as persuasion and inducement, over negative pressures, such as threats and force; balancing negative with positive pressures.
- Wherever possible, fostering participant's sense of autonomy and responsibility by soliciting input regarding terms for conditional and postponed sentences, parole etc. and regarding others terms and obligations imposed by the court.
- Fostering self-efficacy and motivation to change by helping individuals define goals, and understand how to overcome barriers in the way of attaining those goals.
- Highlighting discrepancies between individual's current behaviour and his or her goals by asking open-ended questions, listening reflectively, expressing affirmation and support of the goals, and eliciting self-motivational statements.
- Avoiding arguing with the individual, which can create defensives and be counterproductive; rather than becoming confrontational, judges can listen with empathy and allow an individual "to remain in control, to make her or his own decisions, and find solutions for her or his problems"

Non-paternalism

In many cases, a judge may suspect or be aware of a problem promoting criminality, such as an addiction or mental illness. A paternalistic attitude, however, is not likely to facilitate an individual's acknowledgment of such problems, nor will it solve the problem. Such an approach - preaching to an offender, telling him or her what the problem is and what to do about it, or condescension - can be offensive, reinforce denial ,foster resentment, and cause a judge's efforts to backfire.

Clarity

(Making it easier to understand. There are a number of techniques judges can use to communicate more effectively with people with limited literacy skills in the courtroom)

When speaking, they can do the following to make it easier for people to understand them:

- slowing down
- communicating verbally as much as possible
- speaking clearly and repeating important information
- supplementing oral information with a written note that can be taken away and read over in private
- previewing or reading aloud documents in the courtroom
- adapting language levels
- using plain language instead of “legalese”
- translating specific legal terms when they do come up
- repeating important information, even if it seems redundant
- asking court participants whether they understand and ask to repeat back in their own words what was just said (example: “You are required to sing and promise that you will. If you do not keep the promise there will be consequences. Since this is important, I would like you to tell me in your own words what you have agreed to do”)
- adopting informal spoken language
- using short sentences and clear language
- using words consistently
- using the active rather than the passive voice (“We understand” v/s “It is understood”)
- avoiding strings of synonyms (“all and every’’)
- using informal connectors to link thoughts and sentences
- using first and second person (I, you) more than third person (one)

Specialties: Litigants in person and Children and vulnerable adults

<u>Litigants in person</u>

In some cases, individuals exercise their right to conduct legal proceedings on their own behalf. In this case the judge must be aware of the feelings and difficulties experienced by these individuals and be ready and able to help them, especially if a

represented party is being oppressive or aggressive. Also the judge or prosecutor should maintain a balance between assisting and understanding what the litigant in person requires, while protecting their represented opponent against the problems that can be caused by the litigant in person's lack of legal and procedural knowledge.

In this case, the judge must be sensitive and prepared as appropriate to offer short adjournments to allow a litigant more time to read or to ask anyone accompanying the litigant to help them to read and understand documents. Also judges should not interrupt, engage in dialogue, indicate a preliminary view or cut an argument in the same way that they might with a qualified lawyer.

Children and vulnerable adults

Children and vulnerable adults under stress have been shown to experience much higher levels of communications difficulty in the justice system than was previously recognised. In those cases, the judiciary should be alert to vulnerability, even if not previously flagged up, an indicator may arise. Also, the judiciary must be flexible about arrangements that include, e.g., request that all witnesses be asked „very simply phrased questions" and „to express their answers in short sentences" to make it easier for the defendant to follow the proceedings.

In any case, the judge or prosecutor should be alert to safeguard concerns when dealing with a child or vulnerable adult and addressing them through effective planning and proactive enquires, having contingency plans if things go wrong in ways affecting the witness' welfare (e.g. regarding the timing of the vulnerable witness's evidence or prioritise vulnerable witness cases).

Finally, effective use of special measures could be adopted by judiciary: avoiding confrontation (special separate waiting areas), emotional support and refreshing witness memory.

Debriefing or feedback with mentees after mock trial performance

During this discussion the mentor, encourages the trainee to take responsibility for his own development and gives the mentee feedback on the basis of the competence framework. The mentor should also use meditational questions that can help mentee:

a. Hypothesize what might happen
b. Analyze what worked or didn't
c. Imagine possibilities

d. Compare and contrast what was planned with what ensued

Some meditational questions stems include…

- What's another way you might…?
- What would it look like if…?
- What do you think would happen if..?
- How was…different from (like)…?
- What's another way you might..?
- What sort of an impact do you think..?
- What criteria do you use to..?
- When have you done something like… before?
- What do you think..?
- How did you decide (come to that conclusion)?

Other questions that facilitate discussion include:

-What were the strong and weak points of each side?

-What additional information would have been helpful?

-What was the most believable witness? Why?

- Are there other ways in which the problem could have been settled? What would have been the advantages or disadvantages?

In any case, the mentor will use "open" suggestions, that mean they (1) are expressed with invitational, positive language and voice tone, (2) are often expressed as a question to invite further thinking, (3) are achievable enough to encourage, but not to overwhelm. Some examples of suggestions may be to describe an anecdote (What I've learned from my experience).

ORAL SKILLS´S EVALUATION SHEET

1. Has the mentee utilized effective style in presenting her/his argument?

2. Has the mentee presented clearly a persuasive argument of the case?

3. Is the mentee clear and succinct in his exposition and does he have clarity of expression when questioning?

4. Has the mentee listened and followed up on witness´s answers?

5. Has the mentee displayed appropriate attitude with witnesses and partners and has he shown interest, attention and empathy at the court?

6. Has the mentee responded appropriately to objection and has he given proper responses to motions?

7. Has the mentee maintained a good eye-contact, faced the person head on, paused a few seconds between each question, given time for answering and showed confidence in his/her exposition while questioning?

8. Has the mentee been aware of ethical considerations at the courtroom behaving with humanity, patience and courtesy with witnesses, victims, defendants and other people involved in the court?

WRITING SKILLS

The main goal of this section is to help trainee judge and prosecutor write legal document in a proper way. Precision and clarity are the main concerns in judicial writing. Precision is important because judges and prosecutors write for posterity, so it is important to think how their words might be used and that they write in manner that will forestall misuses. Mentees should acquire ability to write simple, clear and straightforward prose, to think through what is it that they want to say and to say just that and nothing else.

Another point to focus on is structure. A sound opinion is a reflection of logical process of reasoning from premises through principles to conclusion. That organization will be the road map that enables reader to follow reasoning from the beginning to the end without getting lost. An opinion that omits steps in the reasoning essential to its understanding will fail to serve it purpose.

The judge and the prosecutor must avoid pompous writing in their resolution and indictments, such as arcane, florid language or expressions of irrelevant erudition.

Mentor should teach mentees that brevity promotes clarity. Writing that makes its points in few words is more likely to be understood than writing that is lengthy. In addition, writing succinctly also forces mentee to think clearly and focus on what he or she is trying to say. Mentor has to understand that judicial writing should be direct. Mentees should be able to use simple, declarative sentences and short paragraphs most of the time, but they can also vary sentence length and structure where appropriate for emphasis or contrast. Mentees should also use active voice. Therefore, mentor should teach mentees to avoid constructions like “it is said, it is

argued” and so on, and to weed out gratuitous adjectives and eliminate unnecessary adverbs. Mentee´s writing should be succinct and direct.

It is important that the mentor show the mentee that even complex ideas can be expressed in simple language. To express an idea in simple language requires that the mentee has understood the idea fully, enabling him or her to break it down into its essential components. Judges and Prosecutors should avoid using Latin expressions, legal jargon but at the same time they should use elegant words so the reader can easily understand the indictment, the resolution or another legal opinion.

Another mentor´s task is to teach mentees that judges and prosecutors must strive to be objective about their writing and to read every paragraph carefully. They should ask themselves questions like: Have I said precisely what I intended to say? Is there a better or clear way to say it? Does the thought flow clearly and logically? Will the reader understand it?

Mentees should learn that editing an opinion involves striking unnecessary words and facts, rewriting unclear sentences, eliminating repetition, reorganizing and making their opinion cleaner and sharper. In editing their opinion, mentees should not focus only on language, grammar and style.

In case of judges, they must also:

- Check for internal consistency
- Go back to the introduction to see whether the opinion has addressed all of the issues and answered the questions formulated therein
- Reread the statement of facts to see whether it covers all the facts significant for the decision and no other
- Review legal reasoning to see if the opinion has addressed in logical order the issues that need to be addressed
- Consider whether the conclusion derives from the reasoning.

In case of prosecutors, drafting of an indictment requires close attention to:

- realities of the case, and none at all to the theoretical legal possibilities which might arise.
- evidence in support of allegations written with clarity.
- avoidance of duplication
- risk of unnecessary complications for the judge and the parties involved

Guidelines to improve clarity of judges and prosecutor´s writings:

Description

Description tells how something is, in its external and material aspect, or in its internal or mental dimension. Some rules have to be taken into account:

- Descriptions have to be ordered, precise, exact and clear
- They have to follow an order in space (from upwards downwards, from outside to inside), in importance (from the main to the accessory) or in–size (from bigger to smaller).
- The descriptions will use the appropriate vocabulary. They relate to proper noun so as to describe either the object or the concept. Adjectives will moderate the qualities and properties.
- They have to be concise, allowing you to capture more clearly the important and distinctive aspects of the object described.

Narration

A narrative involves telling an event which has happened at a particular time and place and in which some actors have intervened. The narration of facts occupies a transcendental importance in judgments and in indictments.

- The account must be focused on the events, complete in the enumeration of people and circumstances, orderly, clear and concise.
- The narration of facts should be a clear explanation of what happened, who did what, how, where or when, avoiding subjective assessments. The narration of the facts and the legal reasoning must always appear separately.

The reasoning or argumentation

The argument is the type of discourse characteristic of judges. It provides the reasons for a decision. The object of the argumentation is to convince. Thus any argument must take into consideration that the recipient is not a legal professional but the citizen who will suffer the effects of the judgment, in particular, if the citizen loses the case. To that end it should be recalled that:

- The argumentation has to be explicit, clear and it must use an understandable language
- The argumentation and the conclusions must appear in different parts of the judgment.

Paragraph

The paragraphs are a group of sentences that because of their content, their subject or their form are separated from other paragraphs by a full stop.

Paragraphs define and segment the information contained in a text into internally consistent small units. Good management and proper organization of paragraphs essentially contributes to well-built judgments and facilitates their reading and understanding.

However one of the most frequent defects in legal professionals is misuse of this unit of text. To avoid this we propose the following:

- Paragraphs should be short. If paragraphs are too long it becomes difficult for readers to retain information or to keep their attention.
- Each paragraph must refer to only one subject. If the paragraph contains information related to different issues, it can be misunderstood.
- Sequence of paragraphs must follow logical order.
- Paragraphs with only one sentence should be avoided.
- The desire of avoiding repetitions in a paragraph fosters the use of pronouns (he, this, who, same) and other expressions (his, which, here, then) which can refer to several realities, and can easily lead to ambiguity.
- Markers ordering the discourse (first, finally etc.) as well as connectors (also, however, in consequence, therefore, so etc.) must be employed to facilitate more clear expression of relationships between different parts of a paragraph or between successive paragraphs.
- If a paragraph contains relatively long enumerations, they must be typographically divided into separate lines and ordered in a list, with the aim of making them more easily understandable,
- Excessive concatenation of subordinate sentences is a widespread practice among lawyers. It generates comprehension difficulties, ambiguities and possible double interpretations. In order to avoid excessive concatenation of subordinate phrases, it is necessary to divide the sentence into smaller units.
- The way of presenting these enumerations must be homogeneous and, therefore the same type of initial formulation must be used.

Judgement

The court decision is a communication unit that carries a complete meaning. It appears in between full stops. This character of communication unit gives sentences a transcendental importance, not only in the structure of the text, but also in its clarity.

Judgments use too often very lengthy and complex sentences. They tend to be unnecessary long by employing inserted clauses and periphrasis, redundancies and phrases which add no information, or sequences which mean the same. As a result, sentences are excessively long and difficult to understand.

- Judges should make a special effort to use short sentences and simple syntax. Likewise, they have to order, as far as possible, the statements according to their logical order (subject, verb and complements ...)

- Digressions that affect the entire sentence and provide information about time, space, cause or condition must be placed normally at the beginning. Those introducing an explanation or justification should normally be placed at the end of the statement.

Indictment

The indictment is the document containing the charge against a defendant. According to Article 332 of the Criminal Procedure Code of the Republic of Serbia the indictment contains:

1) the first name and surname of the defendant, with personal data (Article 85 paragraph 1), and data on whether and as of when he is in detention, or is at liberty, and, in case he had been released before the filing of the indictment, information on the duration of detention;

2) Description of an act on which legal elements of a criminal offence are based, time and place of the commission of the criminal offence, object on which and the means by which the criminal offence was committed, as well as other circumstances needed to determine the criminal offence as precisely as possible;

3) Legal qualification of the criminal offence, citing the provisions of the law that should be applied according to the prosecutor’s proposal;

4) Designation of the court before which the trial will be held;

5) Proposal for the evidence to be examined at the trial, specifying the names of the witness and expert witness, file documents and objects that should be used as evidence;

6) Reasoning describing the state of the matter according to the results of the investigation, specifying evidence that will serve to establish the determining facts, describing the defence of the defendant and the prosecutor's position on the allegations of the defence. If the defendant is at liberty, it may be proposed in the indictment that the detention be ordered, and if he is in detention, it may be proposed that he be released. One indictment may encompass several criminal offences or several defendants only if under the provisions of Article 30 of this Code, joint proceedings may be conducted and a single judgment rendered.

Mentees at the Prosecutorial Office must learn that the indictment must be a plain, concise, and definite written statement of the essential facts constituting the offense charged. It need not contain a formal introduction or conclusion. A count may incorporate by reference an allegation made in another count. A count may allege that the means by which the defendant committed the offense are unknown or that the defendant committed it by one or more specified means. For each count, the indictment or information must provide an official or customary citation of the statute, rule, regulation, or other provision of law that the defendant is alleged to have violated.
The draft of the charge has to be clear, avoiding vagueness, ambiguity or obscurity

Punctuation

The correct use of punctuation is essential to enable comprehension of a judgment and an indictment. The main function of these signs are to set syntactic limits and standards for reading, to facilitate understanding and, especially, to avoid misinterpretation. However, some judges do not pay enough attention to this aspect.

-Pay attention to punctuation.

a- Commas

Some essential rules in the use of the comma are the following:

- Between subject and predicate there is no comma.
- There is no comma between the subject and its closer objects (direct, indirect…)
- Interpolated clauses should always be separated by commas
- Commas should be avoided in adverbs and adverbial groups used to enhance an expression because they are not interpolated clauses.

b- Semicolon

It is a punctuation sign that should be used to separate, in the inside of a sentence, sets longer than those separated by commas.

- Semicolon should be used mainly in complex lists.

Passive structure

Although this verbal construction is correct, it is rare in contemporary language. The use of the passive form of the verb makes the language strange to citizens. The active voice sounds more direct.

- Use the passive voice of the verb only when necessary.

Inconsistent use of verb's tenses

Sometimes jurists improperly use verbal tenses switching from one to the other indiscriminately.

- It is necessary to avoid narrating events that happened in the past combining arbitrarily verbal forms of present and past.

Capital and small letters

Judgments and indictments use too much capital letters, especially when designating institutions.

- Avoid using too many capital letters, especially when designating institutions.

Terminology

The use of a technical or specialized language is common to all professions, including legal professions. However, this language usually comes across as particularly difficult for understanding, obscure and even cryptic. The use of archaic

linguistic forms, anchored in the past, or the use of Latin expressions without translation, certainly reinforces this widely spread social perception.

To improve clarity, legal professionals have to explain or "translate" these particularities, if it is possible, into common language terms.

- Archaisms have to be replaced by modern words. And if it is impossible, they should be explained in the same text.
- Latin expressions and Anglicisms have to be translated and, at the most, included into brackets.
- Technical terms need to be explained.

Quotations

- Short quotations must be written between inverted commas.
- Long quotations must be written in italics.
- Quotations in cascade, one after the other or one inside the other must be avoided because they render the text difficult for understanding.

References

- References to the laws or the case law of higher courts have to be standardized.

TRAINING ON ETHICS AND DEONTOLOGICAL ETHICS

Introduction

This capacity concerns the moral qualities of the judge or prosecutor and their behaviour in exercising their duties as well as in private sphere. This capacity refers to behavioural and interpersonal competencies (soft skills) of a judge or prosecutor exercised in view of maintaining respect and confidence in the judicial system. Among the most essential moral qualities are honesty and probity.

Furthermore, the judge or prosecutor shall remain impartial, independent and objective at all times while exercising their duties. They must be able to distance themselves from their personal, religious and philosophical beliefs. They also have to be independent from external pressures. In addition, they must remain accessible and demonstrate respect, courtesy and sensitivity in their relations with litigants and with partners in the judiciary.

The Code of Ethics of Judges was approved by the High Judicial Council in December 2010 and the Code of Ethics of Prosecutors in October 2013. The Codes contain extensive and comprehensive rules and exhortations for good conduct. For prosecutors, the Regulation on Administration in the Public Prosecution also contains many of the same or similar provisions.

According to Guidelines of the Leonardo da Vinci Programme, training on ethics and integrity overlaps fundamentally with many other aspects of conduct and training - including legal skills and knowledge as well as judicial skills (managing a courtroom, dealing with tensions between participants in a criminal proceeding, etc.). Training should not be limited to techniques in the purely legal field but also include training in ethics and other relevant matters such as those related to workplace or mentorship; training should ALSO be pluralist in order to guarantee and strengthen the open-mindedness of judges an avoid having a training purely in matters of form.

Ethical rules and norms hold a special position; they run through every aspect of the performance of duty including rules that govern conduct of a trial. Therefore, judges and prosecutors, should not see Ethical rules as “extra requirements” but as integral ingredient necessary for performing one’s duties well, in other words, something that is inherent to judge’ or prosecutor’s function: a measure of status, and one of the main reasons for taking pride in one’s office (in a non-moral sense), and as reinfrocement of status, rather than a requirement to be enforced.

2. Why ethics in the judiciary

2.1 For judges (European Network of Council for the Judiciary Report):

The complexity of the act of judging, beyond the singularities determined by the history of each country, implies that many virtues or qualities must be combined so that justice can be done.

Confidence in justice is not only guaranteed by an independent, impartial, honest, competent and diligent judge.

A judge should perform his role with wisdom, loyalty, humanity, courage, seriousness and prudence, while having the capacity to listen, communicate and work.

These requirements are not specific to the judge but they are essential to guarantee the right of everyone to have a judge.

2.2 For prosecutors (IAP International Association of Prosecutors Standards)

Prosecutors shall:

- at all times maintain the honour and dignity of their profession
- always conduct themselves professionally, in accordance with the law and the rules and ethics of their profession
- at all times exercise the highest standards of integrity and care
- keep themselves well-informed and abreast of relevant legal developments
- strive to be, and to be seen to be, consistent, independent and impartial
- always protect an accused person's right to a fair trial, and in particular ensure that evidence favourable to the accused is disclosed in accordance with the law or the requirements of a fair trial
- always serve and protect the public interest; respect, protect and uphold the universal concept of human dignity and human rights

3. Ethics on mentorship

Bearing in mind all of the above, training in main ethical issues is recommended to be a component of each mentorship training. For this purpose, the key points as well as

resolutions of the ECHR and others documents that speak to different ethical principles covered by the mentorship training have been provided as guidance for the mentor and can serve as a basis for discussing those principles with mentees.

PORTFOLIO

A portfolio is a compilation of materials that shows the trainee's competencies and experiences during his/her training and that provides an insight into his/her personality, work and ethics. It should be a systematic collection of the mentee's work and related material that depicts his/her skills, accomplishments and achievements in the different stages of the mentorship and should include an evidence of mentee's reflection and self-evaluation. Portfolio shows the cumulative efforts and learning of a particular mentee over time and offers valuable data about mentee improvement and skill mastery.

The portfolio should be composed of elements such as: The drafted judgments and indictments, a report of the mentor on the conduct of the trainee when conducting a hearing (and if it is recorded, also the corresponding CD), the trainee's report on the outside internships in which he/she has participate etc. The portfolio should also include pieces of evidence introduced by mentor coordinator on the aspects of the learning pertaining to "attitudes", including professional ethics. These items will be defined in each period of the mentorship.

The mentors "on the job" and "coordinator" should participate in elaboration of the material which will be assessed by the evaluation committee –pieces or elements of portfolio-, but they will not assume directly the role of an evaluator. They should be seen by the trainee as a partner working on his/her side, not as an opponent who has to evaluate him/her. In that sense the Portfolio helps to:

- promote mentee's self-evaluation, reflection and critical thinking.
- measure performance based on genuine samples of mentee work.
- provide flexibility in measuring how mentees accomplish their goals.
- give mentee the opportunity to provide extensive input into the mentoring process.
- provide a process for structuring learning in stages.
- enable measurement of multiple dimensions of mentee's progress by including different types of materials.

The mentor should help mentee focus on his/her Portfolio by discussing with her/him the material that should be included in it with the purpose of demonstrating the progress in terms of learning objectives and to motivate him or her to produce work of high quality.

Therefore, Portfolio contains two basic elements: evidence of teaching and the reflection on that evidence.

Portfolio is a project containing work in progress as well as finished samples of work; it will change as mentee goes through different stages of his or her mentorship.

Portfolio provides ideas, suggestions and examples and enables mentors to think more critically about their teaching.

A successful portfolio should be a coherent report on a period of reflective practice, demonstrating learning and the changing of conceptual perspective of the mentee.

Portfolio is a way to measure and predict teaching effectiveness and it also helps to document teaching proficiency better.

Portfolio also provides a meaningful statement of teaching skills.

Recommended items to be included in the portfolio at the end of each stage of mentorship are outlined in the specific mentoring program for the basic court (criminal and civil division), misdemeanour court and the prosecutor's office.

EXTERNAL INTERNSHIPS

The role of the judges and public prosecutors in present-day society has become more and more complex. They are requested not only to know the law but also to be

aware of the social context in which the problem that they are bound to solve emerges and of the consequences that their decision will entail.

Coming to know other institutions with which the judge and prosecutor will have to relate during the exercise of his/her duty, will provide him/her another point of view, an outside perspective which will help them in the adoption of future decisions, and which will allow judges and public prosecutors to experience how they are regarded by citizens and bodies external to the judiciary.

This is the reason why their initial training should comprise short training periods outside the judiciary and the public prosecutor's office. These external internships would take place in a:

- Social Welfare center
- Penitentiary center
- Forensic Science institute
- Police station

In order to prevent that the internship turns into an institutional visit, without real content, it is important to adopt previously a programme, according to the following recommendations:

- A two parties' programme should be agreed jointly by the Judicial Academy and the institution at issue.
- A person of each one of the institutions (Judicial Academy and the counterpart) should take the responsibility for the development of the internship or stay.
- The responsible persons of both institutions should evaluate the outcome of the stay so that they can improve it for the next generation.

During the internship or after its completion, trainees should meet, with their mentor, so that they can share experiences obtained throughout this activity.

An evaluation of the internship should be done by the trainees through a report which they have to write at the completion of the stay and which they have to include in the portfolio.

THE EVALUATION

PURPOSE OF THE EVALUATION

Evaluation is highly important in the training cycle for it provides an opportunity to detect whether the training objectives initially set have been met and in what extent.

The evaluation permits: to see how the knowledge and skills learned in the training are put into practice; to assess the results and impacts of the trainings programs; to assess the effectiveness of the training programs; to assess whether the training program was properly implemented, and to identify and rank participants in view of their success in the programme.

The entire evaluation process needs to be tailored according to the specificities of the different judicial cultures, the country-specific context, individual and institutional requirements, taking as a common ground the standards of adult professional learning.

In any case, before developing evaluation system, the purposes of evaluation, that is, the goals and objectives that must be achieved shall be determined.

GOALS AND OBJECTIVES TO BE ACHIEVED

At present, the Law on Judicial Academy ("Official Gazette of the RS", no. 104/2009 and 32/2014 decision CC) states:

"After the completion of each part of the initial training the mentor and the lecturer in charge of that part of the training conducted within the court and prosecutor's office shall assess the candidate. The work in the institutions outside the judiciary shall not be assessed.

Assessment of the initial training shall be in marks from 1 to 5. (…)

In case the initial training beneficiary is awarded mark 1 for any part of the initial training, his/her capacity as initial training beneficiary shall be discontinued." (Article 36)

And about the final exam, the same Law states:

"Upon completion of initial training the beneficiaries of the initial training shall take the final exam which shall only test their practical knowledge and skills acquired at the initial training for the performance of duty of a misdemeanour judge, judge of a basic court and deputy public prosecutor in a basic prosecutor's office.

The final exam shall be assessed with marks from 1 to 5.

It shall be considered that the beneficiary of the initial training who is awarded mark 1 at the final exam has not completed the initial training."

Starting from the traditional mentoring training system, the key to upgrade the current training system should be focused on the permanent relation between Judicial Academy and mentors, in accordance with a strategy designed for each generation of candidates.

Evaluation of candidates during internship (continuous assessment) is a task of mentors, whereas the evaluation at the end of the training period is a task of the Council and should be controlled by the Judicial Academy.

It would be good to set an unhindered and permanent communication between Judicial Academy and the mentors.

The work of the mentor can be assessed by the trainees and should be analysed by the Pedagogical Council, in order to implement the periodical training needs assessment and evaluation of mentors.

It is crucial that:

-the mentor discuss with the mentee the purpose and content of the assessment; it is also possible to use self-assessment as a tool that would assist the mentor in measuring the confidence of the mentee. Such self-assessment shall not be binding for the mentor.

-the mentee be made familiar with the mentor's assessment prior to its being forwarded to Judicial Academy. Mentee should be given an opportunity to add their personal opinion about the assessment questionnaire or about specific aspect of the assessment they disagree with.

-statistical data regarding the mentee judge's performance be enclosed with the questionnaire, indicating the exact number and type of cases heard.

-the mentor's assessment be taken into account by the Council assessing the performance of the mentee. To that end, in addition to trainee's feedback through the questionnaire, the portfolio could be forwarded as additional tool for assessment that allows for the analysis of the corrections made by mentor in the drafts and exercises of the mentees.

ASSESSMENT OF TRAINEES DURING THE INTERNSHIP OR INTERIM QUESTIONNAIRE

The main goal of this assessment is to monitor the evolution of the mentee in order to verify whether he has achieved all needed competencies. This assessment should also allow for detection of possible difficulties and remarks that call for specific aid plans for the mentee.

Once candidates applying for the office of judge and prosecutor have been recruited according to legal criteria and admitted to Judicial Academy, trainees should be assessed in terms of their qualifications, so as to evaluate their legal knowledge and professional skills, but also their ability to internalize values that constitute the very core of their legitimacy as future judges and prosecutors.

As their internship starts at the Court or Prosecutor's Office, trainees shall be assessed in a slightly different way, as the aim of the assessment will shift from the aforementioned topics to evaluation of their growing mastery of professional competencies.

These mentors will have to assess trainees placed under their responsibility in terms of their abilities to put their judicial skills into practice.

To ensure the objectivity of trainee assessment, the evaluation tools with specific criteria are created to allow for equal treatment of all trainees, regardless of any personal issues.

The combination of different types of assessment throughout the training course has proven to be effective.

Several forms of assessment can be implemented in the course of the judicial internship training. Thus, the trainees can be assessed by themselves (self assessment) and by the mentor through a continuous assessment process with "tests" in a comprehensive assessment process.

Self assessment is a method that could be used throughout the training process. Trainees are invited to assess themselves according to pre-established criteria. This is particularly well adapted to internship in court and prosecutor's office.

The added value lies in the feedback that is given by the mentor in view of improving the knowledge and skills of the trainees in workplace situations.

More frequently trainee assessment during the internship in court or prosecutor's office consists of an assessment carried out by mentor who regularly exchanges opinion with the trainees about the acquired skills, skills that need further improvement and the skills still to be acquired.

In case of assessment carried out by mentors, the risk of obtaining similar grades, due to the closeness of the trainees and their mentors, should be reduced by establishing

strict evaluation criteria and implementing specific methodologies and by means of supervising the assessment process.

On the other hand the ability to make progress, listen to professional advice, question oneself, improve performance, and take initiatives, can be better assessed by mentor than by external examiners.

It is nevertheless highly advisable that these elements should also be taken into consideration on the occasion of evaluating the ability to hold judicial positions or as a way of ranking the trainees, should such a ranking be necessary at this stage of their training.

FINAL ASSESSMENT OR EVALUATION QUESTIONNAIRE

At the end of the initial training programme, trainees go through process of final assessment which shall determine whether they are able to start a career as a judge/prosecutor in the judiciary.

At the moment the final assessment carried out by manes of simulation of a hearing. It seems that this assessment is not sufficient enough. Before taking the exam, trainees are given all the information, they are given the opportunity to rehearse the trial with the help of their mentors and, therefore, the evaluation cannot be considered entirely reliable.

As said in the Comparative Analysis prepared under Component 3.1 of this Project, the simulation of the final exam should be modified in order to allow a better evaluation of the candidate's skills and attitudes acquired during the mentorship. This simulation should put candidates in an unexpected situation in which they would have to use these skills and also demonstrate their attitudes.

As said before, another tool should be taken into account too - the portfolio which is a compilation of materials demonstrating trainee's competencies and experiences acquired during his/her training and providing insight into his/her personality, work and ethics.

The portfolio should also contain pieces of evidence introduced by the "coordinator" mentor regarding the aspects of the learning that pertain to attitudes, including professional ethics.

Failure to pass various stages of assessment on the part of the mentee may imply an obligation to repeat one or several phases of the training process or may even lead to their dismissal from the judiciary, especially in cases where the trainee has exhibited behaviour incompatible with the judicial or prosecutorial profession.

Assessment of competency-based learning

According to the EJTN Handbook on Judicial Training (2016), the initial training has a major practical component. This means that it is focussed on the acquisition of competencies. Therefore, in the course of initial judicial training, the evaluation of the knowledge, skills and attitudes (the three constituents of competencies) acquired by candidates become extremely important.

Judges and prosecutors are required to be proficient in decision making. This involves not only legal knowledge and techniques, but also the ability to handle soft skills properly and an attitude that supports principles safeguarding objectivity of the decision making process.

The competencies one needs to have in order to be a good judge or public prosecutor can be divided in four categories: Personal-social, technical, analytical and organizational-functional.

Personal-social competencies

These capacities concern moral qualities of judges or public prosecutors reflected in their behaviour while exercising their duties. They have to be respected even in the private sphere of these professionals because when assuming their duties they accept also obligation not to undermine public confidence in Justice.

Judges and prosecutors have to be independent and impartial. Independence implies being free from undue external influences that might come from political, economic or social powers, and, especially, from mass media.

Impartiality implies lack of personal interest in the outcome of a judicial procedure in which the judge or the public prosecutor has to act. Impartiality requires being able to identify personal, political and religious beliefs as well as prejudice, and consequently, to overcome them.

Honesty and probity are also required.

Judges and public prosecutors have to be accessible and demonstrate respect, courtesy, empathy, humility, authority and sensitivity towards the parties and partners in the judiciary.

Judges and public prosecutors should be able to keep issues in perspective, adapt to new and unexpected situations, discern the proper approach, and adopt the most suitable behaviour according to circumstances.

Judges and public prosecutors must show respect to all persons and their dignity at all times.

Judges and public prosecutors should be capable of not loosing heir temper and resisting stress.

Technical

The identified technical competencies for judges and public prosecutors are:

- Application of their own knowledge.
- Analysis and assessment of facts and correct application of the legal rules.
- Direction of oral hearing and adopting an appropriate position for purpose of the hearing.
- Speaking in public clearly and easily explaining different points of view in order to successfully conduct the debate.
- Mastering interview techniques and management of conflicting situations
- Preparing and conducting investigations and conducting respectful questioning in adversarial procedures, in accordance with the legal framework.
- Updating and improvement of legal culture, professional knowledge and working methodology.
- Management of computers and IT.

Analytical

In this group the following competencies can be included:

- Analysing and summarizing a case or file taking into account circumstances and steps of procedure, pleas and arguments raised by the parties, rendering decisions within a reasonable time.
- Listening with receptiveness and open-mindedness, not jumping to conclusions.
- Paying attention to the presentation of facts and legal arguments put forward by the parties (active listening) in order to render a reasonable decision.
- Formalizing and explaining the legal grounds of a decision and communicate it clearly and in a proper way when writing a judgement or an indictment.
- Writing of legal texts (judgements or indictments).
- Comprehension of legal texts.

Organizational - functional

Under this category the following competencies can be included:

- Working with others, as peers and partners. A talent for decision-making and self-management, a sense of personal responsibility and team work.
- Motivating others.

- Undertaking specific actions aimed at strengthening of a service or an office, making new proposals and taking initiatives.
- Planning objectives and agenda and organizing human and material resources.
- Establishing proper relationships with the staff, police service, administrative authorities and private associations.
- Working capacity and efficiency.
- Solving cases striking balance between quantity and quality.

Therefore, these questionnaires are modeled to measure the process of learning of new judicial knowledge, of developing new skills – judicial and other – and learning appropriate professional behaviour (values and attitudes).

ASSESMENT OF TRAINERS

The assessment of trainers is considered a part of the assessment of the initial training programme.

As mentioned earlier, it is important to point out that no single method is entirely accurate, nor should only one assessment system be applied. A combination of methods is advisable.

Focusing on the main contributors in the assessment process, the following methods could be used for evaluation of trainers:

-feedback provided by the judicial trainees' representatives, in their capacity as direct beneficiaries of the initial training activity, they are placed in an adequate position to assess the performance of their trainers from a critical point of view.

-feedback provided by the management staff of the training institution, responsible for the whole process and called upon to take important decisions concerning the activities of the initial training programme; experts/other specialists involved in the assessment process and invited to evaluate trainers' performance from a technical/administrative point of view; and, where applicable, reports from the relevant disciplinary bodies.

-self assessment carried out by the trainers themselves, at the end of the training programme.

As the Guidelines for Initial Training of Judges and Prosecutors (Leonardo da Vinci Partnership Project 2011) states, the use of all these sources for purpose of trainers' assessment represents a guarantee for a 360' perspective of the efficiency of trainer's activities as well as for objectiveness in the entire process. For instance, even though the assessment provided by the direct beneficiaries -judicial trainees - is of utmost

importance and relevance when rendered in a representative sample, one cannot ignore the fact the it might be subjective in certain circumstances, since judicial trainees often have the tendency to make involuntary confusions between “wishes” and “needs” when it comes to their professional training. Neither is the point of view of the training institution management staff sufficient when it comes to completing the assessment process, as their input mainly concerns technical/administrative aspects.

QUESTIONNAIRES OR EVALUATION SHEETS FILLED IN BY THE JUDICIAL TRAINEES

It is important to analyse a huge amount of information obtained through questionnaires regarding the curricula and activities of the initial training programme.

The questionnaires (although different from questionnaires used for continuous training) should collect relevant data about the level of satisfaction of the trainees and the quality of the programme. The purpose of the analysis of the questionnaires is to obtain a global vision and an insight into other important aspects of the curricula and initial training evaluation.

An analysis of the global evaluation of the programme is fundamental for the management of the training institutions. Since trainees are considered as final beneficiaries, their feedback is valuable.

This model also allows focusing on each training activity and trainer separately, obtaining thus the assessment of the trainers’ performance and of other aspects of a specific course.

The trainees assess the trainers. They are expected to complete the assessment sheets, usually at the end of the initial training programme.

These surveys, one for each trainer and one for each of the topics taught, have to provide information about the perception of the trainees with regards a series of items (variables) observed during the training sessions.

The criteria according to which such an evaluation can be carried out may concern, amongst others, to what extent the trainer complied with the curricula and the planned training session content, the relevance of information provided, the usefulness of training methods and training materials, feedback from the trainer and its regularity, trainer’s attitude and behaviour towards the judicial trainees, the assessment issues etc.

When initial training is conducted in small groups, a representative sample of respondents (at least 2/3) is essential for relevant feedback.

Depending on the results of the evaluation, analysed centrally at institutional level and interpreted in accordance with internal methodologies, the judicial training institution may decide, according to its own internal regulations, to take action.

As maintaining of an efficient body of trainers is one of the main objectives of each judicial training institution, failure to abide by all professional norms regarding implementation of training methodology set forth in the initial training strategy, could lead in some cases to loss of trainer status, whereas in other cases, observing training sessions may prove to be sufficient remedy.

COMPLAINT PROCEDURE

The beneficiary of the initial training not satisfied with his/her mark is entitled to submit, within 24 hours from the receipt of the notification on the marks, a request to the Programme Council to be examined for that part of the training by a special commission.

The Program Council shall then set up a special commission referred to in paragraph 3 of this Article within three days from the date of submitting the request. Special commission shall have three members. The mentor against whose marks the initial training beneficiary complained may not be a member of the special commission. The mark of the special commission shall be final. (Article 36 of the Law on Judicial Academy -“Official Gazette of the RS”, no. 104/2009 and 32/2014 decision CC-).

SELF-EVALUATION IN MENTORING PROCESS

What is self-evaluation

Important findings in the area of adult-learning – andragogy - concerning the way adult professionals learn have created necessity for a new design of training events and sessions with a high degree of interactivity and variety of methods, one of which is self-evaluation.

In the educational sciences, self-evaluation is generally defined as a process in which the students monitor and evaluate their own work, behavior and achievement in order to gain information about them and insights needed for further progress. Self-

evaluation is seen as an important concept which plays a particularly important role in supporting the learning process and presents one of the most important means for increasing program sustainability and its quality.

During self-evaluation, the mentee evaluates all the processes in which he/she has taken part. What is being evaluated is his/her domain of responsibility, within given implicit and explicit frame. So, during self-evaluation, the person is both the subject and object of the evaluation.

According to the EJTN Handbook on Judicial Training Methodology in Europe, self assessment requires the participants to work on their own in the learning process and to judge how well they have performed in relation to the assessment criteria. It is an opportunity to identify what constitutes a good or poor piece of work. Some degree of the student involvement in the development and comprehension of assessment criteria is therefore an important component of self-assessment.

Self-assessment can foster number of skills, such as reflection, critical thinking and self-awareness. It can also give mentees insight into the assessment process. Development of reflective skills provides students with the ability to consider their own performance and identify their strengths, weaknesses, and areas that require improvement. This awareness can then be used to influence their future work.

In addition, one can get a range of often hidden data and information about the mentoring that remain invisible to other forms of evaluation. It is an opportunity to get a more detailed insight into the different expectations that mentees have regarding the whole mentoring process. In this sense, particularly significant for improvement of the mentoring process are mentees answers in relation to the assessment of the opportunities given to them.

By combining this form of evaluation with other forms of evaluation, one can get an overview of mentoring that should be used for further process improvement. These findings should be available to mentors (in analyzed format) as they represent important feedback for mentors and institution.

Self-evaluation instruments (First Self-Evaluation Questionnaire and Second Self-Evaluation Questionnaire): methodological explanations

If we consider that mentoring is a process which lasts for a certain period of time, the importance of self-evaluation can be seen in the time continuum - at the very beginning of the process of mentoring and at it end of the mentoring process.

a) At the beginning of the mentoring process, in addition to the fact that mentee needs to completely understand the process of mentoring, it is extremely important that he

becomes aware of himself as a participant in the process. It provides an opportunity for the mentees to analyze their performance, to understand their inputs (competencies, qualities, expectations) and to see if there is room for development.

With this first self-evaluation, the mentees can recognize their educational needs, discrepancy between the current and desired state. Also, they can understand how they perceive the mentoring process and goals and their role in the process.

This first self-evaluation can prove to be motivation for the mentee, especially intrinsic motivation for learning in the mentoring process and can also bring focus on the process of mentoring.

b) At the end of the process, the second self evaluation has a little bit different role. This second self-evaluation gives the mentee the opportunity to reflect on the process of mentoring from a different time perspective: the mentee can get the information about the progress he or she made and about the factors (internal and external) which contributed to that progress. He or she can clearly and undoubtedly compare where he or she was at the beginning of the process and where he or she are now, having a comprehensive overview of entire process of mentoring and being able to think about it.

c) Self-evaluation can be done in different ways and by means of different methods and techniques (interviewing, portfolio, diaries etc.). Instruments designed to meet the needs of the Judicial Academy consists of two questionnaires – First Self-Evaluation Questionnaire and Second Self-Evaluation Questionnaire. In both questionnaires different groups of questions are designed with the aim of having a comprehensive overview of the mentoring process.

1) The first group of questions relates to the self-evaluation of the resources - in terms of competencies that the mentee brings to the process. This is a self-assessment of mentee's competencies. This assessment provides mentee (and institution) with the information about themselves. For mentee, this can be a reflection on his own strengths and weaknesses (how he or she sees them), it is also a recognition as to what has to be done, what needs to be improved, but also what can be used as a basis for further development.
2) The second group of questions are made to assess expectations. This implies the possibility given to the mentees to clearly and unequivocally express their expectations of themselves, mentor and the entire processes of mentoring. In this way, mentoring process gains its additional direction and focus, but it also provides us with an insight into the fact that mentoring means sharing responsibility for and within the process. All three elements of the assessment of the expectations of: the mentee, mentor and mentoring are equally important. Bearing in mind that these expectations

are monitored at the end (through expectations fulfilment), the mentee is given an opportunity to assess how much he/she has fulfilled expectations he/she had of him/herself as well as how much the expectations he had of mentors and mentoring have been fulfilled. This is also an indicator of the weakest or the strongest element of the assessment, which represents an opportunity for further change.

3) Finally, the third group of questions (the Second Self-Evaluation) relates to assessment of external conditions. Those refer to material-technical conditions and opportunities for learning. By introducing the external conditions as an element of assessment, one can get a complete overview of mentoring process. Both types of these elements are important for the accomplishment of the tasks of mentoring.

   By comparing these data sets, the mentees get the opportunity to see how they acted in relation to opportunities (or not) provided for them and how they made use (or not) of them. For institution this is an additional feedback about the opportunities that they provide to the mentees and a starting point for improvement of those opportunities.

First Self-Evaluation Questionnaire for the Mentee

The purpose of this questionnaire is to help you get a better insight into your role regarding mentoring process and take an active role in this process. This questionnaire should be seen as just one of the resources and tools that will enable you to get a better insight into the mentoring process and your perceptions at the beginning of this process. Therefore it is really important to respond honestly to questions.

Name and Surname

Mentor's name

Court

City

Part I Competences Self-assessment

1. Please rate yourself in terms of the statements below by putting an X sign next to each item in relation to the degree of agreement/disagreement with the statement having in mind the meaning of *level*s:

   I strongly disagree - This level reflects the highest level of disagreement with the statement that you are estimating. It describes that your opinion and attitude is in the total and strong disagreement with the proposed statement. There is no element in the statement with which you could agree.

I mostly disagree – This level reflects a high level of disagreement with the statement that you are estimating. It indicates out that your opinion and attitude is in the high disagreement with the proposed statement. There is a minimal, negligible element in the statement with which you could agree.

I agree partially – This level reflects medium level of agreement with the statement. It indicates that your opinion and your attitude contain both the elements of agreement and disagreement, but you find a little bit more elements of the statement with which you could agree.

I mostly agree – This level reflects a high level of agreement with the statement that you are estimating. It indicates out that your opinion and attitude is in the high agreement with the proposed statement. There is a minimal, negligible element in the statement with which you could not agree.

I agree completely - This level reflects the highest level of agreement with the statement that you are estimating. It describes that your opinion and attitude is in the total and strong agreement with the proposed statement. There is no element in the statement with which you could not agree.

	rongly disag	ostly disagr	gree partial	mostly agre	gree complet
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llingness to learn					
to manage databases					
stage fright					
high level of expertise					
keep my knowledge up t					
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ility to work under press					
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ge in practice					
to work independently					

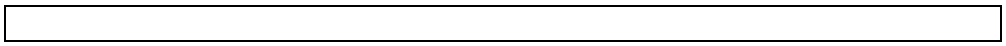
Part II Expectations Self-assessment

This part of the questionnaire refers to the assessment of your expectations and that is why it is important to give honest and specific answers. The questions are open-ended.

1- What do I expect **from myself** during the mentoring process?
Please describe what you expect from yourself during the mentoring process

2- What do I expect from **the mentoring process**?
Please describe your expectations of the mentoring process.

3- What do you expect **from your mentor**?
Please indicate your expectations from mentor.



Second Self-evaluation Questionnaire for the Mentee

The purpose of this questionnaire is to help you to reflect on your progress and changes achieved during the mentoring process. The same elements (as in the previous questionnaire) are the subject of your assessment. In addition it contains an estimation of external circumstances and conditions that you came across in the course of the mentoring.

Name and Surname

Mentor s name

Court

City

Part I Competences Self-assessment

Below, you will find the same list of competencies (as in the first questionnaire). This time they will be evaluated at the end of the process. Again, please rate yourself in terms of the statements below by putting an X sign next to each item in relation to the degree of agreement/disagreement with the statement having in mind the meaning of levels:

I strongly disagree - This level reflects the highest level of disagreement with the statement that you are estimating. It describes that your opinion and attitude is in the total and strong disagreement with the proposed statement. There is no element in the statement with which you could agree.

I mostly disagree – This level reflects a high level of disagreement with the statement that you are estimating. It indicates out that your opinion and attitude is in the high disagreement with the proposed statement. There is a minimal, negligible element in the statement with which you could agree.

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llingness to develop my					
good decision making sk					
ility to work under press					
od interpersonal skills					
ility to monitor and asse k					
od problem solving skill					
ility to apply theoretical ge in practice					
to work independently					

Part II Expectations Self-assessment

1- Expectations fulfillment (expectations from **myself)** during the process of mentoring?
Please state how would you rate the expectations you had from yourself (from the beginning of mentoring process until this point)

2- Expectations fulfillment (expectations from **the mentoring process)**?

Please state how you would rate your expectations from the mentoring process (from the beginning of mentoring process until this point)

3- Expectations fulfillment (**regarding mentor)**?

III Opportunities Self-Assessment

III 1) Assessment of material/technical conditions

Below you will find a series of statements about the material and technical requirements related to the process of mentoring. Please circle yes or no answer for each statement.

eceived the information about the purpose of mentoring		
eceived the information about the tasks expected from me		
ne possibility to cooperate with staff, colleagues from the cou		
ccess to IT system		
dequate work space		
ccess to all resources necessary for work		
room for consultations with mentor		

Explanation of some elements mentioned above:

III 2) Assessment of learning opportunities

Please circle the number in front of the statement which describes your situation regarding learning opportunities that were made available to you:

1) I had the opportunity to attend some educational activities and I have attended them
2) I had the opportunity to attend some educational activities but I did not attend them
3) As far as I know I did not have the opportunity to attend any educational activities

→ **If your answer was 1,** please specify

a) Number of attended activities

b) Name of attended activities

c) How and in what way the educational activity that you specified contributed to the process of mentoring?

→ **If you answer was 2,** please state the reasons for not attending the educational activities (please circle those that apply to you):

a) Lack of time
b) Topics were not relevant for me
c) Another reason for non-attendance (please specify)

Please list tasks and activities you performed during this period of time:

In your opinion, what is the most important thing you have learned during this period of time?

MENTORING PROGRAM AT CIVIL DIVISION OF THE BASIC COURT

Mentor is expected to complete these targets:

A- Introduction to the legal Community

1- Escort the mentee on a tour of the courthouse. Introduce her or him to members of the judiciary, court personnel, public attorneys and clerks of court within jurisdiction.

2- Discuss any “unwritten” customary rules of civility or etiquette that exist between lawyers, prosecutors and judges in the community.

3- Introduce mentee to the personnel at the court room and explain how the following management tools are used:

- case intake system
- filing system
- calendaring of cases
- information technology and case management system
- library, on-line research system and other resources that the mentee will find helpful in his or her work
- time management skills and techniques

4- Discuss with mentee the duties and responsibility of the personnel within jurisdiction of the court where the mentoring takes place.

B- Introduction to the work: TASKS

1- Discuss how to screen for, recognize and avoid conflicts of interest either personal or official.

2- Discuss how to screen cases received by the court and how to make appropriate decisions regarding cases.

3- Discuss how to interview witnesses at the trial.

4- Discuss how to interview claimant and defendant at the civil trial.

5- Discuss how to interview and work with expert witnesses.

6- Discuss “do and don’ts” in order to maintain good ongoing relations with law enforcements, victims, witnesses, the judiciary and the defence bar.

7- Discuss how to deal with difficult defence attorneys, defendant and plaintiff.

8- Discuss the mechanics of trial, including where to sit, proper attire and courtroom decorum.

C- **Portfolio: Recommended Items**.

The mentor should collect work from the mentee related to the day-to-day job. At least 3 judgments from different stages of learning should be included in the Portfolio, containing mentor´s corrections in the text.

In the civil division it is recommended to include resolutions on the most typical disputes. These could be inheritance disputes, debts, repudiation of contracts, and nullity of contracts, housing disputes or similar.

It is also important to allow the mentee to choose what to insert in his/her portfolio. Even though the mentor might decide to include few specific resolutions, the mentee should be permitted to insert some of his/her own choice. Additionally, the mentor should give the mentee the opportunity to reflect about the work to be included in the Portfolio because this compilation will be used to evaluate his/her work.

The report written by the mentee after the external internship should also be included in the Portfolio.

D- **Stays external to the judiciary**

During the mentorship at the civil division, the mentor should take the mentee to a tour of the Social Welfare Centre. An internship in this Centre is essential for judges and prosecutors so they could get acquainted with internal organization, facilities and duties of this institution providing support to the victims of domestic violence.

At the end of the internship the mentee will draft a report describing the activity and his experience.

E- Training on ethics and deontological

During the mentorship at the civil division, mentor should discuss the principle of independence and impartiality with the mentee on the basis of the cases ECHR Gerovska Poppcevska v. Former Yugoslav Republic of Macedonia and ECHR Case of Buscemi v. Italy. Both of these rulings form an integral part of this Manual.

F- Evaluation

At the middle of the training at the civil division the mentor will be requested to fill in a questionnaire in order to evaluate the evolution of the mentee. After the end of the internship the mentor will complete the evaluation questionnaire. Both forms for this questionnaire form an integral part of this Manual. The mentor should follow the instructions provided by the coordinator-mentor.

TRAINING ON ETHICS AND DEONTOLOGICAL ETHICS (CIVIL DIVISION)

PRINCIPLE : INDEPENDENCE (Article 3 Law on Judges)

Key Points:

Independence is not a privilege but “the right of citizens to a judiciary which is - and is seen to be - independent of other branches of government”

Independent from whom? Any other person or institution: not only legislative and executive power but media, other institutions, political parties, other judges, parties to proceedings

What does it mean in terms of conduct: i) That you judge impartially and without being influenced by any other person or institution. ii) That these other entities must respect your independence. iii) That you may use the Code of Ethics for Judges and other legal provisions on independence to defend yourself against attempts at influence or pressure.

Judges should always take care that their conduct, official or private, does not undermine their institutional or individual independence, or the public perception of that independence.

Independence can only be effectively defended if a judge strives to maintain his/her knowledge, skills and competence.

Leading Case: ECHR Gerovska Poppcevska v. Former Yugoslav Republic of Macedonia (Judgment 7.1.2016)

Facts: In 2007, the applicant was removed from judicial office for professional misconduct. The State Judicial Council ("the SJC"), whose intervention had been prompted by a request of the State Anticorruption Commission, found that she had wrongly applied the law in a case in which she adjudicated without following the established order of priority. In her application to the European Court she complained that the SJC had not been "an independent and impartial" tribunal in line with Article 6, Item 1 of the Convention because two of its members, Judge D.I. and the then Minister of Justice, had participated in the preliminary stages of the proceedings against her and had therefore had a preconceived idea about her dismissal. Moreover, the Minister's participation in the SJC's decision constituted interference of the executive in judicial affairs.

PRINCIPLE: IMPARTIALITY (Article 3 Law on Judges)

Key points:

Impartiality might be seen as independence and objectivity. Independence underpins impartiality to some extent (freedom of influence by entities mentioned above) but does not guarantee it – a judge can be free from unauthorized influences but still be partial (e.g. ethnic prejudice)

A specific application of that principle is that a judge must forego any kind of political activity and on appointment sever all ties with political parties. The need for abstinence also involves not participating in public demonstrations which, by associating the judge with the political viewpoint or cause, may diminish his authority as a judge and create in subsequent cases a perception of bias.

Perception is as important as reality, although from the very nature of the judge's function, a judge may be perceived as partial. Judge may be accused publicly of being partial even when he or she is not. Because of this, behaviour that builds trust in impartiality is vital, for example, it is important to exhibit reserve in behaviour. If a judge is known for holding strong views on topics pertaining to the case and he or she issues public statements or other expression of opinion on such topics, it is possible that disqualification of the judge may have to be addressed, whether or not the matter is raised by the parties. The risk will grow if a judge has taken part publicly in a controversial or political discussion.

Leading case: ECHR Case of Buscemi v Italy (Judgment 16th September 1999)

Facts: The applicant and his girlfriend, C.F., had a daughter in 1985. Relations between the mother and father had rapidly deteriorated after their daughter was born and the relevant Youth Court had already had to intervene in the past. Custody of the applicant's daughter was initially awarded to the mother, from whom the applicant had separated in the meantime. On 21st January 1994, the applicant applied to the Turin Youth Court for custody of his daughter to be formally awarded to him, since his ex-girlfriend had already given him custody *de facto*. She had signed a statement on 30th July 1993 acknowledging the applicant's right to custody of the child. The Turin Youth Court, presided over by Judge A.M.B., ordered an investigation and on 5th May 1994 decided to place the child in a children's home. On 3rd November 1994, the Youth Court presided over by C.L. confirmed the decision to place the child in the children's home and ordered social services to arrange a series of meetings between the child and her mother with a view to returning custody to the mother. On 24th June 1994, the Italian daily *La Stampa* published an article with statements of the President of the Turin Youth Court, C.L., about the court's child-custody work. On 11th July 1994, the same daily published a letter signed by the applicant which was also a reply to the first statements made by C.L. The applicant related the episode in which his daughter had been placed in a children's home and made comments. In a letter published in *La Stampa* on 8th August 1994, the President of the court replied.

FIRST SECTION

CASE OF GEROVSKA POPČEVSKA v. THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

(Application no. 48783/07)

JUDGMENT

STRASBOURG

7 January 2016

FINAL

07/04/2016

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

[Type here]

In the case of Gerovska Popčevska v. the former Yugoslav Republic of Macedonia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Päivi Hirvelä, *President,*
Ledi Bianku,
Kristina Pardalos,
Paul Mahoney,
Ksenija Turković,
Robert Spano,
Armen Harutyunyan, *judges,*
and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 1 December 2015, delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 48783/07) against the former Yugoslav Republic of Macedonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Macedonian national, Ms Snežana Gerovska Popčevska ("the applicant"), on 1 November 2007.
2. The applicant was represented by Ms A. Pop-Trajkova Vangeli, a lawyer practising in Skopje. The Macedonian Government ("the Government") were represented by their Agent, Mr K. Bogdanov.
3. Mirjana Lazarova Trajkovska, the judge elected in respect of the former Yugoslav Republic of Macedonia, was unable to sit in the case (Rule 28). On 26 August 2014 the President of the Chamber decided to appoint Ksenija Turković to sit as an *ad hoc* judge (Rule 29).
4. The applicant complained, *inter alia,* that she had been dismissed from the office of judge in proceedings that did not meet the standards of Article 6 of the Convention. In particular, she alleged that her case had not been considered by an "independent and impartial tribunal".
5. On 18 February 2013 the application was communicated to the Government. It was also decided to apply Rule 41 of the Rules of Court and grant priority treatment to the application.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1954 and lives in Skopje.

A. Proceedings in which the applicant was dismissed for professional misconduct

7. On 3 April 2006 the State Anti-Corruption Commission, chaired at the time by M.M., who subsequently (July 2006) became the Minister of Justice, asked the State Judicial Council ("the SJC") to review (*предлог за проверка)* a civil case (no. IV P.br. 2904/01*)* which the applicant had adjudicated at first instance as president of a three-judge panel. The case concerned compensation proceedings against the State.
8. On 19 April 2006 the Civil Division of the Supreme Court convened to draw up an opinion stating that there were grounds for instituting professional misconduct proceedings in respect of the applicant regarding civil case no. IV P.br. 2904/01. According to the record of that meeting, the opinion had been requested by Judge D.I., who was the President of the Supreme Court at that time. The record did not list the members of the Civil Division of the Supreme Court that adopted the opinion. According to the applicant, Judge D.I. was a member of the Civil Division that adopted the opinion.
9. On 26 April 2006 the SJC asked the plenary of the Supreme Court, under section 21 of the State Judicial Council Act of 1992 ("the 1992 Act", see paragraph 24 below), to draw up a report on the issue of whether the applicant's dismissal from the office of judge would be justified.
10. On the same date the SJC, composed in accordance with Article 104 of the Constitution (see paragraph 22 below), instituted (*поведува постапка*) professional misconduct proceedings in respect of the applicant due to misapplication of procedural and substantive law in civil case no. IV P.br. 2904/01. It referred to the request submitted by the State Anti-Corruption Commission and further relied, *inter alia,* on the opinion of the Civil Division of the Supreme Court. The applicant responded in writing.
11. In December 2006 eight members of the SJC (all judges) were appointed in accordance with Amendment XXVIII of the Constitution (see paragraph 23 below). V.G., a member of the SJC, was nominated as the complainant (*овластен предлагач*), as set out in section 55 of the State Judicial Council Act of 2006 ("the 2006 Act", see paragraph 25 below), in the applicant's case.
12. On 25 December 2006 the plenary of the Supreme Court, chaired by Judge D.I., drew up an opinion regarding the applicant's case. The relevant part of the opinion, signed by Judge D.I., reads as follows:

"The plenary of the Supreme Court ... unanimously endorses the complete [text of] the opinion of the Civil Division and finds that there are grounds for dismissing (the applicant) for professional misconduct."

13. On 26 February 2007 a hearing was held before the SJC Commission for determination of professional misconduct by a judge (К*омисија за утврдување нестручно и несовесно вршење на судиската функција*, hereinafter "the Commission"), set up under section 58 of the 2006 Act (see paragraph 25 below). V.G. was not a member of the Commission. Both the applicant, who was represented by legal counsel, and V.G. submitted their arguments verbally. The Commission also took into account the opinions of the Civil Division and the plenary of the Supreme Court. On 28 February 2007 it drew up a report, which it communicated to the SJC.
14. On 14 March 2007 the plenary of the SJC, which included only ten of its members, namely eight judges elected by their peers, as well as the then Minister of Justice and Judge D.I., who were *ex officio* members of the SJC (see Amendment XXVIII to the Constitution, paragraph 23 below), dismissed the applicant from the office of judge for professional misconduct. The SJC found that she had wrongly applied procedural and material law in civil case no. IV P.br. 2904/01, which she had decided out of the established order in which cases should have been dealt with. The dismissal decision referred to the request submitted by the State Anti-Corruption Commission and further was based on evidence adduced at the hearing before the Commission, including the opinions of the Civil Division and the plenary of the Supreme Court.
15. The applicant challenged that decision at second instance, namely before an appeal panel formed within the Supreme Court ("the Appeal Panel"). Such panels were set up on an *ad hoc* basis in each separate case. As specified in section 60 of the 2006 Act (see paragraph 25 below), the Appeal Panel was composed of nine judges, of whom three were Supreme Court judges, four Appeal Court judges and two judges from the court of the applicant. On 8 May 2007 the Appeal Panel dismissed the applicant's appeal and upheld the SJC's decision. The Appeal Panel included Judge L.Š., who had adjudicated in another case allegedly related to case no. IV P.br. 2904/01. According to the applicant, her request for the withdrawal of Judge L.Š., a copy of which was not produced, was to no avail.

B. Proceedings before the Constitutional Court

16. On 19 December 2007 the Constitutional Court rejected (*отфрла*) a constitutional appeal in which the applicant claimed that her dismissal had violated her freedom of conscience, freedom of thought and freedom of public expression. As regards the dismissal, the Constitutional Court found that it had no

jurisdiction to review the lawfulness of the SJC's decision. As to whether the applicant's dismissal affected her freedom of expression, the court held that a distinction had to be made between exercising the office of judge and that particular freedom. It ruled that the office of judge entailed the right and duty to adjudicate in accordance with the law, and that that right and duty did not form part of the rights and freedoms on which it had competence to decide under the Constitution (*У.бр.145/2007*).

C. Media reports regarding the applicant's case

17. The applicant submitted copies of several articles published between April and December 2006 in the daily newspapers *Vreme* and *Dnevnik.*
18. An article published on 20 April 2006 quoted a report by the Supreme Court stating that the law had been wrongly applied in civil case no. IV P.br. 2904/01.
19. An article of 27 December 2006 stated that the Supreme Court had confirmed that the applicant should be dismissed from office. It reported Judge D.I. as saying that the SJC in its new composition should follow their recommendations. In this connection, the article quoted Judge D.I. as saying:

"We only gave a reminder that responsibility should be established (*треба да се сноси одговорност).*"

20. An article of 28 December 2008 stated:

"D.I., the President of the [Supreme] Court, asked (the SJC) to dismiss (the applicant) for professional misconduct."

21. An article dated 11 January 2007 published in the daily newspaper *Dnevnik* quoted Judge D.I. as saying, *inter alia*:

"We will submit an opinion as to whether (the applicant) should be dismissed once the responsibility of other institutions has been established. For the Supreme Court, that there has been professional misconduct [on the part of the applicant] is beyond any doubt (*не е спорна нестручноста и несовесноста на судијката во случајов*). The Civil Division has already established that."

II. RELEVANT DOMESTIC LAW

A. The 1991 Constitution, as amended in 2005

22. The relevant provisions of the 1991 Constitution read as follows:

Article 104

"The State Judicial Council is composed of seven members. The Parliament elects the members of the Council. The members of the Council are elected from among outstanding members of the legal profession for a term of six years with the possibility of being re-elected once ..."

Article 105

"The State Judicial Council:

- proposes to the Parliamentary Assembly the names of judges for election and decides on proposals for the removal of a judge from office in cases set out in the Constitution ..."

23. In December 2005 Parliament adopted several Amendments to the Constitution. Amendment XXVIII and Amendment XIX replaced Articles 104 and 105, respectively. The relevant provisions read as follows:

Amendment XXVI

"1. ... a judge can be dismissed from office:

- for a serious violation of disciplinary rules which renders him or her unsuitable to exercise the office of judge; and

- for exercising the office of judge in an unprofessional and unconscientious manner, under conditions stipulated by law."

Amendment XXVIII

"... The State Judicial Council is composed of fifteen members. The President of the Supreme Court of the Republic of Macedonia and the Minister of Justice are *ex officio* members of the Council. Eight members of the Council are elected by judges from among their peers ... Three members of the Council are elected by Parliament ... Two members are proposed by the President of the Republic and elected by the Parliament ..."

Amendment XXIX

"The State Judicial Council of the Republic of Macedonia:

- elects and dismisses judges and lay judges ..."

B. State Judicial Council Act 1992 (Official Gazette nos. 80/1992; 50/1999 and 43/2003)

24. The relevant provisions of the 1992 Act read as follows:

"b) Determination of professional misconduct in the exercise of a judge's office

Section 21(2)

Before it rules on a request for determination of professional misconduct by a judge, the State Judicial Council shall obtain an opinion by the court of the judge concerned and by the plenary of the Supreme Court as to whether the request for his or her dismissal is justified ...”

C. State Judicial Council Act 2006 (Official Gazette no. 60/2006)

25. The relevant provisions of the 2006 Act read as follows:

Grounds for dismissal of a judge
Section 53(1)(2)

“A judge can be dismissed for unprofessional and unconscientious exercise of the office of judge under conditions specified by law.”

Disciplinary proceedings
Section 55

“Disciplinary proceedings may be instituted by a member of the SJC, the president of the court of a judge whose dismissal is being sought, or the president of the higher court or plenary of the Supreme Court ...

Disciplinary proceedings are urgent and confidential. The public are excluded in the interests of the reputation and dignity of the judge concerned.

The SJC sets up a Disciplinary Commission composed of five of its members.

A judge against whom proceedings have been instituted may respond to the request for disciplinary proceedings in writing or orally within eight days of the date of service of that request.

A judge against whom proceedings have been instituted has the right to a legal representative.

When it receives a request, the Disciplinary Commission collects information and draws up a report, which it submits to the SJC to establish whether the request is justified. On the basis of that report the SJC may initiate or stay disciplinary proceedings.

...

The SJC adopts Rules regarding the proceedings (see paragraph 74 below).”

Proceedings for determination of professional misconduct by a judge (постапка за утврдување на нестручно и несовесно извршување на судиската функција)

Section 58

"Proceedings for determination of professional misconduct by a judge shall be carried out under section 55 by a Commission for of professional misconduct ("the Commission").

The SJC sets up (the Commission) composed of five of its members.

...

On the basis of a report drawn up under section 55(6) of the Act and the hearing held before the SJC, the latter may:

- stay the proceedings; and

- dismiss a judge for professional misconduct."

Right to appeal
Section 60

"The judge concerned may challenge the SJC's dismissal or disciplinary decision before a second-instance panel set up within the Supreme Court ('the Appeal Panel')...

The Appeal Panel is composed of nine members, of whom three are Supreme Court judges, four Appeal Court judges and two judges of the court of the judge against whom proceedings have been conducted.

The President of the Supreme Court may not be a member of the Appeal Panel."

D. State Judicial Council Act 2011 (Official Gazette no. 110/2011)

26. According to section 1 of the 2011 State Judicial Council Act the Minister of Justice participates in the work of the SJC without voting right.
27. Pursuant to section 6 of this Act, the Minister of Justice enjoys all rights, duties and responsibilities as the members of the SJC who have voting right, except to take part in the decisions of the SJC and to inspect the work of a judge.

E. Civil Proceedings Act of 2005

28. Section 400 of the 2005 Civil Proceedings Act provides for the possibility of reopening proceedings in respect of which the Court has found a violation of the Convention. In such reopened proceedings the domestic courts are required to comply with the provisions of the final judgment of the Court.

F. Act on the Council for establishing facts and instituting proceedings to determine the responsibility of a judge (Official Gazette no. 20/2015)

29. In February 2015 Parliament enacted new legislation providing for the creation of a Council for establishing facts and instituting proceedings to determine the responsibility of a judge ("the Council"). The new body's role is to establish relevant facts in proceedings regulated under the Act and decide whether to apply for professional misconduct proceedings in respect of a judge (sections 2 and 49). It is composed of nine members (retired judges, prosecutors and lawyers, section 6) elected by all judges by direct and secret ballot (section 16). It can, *inter alia,* request the SJC to institute proceedings in order to determine the responsibility of a judge or president of a court (section 32). The Act became operational three months after its entry into force (section 53).

G. Rules governing professional misconduct proceedings in respect of a judge (Official Gazette no. 15/2007, *Правилник за постапката и начинот за утврдување нестручно и несовесно вршење на судиската функција*)

30. The relevant provisions of the Rules governing professional misconduct proceedings in respect of a judge read as follows:

Section 5

"Professional misconduct proceedings in respect of a judge may be instituted by a member of the SJC, the president of the court [of a judge whose dismissal is being sought], the president of the higher court or plenary of the Supreme Court of the Republic of Macedonia ['the complainant'].

A request for professional misconduct proceedings shall contain a description of the grounds for instituting professional misconduct proceedings.

The request shall be accompanied by supporting evidence."

Section 7

"The SJC decides whether a request for professional misconduct proceedings is timely, complete and admissible.

...

The SJC sets up a Commission for determination of professional misconduct (*Комисија за утврдување нестручно и несовесно вршење на судиската функција*) composed of five of its members."

Preliminary proceedings

Section 8

"The Commission communicates the request to the judge concerned.

The judge may respond in writing or give a verbal statement within eight days of the request being served on him or her.

The judge against whom the request is submitted has the right to a legal representative whom he or she invites to the hearing.

Together with the observations in reply to the request, the judge concerned submits all evidence in support of his or her response ..."

Section 9

"The Commission seeks information and gathers evidence relevant for [the case]."

Section 10

"On the basis of information and evidence gathered, the Commission submits a report to the SJC stating whether the request is justified."

Initiation of proceedings

Section 11

"The SJC examines the request and the Commission's proposal and decides whether to institute or stay professional misconduct proceedings.

The SJC takes (this) decision by a majority vote of all its members ..."

Section 12(1)

"The decision specified in section 11 of the Rules is served on the complainant (*подносител на барањето*), the judge [whose dismissal is sought], and the president of that judge's court and the case file is forwarded to the Commission."

Section 13

"When the SJC institutes professional misconduct proceedings, it may temporarily suspend the judge concerned."

Section 14

"The Commission schedules a hearing within thirty days of the institution of professional misconduct proceedings.

All members of the Commission attend the hearing.

The chairman of the Commission presides over the hearing."

Section 15

"The complainant and the judge concerned are summoned to a hearing.

If they have been duly summoned and fail to attend without providing any justification, the hearing is held in their absence."

Section 16

"All evidence presented by the complainant and the judge concerned and evidence obtained by the Commission is heard at the hearing.

The judge concerned may argue in relation to all evidence adduced at the hearing."

Section 17(4)

"The record of the hearing is signed by the complainant, the judge concerned or his or her representative, the members of the Commission and the minute writer."

Section 18

"The Commission draws up a report for the SJC within fifteen days of the hearing with a proposal for (one of the) following decisions:

- that the proceedings be stayed or
- that the judge be dismissed for professional misconduct."

Section 20

"On the basis of the (Commission's) report and after the hearing, the SJC may:

- stay the proceedings; or
- dismiss the judge for professional misconduct."

Section 22(1) and (3)

"The SJC takes the (dismissal) decision by a two-thirds majority vote of all its members.

...

A transcript of the decision is served on the judge, his or her representative, the complainant and the president of the court of the judge concerned or the president of the immediate higher court."

Section 23

The judge concerned may challenge the SJC's dismissal decision before a second-instance panel set up within the Supreme Court ('the Appeal Panel') ..."

H. Rules of the Supreme Court (Official Gazette nos. 13/1998 and 21/2009)

31. The relevant provisions of the Rules of the Supreme Court read as follows:

Section 23

"The following judicial divisions are set up within the Supreme Court:

1. Criminal division

2. Civil division

3. Case-law division."

Chapter III

Work of the court
Section 31

"The court carries out its work as specified by the Constitution and the Courts Act through:

- chambers;

- session of divisions;

- joint session of divisions;

- plenary session."

2. Court divisions

Organisation and competencies of divisions
Section 37(2)

"Proceedings and decisions in cases concerning personal, family, labour, property and other civil relationships between legal and physical persons fall within the competence of judges of the civil division."

Section 39(1)

"The division is composed of all judges who deal with cases that fall within the competence of that division, as well as (law clerks) ..."

III. INTERNATIONAL MATERIALS

A. The former Yugoslav Republic of Macedonia 2010 Progress Report, European Commission, Brussels, 9 November 2010

32. The relevant part of the Progress Report reads as follows:

"4.23. Chapter 23: Judiciary and fundamental rights

... the role of the Minister of Justice within the State Judicial Council and the Council of Public Prosecutors raises serious concerns about the interference of the executive power and political control in the work of the judiciary. Controversial dismissals and undue interference by the Minister of Justice indicate that the current system is not in compliance with European standards ..."

B. Opinion on the draft constitutional amendments concerning the reform of the judicial system in "the former Yugoslav Republic of Macedonia" adopted by the Commission at its 64th plenary session, European Commission for democracy through law (Venice Commission), CDL-AD(2005)038, Venice, 21-22 October 2005

33. The relevant part of the Opinion read as follow:

"41. In order to minimise the influence of the executive, the mandatory **membership of the Minister of Justice** in the State Judicial Council could be changed to a **right to be present at the sessions** of the Judicial Council or membership without voting rights."

C. 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, Strasbourg, 23-27 November 2007

34. The relevant provisions of the Opinion read as follows:

II. GENERAL MISSION: TO SAFEGUARD THE INDEPENDENCE OF THE JUDICIARY AND THE RULE OF LAW

"8. The Council for the Judiciary is intended to safeguard both the independence of the judicial system and the independence of individual judges. The existence of independent and impartial courts is a structural requirement of a state governed by the rule of law.

V. C. 2. Discipline

62. The question of a judge's responsibility was examined by the CCJE in Opinion No.3 (2002). The recent experiences of some States show the need to protect judges from the temptation to broaden the scope of their responsibility in purely jurisdictional matters. The role of the Council for the Judiciary is to show that a judge cannot bear the same responsibilities as a member of another profession: he/she performs a public function and cannot refuse to adjudicate on disputes. Furthermore, if the judge is exposed to legal and disciplinary sanctions against his/her decisions, neither judicial independence nor the democratic balance of powers can be maintained. The Council for the Judiciary should, therefore, unequivocally condemn political projects designed to limit the judges' freedom of decision-making. This does not diminish judges' duty to respect the law.

63. A judge who neglects his/her cases through indolence or who is blatantly incompetent when dealing with them should face disciplinary sanctions. Even in such cases, as indicated by CCJE Opinion No.3(2002), it is important that judges enjoy the protection of a disciplinary proceeding guaranteeing the respect of the principle of independence of the judiciary and carried out before a body free from any political influence, on the basis of clearly defined disciplinary faults: a Head of State, Minister of Justice or any other representative of political authorities cannot take part in the disciplinary body.

64. The Council for the Judiciary is entrusted with ethical issues; it may furthermore address court users' complaints. In order to avoid conflicts of interest, disciplinary procedures in first instance, when not addressed within the jurisdiction of a disciplinary court, should preferably be dealt with by a disciplinary commission composed of a substantial representation of judges elected by their peers, different from the members of the Council for the Judiciary, with provision of an appeal before a superior court."

D. Magna Carta of Judges (Fundamental Principles), Consultative Council of European Judges, Strasbourg, 17 November 2010 CCJE (2010)3 Final

35. The relevant provisions of the Magna Carta of Judges read as follows:

Guarantees of independence

"6. Disciplinary proceedings shall take place before an independent body with the possibility of recourse before a court."

Body in charge of guaranteeing independence

"13. To ensure independence of judges, each State shall create a Council for the Judiciary or another specific body, itself independent from legislative and

executive powers, endowed with broad competences for all questions concerning their status as well as the organisation, the functioning and the image of judicial institutions. The Council shall be composed either of judges exclusively or of a substantial majority of judges elected by their peers. The Council for the Judiciary shall be accountable for its activities and decisions."

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

36. The applicant complained under Article 6 § 1 of the Convention that the SJC was not "an independent and impartial tribunal" in view of the participation of the then President of the Supreme Court and the Minister of Justice in the decision of the SJC on her dismissal. She alleged that both had had a preconceived idea about the merits of the issue, namely her dismissal. Furthermore, the personal bias of the President of the Supreme Court had been further strengthened by statements in the media, in which he had expressed unfavourable views about her. Lastly, the Minister's vote had been decisive for her dismissal, which implied that there had been interference by the executive with the judiciary. The relevant part of Article 6 § 1 of the Convention reads as follows:

"1. In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."

A. Admissibility

37. The Government did not raise any objection as to the admissibility of the complaints.
38. Notwithstanding the absence of any objection by the Government regarding the admissibility of the complaints under this head, the Court would like to address the issue of applicability of Article 6 of the Convention. It notes that the applicant's case was considered by the SJC, which determined all the questions of fact and law after holding a hearing and assessing the evidence. A plenary meeting of the SJC adopted a decision on the applicant's dismissal, which was reviewed by the Appeal Panel, a body composed of judges performing a judicial function. In such circumstances, the Court considers that Article 6 applies to the impugned proceedings under its civil head (for an analysis of the *Eskelinen* test (*Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, § 62, ECHR 2007 II), see *Olujić v. Croatia*, no. 22330/05, §§

31-45, 5 February 2009, and *Oleksandr Volkov v. Ukraine,* no. 21722/11, § 91, ECHR 2013).

39. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The issue of independence and impartiality of the State Judicial Council

(a) The parties' submissions

40. The applicant submitted that the SJC had not been impartial because it had included the President of the Supreme Court and the Minister of Justice despite the fact that the former had had a preconceived idea (given his participation in the Civil Division and plenary of the Supreme Court) about her dismissal, and the latter, as President of the Anti-Corruption Commission, had set in motion the impugned proceedings against her. She further reiterated that, given the incomplete composition of the SJC at the time, the participation of the Minister of Justice in the SJC's decision to dismiss her had affected the independence of the SJC.

41. The Government submitted that whereas the President of the Supreme Court had chaired the plenary of that court, another member of the judiciary presided over that court division (Judge S.K. in respect of the Civil Division in the applicant's case). In any event, the President of the Supreme Court could not influence the decisions or opinions of the plenary or divisions of the Supreme Court because those bodies took decisions by a majority vote of all their members. Furthermore, the President of the Supreme Court had withdrawn and abstained from voting in the plenary or in any division of the Supreme Court in cases in which he had sat as a member of the SJC. The opinion adopted unanimously by the plenary of the Supreme Court had been requested by the SJC (see paragraphs 9 and 24 above). The public statements of the President of the Supreme Court regarding the applicant did not raise any doubts as to his personal impartiality, because they did not reflect his personal opinion. They had been made in the context of his competence to represent the Supreme Court and inform the public about important cases.

42. As to the role of the Minister of Justice, the Government submitted that the SJC was a first-instance tribunal vested with jurisdiction to examine and decide each case separately. The fact that the majority of the members of the SJC were judges elected by their peers in direct and secret ballots was a strong indicator of its impartiality. They confirmed that the SJC that had dismissed the

applicant had been composed of ten members: eight judges elected by their peers, as well as the President of the Supreme Court and the Minister of Justice as *ex officio* members. The dismissal decision had been adopted unanimously, in compliance with the two-thirds majority requirement. They denied that the decision of the Minister of Justice, as an individual member, could compromise the entire SJC. In this connection they stressed that the Minister had no powers regarding the election or dismissal of members of the SJC (they referred, by contrast, to *Oleksandr Volkov*, cited above, § 114).

(b) The Court's assessment

(i) General principles

43. The Court reiterates that as a rule, impartiality denotes the absence of prejudice or bias. According to its settled case-law, the existence of impartiality for the purposes of Article 6 § 1 must be determined according to: (i) a subjective test, where regard must be had to the personal conviction and behaviour of a particular judge – that is, whether the judge held any personal prejudice or bias in a given case; and (ii) an objective test, that is to say by ascertaining whether the tribunal itself and, among other aspects, its composition, offered sufficient guarantees to exclude any legitimate doubt in respect of its impartiality (see, among other authorities, *Fey v. Austria*, 24 February 1993, §§ 28 and 30, Series A no. 255, and *Wettstein v. Switzerland*, no. 33958/96, § 42, ECHR 2000-XII).
44. However, there is no watertight division between subjective and objective impartiality, as the conduct of a judge may not only prompt objectively held misgivings as to his or her impartiality from the point of view of the external observer (the objective test), but may also raise the issue of his or her personal conviction (the subjective test) (see *Kyprianou v. Cyprus* [GC], no. 73797/01, § 119, ECHR 2005-XIII). Thus, in some cases where it may be difficult to procure evidence with which to rebut the presumption of the judge's subjective impartiality, the requirement of objective impartiality provides a further important guarantee (see *Pullar v. the United Kingdom*, 10 June 1996, § 32, *Reports* 1996-III).
45. In this respect, even appearances may be of certain importance; in other words, "justice must not only be done, it must also be seen to be done". What is at stake is the confidence which the courts in a democratic society must inspire in the public (see *Morice v. France* [GC], no. 29369/10, § 78, 23 April 2015 and *De Cubber v. Belgium*, 26 October 1984, § 26, Series A no. 86).
46. Finally, the concepts of independence and objective impartiality are closely linked, and, depending on the circumstances, may require joint examination (see *Sacilor-Lormines v. France*, no. 65411/01, § 62, ECHR 2006-XIII). Having regard

to the facts of the present case, the Court finds it appropriate to examine the issues of independence and impartiality together.

(ii) Application to the present case

47. In the present case, the Court notes that the Supreme Court adopted two opinions as to whether there was any professional misconduct on the applicant's part in civil case no. IV. P.br.2904/01.

48. First, on 19 April 2006 the Civil Division of the Supreme Court, which was competent to discuss procedural and substantive issues related to civil cases (see section 37(2) of the Rules of the Supreme Court, paragraph 31 above), found that there were grounds for establishing professional misconduct by the applicant. That opinion had been requested by Judge D.I. (see paragraph 8 above). Although the Government have submitted that at the time, the Civil Division was chaired by Judge S.K., they did not contest the applicant's allegation that Judge D.I. had been a member of the Civil Division that adopted that opinion (see paragraphs 8, 40 and 41 above).

49. Secondly, on 25 December 2006 the plenary of the Supreme Court voted in favour of an opinion in which it found that there were "grounds for dismissing (the applicant) for professional misconduct". Judge D.I. chaired the plenary of that court and signed the opinion. The Court places strong emphasis on the fact that that opinion was adopted unanimously (see paragraphs 12 and 41 above). The Government have not presented the Court with any evidence that Judge D.I. withdrew or abstained from voting for the opinion of the plenary of the Supreme Court. Furthermore, no provision of the legislation or specific example of domestic practice requiring the President of the Supreme Court to withdraw or abstain from voting in such a case has been brought to the Court's attention. In such circumstances, the Court cannot but conclude that Judge D.I. voted in favour of the opinion of the plenary of the Supreme Court. Since that opinion was requested by the SJC under section 21(2) of the 1992 State Judicial Council Act, valid at the time, Judge D.I. must have been aware that it would be used in the impugned proceedings against the applicant that were pending before the SJC.

50. In such circumstances, the Court considers that the applicant had legitimate grounds for fearing that Judge D.I., the then President of the Supreme Court, was already personally convinced that she should be dismissed for professional misconduct before that issue came before the SJC (see, *mutatis mutandis*, *Werner v. Austria*, 24 November 1997, § 41, *Reports* 1997-VII).

51. In the decision dismissing the applicant, the SJC relied on the opinions of both the Civil Division and the plenary of the Supreme Court (see paragraph 14 above). The applicant was dismissed by a unanimous vote of the plenary of the SJC,

which included Judge D.I. as an *ex officio* member (see paragraphs 14 and 23 above).

52. It emerges from the foregoing that Judge D.I., as President of the Supreme Court, by having participated in approving the judicial opinion by, at least, the plenary of that court, expressed a view which was unfavourable to the applicant. Therefore, his further participation in the impugned professional misconduct proceedings before the SJC was incompatible with the requirement of impartiality under Article 6 § 1 of the Convention. In view of this finding, the Court does not consider it necessary to examine whether the public statements made by Judge D.I., as President of the Supreme Court, while the impugned proceedings were still pending were a further element contributing to a perception of bias on his part.
53. Similar considerations apply to the participation of the then Minister of Justice in the decision of the SJC to dismiss the applicant notwithstanding that he had requested, as the then President of the State Anti-Corruption Commission, that the SJC review the civil case IV P.br.2904/01 adjudicated by her (see *Mitrinovski v. the former Yugoslav Republic of Macedonia*, no. 6899/12, § 45, 30 April 2015).
54. Furthermore, the Court observes that, as confirmed by the Government, ten members of the new SJC delivered the decision of March 2007 by which the applicant was dismissed for professional misconduct. It had been adopted unanimously by those ten members. According to the Government, such a decision was in compliance with the "two-thirds majority" requirement (ten out of fifteen) set out at the time in the Rules of the SJC (see paragraph 42 above).
55. Be that as it may, the Court considers that the presence on that body of the Minister of Justice, as a member of the executive, impaired its independence in this particular case.
56. The Court therefore concludes that the SJC that adjudicated the applicant's case was not "an independent and impartial" tribunal as required by Article 6 § 1 of the Convention. Accordingly, there was a violation of this Article.

2. Remaining complaints under Article 6 § 1 of the Convention

57. The applicant also complained that the impugned proceedings had not fulfilled some of the guarantees specified in Article 6 § 1 of the Convention: she had been unable to comment on evidence submitted against her; she had been denied the right to attend the hearing before the Appeal Panel set up within the Supreme Court; the Appeal Panel had not been impartial since it had included Judge L.Š.; sufficient reasons had not been given for her dismissal; and there had been errors in the application of the law.

58. Having regard to the above considerations and the conclusion that the applicant's right to a hearing by an "independent and impartial tribunal" under Article 6 § 1 of the Convention was infringed, the Court declares these complaints admissible but considers that it is not necessary to examine them separately (see *Oleksandr Volkov*, cited above, § 159; *Harabin v. Slovakia*, no. 58688/11, § 143, 20 November 2012; and *Nikolov v. the former Yugoslav Republic of Macedonia*, no. 41195/02, § 29, 20 December 2007).

3. Complaint under Article 6 § 2 of the Convention

59. Lastly, the applicant alleged that the statements made to the media by members of the SJC and high-level politicians while the impugned proceedings were still in progress had violated her rights under Article 6 § 2 of the Convention.

60. The Court found that the civil limb of Article 6 of the Convention applies to the impugned proceedings (see paragraph 38 above). In any event, the applicant failed to claim compensation before the courts of general competence. Accordingly, she failed to exhaust effective domestic remedies (see *Harabin,* cited above, § 145, and *Gorgievski v. the former Yugoslav Republic of Macedonia* (dec.), no. 18002/02, 10 April 2006).

61. It follows that this part of the application must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

62. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

63. The applicant claimed that as a result of the unfair proceedings brought against her, she had lost the salary to which she would have been entitled as a judge. She provided a detailed calculation of her claim, which concerned her unpaid salary, social contributions and personal income tax. She claimed the equivalent of 96,000 euros (EUR) under this head. In this connection she submitted an expert opinion commissioned for the purpose of the proceedings before the Court. She also claimed reimbursement of the subscription fee for her admission, after her dismissal, to the Macedonian Bar. The applicant also claimed that as a consequence of the premature termination of her mandate and the media coverage, her professional reputation had been damaged and

she had suffered mental distress and frustration. In this connection she claimed EUR 12,000 in respect of non-pecuniary damage.

64. The Government contested those claims and submitted that they were speculative, exorbitant and unsubstantiated. They argued that there was no causal link between the pecuniary damage claimed and the alleged violations.

65. The Court observes that an award of just satisfaction can only be based on the fact that the applicant did not have the benefit of all the guarantees of Article 6 § 1 of the Convention. However, the Court cannot speculate as to what the outcome of proceedings compatible with Article 6 § 1 of the Convention would have been had the violations not been found. In the present case the Court sees no causal link between the breaches of Article 6 § 1 of the Convention and the alleged pecuniary damage. There is, therefore, no ground for an award under this head (see *HIT d.d. Nova Gorica v. Slovenia*, no. 50996/08, § 49, 5 June 2014; *Bajaldžiev v. the former Yugoslav Republic of Macedonia*, no. 4650/06, § 52, 25 October 2011; and *Mežnarić v. Croatia*, no. 71615/01, § 43, 15 July 2005).

66. On the other hand, the Court considers that the applicant must have suffered distress and anxiety on account of the violations found. Ruling on an equitable basis, as required by Article 41 of the Convention, it awards the applicant EUR 4,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

67. A judgment in which the Court finds a violation of the Convention or its Protocols imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, general and/or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation found by the Court and make all feasible reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach occurred (see *Harabin,* cited above, § 177).

68. The Court has already established that in the event of a violation of Article 6 of the Convention, the applicant should, as far as possible, be put in the position he or she would have been in had the requirements of this provision not been disregarded. Therefore, the most appropriate form of redress in cases such as the present one would be the reopening of the proceedings, if requested. The Court notes, in this respect, that the Civil Proceedings Act provides for the possibility of proceedings being reopened where the Court concludes in a judgment that a court's decision or proceedings prior to it were in breach of the fundamental human rights or freedoms of the party (see paragraph 28 above).

B. Costs and expenses

69. Regarding the costs and expenses incurred before the Court, the applicant claimed the equivalent of EUR 250 for the expert's fees (see paragraph 63 above) and translation costs in the amount of EUR 60 (supported with an invoice). She further invited the Court to reimburse her legal representative's fees in accordance with its own finding.
70. The Government contested those claims as unsubstantiated or not actually and necessarily incurred.
71. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see *Editions Plon* v. France, no. 58148/00, § 64, ECHR 2004-IV). In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicant EUR 900 for the proceedings before the Court, plus any tax that may be chargeable to her.

C. Default interest

72. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints that the SJC was not "an independent and impartial tribunal", as well the remaining complaints under Article 6 § 1 of the Convention (see paragraph 57 above) admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention in that the SJC lacked the requisite impartiality and independence given the participation of the then President of the Supreme Court and the Minister of Justice in the decision of the SJC dismissing the applicant;

3. *Holds* that there is no need to examine the remaining complaints under Article 6 § 1 of the Convention raised in the application;

4. *Holds,*

(a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts**,** to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 900 (nine hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 7 January 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Päivi Hirvelä
President

CASE OF BUSCEMI v. ITALY

(Application no. 29569/95)

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JUDGMENT

STRASBOURG

16 September 1999

In the case of Buscemi v. Italy,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Mr M. FISCHBACH, *President*,
Mr B. CONFORTI,
Mr G. BONELLO,
Mr P. LORENZEN,
Mrs M. TSATSA-NIKOLOVSKA,
Mr A.B. BAKA,
Mr E. LEVITS, *judges*,
and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 7 September 1999,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 29569/95) against the Italian Republic lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Italian national, Mr Vincenzo Ettore Buscemi ("the applicant"), on 23 June 1995. The applicant presented his own case. The

Italian Government ("the Government") were represented by their Agent, Mr U. Leanza.

2. On 4 December 1998 the Commission decided to bring the case before the Court (former Article 48 (a) of the Convention).

3. The application concerned the custody award made in respect of the applicant's daughter and the related proceedings, the alleged bias on the part of the President of the Turin Youth Court and the alleged injury to the applicant's reputation and family life as a result of statements made to the press by that judge. The applicant relied on Articles 8 and 6 § 1 of the Convention.

4. In accordance with Rule 52 § 1 of the Rules of Court, the President of the Court, Mr L. Wildhaber, assigned the case to the Second Section. The Chamber constituted within that Section included *ex officio* Mr B. Conforti, the judge elected in respect of Italy (Article 27 § 2 of the Convention and Rule 26 § 1 (a)), and Mr C.L. Rozakis, President of the Section (Rule 26 § 1 (a)). The other members appointed by the latter to complete the Chamber were Mr M. Fischbach, Mr P. Lorenzen, Mrs M. Tsatsa-Nikolovska, Mr A.B. Baka and Mr E. Levits (Rule 26 § 1 (b)).

5. Subsequently Mr Rozakis, who had taken part in the Commission's examination of the case, withdrew from the case (Rule 28). Accordingly, Mr Fischbach replaced Mr Rozakis as President of the Chamber (Rule 12) and Mr G. Bonello was appointed to replace him as a member of the Chamber.

6. On 30 March 1999, after consulting the Agent of the Government and the applicant, the Court decided that there was no need to hold a hearing.

7. The Government submitted their memorial on 12 May 1999 and the applicant submitted his on 18 June 1999.

THE FACTS

A. The custody proceedings in respect of the applicant's daughter

8. Mr Buscemi, who is an Italian national, was born in 1949 and lives in Cuneo, where he practises as a doctor.

9. The applicant and his girlfriend, C.F., had a daughter in 1985. Relations between the mother and father had rapidly deteriorated after their daughter was born and the relevant Youth Court had already had to intervene in the past.

10. Custody of the applicant's daughter was initially awarded to the mother, from whom the applicant had separated in the meantime.

11. On 21 January 1994 the applicant applied to the Turin Youth Court for custody of his daughter to be formally awarded to him, since his ex-girlfriend had already given him custody *de facto*. She had signed a statement on 30 July 1993 acknowledging the applicant's right to custody of the child.

12. The Turin Youth Court, presided over by Judge A.M.B., ordered an investigation and on 5 May 1994 decided to place the child in a children's home. The court applied, *inter alia*, Article 333 of the Civil Code. At the same time it limited the mother's access to once a week and the father's to once a month.

13. On the morning of 3 June 1994 social workers collected the child from school, having informed her teachers, and took her to a home.

14. Immediately afterwards the applicant asked for his daughter to be examined by a neuropsychiatrist, but his request was refused for reasons which are unknown. According to the applicant, his daughter had been ill-treated in the children's home.

15. On 14 June 1994 the Youth Court appointed of its own motion two experts, one, E.T., a psychologist and the other, S.L., a child neuropsychiatrist, whose names had already appeared in the decision of 5 May 1994. It appears from a certificate issued by the Cuneo Chamber of Commerce that E.T. had also been a street trader in second-hand clothes and other items since 10 January 1994. Both experts were instructed to establish the state of relations between, firstly, the parents themselves and, secondly, the parents and their daughter, with a view to determining, among other things, which parent should be awarded custody of the child. To that end the court gave the experts the following directions, *inter alia*:

"The experts are instructed to ascertain, once they have carried out all necessary investigations, examined the documents in the proceedings, met the parents, the maternal grandmother and the child …, the parents' personality type and the relationship between them, including how the situation is likely to develop in the future; …"

16. The two experts agreed to each meet only one of the parents.

17. The applicant first appealed against the decision of 5 May 1994 on 11 June 1994, but his appeal was dismissed by the Turin Court of Appeal (Youth Division) on 28 July 1994. The Court of Appeal upheld the Youth Court's decision on the ground that the child needed to be placed in a calmer environment so that the psychological difficulties she was experiencing as a result of the conflict between her parents could be studied. The Court of Appeal also stated that two privately appointed experts should be allowed to observe the court-appointed experts' work.

18. The experts commissioned by the applicant were never consulted in the proceedings conducted by the court's experts and were unable to be present at the interview with the child. One of them did, however, take part in a meeting with the court's experts to assess the material they had gathered during their assignment.

19. The court-appointed experts' report was filed on 3 October 1994. It concluded, among other things, that neither parent seemed fit to give the child adequate emotional support or to have a balanced relationship with her. The experts also highlighted the fact that it had been impossible to assess the applicant's personality fully since he had failed to take part in all the diagnostic psychological tests.

20. On 10 October 1994 one of the privately commissioned experts filed his report with the Youth Court registry. The report criticised the conclusions of the court-appointed experts' report, particularly the finding that the applicant cared little for the welfare of his daughter or her mother. A second privately commissioned expert report expressed the same view.

21. On 15 October 1994 the applicant wrote to the court complaining that one of its experts had never met him but had nonetheless signed the report containing assessments relating directly to his personality, and that the privately commissioned experts had not been invited to attend the interview with the child by the court-appointed experts. He submitted that the best solution would be for custody of the child to be awarded to him.

22. On 3 November 1994 the Youth Court, presided over by C.L., confirmed the decision to place the child in a children's home and ordered the social services to arrange a series of meetings between the child and her mother with a view to returning custody to the mother. The applicant, on the other hand, was authorised to visit his daughter only once a month for two hours and only inside the home.

23. On 2 December 1994 the applicant's daughter was injured in a road accident. The applicant was informed of this on 7 December 1994 and went to visit his daughter the next day. Noting that she had some fairly serious injuries and being of the view that the local hospital was not equipped to carry out the necessary tests, he applied to the local magistrate (*pretore*) on 9 December 1994 to authorise him to take his daughter himself to Cuneo Hospital, which was better equipped. The magistrate considered the situation to be urgent and authorised the applicant to take his daughter to Cuneo Hospital accompanied by a member of staff from the home. However, on the same day the President of the Turin Youth Court decided that the father had no authority to intervene. He instructed the children's home to submit the child to such tests as the home judged appropriate, in consultation with the mother. The President of the court reiterated that he had made a decision authorising the applicant to see his daughter for only two hours a month and that the magistrate was clearly unaware of that decision.

24. On 12 December 1994 the applicant appealed against the Youth Court's decision of 3 November 1994. He submitted, *inter alia*, that only one of the court experts had met him despite the court's instruction to them to prepare the expert report jointly. Furthermore, the privately commissioned expert had not been informed by the court-appointed experts of the date of their interview with the child, nor had he taken part in the court's deliberations on 3 November 1994.

25. In the meantime the applicant had requested the court to award custody of the child to her mother and to review its ruling on access rights. His application was dismissed on 13 December 1994. On 18 January 1995 the applicant appealed against that decision, referring once again to the shortcomings of the court-appointed experts' report and reiterating his request for custody of the child to be returned to the mother.

26. In two separate decisions of 14 February 1995 the Turin Court of Appeal declared the first appeal inadmissible on the ground that it had been lodged out of time and dismissed the second one.

27. In the second decision the Court of Appeal noted that the proceedings were still pending, including the application made by the mother in the meantime for the father's parental rights to be forfeited. In particular, as the lower court had observed, certain factors at the root of the case subsisted, such as the mother's opposition to taking her daughter back to live with her and the serious psychological problems affecting the girl's relationship with the applicant. Having regard, therefore, to the temporary nature of the child's placement in a children's home, the Court of Appeal considered premature any decision altering the current position. The court did not rule on the applicant's allegations regarding the conduct of the experts' investigations.

28. On 23 May 1995, following a series of reports by the social services, the Youth Court authorised the girl's mother to stay with her daughter on Saturdays and Sundays.

29. On 22 June 1995 the applicant applied to the Court of Appeal again, requesting that in view of his daughter's increasing anxiety in the home, she be removed as a matter of urgency and entrusted either to his care or to her paternal grandmother's.

30. On 3 August 1995 the Court of Appeal dismissed that application. It found, among other things, that the paternal grandmother had in the past refused to take the child into her care and that the applicant had not shown that her attitude had changed. It also noted that since being placed in the home, the child no longer suffered from the fits of hysteria which she had had when living with her mother, was seeing the applicant more often and had made no further request to leave the home. The Court of Appeal also pointed out that according to the social services' report of 13 June 1995, the girl had, moreover, refused to spend two weeks by the sea with the applicant. Lastly, the court held that if the child were to go to her paternal grandmother, that would distance her from her mother, whereas she should be encouraged to resume a relationship with her mother despite the latter's limitations and her inability to demonstrate real affection for her daughter. Indeed, the child had clearly expressed a desire to go back to her mother.

31. On 9 August 1995 the Youth Court revoked its decision of 5 May 1994 and ordered custody of the child to be returned to the mother. It also limited the applicant's access to once a month in a neutral place to be agreed with the social services.

32. The applicant applied to the court on 5 September 1995, expressing his satisfaction with the decision to remove his daughter from the home, but complaining of the decision to maintain restrictions on his access rights.

33. On 23 October 1995 the Court of Appeal allowed his application in part and ordered that the applicant's access should be increased from once to twice a month.

34. On 11 July 1996 the Youth Court authorised the child to stay with her paternal aunt for the holiday, from 19 July to 5 August 1996.

35. On 24 October 1996 the court granted the applicant the right to see his daughter one afternoon a week. The court stressed, however, that relations between the social services and the applicant were extremely problematical, because the latter kept sending them written requests but showed no real willingness to enter into a dialogue.

36. The applicant appealed, seeking increased contact with his daughter, but his appeal was dismissed by the Court of Appeal on 28 January 1997. Its decision was based on a psychiatrist's report of 16 December 1996, according to which the child's mental condition had greatly deteriorated and there was a risk that she would have a mental breakdown. The fact that the girl described her parents as mentally deranged and wanted to return to the home showed how precarious her mental stability was. The Court of Appeal concluded that the child was above all in need of psychological care and certainly not of more frequent contact with her father.

37. The applicant had in the meantime filed complaints against the court-appointed experts with the Principal Public Prosecutor at the Court of Cassation and the Public Prosecutor's Office at the Turin District Court. He submitted that the court experts had performed their task negligently, that they had failed to contact the privately commissioned experts and were consequently guilty of a failure to discharge one of their obligations (*omissione d'atti d'ufficio*) under Article 328 of the Criminal Code. The second complaint was struck out on 22 June 1996 on the ground that, in the absence of malicious intent, it concerned problems regarding the experts' method of conducting their investigations, which it fell to the judge ordering the expert report to assess after hearing submissions from the parties and their experts. The District Court also pointed

out that it had been for the privately commissioned expert to take action and contact the court-appointed experts. No action was taken on the first complaint.

B. The President of the court's statements to the press

38. On 24 June 1994 the Italian daily *La Stampa* published an article containing statements by the President of the Turin Youth Court, C.L., about the court's child-custody work. In that article C.L. used the following expressions, among others:

"We are not child-snatchers."

"Our role is to release children from their suffering."

39. On 11 July 1994 the same daily published a letter signed by the applicant which was also a reply to the first statements made by C.L. The applicant related the episode in which his daughter had been placed in a children's home and made the following comments, among others:

"The act in itself is one of sequestration or, at the very least, violence towards children. Whether that act should not be considered as violence or sequestration on the ground that a court is involved is quite another question."

"This little girl suffered shock and emotional stress to a cruel degree."

"Clearly the cruelty of the exercise cannot fail to have tarnished the State's image and lessened confidence in an institution which should guarantee the greatest respect for human beings."

"Among other things, the inappropriateness of the method used derives from the fact that an urgent decision was not implemented until a month after it had been taken."

"In such a case I doubt whether the President, Judge L., ... can say 'we have released a child from its suffering' or 'we are not child-snatchers'."

40. In a letter published in *La Stampa* on 8 August 1994 the President of the court replied. Among other things, C.L. stated:

"... [The applicant's] account of events is inaccurate as regards the fundamental circumstances of the case ... Custody of the child was awarded not to the father but to the mother. At home, both on account of the disputes between the parents and other circumstances of which I cannot give details, she was living in very difficult conditions, which led to episodes of violence, even physical violence, and which, over time, genuinely undermined the child's physical and psychological stability. It was absolutely necessary to remove her precisely in order to release her from an oppressive situation ... She was very happy to be somewhere quiet and peaceful at last. Clearly, if and when the parents overcome the difficulties in their relationship, the child will be able to go home. I guarantee that everyone who has worked on and is working on this case is highly qualified: specialist juvenile judges, social workers, psychologists ..."

41. In a letter published in *La Stampa* on 5 September 1994 the applicant responded to C.L.'s letter, complaining that the judge had not only called him a liar, but had also revealed confidential information about his case, which in a small provincial town such as Cuneo had made it easy to identify the persons involved and had left people feeling puzzled.

42. On the same date *La Stampa* also published a letter from a group of the applicant's colleagues expressing their solidarity with him.

43. On 21 November 1994 the applicant asked for C.L. to be replaced by a different judge in the custody proceedings in respect of his daughter. He alleged that C.L. was biased on account of the heated exchange of views they had had in the press.

44. In an order of 1 December 1994 the Youth Court dismissed the applicant's challenge for being out of time. The court held that, quite apart from the fact that the ground relied on by the applicant did not appear among those formally provided for in Article 51 of the Code of Civil Procedure, the application had in any event been made out of time since it should have been filed before the date set for the decision (taken on 3 November 1994 - see paragraph 22 above). Besides, the applicant could have foreseen that C.L. might preside over the court, since in the event that more than the required number of judges was available, the most senior member would act as President and the applicant had known that C.L. was a member of the division which would be trying his case. At all events, as the decision had already been taken, the applicant had a remedy in ordinary proceedings, namely lodging an appeal, for submitting that complaint.

45. Following the statements made by C.L. in his letter published on 8 August 1994, the applicant had also lodged a complaint with the Public Prosecutor's Office at the Milan District Court. Proceedings on that complaint were officially discontinued on 22 March 1995 as the preliminary investigating judge at the Milan District Court found that C.L. had confined himself to replying to the applicant's first letter, correcting the inaccuracies in the applicant's allegations and stressing that the conduct of all those involved in the case had been right and proper. The only offensive comments, in the judge's view, were those the applicant had directed at C.L., whom he had called a "child-snatcher". C.L.'s reply had been appropriate and moderate and had not disclosed any confidential information acquired in the course of his duties as it would not in any event have been possible to identify the persons involved in the case. It was rather the applicant who had disclosed the circumstances in which the child had been removed from her mother's custody. There had thus been no injury to the reputation or honour of the applicant.

46. The applicant also applied – unsuccessfully – to the National Council of the Judiciary (*Consiglio superiore della magistratura*).

relevant domestic law

47. Under Article 30 of the Constitution,

"Parents have a duty to maintain, educate and bring up their children, including children born out of wedlock.

Where the parents are incapable of performing those duties, the legislature shall make appropriate provision.

..."

48. Under Article 333 of the Civil Code,

"If the conduct of one or both parents is not such as to justify forfeiting parental authority ..., but is harmful to the child, the court may, if appropriate, take any necessary measure and may also order the child to be removed from the family home. Such measures may be rescinded at any time."

proceedings before the commission

49. Mr Buscemi applied to the Commission on 23 June 1995. He alleged, among other things, an infringement of his right to respect for his family life on account of his daughter's having been placed in a children's home, bias on the part of the President of the Turin Youth Court and injury to his reputation and to his family life as a result of the statements made by him to the press (Articles 8 and 6 § 1 of the Convention).

50. The Commission declared the application (no. 29569/95) admissible on 16 April 1998. In its report[1] of 27 October 1998 (former Article 31 of the Convention), it expressed the unanimous opinion that there had been a violation of Article 8 on account of the manner in which the experts had conducted their investigations and of Article 6 § 1 on account of the President of the Youth Court's statements to the press.

the law

i. aLLEGED VIOLATION OF article 8 of the convention

51. The applicant said that the measures taken by the Turin Youth Court had contributed to the almost irretrievable breakdown of his relationship with his daughter. He alleged in particular that the court had based its decision on an expert report which was unfounded and procedurally flawed. He submitted that there had been a violation of Article 8 of the Convention, which provides:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

52. The Government disputed that submission. The Commission found that although the restrictive measures taken by the Italian authorities against the parents, including the applicant, had been based on relevant and sufficient grounds, there had been a violation of Article 8 on account of the manner in which the expert report ordered by the court had been prepared.

1. *Note by the Registry.* The report is obtainable from the Registry.

A. Measures taken to remove the daughter

53. The Court points out that the enjoyment by parent and child of each other's company constitutes a fundamental element of family life and that domestic measures hindering such enjoyment amount to an interference with the right protected by Article 8 (see the Bronda v. Italy judgment of 9 June 1998, *Reports of Judgments and Decisions* 1998-IV, p. 1489, § 51). In the instant case the restrictive measures taken by the Italian authorities against the applicant amounted to an interference with his right to respect for his family life. Such interference will constitute a violation of Article 8 unless it is "in accordance with the law", pursues an aim or aims that are legitimate under paragraph 2 of Article 8 and can be regarded as "necessary in a democratic society".

54. The Court is of the view that the interference was in accordance with the law, in particular with Article 333 of the Civil Code, and pursued the legitimate aim of protecting the rights of others. The question remains as to whether that interference was also "necessary in a democratic society".

55. The Court considers, as the Commission did, that, having regard to the circumstances of the case, particularly the real and serious conflicts between the applicant and the child's mother, the measures taken by the national courts appear to be based on relevant and sufficient grounds. The national courts, which dealt with the case continually and gave decisions stating full reasons, were in a better position than the Court to strike a fair balance between the interests of the child in living in a peaceful environment and those motivating the steps taken by her father (see the Söderbäck v. Sweden judgment of 28 October 1998, *Reports* 1998-VII, pp. 3095-96, §§ 30-34) and did not exceed the margin of appreciation afforded to them under paragraph 2 of Article 8.

56. Accordingly, there has not been a violation of Article 8 arising from the measures taken to remove the child from the applicant.

B. Manner in which the experts conducted their investigations

57. The Court does not agree with the applicant's submission, which was accepted by the Commission, that he has been the victim of a violation of Article 8 on account of the court-appointed experts' conduct of their investigations.

58. Undoubtedly, as the Court has affirmed, Article 8 requires it to determine whether, "having regard to the particular circumstances of the case and notably the serious nature of the decisions to be taken, the parents have been involved in the decision-making process, seen as a whole, to a degree sufficient to provide them with the requisite protection of their interests. If they have not, there will have been a failure to respect their family life and the interference resulting from the decision will not be capable of being regarded as 'necessary' within the meaning of Article 8" (see the W. v. the United Kingdom judgment of 8 July 1987, Series A no. 121-A, pp. 28-29, § 64). The Court has also acknowledged that whilst "Article 8 contains no explicit procedural requirements, the decision-making process leading to measures of interference must be fair and such as to afford due respect to the interests safeguarded by Article 8" (see the McMichael v. the United Kingdom judgment of 24 February 1995, Series A no. 307-B, p. 55, § 87).

59. In that connection the Government submitted that, while it was true that in custody proceedings the parties had more limited powers of intervention than in ordinary proceedings (owing to the non-contentious nature of the proceedings, which were pursued exclusively with the aim of protecting children's interests), it should not be overlooked that the applicant had always been given a hearing, that he had always been informed of all matters concerning the case and had been able to comment on them. As regards, in particular, the allegation that one of the court-appointed experts also carried on business as a street trader, the Government disputed the veracity of that allegation and pointed out that an assessment of the professional competence of an expert could only be based on work done in that capacity. The Government submitted, moreover, that a violation could not be found merely on the basis of the manner in which the experts had conducted their investigations when, as the Commission had found in its report, the interference with the applicant's family life was in itself justified.

60. The Court considers as the Government did, that the foregoing principles regarding the parents' role in the decision-making process (see paragraph 58) were not breached in the instant case. The applicant cannot be said to have played no role in the decision-making process. On the contrary, he took an active part in it; he was always able to submit his arguments in the national courts and to study all the documents. Furthermore, one of the privately commissioned experts had been able to discuss with the court-appointed experts the results of the tests conducted in the course of their investigations. The decision-making process as a whole does not appear to have been unfair, and excessive weight should not be attached to the fact that one of the two experts was also a street trader (see paragraph 15 above). In that connection the Court notes that the applicant did not expressly question that expert's professional competence as a psychologist. The Court considers that the fact that the expert was also a street trader does not detract from his expertise as a psychologist.

61. As regards the complaint that one of the court-appointed experts did not interview the applicant, the Court considers that the court decision setting out the purpose of the expert opinion was worded in terms sufficiently general to allow the experts some discretion as to the precise manner in which their report would be prepared. In any event, the results of the experts' work were examined by both experts jointly. In this context account should also be taken of the fact that the applicant failed to participate in all the diagnostic psychological tests (see paragraph 19 above).

62. In the Court's view, it might perhaps have been desirable for the privately commissioned experts to be more fully involved in the various stages of the court-appointed experts' assignment and not only at the meeting to assess the results, although there is nothing in the case file to suggest that the privately commissioned experts actually asked to be involved further. Nevertheless, the circumstances of which the applicant complains do not suffice in themselves to have adversely affected the fairness of the proceedings, which were based not only on the expert report in question but also on a series of social-services reports (see, *inter alia*, paragraph 28 above).

63. In sum, the manner in which the expert report was prepared did not breach Article 8.

ii. aLLEGED VIOLATION OF article 6 § 1 of the convention ARISING FROM the statements made to the press by the president of the turin youth court

64. The applicant complained of bias on the part of the President of the Turin Youth Court, C.L., and submitted that his case should not have been heard by a court presided over by a person with whom he had had an argument in the press. He alleged that this had given rise to a violation of Article 6 § 1 of the Convention, which provides:

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal ..."

65. The Government considered that there could be no doubt as to the President of the court's impartiality. The decisions adopted by the court presided over by C.L. had not subsequently been varied and the proceedings on the complaints which the applicant had filed against the President had been discontinued. Furthermore, it was the applicant who had started the controversy with his letter in *La Stampa* portraying the court's work in an unfavourable light and he had been supported in that action by the journalist responsible for the column. The President of the court had therefore simply considered it his duty to clarify matters, having regard in particular to the risk of misinformation on account of the relative importance given by the daily in question to the applicant's story.

66. The applicant disputed that argument.

67. The Court stresses, above all, that the judicial authorities are required to exercise maximum discretion with regard to the cases with which they deal in order to preserve their image as impartial judges. That discretion should dissuade them from making use of the press, even when provoked. It is the higher demands of justice and the elevated nature of judicial office which impose that duty.

68. The Court considers, as the Commission did, that the fact that the President of the court publicly used expressions which implied that he had already formed an unfavourable view of the applicant's case before presiding over the court that had to decide it clearly appears incompatible with the impartiality required of any court, as laid down in Article 6 § 1 of the Convention. The statements made by the President of the court were such as to objectively justify the applicant's fears as to his impartiality (see, *mutatis mutandis*, the Ferrantelli and Santangelo v. Italy judgment of 7 August 1996, *Reports* 1996-III, p. 952, §§ 59 and 60).

69. There has accordingly been a breach of Article 6 § 1 of the Convention.

iii. aLLEGED VIOLATION OF article 8 of the convention ARISING FROM the statements made to the press by the president of the turin youth court

70. The applicant also complained of a violation of Article 8 of the Convention arising from C.L.'s statements published by *La Stampa* and alleged that injury had been caused to his reputation and his family life.

71. The Government disputed that submission.

72. The Court considers that no injury to the applicant's right to respect for his private and family life can be established under this head, having regard to the fact that in his letter of 11 July 1994 the applicant had himself disclosed his identity.

73. Accordingly, there has not been a violation of Article 8 of the Convention in this regard.

IV. application of article 41 of the convention

74. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

75. The applicant sought, firstly, 500,000,000 Italian lire (ITL) in compensation for pecuniary damage, relying in particular on the damage done to his professional image as a surgeon. He also claimed ITL 2,000,000,000 in compensation for non-pecuniary damage.

76. The Government did not make any submissions on the issue.

77. The Court notes that it has no evidence on which to find that the applicant sustained pecuniary damage. As to non-pecuniary damage, it considers that the finding of a violation of Article 6 § 1 of the Convention constitutes sufficient compensation. In that connection, it takes account, *inter alia*, of the fact that the applicant significantly contributed to fuelling the controversy concerning him in the press.

B. Costs and expenses

78. The applicant sought primarily reimbursement of the expenses incurred in the proceedings in the domestic courts in the sum of ITL 3,105,000 (the applicant produced fee notes for the custody proceedings and a breakdown of the amounts paid for the privately commissioned expert reports).

79. The Court notes that the documents supplied by the applicant relate only to the expenses incurred in connection with the placement of his daughter – the applicant did not claim reimbursement of any amounts incurred to prevent or have redressed a violation of Article 6 § 1 of the Convention – and considers, in the light of its conclusions regarding Article 8 of the Convention, that it is not necessary to award the applicant reimbursement under this head.

80. As regards the expenses incurred before the Convention institutions, the Court, making its assessment on an equitable basis as required by Article 41 of the Convention and having regard to the fact that the applicant presented his own case, awards him ITL 1,000,000 for costs and expenses.

C. Default interest

81. According to the information available to the Court, the statutory rate of interest applicable in Italy at the date of adoption of the present judgment is 2.5% per annum.

for these reasons, the court

1. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention;

2. *Holds* unanimously that there has not been a violation of Article 8 of the Convention;

3. *Holds* by six votes to one that the present judgment constitutes in itself sufficient just satisfaction in respect of non-pecuniary damage;

4. *Holds* unanimously that the respondent State is to pay the applicant, within three months, 1,000,000 (one million) Italian lire for costs and expenses, plus simple interest at an annual rate of 2.5% from the expiry of the above-mentioned three months until settlement;
5. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in French, and notified in writing on 16 September 1999, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
President

Marc FISCHBACH Registrar

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the partly dissenting opinion of Mr Bonello is annexed to this judgment.

M.F.
E.F.

The mentor should collect work from the mentee related to the day-to-day job. At least 3 judgments from different stages of learning should be included in the Portfolio, containing mentor´s corrections in the text.
In the civil division it is recommended to include resolutions on the most typical disputes. These could be inheritance disputes, debts, repudiation of contracts, and nullity of contracts, housing disputes or similar.
It is also important to allow the mentee to choose what to insert in his/her portfolio. Even though the mentor might decide to include few specific resolutions, the mentee should be permitted to insert some of his/her own choice. Additionally, the mentor should give the mentee the opportunity to reflect about the work to be included in the Portfolio because this compilation will be used to evaluate his/her work.
The report written by the mentee after the external internship should also be included in the Portfolio.

PARTLY DISSENTING OPINION
OF JUDGE BONELLO

I do not share the majority's opinion that the finding of a violation of Article 6 § 1 of the Convention amounts in itself to sufficient just satisfaction in respect of the non-pecuniary damage alleged by the applicant. I consider such "non-redress" to be inadequate irrespective of the court of justice concerned and, furthermore, to be incompatible with the terms of the Convention, as I explained in detail in my partly dissenting opinion annexed to *Aquilina v. Malta* [GC], no. 25642/

Civil Division	
Week 1	**MEETING COORDINATOR WITH MENTOR. MEETING COORDINATOR WITH MENTEE. (PURPOSE: to know their needs, expectations and objectives during mentorship and evaluation system. Coordinator will deliver to mentees questionnaires of first and second self-evaluation)**
Week 2	**MENTEE FILL FIRST SELF ASSESSMENT**
Week 3	
Week 4	
Week 5	
Week 6	
Week 7	
Week 8	
Week 9	
Week 10	
Week 11	
Week 12	

Week 13	
Week 14	
Week 15	
Week 16	
Week 17	**MEETING COORDINATOR WITH MENTOR TO PREPARE INTERIM QUESTIONNAIRE**
Week 18	**MENTOR FILL INTERIM QUESTIONNAIRE**
Week 19	
Week 20	
Week 21	
Week 22	
Week 23	
Week 24	
Week 25	

Week 26	
Week 27	
Week 28	
Week 29	
Week 30	**MENTEE FILL SECOND SELF ASSESSMENT. MENTEE FILL QUESTIONNAIRE ASSESSMENT MENTORS**
Week 31	**MEETING COORDINATOR WITH MENTOR TO PREPARE FINAL QUESTIONNAIRE EVALUATION. MEETING COORDINATOR WITH MENTEES TO COLLECT QUESTIONNAIRES FILLED BY THEM**
Week 32	**MENTOR FILL FINAL QUESTIONNAIRE EVALUATION**
Week 33	
Week 34	
Week 35	
Week 36	
*** note 1**	**In this mentorship the mentee would have an internship at Social Welfare Centre. Programme and schedule would be provided by Coordinator according with Judicial Academy**

***note 2**	**In this mentorship the mentee should attend the seminar(s) provided by Judicial Academy**

94, ECHR 1999-III.

INTERIM QUESTIONNAIRE (At the middle of the time frame)

Mentor's name	
Court/Prosecutor's Office	
Time frame	
Mentee's name	

Goal of the Interim Questionnaire

The goal of this questionnaire is to monitor the evolution of the mentee in order to verify if he has achieved all the necessaries competencies. If any problem still remains, the mentor can focus the training on this point. This questionnaire has to be shared with the mentee who shall be given opportunity to express his/her own point of view. There are only two possible marks:

- Need to improve
- Adequate progress

Mark just one in each question;

1. The mentee possesses knowledge of the substantive law

Need to improve	Adequate progress

2. The mentee possesses knowledge or the procedural law

Need to improve	Adequate progress

3. The mentee is able to write quality drafts of statements, indictments or any other resolutions

Need to improve	Adequate progress

4. The mentee has the ability to manage information from different sources as databases, legislative collection and handles IT correctly

Need to improve	Adequate progress

5. The mentee is able to organize his/her daily tasks effectively

Need to improve	Adequate progress

6. The mentee interacts appropriately with other people involved in the court proceedings (lawyers, defendants, victims, witnesses, police…)

Need to improve	Adequate progress

7. The mentee uses clear, logical and understandable language

Need to improve	Adequate progress

8. The mentee is aware of and acts in accordance with the constitutional values

Need to improve	Adequate progress

9. The mentee shows willingness to work and perfect his/her knowledge and skills

Need to improve	Adequate progress

10. The mentee shows ability of critically reflect about his/her own work and readiness to accept suggestions

Need to improve	Adequate progress

Space for your comments if you want to give additional explanations

EVALUATION QUESTIONNAIRE

Mentor's Name	
Court/Prosecutor's Office	
Time frame	
Mentee's name	

Goal of the evaluation

After the completion of each part of the initial training, mentor in charge of that part of the training within the court or prosecutor's office shall assess the candidate.

Art. 25 Law say: "**The initial training shall imply organized acquisition of practical and theoretical knowledge and skills, understanding the role and basic principles of actions of judges and deputy public prosecutors for the purpose of independent, professional and efficient performance of the office or a judge in a misdemeanor and basic court and that of a deputy public prosecutor in a basic public prosecutor's office".**

In accordance with this perspective, the goal of the evaluation is to ensure that the mentees have acquired knowledge, skills and attitudes to necessary to perform the duty of judge or prosecutor.

In order to reach an objective, impartial and fair evaluation, the mentor has to take into account the following criteria:

From 1 to 5: These marks mean:

1: mentee has not acquired the competence

2: sufficient elements have been acquired

3: sufficient elements have been acquired in a good way

4: sufficient elements have been acquired in a very good way

5: sufficient elements have been acquired in an excellent way

Explanation of grades:

Grade 1: The candidate has not mastered even a minimum of competence. He is not able to demonstrate the necessary knowledge/activity/behavior even with the support of the mentor.

Grade 2: The candidate has mastered minimum competencies. He is able to demonstrate the necessary knowledge/activity/behavior only with the support of mentor.

Grade 3: The candidate has mastered the competence to an average degree. He is able to demonstrate necessary knowledge/activity/behavior, in a satisfactory manner, with occasional reliance on the support of mentor.

Grade 4: The candidate has mastered the competence to a high degree. He is able to satisfactorily demonstrate the necessary knowledge/activity/behavior, in a satisfactory manner, completely independently.

Grade 5: The candidate has mastered the competence to an extremely high degree. He is capable of demonstrating necessary knowledge/activity/behavior in an exceptionally satisfactory manner, completely independently.

At the end of each competence, the points obtained in each indicator must be added up. At the end of the questionnaire, the points obtained in each competence must be added up and divided by the number of indicators. In this way we can get the average score for each mentee.

Oral skills (1-Technical competences) will be evaluated by means of mock trials.

Indicators

Cross just one of the listed numbers

1- TECHNICAL COMPETENCES

The mentees must have a thorough knowledge of the law – substantive and procedural. They must be able to write judgments and indictments. They have to handle IT tools and manage information from different sources.

1- The mentee has knowledge of substantive law

Not have competence				Excellent
1	2	3	4	5

2- The mentee is able to apply the knowledge of substantive law

Not have competence				Excellent

1	2	3	4	5

3- The mentee has knowledge of procedural law

Not have competence				Excellent
1	2	3	4	5

4- The mentee knows how to use the knowledge of procedural law in practice

Not have the competence				Excellent
1	2	3	4	5

5- The mentee has the ability to draft statements, indictments, final judgments or any other resolutions and to apply legal rules in a proper way.

Not have the competence				Excellent
1	2	3	4	5

6- The mentee has the ability to manage information from different sources as databases, legislative collection and to handle correctly IT

Not have the competence				Excellent
1	2	3	4	5

7- The mentee has the ability to prepare and conduct the investigations and to question witnesses, defendants, experts, crime victims etc. respectfully.

Not have the competence				Excellent
1	2	3	4	5

8- The mentee is capable of conducting oral hearings.

Not have the competence				Excellent
1	2	3	4	5

9- The mentee has the capacity to speak in public clearly and easily.

Not have the competence				Excellent
1	2	3	4	5

10- The mentee has the ability to conduct the debate, use a clear, logical an understanding language, explain different points of view and adopt an adequate position.

Not have the competence				Excellent
1	2	3	4	5

11. The mentee has the ability to manage conflicting situation and act in the most appropriate way.

Not have the competence				Excellent
1	2	3	4	5

12- The mentee is able to pay attention to the presentation of the facts and legal arguments in order to render a reasonable decision.

Not have the competence				Excellent
1	2	3	4	5

This competence score	

2-FUNCIONAL AND ORGANIZATIONAL COMPETENCES:

These skills refer to the understanding of different organizations (different courts and prosecutor's offices), of the agenda and the efficient organization of the work.

1- The mentee has understood the organization of the judiciary body wherein he/she was assigned to work under you

Not have the competence				Excellent
1	2	3	4	5

2- The mentee shows working capacity and ability to solve cases taking into account aspects related to quantity and quality.

Not have the competence				Excellent
1	2	3	4	5

3- The mentee is able to organize his/her daily schedule effectively

Not have the competence				Excellent
1	2	3	4	5

4-The mentee has learned to set aside enough time to perform each task

Not have the competence				Excellent
1	2	3	4	5

5-The mentee is able to listen receptively and with an open mind.

Not have the competence				Excellent
1	2	3	4	5

6-The mentee is able to adapt his/her way of working where there is a need and to accept criticism

Not have the competence				Excellent
1	2	3	4	5

This competence score	

3- ANALYTICAL COMPETENCES

These competences are necessary to identify relevant information in the main documents, propose/accept the relevant evidence, and to provide adequate legal reasoning and evidence assessment.

1- The mentee has learned to analyze and summarize a case or a file

Not have the competence				Excellent
1	2	3	4	5

2- The mentee has the ability to summarize the circumstances and procedural steps of a case.

Not have the competence				Excellent
1	2	3	4	5

3- The mentee has the ability to formalize and explain legal grounds of a decision and communicate it clearly and in a proper way

Not have the competence				Excellent
1	2	3	4	5

4- The mentee uses a clear, logical, an understating language when taking statements or testimonies from witnesses,

Not have the competence				Excellent
1	2	3	4	5

5- The mentee shows skills for strategic investigation

Not have the competence				Excellent
1	2	3	4	5

6- The mentee is able to analyze the pleas in law and arguments raised by the parties under the applicable law and to render a decision within a reasonable time.

Does not have Excellent the competence				
1	2	3	4	5

7- The mentee has the ability to use a logical reasoning and critical thinking in the exercise of its duties

Does not have Excellent the competence				
1	2	3	4	5

8- The mentee is able to give judgment in accordance with law and Constitution.

Does not have Excellent the competence				
1	2	3	4	5

This competence score	

4- SOCIAL AND PERSONAL COMPETENCES

Social competences include teamwork, active listening, empathy and respect when communicating with different persons with whom the judge or prosecutor comes into contact. Personal competences include the constitutional values that judges and prosecutors have to adopt as ethical principles regulating their personal behavior. This also includes the taking care of their own continuous training.

1. The mentee is capable of following instructions from their superiors (*this competence should be particularly monitored when the mentee is serving in Prosecutor Office)*

Does not have the competence			Excellent	
1	2	3	4	5

2. The mentee interacts appropriately with other people involved in the court proceedings (lawyers, defendants, victims, witnesses, police…)

Does not have the competence			Excellent	
1	2	3	4	5

3. The mentee listens actively and empathetically

Does not have the competence			Excellent	
1	2	3	4	5

4. The mentee understands the consequences of his/her decisions for the people involved

Does not have the competence			Excellent	
1	2	3	4	5

5. The mentee is able to remain impartial, independent and objective at all times while exercising their duties

Does not have Excellent the competence				
1	2	3	4	5

6. The mentee is able to distance himself/herself from their personal political, religious and philosophical opinions and from external pressure in performing their duties

Does not have Excellent the competence				
1	2	3	4	5

7. The mentee is accessible and demonstrates respect, courtesy and sensitivity in their contacts with the parties and other people involved with the court proceedinigs (police, victims, witnesses…)

Does not have Excellent the competence				
1	2	3	4	5

8. The mentee is capable of showing empathy, humility or authority fitting the circumstances.

Does not have Excellent the competence				
1	2	3	4	5

9. The mentee is able to keep things in perspective, adapt to new and unexpected situations and adopt the most suitable behavior.

Does not have Excellent the competence				
1	2	3	4	5

This competence score	

All the competence added	
The average (The previous add divided between the total number)	

Space for your comments if you wish to give extra explanations about your assessment or to help next mentor in his/her mentorship

QUESTIONNAIRE FOR MENTEES

Mentee's Name	
Court/Prosecutor's Office	
Time frame	
Mentor's name	

Below you will find a number of statements. Please put an X sign next to each item in relation to the degree of agreement / disagreement with the statement, having in mind the meaning of the levels:

I strongly disagree - This level reflects the highest level of disagreement with the statement that you are estimating. It describes that your opinion and attitude is in the total and strong disagreement with the proposed statement. There is no element in the statement with which you could agree.

I mostly disagree – This level reflects a high level of disagreement with the statement that you are estimating. It indicates that your opinion and attitude is in the high disagreement with the proposed statement. There is a minimal, negligible element in the statement with which you could agree.

I agree partially – This level reflects medium level of agreement with the statement. It indicates that your opinion and your attitude contain both the elements of agreement and disagreement, but you find a little bit more elements of the statement with which you could agree.

I mostly agree – This level reflects a high level of agreement with the statement that you are estimating. It indicates out that your opinion and attitude is in high agreement with the proposed statement. There is a minimal, negligible element in the statement with which you could not agree.

I completely agree - This level reflects the highest level of agreement with the statement that you are estimating. It describes that your opinion and attitude is in the total and strong agreement with the proposed statement. There is no element in the statement with which you would not agree.

Cross just one of the listed numbers

1. **My mentor was accessible and available**

I Strongly disagree completely				I agree
1	2	3	4	5

2. **My mentor communicated regularly with me**

I strongly disagree completely				I agree
1	2	3	4	5

3. **My mentor assisted me with my career queries in my path of becoming judge or prosecutor.**

I strongly disagree completely				I agree
1	2	3	4	5

4. **My mentor assisted me with improving my work during the mentorship**

I strongly disagree completely				I agree
1	2	3	4	5

5. **My mentor assisted me with my understanding of the judge-craft and prosecutor-craft to achieve my goal.**

I strongly disagree completely				I agree
1	2	3	4	5

6. **My mentor demonstrated reasonable interest/concern towards me**

I strongly disagree completely				I agree
1	2	3	4	5

7. **My mentor´s behaviour and attitude is an example of professionalism**

I strongly disagree completely				I agree
1	2	3	4	5

8. **I learned about the concept of judicial independence and impartiality In the judiciary from my mentor**

I strongly disagree completely				I agree
1	2	3	4	5

9. **I learned the respect for due process and judicial guarantees from my mentor**

I strongly disagree completely	I agree

1	2	3	4	5

10. I learned from my mentor to be a responsible and hard-working person in my daily work

I strongly disagree completely				I agree
1	2	3	4	5

11. My mentor runs effective sessions, beginning the sessions on time and setting and adhering to an agenda

I strongly disagree completely				I agree
1	2	3	4	5

12. My mentor provides appropriate feedback in a constructive manner

I strongly disagree completely				I agree
1	2	3	4	5

13. I learned to manage information from different sources (databases, legislative collection…) from my mentor.

I strongly disagree completely				I agree

1	2	3	4	5

14. My mentor provides assistance in matters pertaining to the final exam

I strongly disagree completely				I agree
1	2	3	4	5

15. I recommend my mentor for future mentorship training programmes

I strongly disagree completely				I agree
1	2	3	4	5

Space for your comments if you wish to give extra explanations about your assessment

COMPLAINT FORM

Section 1 Identification Details

Name:

Address:

Tel:

E-mail:

Section 2 About Your Complaint

2a. Indicate with which mark(s) you are not in agreement

2b. Please give a brief description of why you believe your marks are wrong. If you are making more than one complaint (or your complaint is of multiple parts, please number them clearly. These numbers will be the terms of reference for review of your marks.

MENTORING PROGRAM AT CRIMINAL DIVISION OF THE BASIC COURT

The mentor is expected to complete these targets:

A- Introduction to the legal Community

1. Escort the mentee on a tour of the courthouse. Introduce her or him to members of the judiciary, court personnel, public attorneys and clerks of court within jurisdiction.
2. Discuss any “unwritten” customary rules of civility or etiquette among lawyers, prosecutors and judges in the community.
3. Introduce the mentee to the personnel of a court room and explain how the following management tools are used:

a. case intake system
b. filing system
c. calendaring of cases
d. information technology and case management system
e. library, on-line research system and other resources that can help mentee in his or her work
f. time management skills and techniques

4. Discuss with the mentee the duties and responsibility of the personnel within jurisdiction of the court where the mentoring takes place.
5. Introduce the mentee to the head of each law enforcement agency within jurisdiction.
6. Introduce the mentee to the members of the forensic laboratories that are used by and work for the Court, as appropriate.

B- Introduction to work: TASKS

1. Discuss the role of law enforcement in each care.
2. Discuss the legal and ethical rules for proper use of subpoenas, search warrants, notice to produce evidence and court orders.
3. Discuss how to screen for, recognize and avoid conflicts of interest, either personal or official.
4. Discuss how to screen cases received by the court and how to make appropriate decisions regarding cases.
5. Discuss how to take statement from witnesses, civilians and law enforcement officers at the trial.
6. Discuss how to take statement form victims of crimes, especially victims of domestic violence and sexual assault as well as from the elderly and child victims at the criminal trial.

7. Discuss how to interview and work with expert witnesses.
8. Discuss “do and don’ts” in order to maintain good ongoing relations with law enforcements, victims, witnesses, the judiciary and the defence bar.
9. Discuss how to deal with difficult defence attorneys, law enforcement officers and victims.
10. Discuss the role and function of forensic laboratories.
11. Discuss the mechanics of trial, including where to sit, proper attire and courtroom decorum.

C- Portfolio: Recommended items.

The mentor should collect work from the mentee related to the day-to-day job. At least 3 judgments from different stages of learning should be included in the Portfolio, containing mentor´s corrections in the text.
In the criminal division it is recommended to include resolutions on the most typical criminal offences. These could be robbery, endangerment of safety, illegal possession of narcotics, domestic violence or similar.
It is also important to allow the mentee to choose what to insert in his/her portfolio. Even though the mentor might decide to include few specific resolutions, the mentee should be permitted to insert some of his/her own choice. Additionally, the mentor should give the mentee the opportunity to reflect about the work to be included in the Portfolio because this compilation will be used to evaluate his/her work.
The report written by the mentee after the external internship should also be included in the Portfolio.

D- Stays external to judiciary

During the mentorship at the criminal division, the mentor should take the mentee to a tour at the penitentiary centre. An internship in the prison is essential for judges and prosecutors so they could get acquainted with internal organization, facilities and duties of this institution, and even interview some of the inmates.

At the end of the internship the mentee will draft a report describing the activity and his/her experience.

E- Training on ethics and deontological ethics

During the mentorship at the criminal division, mentor should discuss the principle of integrity with the mentee on the basis of the Solemn Hearing for the Opening of the Judicial Year at ECHR that forms an integral part of this Manual.

F- Evaluation

At the middle of the training at the criminal division the mentor will be requested to fill in a questionnaire in order to evaluate the evolution of the mentee. After the end of the internship the mentor will complete the evaluation questionnaire. Both forms for this questionnaire form an integral part of this Manual. The mentor should follow the instructions provided by the coordinator-mentor.

TRAINING ON ETHICS AND DEONTOLOGICAL ETHICS (CRIMINAL DIVISION)

PRINCIPLE : INTEGRITY, DIGNITY

Key Points:

General: Obligation, in public and private life, to conduct oneself so as to protect reputation and dignity of judiciary and obligation to avoid compromising situations (e.g. public drunkenness), Thus, a judge shall avoid impropriety and the appearance of impropriety in all judge's activities.

A judge's conduct in court must be such to uphold the status of judicial office, to respect the commitment given in the judicial oath and to strengthen confidence in the judiciary on the part of litigants in particular and the public in general.

A judge shall not knowingly permit court staff or others under his/her influence, management or authority, to ask for or accept, any gift, bequest, loan or favour in relation to anything that they did, will do or omitted to do in connection with his or her duties or functions.

The judge should strive to be courteous, patient, tolerant and punctual and should respect the dignity of all.

The judge should ensure that no one in the court is exposed to any display of bias or prejudice on the grounds referred to in the Bangalore principle related to "equality" which includes but is not limited to "race , colour, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes".

Judges should avoid situations which might reasonably undermine respect for their judicial office or might cast doubt on their impartiality as judges.

With regards to Social Networking and Blogging: Be wary of publishing more personal information than necessary. Judges must not identify themselves as members of the judiciary. They must also avoid expressing opinions which, should it become know that they hold judicial office, would undermine public confidence in their own impartiality or in the judiciary in general .Check your privacy stings: you can restrict access to your profile to ensure your information is kept to a restricted group.

Material for discussion : To Be a Judge (Solemn Hearing for the opening of the judicial Year, 29th January 2016, by *Andrzej Rzeplinski*, President of the Constitutional Court of Poland).

Solemn hearing for the opening of the Judicial Year 29 January 2016

Andrzej Rzepliński, President of the Constitutional Tribunal of Poland

To Be a Judge

Being a judge is equally as beautiful and utterly as absorbing as being a doctor or being a scholar. The profession of judge is not a good career for persons who do not possess a sufficiently well-established sense of personal and professional dignity, the virtue of personal integrity, an impeccable past, professional and practical knowledge, social and family maturity, and personal maturity, to be able to assume full responsibility for each ruling given in accordance with the law and with their own conscience.

Each judge must be equipped with good work-organisation skills so that any acts of neglect do not tempt him to pacify either "the superiors" or one of the parties.

A judge must have the courage not only to make decisions but also the moral courage to judge specific persons. This entails that judging belongs to "one of the most fundamental functions in each society" [1].

The importance that societies have always attached to selecting possibly the best persons to fill these posts is well demonstrated by the requirements posed for future judges by the ancient Jewish law, which included first of all "the knowledge of law, combined with general education" and "the impeccability of character combined with piety, gentleness and kind-

[1] Israel Drapkin, *The Art of Sentencing: Some Criminological Considerations*, "Reports of UNAFEI", 1979, No. 16, p. 53.

heartedness"[2]. A judge – in the Christian doctrine, according to Saint Thomas Aquinas – is a man who should live in "a state of perfection, that is in truth." Judges "should by virtue of their office be the guardians of truth in the judiciary", like scholars in science – "A lie in a court or against science is a deadly sin"[3].

Worlds apart from the values that a judge must represent in a State ruled by law, was a judge called to serve by Vladimir Lenin who, by virtue of his absolute authority, issued orders to judges to openly sow terror with their rulings, and to justify and legitimise it "in a principle-based manner, without any falsehood and beautification". In civil cases, judges were to pass orders of confiscation and requisition, to exercise supervision over merchants and entrepreneurs, and not to recognise any private ownership. From criminal court judges he demanded his two favourite punishments: either death by firing squad or deportation for forced labour. The punishments had to be "merciless", the courts had to be "militant" – "the proletariat's courts", he wrote, "should know what to allow".[4]

Within the system of a totalitarian state, there was no room for an independent judge. Even though the regime gradually softened, and the judiciary's terror subsided accordingly, the subsequent generations of judges were prepared for service by judges who, through their rulings, had destroyed the lives of tens of thousands of people. In a totalitarian state, for the purposes of a ruthless fight with the political opposition, it was always easy to find judges who did not mind being used to spread institutionalised, legal terror, in the name of the law. A specific award for them was a sense of total impunity. They were protected by the Communist party – their party. The judiciary was permeated with political corruption through and through. Hitler was just as efficient in demoralising judges as Lenin was.[5]

After 1948, judges behind the Iron Curtain worked in toxic conditions. The departure, after 1956-1960, from the exercise of power by mass intimidation of society opened up a margin of independence for most judges. Extraordinary courage was no longer required. What was required was internal honesty. Nonetheless, regimes still need judges, also in periods of decline, to maintain control over society. Admittedly, this was already to be achieved at lesser expense. It had been hard to govern with bayonets. The control of

[2] alomon Ladier, *Proces karny w Talmudzie* (*A Penal Trial in the Talmud*), Lwów, Jaeger, 1933, p. 46.

[3] Tomasz z Akwinu, *Cnoty społeczne pokrewne sprawiedliwości* (*Treatise on Justice*), transl. F.W. Bednarski,
London, Veritas, 1972, qu.110, 4, 5.

[4] W.I. Lenin, *Dzieła wszystkie* (*The Collected Works*) ,Warsaw, 1989, vol. 44, pp. 317, 379, 394.

[5] Ingo Müller, *Hitler's Justice. The Courts of the Third Reich*. Harvard University Press 1991; Helmut Ortne, *Der Hinrichter: Roland Freisler – Mörder im Dienste Hitlers*. Nomen 2009.

people began to be exercised using relatively soft measures. This created a niche for most judges, particularly those who preserved some institutional memory of the pre-Communist or pre-Nazi eras.

Many judges then still had pre-revolutionary publications in their home libraries.

Few managed to get hold of uncensored books published in free countries.

Most of the judges were aware of the standards that were binding in the countries of free Europe.

These circumstances helped the transformation of the judiciary, which started in 1989-1990. This transformation required and still requires time; it also requires painstaking practice, good, stable law, respect for the separateness of the judiciary on the part of the subsequent political parties after they win parliamentary elections.

For the transformation of the judiciary to be fully completed, it is necessary, after the period of transformation, for the new judges to be prepared for their role by older colleagues who have adjudicated throughout their lives in a State ruled by law where the separation of powers is a well- established and unquestioned principle. This means decades of practice, as in the Bible's story of forty years of exodus from Egyptian slavery. One cannot buy time.

Just as it has been throughout the centuries, also at the present time, societies demand judges who are men of integrity and who have adequate intellectual capabilities, good work-organisation skills and solid knowledge of the law and its application[6]. Not every lawyer who has passed a judge's exam is able to meet such requirements.

I have devoted thirty years to research on the history of the judiciary, to analysing the essence and challenges of a judge's authority[7], to the formation of the system of courts guaranteeing the separation of the three powers in Poland and in other countries, and furthermore, to the active defence of judges against attacks, as well as to monitoring the procedures of the judges'

[6] The eighth principle on the independence of the judiciary of the UN from 1985 reads that "judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary", whereas from the tenth principle it follows that

judges shall be "individuals of integrity and ability, with appropriate training and qualifications in law", see A. Rzepliński, 1981, "Niezawisłość sądownictwa w świetle norm ONZ" ("The Independence of the Judiciary in the Light of the UN Norms"), *Tygodnik Powszechny*, 1987, No. 33. Similar is the wording of the international norms taken over by the International Commission of Jurists and by the Law Association of Asia and Western Pacific (see The World Conference on the Independence of Justice, Working Documents, Montreal, June 5-10, 1983).

[7] Andrzej Rzepliński, *Die Justiz in der Volksrepublik Polen*. Dieter Simon (Vorwort). Frankfurt am Main 1996.

appointment to office and to monitoring the quality of the work of courts and judges.

I have held the office of judge in the Constitutional Court for eight years; soon my nine-year term of office will come to an end. Having the experience of these years of a judge's practice, I can attempt to answer the fundamental question that I asked myself when I accepted the kind invitation of the President of the European Court of Human Rights, Professor Guido Raimondi, to deliver a speech before such a dignified assembly, so uniquely important for over 800 million Europeans – this assembly of outstanding judges, judges of those millions of people, also my judges. I decided to ask myself this question, as expressed in the title: what does it mean to be a judge? For the needs of my speech today, I have gathered thoughts that have come to mind at various stages of my career as judge and in my research on the judiciary.

Referring to the concept of antinomy in the idea of law from the work of Gustav Radbruch[8], I would say that a judge's public function is to realise an idea of law which comprises legal security, common good and justice. In the case of a constitutional judge, this means assessing the conformity of normative acts with the Constitution in a manner which at the same time protects the stability of law, eliminates instances of injustice from it (e.g. unjustified interference with the liberties and rights of man and the citizen) and realises the idea of common good, i.e. the idea of a State in which the decisions are made by way of agreement and cooperation, and not imposition, a State which does not exclude anyone and for which all citizens bear responsibility. This is an extremely difficult task, requiring no mean competences and skills and a specific attitude; which is why not everyone can undertake it. To perform this task thoroughly one has to be very well prepared in terms of substantive knowledge, and apart from that, one must be characterised – at the very least

– by fairness, independence, courage, sensitivity and – a quality which is often forgotten – humility.

Speaking of the necessity of very good preparation in terms of substantive knowledge, one may say that to be a judge means to be a craftsman and to have the ambition to be a craft artist, like Italian craftsmen – artists of luxury goods, so admired worldwide. A wise, fair judgment is the work of a craftsman – an artist of law. This term may be used for a judge who is an expert in the dogmatics of law, understands law, perceives it as a structure, as a certain mechanism, i.e. who knows and "feels" "how law is built, what rules

[8] See Gustaw Radbruch, *Filozofia prawa* (*Rechtsphilosophie*), transl. Ewa Nowak, Warsaw, 2012, pp. 79–84, 241–243.

govern or should govern its construction, functioning and interpretation"[9]. The knowledge and understanding of law require from a judge that he keeps his mind in constant motion. He does not stop being a judge the moment he leaves the court-house. Some judges are better at the art of judging, others are not so good. Each judge being a rapporteur of a case in which there is – and in which he will notice – an important legal issue, a constitutional issue, an issue of importance from the perspective of the European Convention, may actually out-play the first violin, as in a chamber symphony orchestra. But just as in an orchestra, nearly each work of art that an unprecedented judgment, referred to for years to come, undoubtedly is, will be a common achievement of various artists of law: those who brought the case to the court, presented new, challenging arguments and those who, in a court dispute, submitted in an equally brilliant manner their counter-arguments, together with – an equally salient point – any other judges who have adjudicated upon the case. Poor is the judge who will not notice the potential of such a case for jurisprudence. A wise and fair judgment multiplies the satisfaction of being a judge. Such a judge must possess the skill of bridging law and life. This is a challenge of special importance when the IT revolution changes, twists and redefines eternal values. The bar has been raised very high. Not without reason did Ronald Dworkin present in his works the character of the judge as Hercules[10]. To be a judge, one has to, more often than not; demonstrate a strength that is comparable to the strength of a Greek hero.

In order to thoroughly fulfill the public function of a judge, i.e. – as I mentioned above – to realise an idea of law which comprises legal security, common good and justice, what is indispensable is not only expertise in the craft and art of law, but also a certain attitude of a judge as an individual. A judge must possess certain traits of character

and personality. Among the most important ones, as I said at the beginning, I would list fairness, independence, courage, sensitivity and humility.

A fair judge is a judge who gives everyone his rightful due. Such a definition of a fair judge requires specification of a criterion whereby he assesses what is rightfully due to whom. For constitutional judges, such a criterion is the Constitution, confirming the fundamental values and rights, setting forth the competences of individual constitutional bodies. A fair judge must apply the criterion of giving everyone his due in a consistent manner, i.e. he must treat equals the same way, and those who are not equal he must treat

[9] Ewa Łętowska, *Prawo bywa bardzo piękne* (*The Law is Sometimes Very Beautiful*), an interview on Channel Three of the Polish Radio of February 27, 2011.

[10] See Ronald Dworkin, *Biorąc prawa poważnie* (*Taking Laws Seriously*), Warsaw 1998; Ronald Dworkin,
Imperium prawa (*Law's Empire*), Warsaw 2006 differently. Only such a judge will be a fair judge, and thereby also an impartial one.

The Constitution, as a criterion whereby everyone is given his due, or another objective criterion, is linked with another indispensable trait of a judge as an individual – with his independence. An independent judge is a judge who is well prepared in terms of substantive knowledge – this is where yet another role of good substantive preparation comes into the fore, as a condition of a judge's independence – and is able to think critically, i.e. is intellectually independent. Otherwise he will be dependent on the knowledge and views of other people, for example, other judges or his assistants. An independent judge is also someone who is internally independent; adjudicating not on the basis of his views and postulates, but on the basis of the criterion of adjudication conferred on him by law[11]. In the case of constitutional judges, this criterion is the Constitution.

A judge must also be a sensitive individual. Just like a doctor must remember that a patient is a human being and not a medical case, a judge must also remember that a person appearing in a specific legal situation is a human being and not a subjective element of a case. This also applies to constitutional judges. The decisions of a constitutional court shape people's lives – sometimes the life of all inhabitants of the country. To be a constitutional judge is to remember that behind a judgment on the hierarchical conformity of legal norms with the Constitution there are specific situations involving many people, and this fact needs to be taken into account in adjudicating upon a case.

The fundamental traits of a judge, determining as they do the reliable holding of the public function entrusted to him, also include humility. This is an oft-forgotten trait. Meanwhile, the awareness of one's own imperfection, and – by the same token – fallibility, is a judge's indispensable tool that makes him able to choose the best solutions, and not always those invented by him. Humility will also be necessary to be able to accept reasonable criticism of the decisions made –on the part both of professionals and of public opinion, the voice of which, in a democratic State ruled by law, a judge cannot disregard.

Therefore, a judge must thoroughly justify his decisions in order to explain to others and to public opinion in general, the reason for a particular decision, and thereby to account for the authority he has been entrusted with. A judge is there for people, and not *vice versa*. Respect for public opinion,

[11] See Marek Safjan, *Wyzwania dla państwa prawa* (*Challenges for a State Ruled by Law*), Warsaw 2007, pp. 81–82. treating it as an empowered subject, and care for being understood by it, should not be confused with yielding to its demands.

so it means that a judge must be independent also of public opinion. It is not by accident that a provision in one of the Roman constitutions read that "the hollow and vain voices of the mob should not be heeded" (*Vanae voces populi non sunt audiendae*)[12]. If judges had followed such voices – as Professor Juliusz Makarewicz said – "we would probably still be burning witches at the stake"[13].

To be a judge is also to offer the parties to the proceedings one's moderate temperament, to be equally loyal towards each participant in the proceedings. This means understanding people, their emotions, interests and hopes. Here a judge must be able, in difficult moments, when a case is heard, to skillfully use his authority, not to lecture, and, in particular, not to treat people in an arrogant manner.[14] Because if a judge cannot do this, then what is the worth of his respect for the dignity of every person, be he even the worst man?

To be able to thoroughly hold the public office entrusted to him, a judge must also be a courageous person. He has to have the courage to take a different stand from that of others, including other members of the bench, if he is convinced that there are more arguments for his opinion than for others' opinions.

Courage is also indispensable for a judge to perform his duty of

being independent. He who lacks courage will yield to all kinds of pressure, be it political, community-related or ideological. A courageous judge applies the law in a manner independent of what others expect of him. As a dignified example of this, I would mention some of the judges who adjudicated during martial law in Poland in matters of political crimes. Next to obedient judges, being part of the apparatus of political repression, there were also those who acquitted the initiators of peaceful opposition against the regime[15]. The courage of those judges restored the law's authority and dignity. In their hands, the law was what it was supposed to be: a tool allowing people to be protected from abuse by public authority.

[12] See Agnieszka Kacprzak, Jerzy Krzynówek, Witold Wołodkiewicz, *Rugulae iuris. Łacińskie inskrypcje na kolumnach Sądu Najwyższego Rzeczypospolitej Polskiej* (*Rugulae iuris. Latins Inscriptions on the Columns of the Supreme Court of the Republic of Poland*), Warsaw 2006, pp. 92–93.

[13] Lech Gardocki, *Naprawdę jesteśmy trzecią władzą* (*We Really Are the Third Power*), Warsaw 2008, p. 119.

[14] Aharon Barak, *The Judge In a Democracy*. Princeton 2006, p. 311.

[15] See e.g. Maria Stanowska, Adam Strzembosz, *Sędziowie warszawscy w czasie próby 1981–1988* (*Warsaw – Based Judges During the Time of Test, 1981-1988*), Warsaw 2005, pp. 255–257.

A courageous judge must also be able to step down, to depart from the profession – if his presence in the corps of judges would legitimise an authoritarian regime. A Polish judge who, in 1980, joined the peaceful "Solidarity" movement, then about a dozen months later, when the Communist party declared a war against society, was interrogated by military supervisors, could either withdraw from "Solidarity" and condemn his political "error", or defend his attitude and the principles of a freedom-loving movement and sentence himself to banishment from the judiciary. Each of those judges was faithful to the judge's oath that he had taken: to conscientiously guard the law. The decree on martial law of December 1981 was an unlawful act, even in the light of the Communist Constitution. Every courageous judge who departed from the court or was removed from the judiciary delegitimised the regime and throughout the 1980s became a role model for the judges who stayed on the sidelines and for the judges that were just entering the profession. A regime usually steps back when confronted with a courageous judge.[16] There is some power in the profession of a

judge that holds back even political hooligans.

A judge of the supreme court or a judge of the constitutional court is often, even against his will and against his temperament, a public person. Judges of these tribunals have an essential impact on the quality of constitutional democracy. Through their judgments, they shape the boundaries of this democracy and the values that govern it, while protecting the fundamental rights of each human being. It may happen that this causes irritation among political leaders who demonstrate an authoritarian inclination. They perceive such a state of affairs as a threat to their authority. Their irritation focuses usually on the presidents of the supreme court or the constitutional court. That these judges are guardians of the value of constitutional democracy, they perceive as an intolerable state of affairs. Such leaders try, either themselves or through their adjutants, to force the president of the court to resign, by fair means or foul. The mere fact of not succumbing to the pressure is perceived by them – rather erroneously – as delegitimising their authority. The history of such tensions shows that judges/presidents of such courts have had sufficient courage and determination to protect the integrity of their courts. Usually, the best solution for such tension has been to develop a better understanding of the authorities and their functions. A well- organised State, with a strong legislative and a strong executive authority, requires equally strong courts.

To be able to be a judge – a good judge – you have to constantly demand a lot from yourself. It is, however, worth the trouble, because ~~he who is an~~

[16] Ibid, Maria Stanowska, Adam Strzembosz; Hans Petter Graver, *Judges Against Justice. On Judges When the Rule of Law is Under Attack*. Berlin Heidelberg 2015, pp. 259-270.

expert lawyer and, as also happens several times in a judge's career, an artist of law, is an important actor – which particularly applies to a constitutional judge -in the protection of constitutional democracy and of its foundations. To be a judge means to be an individual who is – at the very least – fair, independent, courageous, sensitive, humble and kind, and who is constantly learning, and, for that matter, not only from the books of law. Such a judge is – to quote Cicero – entitled to say "let arms yield to the toga" (*Cedant arma togae*)[17], and by the same token – demand that strength and violence yield to law.

Let us then pose the question as to what kind of satisfaction a judge may expect from meeting these tough requirements, from subordinating his life to the profession of judge? There is no doubt

that a good judge may find an interest in expecting the reverence that will surround him, in personal satisfaction on account of his impartiality in the application of the law, and in the ensured high material status. The less heroism a specific system of law or a social system demands of a judge, the better both this law and this system will be.

[17] Agnieszka Kacprzak, Jerzy Krzynówek, Witold Wołodkiewicz, *op. cit.*, p. 103.

Criminal Division	
Week 1	MEETING COORDINATOR WITH MENTOR. MEETING COORDINATOR WITH MENTEE. (PURPOSE: to know their needs, expectations and objectives during mentorship and evaluation system. Coordinator will deliver to mentees questionnaires of first and second self-evaluation)
Week 2	MENTEE FILL FIRST SELF ASSESSMENT
Week 3	
Week 4	
Week 5	
Week 6	
Week 7	
Week 8	
Week 9	
Week 10	

Week 11	
Week 12	**MEETING COORDINATOR WITH MENTOR TO PREPARE INTERIM QUESTIONNAIRE**
Week 13	**MENTOR FILL INTERIM QUESTIONNAIRE**
Week 14	
Week 15	
Week 16	
Week 17	
Week 18	
Week 19	
Week 20	
Week 21	
Week 22	MENTEE FILL SECOND SELF ASSESSMENT. MENTEE FILL QUESTIONNAIRE ASSESSMENT MENTORS
Week 23	MEETING COORDINATOR WITH MENTOR TO PREPARE FINAL QUESTIONNAIRE EVALUATION. MEETING COORDINATOR WITH MENTEES TO COLLECT QUESTIONNAIRES FILLED BY THEM

Week 24	MENTOR FILL FINAL QUESTIONNAIRE EVALUATION
Week 25	
Week 26	
***note 1**	In this mentorship the mentee would have an internship at Penitentiary centre. Programme and schedule would be provided by Coordinator according with the Judicial Academy
***note 2**	In this mentorship the mentee should be attendance the seminar(s) provided by Judicial Academy

INTERIM QUESTIONNAIRE (At the middle of the time frame)

Mentor's name	
Court/Prosecutor's Office	
Time frame	
Mentee's name	

Goal of the Interim Questionnaire

The goal of this questionnaire is to monitor the evolution of the mentee in order to verify if he has achieved all the necessaries competencies. If any problem still remains, the mentor can focus the training on this point. This questionnaire has to be shared with the mentee who shall be given opportunity to express his/her own point of view. There are only two possible marks:

- Need to improve
- Adequate progress

Mark just one in each question;

1.The mentee possesses knowledge of the substantive law

Need to improve	Adequate progress

2. The mentee possesses knowledge or the procedural law

Need to improve	Adequate progress

3. The mentee is able to write quality drafts of statements, indictments or any other resolutions

Need to improve	Adequate progress

4. The mentee has the ability to manage information from different sources as databases, legislative collection and handles IT correctly

Need to improve	Adequate progress

5.The mentee is able to organize his/her daily tasks effectively

Need to improve	Adequate progress

6. The mentee interacts appropriately with other people involved in the court proceedings (lawyers, defendants, victims, witnesses, police…)

Need to improve	Adequate progress

7. The mentee uses clear, logical and understandable language

Need to improve	Adequate progress

8. The mentee is aware of and acts in accordance with the constitutional values

Need to improve	Adequate progress

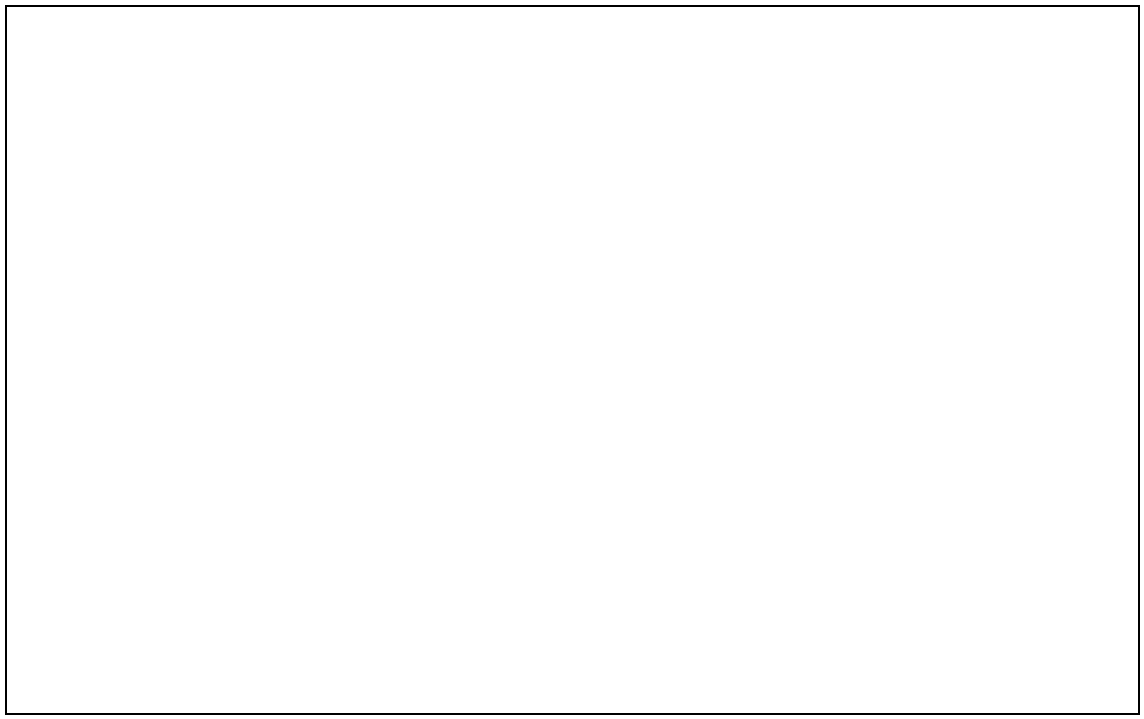
9. The mentee shows willingness to work and perfect his/her knowledge and skills

Need to improve	Adequate progress

10. The mentee shows ability of critically reflect about his/her own work and readiness to accept suggestions

Need to improve	Adequate progress

Space for your comments if you want to give additional explanations



EVALUATION QUESTIONNAIRE

Mentor's Name	
Court/Prosecutor's Office	
Time frame	
Mentee's name	

Goal of the evaluation

After the completion of each part of the initial training, mentor in charge of that part of the training within the court or prosecutor's office shall assess the candidate.

Art. 25 Law say: "**The initial training shall imply organized acquisition of practical and theoretical knowledge and skills, understanding the role and basic principles of actions of judges and deputy public prosecutors for the purpose of independent, professional and efficient performance of the office or a judge in a misdemeanor and basic court and that of a deputy public prosecutor in a basic public prosecutor's office".**

In accordance with this perspective, the goal of the evaluation is to ensure that the mentees have acquired knowledge, skills and attitudes to necessary to perform the duty of judge or prosecutor.

In order to reach an objective, impartial and fair evaluation, the mentor has to take into account the following criteria:

From 1 to 5: These marks mean:

1: mentee has not acquired the competence

2: sufficient elements have been acquired

3: sufficient elements have been acquired in a good way

4: sufficient elements have been acquired in a very good way

5: sufficient elements have been acquired in an excellent way

Explanation of grades:

Grade 1: The candidate has not mastered even a minimum of competence. He is not able to demonstrate the necessary knowledge/activity/behavior even with the support of the mentor.

Grade 2: The candidate has mastered minimum competencies. He is able to demonstrate the necessary knowledge/activity/behavior only with the support of mentor.

Grade 3: The candidate has mastered the competence to an average degree. He is able to demonstrate necessary knowledge/activity/behavior, in a satisfactory manner, with occasional reliance on the support of mentor.

Grade 4: The candidate has mastered the competence to a high degree. He is able to satisfactorily demonstrate the necessary knowledge/activity/behavior, in a satisfactory manner, completely independently.

Grade 5: The candidate has mastered the competence to an extremely high degree. He is capable of demonstrating necessary knowledge/activity/behavior in an exceptionally satisfactory manner, completely independently.

At the end of each competence, the points obtained in each indicator must be added up. At the end of the questionnaire, the points obtained in each competence must be added up and divided by the number of indicators. In this way we can get the average score for each mentee.

Oral skills (1-Technical competences) will be evaluated by means of mock trials.

Indicators

Cross just one of the listed numbers

1. TECHNICAL COMPETENCES

The mentees must have a thorough knowledge of the law – substantive and procedural. They must be able to write judgments and indictments. They have to handle IT tools and manage information from different sources.

1. The mentee has knowledge of substantive law

Not have competence				Excellent
1	2	3	4	5

2. The mentee is able to apply the knowledge of substantive law

Not have the competence				Excellent
1	2	3	4	5

3. The mentee has knowledge of procedural law

Not have competence				Excellent
1	2	3	4	5

4. The mentee knows how to use the knowledge of procedural law in practice

Not have the competence				Excellent
1	2	3	4	5

5. The mentee has the ability to draft statements, indictments, final judgments or any other resolutions and to apply legal rules in a proper way.

Not have the competence				Excellent
1	2	3	4	5

6. The mentee has the ability to manage information from different sources as databases, legislative collection and to handle correctly IT

Not have the competence				Excellent
1	2	3	4	5

7. The mentee has the ability to prepare and conduct the investigations and to question witnesses, defendants, experts, crime victims etc. respectfully.

Not have the competence				Excellent
1	2	3	4	5

8. The mentee is capable of conducting oral hearings.

Not have the competence				Excellent
1	2	3	4	5

9. The mentee has the capacity to speak in public clearly and easily.

Not have the competence				Excellent
1	2	3	4	5

10. The mentee has the ability to conduct the debate, use a clear, logical an understanding language, explain different points of view and adopt an adequate position.

Not have the competence				Excellent
1	2	3	4	5

11. The mentee has the ability to manage conflicting situation and act in the most appropriate way.

Not have the competence				Excellent
1	2	3	4	5

12. The mentee is able to pay attention to the presentation of the facts and legal arguments in order to render a reasonable decision.

Not have the competence				Excellent
1	2	3	4	5

This competence score	

2-FUNCIONAL AND ORGANIZATIONAL COMPETENCES:

These skills refer to the understanding of different organizations (different courts and prosecutor's offices), of the agenda and the efficient organization of the work.

1. The mentee has understood the organization of the judiciary body wherein he/she was assigned to work under you

Not have the competence				Excellent
1	2	3	4	5

2. The mentee shows working capacity and ability to solve cases taking into account aspects related to quantity and quality.

Not have the competence				Excellent
1	2	3	4	5

3. The mentee is able to organize his/her daily schedule effectively

Not have the competence				Excellent
1	2	3	4	5

4-The mentee has learned to set aside enough time to perform each task

Not have the competence				Excellent
1	2	3	4	5

5-The mentee is able to listen receptively and with an open mind.

Not have the competence				Excellent
1	2	3	4	5

6-The mentee is able to adapt his/her way of working where there is a need and to accept criticism

Not have the competence				Excellent
1	2	3	4	5

This competence score	

3- ANALYTICAL COMPETENCES

These competences are necessary to identify relevant information in the main documents, propose/accept the relevant evidence, and to provide adequate legal reasoning and evidence assessment.

1. The mentee has learned to analyze and summarize a case or a file

Not have the competence				Excellent
1	2	3	4	5

2. The mentee has the ability to summarize the circumstances and procedural steps of a case.

Not have the competence				Excellent
1	2	3	4	5

3. The mentee has the ability to formalize and explain legal grounds of a decision and communicate it clearly and in a proper way

Not have the competence				Excellent
1	2	3	4	5

4. The mentee uses a clear, logical, an understating language when taking statements or testimonies from witnesses,

Not have the competence				Excellent
1	2	3	4	5

5. The mentee shows skills for strategic investigation

Not have the competence				Excellent
1	2	3	4	5

6. The mentee is able to analyze the pleas in law and arguments raised by the parties under the applicable law and to render a decision within a reasonable time.

Does not have Excellent the competence				
1	2	3	4	5

7. The mentee has the ability to use a logical reasoning and critical thinking in the exercise of its duties

Does not have Excellent the competence				
1	2	3	4	5

8. The mentee is able to give judgment in accordance with law and Constitution.

Does not have Excellent the competence				
1	2	3	4	5

This competence score	

4- SOCIAL AND PERSONAL COMPETENCES

Social competences include teamwork, active listening, empathy and respect when communicating with different persons with whom the judge or prosecutor comes into contact. Personal competences include the constitutional values that judges and prosecutors have to adopt as ethical principles regulating their personal behavior. This also includes the taking care of their own continuous training.

1. The mentee is capable of following instructions from their superiors (*this competence should be particularly monitored when the mentee is serving in Prosecutor Office)*

Does not have Excellent petence				
1	2	3	4	5

2. The mentee interacts appropriately with other people involved in the court proceedings (lawyers, defendants, victims, witnesses, police…)

Does not have Excellent the competence				
1	2	3	4	5

3. The mentee listens actively and empathetically

Does not have Excellent the competence				
1	2	3	4	5

4. The mentee understands the consequences of his/her decisions for the people involved

Does not have Excellent the competence				
1	2	3	4	5

5. The mentee is able to remain impartial, independent and objective at all times while exercising their duties

Does not have Excellent the competence				
1	2	3	4	5

6. The mentee is able to distance himself/herself from their personal political, religious and philosophical opinions and from external pressure in performing their duties

Does not have Excellent the competence				
1	2	3	4	5

7. The mentee is accessible and demonstrates respect, courtesy and sensitivity in their contacts with the parties and other people involved with the court proceedinigs (police, victims, witnesses…)

Does not have Excellent the competence				
1	2	3	4	5

8. The mentee is capable of showing empathy, humility or authority fitting the circumstances.

Does not have Excellent the competence				
1	2	3	4	5

9. The mentee is able to keep things in perspective, adapt to new and unexpected situations and adopt the most suitable behavior.

Does not have Excellent the competence				
1	2	3	4	5

This competence score	

All the competence added	
The average (The previous add divided between the total number)	

Space for your comments if you wish to give extra explanations about your assessment or to help next mentor in his/her mentorship

QUESTIONNAIRE FOR MENTEES

Mentee's Name	
Court/Prosecutor's Office	
Time frame	
Mentor's name	

Below you will find a number of statements. Please put an X sign next to each item in relation to the degree of agreement / disagreement with the statement, having in mind the meaning of the levels:

I strongly disagree - This level reflects the highest level of disagreement with the statement that you are estimating. It describes that your opinion and attitude is in the total and strong disagreement with the proposed statement. There is no element in the statement with which you could agree.

I mostly disagree – This level reflects a high level of disagreement with the statement that you are estimating. It indicates that your opinion and attitude is in the high disagreement with the proposed statement. There is a minimal, negligible element in the statement with which you could agree.

I agree partially – This level reflects medium level of agreement with the statement. It indicates that your opinion and your attitude contain both the elements of agreement and disagreement, but you find a little bit more elements of the statement with which you could agree.

I mostly agree – This level reflects a high level of agreement with the statement that you are estimating. It indicates out that your opinion and attitude is in high agreement with the proposed statement. There is a minimal, negligible element in the statement with which you could not agree.

I completely agree - This level reflects the highest level of agreement with the statement that you are estimating. It describes that your opinion and attitude is

in the total and strong agreement with the proposed statement. There is no element in the statement with which you would not agree.

Cross just one of the listed numbers

1. My mentor was accessible and available

I Strongly disagree completely				I agree
1	2	3	4	5

2. My mentor communicated regularly with me

I strongly disagree completely				I agree
1	2	3	4	5

3. My mentor assisted me with my career queries in my path of becoming judge or prosecutor.

I strongly disagree completely				I agree
1	2	3	4	5

4. My mentor assisted me with improving my work during the mentorship

I strongly disagree completely				I agree
1	2	3	4	5

5. My mentor assisted me with my understanding of the judge-craft and prosecutor-craft to achieve my goal.

I strongly disagree completely				I agree
1	2	3	4	5

6. My mentor demonstrated reasonable interest/concern towards me

I strongly disagree completely				I agree
1	2	3	4	5

7. My mentor´s behaviour and attitude is an example of professionalism

I strongly disagree completely				I agree
1	2	3	4	5

8. I learned about the concept of judicial independence and impartiality In the judiciary from my mentor

I strongly disagree completely				I agree
1	2	3	4	5

9. I learned the respect for due process and judicial guarantees from my mentor

I strongly disagree completely				I agree
1	2	3	4	5

10. I learned from my mentor to be a responsible and hard-working person in my daily work

I strongly disagree completely				I agree
1	2	3	4	5

11. My mentor runs effective sessions, beginning the sessions on timeand setting and adhering to an agenda

I strongly disagree completely				I agree
1	2	3	4	5

12. My mentor provides appropriate feedback in a constructive manner

I strongly disagree completely				I agree
1	2	3	4	5

13. I learned to manage information from different sources (databases, legislative collection…) from my mentor.

I strongly disagree completely				I agree
1	2	3	4	5

14. **My mentor provides assistance in matters pertaining to the final exam**

I strongly disagree completely				I agree
1	2	3	4	5

15. **I recommend my mentor for future mentorship training programmes**

I strongly disagree completely				I agree
1	2	3	4	5

Space for your comments if you wish to give extra explanations about your assessment

COMPLAINT FORM

Section 1 Identification Details

Name: Address: Tel: E-mail:

Section 2 About Your Complaint

2a. Indicate with which mark(s) you are not in agreement

2b. Please give a brief description of why you believe your marks are wrong. If you are making more than one complaint (or your complaint is of multiple parts, please number them clearly. These numbers will be the terms of reference for review of your marks.

MENTORING PROGRAM AT THE MISDEMEANOR COURT

Mentor is expected to complete these targets:

A- Introduction to the legal Community

1. Escort the mentee on a tour of the courthouse. Introduce her or him to members of the judiciary, court personnel, public attorneys and clerks of court within jurisdiction.
2. Discuss any “unwritten” customary rules of civility or etiquette that exists between lawyers, prosecutors and judges in the community.
3. Introduce the mentee to the personnel at the court room and explain how the following management tools are used:
4. case intake system
5. filing system
6. calendaring of cases
7. information technology and case management system
8. library, on-line research system and other resources that the mentee will find helpful in his or her work
9. time management skills and techniques

10. Discuss with the mentee the duties and responsibility of the personnel within jurisdiction where the mentoring takes place.
11. Introduce the mentee to the head of each law enforcement agency within jurisdiction.
12. Introduce mentee to the members of forensic laboratories that are used by and work with the Court, where appropriate.

B- Introduction to the work in the Misdemeanour Court: TASKS

1. Discuss the role of law enforcement in each of the cases.
2. Discuss legal and ethical rules for proper use of subpoenas, search warrants, notice to produce evidence and court orders.
3. Discuss how to screen for, recognize and avoid conflicts of interest either personal or official.
4. Discuss how to screen cases received by the court and how to make appropriate decisions regarding cases.
5. Discuss how to take statements to witnesses, civilians and law enforcement officers at the trial.
6. Discuss how to take statements from the victims at the trial.
7. Discuss how to interview and work with expert witnesses.
8. Discuss “do and don’ts” in order to maintain good ongoing relations with law enforcements, victims, witnesses, the judiciary and the defence bar.

9. Discuss how to deal with difficult defence attorneys, law enforcement officers and victims.
10. Discuss the role and function of forensic laboratories.
11. Discuss the mechanics of trial, including where to sit, proper attire and courtroom decorum.

C- Portfolio: Recommended Items.

The mentor should collect work from the mentee related to the day-to-day job. At least 3 judgments from different stages of learning should be included in the Portfolio, containing mentor´s corrections in the text.
In the misdemeanor court it is recommended to include most typical decisions. These could be decisions in the area of traffic violations, tax, border and foreign currency violations.
It is also important to allow the mentee to choose what to insert in his/her portfolio. Even though the mentor might decide to include few specific resolutions, the mentee should be permitted to insert some of his/her own choice. Additionally, the mentor should give the mentee the opportunity to reflect about the work to be included in the Portfolio because this compilation will be used to evaluate his/her work.
The report written by the mentee after the external internship should also be included in the Portfolio.

D- Stays external to the judiciary

During the mentorship at the misdemeanor court, the mentor should take the mentee to a tour of the Traffic Violation Department in the Police. An internship in this Department is essential for judges and prosecutors so that they could get acquainted with internal organization, facilities and duties of this institution and even accompany the traffic police in speed monitoring using camera techniques, breath-tests, drugs control and so on.
At the end of the internship the mentee will draft a report describing the activity and their experience.

E- Training on ethics and deontological

During the mentorship at the civil division, mentor should discuss the principle of diligence and competence (dedication) with the mentee.

F- Evaluation

At the middle of the training at the misdemeanor court the mentor will be requested to fill in a questionnaire in order to evaluate the evolution of the mentee. After the end of the internship the mentor will complete the evaluation questionnaire. Both forms for this questionnaire form an integral part of this Manual. The mentor should follow the instructions provided by the coordinator-mentor.

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TRAINING ON ETHICS AND DEONTOLOGICAL ETHICS (MISDEMENOUR COURT)

PRINCIPLE: DILIGENCE AND COMPETENCE (DEDICATION)

Key points:

Obligation to maintain and improve theoretical and practical knowledge and judicial skills - includes obligation to engage in training.

Mostly a combination of commitment, competence and ensuring that performance of judicial duties takes priority over any others activities. Not engaging in conduct incompatible with the diligent discharge of such duties (conflict of interest).

Material to discussion:

“The God of Small Things”. A short story by Carlos Gómez (Senior Judge, former director of Spanish Judicial School)

Misdemeanour Court	
Week 1	**MEETING COORDINATOR WITH MENTOR. MEETING COORDINATOR WITH MENTEE. (PURPOSE: to know their needs, expectations and objectives during mentorship and evaluation system. Coordinator will deliver to mentees questionnaires of first and second self-evaluation)**
Week 2	
Week 3	
Week 5	
Week 5	
Week 6	MENTEE FILL SECOND SELF ASSESSMENT. MENTEE FILL QUESTIONNAIRE ASSESSMENT MENTORS
Week 7	MEETING COORDINATOR WITH MENTOR TO PREPARE FINAL QUESTIONNAIRE EVALUATION. MEETING COORDINATOR WITH MENTEES TO COLLECT QUESTIONNAIRES FILLED BY THEM
Week 8	MENTOR FILL FINAL QUESTIONNAIRE EVALUATION

***note 1**	In this mentorship the mentee would have an internship at Police Station at the section of traffic violations
***note 2**	In this mentorship the mentee should attend the seminar(s) provided by Judicial Academy

EVALUATION QUESTIONNAIRE

Mentor's Name	
Court/Prosecutor's Office	
Time frame	
Mentee's name	

Goal of the evaluation

After the completion of each part of the initial training, mentor in charge of that part of the training within the court or prosecutor's office shall assess the candidate.

Art. 25 Law say: "**The initial training shall imply organized acquisition of practical and theoretical knowledge and skills, understanding the role and basic principles of actions of judges and deputy public prosecutors for the purpose of independent, professional and efficient performance of the office or a judge in a misdemeanor and basic court and that of a deputy public prosecutor in a basic public prosecutor's office".**

In accordance with this perspective, the goal of the evaluation is to ensure that the mentees have acquired knowledge, skills and attitudes to necessary to perform the duty of judge or prosecutor.

In order to reach an objective, impartial and fair evaluation, the mentor has to take into account the following criteria:

From 1 to 5: These marks mean:

1: mentee has not acquired the competence

2: sufficient elements have been acquired

3: sufficient elements have been acquired in a good way

4: sufficient elements have been acquired in a very good way

5: sufficient elements have been acquired in an excellent way

Explanation of grades:

Grade 1: The candidate has not mastered even a minimum of competence. He is not able to demonstrate the necessary knowledge/activity/behavior even with the support of the mentor.

Grade 2: The candidate has mastered minimum competencies. He is able to demonstrate the necessary knowledge/activity/behavior only with the support of mentor.

Grade 3: The candidate has mastered the competence to an average degree. He is able to demonstrate necessary knowledge/activity/behavior, in a satisfactory manner, with occasional reliance on the support of mentor.

Grade 4: The candidate has mastered the competence to a high degree. He is able to satisfactorily demonstrate the necessary knowledge/activity/behavior, in a satisfactory manner, completely independently.

Grade 5: The candidate has mastered the competence to an extremely high degree. He is capable of demonstrating necessary knowledge/activity/behavior in an exceptionally satisfactory manner, completely independently.

At the end of each competence, the points obtained in each indicator must be added up. At the end of the questionnaire, the points obtained in each competence must be added up and divided by the number of indicators. In this way we can get the average score for each mentee.

Oral skills (1-Technical competences) will be evaluated by means of mock trials.

Indicators

Cross just one of the listed numbers

1- TECHNICAL COMPETENCES

The mentees must have a thorough knowledge of the law – substantive and procedural. They must be able to write judgments and indictments. They have to handle IT tools and manage information from different sources.

1. The mentee has knowledge of substantive law

Not have competence				Excellent
1	2	3	4	5

2. The mentee is able to apply the knowledge of substantive law

Not have the competence				Excellent
1	2	3	4	5

3. The mentee has knowledge of procedural law

Not have competence				Excellent
1	2	3	4	5

4. The mentee knows how to use the knowledge of procedural law in practice

Not have the competence				Excellent
1	2	3	4	5

5. The mentee has the ability to draft statements, indictments, final judgments or any other resolutions and to apply legal rules in a proper way.

Not have the competence				Excellent
1	2	3	4	5

6. The mentee has the ability to manage information from different sources as databases, legislative collection and to handle correctly IT

Not have the competence				Excellent
1	2	3	4	5

7. The mentee has the ability to prepare and conduct the investigations and to question witnesses, defendants, experts, crime victims etc. respectfully.

Not have the competence				Excellent
1	2	3	4	5

8. The mentee is capable of conducting oral hearings.

Not have the competence				Excellent
1	2	3	4	5

9. The mentee has the capacity to speak in public clearly and easily.

Not have the competence				Excellent
1	2	3	4	5

10. The mentee has the ability to conduct the debate, use a clear, logical an understanding language, explain different points of view and adopt an adequate position.

Not have the competence				Excellent
1	2	3	4	5

11. The mentee has the ability to manage conflicting situation and act in the most appropriate way.

Not have the competence				Excellent
1	2	3	4	5

12- The mentee is able to pay attention to the presentation of the facts and legal arguments in order to render a reasonable decision.

Not have the competence				Excellent
1	2	3	4	5

This competence score	

2-FUNCIONAL AND ORGANIZATIONAL COMPETENCES:

These skills refer to the understanding of different organizations (different courts and prosecutor's offices), of the agenda and the efficient organization of the work.

1. The mentee has understood the organization of the judiciary body wherein he/she was assigned to work under you

Not have the competence				Excellent
1	2	3	4	5

2. The mentee shows working capacity and ability to solve cases taking into account aspects related to quantity and quality.

Not have the competence				Excellent
1	2	3	4	5

3. The mentee is able to organize his/her daily schedule effectively

Not have the competence				Excellent
1	2	3	4	5

4-The mentee has learned to set aside enough time to perform each task

Not have the competence				Excellent
1	2	3	4	5

5-The mentee is able to listen receptively and with an open mind.

Not have the competence				Excellent
1	2	3	4	5

6-The mentee is able to adapt his/her way of working where there is a need and to accept criticism

Not have the competence				Excellent
1	2	3	4	5

This competence score	

3- ANALYTICAL COMPETENCES

These competences are necessary to identify relevant information in the main documents, propose/accept the relevant evidence, and to provide adequate legal reasoning and evidence assessment.

1. The mentee has learned to analyze and summarize a case or a file

Not have the competence				Excellent
1	2	3	4	5

2. The mentee has the ability to summarize the circumstances and procedural steps of a case.

Not have the competence				Excellent
1	2	3	4	5

3. The mentee has the ability to formalize and explain legal grounds of a decision and communicate it clearly and in a proper way

Not have the competence				Excellent
1	2	3	4	5

4. The mentee uses a clear, logical, an understating language when taking statements or testimonies from witnesses,

Not have the competence				Excellent
1	2	3	4	5

5. The mentee shows skills for strategic investigation

Not have the competence				Excellent
1	2	3	4	5

6. The mentee is able to analyze the pleas in law and arguments raised by the parties under the applicable law and to render a decision within a reasonable time.

Does not have Excellent the competence				
1	2	3	4	5

7. The mentee has the ability to use a logical reasoning and critical thinking in the exercise of its duties

Does not have Excellent the competence				
1	2	3	4	5

8. The mentee is able to give judgment in accordance with law and Constitution.

Does not have Excellent the competence				
1	2	3	4	5

This competence score	

4- SOCIAL AND PERSONAL COMPETENCES

Social competences include teamwork, active listening, empathy and respect when communicating with different persons with whom the judge or prosecutor comes into contact. Personal competences include the constitutional values that judges and prosecutors have to adopt as ethical principles regulating their personal behavior. This also includes the taking care of their own continuous training.

1. The mentee is capable of following instructions from their superiors (*this competence should be particularly monitored when the mentee is serving in Prosecutor Office)*

Does not have Excellent the competence				
1	2	3	4	5

2. The mentee interacts appropriately with other people involved in the court proceedings (lawyers, defendants, victims, witnesses, police…)

Does not have Excellent the competence				
1	2	3	4	5

3. The mentee listens actively and empathetically

Does not have Excellent the competence				
1	2	3	4	5

4. The mentee understands the consequences of his/her decisions for the people involved

Does not have Excellent the competence				
1	2	3	4	5

5. The mentee is able to remain impartial, independent and objective at all times while exercising their duties

Does not have Excellent the competence				
1	2	3	4	5

6. The mentee is able to distance himself/herself from their personal political, religious and philosophical opinions and from external pressure in performing their duties

Does not have Excellent the competence				
1	2	3	4	5

7. The mentee is accessible and demonstrates respect, courtesy and sensitivity in their contacts with the parties and other people involved with the court proceedinigs (police, victims, witnesses…)

Does not have Excellent the competence				
1	2	3	4	5

8. The mentee is capable of showing empathy, humility or authority fitting the circumstances.

Does not have Excellent the competence				
1	2	3	4	5

9. The mentee is able to keep things in perspective, adapt to new and unexpected situations and adopt the most suitable behavior.

Does not have Excellent the competence				
1	2	3	4	5

This competence score	

All the competence added	
The average (The previous add divided between the total number)	

Space for your comments if you wish to give extra explanations about your assessment or to help next mentor in his/her mentorship

QUESTIONNAIRE FOR MENTEES

Mentee's Name	
Court/Prosecutor's Office	
Time frame	
Mentor's name	

Below you will find a number of statements. Please put an X sign next to each item in relation to the degree of agreement / disagreement with the statement, having in mind the meaning of the levels:

I strongly disagree - This level reflects the highest level of disagreement with the statement that you are estimating. It describes that your opinion and attitude is in the total and strong disagreement with the proposed statement. There is no element in the statement with which you could agree.

I mostly disagree – This level reflects a high level of disagreement with the statement that you are estimating. It indicates that your opinion and attitude is in the high disagreement with the proposed statement. There is a minimal, negligible element in the statement with which you could agree.

I agree partially – This level reflects medium level of agreement with the statement. It indicates that your opinion and your attitude contain both the elements of agreement and disagreement, but you find a little bit more elements of the statement with which you could agree.

I mostly agree – This level reflects a high level of agreement with the statement that you are estimating. It indicates out that your opinion and attitude is in high agreement with the proposed statement. There is a minimal, negligible element in the statement with which you could not agree.

I completely agree - This level reflects the highest level of agreement with the statement that you are estimating. It describes that your opinion and attitude is in the total and strong agreement with the proposed statement. There is no element in the statement with which you would not agree.

Cross just one of the listed numbers

1. My mentor was accessible and available

I Strongly disagree completely				I agree
1	2	3	4	5

2. My mentor communicated regularly with me

I strongly disagree completely				I agree
1	2	3	4	5

3. My mentor assisted me with my career queries in my path of becoming judge or prosecutor.

I strongly disagree completely				I agree
1	2	3	4	5

4. My mentor assisted me with improving my work during the mentorship

I strongly disagree completely				I agree
1	2	3	4	5

5. My mentor assisted me with my understanding of the judge-craft and prosecutor-craft to achieve my goal.

I strongly disagree completely				I agree
1	2	3	4	5

6. My mentor demonstrated reasonable interest/concern towards me

I strongly disagree completely				I agree
1	2	3	4	5

7. My mentor´s behaviour and attitude is an example of professionalism

I strongly disagree completely				I agree
1	2	3	4	5

8. I learned about the concept of judicial independence and impartiality

In the judiciary from my mentor

I strongly disagree completely				I agree
1	2	3	4	5

9. I learned the respect for due process and judicial guarantees from my mentor

I strongly disagree completely				I agree
1	2	3	4	5

10. I learned from my mentor to be a responsible and hard-working person in my daily work

I strongly disagree completely				I agree
1	2	3	4	5

11. My mentor runs effective sessions, beginning the sessions on time and setting and adhering to an agenda

I strongly disagree completely				I agree
1	2	3	4	5

12. My mentor provides appropriate feedback in a constructive manner

I strongly disagree completely				I agree
1	2	3	4	5

13. I learned to manage information from different sources (databases, legislative collection…) from my mentor.

I strongly disagree completely				I agree
1	2	3	4	5

14. My mentor provides assistance in matters pertaining to the finalexam

I strongly disagree completely				I agree
1	2	3	4	5

15. I recommend my mentor for future mentorship training programmes

I strongly disagree completely				I agree
1	2	3	4	5

Space for your comments if you wish to give extra explanations about your assessment

COMPLAINT FORM

Section 1 Identification Details

Name: Address: Tel: E-mail:

Section 2 About Your Complaint

2a. Indicate with which mark(s) you are not in agreement

2b. Please give a brief description of why you believe your marks are wrong. If you are making more than one complaint (or your complaint is of multiple parts, please number them clearly. These numbers will be the terms of reference for review of your marks.

MENTORING PROGRAM AT THE PROSECUTOR´S OFFICE

The mentor is expected to complete these targets:

A- Introduction to the legal community and at the Prosecutor´s Office

1. Escort the mentee prosecutor on a tour of the courthouse. Introduce her or him to members of the judiciary, court personnel, public attorneys and clerks of court within jurisdiction.
2. Discuss any “unwritten” customary rules of civility or etiquette among lawyers and judges in the community.
3. Introduce the mentee to the personnel at the PPO and explain how the following management tools are used in the prosecutor´s office:

a. case intake system
b. filing system
c. calendaring of cases
d. information technology and case management system
e. library, on-line research system and other resources that can help mentee in his or her work
f. time management skills and techniques

4. Discuss with mentee the duties and responsibility of the personnel within the prosecutor´s office.
5. Introduce the mentee to the head of each law enforcement agency within jurisdiction.
6. Introduce mentee to the members of forensic laboratories that are used by and work for the prosecutor´s office.

B- Introduction to prosecutor´s work: TASKS

1. Discuss. the role of law enforcement in the investigation and prosecution of crimes
2. Explain how the prosecutor´s office interacts with the law enforcement agencies that operate within jurisdiction.
3. Discuss how to gather evidence and information for criminal cases
4. Discuss legal and ethical rules for proper use of subpoenas, search warrants, notice to produce evidence and court orders.
5. Discuss how to screen for, recognize and avoid conflicts of interest, either personal or official.
6. Discuss how to screen incoming cases and make decisions whether to prosecute. Introduce trainees to different stages of pre-investigation, investigation and prosecution.

7. Present to the trainees an in-depth analysis of the police powers in pre-investigation procedure (how to collect information from the citizens, inspection of vehicles, inspection and detention of persons and the like)
8. Introduce trainees to formal and substantive requirements for conducting of the investigation, its course, extension, interruption, suspension and additional investigation.
9. Introduce trainees to the type, content and form of decisions rendered in the pre-investigative procedure.
10. Introduce trainees to and outline for them the importance of the interrogation of defendants; hearing of witnesses and expert witnesses; of on-site investigation, event reconstruction, documentary proof, examination of accounts and suspicious transactions.
11. Discuss how to draft indictments, accusations and juvenile delinquency petitions.
12. Discuss how to interrogate law enforcement and the importance of interrogation of victims of crimes, especially victims of domestic violence and sexual assault as well as of the elderly and child victims.
13. Discuss “do and don’ts” in order to maintain good ongoing relations with law enforcement officers, victims, witnesses, the judiciary and the defence bar.
14. Discuss how to deal with difficult defence attorneys, law enforcement officers and victims.
15. Discuss the role and function of forensic laboratories.
16. Discuss the mechanics of trial, including where to sit, proper attire and courtroom decorum.

C- Portfolio: Recommended Items.

The mentor should collect work from the mentee related to the day-to-day job. At least 3 judgments from different stages of learning should be included in the Portfolio, containing mentor´s corrections in the text.

In the public prosecutor's office it is recommended to include resolutions on the most typical criminal offences. These could be drug trafficking, sexual offences, domestic violence, offences against economic interest, offences against property and against life and limb.

It is also important to allow the mentee to choose what to insert in his/her portfolio. Even though the mentor might decide to include few specific resolutions, the mentee should be permitted to insert some of his/her own choice. Additionally, the mentor should give mentee the opportunity to reflect about the work to be included in the Portfolio because this compilation will be used to evaluate his/her work.
The report written by the mentee after the external internship should also be included in the Portfolio.

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D- Stays external to the judiciary

During the mentorship at the prosecutor´s office, mentor should take the mentee to a tour of the Forensic Science Institute. An internship in that place is essential for judges and prosecutors to become acquainted with the internal organization of the Institute, crime scene duties, lab duties and the process of an investigation, starting from collection of evidence at a crime scene or from a person, through their analysis in a laboratory, all the way to presentation of the results, i.e., evidence, in the court. The mentees could even be involved in a crime scene investigation, learning how to interpret evidence collected thereat.
At the end of the internship the mentee will draft a report describing the activity and his/her experience.

E- Training on ethics and deontological ethics

Mentor at the Prosecutor´s Office during the mentorship should discuss with the mentee the principle of independence, autonomy, impartiality, respect of rights, responsibility and attention to professional duties, professionalism, dignity, implementation, enforcement on the basis of the Opinion No. 9 (2014) European Norms and Principles concerning prosecutors (by Consultative Council of European Prosecutors)

F- Evaluation

At the middle of the training at the prosecutor´s office, the mentor will be requested to fill in a questionnaire in order to evaluate the evolution of the mentee. At the end of the internship the mentor will complete the evaluation questionnaire. Both forms for this questionnaire form an integral part of this Manual. The mentor should follow instructions provided by the coordinator-mentor.

TRAINING ON ETHICS AND DEONTOLOGICAL (PROSECUTORIAL OFFICE)

For prosecutors the most important international document regarding standards of conduct is the International Association of Prosecutors Standards. The IAP Standards are divided into six sections: Professional Conduct, Independence, Impartiality, Role in Criminal Proceedings, Co-operation and Empowerment. In addition, there are also the European Guidelines on Ethics and Conduct for Public Prosecutors ("Budapest Guidelines"), adopted by the Conference of General State Prosecutors of Europe in May 2005.

PRINCIPLE/VALUE: INDEPENDENCE/AUTONOMY

Key points:

Art. 5 Law on Public Prosecution

Making decisions about the case on the basis of "own assessment of evidence and interpretation of legal norms ".

Independent/autonomous, from whom? Not only from legislative and executive power, but also from media, other institutions, political parties, others judges, parties to the proceedings.

Examples/illustration of violation

Prosecutor fails to disclose evidence in favour of defendant in a high-profile case, while the authorities are eager for conviction

Prosecutor fails to press charges in case involving businessman with close ties to the Government, even though there are strong evidence for the case.

PRINCIPLE/VALUE: IMPARTIALITY

Key points:

The "assessment" mentioned above is not the prosecutor's "own" in the sense that they can do whatever they want: it must be based only on objective and relevant considerations.

Conflict of interest: obligation to recuse themselves when there are reasons to doubt their impartiality.

Obligation to refrain from any activities in private life that might cast doubt on their impartiality.

Examples/illustration of violation

Examples under “Independence”

Prosecutor systematically fails to give equal weight to evidence in defendants favour

Prosecutor fails to disclose that his brother is related to the defendant

Prosecutor is seen in a restaurant/café with relatives of defendants in a case that his/her Office is dealing with

PRINCIPLE/VALUE: RESPECT FOR RIGHTS

Key points:

Provision mainly requires prosecutor to obey the law and respect the right to a fair trial

Includes specific prohibitions on receiving gifts and abusing power

Examples/illustration of violation

Examples 1 under Independence and 2 under Impartiality

Prosecutor accepts hospitality from relatives of damaged party in a case

PRINCIPLE/VALUE: RESPONSIBILITY AND ATTENTION TO PROFESSIONAL DUTIES

Key points:

Basically reiterates the obligations to collect evidence/make decision – and illustrates how ethical principles underpin these other technical obligations

Examples/illustration of violation

See other principles in this chapter.

PRINCIPLE/VALUE: PROFESIONALISM

Key points:

Brings together other obligations/principles (impartiality, responsibility, efficiency) as components of “professionalism”

Includes obligation to improve knowledge and skills (training)

Obligation of confidentiality

Obligation to dress appropriately and properly

Examples/illustration of violation

Prosecutor fails to keep up to date with legal developments in the area of his speciality

Failure to attend the training for which he/she has subscribed

Leakage of case information to media. This also includes “passiveness” when they suspect that some classified information may be disclosed to media, but fail to take action (e.g. inform their superiors) in order to prevent it

PRINCIPLE/VALUE: DIGNITY

Key points:

Treating participants to proceedings fairly and with respect, taking into account their views and legitimate interests

Treating colleagues with decency and respect

Examples/illustration of violation

Behaving rudely towards parties/legal representatives

Personalising professional disputes in the workplace

PRINCIPLE/VALUE: IMPLEMENTATION AND ENFORCEMENT

Key points:

Significant violations may be considered a disciplinary offence

Significant = deliberate serious or frequent violation of principles referred to in the Code of Ethics of Prosecutors

Examples/illustration of violation

Self-explanatory

DOCUMENT FOR DISCUSSION: Opinion No. 9 (2014) European Norms and Principles Concerning Prosecutors (by Consultative Council of European Prosecutors)

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CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS

(CCPE)

Opinion No.9 (2014)

of the Consultative Council of European Prosecutors

to the Committee of Ministers of the Council of Europe

on

European norms and principles concerning prosecutors

This Opinion contains:

- a Charter, called "the Rome Charter",

- a detailed Explanatory Note of the principles which appear in this Charter.

ROME CHARTER

The Consultative Council of European Prosecutors (CCPE), having been requested by the Committee of Ministers of the Council of Europe to provide a reference document on European norms and principles concerning public prosecutors, agreed on the following:

I. In all legal systems, public prosecutors (hereafter prosecutors) contribute to ensuring that the rule of law is guaranteed, especially by the fair, impartial and efficient administration of justice in all cases and at all stages of the proceedings within their competence.

II. Prosecutors act on behalf of society and in the public interest to respect and protect human rights and freedoms as laid down, in particular, in the Convention for the Protection of Human Rights and Fundamental Freedoms and in the case-law of the European Court of Human Rights.

III. The role and tasks of prosecutors, both within and outside the field of criminal justice, should be defined by law at the highest possible level and carried out in the strictest respect for the democratic principles and values of the Council of Europe.

IV. The independence and autonomy of the prosecution services constitute an indispensable corollary to the independence of the judiciary. Therefore, the general tendency to enhance the independence and effective autonomy of the prosecution services should be encouraged.

V. Prosecutors should be autonomous in their decision-making and should perform their duties free from external pressure or interference, having regard to the principles of separation of powers and accountability.

VI. Prosecutors should adhere to the highest ethical and professional standards, always behaving impartially and with objectivity. They should thus strive to be, and be seen as, independent and impartial, should abstain from political activities incompatible with the principle of impartiality, and should not act in cases where their personal interests or their relations with the persons interested in the case could hamper their full impartiality.

VII. Transparency in the work of prosecutors is essential in a modern democracy. Codes of professional ethics and of conduct, based on international standards, should be adopted and made public.

VIII. In performing their tasks, prosecutors should respect the presumption of innocence, the right to a fair trial, the equality of arms, the separation of powers, the independence of courts and the binding force of final court decisions. They should focus on serving society and should pay particular attention to the situation of vulnerable persons, notably children and victims.

IX. Prosecutors enjoy the right to freedom of expression and of association. In the communications between prosecutors and the media, the following principles should be respected: the presumption of innocence, the right to private life and dignity, the right to information and freedom of the press, the right to fair trial, the right to defence, the integrity, efficiency and confidentiality of investigations, as well as the principle of transparency.

X. Prosecutors should not benefit from a general immunity, but from functional immunity for actions carried out in good faith in pursuance of their duties.

XI. Prosecutors and, where necessary, their families have the right to be protected by the State when their personal safety is threatened as a result of the discharge of their functions.

XII. The recruitment and career of prosecutors, including promotion, mobility, disciplinary action and dismissal, should be regulated by law and governed by transparent and objective criteria, in accordance with impartial procedures, excluding any discrimination and allowing for the possibility of impartial

review.

XIII. The highest level of professional skills and integrity is a pre-requisite for an effective prosecution service and for public trust in that service. Prosecutors should therefore undergo appropriate education and training with a view to their specialisation.

XIV. The organisation of most prosecution services is based on a hierarchical structure. Relationships between the different layers of the hierarchy should be governed by clear, unambiguous and well-balanced regulations. The assignment and the re-assignment of cases should meet requirements of impartiality.

XV. Prosecutors should decide to prosecute only upon well-founded evidence, reasonably believed to be reliable and admissible. Prosecutors should refuse to use evidence reasonably believed to have been obtained through recourse to unlawful methods, in particular when they constitute a grave violation of human rights. They should seek to ensure that appropriate sanctions are taken against those responsible for using such methods or for other violations of the law.

XVI. Prosecutions should be firmly but fairly conducted. Prosecutors contribute to reaching just verdicts by the courts and should contribute to the effective, expeditious and efficient operation of the justice system.

XVII. In order to achieve consistency and fairness when taking discretionary decisions within the prosecution process and in court, clear published guidelines should be issued, particularly regarding decisions whether or not to prosecute. Where appropriate, and in accordance with law, prosecutors should give consideration to alternatives to prosecution.

XVIII. Prosecutors should have the necessary and appropriate means, including the use of modern technologies, to exercise effectively their mission, which is fundamental to the rule of law.

XIX. Prosecution services should be enabled to estimate their needs, negotiate their budgets and decide how to use the allocated funds in a transparent manner, in order to achieve their objectives in a speedy and qualified way. Where the prosecution service is entrusted with the management of resources, it should use modern management methods efficiently and transparently, being also provided with adequate training.

XX. Mutual and fair cooperation is essential for the effectiveness of the prosecution service at national and at international level, between different prosecution offices, as well as between prosecutors belonging to the same office. Prosecutors should treat international requests for assistance within their jurisdiction with the same diligence as in the case of their work at national level and should have at their disposal the necessary tools, including training, to promote and sustain genuine and effective international judicial

cooperation.

Approved by the CCPE in Rome on 17 December 2014

EXPLANATORY NOTE

Introduction

1. Recommendation Rec(2000)19 of the Council of Europe's Committee of Ministers on the role of public prosecution in the criminal justice system remains, after 14 years, a milestone. At the same time, since 2000, further aspects of the public prosecution's activities have been highlighted at European level and the need for an update and a synthesis of relevant principles has become obvious.

2. In this context, the Consultative Council of European Prosecutors (CCPE), established by the Committee of Ministers in 2005, wished to identify the most notable trends as regards the status, tasks and operations of the public prosecution. In this framework, the Committee of Ministers, in January 2014[1], instructed the CCPE to adopt a reference document on European norms and principles concerning prosecutors. To undertake this task, the CCPE took into account the documents listed in the Annex to this Note.

3. The legal systems of member States are characterised by great diversity, particularly as regards the tasks and roles of prosecutors. Nevertheless, they always remain under an obligation to respect human rights and fundamental freedoms as laid down in the Convention for the Protection of Human Rights and Fundamental Freedoms and the case-law of the European Court of Human Rights.

4. This document is intended for state institutions and for judicial, executive and legislative powers, as well as practitioners and researchers.

1. Definition of a prosecutor

5. Public prosecutors (hereafter prosecutors) are public authorities who, on behalf of society and in the public interest, ensure the application of the law where the breach of the law carries a criminal sanction, taking into account both the rights of the individual and the necessary effectiveness of the criminal justice system[2]. The prosecutors' mission can also include powers outside the criminal justice system, where the national legal system so provides[3].

2. Role of prosecutors

6. In all cases and at all stages of the legal proceedings, prosecutors contribute to ensuring that the rule of law and public order are guaranteed by the fair, impartial and effective administration of justice[4].

7. It is essential to ensure the independence and effective autonomy of prosecutors and to establish proper safeguards. They have a duty to act fairly,

impartially and objectively. In criminal matters, prosecutors must also take into account the serious consequences of a trial for the individual, even one which results in an acquittal. They should also seek to contribute that the justice system operates as expeditiously and efficiently as possible and assist the courts in reaching just verdicts[5].

8. A system where both prosecutor and judge act to the highest standards of integrity and impartiality presents a greater protection for human rights than a system which relies on the judge alone[6].

2.1 Functions in criminal proceedings

9. Prosecutors play an essential role for the rule of law and the proper functioning of criminal justice systems.

10. Prosecutors decide whether or not to initiate or continue a prosecution, conduct the prosecution before an independent and impartial court established by law and decide whether or not to appeal decisions by that court.

11. In certain criminal justice systems, prosecutors also have other functions such as to elaborate and implement national crime policy (while adapting it, where appropriate, to regional and local circumstances), to conduct, direct or supervise investigations, to ensure that victims are effectively assisted, to decide on alternatives to prosecution, or to supervise the execution of court decisions[7].

2.1.1 Principles governing prosecutions

12. The legal systems of some member states provide for the principle of "legality" as the basis for prosecutions. The legal systems of other member states provide for the principle of "discretion" or "opportunity principle".

13. In order to achieve consistency and fairness when taking discretionary decisions within the prosecution process and in court, clear published guidelines should be issued, particularly regarding decisions whether or not to prosecute[8]. Even when the system does not foresee that prosecutors can take discretionary decisions, general guidelines should lead the decisions taken by them.

14. Prosecutors should seek to ensure that all necessary and reasonable enquiries and investigations are made before taking a decision in relation to a prosecution and proceed only when a case is founded upon evidence assessed to be reliable and admissible. Prosecutions should be firmly but fairly conducted and not beyond what is indicated by the evidence[9].

15. Where participation in the investigation of crime or supervision of the police or other investigation bodies is within their competence, prosecutors should do so objectively, impartially and professionally and seek to ensure that the investigating services respect legal principles and fundamental human

rights[10].

16. Prosecutors should take account of the interests of witnesses, and where this is within their competence, take or promote measures to protect their life, safety and privacy, or ensure that such measures have been taken.

17. Prosecutors should take account of the views and concerns of victims when their personal interests are affected and take or promote actions to ensure that victims are informed of both their rights and developments in the procedure[11].

18. Prosecutors should give careful consideration on whether or not to prosecute, respect the rights of victims, witnesses and suspects and afford a right to seek a review to persons affected by their decisions[12].

19. Prosecutors should respect the principle of equality of arms between prosecution and defence, the presumption of innocence, the right to a fair trial, the independence of the court, the principle of separation of powers and the binding force of final court decisions.

20. The prosecutor should put all the credible evidence available before a court and disclose all relevant evidence to the accused. There can be situations where prosecutions should be discontinued[13].

21. Prosecutors should refuse to use evidence reasonably believed to have been obtained through recourse to unlawful methods, in particular when they constitute a grave violation of human rights. They should seek to ensure that appropriate sanctions are taken against those responsible for using such methods or other violations of the law[14]. In some systems, the violation of human rights is sufficient to deny the evidence, without having to be grave.

2.2 Functions outside criminal proceedings

22. In many States, prosecutors have competences outside the criminal law field (inter alia, civil, family, labour, administrative, electoral law, protection of the environment, social rights and rights of vulnerable persons such as minors, disabled persons and persons with very low income[15]).

23. Where such competencies exist, prosecutors' mission should be to represent the general or public interest, protect human rights and fundamental freedoms, and uphold the rule of law[16]. They should also firmly respect the democratic principles and values of the Council of Europe.

24. These competencies should be exercised in such a way as to:

· respect the effective separation of state powers;

· respect the independence of the courts and their role in protecting human rights, equality of parties, equality of arms and non-discrimination;

· be regulated by law as precisely as possible, be strictly limited, clearly

defined and follow clear published guidelines in order to avoid any ambiguity[17];

· ensure that there is no undue external intervention in the activities of prosecution services;

· respect the right of any natural or legal person to initiate or act as a defendant to defend his or her interests before an independent and impartial tribunal, even in cases where the public prosecutor is or intends to be a party[18];

· not violate the principle of binding force of final court decisions (*res iudicata*) with some exceptions established in accordance with international obligations including the case-law of the Court;

· ensure that the ability of persons or institutions involved in the case to seek a review of actions by prosecutors is clearly prescribed;

· ensure that the right of persons or institutions, involved or interested in civil law cases to claim against measures or default of prosecutors is assured.

25. Any prosecutor's actions which affect human rights and freedoms should remain under the control of competent courts[19].

26. Where prosecutors have power to question the decision of a court or state administration, they must do so by exercising a power of appeal or a power to seek a review of a decision. In private litigation between parties, where a public interest must be defended or asserted before the court, the ultimate say rests with the court[20].

27. The prosecutor who intervenes in court outside the field of criminal justice, should, in particular, in accordance with domestic laws:

· have equal rights and obligations to the other parties to the proceedings;

· not withhold evidence relevant to the issues in dispute;

· neither participate in the deliberations of the court, nor give the impression of doing so;

· when entitled to the right of appeal to a court decision, the prosecutors should have equal rights as other parties and never substitute their rights of appeal;

· exercise its powers independently, transparently and in full accordance with the rule of law;

· intervene against legal entities in cases where there are reasonable and objective grounds to believe that the private entity in question is in violation of its legal obligations, including those derived from the application of international human rights treaties.

Relevant decisions taken by prosecutors outside the field of criminal justice should always be followed by reasons open for persons or institutions involved or interested in the case.

2.3 Alternatives to prosecution and penalties

28. Prosecutors should give consideration, where appropriate and in accordance with law, to alternatives to prosecution[21]. When applying these alternatives, they should afford full respect for the rights and legitimate interests of suspects and victims and offer the possibility of mediation and reconciliation between offender and victim[22]. Special consideration should be given to the nature and gravity of the offence, protection of society and the character and background of the offender.

29. With a view to promoting a fair, consistent and efficient activity of prosecutors, the relevant state authorities are encouraged to publish clear rules, general guidelines and criteria for the effective and fair implementation of the criminal policy related to alternatives to prosecution.

30. Alternative measures should never be used to circumvent the rules of fair trial by imposing measures on a person who is innocent or who could not be convicted owing to procedural obstacles such as time-limits on prosecution, or where there is doubt as to the responsibility of the offender identified or the extent of the damage caused by the offence.

31. Having in mind the possible damaging impact of criminal and other proceedings on the future development of juveniles, prosecutors should, to the widest possible extent and according to the law, seek alternatives to prosecution of juvenile offenders, where such alternatives constitute a proper judicial response to the offence, taking into consideration the interest of the victims and of the general public and being consistent with the goals of juvenile justice[23].

32. Prosecutors should use their best efforts to prosecute juveniles only to the extent strictly necessary[24].

3. Status of prosecutors and safeguards provided to them for carrying out their functions

3.1 The independence of prosecutors

33. Independence of prosecutors – which is essential for the rule of law - must be guaranteed by law, at the highest possible level, in a manner similar to that of judges. In countries where the public prosecution is independent of the government, the state must take effective measures to guarantee that the nature and the scope of this independence are established by law[25]. In countries where the public prosecution is part of or subordinate to the government, or enjoys a different status that the one described above, the state must ensure that the nature and the scope of the latter's powers with respect to the public prosecution is also established by law, and that the government exercises its

powers in a transparent way and in accordance with international treaties, national legislation and general principles of law[26].

34. The European Court of Human Rights (hereafter "the Court") considered it necessary to emphasise that "in a democratic society both the courts and the investigation authorities must remain free from political pressure"[27]. It follows that prosecutors should be autonomous in their decision making and, while cooperating with other institutions, should perform their respective duties free from external pressures or interferences from the executive power or the parliament, having regard to the principles of separation of powers and accountability[28]. The Court also referred to the issue of independence of prosecutors in the context of "general safeguards such as guarantees ensuring functional independence of prosecutors from their hierarchy and judicial control of the acts of the prosecution service"[29].

35. The independence of prosecutors is not a prerogative or privilege conferred in the interest of the prosecutors, but a guarantee in the interest of a fair, impartial and effective justice that protects both public and private interests of the persons concerned.

36. States must ensure that prosecutors are able to perform their functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability[30].

37. Prosecutors should, in any case, be in a position to prosecute, without obstruction, public officials for offences committed by them, particularly corruption, unlawful use of power and grave violations of human rights[31].

38. Prosecutors must be independent not only from the executive and legislative authorities but also from other actors and institutions, including those in the areas of economy, finance and media.

39. Prosecutors are also independent with regard to their cooperation with law enforcement authorities, courts and other bodies.

3.2 The hierarchy

40. A hierarchical structure is a common aspect of most public prosecution services, given the nature of the tasks they perform. Relationships between the different layers of the hierarchy must be governed by clear, unambiguous and well-balanced regulations, and an adequate system of checks and balances must be provided for.

41. In a State governed by the rule of law, when the structure of the prosecution service is hierarchical, effectiveness of prosecution is, regarding public prosecutors, strongly linked with transparent lines of authority, accountability and responsibility.

42. It is essential to develop appropriate guarantees of non-interference in the prosecutor's activities. Non-interference means ensuring that the prosecutor's

activities, in particular in trial procedures, are free of external pressure as well as from undue or illegal internal pressures from within the prosecution system[32]. In a hierarchical system, the superior prosecutor must be able to exercise appropriate control over the decisions of the office, subject to proper safeguards for the rights of individual prosecutors.

3.2.1 The assignment and the re-assignment of cases

43. With respect to the organisation and the internal operation of the public prosecution, in particular the assignment and re-assignment of cases, this should meet requirements of impartiality with respect to the structure, responsibilities and decision-making competences of the prosecution services.

44. Assignment and re-assignment of cases should be determined by transparent regulation that is aligned with the hierarchical or non-hierarchical structure of the prosecution service.

3.2.2 Instructions

45. General decisions on implementation of crime policies should be transparent in order to ensure fair, consistent and efficient activities of public prosecutors.

46. Instructions of a general nature must be in writing and, where possible, be published or otherwise transparent. Such instructions must respect strictly equity and equality[33].

47. Instructions by the executive or by superior level of the hierarchy concerning specific cases are unacceptable in some legal systems. While there is a general tendency for more independence of the prosecution system, which is encouraged by the CCPE, there are no common standards in this respect. Where the legislation still allows for such instructions, they should be made in writing, limited and regulated by law.

48. A public official who believes he/she is being required to act in a way which is unlawful, improper or unethical, should respond in accordance with the law[34].

49. A prosecutor enjoys the right to request that instructions addressed to him/her be put in writing. Where he/she believes that an instruction is either illegal or runs counter to his/her conscience, an adequate internal procedure should be available which may lead to his/her eventual replacement[35].

50. It should be understood that these guarantees are established in the interest of both individual prosecutors and the public[36].

3.3 Appointment and career

3.3.1 General principles

51. Member States should take measures to ensure that:

a) the recruitment, the promotion and the transfer of prosecutors are carried out according to fair and impartial procedures and excluding discrimination on any ground such as gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status;

b) the careers of prosecutors, their professional evaluation, their promotions and their mobility are governed by transparent and objective criteria, such as competence and experience; recruitment bodies should be selected on the basis of competence and skills and should discharge their functions impartially and based on objective criteria;

c) the mobility of prosecutors is governed also by the needs of the service[37].

52. The appointment and termination of service of prosecutors should be regulated by the law at the highest possible level and by clear and understood processes and procedures.

53. The proximity and complementary nature of the missions of judges and prosecutors create similar requirements and guarantees in terms of their status and conditions of service, namely regarding recruitment, training, career development, salaries, discipline and transfer (which must be affected only according to the law or by their consent)[38]. For these reasons, it is necessary to secure proper tenure and appropriate arrangements for promotion, discipline and dismissal[39].

54. Striving for impartiality, which in one form or another must govern the recruitment and career prospects of public prosecutors, may result in arrangements for a competitive system of entry to the profession and the establishment of High Councils either for the whole judiciary, or just for prosecutors[40].

55. The manner in which the Prosecutor General is appointed and dismissed plays a significant role in the system guaranteeing the correct functioning of the prosecutor's office[41].

56. If governments have some control over the appointment of the Prosecutor General, it is important that the method of selection is such as to gain the confidence and respect of the public as well as of the members of the judicial and prosecutorial system and legal profession. The Prosecutor General should be appointed either for an adequately long period or permanently to ensure stability of his/her mandate and make him/her independent of political changes[42].

3.3.2 Training

57. The highest level of professional skills and integrity is a pre-requisite for an effective prosecution service and for public trust in that service. Prosecutors should therefore undergo appropriate education and training with a view to their specialisation[43].

58. Different European legal systems provide training for judges and prosecutors according to various models, the training being entrusted to specific bodies. In all cases, it is important to assure the autonomous character of the institution in charge of organising such training, because this autonomy is a safeguard of cultural pluralism and independence[44].

59. Such training should be organised on an impartial basis and regularly and objectively evaluated for its effectiveness. If it is appropriate, joint training for judges, prosecutors and lawyers on themes of common interest can contribute to improving the quality of justice[45].

60. The training should also include administrative staff and officials, as well as law enforcement agents.

61. Training, including management training[46], is a right as well as a duty for prosecutors, both before taking their duties and on a permanent basis.

62. Prosecutors should benefit from appropriate specialised training in order to adequately fulfil their responsibilities within and outside the criminal justice system[47], including in relation to the management of budgetary resources[48] and in the field of communication[49].

63. States should therefore take effective measures to ensure that prosecutors have appropriate education and training, both before and after their appointment. In particular, prosecutors should be made aware of:

a) the principles and ethical duties of their office;

b) the constitutional and other legal protection of persons involved in legal proceedings;

c) human rights and freedoms as laid down by the Convention for the Protection of Human Rights and Fundamental Freedoms (Articles 5 and 6 in particular) and by the case-law of the European Court of Human Rights;

d) principles and practices of organisation of work, management and human resources;

e) mechanisms and materials which contribute to efficiency and consistency in their activities[50].

64. New criminal challenges as well as the growing complexity of certain types of criminality are due to the speedy development of new technologies,

the globalisation and expanding international trade and data flow. Special training to enable prosecutors face the threats posed by the above mentioned phenomena is also required[51].

3.3.3 Evaluation of professional skills

65. Evaluation of the performance of prosecutors should be carried out at regular intervals, be reasonable, on the basis of adequate, objective and established criteria and in an appropriate and fair procedure.

66. Prosecutors should have access to results concerning their evaluation and have the right to submit observations and to legal redress, where appropriate.

67. The promotion of prosecutors must be based on objective factors, in particular professional qualifications, ability, integrity and experience, and decided upon in accordance with fair and impartial procedures[52].

3.3.4 Transfer and mobility

68. A means of improperly influencing a prosecutor might be his/her transfer to another prosecutor's office without consent.

69. In introducing transfer or secondment against the will of a prosecutor, either internal or external, the potential risks should be balanced by safeguards provided by law (for example, a transfer which is disguising a disciplinary procedure).

70. The ability to transfer a prosecutor without his/her consent should be governed by law and limited to exceptional circumstances such as the strong need of the service (equalising workloads, etc.) or disciplinary actions in cases of particular gravity, but should also take into account the views, aspirations and specialisations of the prosecutor and his/her family situation[53].

71. It should be possible to appeal to an independent body.

3.3.5 Dismissal

72. Given their important role and function, the dismissal of prosecutors should be subject to strict requirements, which should not undermine the independent and impartial performance of their activities[54]. All guarantees attached to the disciplinary procedures should apply.

73. The independence of prosecutors is their protection from arbitrary or politically motivated dismissal. This is particularly relevant with reference to the Prosecutors General and the law should clearly define the conditions of their pre-term dismissal[55].

3.4 Conditions of service

3.4.1 General principles

74. Prosecutors should have the necessary and appropriate means to exercise their missions which is fundamental for the rule of law[56].

75. States should take measures to ensure that prosecutors have reasonable conditions of service such as remuneration, tenure and pension commensurate with their crucial role as well as an appropriate age of retirement[57].

76. The conditions of service should reflect the importance and dignity of the office, and respect attached to it[58]. The appropriate remuneration of prosecutors also implies recognition of their important function and role and can also reduce the risk of corruption[59]. Bonuses, where they exist, should be based on criteria which are completely objective and transparent.

3.4.2 Incompatibilities and conflicts of interest

77. Prosecutors should at all times adhere to the highest ethical and professional standards. In particular, they should not act in cases where their personal interests or their relations with the persons interested in the case could hamper their full impartiality[60]. Prosecutors should not engage in any activity or transaction or acquire any position or function, whether paid or unpaid, that is incompatible with or detracts from the proper performance of his/her duties[61].

78. States should guarantee that a person cannot at the same time perform duties as a prosecutor and as a court judge. However, States may take measures in order to make it possible for the same person to perform successively the functions of prosecutor and those of judge or vice versa. Such changes in functions are only possible at the explicit request of the person concerned and respecting the safeguards[62].

79. Any attribution of judicial functions to prosecutors should be restricted to cases involving in particular minor sanctions, should not be exercised in conjunction with the power to prosecute in the same case and should not prejudice the defendants' right to a decision on such cases by an independent and impartial authority exercising judicial functions[63].

80. Prosecutors should, at all times, conduct themselves in a professional manner and strive to be and be seen as independent and impartial[64].

81. Prosecutors should abstain from political activities incompatible with the principle of impartiality.

82. Prosecutors should exercise their freedom of expression and association in a manner that is compatible with their office and that does not affect or appear to affect judicial and prosecutorial independence or impartiality. While they are free to participate in public debate on matters pertaining to legal subjects,

the judiciary or the administration of justice, they must not comment on pending cases and must avoid expressing views which may undermine the standing and integrity of the court[65].

83. In accordance with the law, for an appropriate period of time, the prosecutor should not act for any person or body in respect of any matter on which he/she acted for, or advised, the public service and which would result in a particular benefit to that person or body[66].

84. A prosecutor, like a judge, may not act in a matter where he/she has a personal interest, and may be subject to certain restrictions aiming to safeguard his/her impartiality and integrity[67].

3.5. Guarantees in proceedings

85. Standards and principles of human rights establish that prosecutors are responsible in the performance of their duties and may be subject to disciplinary procedures[68].

86. In a democratic system under the rule of law, an acquittal of an individual should not result in disciplinary proceedings against the prosecutor responsible for the case.

87. States should take measures to ensure that disciplinary proceedings against prosecutors are governed by law and should guarantee a fair and objective evaluation and decision which should be subject to independent and impartial review[69].

88. Prosecutors should not benefit from a general immunity that would protect them from prosecution for crimes they have committed, and for which they have to answer before the courts, as this may lead to lack of public trust or even to corruption[70]. States may establish special procedures to bring prosecutors to justice as a guarantee for their independence and impartiality.

89. According to general standards, prosecutors may need protection from civil suits for actions done in good faith in pursuance of their duties.

3.6 Protection of prosecutors, their families, etc.

90. States should take measures to ensure that prosecutors, and where necessary, their families are protected by the State when their personal safety is threatened as a result of the discharge of their functions[71].

91. When prosecutors or their families are subject to violence or threats of violence, or to any form of intimidation, coercion or inappropriate undue surveillance, a thorough investigation of such incidents should be carried out and steps to prevent their future recurrence should be taken; when needed, prosecutors and their families should be provided with the necessary counselling or psychological support[72].

4. Duties and rights of prosecutors

4.1 Duties concerning the conduct of prosecutors

4.1.1 The fundamental duty of impartiality, objectivity and fairness

92. Prosecutors should carry out their functions impartially and act with objectivity. They should also treat people as equal before the law and should neither favour anyone nor discriminate against anyone.

93. Prosecutors are aware of the dangers of corruption and do not ask for, accept or receive benefits or any advantage in the exercise of their functions. Through their impartiality, prosecutors must ensure the confidence of the public in the prosecution services. Prosecutors avoid secondary occupations and other tasks in which their impartiality might be endangered. They identify situations that pose a conflict of interest and, if necessary, recuse themselves from handling the task.

4.1.2 The accountability of prosecutors

94. Prosecutors operate on the basis of public liability. Their decisions are based on the law and other regulations, and they remain within the scope of their discretion. In particular, prosecutors should respect and ensure the protection of human rights.

95. Prosecutors act in a transparent manner, unless legislation restricts their actions or the publicity of the documents they have drafted. They should particularly be careful to express their decisions in an understandable manner to the parties concerned and when communicating with the public and media.

96. The professional knowledge and skills of prosecutors, particularly as regards management, communication and cooperation, including at international level, must be at a high level and must be maintained through training. Prosecutors must manage cases, for which they are responsible, with speed and optimum quality and they should use resources available to them in a responsible manner.

4.1.3 The duty to maintain the dignity of the profession

97. Prosecutors must earn the trust of the public by demonstrating in all circumstances an exemplary behaviour. They must treat people fairly, equally, respectfully and politely, and they must at all times adhere to the highest professional standards and maintain the honour and dignity of their profession, always conducting themselves with integrity and care[73].

4.1.4 Code of ethics and conduct

98. The sharing of common legal principles and ethical values by all prosecutors involved in the legal process is essential for the proper administration of justice[74] and for the respect of the highest professional

standards. Prosecutors must be able to identify ethical problems in their work and to refer to clear principles to solve them.

99. Codes of professional ethics and of conduct should be adopted and made public, based on international standards developed by the United Nations, as well as those set out in the European Guidelines on Ethics and Conduct for Public Prosecutors (The Budapest Guidelines) adopted by the Conference of Prosecutors General of Europe on 31 May 2005.

4.2 Fundamental freedoms of prosecutors

100. Prosecutors enjoy the freedom of opinion and speech and freedom of association in the same manner as other members of the society. When making use of these rights, they must take into account the duty of discretion and be careful not to jeopardise the public image of independence, impartiality and fairness which a prosecutor must always uphold.

101. All necessary steps should be taken to ensure that prosecutors' privacy is respected[75]. However, they should behave with discretion and caution to avoid putting into question the dignity of their profession or their ability to exercise their functions.

5. Relations with other actors and institutions

5.1 Relations with victims, witnesses, suspects, defendants, accused persons and the public

102. Prosecutors should uphold the right to a fair trial and take into account the legitimate interests of witnesses, victims, suspects, defendants or accused persons by ensuring that they are informed of their rights and the progress of the procedure[76].

5.2 Relations with courts (judges and court staff) and lawyers

103. Where the prosecution service is a part of the judicial institution, it is necessary to establish a clear distinction between prosecutors and court judges. Member States should clarify the legal status, the competencies and the procedural role of prosecutors by law in a way that there can be no doubt about the reciprocal independence and impartiality of prosecutors and court judges[77].

104. A fair, impartial and effective justice can only be guaranteed by complementary actions of judges and prosecutors[78].

105. For the effectiveness of judicial action, the prosecutors must also always maintain courteous relations with all court staff and lawyers.

5.3 Relations with investigators

106. The prosecutors and investigators cooperate in an appropriate and effective manner in the course of investigations.

107. It is up to the prosecutors, where this is within their competence, to ensure that investigators act legally, respect the rights of the defence and inform all suspects, in the shortest possible time and in a language that is accessible, in detail, about the facts that could be used against them[79].

5.4 Relations with the prison administration

108. The prosecutor, within the limits of his/her competence, is responsible for verifying the lawfulness of how the detention is carried out. He/she must ensure the full and effective protection of the rights of detainees and inmates, improve their situation and facilitate their reintegration into society[80].

5.5 Relations with the media

109. Prosecutors are encouraged to regularly inform the public, through the media, about their activities and the results thereof[81]. The actions of prosecutors should strive to promote and preserve transparency and public trust in the prosecution service.

110. Communications from prosecutors must demonstrate impartiality, without improperly influencing judges in any way and exposing them to personal criticisms.

111. When an individual prosecutor is subject to an unfair attack through the media, he/she is entrusted with the right of having the contested information rectified or other legal remedies according to the national law. Nevertheless, in such cases, as well as when false information is spread about persons or events involved in the proceedings which he/she deals with, any reaction should preferably come from the head or a spokesperson of the prosecution office and, in major cases, by the Prosecutor General or the highest authority in charge of the service or the highest state authority. Such an institutional reaction minimises the need for the prosecutor concerned to make use of his/her right of response guaranteed to every person, and the risk of excessive "personalisation" of the conflict.

5.6 Relations with public services and other institutions

112. Prosecutors should not interfere with the competence of the legislature or the executive. However, they should cooperate with state institutions and various services.

113. Prosecutors should be empowered, without suffering any hindrance, to

order investigations and prosecute civil servants and elected officials when they are suspected of having committed crimes[82].

6. Organisation of the prosecutor's office

6.1 Structure

114. A fundamental responsibility of the prosecution service is to ensure the effectiveness of its action. There should be an organisation and a structure to meet all of its statutory tasks with speed and skill while maintaining a high level of quality.

6.2 Staff

115. The prosecutor's office should be managed effectively, avoiding any bureaucratic drift. To do this, prosecutors should have sufficient and qualified administrative personnel, adequately trained. Experts in specific fields should also be provided for, e.g. for the reception of victims of crimes, data processing, statistics.

6.3 Management of resources

116. The provision of adequate organisational, financial, material and human resources contributes to ensuring independence. Particularly in times of economic difficulty, sufficient resources should be assigned to provide a quality service[83].

117. Where the management of resources is entrusted to the prosecution service, it has the duty to do it with the utmost rigor and transparent manner[84]. For this purpose, as well as to maximise the results with the given means, there should be relevant measures in place; prosecutors should also receive adequate training and be supported by qualified specialists.

118. In any case, either where the prosecution services have or do not have management autonomy, they should be enabled to estimate their needs, negotiate their budgets and decide how to use the allocated funds in a transparent manner, in order to achieve the objectives of speedy and quality justice[85].

6.4 Specialisation

119. The need of specialisation of prosecutors, as well as within the public prosecutors organisational structure, should be seen as a priority[86], to better respond to new forms of criminality, as well as in cases where the prosecutor has competences outside the criminal law field. It would also improve and facilitate international co-operation. Specialisation is essential to improve effectiveness, but also to answer the challenges for the prosecutors' mission

coming from the complexity of contemporary society.

6.5 Internal cooperation

120. Mutual and fair cooperation is essential for the effectiveness of the prosecution service, between different prosecution offices as well as between prosecutors belonging to the same office.

7. International cooperation

121. Prosecutors should treat international requests for support within their jurisdiction with the same diligence as in the case of their work at national level. In their jurisdiction, they should contribute, where appropriate, to the implementation of foreign decisions**.**

122. Prosecutors should benefit from training in the application of international instruments and basic principles governing the major legal systems. They may participate as much as possible in exchanges and international fora useful for the exercise of their functions, including in particular the collection of best practices[87].

123. When it results in more efficiency, prosecutors should use cooperation arrangements such as Eurojust, the European Judicial Network and other various relevant networks including liaison prosecutors[88].

Appendix

List of documents

1. Recommendation Rec(2000)10 of the Committee of Ministers to member states *on codes of conduct for public officials*, 11 May 2000.

2. Recommendation Rec(2000)19 of the Committee of Ministers to member states on *the role of public prosecution in the criminal justice system*, 6 October 2000.

3. Recommendation Rec(2003)13 of the Committee of Ministers to member states *on the provision of information through the media in relation to criminal proceedings*, 10 July 2003.

4. Recommendation Rec(2010)12 of the Committee of Ministers to member states *on judges: independence, efficiency and responsibilities*, 17 November 2010.

5. Recommendation Rec(2012)11 of the Committee of Ministers to member states on *the role of public prosecutors outside the criminal justice system*, 19 September 2012.

6. Consultative Council of European Prosecutors (CCPE), Opinion No. 1(2007) on *ways of improving international co-operation in the criminal*

justice field, 30 November 2007.

7. Consultative Council of European Prosecutors (CCPE), Opinion No. 2(2008) on *alternatives to prosecution*, 16 October 2008.

8. Consultative Council of European Prosecutors (CCPE), Opinion No. 3(2008), on *the role of prosecution services outside the criminal law field*, 21 October 2008.

9. Consultative Council of European Prosecutors (CCPE), Opinion No. 4(2009) on *the relations between judges and prosecutors in a democratic society*, 8 December 2009, Bordeaux Declaration.

10. Consultative Council of European Prosecutors (CCPE), Opinion No. 5(2010) on *public prosecution and juvenile justice, Yerevan Declaration*, 20 October 2010.

11. Consultative Council of European Prosecutors (CCPE), Opinion No. 6(2011), on *the relationship between prosecutors and the prison administration*, 24 November 2011.

12. Consultative Council of European Prosecutors (CCPE), Opinion No. 7(2012) on *the management of the means of prosecution services*, 11 December 2012.

13. Consultative Council of European Prosecutors (CCPE), Opinion No. 8(2013) on *relations between prosecutors and the media*, 9 October 2013.

14. Conference of Prosecutors General of Europe, 6th session, *European Guidelines on Ethics and Conduct for Public prosecutors – "The Budapest Guidelines"*, 31 May 2005.

15. Conference of Prosecutors General of Europe, *The role of public prosecution in the protection of human rights and public interest outside the criminal law field*, Saint Petersburg, 3 July 2008.

16. Venice Commission, *Report on European Standards as Regards the Independence of the Judicial System: Part II – the Prosecution Service*, CDL-AD(2010)040, 3 January 2011.

17. UN Commission on Crime Prevention and Criminal Justice, Resolution on *strengthening the rule of law through improved integrity and capacity of prosecution services*, E/CN.15/2008/L.10/Rev.2, 17 April 2008.

18. General Assembly of the United Nations, *Interim Report of the Special Rapporteur on the Independence of Judges and Lawyers*, Gabriela Knaul, A/65/274, 10 August 2010.

19. *Guidelines on the Role of Prosecutors* adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Havana, Cuba, 27 August to 7 September 1990.

20. UN Human Rights Council, *Interim Report of the Special Rapporteur on the independence of judges and lawyers*, A/65/274, 10 August 2010.

21. UN Human Rights Council, *Report of the Special Rapporteur on the independence of judges and lawyers*, Gabriela Knaul, A/HRC/20/19, 7 June 2012.

22. UN Human Rights Council, *Report of the Special Rapporteur on the Independence of judges and lawyers on Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development*, A/HRC/11/41, 24 March 2009.

23. UN Human Rights Council, *Report of the Special Rapporteur on the independence of judges and lawyers*, Gabriela Knaul, A/HRC/23/43, 15 March 2013

24. UN Human Rights Council, *Report of the Special Rapporteur on the Independence of judges and lawyers on Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development*, A/HRC/8/4/, 13 May 2008.

25. International Association of Prosecutors, *Standards of professional responsibility and statement of the essential duties and rights of prosecutors*, 23 April 1999.

26. International Association of Prosecutors, *Combating use of the internet to exploit children*, Best Practice Series No. 1.

27. International Association of Prosecutors, *An international survey of the legal framework for and implementation of victim services by prosecutors' offices*, conducted for the International Association of Prosecutors by Heike Gramckow, Ph.D. Susanne Seifert National Center for State Courts Arlington, VA, USA, 2006.

28. International Association of Prosecutors, *Declaration on Minimum Standards Concerning the Security and Protection of Public Prosecutors and their Families*, 1 March 2008.

29. International Association of Prosecutors, *Model guidelines for the effective prosecution of crimes against children*, IAP Best Practice Series No. 2, general principles.

30. Submission by the International Association of Prosecutors to the Search Committee for the position of ICC Prosecutor, March 2011.

31. UNODC/IAP Guide on *the status and role of prosecutors* (2014).

[1] 1189th meeting of the Ministers' Deputies, 22 January 2014.

[2] See Recommendation Rec(2000)19 of the Committee of Ministers of the Council of Europe *on the role of public prosecution in the criminal justice system*, 6 October 2000, Article 1.

[3] See Recommendation Rec(2012)11 of the Committee of Ministers of the Council of Europe *on the role of public prosecutors outside the criminal justice system*, 19 September 2012, Article 2.

[4] Kayasu v. Turkey, no. 64119/00 and 76292/01, 13/02/2009, § 91.

[5] See Recommendation Rec(2000)19 of the Committee of Ministers of the Council of Europe *on the role of public prosecution in the criminal justice system*, 6 October 2000, Article 24, and Conference of Prosecutors General of Europe, 6th session, *European Guidelines on Ethics and Conduct of Public Prosecutors – "The Budapest Guidelines",* CCPE (2005)05, 31 May 2005 item III. See also Consultative Council of European Prosecutors, Opinion No. 4(2009) on *relations between judges and prosecutors in a democratic society*, 8 December 2009, explanatory note, Article 11. See also Venice Commission, *Report on European Standards as Regards the Independence of the Judicial System: Part II – the Prosecution Service*, CDL-AD(2010)040, 3 January 2011, Article 16.

[6] Venice Commission, *Report on European Standards as Regards the Independence of the Judicial System: Part II – the Prosecution Service*, CDL-AD(2010)040, 3 January 2011, Article 19.

[7] See Recommendation Rec(2000)19 of the Committee of Ministers of the Council of Europe *on the role of public prosecution in the criminal justice system*, 6 October 2000, Article 3. See also *Guidelines on the Role of Prosecutors* adopted by the Eighth United Nations Congress on the *Prevention of Crime and the Treatment of Offenders*, Havana, Cuba, 27 August to 7 September 1990, Article 11.

[8] See *Guidelines on the Role of Prosecutors* adopted by the Eighth United Nations Congress on the *Prevention of Crime and the Treatment of Offenders*, Havana, Cuba, 27 August to 7 September 1990, Article 17.

[9] Conference of Prosecutors General of Europe, 6th session, *European Guidelines on Ethics and Conduct for Public prosecutors – "The Budapest Guidelines"*, CPGE(2005)05, 31 May 2005, item III. International Association of Prosecutors, *Standards of professional responsibility and statement of the essential duties and rights of prosecutors*, 23 April 1999, item 4.2. Recommendation Rec(2000)19 of the Committee of Ministers of the Council of Europe *on the role of public prosecution in the criminal justice system*, 6 October 2000, Article 27.

[10] International Association of Prosecutors, *Standards of professional responsibility and statement of the essential duties and rights of prosecutors*,

23 April 1999, item 4.2.

[11] See Recommendation Rec(2000)19 of the Committee of Ministers of the Council of Europe *on the role of public prosecution in the criminal justice system*, 6 October 2000, Articles 32 and 33. See also: International Association of Prosecutors, *Standards of professional responsibility and statement of the essential duties and rights of prosecutors*, 23 April 1999, item 4.3; Conference of Prosecutors General of Europe, 6th session, *European Guidelines on Ethics and Conduct for Public Prosecutors – "The Budapest Guidelines"*, CPGE(2005)05, 31 May 2005, item III; *Guidelines on the Role of Prosecutors* adopted by the Eighth United Nations Congress *on the Prevention of Crime and the Treatment of Offenders*, Havana, Cuba, 27 August to 7 September 1990, § 13; Consultative Council of European Prosecutors, Opinion No. 4(2009) on *relations between judges and prosecutors in a democratic society*, 8 December 2009, explanatory note, Article 12.

[12] Consultative Council of European Prosecutors, Opinion No. 4(2009) on *relations between judges and prosecutors in a democratic society*, 8 December 2009, explanatory note, Articles 53 and 54. See also: International Association of Prosecutors, *Standards of professional responsibility and statement of the essential duties and rights of prosecutors*, 23 April 1999, item 2.1. Recommendation Rec(2000)19 of the Committee of Ministers of the Council of Europe *on the role of public prosecution in the criminal justice system*, 6 October 2000, Article 34.

[13] Consultative Council of European Prosecutors, Opinion No. 4(2009) on *relations between judges and prosecutors in a democratic society*, 8 December 2009, explanatory note, Article 55. See also Venice Commission, *Report on European Standards as Regards the Independence of the Judicial System: Part II – the Prosecution Service*, CDL-AD(2010)040, 3 January 2011, Article 15.

[14] International Association of Prosecutors, *Standards of professional responsibility and statement of the essential duties and rights of prosecutors*, 23 April 1999, item 4.3.

[15] Consultative Council of European prosecutors, Opinion No. 3(2008), on *the role of prosecution services outside the criminal law field*", 21 October 2008, §§ 16 and 19. See also: Consultative Council of European Prosecutors, Opinion No. 4(2009) on *relations between judges and prosecutors in a democratic society*, 8 December 2009, explanatory note, § 64. See also Korolev v. Russia (no. 2), no. 5447/03, 4/10/2010, §§ 33-34; Batsanina v. Russia, no. 3932/02, 14/09/2009, § 27; Menchinskaya v. Russia, no. 42454/02, 15/04/2009, § 35.

[16] Committee of Ministers of the Council of Europe, Recommendation CM/Rec(2012)11 on *the role of public prosecutors outside the criminal justice system*, 19 September 2012, § 2.

[17] Committee of Ministers of the Council of Europe, Recommendation CM/Rec(2012)11 on *the role of public prosecutors outside the criminal justice*

system, 19 September 2012, §§ 3 and 11, and Committee of Ministers of the Council of Europe, Recommendation CM/Rec(2012)11 on *the role of public prosecutors outside the criminal justice system*, 19 September 2012, § 9.

[18] Committee of Ministers of the Council of Europe, Recommendation CM/Rec(2012)11 on *the role of public prosecutors outside the criminal justice system*, 19 September 2012, § 10.

[19] Venice Commission, *Report on European Standards as Regards the Independence of the Judicial System: Part II – the Prosecution Service*, CDL-AD(2010)040, 3 January 2011, § 73.

[20] Venice Commission, *Report on European Standards as Regards the Independence of the Judicial System: Part II – the Prosecution Service*, CDL-AD(2010)040, 3 January 2011, § 77.

[21] See Opinion No. 2(2008) of the CCPE. See also Natsvlishvili and Togonidze v. Georgia, no. 9043/05, 29/04/2014, §§ 90-91.

[22] See *Guidelines on the Role of Prosecutors* adopted by the Eighth United Nations Congress on the *Prevention of Crime and the Treatment of Offenders*, Havana, Cuba, 27 August to 7 September 1990, Article 18.

[23] Consultative Council of European Prosecutors, Opinion No. 5 on *public prosecution and juvenile justice*, Yerevan Declaration, CCPE (2010)1, 20 October 2010, § 26.

[24] See *Guidelines on the Role of Prosecutors* adopted by the Eighth United Nations Congress on the *Prevention of Crime and the Treatment of Offenders*, Havana, Cuba, 27 August to 7 September 1990, § 19.

[25] See Recommendation Rec(2000)19 of the Committee of Ministers of the Council of Europe *on the role of public prosecution in the criminal justice system*, 6 October 2000, § 14.

[26] See Recommendation Rec(2000)19 of the Committee of Ministers of the Council of Europe *on the role of public prosecution in the criminal justice system*, 6 October 2000, § 13, items a & b. For further safeguards, see also items from c to f.

[27] Guja v. Moldova (Grand Chamber), no. 14277/04, § 86.

[28] Kolevi v. Bulgaria, no. 1108/02, 05/02/2010, §§ 148-149; Vasilescu v. Romania, no. 53/1997/837/1043, 22/05/1998, §§ 40-41; Pantea v. Romania, no. 33343/96, 03/09/2003, § 238; Moulin v. France, no. 37104/06, 23/02/2011, § 57.

[29] Kolevi v. Bulgaria, no. 1108/02, 05/02/2010, § 142.

[30] See *Guidelines on the Role of Prosecutors* adopted by the Eighth United

Nations Congress *on the Prevention of Crime and the Treatment of Offenders*, Havana, Cuba, 27 August to 7 September 1990, § 4.

[31] See Recommendation Rec(2000)19 of the Committee of Ministers of the Council of Europe *on the role of public prosecution in the criminal justice system*, 6 October 2000, § 16.

[32] Venice Commission, *Report on European Standards as Regards the Independence of the Judicial System: Part II – the Prosecution Service*, CDL-AD(2010)040, 3 January 2011, §§ 31 and 32.

[33] See Recommendation Rec(2000)19 of the Committee of Ministers of the Council of Europe *on the role of public prosecution in the criminal justice system*, 6 October 2000, Explanatory Memorandum (§ 13).

[34] Committee of Ministers of the Council of Europe, Recommendation n° R(2000)10 on *codes of conduct for public officials*, 11 May 2000, § 12, item 1.

[35] Committee of Ministers of the Council of Europe, Recommendation Rec(2000)19 on *the role of public prosecution in the criminal justice system*, 6 October 2000, § 10.

[36] Committee of Ministers of the Council of Europe, Recommendation Rec(2000)19 on *the role of public prosecution in the criminal justice system*, 6 October 2000, Explanatory Memorandum (§ 10).

[37] Committee of Ministers of the Council of Europe, Recommendation Rec(2000)19 on *the role of public prosecution in the criminal justice system*, 6 October 2000, § 5, items a, b and c.

[38] See: Consultative Council of European Prosecutors, Opinion No. 4(2009) on *relations between judges and prosecutors in a democratic society*, 8 December 2009, Bordeaux Declaration, Explanatory Note, § 37.

[39] See: Venice Commission, *Report on European Standards as Regards the Independence of the Judicial System: Part II – the Prosecution Service*, CDL-AD(2010)040, 3 January 2011, § 18.

[40] Committee of Ministers of the Council of Europe, Recommendation Rec(2000)19 on *the role of public prosecution in the criminal justice system*, 6 October 2000, § 5, items a, b and c.

[41] Venice Commission, *Report on European Standards as Regards the Independence of the Judicial System: Part II – the Prosecution Service*, CDL-AD(2010)040, 3 January 2011, § 34-35.

[42] Venice Commission, *Report on European Standards as Regards the Independence of the Judicial System: Part II – the Prosecution Service*, CDL-AD(2010)040, 3 January 2011, § 37. Human Rights Council, *Report of the Special Rapporteur on the independence of judges and lawyers*, Gabriela

Knaul, A/HRC/20/19, 7 June 2012, § 65.

[43] Consultative Council of European Prosecutors, Opinion No. 4(2009) on *relations between judges and prosecutors in a democratic society*, 8 December 2009, Bordeaux Declaration, Explanatory Note, § 43.

[44] Consultative Council of European Prosecutors, Opinion No. 4(2009) on *relations between judges and prosecutors in a democratic society*, 8 December 2009, Bordeaux Declaration, Explanatory Note, § 46.

[45] Consultative Council of European Prosecutors, Opinion No. 4(2009) on *relations between judges and prosecutors in a democratic society*, 8 December 2009, Bordeaux Declaration, § 10.

[46] Consultative Council of European Prosecutors, Opinion No. 4(2009) on *relations between judges and prosecutors in a democratic society*, 8 December 2009, Bordeaux Declaration, § 10.

[47] Committee of Ministers of the Council of Europe, Recommendation CM/Rec(2012)11 *on the role of public prosecutors outside the criminal justice system*, 19 September 2012, § 8.

[48] Consultative Council of European Prosecutors, Opinion n° 4(2009) on *judges and prosecutors in a democratic society*, 8 December 2009, Bordeaux Declaration, § 10, and the Consultative Council of European Prosecutors, Opinion No. 7(2012) on *the management of the means of prosecution services*, 11 December 2012, § 17.

[49] Consultative Council of European Prosecutors, Opinion No. 8(2013) on *relations between prosecutors and the media*, 9 October 2013, Recommendation VII.

[50] Committee of Ministers of the Council of Europe, Recommendation Rec(2000)19 on *the role of public prosecution in the criminal justice system*, 6 October 2000, § 7.

[51] Consultative Council of European Prosecutors, Opinion No. 7(2012) on *the management of the means of prosecution services*, 11 December 2012, § 19.

[52] See *Guidelines on the Role of Prosecutors* adopted by the Eighth United Nations Congress *on the Prevention of Crime and the Treatment of Offenders*, Havana, Cuba, 27 August to 7 September 1990, § 7.

[53] Human Rights Council, *Report of the Special Rapporteur on the independence of judges and lawyers*, Gabriela Knaul, A/HRC/20/19, 7 June 2012, §§ 68 and 69.

[54] Human Rights Council, *Report of the Special Rapporteur on the independence of judges and lawyers*, Gabriela Knaul, A/HRC/20/19, 7 June

2012, § 70.

[55] Venice Commission, *Report on European Standards as Regards the Independence of the Judicial System: Part II – the Prosecution Service*, CDL-AD(2010)040, 3 January 2011, § 40.

[56] Consultative Council of European Prosecutors, Opinion No. 7(2012) on *the management of the means of prosecution services*; see also Opinion No. 5(2010) on *the public prosecutor and the juvenile justice*, Declaration of Yerevan, 20 October 2010, § 19.

[57] Committee of Ministers of the Council of Europe, Recommendation Rec (2000)19 on *the role of public prosecution in criminal justice system*, 6 October 2000, § 5d.

[58] Committee of Ministers of the Council of Europe, Recommendation Rec (2000)19 on *the role of public prosecution in criminal justice system*, 6 October 2000, § 5 item d.

[59] Venice Commission, *Report on European Standards as Regards the Independence of the Judicial System:*
Part II – the Prosecution Service, CDL-AD (2010)040, 3 January 2011, §69. Also see: Human Rights Council, *Report of the Special Rapporteur on the independence of judges and lawyers*, Gabriela Knaul, A/HRC/20/19, 7 June 2012, § 71.

[60] Conference of Prosecutors General of Europe, 6th session, *European Guidelines on Ethics and Conduct for Public Prosecutors – "The Budapest Guidelines",* CPGE(2005)05, 31 May 2005, item II.

[61] Committee of Ministers of the Council of Europe, Recommendation Rec(2000)10 on *codes of conduct for public officials*, 11 May 2000, § 15, items 1, 2, 3.

[62] Committee of Ministers of the Council of Europe, Recommendation Rec(2000)19 on *the role of public prosecution in the criminal justice system*, 6 October 2000, §§ 17 and 18.

[63] Consultative Council of European Prosecutors, Opinion No. 4(2009) on *the relations between judges and prosecutors in a democratic society*, 8 December 2009, Bordeaux Declaration, § 7.

[64] Human Rights Council, *Report of the Special Rapporteur on the independence of judges and lawyers*, Gabriela Knaul, A/HRC/20/19, 7 June 2012, § 81.

[65] Adapted from the Code of Judicial Ethics of the International Criminal Court.

[66] Committee of Ministers of the Council of Europe, Recommendation n° R

(2000)10 *on codes of conduct for public officials*, 11 May 2000, Article 26 item 3.

[67] Venice Commission, *Report on European Standards as Regards the Independence of the Judicial System: Part II – the Prosecution Service*, CDL-AD (2010)040, 3 January 2011, §§ 17 and 62.

[68] Human Rights Council, *Interim report of the Special Rapporteur on the independence of judges and lawyers*, A/65/274, 10 August 2010, § 60.

[69] Committee of Ministers of the Council of Europe, Recommendation Rec(2000)19 on *the role of public prosecution in criminal justice system*, 6 October 2000, § 5 item e. See also *Guidelines on the Role of Prosecutors* adopted by the Eighth United Nations Congress *on the Prevention of Crime and the Treatment of Offenders*, Havana, Cuba, 27 August to 7 September 1990, § 22.

[70] Venice Commission, *Report on European Standards as Regards the Independence of the Judicial System: Part II – the Prosecution Service*, CDL-AD(2010)040, 3 January 2011, § 61.

[71] Committee of Ministers of the Council of Europe, Recommendation Rec (2000)19 on *the role of public prosecution in criminal justice system*, 6 October 2000, § 5, items g.

[72] Human Rights Council, *Report of the Special Rapporteur on the independence of judges and lawyers*, Gabriela Knaul, A/HRC/20/19, 7 June 2012, §§ 76 à 78 and 118.

[73] Conference of Prosecutors General of Europe, 6th session, *European Guidelines on Ethics and Conduct for Public Prosecutors – "The Budapest Guidelines"*, CPGE(2005)05, 31 May 2005, item II.

[74] Consultative Council of European Prosecutors, Opinion No. 4(2009) on *relations between judges and prosecutors in a democratic society*, 8 December 2009, Bordeaux Declaration, § 10.

[75] Committee of Ministers of the Council of Europe, Recommendation Rec(2000)10 on *codes of conduct for public officials*, 11 May 2000, § 17.

[76] Conference of Prosecutors General of Europe, 6th session, *European Guidelines on Ethics and Conduct for Public prosecutors – "The Budapest Guidelines"*, CPGE(2005)05, 31 May 2005, item II.

[77] See Recommendation Rec(2000)19 of the Committee of Ministers of the Council of Europe *on the role of public prosecution in the criminal justice system*, 6 October 2000, § 17, and see also the CCPE Opinion No. 4(2009), 8 December 2009, Explanatory Note, § 66.

[78] Consultative Council of European Prosecutors, Opinion No. 4(2009) on the

relations between judges and prosecutors in a democratic society, 8 December 2009, Bordeaux Declaration, § 3.

[79] Consultative Council of European Prosecutors, Opinion No. 4(2009) on the *relations between judges and prosecutors in a democratic society*, 8 December 2009, Bordeaux Declaration, Explanatory Note, §§ 60 and 61.

[80] Consultative Council of European Prosecutors, Opinion No. 6(2011) on *the relationship between prosecutors and the prison administration*, 24 November 2011, §§ 16 and 36.

[81] Consultative Council of European Prosecutors, Opinion No. 8(2013) on *relations between prosecutors and the media*, 9 October 2013, §§ 20 and 22. See also the case-law of the European Court of Human Rights: Arrigo and Vella v. Malta (dec.), no. 6569/04, 10 May 2005; Yordanova and Toshev v. Bulgaria, no. 5126/05, § 53, 2 October 2012; Observer et Guardian v. UK, no. 13585/88, 26 November 1991.

[82] Committee of Ministers of the Council of Europe, Recommendation Rec(2000)19 on *the role of public prosecution in criminal justice system*, 6 October 2000, § 16.

[83] See Opinion No. 4(2009) of the CCPE, Bordeaux Declaration, para 4. See also Consultative Council of European Prosecutors, Opinion No. 7(2012) on *the management of the means of prosecution services*, 11 December 2012, recommendation (i).

[84] Consultative Council of European Prosecutors, Opinion No. 7(2012) on *the management of the means of prosecution services*, 11 December 2012, § 51.

[85] Consultative Council of European Prosecutors, Opinion n°7(2012) *on the management of the means of prosecution services*, 11 December 2012, recommendation (ii).

[86] Committee of Ministers of the Council of Europe, Recommendation Rec(2000)19 on *the role of public prosecution in the criminal justice system*, 6 October 2000, § 8.

[87] Committee of Ministers of the Council of Europe, Recommendation Rec(2000)19 on *the role of public prosecution in the criminal justice system*, 6 October 2000, §§ 38 and 39.

[88] Consultative Council of European Prosecutors, Opinion No. 1(2007) on *ways of improving international co-operation in the criminal justice field*, 30 November 2007, §§ 38 and 39.

Prosecutorial Office	
Week 1	MEETING COORDINATOR WITH MENTOR. MEETING COORDINATOR WITH MENTEE. (PURPOSE: to know their needs, expectations and objectives during mentorship and evaluation system. Coordinator will deliver to mentees questionnaires of first and second self-evaluation)
Week 2	MENTEE FILL FIRST SELF ASSESSMENT
Week 3	
Week 3	
Week 4	
Week 5	
Week 6	
Week 7	MEETING COORDINATOR WITH MENTOR TO PREPARE INTERIM QUESTIONNAIRE
Week 8	MENTOR FILL INTERIM QUESTIONNAIRE

Week 9	
Week 10	
Week 11	
Week 12	
Week 13	
Week 14	MENTEE FILL SECOND SELF ASSESSMENT . MENTEE FILL QUESTIONNAIRE ASSESSMENT MENTORS
Week 15	MEETING COORDINATOR WITH MENTOR TO PREPARE FINAL QUESTIONNAIRE EVALUATION. MEETING COORDINATOR WITH MENTEES TO COLLECT QUESTIONNAIRES FILLED BY THEM
Week 16	MENTOR FILL FINAL QUESTIONNAIRE EVALUATION
***note 1**	In this mentorship the mentee would have an internship at Forensic Science Institute. Programme and schedule would be provided by Coordinator according with the Judicial Academy

***note 2**	In this mentorship the mentee should attend the seminar(s) provided by Judicial Academy

INTERIM QUESTIONNAIRE (At the middle of the time frame)

Mentor's name	
Court/Prosecutor's Office	
Time frame	
Mentee's name	

Goal of the Interim Questionnaire

The goal of this questionnaire is to monitor the evolution of the mentee in order to verify if he has achieved all the necessaries competencies. If any problem still remains, the mentor can focus the training on this point. This questionnaire has to be shared with the mentee who shall be given opportunity to express his/her own point of view. There are only two possible marks:

- Need to improve
- Adequate progress

Mark just one in each question;

1. The mentee possesses knowledge of the substantive law

Need to improve	Adequate progress

2. The mentee possesses knowledge or the procedural law

Need to improve	Adequate progress

3. The mentee is able to write quality drafts of statements, indictments or any other resolutions

Need to improve	Adequate progress

4. The mentee has the ability to manage information from different sources as databases, legislative collection and handles IT correctly

Need to improve	Adequate progress

5. The mentee is able to organize his/her daily tasks effectively

Need to improve	Adequate progress

6. The mentee interacts appropriately with other people involved in the court proceedings (lawyers, defendants, victims, witnesses, police…)

Need to improve	Adequate progress

7. The mentee uses clear, logical and understandable language

Need to improve	Adequate progress

8. The mentee is aware of and acts in accordance with the constitutional values

Need to improve	Adequate progress

9. The mentee shows willingness to work and perfect his/her knowledge and skills

Need to improve	Adequate progress

10. The mentee shows ability of critically reflect about his/her own work and readiness to accept suggestions

Need to improve	Adequate progress

Space for your comments if you want to give additional explanations

EVALUATION QUESTIONNAIRE

Mentor's Name	
Court/Prosecutor's Office	
Time frame	
Mentee's name	

Goal of the evaluation

After the completion of each part of the initial training, mentor in charge of that part of the training within the court or prosecutor's office shall assess the candidate.

Art. 25 Law say: "**The initial training shall imply organized acquisition of practical and theoretical knowledge and skills, understanding the role and basic principles of actions of judges and deputy public prosecutors for the purpose of independent, professional and efficient performance of the office or a judge in a misdemeanor and basic court and that of a deputy public prosecutor in a basic public prosecutor's office".**

In accordance with this perspective, the goal of the evaluation is to ensure that the mentees have acquired knowledge, skills and attitudes to necessary to perform the duty of judge or prosecutor.

In order to reach an objective, impartial and fair evaluation, the mentor has to take into account the following criteria:

From 1 to 5: These marks mean:

1: mentee has not acquired the competence

2: sufficient elements have been acquired

3: sufficient elements have been acquired in a good way

4: sufficient elements have been acquired in a very good way

5: sufficient elements have been acquired in an excellent way

Explanation of grades:

Grade 1: The candidate has not mastered even a minimum of competence. He is not able to demonstrate the necessary knowledge/activity/behavior even with the support of the mentor.

Grade 2: The candidate has mastered minimum competencies. He is able to demonstrate the necessary knowledge/activity/behavior only with the support of mentor.

Grade 3: The candidate has mastered the competence to an average degree. He is able to demonstrate necessary knowledge/activity/behavior, in a satisfactory manner, with occasional reliance on the support of mentor.

Grade 4: The candidate has mastered the competence to a high degree. He is able to satisfactorily demonstrate the necessary knowledge/activity/behavior, in a satisfactory manner, completely independently.

Grade 5: The candidate has mastered the competence to an extremely high degree. He is capable of demonstrating necessary knowledge/activity/behavior in an exceptionally satisfactory manner, completely independently.

At the end of each competence, the points obtained in each indicator must be added up. At the end of the questionnaire, the points obtained in each competence must be added up and divided by the number of indicators. In this way we can get the average score for each mentee.

Oral skills (1-Technical competences) will be evaluated by means of mock trials.

Cross just one of the listed numbers.

1- TECHNICAL COMPETENCES

The mentees must have a thorough knowledge of the law – substantive and procedural. They must be able to write judgments and indictments. They have to handle IT tools and manage information from different sources.

1. The mentee has knowledge of substantive law

Not have competence				Excellent
1	2	3	4	5

2. The mentee is able to apply the knowledge of substantive law

Not have the competence				Excellent
1	2	3	4	5

3. The mentee has knowledge of procedural law

Not have competence				Excellent
1	2	3	4	5

4. The mentee knows how to use the knowledge of procedural law in practice

Not have the competence				Excellent
1	2	3	4	5

5. The mentee has the ability to draft statements, indictments, final judgments or any other resolutions and to apply legal rules in a proper way.

Not have the competence				Excellent
1	2	3	4	5

6. The mentee has the ability to manage information from different sources as databases, legislative collection and to handle correctly IT

Not have the competence				Excellent
1	2	3	4	5

7. The mentee has the ability to prepare and conduct the investigations and to question witnesses, defendants, experts, crime victims etc. respectfully.

Not have the competence				Excellent
1	2	3	4	5

8. The mentee is capable of conducting oral hearings.

Not have the competence				Excellent
1	2	3	4	5

9. The mentee has the capacity to speak in public clearly and easily.

Not have the competence				Excellent
1	2	3	4	5

10. The mentee has the ability to conduct the debate, use a clear, logical an understanding language, explain different points of view and adopt an adequate position.

Not have the competence				Excellent
1	2	3	4	5

11. The mentee has the ability to manage conflicting situation and act in the most appropriate way.

Not have the competence				Excellent
1	2	3	4	5

12. The mentee is able to pay attention to the presentation of the facts and legal arguments in order to render a reasonable decision.

Not have the competence				Excellent
1	2	3	4	5

This competence score	

2. **FUNCIONAL AND ORGANIZATIONAL COMPETENCES**:

These skills refer to the understanding of different organizations (different courts and prosecutor's offices), of the agenda and the efficient organization of the work.

1. The mentee has understood the organization of the judiciary body wherein he/she was assigned to work under you

Not have the competence				Excellent
1	2	3	4	5

2. The mentee shows working capacity and ability to solve cases taking into account aspects related to quantity and quality.

Not have the competence				Excellent
1	2	3	4	5

3. The mentee is able to organize his/her daily schedule effectively

Not have the competence				Excellent
1	2	3	4	5

4. The mentee has learned to set aside enough time to perform each task

Not have the competence				Excellent
1	2	3	4	5

5. The mentee is able to listen receptively and with an open mind.

Not have the competence				Excellent
1	2	3	4	5

6.The mentee is able to adapt his/her way of working where there is a need and to accept criticism

Not have the competence				Excellent
1	2	3	4	5

This competence score	

3. ANALYTICAL COMPETENCES

These competences are necessary to identify relevant information in the main documents, propose/accept the relevant evidence, and to provide adequate legal reasoning and evidence assessment.

1. The Mentee has learned to analyze and summarize a case or a file

Not have the competence				Excellent
1	2	3	4	5

2. The mentee has the ability to summarize the circumstances and procedural steps of a case.

Not have the competence				Excellent
1	2	3	4	5

3. The mentee has the ability to formalize and explain legal grounds of a decision and communicate it clearly and in a proper way

Not have the competence				Excellent
1	2	3	4	5

4. The mentee uses a clear, logical, an understating language when taking statements or testimonies from witnesses,

Not have the competence				Excellent
1	2	3	4	5

5. The mentee shows skills for strategic investigation

Not have the competence				Excellent
1	2	3	4	5

6. The mentee is able to analyze the pleas in law and arguments raised by the parties under the applicable law and to render a decision within a reasonable time.

Does not have Excellent the competence				
1	2	3	4	5

7. The mentee has the ability to use a logical reasoning and critical thinking in the exercise of its duties

Does not have Excellent the competence				
1	2	3	4	5

8. The mentee is able to give judgment in accordance with law and Constitution.

Does not have Excellent the competence				
1	2	3	4	5

This competence score	

4. SOCIAL AND PERSONAL COMPETENCES

Social competences include teamwork, active listening, empathy and respect when communicating with different persons with whom the judge or prosecutor comes into contact. Personal competences include the constitutional values that judges and prosecutors have to adopt as ethical principles regulating their personal behavior. This also includes the taking care of their own continuous training.

1. The mentee is capable of following instructions from their superiors (*this competence should be particularly monitored when the mentee is serving in Prosecutor Office)*

Does not have Excellent the competence				
1	2	3	4	5

2. The mentee interacts appropriately with other people involved in the court proceedings (lawyers, defendants, victims, witnesses, police…)

Does not have Excellent the competence				
1	2	3	4	5

3. The mentee listens actively and empathetically

Does not have Excellent the competence				
1	2	3	4	5

4. The mentee understands the consequences of his/her decisions for the people involved

Does not have Excellent the competence				
1	2	3	4	5

5. The mentee is able to remain impartial, independent and objective at all times while exercising their duties

Does not have Excellent the competence				
1	2	3	4	5

6. The mentee is able to distance himself/herself from their personal political, religious and philosophical opinions and from external pressure in performing their duties

Does not have Excellent the competence				
1	2	3	4	5

7. The mentee is accessible and demonstrates respect, courtesy and sensitivity in their contacts with the parties and other people involved with the court proceedinigs (police, victims, witnesses…)

Does not have Excellent the competence				
1	2	3	4	5

8. The mentee is capable of showing empathy, humility or authority fitting the circumstances.

Does not have Excellent the competence				
1	2	3	4	5

9. The mentee is able to keep things in perspective, adapt to new and unexpected situations and adopt the most suitable behavior.

Does not have Excellent the competence				
1	2	3	4	5

This competence score	

All the competence added	
The average (The previous add divided between the total number)	

Space for your comments if you wish to give extra explanations about your assessment or to help next mentor in his/her mentorship

QUESTIONNAIRE FOR MENTEES

Mentee's Name	
Court/Prosecutor's Office	
Time frame	
Mentor's name	

Below you will find a number of statements. Please put an X sign next to each item in relation to the degree of agreement / disagreement with the statement, having in mind the meaning of the levels:

I strongly disagree - This level reflects the highest level of disagreement with the statement that you are estimating. It describes that your opinion and attitude is in the total and strong disagreement with the proposed statement. There is no element in the statement with which you could agree.

I mostly disagree – This level reflects a high level of disagreement with the statement that you are estimating. It indicates that your opinion and attitude is in the high disagreement with the proposed statement. There is a minimal, negligible element in the statement with which you could agree.

I agree partially – This level reflects medium level of agreement with the statement. It indicates that your opinion and your attitude contain both the elements of agreement and disagreement, but you find a little bit more elements of the statement with which you could agree.

I mostly agree – This level reflects a high level of agreement with the statement that you are estimating. It indicates out that your opinion and attitude is in high agreement with the proposed statement. There is a minimal, negligible element in the statement with which you could not agree.

I completely agree - This level reflects the highest level of agreement with the statement that you are estimating. It describes that your opinion and attitude is in the total and strong agreement with the proposed statement. There is no element in the statement with which you would not agree.

Cross just one of the listed numbers

1. My mentor was accessible and available

I Strongly disagree completely				I agree
1	2	3	4	5

2. My mentor communicated regularly with me

I strongly disagree completely				I agree
1	2	3	4	5

3. My mentor assisted me with my career queries in my path of becoming judge or prosecutor.

I Strongly disagree completely				I agree
1	2	3	4	5

4. My mentor assisted me with improving my work during the mentorship

I Strongly disagree completely				I agree
1	2	3	4	5

5. My mentor assisted me with my understanding of the judge-craft and prosecutor-craft to achieve my goal.

I Strongly disagree completely				I agree
1	2	3	4	5

6. My mentor demonstrated reasonable interest/concern towards me

I strongly disagree completely				I agree
1	2	3	4	5

7. My mentor´s behaviour and attitude is an example of professionalism

I strongly disagree completely				I agree
1	2	3	4	5

8. I learned about the concept of judicial independence and impartiality

In the judiciary from my mentor

I strongly disagree completely				I agree
1	2	3	4	5

9. I learned the respect for due process and judicial guarantees from my mentor

I strongly disagree completely				I agree
1	2	3	4	5

10. I learned from my mentor to be a responsible and hard-working person in my daily work

I strongly disagree completely				I agree
1	2	3	4	5

11. My mentor runs effective sessions, beginning the sessions on time and setting and adhering to an agenda

I strongly disagree completely				I agree
1	2	3	4	5

12. My mentor provides appropriate feedback in a constructive manner

I strongly disagree completely				I agree
1	2	3	4	5

13. I learned to manage information from different sources (databases, legislative collection…) from my mentor.

I strongly disagree completely				I agree
1	2	3	4	5

14. My mentor provides assistance in matters pertaining to the final exam

I strongly disagree completely				I agree
1	2	3	4	5

15. I recommend my mentor for future mentorship training programmes

I strongly disagree completely				I agree
1	2	3	4	5

Space for your comments if you wish to give extra explanations about your assessment

COMPLAINT FORM

Section 1 Identification Details

Name:
Address:
Tel:
E-mail:

Section 2 About Your Complaint

2a. Indicate with which mark(s) you are not in agreement

2b. Please give a brief description of why you believe your marks are wrong. If you are making more than one complaint (or your complaint is of multiple parts, please number them clearly. These numbers will be the terms of reference for review of your marks.

COMPLEMENTARY INTERNSHIPS

According to Article 35 of the Law on Judicial Academy (Official Gazette of the Republic of Serbia, nº 104/2009), the mentorship is a two years period of judge's and prosecutors' s initial training conducted at the courts of justice, public prosecutor's offices, bar chambers and other institutions outside the judiciary, under the supervision of a mentor.

Specifically, during this time, in accordance with the teaching plan, candidates have to go through the training in the following courts and prosecutor's offices: 8 months in basic court -civil division, 6 months in basic court - criminal division, 4 months in the prosecutorial office and 2 months in misdemeanour court.

In principle, after these mandatory periods of mentoring, mentees still have several months left before they have to take the final exam. This varies according to each generation: depending on when the mentoring begins and the scheduled date of the final exam.

During this period students are assigned to some of the courts in which they have previously fulfilled their compulsory stay in accordance with the official initial training programme. When assigning students, the preferences of the students and the guidelines of the Judicial Academy should be taken into consideration.

According to the content of the functions carried out by the mentees in the internships referred to above, the mentoring programme is lacking in training in at least three types of judicial organs that are indispensable on account of their function: basic court-civil division/department for family disputes (considering that the vast number on judicial proceedings relate to resolution of "family crises") and at the on-duty court (which deal with issues related to restriction on fundamental rights of citizens, such as privation of liberty or restriction of the right to privacy, among other fundamental rights affected). Likewise, it is not unusual for the graduate to be appointed as the first-time judge in the commercial court.

For this reason, it is necessary for the mentees to undergo an internship of two weeks at the family court and at the on-duty court, one month at the commercial court, and another extra two months in the public prosecutor's office in the course of their mentoring period, when the mandatory periods form the teaching plan have been completed.

In these internships, the mentor can encourage, advise and monitor the mentee, drawing out the learning acquired through the training into the practical context of the court room.

In designing mentee's orientation activities in these courts, mentor judges should considerer the following guidelines:

1. Familiarize themselves with mentee's internship background and previous experience. This will allow mentor to anticipate the kind of information the mentee needs. For example, if the mentee has been working as assistant judge in the same court, he or she will be required to improve his or her abilities and knowledge on those specific duties. Therefore, it is important to tailor orientation to mentee's individual needs.

2. Provide opportunities for new judges to observe others on the bench. The adults learn better by observing and participating than by merely listening. More time mentee observes experienced judges in action on the bench and spends in discussing individually with them relevant judicial problems, more effective he or she will be.

3. Set aside time intervals, gradually extending them, to introduce mentee to new procedures and concepts. No one can assimilate more than a certain amount of information at a time. Mentor judge needs to be sensitive to the fact that a mentee may be (a) meeting scores of new people in roles that are unfamiliar to him/her, (b) becoming acquainted with the rules and customs of a new workplace environment, (c) adjusting to a very different professional role and self-concept, and (d) learning entirely new areas of law.

In the case of the commercial court, since in line with the provisions of the Law on Judges any candidate may be appointed as a first-time judge to a commercial court in the Republic of Serbia, which is the first-instance court with the specialised jurisdiction in line with the Law on Courts Organisation, students should also be trained to apply practical knowledge and do the practical work in the commercial courts, which act under specialised jurisdiction, with significant specificities in the pertinent proceedings and applied regulations. If they are not provided with practical training in the commercial courts, Judicial Academy students, being candidates for future judges, are deprived of acquisition of this specialised knowledge in the area of commercial law, and by their appointment as judges in the commercial courts without any previous training, the commercial courts will get insufficiently qualified and trained employees, which will have direct impact on the timeliness and quality of the work of the mentioned courts, and above all on the right of the parties to have good quality court proceedings.

Mentees will be trained in the commercial courts for a period of one month – four weeks, as a mandatory part of the training of all JA students. During this period of four weeks, in the commercial courts, all students should get to know the work of:

- Department for Commercial Disputed (one week)
- Enforcement Department (one week)
- Contentious Department (one week)
- Bankruptcy Department (one week)

Additional internship in the prosecutor's office is considered necessary because prosecutors of Serbia have recently assumed investigation tasks, which has created new training needs.

At the end of each stage of internship the mentee will draft a report describing the activity, the work done and their experience.

EUROPEAN UNION'S SUPPORT TO THE JUDICIAL ACADEMY

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BRITISH COUNCIL

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