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In Search of A New Judicial Professionalism: Intertwining Legal and Extra-Legal Values in Post-Authoritarian Training Programs

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Summary

Judicial professions are pivotal in liberal democracies as far as they actively participate in the enforcement of fundamental rights. In the pages that are to follow the author intends to offer a critical appraisal of the normative inputs addressed by the European institutions to the judicial professions in the Central, Eastern and Southern-Eastern part of the continent. The analysis undertaken here is intended to raise a couple of critical points about the coherence and the sustainability of the pressure exercised by external actors on all these countries. The exercise undertaken herein provides useful insights about the new professional ethics that seem to characterise judicial elites nowadays in Europe and the type of training activities that should be figured out in order to provide them with adequate knowledge, theoretical and practical as well, to perform the new tasks they will be confronting with in the near future. The research conducted to draft this paper was done under the auspices of the LLP Erasmus Academic project Menu for Justice, specifically devoted to developing a European curriculum on Judicial studies.

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Introduction

Judicial professions are pivotal in liberal democracies (Abbott, 2000). They actively participate in the enforcement of fundamental rights and can play a crucial role in opposing policy options that might be detrimental to individual freedoms and social rights (Karpik and Halliday, 1977; Feeley, Karpik and Halliday, 2007). Such an important function can be properly performed if judicial professions are both competent and reliable, that is to say that they objectively master adequate knowledge of the law and are deemed within society to be compliant with the law.

In those countries that have experienced a long period of non-democratic rule judicial professions have been, if not dismantled, surely deeply weakened, both in their advocacy capacity and in their professional legitimacy. Ideally, totalitarian regimes do not accept any kind of free liberal profession, and authoritarian regimes are used to make these professions useless and insignificant in the whole social process (Linz, 2000). In the first type of regime, judges and prosecutors have been completely politicized and are used as transmitters of the dominant party's ideology in order to transform the whole society. In the second type of regime, judicial professions are isolated and confined to exercise a relatively insignificant function (Toharia, 1975). Despite the fact that reality is always in-between and this type of modelling of political regimes does not entirely do justice to the actual dynamics followed by real non-democracies, it is possible to say that judicial professions suffer of a lack of capacity in non democratic countries. In these countries, the reconstruction of a reliable and trusted professional legitimacy should go through a process of training and re-socialization, something that entails a paradoxical effect: courts come about a comprehensive cultural change by relying on pre-democratic practices and pre-democratic cultural references (practices and references learnt by judicial actors socialized by the past regime). The more the discontinuity with the previous staff is ensured by the transition, the more likely it is that such an achievement can be achieved without difficulty.

In the case of the European policy of the promotion of the rule of law enacted in the most recent in-coming Member States – namely Central and Eastern European countries and the Balkans – the reconstruction of the professional legitimacy of judicial elite represented one of the most challenging and compelling of the European agenda. However, in all these countries, judicial professions were asked to comply not only with legal, but also with extra-legal values, such as the efficiency of court administration and the capacity of performing as policy-oriented actors. This latter requirement came from the relatively low confidence which

citizens had in representative institutions, such as the parliaments and the governments. Courts were expected to pioneer the enforcement of fundamental rights, if necessary even against the parliamentary majority. It goes without saying that in such a situation, post-authoritarian courts felt particularly under pressure and in urgent need of professional qualifications.

The demands on the judicial system addressed to post-authoritarian courts was emphasized in the post-communist countries that were candidates for European membership (Priban et al., 2003). For them, the task to be accomplished was multiple and manifold. First, they had to comply with domestic laws and adapt the new laws adopted by democratic parliaments to the laws inherited by the past regime. Second, they had to comply with EC law, which was to be absorbed into the domestic legal systems. Third and even more challenging, they had to ensure the enforcement of fundamental rights.

All these three tasks have been placed at the top of the agenda by the European institutions, for which the capacity of the new member states to properly apply the EC law was an absolute priority (Cremona, 2003). Courts were supposed to adjudicate strictly on the base of clearly formalized and codified norms – which was making them incline to adopt a positivist stance. At the same time they were sentencing on clearly politically and morally oriented issues, as the interpretation of abstract clauses on fundamental rights and individual freedoms. In a nutshell, post-communist courts needed to be trained both in a positivist and formalist fashion and in a policy oriented fashion. The incoherence raised by this double-faced requirement has been mirrored by the programs of training promoted by the European institutions in all these countries (Kuhn, 2003 and 2004; Piana, 2010).

In the pages that are to follow the author intends to offer a critical appraisal of the normative inputs – both binding and non binding – addressed by the European institutions (see Piana, 2010, Ch 2) to the judicial professions in the Central, Eastern and Southern-Eastern part of the continent. The analysis undertaken here is intended to raise a couple of critical points about the coherence and the sustainability of the pressure exercised by external actors on all these countries. The exercise undertaken herein does not represent a merely case study on the process of change that took place in this area. It also provides useful insights about the new professional ethics that seem to characterise judicial elites nowadays in Europe and the type of training activities that should be figured out in order to provide them with adequate knowledge, theoretical and practical as well, to perform the new tasks they will be confronting with in the near future.

Legality and Judicial Professionalism

In a bureaucratic judicial system, legal and bureaucratic logic – which prescribe that decisions should be based on legal norms and be at the same time respectful of the legal doctrine set down by senior judges and prosecutors (usually sitting in a Supreme Court) co-participate to put in motion a distinctive pattern of judicial governance, in which the independence of the single judge is substantially subordinated to the independence of the magistracy as a system.

The rationale of this goes in the same direction of the principle of autonomy of public administration from political institutions. As Max Weber correctly pointed out, judges who work in bureaucratic settings benefit from a very particular type of guarantee, such as their independence and their professional status. Once recruited by means of a general,

standardized procedure, which resembles very much the procedure adopted to recruit civil servants and bureaucrats, they are inserted into a machine in which they will spend all their career. Each judge is expected to behave in way that is respectful of several different rules and standards. Her behaviour should be lawful, should respect the organizational values that constitute and shape the identity of the judicial system in which she works, should respect the professional ethics of the legal professions, should respect a standard of effectiveness and efficiency in the use of the organizational resources, and should respect the rights of the citizens, ultimate holders of the democratic sovereignty. "This complex picture figures out a situation where judges expect costs and negative rewards if their behaviour does not respect a set of several different standards. Some of them are weaker and informally enforced, while some of them are harder and legally binding" (Piana 2009, p 4). One may safely say that the bureaucratic judge (a judge who is working into a bureaucratically organized judicial system) is held accountable by means of a vertical chain of mechanisms of rule enforcement, whose effectiveness depends on the internal cohesiveness of the judicial hierarchy.

What ensures the legitimacy of a decision on a case is the balanced combination of a procedurally correct process of decision making on the case (evidence taking, hearing of witnesses, etc.) and the cohesiveness of the judicial decisions taken along the years/decades and among different courts belonging to the same system. The consistency of the judicial hierarchy and the respect for legal procedures both aim to ensure the impartiality and the imperturbability of the bench vis-à-vis possible influences coming from the external environment, either politics, or the market, or other foreign legal systems.

A bureaucratic logic of action goes about the application of general norms in a neutral way. Ideally a bureaucratically-oriented agency does not perform its role other than by classifying a case as an instantiation of a general norm and deductively reasoning this case on the base of the specific obligation the norm contains. Creativity, discretionary comprehension of the case and extra normative arguments do not have any salience in this picture. Legality sticks to this view if it is intended to be a formal principle, which stands on a meta level vis-à-vis the ordinary application of legal norms. What makes the adjudication legitimate is the belief and the common expectation that a judicial actor will apply a legal norm along a pattern of reasoning that is strictly procedurally correct.

The mechanisms of training that are required by this approach should be considered attentively. The legality principle must be ensured by means of a mechanism of training that guarantees the transmission of the legal doctrine from senior to junior justices. These latter should be taught about legal affairs. All along the way of the development of their career, they should be regularly trained in order to be provided with a general knowledge of the law and a specific knowledge of the doctrine and the jurisprudence that is elaborated by the most senior justices – usually those that are sitting in the Court of Cassation and in the Supreme Court. This system can be easily enriched and institutionalized by the creation of a centralized judicial school.

This portrait of the magistracy does not prove to be adequate for the contemporary world. As we all know, this portrait does not correspond any longer to the real state of affairs in which contemporary adjudication takes place. First and foremost judges are now placed amidst a complex, multi-layered and multi-centred system that spans globally from legal cultures that are far miles away, and which generate norms that should generally be accommodated case by case, rather on the base of deductive and intra-systemic reasoning. Ordinary judges (not to mention judges sitting in constitutional courts) are allowed to be attentive to the normative

creations of foreign courts and, accordingly, to pass over or to overrule in some cases, the doctrine endorsed by the senior judges who are responsible for their career promotion. In issuing a sentence judges are not any more simply interested by the domestic reputation, but can become particularly sensitive to the Sybille of the international fame in academic or judicial networks and entourages. In a word, not only does the legal procedure start to get in touch with "heteronomic" inputs (i.e. inputs coming from different "nomos", different normative orders), but also the judicial hierarchy is put under pressure by an increasingly important interaction with colleagues placed beyond the formalized borders of the bureaucracy in which the hierarchy is embodied.

Non-democratic judicial systems fit into this picture with some nuances and under specific conditions. It should be remembered for example that in authoritarian regimes judges are usually not subjected to any particular form of politicization, whereas the scope of their action is mostly and considerably reduced by limiting the number and the types of cases on which ordinary courts adjudicate. In this respect, the development of a hierarchical judicial organization is less important for authoritarian rulers, because they do not aim by no means to influence the society through the adjudication. Sensitive cases and politically delicate issues are treated outside the ordinary courts in special judicial bodies (military courts are a fairly common example of that). Unlike authoritarian regimes, totalitarian regimes desperately need the support of the bench in applying the law in line with the dominant (and unique) ideology. Therefore, courts adjudicating under totalitarian rule are asked to become part of the system rather than being left aside of it (Arendt, 1951). Accordingly judicial behaviours are inclined to become over-proceduralized in order to cover over with the sacred value of procedure (impersonal by definition) the arbitrariness (from the point of view of citizens) of their decisions. Moreover, the judicial hierarchy is vital to achieve an effective transformation of the courts into the arm of the regime. The more cohesive is the hierarchy, the more values injected into the system from the top of the hierarchy, namely at the level of high judges, are likely to be enforced all through the levels of the judicial system, from the supreme court to the ordinary courts. Strong socialization to ideology is distinctive of this system (Bihari, 1976; Lane, 1996). Whereas high ranked judges are appointed by political bodies, ordinary and low ranked judges are then influenced by means of their socialization to senior colleagues and career promotions (decided by senior judges). Central and Eastern European countries are very representative of this second model. This was however only in theory. With the time passing, socialist States were rapidly experiencing a collapse of authority and of cohesiveness. Organizational units, in principle belonging to the same State, were in reality under the influence of external interest and unable to stick to a common, organization-based set of values, because of the lack of a fully fledged impersonal approach ever embodied. Therefore, in post-communist societies bureaucracies are in a very uneasy position. On the one hand, they are a vital instrument for the processes of institutional change and institutional re-building necessary to democratize the State. On the other hand, they are the scope of the reforms, the largest part of which aims at sweeping away authoritarian attitudes from the public sectors. Beside the problem of the inner contradiction between the fact that public institutions have been both instrument and target of reforms during the post-communist period, post-communist bureaucracies faced also with a problem of capacity building. In fact, in these societies the legacy of the non democratic regime mainly consisted of a largely politicized State, which had undergone in the last decade of communism a process of de-legitimization. At the sunset of the communism, States turned out to be captured by a political elite intertwined with the dominant party and masked behind a heavy proceduralization and a comprehensive formal legalism. Beyond the *façade* of a compact structure, local elites were intertwined with public officials and civil servants, whose loyalty

had been turned against the central hierarchy and had instead addressed and been devoted to local networks, clubs of influential persons working between politics and bureaucracies. The coherence and the cohesiveness of the State in the moment of the decline of the communist were both very low. The lack of hierarchical coherence, the legacy of a regime that had dismantled any capacity of undertaking individual enterprises matched the bureaucratization of all the public sector. The 'socialist rule of law' was the label used to refer to a State that was organized according to the law, was performing according to hierarchical rules – to which a deductive systems of legal sources corresponded – and was respectful of the legal correctness of the procedures. However, beyond this mask, at different degrees, all Central and Eastern European countries experienced at the end of the communist era a weak State, wrapped in a blanket of procedural splendour (Ajani, 1996).

Judges were not exempt from this process. In communist judicial systems, the hierarchical organization of the functions had been kept firmly immune from any change for decades. However, the communist ideology penetrated (more in some countries, such as the Czech Republic or Bulgaria, less in others, such as Hungary and Poland) the exercise of the judicial function: the more the communist State developed, the more the high court turned out politicized, not to mention the exercise of the prosecutorial function, whose limits, scopes, instruments and aims were completely handled by a restricted and exclusive political elite. Therefore, in the aftermath of the fall of the communism, all Central and Eastern European countries (CEEC) that came into the view of the democratic rule of law were featuring a bureaucratic, proceduralized, but not a-political State. The *procuratura* have been thought as the paladin of the political power. The unachieved or unaccomplished separation of normative institutional orders based on different values, basically morality, politics, and law, that characterised the totalitarian experience, left a deep mark on the way the bureaucracy was participating in the governance of the CEECs' societies. Even if it would be definitely risky to adventure into an analysis of the relationship that exists between totalitarianism and modernity, for the sake of my argument I want simply to point to the fact that the impersonal character of the legal rules and the division of politics from morality and law was only partial in the post-communist social systems, even if they featured bureaucratic structures, based on legal rationality, and proceduralized ways of dealing with collective actions.

For all the reasons mentioned above, judicial training has been considered an absolute priority in the pre-access strategy agreed with the European Union by post-communist member states. Training was expected to play a catalysing role. Once judges and prosecutors have been trained in legal matters, they can act as intra-systemic factors of change. Formal rules can be rewritten. This represents a way to change a socio-political system. But once these rules are rewritten, they are to be applied and interpreted. Therefore, the cultural attitude and the know-how of judicial professions turns out to be particularly important in the process of systemic and durable change which was encouraged by the European institutions.

Insights from European Rule of Law Promotion Eastward

The breakdown of communism, which took place over the early '90s, entailed a series of institutional changes which had a "domino effect" on the legal and social systems of Central and Eastern European countries and in the Balkans. One of the most disruptive consequences it had was the creation of a completely new and unexpected demand for justice. People who had been deprived of their own estates by the past regime were then involved in a variety of cases in which the reallocation of the property rights was at stake; the reconciliation and the resolution of new conflicts was required. All these matters required courts to enter widely and

deeply into the economic and social life of these countries. On a different level, political institutions, restored by the constitution, or in some cases installed *de novo*, had to handle a high number of conflicts and negotiations. From this resulted a great need for impartial and consensual actors to settle the disputes, define new jurisdictions, and more clearly allocate powers and prerogatives. The legal systems that emerged from the constitutional negotiations were placed under huge pressure: radically transformed over the decades of non democratic regime, they were now expected to be reformed, both because of the transition from a non-constitutional to a constitutional State and, afterwards, because of the long and challenging process of legal adaptation to European Community law. In a nutshell, domestic courts – both ordinary and constitutional ones – have been placed under immense pressure in order to cope with the double processes of change involving both domestic reforms and the Europeanization of law.

To confront properly all these challenges, courts had to regain their legitimacy and their professional reliability. In countries that have experienced the dismantlement of the judicial independence and consequently the undermining of all guarantees of judicial impartiality, judges and prosecutors were asked more than ever to prove their capacity of being independent and to adjudicate fairly and transparently.

Central and Eastern European governments undertook the restoration of judicial professionalism in several ways. More radically, some of them kicked off those judges and prosecutors who had been more deeply involved in the practices of justice administration used by the past regime. Courts went through a process of *lustratia*, which had the perverse effect of depriving the new judiciary of the competences and skills that had drawn on seniority. Young judicial actors have been considered farther from any influence coming from the past, even if they manifestly sought a wide process of professional qualification and training. In other countries, judicial training has been put on the institutional agenda. This latter was under the influence of the European institutions, which deemed a competent judiciary a necessary condition to ensure the rule of law. From 1989 to 2009, the European Commission and the Council of Europe worked out a conception of constitutionalism that casts a new light on the European constitutional traditions held by the member States, set down common guidelines surrounding the many legal traditions coexisting in EU and served as a model to give to legal and judicial reforms of the candidate countries a common orientation (Mancini, 2000; Pernice, 1999). Judges were for the first time explicitly considered as pivotal actors in the discovery, definition, promotion, and consolidation of European constitutionalism (Priban, 2008).

To promote this model of constitutionalism, European institutions could exclusively rely on non-mandatory instruments. As they touched upon a traditional sphere of national sovereignty, jealously preserved by member States, the EU and the Council of Europe started to address their influence by means of non-legally binding norms. Horizontal cooperation and international communication looked like the most promising solution. In doing so, judges and prosecutors started to get involved in a regular process of standard setting that has entailed, since the very beginning, the discussion of 1) which models of judicial governance do coexist in Europe; 2) which type of characteristics should judicial decisions have in order to be considered of a good quality; 3) which institutional settings are better equipped to ensure the impartiality of adjudication.

The process of standard-setting took place within arenas created ad hoc by the Council of Europe by means of a large and extensive involvement of judicial actors representatives of

national institutions. Several judicial networks have been created. All of them started to work intensively on a comprehensive agenda, in which standards of judicial independence and judicial capacity were prioritized.

European policies entered into the judicial field by influencing both aspects. They created *de novo* arenas of socialization, epistemic communities and judicial networks in which judges and prosecutors, who are representatives of national judicial institutions, get involved in a permanent process of mutual influence, information exchange and communication. We can expect their identity to be reshaped or at least modified by that. The second aspect is associated with the selection of the teachers who are involved in judicial training activities at home and abroad. Indeed, by means of funding programs that range from AGIS to PHARE, European institutions have promoted the creation of new programs of judicial training, in which not only EC law plays a dominant role – in terms of substantive law – but also managerial and communicational values start to occupy an extremely important space. Indeed, instead of having a self-perception based on national legal cultures, judges who regularly attend seminars and training sessions that take place in a European environment, may re-frame their self-perception and may follow values and behavioural standards shared with foreign colleagues.

The approach of the European institutions is grounded on the assumption that the legal culture is the effect of judicial training and legal education rather than being the cultural background in which judicial training and legal education are shaped. These last two are used as leverage to make legal cultures converging toward a common standard.

The European pre-accession strategy comprised a number of policy instruments aiming at improving the systems of judicial training and to "Europeanise" (to the extent this is possible) the contents of training programs, for instance encouraging the integration of extensive programs of EC law. As the aforementioned data showed with a certain degree of certainty, the influence exercised by the European Union upon the judicial training systems entailed several spill-over effects, some of them related with the emergence of persistent patterns of judicial cooperation established by judicial schools of new and old members. Not only skilful and competent judges are required in order to ensure citizens about the effectiveness of the law enforcement, but also legal professions who share common values and have reasons to trust each other are better places to protect fundamental rights.

Actions undertaken by European institutions are particularly concentrated in the field of judicial training. In June 2006, after the adoption of the Report on the implementation of the Hague Programme, the European Commission, under the leadership of the Directorate General of Justice and Home Affairs, issued the Communication on Judicial Training (European Commission, 2006). This document states that, "given the European Union's objective of establishing an area of freedom, security and justice, it is crucial for justice professionals in each Member State to acquire a European legal culture. To this end, Member States will have to become familiar with one another's systems, learn one another's languages and become accustomed to working in the context of mutual recognition and cross-border partnership, so as to foster cooperation between judicial authorities" (http://europa.eu/legislation_summaries/justice_freedom_security/judicial_cooperation_in_criminal_matters/l33266_en.htm). Judicial training is held as a crucial leverage to enhance the mutual trust that should exist among magistrates. Therefore judicial training is used as leverage to facilitate the implementation of the principle of mutual recognition. This principle is a pillar of the European policy of justice and home affairs. It notably states that decisions

take in any of the European countries by any judicial authority apply in all member States and should be executed by any of the judicial authorities located in the 27 members. Second, the development of a comprehensive core of EC law in several policies requires judges become competent in European legal norms. Therefore, the European policy of judicial training aimed at enhancing the capacity of judges and legal practitioners to apply the EC law. The methods figured out in the Communication to achieve this purpose comprised: "the traditional lectures and seminars, methods allowing broader dissemination of the results of training can be developed; easily accessible, innovative on-line training tools can be developed and used, especially with regard to Union instruments and information on national legal and judicial systems; close cooperation can be facilitated between national training bodies" (http://europa.eu/legislation_summaries/justice_freedom_security/judicial_cooperation_in_criminal_matters/l33266_en.htm).

To provide a first tentative scoping of programs of judicial training promoted by European institutions, Table 1 offers a synopsis of judicial training as it emerged in the new member States. It analyzes two dimensions: contents of training and trainers. "Contents" covers the combination of legal and non legal issues in the programs of training. Table 1 does not cover all the bulk of training courses offered in Europe to judicial actors. It should be considered only as a mirror (the most reliable and complete I have been able to reconstruct so far) of the model promoted by the European Union. This model is the template tailored for the national judicial training institutions. However, national courses do not include all types of training and socialization activities figured out by European institutions. As a matter of fact, much more innovative and far reaching activities have been arranged at the supranational level or across the borders of national institutions by mean of twinning projects, mobility's programs for judges and prosecutors and sessions offered by ERA and EIPA.

Tab. 1. Judicial training programs in new EU members

Country	Contents	Trainers
Poland	dominance of legal courses; courses of legal theory optional, ICT;	judges and legal scholars
Czech Republic	dominance of legal courses; human rights; ICT;	judges of the high courts
Hungary	legal courses and courses of sociology of law; human rights;	social scientists, lawyers, judges
Bulgaria	legal courses, ICT, court management;	judges, experts of NPM
Romania	legal courses, foreign languages; ICT	social psychology; judges

(Sources: Lisbon Network, 2004a, Lisbon Network, 2004b, Lisbon Network, 2004c, Lisbon Network, 2006a, Lisbon Network, 2006b and Lisbon Network, 2006c.)

This overview of the training policies offers some clues about the legal cultures and, as a consequence, about the pattern of professional accountability to which judges are held responsible in the new members. The internal dimension of legal cultures, the one pointed out by Lawrence Friedman, particularly refers to the values, legal doctrines and ideas shared by the judicial personnel. In this respect, the comprehension of the internal legal culture should go beyond the borders of the reconstruction of the legal knowledge held by judges and

prosecutors, and goes as far as the understanding of the group of peers whom they hold as a reference group. Indeed, the so-called "ideal public" (Alexy, 1976) toward which judges and prosecutors address their attention and their energies in order to obtain acknowledgement, reputational rewards and leadership eventually varies and takes a different shape and composition in different countries.

To conclude, one may safely say that the European policies have tried to promote several types of normative inputs.

1) legal knowledge, particularly in the field of EC law and ECJ jurisprudence;
2) extra legal knowledge of the EU constitutionalism: non codified principles and general values that are considered as the pillar of the EU constitutional culture;
3) extra legal knowledge of the principles and the standards that should be followed in order to efficiently perform the judicial function: managerial principles, best practices, organizational models and a objective-oriented attitude.

All these normative inputs impinge upon a judicial elite that was already engaged in a comprehensive process of change. Most important of all justices working in new member States were in a difficult position. They had to be as adaptive as possible in order to muddle through between the domestic law, the EC law and the legacy of the past. The bureaucratic logic of action, which was the safest answer to the demand of an impartial and fair adjudication, was almost out of reach. Surely justices needed to apply the law strictly. But which laws? Which interpretation? The post-authoritarian law proved to be an on-going process, a work in progress, a never-ending creative enterprise, rather than a coherent, consistent system whose rules were simply to be picked up and placed in a deductive schemata of reasoning in order to reach a final sentence.

Impinging upon Judicial Cultures: The Paradoxes of the EU Policy of Judicial Training

In sociology the concept of "reference group" was introduced by Robert Merton to refer to the group of people to which an actor longs to be accepted (Merton 1949). Compliant behaviours and adherence to specific clusters of values that are thought of as being constitutive or preferred by this group represent the clearest indicator of likelihood of being accepted by a reference group. The reference group also comprises individuals from whom one learns behavioural norms and values. Generally speaking, these individuals are higher ranked when the reference group is functionally associated with the work environment. Training and socialization are tightly related to the identification of a reference group. People trained and socialized to a particular organizational environment by a specific type of teacher, will be affected by the values transmitted by her/him. This is due to the peculiar relationship that exists between actors who are willing to enter into an organization and actors who are recognized as the embodiment of values and norms that are constitutive of that organization. Usually these actors are senior or higher ranked staff who have been working in that organization for a long time.

In the judicial field, seniority and prestige by and large determine the type of actors who are entitled to teach and transmit values to incoming judges and prosecutors. In some countries, which adhere more strictly to a *Rechtstaat* model of judicial governance, legal values have been developed by legal scholars, i.e. professors of law (Canehgaem, 1991). Patently, in this sector, cultural and institutional traditions exercise a fairly large influence on the type of

group of reference (Guarnieri, 2003; Guarnieri e Pederzoli, 2002). Even staying at the very surface, whereas in bureaucratic judicial systems lawyers and judicial actors are trained and socialized on two different and rigorously separate paths, which may cross each other only in an advanced stage of the career (Bell, 2006), in professional judicial systems judges and lawyers follow the same career path and consequently they end up belonging to the same reference group. A reference group is strictly associated with some sort of professional accountability. *Professional accountability* refers to the control exercised by peers on the base of their knowledge and expertise. They also transmit and enforce legal ideologies. Professional accountability is strongly linked with the allocation of moral and cognitive costs. If a judge wishes to be held in high consideration by her colleagues, she will be encouraged to argue and to decide according to the mainstream doctrine. This has also an impact on the career path followed by individual judges.

Training activities are of the utmost importance in socializing judicial elites and in allowing them to enter into a permanent relationship with a reference group. The choice of the trainers, of the topics on which judges and prosecutors are taught, and ultimately the choice of the type of mechanisms by means of which training programs are delivered, all these factors deeply affect the type of reference group judicial elites recognize and by which judicial elites are recognized.

In this scenario, the role of the EU is unclear and, at least to some extent, contradictory. On the one hand, European institutions, by means of standardization, push toward uniformity and generalization. Legal cultures are bound to disappear from the screen of the "quality of justice" promoters. On the other hands, exactly because of its influence, the EU is challenging the bureaucratic order held so far by judicial institutions by virtue of the sovereign power of national States to which they belong. Indeed, the coherence and consistency of those values and norms that are enforced within judicial institutions by means of judicial training and socialization are ensured by the closeness of the domestic borders. Once they have been opened up, consistency and coherence are by consequence questioned and likely to come out weakened.

What then happens to the values transmitted to incoming judges? And what should become the approach in judicial training if it has to provide judges with adequate instruments to deal with this new scenario? In bureaucratic judicial systems, as the ones which dominate in Europe, judicial and administrative functions overlap and interact. They are tangential one to the other to the point that they become easily critical for the functioning of the whole system. This overlapping affects the identity of the judge. Judges' professional identity should encompass both managerial dimensions and judicial dimensions, which makes their decisions and their actions intrinsically more complex than other types of public actions accomplished by State-based agencies. Moreover, the legal order is becoming trans-nationalised and fragmented (Sousa Santos, 1996). For good or bad, judges need to cope with this new scenario. Principles and standards that identify a professional judicial profile should be responsive to the needs societies address and witness before the courts: transparency, public accountability, but also the importance of public communication. This means in practice that training programs need to touch upon not only the law, but also extra-legal knowledge. Recent developments in the judicial field have created a space for legal pluralism. Fragmentation and pluralism are destined to be jointed with a process of new assemblage of pieces of norms, whose sources are located in different political and cultural settings. Courts still remain at the crossroad of this process of assemblage. Each case represents a potential arena in which norms produced by different sources can melt up in a new way. Margins for

judicial creativity and judicial innovation are increased accordingly. If this argument holds, judicial decisions would be more discretionary than they were in the traditional setting. For that reason, if not for others, judges are in a strong need of adequate ethical codes. Which ethics however? It seems that legal pluralism entails also some sort of professional pluralism (Salas and Epineuse, 2004). Different values are retained to be constitutive of judicial professions in different cultural settings. It is already occurring in relation to the bulk of law case and jurisprudence produced by constitutional courts in different European countries. This allows us to heavily question the commonality of principles and values and the existence of a common grammar that might be advocated in a code of judicial ethics for all European judges. However, judges will be forced to perform a complex set of different roles, some of them contradictory the one to the other, and also to learn the grammar of different legal cultures (Allard and Garapon, 2005). Mobility, international communication and social learning that take place across domestic borders challenge the self-awareness of a judge that is becoming multi-national (Kuhn, 2003; Priban, 2007). The point raised here does not bespeak in favour of a unified, top-down imposed ethical code. Judges are not in a need of a repertory of commands. More likely and more adequately, one may argue in favour of a kind of judicial training that is beyond anything else training in self-awareness. Tools to assess the need of training (Thomas, 2006), tools to make explicit normative premises from which judicial decisions take legitimacy, tools to enter in a comprehensive and durable collective discourse about who we are, what our institution is for, whither law for which society. The task in front of us is not of the easiest. However, institutions should take the responsibility of providing judicial actors with adequate instruments to contribute to the construction of a new narrative, which "takes part in the story's movement, in the dialectic between order and disorder" (Ricoeur, 1995).

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