



FREEDOM OF EXPRESSION AND ASSOCIATION OF JUDGES

HYBRID CROSS-BORDER TRAINING WORKSHOP FOR JUDGES, PROSECUTORS,
ATTORNEYS AND OTHER LEGAL PROFESSIONALS

Date 13-14 March 2024

Time 9.00-17.00 and 14.00- 17.30, CET

Host Faculty of Law, University of Ljubljana

Place: Faculty of Law, Senate room and online

Call for Participants

This workshop is offered within the European Commission's funded project *TRIAL 2 - TRust, Independence, Impartiality and Accountability of Legal professionals under the EU Charter - part 2* (project no. 101089737, JUST-2022-JTRA). The TRIAL 2 project provides training activities and tools for judges, attorneys, and prosecutors on the European rule of law, mutual trust, judicial independence, impartiality and accountability (see the dedicated website [here](#)).

What is the Cross-Border Workshop about?

This Cross-border training workshop will address two interconnected topics: the freedom of expression and association of judges. It builds on workshops, organized already under TRIAL project, to offer further insights into the topics and to address the most recent developments in this field.

The Workshop is relevant for not only for judges, but also for:

Attorneys: special emphasis will be given to situations, in which judicial expression or association is invoked to establish doubt in the impartiality of the court; judges increasingly rely on the help of attorneys in defend their freedom of expression, association and independence.

Prosecutors: Freedom of expression and association of public prosecutors and judges is often governed by similar and sometimes even by identical standards. The workshop will address the differences and commonalities in standards in this field.

Judicial advisors (clerks): Judicial advisors – future judges - often face similar, sometimes even more complex dilemmas concerning freedom of expression and association. The workshop will discuss their special position and assess to what extent the differences are reflected in different standards of freedom of expression and association of judicial advisors.

Other legal professionals and policy makers: Freedom of expression and association of judges is becoming an increasingly important topic, which requires in-depth understanding of the role of judges in the democratic society, different channels of communication (including social media) and the reasons for a differentiated approach in the context of rule of law backsliding.

Why is Freedom of Expression and Association of Judges relevant?

Judges enjoy freedom of expression and association as any other citizen.¹ However, when exercising these fundamental rights, they have to be mindful of the limitations the legal system has traditionally imposed to safeguard important competing interests: judicial independence, impartiality and public trust in the judiciary. Striking a proper balance is an extremely demanding task. In the last decade, two major societal developments – the rise of social networks and the rule of law crisis – have even further increased the complexity of the topic of this workshop.

Social networks have fundamentally changed our daily lives. Judges are no exception. Their use of social media can be regarded as a welcomed novelty for the democratic society, yet it poses a series of challenges: the appropriate content of communication, especially from the perspective of the requirement of impartiality, the blurred lines between private and public communication, the consequences of liking, retweeting and other means of limited communication, etc. As a result, guidelines and standards on the use of social media by judges are growing and evolving at an accelerated pace.²

The second development is that several Member States are witnessing an unprecedented decline in the rule of law. Polish and Hungarian judicial “reforms” led to a structural breakdown, which no longer makes it possible to talk about independence and impartiality of their judiciaries (e.g. C-791/19, § 64). While other Member States endure for the moment, they are not immune to the constitutional backsliding. Judges’ expression and association have proved to be an important antidote against attempts to undermine the rule of law.

These developments have triggered a response from the CJEU and the ECtHR. Firstly, both courts have extensively dealt with questions regarding the compatibility of domestic accountability systems with EU law and ECHR (e.g. *Juszczyszyn v Poland*, *Grzęda v Poland*, C-487/19, C-791/19, C-585/18, C-624/18, and C-625/18, C-83/19, C-127/19 and C-195/19, C-355/19; C-791/19; C-817/21). Secondly, they have developed the standards concerning freedom of expression and association of judges (and prosecutors) to shield judges who raised their voices and protested against deleterious judicial reforms. Judges now have a (moral) duty to speak out in the face of affronts to the rule of law (see ECtHR, *Żurek v Poland*, No. 39650/19, para. 222). Nevertheless, fulfilment of such a duty could expose them to disciplinary and other sanctions, as it happened in numerous recently decided cases (e.g. *Miroslava Todorova v Bulgaria*; *Kozan v Turkey*; *Tuleya v Poland*). As a result, thirdly, some judges have sought to channel their opposition to judicial reforms through Article 267 of the TFEU and in fact did find refuge from the national pressures before the CJEU (C-558/18 and

¹ Bangalore principles of judicial conduct, UN Judicial Group on Strengthening Judicial Integrity, November 2002, p. 5, para. 4.6.

² E.g. UNODOC Non-binding guidelines on the use of social media by judges <https://www.unodc.org/res/ji/import/international_standards/social_media_guidelines/social_media_guidelines_final.pdf>; CEELI Institute, Practical guidelines on use of social media by judges: Central and Eastern European context, November 2019 <https://ceeliinstitute.org/wp-content/uploads/2022/01/CEELI_SoMe_Guidelines_ENG_Upd2021.pdf>.

C-563/18, *Miasto Łowicz*; C-564/19, *IS*; C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, *Euro Box Promotion and Others*).

Standards stemming from the jurisprudence of both European supranational courts are currently under accelerated development. Only this year, the ECtHR has issued three new decisions concerning the topic (*Tuleya v Poland*, *Manole v Moldova*, *Sarisu Pehlivan v Turkey*). Numerous pending cases (e.g. *Morawiec v Poland* *Gąciarek v Poland*; *Wrobel v Poland*, *Chinita Rodrigues v Portugal*, *Ferek v Poland* etc.) guarantee that the topic will be relevant for the years to come. Moreover, various soft law instruments are currently sprouting at the national and supranational level (e.g. the CCJE Opinion 25 on freedom of expression of judges from December 2022). The workshop will therefore address a topic, which is currently extremely important and will remain highly relevant in the future. It will strive to equip the participants with legal knowledge on the scope and content freedom of expression and association of judges as well as on procedural guarantees and avenues for its protection, ultimately empowering them to address adequately the manifold challenges of their daily work and their professional vocation.

Methodology

You will learn through:

- a 2-day hybrid workshop, including:
 - lectures and discussion sessions,
 - two hypothetical case sessions, where participants will discuss real legal issues through a case, replicating real life scenarios, in small groups,
 - interactive discussion roundtable.
- preparatory materials distributed to participants in advance of the training:
 - thematic booklet on freedom of expression and association of judges,
 - recorded lectures,
 - casenotes analysing the relevant national jurisprudence.

Target group

Judges, public prosecutors, attorneys and other legal practitioners (including candidate judges, candidate prosecutors, candidate attorneys, judicial advisers (*sl. pravosodni svetovalec, strokovni sodelavec*) from European Union (EU) countries. The Workshop will host **40 participants**. The participation is free of charge. In-person participants have to cover their expenses (accommodation, transport). All participants will be provided with certificates of participation.

What you can expect after the completion of the training?

This Cross Border Workshop will strive towards enabling you:

- to understand and explain the main legal issues relating to the European rule of law;
- to acquire the knowledge and the ability to assess the European legal pathways for defending freedom of expression and association of judges;
- to understand the threats to the rule of law from outside and from within the judiciary, and your role in upholding this fundamental EU value;
- to become familiar with the ECtHR standards concerning freedom of expression and association of judges and with the recent CJEU case-law, providing a new avenue for protection of this right;
- to understand the different underlying premises that govern the freedom of expression and association of different groups of professionals within the judicial system;
- to become familiar with the national case law concerning freedom of expression and association of judges

- to determine, whether the Charter of Fundamental Rights of the EU is applicable in a certain case or not;
- to be able to establish whether the solution of the pending case requires the involvement of the Court of Justice through the reference for preliminary ruling;
- to become part of a network of legal practitioners and scholars dealing with similar issues that could provide support for future questions.

Selection Process

The workshop is open to 40 legal practitioners (judges, public prosecutors, lawyers, arbitrators, policy makers, public officials, representatives of ministries) from any EU country. Applicants are invited to submit their application, in accordance with the requirements as specified below, by **31 January 2024** to mohor.fajdiga@pf.uni-lj.si.

By applying for the event, the applicants authorise the processing of their personal data for the purpose of the selection procedure and the event. Consent may be withdrawn, in whole or in part, at any time by written declaration to mohor.fajdiga@pf.uni-lj.si, without affecting the lawfulness of the data processing carried out on the basis of the consent until its withdrawal. However, in this case it may not be possible to provide the service or activity to such an applicant. For more information on the protection of personal data, please refer to the [privacy policy](#).

Application requirements

1. A full CV in English or Slovenian;
2. A very brief motivation letter in English or Slovenian explaining the candidate's reasons of applying, how he or she would benefit from and contribute to the project. This letter should not merely restate the candidate's CV.

Applicants will be notified about the result of the selection process by 24 February 2024.

Selection criteria

The selection process aims to identify participants who will effectively and substantially contribute to dissemination of project results. Thus, candidates are expected to have a general knowledge of and experience in the topic of the workshop. However, applicants are neither required to have participated in similar training programmes before, nor will recent participation in similar training programmes necessarily prevent them from being accepted.

The assessment of applications will be based on the following criteria:

1. Gender and age balanced;
2. Geographically balanced;
3. Diversity of legal competences: the call is open to civil, administrative, and criminal judges; in addition, attorneys, public prosecutors, state attorneys, candidate judges, candidate prosecutors, candidate attorneys, judicial advisers can also apply.
4. Balance in the judicial hierarchy: both higher and lower instance courts shall be represented among selected participants;
5. Trainers will have priority in selection (please refer to relevant training responsibilities in your CV);
6. Knowledge of and experience with fundamental rights and rule of law issues;
7. Good knowledge of English;
8. Single participation within the same Training Project (TRIAL 2): in principle, no participant can take part in more than one Workshop among those offered within the TRIAL 2 Project. In exceptional cases, deviations are subject to express and prior permission of the organiser.

Participants are asked to devote the necessary time to this training and to prepare for the workshop by reading the relevant materials in advance. The selected candidates are expected to be ready to commit to the active participation in the workshop.

Contact person and general information:

For any information on the workshop or doubts concerning the call for application, please contact Mohor Fajdiga: mohor.fajdiga@pf.uni-lj.si.