



TRAINING GUIDE ON THE RULE OF LAW FOR JUDGES AND PROSECUTORS

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Funded by the Justice Pro-
gramme of the European Union



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This publication was produced with the financial support of the European Union. Its contents are the sole responsibility of EJTN and do not necessarily reflect the views of the European Union.

ISBN number: 9789082810653



Funded by the Justice Programme
of the European Union

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FOREWORD

It is with great pride that I invite you to become familiar with and apply the contents of this Training Guide on the rule of law for judges and prosecutors, which has been produced by the European Judicial Training Network (EJTN) within the Pilot training project for justice professionals on key issues of fundamental rights and rule of law implemented, in 2018 – 2019, financed by the European Commission as part of its strategy for the effective implementation of the EU Charter of Fundamental Rights.

As the principal platform and promoter for the European judiciary's training and exchange of knowledge, the EJTN develops training standards, training expertise and promotes cooperation between EU judicial training institutions. The EJTN aims to help build a genuine European area of justice and to promote knowledge of European law and national legal systems, enhancing understanding, confidence and cooperation between judges and prosecutors within EU Member States as well as bolstering societal trust of judicial professions.

The *EJTN Strategic Plan 2021-2027* stipulates that the rule of law, judicial independence and accountability are core competencies of judges and prosecutors, and that these aspects should be enhanced through training offered by the EJTN and its members.

This Training Guide is designed to improve the quality and methodological implementation of modern judicial training in the rule of law field by the EJTN and its Members. The EJTN believes that the rule of law should form an important part of the formal training programmes of the national judicial training bodies.


The rule of law is a common value for all EU Member States, thus a common approach to training on such an important common value needs to be adopted.

The objectives of this Training Guide are to share knowledge of how to design training events in the rule of law field, how to implement such programmes and, finally, how to best evaluate the process and the results of such training.

This Training Guide builds on the EJTN's expertise collected over the years and articulated in such celebrated EJTN publications as the *Handbook on Judicial Training Methodology in Europe*, published in 2016, and the *Judicial Training Methods Guidelines for Evaluation of Judicial Training Practices*, published in 2017.

In parallel to this Training Guide, another published output from this project is *Rule of Law in Europe. Perspectives from practitioners and academics*.

Our acknowledgements go to judge Horatius Dumbrava (RO), Professor Otilia Pacurari (RO) and Professor Rafael Bustos Gisbert (ES) who, building on the above, co-authored this Training Guide. Their work was supported by invaluable the insights and discussions of the EJTN experts' group, which was coordinated by judge Nicolae Horatius Dumbrava. The experts' group consisted of Professor Rafael Bustos Gisbert, Ms Karolina Rokicka (The Academy of European Law), judge Andrea Chis (RO, European Networks of Councils for the Judiciary), judge Zeller Edith (AT, Association of European Administrative Judges, AEAJ), Astrid Hopma (NL), prosecutor Lara Barberic (HR), Eva Pastrana (Council of Europe, CoE), Jana Gajdosova (European Union Agency



for Fundamental Rights, FRA), prosecutor Sava Petrov (BG), judge Luca Perilli (IT), Claudia Weisbart (DE) and judge Wojciech Postulski (EJTN). The EJTN is also grateful to the European Commission's representatives supporting the experts' group.

The project was managed by Mr Georgios Klis, EJTN Project Manager, to whom I owe much gratitude for his commitment and dedication to the project's implementation.

Finally, I wish to thank the Tipik Communication Agency S.A. for its efficient collaboration in the implementation of the project.

I am sure this publication will significantly enhance judicial training and its quality within the area of the rule of law.

Wojciech Postulski

Judge and Secretary General of the European Judicial Training Network

INTRODUCTION

Why do we need a training guide?

- The Rule of law (referred to here with the acronym RoL) is a common value for all EU Member States;
- A common approach to training on such an important common value of EU Member States should be adopted;
- It is important to incorporate good practices with respect to training in the field of the rule of law.

The Guidelines are intended to be a useful working tool for the training programme managers, administrators, organisers, trainers, practitioners and other specialists. *The Training Guidelines for the legal field regarding the rule of law* provides guidance for activities related to the Rule of Law principles. **They focus on how to assess needs, design a training programme, implement it and evaluate rule of law training.**

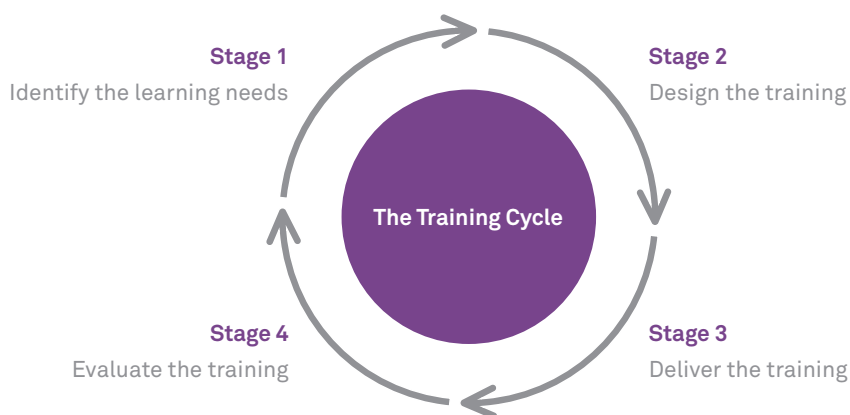
Benefits

- The *sharing* of a common RoL training strategy (will improve mutual confidence among European judges and prosecutors.
- *The improvement of the knowledge and skills* of European judges and prosecutors in identifying and responding to challenges to this basic principle will help to uniformly apply the appropriate mechanisms to prevent, correct and sanction abuses of the Rule of Law.
- Full compliance with RoL is not simply a matter of legal rules. It has a lot to do with the *deepening of a common culture in Europe* about the values of judicial independence and the separation of powers between judges, prosecutors, politicians, victims, defendants, the media and society at large. Public trust in the EU and in Member States can be increased through a common training strategy.

UNIT ONE: NEEDS ANALYSIS¹

1.1 The big picture

It is critical for all trainers/training organisers to understand the training process with the product in mind. Awareness of **the Training Cycle** ensures a systematic approach to the training programme's development.



This picture – *the Training Cycle* – shows that there is a systematic approach to the training event.

The key questions associated with the above phases could be:

- Which are *the needs* of the participants in the training process?
- Which are *the main learning points and objectives* based on the topic?
- Which are the *most effective training methods* to support the participant's learning?
- After the training, *can the participants demonstrate what they have learned?*

¹ All annexes contain documents developed within the framework of the project developed by the European Judicial Training Network in cooperation with Tipik Communication Agency S.A., funded by the Justice Programme of the European Union: *Training activities for justice professionals on key issues of fundamental rights and the rule of law, 2018-2019*.

1.2. Needs assessment and analysis

A pre-condition of any training programme design is the careful **needs analysis**. *Any RoL training programme should be needs-oriented.*

1.2.1. Characteristics of the needs assessment:

- The Needs assessment should be *a continuous process*;
- *Those who have relevant information* about the needs in specific fields in the judiciary should *be identified*;
- Data collection and analysis should be organised and the *information obtained used*;
- The needs assessed should contribute to the training programme objectives.

The needs assessment is done around questions that bring about clarification.

For example:

- Which are the frequent mistakes visible in courts?
- Which skills need more practice?
- Which are the attitudes that require improvement in challenging court situations?

There were six areas where needs were identified within the framework of the RoL project developed by EJTN for 2018–2019 (**Annex 1 on needs identified during the RoL seminars, which contains the long list of needs identified by the EJTN participants in the RoL project**):

- Needs relating to legality;
- Judicial and prosecutorial accountability and independence;
- Efficiency of the judiciary and prosecutorial system versus independence;
- Legal certainty (case law consistency) versus independence;
- Internal and external communication on specific issues such as: ways to defend the judiciary and individuals when attacked by other social/political factors, improving public trust, avoidance of misunderstandings etc.
- Importance and value of ethics in upholding the rule of law.

1.2.2. Sources used to assess and analyse needs

The key word *source* refers to stakeholders who can provide relevant information in the problem area.

Recommendation: Collect information from several sources.

Examples:

- **The target audience:** judges, prosecutors, staff in the courts and prosecutors' offices are interviewed at the end of the training programme.
- **Presidents of the courts and prosecutors' offices.** The findings from these interviews are valuable elements of identifying training needs.

- **Trainers, speakers and other specialists.** After certain training activity is completed, each trainer has to submit the report, giving input on the needs further identified in the subject area.
- **Other key factors.** Other interested stakeholders: consulting with the judicial councils, senior judiciary, media and opinion pools can be valuable sources of information in this respect.

1.2.3. Methods recommended for needs analysis:

Questionnaires; interviews; focus groups; reports.

- **Questionnaires:** These allow a degree of anonymity for respondents and collected data is easy to summarise and report. They can be written or oral. *(Annex 2 gives an example of questions used to elicit information from the participants; it can be a tool for further needs assessment, although it is administered at the end of a training course).*

CHARACTERISTICS OF A GOOD QUESTIONNAIRE

- Keep questionnaires as short as possible;
- Use simple language;
- Avoid questions that rely on memory;
- Avoid ambiguous questions;
- Avoid using emotive words (do you feel...?);
- Avoid multiple questions (do you think you need more and better training?);
- Avoid double negatives (please indicate whether you agree or disagree with the following statement);
- Avoid presumptive questions (how many training session plans have you prepared?); these should be preceded by a filter question – have you prepared any training session plans?
- Questions should always be able to stand alone;
- Avoid hypothetical questions (probe experience) and pay attention to details such as instructions for completing the questionnaire.

- **Interviews:** interviews are a means to collect data through one or more conversations between two or more people. Pre-interview planning will include:
 - Who the interviewer and interviewee are;
 - What kind of questions will be asked;
 - The place and time that will be needed;
 - What will be done with the data;
 - How confidentiality will be maintained.

The advantages of this method is that information is obtained in a direct manner that can be clarified or challenged immediately if necessary. The personal contact gives the interviewer the feeling of real value and use. Non-verbal signals can be seen and their support for the verbal messages confirmed.

- **Focus groups:** These are group discussions conducted in person with a limited number of stakeholders to gain information about their views and experience of a topic. A focus group can be highly useful for planning a needs assessment because you can learn a great deal about attitudes and beliefs. It is also a useful method for gathering detailed information as follow-up to a questionnaire. Focus groups allow comments, explanations and shared experiences.
- **The report,** when structured, collects valuable information from the trainer/expert ([Annex 3](#) – *structure of a report to be completed by the trainers/experts within the framework of the project*).

1.2.4. Learning objective

The learning objectives contain all the necessary and essential information for those who intend to participate in the training programme. They state the learning points that can be covered in the content area. ([Annex 8](#)).

The learning objectives give the possibility of ensuring that the results of the learning are correctly evaluated. Measurable outcomes would be an asset.

The final stage of the needs analysis process is to determine the learning objectives and content-based learning points.

The learning objectives should be presented/advertised before the training programme and revisited at the start of training programme in order to set realistic expectations.

The measurable intended end result of a training programme² is expressed in terms of:

- the desired behaviour or skill level,
- the conditions under which it has to occur, and
- the benchmark against which it will be measured.

Important. Key motives for design that has learning objectives in mind:

- To provide essential and necessary information to the participants about the purpose of the training. To enable them to become aware of the knowledge and skills they will gain;
- To ensure that the organisers and experts' training programme has considered all the necessary factors for achieving the goals of the programme;
- For organisers/experts and participants to check whether the training activities meet the objectives set at the beginning;
- Having learning objectives in mind helps organisers and experts to tailor and adjust the content of the training programme. It enables them to save time and resources;
- Learning objectives are not simply a time-consuming task. They allow us to avoid wasting valuable time, money and resources by having to re-create the training programme and events within this programme content.

² See Business Dictionary: <http://www.businessdictionary.com/definition/training-objective.html>

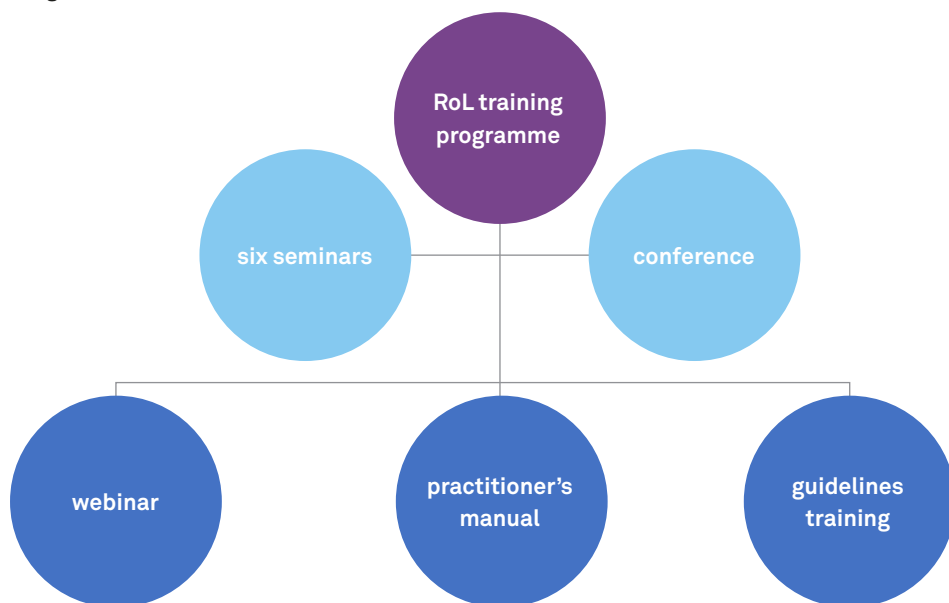
UNIT ONE: RoL PROJECT LESSONS LEARNED

- The RoL Training is something that should be planned and developed in advance. there are at least three important actions to follow throughout the RoL training programme:
 - To guide activities during the RoL project;
 - To design the training programme and
 - To develop uniform content for the project's deliverables: 6 seminars, one conference, a webinar, the practitioner's manual and the rule of law training guidelines;
- Needs assessments should be performed properly;
- The training methods should be carefully chosen to meet the needs of the participants;
- The training objectives and content-based learning points should be determined.

UNIT TWO: FORMS OF TRAINING DELIVERY

- *Communication between the training organiser/coordinator and the trainer is necessary and useful;*
- *In order to make proper decisions **and be clear about the training format:***
 - A training programme on the RoL must be developed by the national training institutions/ organisations taking into account the specific needs in their country;
 - These guidelines do not substitute internal procedures to identify needs, nor does it set learning objectives in each Member State;
 - The first task in designing such a programme is to identify which aspects of the RoL merit a training initiative for national judges and prosecutors. National training institutions have their own systems for detecting training needs³;
 - Once the needs are identified, the training institution/organisation will decide on the form of training delivery or on their combination.

As mentioned above (see footnote on page 2), within the framework Rule of Law Project implemented by the European Judicial Training Network, in order to achieve the Project's scope, several events were designed and implemented relating to the Rule of Law training programme during 2018-2019:



³ Unit One of this publication is developed to assist all national institutions that intend to design a RoL training programme.

The main approaches to organising a training event are:

The Conference

This accommodates a larger number of participants and is mainly centred around new knowledge delivery and clarifying problems. It is less interactive but can give a unitary view of the topics of interest ([Annex 4 – the final conference agenda](#)).

The Workshop

This is a short educational programme designed around professional skill and attitude development with the help of participatory training techniques. It can be combined with a conference format when there is the need to discuss and apply the new ideas put forward ([Annex 5a describes the scope and structure of a workshop](#) and [Annex 5b provides an example of a workshop combined with a conference](#)).

The Face-to-face Learning/Seminar

This provides the advantage of group work and, for busy professionals such as judges and prosecutors, it takes learners away from the demands of their daily jobs so they can focus on learning new skills and acquiring new knowledge. In addition, it encourages networking between professionals who might not normally interact on a personal level. It can be used in both initial training programs and in continuous training programs ([Annex 6a](#) and [Annex 6b show the requirements when organising a training seminar in the field](#)).

Distance learning

This is a valuable tool for preparing for and then following up on training sessions. It enables the trainer and the training organisation to reach more learners, and can increase the availability of good experts from other venues or the accessibility of supporting resources.

Blended learning

This is a combination of digital instruction and face to face learning.

Webinar

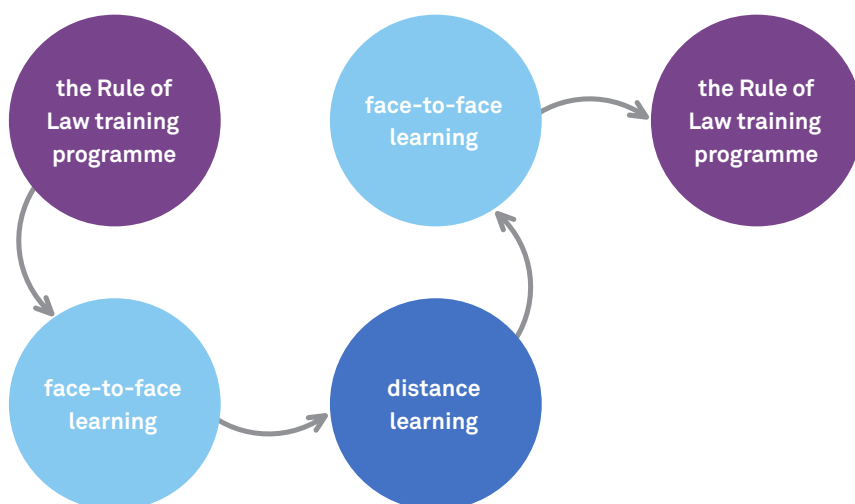
A webinar is an engaging online event where a speaker, or small group of speakers, deliver a presentation to a large audience who participate by submitting questions, responding to polls and using other available interactive tools. The webinar is intended to be accessed by judges/prosecutors and other professionals from the judiciary (leaders; court presidents, chief prosecutors, members of the judicial councils) to raise awareness and to inform their daily professional behaviour in the field of the RoL ([Annex 7 on how to write a concept paper for a webinar](#)).

One combination that proved successful in RoL training, within the project carried out by the EJTN during 2018-2019, was the conference/workshop mixed format. Based on findings from the evaluations of the Project, the format of a conference where issues of general interest are presented can be applied more widely for clarifications in smaller groups to exchange experience and good practice ([Annex 4](#) and [Annex 5b](#)).



The architecture of the training programme is generated by the format(s) used during a training project.

When a training programme/project extends over a longer period of time, the combination of face-to-face learning and distance learning with follow-up/face-to-face learning is possible. This type of a combination ensures the theory-practice-reflection mix for a solid connection to problems that need to be solved on a continuous basis (see below):



UNIT TWO: ROL PROJECT LESSONS LEARNED

- The organisation of a training event should have the active participation of the adult learners in mind;
- If it is possible, a combination of formats should be used: large group presentations and small groups for discussions;
- The workshop is an excellent way to ensure exchange of experience;
- The webinar saves money and time.

UNIT THREE: THE DESIGN AND PREPARATION OF THE TRAINING PROGRAMME/SEMINAR/COURSE/CONFERENCE/WEBINAR

(Annex 9b)

THE PREPARATORY STAGE

There were five critical issues to be clarified in the preparatory stage of the seminars, conferences and webinar. These are listed below:

Clarification of the time frame.

How long should the training event be? It can last for 1/2/3-5 days:

- Each day is split into four training sessions of around 90 minutes each.
- Each training session is divided into training activities, bearing in mind that participants' capacity to concentrate and learn is 20-30 minutes.

Determining the number of participants and the profile of the group of judges/prosecutors/mixed etc.

The profile of the target group is one important variable to be considered when preparing the training programme. There can be judges, prosecutors, mixed groups, other specialists in related fields etc. Information is collected from the training institution/organisation.

The choice of training format.

Different training formats relate to different training methods, although the involvement of experienced participants is the default mode when RoL principles are under consideration.

Collecting information about the location.

Each location should be checked before the training event to see the room configuration, logistics available, connectivity etc.

Discussions about clarifying the needs identified with the training organisers.

The training organiser is able to specify the training needs and the trainer examines the individual interests more closely at the start, and perhaps during, the training sessions through specific activities (e.g. getting to know each other exercises) or through targeted discussions.

SETTING THE LEARNING OBJECTIVES

The trainer's aim as regards the learning process is expressed through objectives.

Objectives are actions to be accomplished through the appropriate training methods.

There are general objectives that refer to the entire training programme, and specific objectives that refer to each training session.

*In order to set the appropriate learning objectives there is **a support tool**, a list of verbs that can be chosen depending on what the trainer aims to enhance through his/her training (**Annex 8** for the support tool and **Annex 9a**, for example agendas of seminars during the RoL project that show the goals/objectives of the training seminars).*

SELECTING THE CONTENT AND KEY LEARNING POINTS

In order to select the relevant content, the analysis should focus on:

- the legal problems to be solved;
- problems of direct interest to the judges/prosecutors (**Annex 10a** refers to the content selected within the project framework).

By way of example, *the learning points* covered by this guide are:

- planning a needs-oriented training programme;
- organising a judicial training event on the RoL;
- awareness of the adult learning methodology particularly suitable for RoL;
- an outline to follow during the training;
- framing an evaluation methodology.

Comment

- Separate what is central from what is secondary information. Keep only the information that directly supports the learning objectives and only enough theory to sufficiently explain the subject matter and how it is used in the job. Reading can be an outsourced activity.
- The learning points for new knowledge transfer should include (1) a definition of the concept, (2) critical elements of the concept, (3) any variable elements of the concept, (4) examples that illustrate the concept, and (5) to reinforce learning, examples that may create confusion on the job.
- Additional information might include elements that trigger a need to take action or make a decision; resources that are necessary or useful in performing the work; the frequency and timing of events within the procedure; typical problems encountered or errors made; and examples such as sample judgments or orders.
- Including job-specific examples and different analogies is beneficial. Sharing personal experience can provide a good change of pace and provide the opportunity for the participants to gain more personal involvement with what the training is about.
- The use of resources from the work environment, such as the penal or civil code, methodologies, international references and different guiding documents can demonstrate their value when used.

CHOICE OF THE TRAINING METHODOLOGY

The training methodology is based on the way in which adult professionals learn. *Each training programme in the RoL area should be based on a well-articulated training approach* that actively involves the judges and prosecutors in the learning process to further apply the knowledge, skills and ethical values in courts and prosecutors' offices. Participation for sharing knowledge and experience as well as accurate exposure to new developments in the area should be the foundation and framework for all training activities.

Comment

The critical issue when training professionals is that adults learn differently from children. The trainer of judges and prosecutors therefore has a very different job from teaching, because judges and prosecutors:

- have internal motivation for learning;
- have specific ways of processing information;
- come to training with pre-existing judicial knowledge and skills as well as with a set of personal and professional values and years of experience;

The composition of the target group is also a variable to be considered when choosing the training methods: judges, prosecutors, mixed groups, other specialists in related fields etc.

The delivery methods of the training have to adapt to the content and objectives pursued. There is no single method, but rather different approaches depending on the circumstances, content and objectives that have to be combined during the training event.

GOOD PRACTICES IN RoL TRAINING METHODOLOGY

The judicial training activities/methods should reflect *good practices* in the field of training. This guide looks into good practices identified during the project work.

Comment

- A good practice can be defined as a set of processes, practices and activities that have been widely recognised as being the most effective. In the field of training, good practices come from a growing body of knowledge of what is effective and what is not effective in the way that adult professionals/judges learn.
- When choosing good practices, we look at: the main purpose of the training activity (how are competencies being developed), the relevance of the training sessions (meeting specific needs) and the design of the training sessions (effective training methods should be chosen and combined).

The trainer should avoid excessive use of a single methodology. The trainer should avoid using a confusing number of methodologies. All methodologies need to adapt to participant needs as best known prior to and during a training programme. The best practices in the Rule of Law show that a combination of training methods is working .

The options that a trainer has in terms of the training methods are:

- Role plays, simulations/moot courts, experiential exercises, problem-solving exercises, case studies to accomplish learning through concrete experience;
- Structured observation, feedback, debriefings to facilitate learning through observation and reflection;
- Lectures/presentations associated with brainstorming, snowballing, the technique of questioning, group work, debates and other forms of interactivity to form abstract concepts;
- Trainees assess whether they solved the problem and identified the main features in a case study when they applied knowledge to new situations.

TYPES OF TRAINING METHODS USED

The Lectures

- The specific characteristic of the lectures are:
- they are short (maximum 20 min.)
- they are supported by PowerPoints as visual aids for the participants. The PowerPoint slides should have no more than 50 words, use two colours at most and use a font size of 20.

Discussions ([Annex 11](#)):

Can *anticipate or follow* the presentations on the theoretical aspects or the examples of international/European case law. There are different methods to involve the participants and organise discussions:

- Brainstorming
- Guided Discussions
- The Socrates Method
- Small group work
- Debate

Problem solving (Annex 12):

The 21st century is the era of problem solving.

Besides the presentations with or without PowerPoints, followed by discussions (with the different configurations), problem solving can be approached through the following training methods:

- Case Studies
- Critical Incidents
- Snowballing

Debriefing and reporting

When participants are involved and active, many professional ideas, points of view, arguments are being circulated. Debriefing and reporting are there useful methods for reaching a common understanding of the subject matter/judicial problem/specific practices.

Debriefing is the summary made by the trainer at different moment in the interactive activities. to the aim of the report is to present an overall conclusion of the small group work or at the end of the training programme.

Feedback

Feedback is given to the participants and comes *from* the participants to ensure a proper learning process.

UNIT THREE: ROL PROJECT LESSONS LEARNED

- We should start the training programme design with the results in mind: set the goal and learning objectives of the training programme properly;
- The training methods should be combined for real time learning: there should be a change in the type of training methods three times every 90 minutes (learner retention time is 20-30 minutes)
- Active participation is an important part of the training programme. For this, give participants time to speak. Pair work and group work is recommended.
- One important role of the trainer is to connect the participants and debrief on what was said at the end of a training session.
- Professional communication should be constantly guided by the trainer to achieve the right conclusions.

UNIT FOUR: TRAINING MATERIAL DESIGN

Trainers should prepare training materials for use before, during or after the respective session day(s). These could include PowerPoint presentations, case study scenarios/critical incidents, observation sheets, questionnaires, videos, lists of references etc.

- The key to choosing the right materials to support learning is to design the materials with the learner and the learning context (methods, learning environment) in mind.
- The training materials can have the following functions:
 - **simplify:** use a diagram, a picture;
 - **focus attention:** use a good visual aid;
 - **make learning points memorable:** use striking audio-visual aids (films, diagrams, posters) to create impact;
 - **take you where you want to go:** you can bring a suit/trial into the training room
 - **create diversity:** use short films, stories, handouts, observation sheets but take care;
 - **save time:** use slides (no more than 50 words), graphics, diagrams.
- Materials might include printed materials, USBs, videos, web-based resources or libraries, or a combination of any of these, reference guides, participant guides, research papers, articles and other documents that support and further the information presented.
- Valuable sessions are often those that provide learners with reference materials. Such materials could be references to:



The **Concept Paper** and the **Terms of Reference (ToR)** are exceptionally important training materials. There are written in the preparatory phase of the training project/programme.

The concept paper of a training event is:

- a short summary about what the training event is, why it is important, and how it will be carried out in order to reach agreements among different stakeholders;
- a clear description of the training event, including a summary of what is already known about the topic;
- a description of how the event's experts (trainers/moderators etc.) should put the objectives of the training into practice.

Terms of reference are referred to in the concept paper and show how the concept paper is implemented, developed and verified. It is a document used for making future decisions and for developing a common understanding of the scope among stakeholders.

Within the Rule of Law project, concept papers and terms of reference were designed for each of the training events: six seminars, one conference, one webinar, Training Guidelines (this document) and a Practitioner's Manual (for an example of a concept paper used during the Rule of Law Project, refer to [Annex 7](#) and for a ToR refer to [Annex 6b](#)).

The concept papers were developed by the organisers and the ToRs are implemented together with the expert trainers/moderators of the training event. Skype, emails, conference calls etc. were the technological means used to ensure connectivity in real time.

ADVANTAGES OF THE CONCEPT PAPER AND THE TOR FOR THE ROL PROJECT BENEFITED FROM ARE:

- it accommodates the general perspective of the organisers of the training event with the more specific issues dealt with by the trainers;
- it ensures a conceptual link between the input and methodology put forward by the trainers/experts who are invited to the same training event;
- it aligns the training goal with the training objectives of each training session;
- it provides a practical framework to structure and organise ideas on paper;
- it is useful for organisers and experts/moderators to exchange ideas, thoughts and proposals for the training event;
- it can be used as a dynamic tool that affords flexibility and ensures the training programme smooth development;
- it helps the organisers to align the material needs and other facilities for the event.

THE TRAINING AGENDA ([Annex 10b](#))

The training agenda contains the main features of the training programme. It is intended to give information to the participants about what they will be part of:

- The scope and general objectives of the training programme;
- The training activities/topics linked to a time frame;
- The expert(s).

UNIT FOUR: ROL PROJECT LESSONS LEARNT

- The concept paper is an instrument that helps the experts to coordinate among themselves and with the programme goal.
- The training agenda clarifies for the participants what is going to happen during the training process.
- The participants should be prepared to connect the competencies delivered through the project with their personal readings and actual practice

UNIT FIVE: ASSESSMENT AND EVALUATION OF A RoL TRAINING PROGRAMME AND/OR A RoL TRAINING EVENT

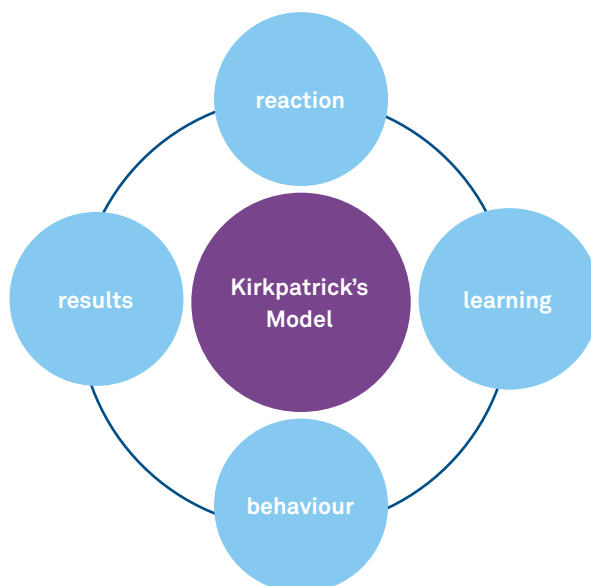
The evaluation of a training programme was conceptualised by Donald Kirkpatrick and it is known as: *The Four-Level Training Evaluation Model*. It aims to analyse the effectiveness of a training programme.

The basic point of reference for the RoL training programme evaluation should be the guidelines developed by EJTN ([EJTN Guidelines for Evaluation](#) issued by EJTN WG Methodologies).

Description of Kirkpatrick's Model

Kirkpatrick's Four-Level Training Evaluation Model helps trainers and training coordinators to measure the effectiveness of the training delivered in an objective way. The model was originally created by Donald Kirkpatrick in 1959 and has since gone through several updates and revisions, the latest one in 1994. The Four Levels are as follows:

- Reaction
- Learning
- Behaviour
- Results



By going through and analysing each of these four levels, one can gain a thorough understanding of how effective the training was, and how it can be improved in the future.

Each level is described below in further detail.

Reaction

This level can measure how the judges/prosecutors/professionals reacted to the training. Obviously, the organisers want them to feel that the training was a valuable experience, to feel good about the trainer, the topic, the material, its presentation and the venue. It is important to measure reaction, because it helps the trainer and trainer-coordinator understand how well the training was received by the trainees. It also helps the institution improve the training for future trainees, for example by identifying important areas or topics that are missing from the training.

Learning

Level 2 measures what the judges and/or prosecutors have learned.

When the training session is being planned, the trainer starts with a list of specific learning objectives: these should be the starting point for the measurement. Learning can be measured in different ways. It depends on the objectives and on whether there is any interest in changes in knowledge, skills, or attitudes. It is important to measure this, because knowing what the trainees are learning and what they are not can improve future training.

Behaviour

This level evaluates how far the trainees have changed their behaviour based on the training they received. Specifically, this looks at how trainees apply the information. It is important to realize that behaviour can only change if conditions are favourable. For instance, imagine you have skipped the measurement at the first two Kirkpatrick levels and, when looking at the group's behaviour, you determine that no behavioural change has taken place.

It might therefore be assumed that the trainees have not learned anything and that the training was ineffective. However, just because behaviour has not changed, it does not mean that trainees have not learned anything. Perhaps their professional situation will not let them apply new knowledge. Or perhaps they have learned everything you taught but they have no desire to apply the knowledge themselves.

Results

At this level, the final results of the training are analysed. This includes outcomes that are determined to be good for the magistrates, or for the bottom line.

How to Apply the Model

Level 1: Reaction

Start by identifying how you will measure reaction. Consider addressing these questions:

Did the trainees feel that the training was worth their time?

- Did they think that it was successful?
- What were the biggest strengths of the training, and the biggest weaknesses?
- Did they like the venue and presentation style?
- Did the training session accommodate their personal learning style?

Next, identify how you want to measure these reactions.

The basic tools for this level are: Debriefing/feedback, Flip Charts/post-its; Activity Coordinator's Report; Use of a Focus Group, Evaluation questionnaire; Happy sheets (see [EJTN Handbook on Judicial Training Methodology in Europe](#)).

Level 2: Learning

To measure learning, start by identifying what you want to evaluate. There could be changes in:

- knowledge,
- skills,
- or attitudes.

It can be helpful to measure these areas both before and after the training. Before the training begins, assess your trainees to determine their knowledge, skill levels, and attitudes. Once training is finished, assess your trainees a second time to measure what they have learned, or measure learning using interviews or verbal assessments.

The tools for this level can be classified in two groups. First: a straightforward assessment of the learning outcomes (using Tests, Action Plans, Self-assessments or Team assessments). Second: Use of modern technologies: the Clicker tool (for a full explanation of this tool, see the EJTN Guidelines)

Level 3: Behaviour

It can be challenging to measure behaviour effectively. This is a longer-term activity that should take place weeks or months after the initial training. Consider these questions:

- Did the trainees put any of their learning to use?
- Are trainees aware that they have improved their professional behaviour?
- Did they personally use the information/training experience/skills on the job?

To conclude: level three has two main goals to follow. Firstly, to check the effect of the training on the professional behavior of the judge/prosecutor judges. Secondly, to identify how to improve or redesign the training to better achieve the intended learning objectives.

There are three tools that can be recommended to carry out this evaluation: questionnaires, observation at workplace and inter-vision (with peer discussions).

Level 4: Results

Here are some outcomes to consider, depending on the objectives of your training:

- Higher morale.
- Higher quality activities
- Fewer complaints.

Level 4 (the result) of the evaluation aims to establish effectiveness (production of the desired output); impact (improvement of performance) and sustainability (delivery of appropriate training).

The tools that may be used at this level are: questionnaires; peer reviews or intervention; action plans; a court-wide position study or report; court's expert committees' visits; court users satisfaction surveys; and staff motivation and satisfaction surveys.

There should be consideration of the fact that changes happen if conditions are favourable. For instance, effective learning could have taken place in the training session. But, if the overall organisational culture is not set up for any behavioural changes, the trainees might not be able to apply what they have learned.

UNIT FIVE: ROL PROJECT LESSONS LEARNT

- The reaction level questionnaires provide a lot of information that is useful for further improvement.
- Learning can be assessed with the group in mind (not necessarily the individual participant). For this, the administration of an initial questionnaire revisited at the end of the training programme can be an asset.
- Level 3 –application of what the training is about is not always a given. To encourage application to take place, using the individual action plan can be useful.

ANNEX 1

Needs Identified During the RoL Seminars

The Venice Commission Rule of Law checklist should be followed when describing which are the main needs of judges and prosecutors. This means that we should include the needs we are seeking to meet within one of the following groups:

Needs Related to Legality

- i.- Supremacy of the Law
- ii.- Compliance with the Law
- iii.- Duty to implement the Law

Needs Related to Legal Certainty

- i.- Accessibility of court decisions.
- ii.- Foreseeability of the laws
- iii.- Stability and consistency of law and of court decisions.
- iv.- Res judicata

Needs Related to Prevention of abuse (misuse) of powers

- i.- Separation of powers
- ii.- Mechanisms to prevent, correct and sanction abuse of discretionary power (inside or outside judiciary).

Needs Related to Equality

- i.- Non-discrimination
- ii.- Equality in law
- iii.- Equality before the law

Needs Related to Independence, Autonomy, Accountability and Impartiality.

- i.- Independence of the judiciary and of individual judges
- ii.- Impartiality
- iii.- Integrity
- iv.- The prosecution service: independence, autonomy and control.

Needs Related to Access to Justice.

- i.- Effectiveness
- ii.- Public trust and communication: written language. Relations with media.

NOTE. The needs will include an increase in the knowledge, skills, attitudes and values of judges and prosecutors on the topic.

Needs must be updated and redefined within short periods of time because they may change rapidly. New needs may emerge and old needs can become old fashioned because of changes in circumstances, or simply because they become clearly settled by a legislative measure or by a high court decision.

1. Needs related to legality

- To raise knowledge of RoL standards at international and European levels in both hard and soft law;

- To enhance knowledge of the different legal aspects of rule of law (such as independence, impartiality, separation of powers, responsibility and accountability, communication, conflict of interests etc);
- To increase skills and sensitivity around RoL issues;
- To stress the existence of common values linked to RoL among European judges and prosecutors;
- To stress the common values around RoL among prosecutors and prosecutorial systems, despite their variations throughout Europe.

2. Needs Related to Legal Certainty

- To increase abilities to compatibility between judicial independence and the need for consistent jurisprudence a possibility;
- To raise awareness about the importance of internal communications within the judiciary and the prosecutorial system;
- To enhance the knowledge about how judicial independence is important when deciding to refer a preliminary ruling to the CJEU;
- To improve the knowledge, skills and awareness of EU Law mechanisms for facing RoL crises inside Member States;
- To improve knowledge and skills on the use of preliminary rulings in RoL issues.

3. Needs Related to Prevention of abuse (misuse) of powers

- To raise awareness among judges and prosecutors of aspects of the rule of law in their daily work;
- To increase knowledge and skills around judicial and prosecutorial mechanisms to protect and uphold RoL values in their everyday work;
- To enhance knowledge, skills and awareness of individual guarantees that a judge or a prosecutor may use in their daily work to reinforce RoL values (especially those linked to integrity, personal and intellectual independence, compliance, disciplinary proceedings etc.);
- To implement in the daily activities of judges and prosecutors legal mechanisms to prevent, correct and sanction abuse of powers;
- To increase knowledge of EU and Council of Europe limits to the contravention of basic elements of the division of powers by Member States' legislatures and executives;
- To better apply CJEU and ECtHR case law as a guide in decision- making and in the exercise of discretionary powers;
- To know more about the red lines that separate Judiciary and Prosecutorial Systems from other powers of the State;
- To understand better which are the European standards ruling on the interference of other powers of the state in selecting, promoting or transferring judges and prosecutors;
- To know more about the minimum European standards about the influence of other State powers in the selection, organisation and functions of Judicial Councils;
- To increase mutual understanding between judges and prosecutors in their shared role in defending the RoL.

4. Needs Related to Equality

- To increase awareness about the importance of the defence of human rights as an essential value of the RoL in Europe;
 - To raise the sensitivity among judges of non-discrimination as a central aspect of the RoL;
 - To know the interconnection between European Human Rights instruments and how they relate to RoL issues;
 - To include the perspective of protecting vulnerable groups in their daily work;
 - To raise awareness of the importance of gender-sensitive adjudication for gaining public trust in the judiciary and the prosecutorial system.
5. Needs Related to Independence, Autonomy, Accountability and Impartiality.
- To raise the skills of judges and prosecutors for identifying issues relating to judicial/prosecutorial independence and how to react;
 - To learn how to distinguish and apply the different legal instruments to defend individual and institutional independence;
 - To increase the skills for deciding on how to reconcile the need to reserve and the exercise of freedom of speech;
 - To increase knowledge and skills in the use of legal mechanisms that define how to react or behave in specific situations in which the RoL (and independence in particular) is challenged due to external pressures;
 - To improve the abilities of judges and prosecutors to identify situations in which they must react to publicly defend the RoL;
 - To boost skills for dealing with high media pressure situations without undermining independence and impartiality;
 - To raise awareness on the importance of judicial independence (and public trust) in the process to select, promote and transfer judges and prosecutors;
 - To identify the different RoL issues arising from the exercise of political rights and the involvement in politics of judges and prosecutor;
 - To raise awareness about the role of professional associations of judges and prosecutors in upholding the RoL;
 - To enhance the skills of judges and prosecutors in the use of social media without putting at risk their impartiality and public trust in the judiciary;
 - To improve awareness about benefits and limits of expressing their opinion on legal issues in academic or forensic contexts;
 - To preserve public confidence in the defence of the RoL by expressing personal and permanent subordination to the same rules in force for citizens;
 - To increase knowledge about the role of ethics in safeguarding individual aspects of the RoL;
 - To raise skills in detecting issues related to the existence of conflicts of interest;
 - To improve awareness of the limitations of social contacts with other actors in judicial processes;
 - To enhance sensitivity around the appearance of impartiality (objective impartiality) and its importance for public trust;
 - To identify the principle of prosecutorial independence/autonomy regardless of the specific configuration of the prosecutorial system in each Member State

6. Needs Related to Access to Justice

- To increase awareness around the importance of good communication. To raise awareness on the management of cases that raise general concerns in public opinion;
- To improve skills for reacting in a proportional way to trials in newspapers;
- To raise awareness of the role of judges and prosecutors as public figures subject to public criticism;
- To enhance skills in improving public trust;
- To improve awareness of the importance of clear and good use of language in judicial decisions to make their direct comprehension by the public possible;
- To raise awareness about the relevance of the different systems of allocation of cases from the perspective of the RoL;
- To raise awareness of how independence (impartiality) plays an important role in daily work when interplaying with different forms of accountability and quality requirements;
- To enhance awareness of the importance of transparency in prosecutorial and judicial decision processes;
- To raise awareness about the costs and benefits arising from the use of transparency mechanisms for judges and prosecutors;
- To increase knowledge around RoL issues raised by plea bargains and by parallel justice systems;
- To raise awareness of RoL issues when facing case workloads in the judiciary;
- To understand better the implications for the RoL of instruments to evaluate the efficiency of judges or prosecutors;
- To raise awareness about the variety of systems for evaluating and assessing the performance of judges and prosecutors;
- To identify ethical and RoL aspects of workload optimisation;
- To improve knowledge of the limits of the competences of presidents of courts and chief prosecutors;
- To improve the management capabilities of presidents of courts or chief prosecutors without undermining basic RoL aspects (e.g. independence);
- To raise awareness about the systems for allocating cases both in the judiciary and in the prosecutorial system.

ANNEX 2

QUESTIONNAIRE

1. General information about participant

2. What were your expectations of the training activity? What did you want to focus on, learn etc.?

3. Did you undertake any specific preparation before attending the training activity?

4. Were your language skills sufficient to enable you to benefit fully from the training?

5. To what extent did the pre-course material assist your preparation and learning?

6. Was/were the learning outcome(s), as stated in the activity programme, achieved?

7. Will the learning outcome be of added value for your professional development?

8. How will you use the developments achieved after the training activity?

I will undoubtedly use the outcomes in my professional life	36 answers
I will inform my peers about the outcomes at a meeting	28 answers
I will talk informally about the outcomes with my colleagues	40 answers
I will continue networking with the participants of the seminar	21 answers
I don't know, have not given the question any thought	0 answers
I will probably not use the outcomes much	0 answers
Other	2 answers

9. In your opinion, what is the EU added value of this training activity?

10. Expert assessment

10.1. Was the expert knowledgeable about the topic?

10.2. How would you evaluate the expert's training skills?

10.3. How would you evaluate the training materials provided by the expert?

11. What training methods applied at the seminar did you appreciate the most?

- 12. How would you evaluate your own participation and contribution in the activity?**
- 13. The information provided by EJTN about the training was:**
- 14. The organisation provided by the hosting institution was:**
- 15. The interpretation service was:**
- 16. Comments or suggestions on organisational issues**
- 17. What is your overall assessment of the training activity?**
- 18. What improvements should be made to the training activity?**
- 19. Would you recommend this activity to your colleagues?**

ANNEX 3



European Judicial Training Network
Réseau Européen de Formation Judiciaire



The Rule of Law: Independence and Accountability of the Judiciary and Effective Judicial Protection

ROL/2019/03

Seminar Report

Name of the Expert	
Role in the seminar	
Month/Year	

Summary of activities undertaken by the expert during the seminar

(in this section please list what you have done during the preparation phase for the seminar. Please list the sources of information that you used to prepare for the seminar. The sources that you will list are important to us, as they will be used when drafting the training strategy guidelines as well as the practitioners' manual)

--

Summary of outputs from activities undertaken during the seminar

(in this section please be specific and list your contribution to the seminar in the form of case studies, PowerPoint presentations or any other materials drafted by you which were shared with the participants)

Follow-up actions required/Recommendations

(under this section please list your recommendations for EJTN for better implementation of the seminar. These recommendations could be, for example: better content and structure of the agenda, better coordination and organisation of the seminar etc. We encourage you to give examples and be specific)

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Comments/Conclusions

(in this section please describe your perception from moderating the subgroups and participating in the plenary discussions. Please give examples from your discussions within the subgroups regarding issues that came to your attention, such as, but not limited to: which issues elicited most discussion; which questions triggered disagreement among the participants; what were the basic elements everyone agreed upon from the start; which issues cause major worries about independence expressed by participants. Your comments are important to us, as they will be used when drafting the training strategy guidelines as well as the practitioners' manual)

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ANNEX 4

13-14 MAY 2018
EU Court of Justice, LUXEMBOURG

With financial support from the Justice
Programme of the European Union

The conference will summarise the training project on the Rule of Law implemented by EJTN in 2018 and 2019, aiming to:

- present and discuss developments in relevant case-law of the CJEU and ECtHR and EC policy in the Rule of Law;
- exchange opinions about the challenges judges and prosecutors face when upholding the Rule of Law, discussed at the six seminars of the project;
- discuss the future priorities, developments and actions required from the key players as judicial councils, judicial training providers, European judicial associations and networks, including expediency of the EJTN Rule of Law Practitioner's Manual and the EJTN Rule of Law Training Guide.

AGENDA

MONDAY 13 MAY 2019		
8.45 9.15	Arrival and participant registration Hearing Room II, Palais, Level 6	Wojciech Postulski, Secretary General, EJTN
	Official opening of the seminar	
9.30	Jurisprudence of CJEU on the Rule of Law	Koen Lenaerts, President, CJEU
10.00	Jurisprudence of ECtHR on the Rule of Law	Angelika Nussberger, 1st Vice-President, ECtHR
10.20	Upholding the Rule of Law in the EU	Emmanuel Crabit, Director, EC
10.40	Summary of the EJTN Rule of Law Project	Wojciech Postulski, Secretary General, EJTN
10.45 11.15	Coffee Break Hearing Room II, Palais, Level 6 Panel discussion on key challenges for the judiciary: - accommodating judicial independence and accountability, grey areas of judicial independence; - integrity of judges and prosecutors in and outside court rooms including freedom of speech and the need to reserve - autonomy of prosecution, understanding the role of the hierarchical system; - public discussion and criticism of judges and prosecutors: role of the media and public trust; - reassignment of judges and prosecutors to other cases/courts/prosecution office	Moderator: Christian Davies, journalist Panellists: Herman van Harten, Judge, NL Romulus Vargas, prosecutor, RO Paul Craig, Professor, Oxford University Andrea Annamaria Chis, ENCJ
13.00 14.00	Lunch break Parallel workshop sessions Hearing Room II, Palais, Level 6 Workshop A: How to maximise the impact of judicial training on upholding the Rule of Law Hearing Room III, Palais, Level 8 Workshop B: Role of Senior Judiciary in cultivating the Rule of Law	Moderators: Gerard Tangenberg LL.M., President of the Board, SSR Astrid Hopma, Educational Adviser, SSR Kees Sterk, President, ENCJ

	Hearing Room IV, Palais, Level 8 Workshop C: Role of European judicial networks and associations in building European understanding of the Rule of Law	Edith Zeller, President, AEAJ
16.00	Coffee Break	
16.20	Reports from the workshops	Gerard Tangenberg LL.M., President of the Board, SSR Astrid Hopma, Educational Adviser, SSR Kees Sterk, President, ENCJ Edith Zeller, President, AEAJ
16.40	Closing session	Horatius Dumbrava Wojciech Postulski
17.00	End of the Conference	
20.00	Dinner	
TUESDAY 14 MAY 2019		
8.45	Arrival and participant registration	
9.00	Introduction to the EU CJ case	Conference Room Thomas More, Level 0, T. More Building EJTN Rule of Law Project Experts' Group meeting
9.30	Participation in the CJEU hearing	
12.00	End of the programme	

Wojciech Postulski, Secretary General, EJTN
 Koen Lenaerts, President, CJEU
 Angelika Nussberger, 1st Vice-President, ECtHR
 Emmanuel Crabit, Director, EC
 Christian Davies, Journalist
 Herman van Harten, Judge, NL
 Romulus Varga, Prosecutor, RO
 Paul Craig, Professor, Oxford University
 Andrea Annamaria Chis, ENCJ
 Gerard Tangenberg LL.M., President of the SSR
 Astrid Hopma, Educational Adviser, SSR
 Kees Sterk, President, ENCJ
 Edith Zeller, President, AEAJ
 Horatius Dumbrava, Judge, RO

ANNEX 5a

WHAT IS A WORKSHOP?

The continuous training of adult professionals could be designed in the format of a workshop. There are many ways to define it, but probably the most accurate definition, considering its scope, is: *A short educational programme designed around professional skill and attitude development with the help of participatory training techniques.*

The main features of a workshop are:

1. The number of participants is small in order to facilitate individualised participation.
2. The type of group is generally homogenous, as professionals from the same field of work.
3. The workshop is led by one or two trainers who have experience in the field and are trained as workshop facilitators.
4. The methods used are for active participation.
5. The working climate of a workshop should be informal, for a lot of participation and exchange of experience.
6. The workshop is self-contained, it is not connected to other training events that take place in continuous training and professional development in the field.
7. The time limit is from 45 to 90 minutes.

WHEN TO ORGANISE A WORKSHOP?

There are a number of situations when a workshop is a value-added to the educational process:

1. Combined with a conference format when there is the need to discuss and apply the new ideas put forward.
2. When there is the need to facilitate a change process by practicing something new in a safe environment.
3. When the exchange of experience is as important as the knowledge and skills sought.

WORKSHOP DESIGN

In the workshop design phase, the trainer/facilitator should answer the following questions:

1. Who is my audience?

This is the entry point question. Understanding where the participants come from and what their needs are leads to accurate problem identification and topic selection.

2. Which are the problems around to select my topic?

Solving a problem might require a new topic delivery or skill practice in the subject area.

3. What resources do I have?

When thinking about the resources, the following should be considered:

- Time: what is the length of the workshop?

- Number of participants: How many participants do I have?
- Environment: What is the room type and the furniture configuration?
- Logistics: What material resources do I need? (laptop, flip-chart, markers etc)

4. How should I approach the activities?

Step One: Time for the participants to connect, introduce each other.

Step Two: How many activities and when do I change them?

Remember that 30 minutes is a maximum before a switch between activities should happen, since the learning attention span falls between 20 to 30 minutes of activity. At the same time, if there is active participation, talking time should be included in the activity's design.

A POSSIBLE STRUCTURE

1. The participants introduce each other.
2. The trainer/facilitator leads into the topic/problem to solve together
3. The participants share their experience in the field.
4. The trainer/facilitator gives a common problem to be solved through an active learning method.
5. Conclusions to be drawn.



European Judicial Training Network
Réseau Européen de Formation Judiciaire



Questions designed for a workshop combined with a conference.

**Rule of Law in Europe. Perspectives, demands and challenges for
and from the European Judiciary**

**Rule of Law Project Final Conference
13-14 May, CJEU, Luxembourg**

**Workshop C: Role of the European Judicial Network and associations in building European
understanding of the Rule of Law**

**Q1) How can judicial networks improve the RoL? How can awareness be increased? Possible
solutions:**

- a) *Promotion of common standards and best practices?*
- b) *How can judicial networks contribute to recognising warning signs in a judicial system?*
- c) *Deepening knowledge?*
- d) *Strengthening existing standards for detecting and closing existing gaps?*
- e) *Creation of a common database with decisions of all member States in the field of Rule
of Law?*
- f) *What else?*

--

Q2) What do judicial networks need in order to optimise their role in this respect? Possible solutions:

- a) *Possibilities to share between the associations:*
- b) *Scientific activities between of judges and dissemination of EU law principles in peer-to-peer groups*
- c) *Options for associations to contribute in expert groups at European level in the area of relevance for the rule of law, mutual exchange*
- d) *Other support, other necessary institutional settings?*

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ANNEX 6a indicating the requirements for a training seminar for a specific target group

TERMS OF REFERENCE

OF THE SEMINAR FOR PRESIDENTS OF COURTS AND CHIEFS PROSECUTORS

- BRUSSELS, 26 – 27 February 2019 -

1. Background toto the project

Following the decision of the European Commission (DG Justice and Consumers Directorate – General) to allocate a grant to a European training programme related to the rule of law (the RoL), the European Judicial Training Network (hereinafter EJTN) and the Tipik Communications Agency have agreed to implement the RoL training programme with following tasks:

- a series of seven seminars;
- one webinar;
- a Practitioner's Manual and
- a Training Strategy Guide.

The project will run during 2018 and 2019, and its main scope is to present and discuss the latest European Union Court of Justice and the European Court of Human Rights case law in the area of the RoL, including that relating to the European Union Member States. In light of their national application, this will then allow for the presentation of standards deriving from the European Convention on Human Rights and EU Charter of Fundamental Rights. The main scope of the specific seminar is judicial independence (as explained in point 2).

The seminars, together with the other deliverables, aim to increase coherence and complementarity among existing training module materials on the topic of the rule of law across the EU and six western Balkan nations (Albania, Bosnia and Herzegovina, Macedonia, Montenegro, Serbia and Kosovo).

2. Background to the seminar

Of these 7 seminars, it was decided that one of them should be dedicated to Presidents of Courts and Chief Prosecutors, focusing on different aspects of the RoL relevant for the independence, effectiveness and accountability of judges and prosecutors in EU Member States and the six western Balkan Countries.

The independence of judges is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. Judges are “charged with the ultimate decision over life, freedoms, rights, duties and property of citizens”⁴. Judges’ independence is not a prerogative or privilege in their own interests, but in the interests of the rule of law and of those seeking and expecting justice⁵. The need to promote the independence of judges is not confined to individual judges only, but may have consequences for the judicial system as a whole. To fulfil its role, the judiciary must be independent of the Government and the Legislature, which involves freedom from inappropriate connections with and influence by these bodies. Independence thus serves as the guarantee of impartiality. This has implications, necessarily, for almost every aspect of a judge’s career: from training to appointment and promotion and to disciplining⁶.

The principle of judicial independence means the independence of each individual judge in the exercise of adjudicating functions. In their decision-making, judges should be independent and impartial and able to act without any restriction, improper influence, pressure, threat or interference, whether direct or indirect, from any authority, including authorities internal to the judiciary. Hierarchical judicial organisation should not undermine individual independence. Superior courts should not address instructions to judges about the way they should decide individual cases, except in preliminary rulings or when deciding on legal remedies according to the law. The allocation of cases within a court should follow objective pre-established criteria in order to safeguard the right to an independent and impartial judge. It should not be influenced by the wishes of a party to the case or anyone otherwise interested in the outcome of the case ⁷.

⁴ United Nations Basic Principles on the Independence of the Judiciary, endorsed by the United Nations General Assembly in November 1985 (hereinafter referred to as UN Basic Principles).

⁵ Recommendations [CM/Rec\(2010\)12](#) of the Committee of Ministers of the Council of Europe to Member States on judges: independence, efficiency and responsibilities

⁶ According to the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on standards concerning the independence of the judiciary and the irremovability of judges, judicial independence presupposes total impartiality on the part of judges.

⁷ Opinion no. 1 of the Consultative Council of European Judges (CCJE).

*“Public 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”.*⁸

The mission of the **Public Prosecution Service** is then to secure citizens’ basic rights to freedom and liberty. As an objective **body independent of direct political influence**, it has a central role within the criminal justice system: It has to control investigation, to decide on bringing cases before the court and to guarantee that the legal rights of the persons concerned are observed⁹.

Public prosecutors in continental jurisdictions often belong to the judicial branch. This is in accordance with the inquisitorial tradition in which the prosecutor is seen as a neutral and impartial party. There is a long tradition in civil law systems of public prosecutors taking responsibility for prosecutions in the public interest. However, in countries where prosecutors do not belong to the judicial branch, there is a basic acceptance that the prosecution service should be free from political influence and yet there is a clear need for accountability.

If the prosecution service is to gain trust as an objective body, supporting the rule of law, it is vital that it be regarded as independent in its decision-making.

At the same time, its handling of the cases must also be seen to be objective and fair.

This will only be true if similar cases are dealt with in similar ways. If individual prosecutors are making discretionary decisions it is therefore important that these are coordinated.

According to principle 36a of Rec(2000)19, *hierarchical methods of organisation* of the Prosecution service can be considered to a certain extent necessary *with a view to promoting fair, consistent and efficient activity* of the Prosecution Office.

Nevertheless, it must be remembered that, according to Rec(2000)19, the hierarchical method of organisation has to be balanced by other rules to ensure the internal independence of the prosecutors, such as the following: *the assignment and re-assignment of cases should meet requirements of impartiality and independence and maximise the proper operation of the criminal justice system, in particular the level of legal qualification and specialisation devoted to each matter (principle 9).*

However, an independent decision maker is not enough to ensure effective judicial protection¹⁰. Until the eighties, the administration of justice was a matter of applying the law to concrete cases. In civil law countries, the metaphor of the judge as the mouth of the law was considered a proper way to represent the functioning of courts and the foundations of the legitimacy of the judge and the judiciary. Over the last 30 years, many facts have

⁸ Recommendation Rec (2000)19 Adopted by the Committee of Ministers of the Council of Europe on 6 October 2000 on *“The role of public prosecution in the criminal justice system”*, hereinafter referred to as Rec (2000)19.

⁹ Recommendation Rec (1987)18 Adopted by the Committee of Ministers of the Council of Europe on 6 October 2000 on *“The simplification of criminal justice”*.

¹⁰ Article 19 of the Treaty on European Union.

changed the scene: technological innovation, budget cuts and managerial methods, users' orientation, and challenges to the legitimacy of courts have pushed judicial systems to change radically the way in which the justice is administered. Now courts exercise public authority, but are also service providers for citizens and other institutions, as well as "problem solvers" in many areas of public and private life¹¹. The proper management of organisational changes require leadership capacity in the President of Courts (and Chief Prosecutors). And the **quality** of judicial activity has become crucial for the Member States of European Union.

International organisations, ministries and judicial councils, courts, association of judges and practitioners have initiated actions to promote efficiency and quality of justice and to promote systems for assessing the judicial service both from the perspective of quality and quantity (and time management). Hence new systems of **accountability** for judges and prosecutors, chiefs of courts and prosecutions offices and the whole judicial offices, either in the form of individual professional evaluation or in the form of evaluation of the quality of the judicial service. Hence also new ethical rules for judges and prosecutors.

Furthermore, judicial and prosecutors' offices must be able to engage in an appropriate external communication of the results of their activity, in order to reinforce their legitimisation vis à vis wider society.

However, one question remains: how to reconcile independence, impartiality and fairness with efficiency and management.

In the seminar, the participants will be invited to discuss with the speakers and among themselves (in working groups) the concept of independence, accountability and quality/effectiveness of justice as the three pillars of the Rule of Law.

The main focal points of the seminar will be:

- The principle of the RoL in sources of primary law of the European Union (the TEU and the Charter of Fundamental Rights of EU); in the "common constitutional traditions" of Member States; in the Convention on Human Rights and in the soft law of the Council of Europe; and in the case law of the CJEU and the ECtHR, for both judges and prosecutors.
- The concepts of "external and internal independence of the judiciary".
- The concepts of independence and autonomy of prosecutors and the hierarchical organisation of the prosecution service.
- The accountability of the Judiciary and of the Prosecution service. The systems of individual professional evaluations. Ethical rules.
- The effectiveness of justice. Quality. Change management. Leadership and communication.

The seminar will be held in Brussels on 26 and 27 February 2018.

¹¹ For the above concept, please see the e-book "Handle with care", a project co-financed by the Justice Programme of the European Commission (Actions grants to support transnational projects on promoting the quality of the national justice systems - JUST/2015/JACC/AG/QUAL/8547), in www.lut.fi/hwc.

These ToRs are dedicated to this seminar but will be seen in connection with the entire project and its deliverables: the remaining 6 seminars, the webinar, the Practitioner's Manual and the Training Strategic Guide.

3. The goals of the seminar:

to stress the common values of the rule of law principles for judges and prosecutors;
to familiarise judges and prosecutors from all of the European Union with key issues and common values of the Rule of Law
to discuss how different judicial systems respond to the various challenges related to the Rule of Law and how to implement in their daily activities mechanisms to prevent, correct and sanction abuse of the Rule of Law.
to hear experiences of European colleagues and to increase mutual understanding.

4. Required profile of the participants:

- Presidents of Courts and Chief Prosecutors from EU Member States and the Western Balkans countries;
- A good command of the English language;
- Willing to participate actively in discussions and to share experiences in the field of the seminar.

For this seminar, the EJTN, through national training institutes, selected 68 participants, judges from EU Members States and the Western Balkan countries.

5. The outline of the seminar (topics, methodology):

For the **topics**, please see the attached agenda.

The seminar will be divided in three main sessions about:

- 1) The independence of the judges and the independence and autonomy of prosecutors in a comparative perspective.
- 2) The accountability of judges and prosecutors in a comparative perspective
- 3) The effectiveness/quality of justice in a comparative perspective.

In each session there will be one or two keynote speeches of 30 minutes, aimed at introducing the issues that will later be debated by the participants in groups.

The speakers will refer, when appropriate, to the sources of primary law of the European Union (the TEU and the Charter of Fundamental Rights of EU); the "common constitutional traditions" of Member States; the Convention on Human Rights; the soft law of the Council of Europe; the case law of the CJEU and the ECtHR.

In each session, the participants will then be divided in four groups (of around 15 participants in each group) according to different topics.

Each *group will be assisted by a facilitator*. The work will take place for 90 minutes according to the *snowball* methodology.

The group facilitator will open the session by introducing questions for discussion, prepared in advance.

Participants will begin the work individually, by writing down their individual responses (to discuss later with a partner) on post-it notes.

After this, the participants will join together in pairs/groups of three to discuss their responses with their partner. They may reach a consensus agreement on the responses, which should be discussed in detail to find similarities and differences. If they do not agree on an area, they should be clear about what their differences are, and record why.

The pairs/groups of three will join together into the larger group of 15. All post-it notes are put forward and thoughts and reflections are shared. The notes are grouped and re-written if necessary to capture similar content and discussed in detail to find similarities and differences. If they do not agree on an area, they should be clear about what their differences are, and record why.

The final group session ends at the end of the seminar with a plenary session, in which a rapporteur from each group (12 rapporteur in total) will report on the findings and conclusions of the groups.

Each report should not exceed 7 minutes.

After the seminar, the rapporteur will send a written report to the seminar's coordinator.

6. Expected results/outputs related to the participants

The main expected outcomes:

- Participants' increased awareness about different rules and practices regarding the protection of the Rule of Law in the Member States, as regards independence, accountability and effectiveness of the judiciary and prosecution service.
- Final written reports about the twelve topics selected for the work in groups, to be used for the webinar, the Practitioner's Manual and a Training Strategic Guide (please see the following chapter).

7. Expected results from the seminar's experts/trainers (one moderator and three trainers): tasks and outputs

As mentioned previously, this seminar is part of the RoL training programme, which has been designed according to the project implemented by the ETJN together with the Tipik Communication Agency: 7 seminars, a webinar, a Practitioner's Manual and a Training Strategic Guide (see the diagram on page 1).

This is why, alongside the expected results from working with the participants, this seminar is intended to provide information for all deliverables of the project.

For this reason, the tasks and outputs are not limited just to this seminar, but are for the entire project, and the information obtained from the trainers' work and the participants' contributions will be used for the project as well.

The coordinator and the moderators (3 moderators) and the facilitators (4 facilitators) of the seminar will work together to the methodology of the seminar and the chosen topics put into practice, in order to meet the participant-related expectations (see point 6) and the objectives of the seminar and of the project (see points 1, 2 and 3).

The total number of working days is one and a half days. More specifically, the coordinator and the moderators of the seminar are expected to be engaged in the following tasks/responsibilities and outputs:

Tasks/Responsibilities	Outputs
<p>Before starting the seminar, there will be a meeting with all the experts (the coordinator, moderator and facilitators).</p> <p>The place and the time of this meeting will be decided by the experts of the seminar with the help of the experts of the project and/or of the EJTN and can take place in the evening before the first day of the seminar or in the morning of the same day, or via e-mail or other means of communication in the days prior to the seminar.</p>	<p>The aim of the meeting:</p> <ul style="list-style-type: none"> - Laying out the details of how to carry out the seminar; - How to approach the topics of the seminar and how to connect them in order to have a unitary approach to the seminar; - Sharing the responsibilities during the activities of the seminar; - Preparing questions for the work in groups.
<p>The responsibilities of the coordinator:</p> <ul style="list-style-type: none"> - To initiate and participate in the meeting before starting the seminar; - To coordinate and monitor the carrying out of the seminar's activities; - Within three weeks of the seminar's completion, the coordinator will deliver a short report in electronic format to the EJTN; - Take an active role in the delivery of the seminar in question by means of making presentation(s) and contributing to panel discussions; - Supervise the implementation of the seminar; 	<ul style="list-style-type: none"> - The enforcement of the seminar's methodology and the details established with the trainers before the seminar; - The short report shall contain the outcomes of the seminar according to the goals of the seminar (number 3 of the ToR) and recommendations for the entire project, including information and materials that can be used for drafting a Training Strategy and Practitioner's Manual; - Materials for the seminar as outlined above
The responsibilities of the moderators (3):	

<ul style="list-style-type: none"> - To participate in the meeting before starting the seminar; - To put in practice the methodology according to the seminar's agenda; - To carry out the seminar's activities according to the agenda and the shared responsibilities, which are to be decided before the seminar; - Within three weeks of the seminar's completion, the moderators will deliver a short report in electronic format to the EJTN; - Conduct research on relevant topics as requested by the coordinator; - Take an active role in the delivery of the seminar in question. 	<ul style="list-style-type: none"> - Determining the details of the seminar before starting the seminar; - Case studies/dilemmas prepared by the moderators in accordance with the seminar's methodology; - Discussing and identifying the essential components of the rule of law from the perspective of judges and prosecutors in leading positions, according to the topics of the seminar and the expected results from the participants (number 6 of the ToR) - The short report shall contain the outcomes of the seminar according to the goals and recommendations for the entire project, including information and materials that can be of used for drafting a Training Strategy and Practitioner's Manual; - Materials for the seminar as outlined above.
<p>The responsibilities of the facilitators (4):</p> <ul style="list-style-type: none"> - To participate in the meeting before starting the seminar; - To put into practice the methodology according to the seminar's agenda; - To carry out the seminar's activities according to the agenda and the 	<ul style="list-style-type: none"> - Determining the details of the seminar before starting the seminar; - Each group will be assisted by a facilitator. The work will take place for 90 minutes according to the snowball methodology; - The group facilitator will open the session by introducing questions for

<p>shared responsibilities, which are to be decided before the seminar;</p> <ul style="list-style-type: none"> - Within three weeks of the seminar's completion, the facilitators will deliver a short report in electronic format to the EJTN; - Take an active role in the delivery of the seminar in question. 	<p>discussion, prepared in advance by them in cooperation with the seminar's coordinator moderators. The facilitator must promote group participation, mutual understanding and shared responsibility among the members' group;</p> <ul style="list-style-type: none"> - The short report shall contain the outcomes of the seminar according to the goals and recommendations for the entire project, including information and materials that can be of used for drafting a Training Strategy and Practitioner`s Manual; - Materials for the seminar as outlined above.
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Reporting requirements:

- The Moderator(s) will report to the Coordinating Expert;
- The Moderator(s) will prepare a written mission report, with an executive summary and attach all the materials produced during the assignment;
- The Mission Report should be submitted on the last day of the consulting assignment;
- All reports will be written in English and submitted in electronic form to the Coordinating Expert;
- No report or other work product is to be distributed without the prior approval of the Coordinating Expert and
- The Coordinator and the Moderator(s) will comply with all other administrative and EJTN record-keeping requirements as instructed.



European Judicial Training Network
Réseau Européen de Formation Judiciaire



**TERMS OF REFERENCE
OF THE SEMINAR FOR JUDGES AND PROSECUTORS
- BRUSSELS, 2-3 OCTOBER 2018 -**

8. Background to the project

Following the decision of the European Commission (DG Justice and Consumers Directorate – General) to allocate a grant to a European training programme related to the rule of law (the RoL), the European Judicial Training Network (hereinafter EJTN) and the Tipik Communications Agency have agreed to implement the RoL training programme with following tasks:

- a series of seven seminars;
- one webinar;
- a Practitioner’s Manual and
- a Training Strategy Guide.

The project will run during 2018 and 2019 and its main scope is to present and discuss the latest European Union Court of Justice and the European Court of Human Rights case law in the area of the RoL, including that relating to the European Union Member States. In the light of their national application, this will then allow for the presentation of standards deriving from European Convention on Human Rights and EU Charter of Fundamental Rights.

The seminars, together with the other deliverables, aim to increase coherence and complementarity among existing training module materials on the topic of the rule of law across the EU and six western Balkan nations (Albania, Bosnia and Herzegovina, Macedonia, Montenegro, Serbia and Kosovo).

9. Background to the seminar

Of these 7 seminars, it was decided that two of them should be dedicated to judges and prosecutors, focusing on different aspects of the RoL relevant to their daily work.

These two seminars will focus on practical issues relating to the work of judges and prosecutors in relation to the following areas:

- *Seminar 1*: relationship between judges/prosecutors in work environment and vis-à-vis other state powers;
- *Seminar 2*: selected aspects of the independence of judges and prosecutors, such as judicial and prosecutorial integrity, standards of ethical and professional conduct.

Both seminars will also address the issue of public discussion and criticism of judges and prosecutors: the role of media and public trust.

The first seminar will be held in Brussels on 2 and 3 October 2018. The second, also in Brussels, on January 2019.

These ToR focus on the first seminar, but will be seen in connection with the second seminar and the entire project and its deliverables: the remaining 5 seminars, the webinar, the Practitioner's Manual and the Training Strategic Guide.

10. The goals of the seminar:

to enhance the knowledge of judges and prosecutors of all levels and different hierarchical functions and branches of different aspects of the rule of law, such as independence and impartiality, separation of powers, responsibility and accountability of judges and prosecutors, communication strategies, particularly challenges to the rule of law (corruption, conflicts of interest, etc);

to raise awareness among judges and prosecutors about how these aspects of the rule of law play an important role in their daily work;

to increase awareness among judges and prosecutors about the importance of a good communications policy for managing cases that raise general concerns in public opinion;

to sharpen the participants' skills and sensitivity around issues related to the rule of law and to stress the common values of the rule of law principle throughout Europe;

to have an in-depth exchange with European colleagues and thus enhance mutual trust.

11. Additional objectives for the project:

to discuss and identify the essential components of the rule of law from the perspective of both judges and prosecutors;

to collect information and materials that can be used for drafting a Training Strategy and Practitioners' Manual;

to boost similar training activities at the respective national level across the EU.

12. Required profile of the participants:

- all members of judiciary, as well as prosecution services from EU Member States and the Western Balkans countries;
- specific groups, such as presidents of courts, members of councils, members of supreme judicial bodies, spokesperson of the courts;
- trainers at national training institutions for prosecutors and judges.

For this seminar, the EJTN, through the national training institutes, selected 68 participants, judges and prosecutors from EU Members States and the Western Balkan countries.

13. The topics of the seminar:

The introduction– UN, Council of Europe and European Union standards on the RoL, an overview on following sub-topics:

- a. Legality;
- b. Legal certainty;
- c. Prevention of abuses of power;
- d. Independence/autonomy and impartiality;
- e. Effectiveness;
- f. Quality.

The first topic of the seminar: relationship between judges/prosecutors in work environment and other state powers, with four sub-topics (for each working group: see the methodology section below):

- a. Relationship between judges and prosecutors in and outside court rooms – division of powers and mutual respect;
- b. Impartiality of judges and prosecutors in and outside court rooms;
- c. Integrity of judges and prosecutors in and outside court rooms (including quality and efficiency of judicial protection and ethical issues);
- d. Key players as safeguards for the independence of judges and prosecutors (e.g. councils, presidents, general assemblies of judges, associations, judges themselves etc.).

Note for the first topic: related activities for b., c. and d. will be necessary linked to the main topic, 'relationship between judges/prosecutors in work environment and other state powers.

The second topic of the seminar: infringement of the security of tenure of judges and prosecutors, with four sub-topics (the same procedure as for the first topic):

- a. Termination of terms of office or due to retirement age of judges and prosecutors, defined by executive decision or legislative reform motivated by political reasons;
- b. Re-assignment of judges and prosecutors to other cases/courts/prosecution offices;
- c. Direct and indirect influence of the executive in the process of appointing judges and prosecutors (e.g. where security checks are required without the possibility of challenging their results);
- d. Individual responsibility/liability of judges/prosecutors for their decisions.

The third topic of the seminar: public discussion and criticism of judges and prosecutors – the role of the media and public trust (the same procedure as for the other two topics).

14. Methodology of the seminar

The seminar consists of three parts:

- part I – theoretical background, providing an overview of different Rule of law standards – UN, Council of Europe and European Union;
- parts II and III – practical applications of these standards to the work of judges and prosecutors. In terms of methodology, on the first day, part II involves case studies and working in smaller teams (4 working groups) for both topics (the first and the second topic). In the second day, part III (the third topic) includes the so-called “Problem Solving: The Seven Steps of Problem Analysis” methodology, also asking participants to work in small groups (debriefing, p. 39 of the EJTN Training Handbook).

Note 1: on the second day, before starting part III (the third topic), the four trainers will give a report on the outcome of discussions on the previous day to the Plenary (for the first and the second topic).

Note 2: depending on the project’s experts, we will have to decide about Saskia Wallner’s contribution – it should be one of the trainers of the four working groups, or it should be an ‘outsider’ who, as a journalist, gives feedback to the participants relating to the discussions at the end of each stage (one intervention in the morning after the four trainers reporting on the outcome of discussions of the first and second topics – this means that she has to ‘visit’ each working group for a few minutes – and the second intervention after the third topic). For the second option, the fourth trainer should be the moderator of the seminar (Ms Monica Claes).

Note 3: The project’s experts mentioned an option to consider: a questionnaire could be sent to the participants in advance, in order to get them to reflect on their own systems and the rule of law in the context of their work in general. Such a questionnaire would be put together with the experts who would deliver the training. In the seminar, a summary of answers will be presented (before case studies are debated). If it is a pertinent idea for the seminar and if there is enough time to ‘construct’ such a questionnaire, we have to decide together with the seminar’s trainers on this option.

15. Expected results/outputs relating to the participants

The main expected outcomes:

- Increased knowledge on the key elements of the RoL and their practical implications to their professional and private lives of judges and prosecutors;
- Increased awareness and knowledge on how to protect and uphold RoL values in their everyday work;
- In particular, awareness of individual guarantees that a judge and a prosecutor can apply in their work to reinforce the RoL, such as integrity, personal independence, intellectual independence, competence, media communication strategies, appropriate appointment or disciplinary procedures.

16. Expected results from the experts/trainers of the seminar (one moderator and four trainers): tasks and outputs

As mentioned previously, this seminar is part of the RoL training programme, which has been designed according to the project implemented by the ETJN together with the Tipik Communication Agency: 7 seminars, a webinar, a Practitioner's Manual and a Training Strategic Guide (see the diagram on page 1).

This is why, alongside the expected results from working with the participants, this seminar is intended to provide information for all of the project's deliverables.

For this reason, the tasks and outputs are not limited just to this seminar, but are for the entire project, and the information obtained from the trainers' work and the participants' contributions will be used for the project as well.

The moderator and the trainers of the seminar will work together to put the seminar's methodology into practice (see point 7), as well as the chosen topics (see point 6), in order to meet the participant-related expectations (see point 8) and the objectives of the seminar and of the project (see points 1, 3 and 4).

The total number of working days is one and a half days (2-3 October 2018). More specifically, the moderator and the trainers of the seminar are expected to be engaged in the following tasks/responsibilities and outputs:

Tasks/responsibilities	Outputs
<p>Before starting the seminar, there will be a meeting with all of the seminar's experts (the moderator and the trainers).</p> <p>The place and the time of this meeting will be decided by the experts of the seminar with the help of the experts of the project and/or of the EJTN and can take place in the evening before the first day of the seminar or in the morning of the same day, or via e-mail or other means of communication in the days prior of the seminar.</p>	<p>The aim of the meeting:</p> <ul style="list-style-type: none">- Laying out the details of how to carry out the seminar;- How to approach the topics of the seminar and how to connect them in order to have a unitary approach to the seminar;- Sharing the responsibilities during the activities of the seminar.
<p>The responsibilities of the moderator:</p> <ul style="list-style-type: none">- To initiate and participate in the meeting before starting the seminar;- To coordinate and monitor the carrying out of the seminar's activities;- Within three weeks of the seminar's completion, the moderator will deliver a short report in electronic	<ul style="list-style-type: none">- The enforcement of the seminar's methodology and the details established with the trainers before the seminar;- The short report shall contain the outcomes of the seminar according

format to the EJTN.	to the goals and additional objectives of the seminar (points 3 and 4 of the ToR) and recommendations for the entire project, including information and materials that can be used for drafting a Training Strategy and Practitioner's Manual
<p>The responsibilities of the trainers:</p> <ul style="list-style-type: none"> - To participate in the meeting before starting the seminar; - To put into practice the methodology according to the seminar's agenda; - To carry out the seminar's activities according to the agenda and the shared responsibilities, which are to be decided before the seminar; - Within three weeks of the seminar's completion, the trainers will deliver a short report in electronic format to the EJTN. 	<ul style="list-style-type: none"> - Determining the details of the seminar before starting the seminar; - Case studies prepared by the trainers in accordance with the seminar's methodology; - Discussing and identifying the essential components of the rule of law from the perspective of both judges and prosecutors, according to the topics of the seminar and the expected results from the participants (point 8 of the ToR). - The short report shall contain the outcomes of the seminar according to the goals and additional objectives of the seminar (points 3 and 4 of the ToR) and recommendations for the entire project, including information and materials that can be used for the drafting a Training Strategy and Practitioner's Manual



European Judicial Training Network

Réseau Européen de Formation Judiciaire



ON HOW TO WRITE A CONCEPT PAPER WHEN YOU DESIGN A WEBINAR

Webinar Concept Paper

- Rule of Law Project -

developed by the European Judicial Training Network (EJTN),

in cooperation with Tipik Communication Agency S.A.,

funded by the Justice Programme of the European Union

Background

As part of the European Commission strategy for the effective implementation of the EU Charter of Fundamental Rights¹² (hereinafter the Charter) and the conclusions of the European Council from October 2017, where high importance was placed on awareness-raising on the application of the Charter at national level among legal practitioners, as well as the need to enhance the use of digital tools such as e-Justice and the exchange of best practices¹³ in 2017, the Justice and Consumers Directorate-General of the European Commission decided to fund a European training programme relating to the rule of law (hereinafter the RoL).

For this purpose, the European Judicial Training Network (hereinafter EJTN) and Tipik Communications Agency have agreed to implement the RoL training programme during 2018 and 2019 with following tasks:

- a series of seven seminars;
- **one webinar;**

¹² COM(2010) 573 final, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0573:FIN:en:PDF>

¹³ General Affairs Council, meeting n°3567, Luxembourg 17/10/2017, Background brief, <http://www.consilium.europa.eu/media/22060/background-final-en-docx.pdf>. Outcome of the Council Meeting, <http://www.consilium.europa.eu/media/31717/st13257en17.pdf>

- a Practitioner's Manual and
- a Training Strategy Guide

This concept paper is dedicated to the webinar, one of the project's deliverables .

The webinar

One of the scopes of the RoL project is to deliver a webinar during the project. For this reason, the tasks for the webinar's implementation are to design and develop the concept and the content of the webinar.

According to the word's conventional meaning, a webinar is a seminar/conference conducted via the internet. The webinar assumes few things:

- **Attendees/participants;**
- **Topics (to be discussed)**
- **Technical requirements such as a computer, a fast and stable internet connection and headsets or speakers;**
- **Moderators/experts.**

The webinar is a form of one-to-many communication, to give, receive and discuss information, and it offers various interactive online opportunities:

- To ask a question and answer a question;
- Chat;
- Poll;
- Survey;
- Test.

The experience gained and the information that has been gathered and will be gathered from the seminars and from other deliverables of the project should be useful for entire process of the project's webinar phase.

Objectives of the webinar

The webinar will be organised for a one-day electronic conference:

- to stress the common values of the rule of law principles for judges, prosecutors and justice leaders (presidents of courts, chief prosecutors, members' judicial councils);
- to familiarise judges, prosecutors and justice leaders from all the European Union with key issues and common values of the Rule of Law as they are reflected in primary and soft law, and in the jurisprudence of the CJEU and ECtHR;
- to discuss how different judicial systems respond to the various challenges related to the Rule of Law and how to implement them in their daily activities mechanisms to prevent, correct and sanction abuse of the Rule of Law;
- to hear experiences of European colleagues and to increase mutual understanding.

Target audience

The webinar is addressed to judicial audiences from all across the EU Member States and six Balkan nations (Albania, Bosnia and Herzegovina, Macedonia, Montenegro, Serbia and Kosovo):

- senior judges and prosecutors;
- future and early-career judges and prosecutors;
- judicial trainers;
- heads and members of judicial and prosecutorial high councils;
- academics etc.

Profiles of the speakers and moderators of the webinar

- academics;
- judicial trainers;
- others (should be decided by the experts' project).

The session's content, sequences and duration

The webinar module focuses on understanding the Rule of Law concepts and analysing their principles provided in primary and soft law, and in the jurisprudence of the CJEU and ECtHR.

1. The session starts by explaining the concept of the Rule of Law as a fundamental principle of the European Union and for its citizens. It is a theoretical part of the session.

The method: presentation.

One or two speakers, 20 or 30 minutes (should be decided by the experts' project).

2. The session's content helps with answering and understanding the following Rule of Law questions and concepts of the RoL (should be completed by the experts' project).
Examples:
 - Institutional independence vs individual independence;

- The role of the judge or of the prosecutor in the separation of powers (in which law-making is the domain of the legislative body);
-

The method could be an icebreaker (should be decided by the experts' project).

10 minutes for each question or concept (should be decided by the experts' project).

3. Comments and remarks from the speakers and moderators.

The method: debate (should be decided by the experts' project).

30 minutes.

4. Questions and answers – Q & A plenary session.

The method: debate.

45 minutes (should be decided by the experts' project).

Language and schedule

The webinar will be conducted in English:

Language	Date and time	Speakers	Moderators	Topics
English	1. 2. 3. 4.	1. 2. 3.	1. 2. 3. 4.

Handouts for participants

- Slides presentation;
- Written presentations.

Reading material for participants

- International Covenant on Civil and Political Rights (1966) (ICCPR);
- UN Basic Principles on the Independence of the Judiciary (UNGA, 1985);
- Bangalore Principles of Judicial Conduct (2002);
- TEU, articles 2 and 19;
- Charter of Fundamental Rights of the EU;
- European Commission For Democracy Through Law (Venice Commission) Rule Of Law Checklist, CDL-AD(2016)007

[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)007-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)007-e);

- European Commission for Democracy through Law (Venice Commission), Report on the Rule of Law, CDL-AD (2011)003rev [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2011\)003rev-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)003rev-e);
- Council of Europe Committee of Ministers, ‘The Council of Europe and the Rule of Law’, CM(2008)170 http://www.coe.int/t/dghl/standardsetting/minjust/mju29/CM%20170_en.pdf
- The European Commission for the Efficiency of Justice’s Evaluation of European Judicial Systems project http://www.coe.int/t/dghl/cooperation/cepej/series/Etudes6Suivi_en.pdf ;
- Specific case law of the CJEU and the ECtHR.

Expected outcomes of the webinar

- For participants:
 - increased knowledge of the concepts of independence, accountability and other RoL concepts, and for identifying problems and finding appropriate remedies related to these concepts of the RoL;
 - experience in reflecting on how these values influence their work and lives as judge/prosecutor;
 - increased awareness and knowledge of how to protect and uphold these values in their work as judges and prosecutors.
- For the project: identifying common issues and possible solutions on the designated topics for judges/prosecutors/leaders and developing the Practitioner’s Manual and Training Strategic Guide.

ANNEX 8

DESIGNING LEARNING OBJECTIVES

Training programme can be designed to help judges/prosecutors achieve their learning objectives at many levels; from knowledge delivery to assessment and self-assessment. From lower level thinking skills (knowledge, understanding, application) to higher order thinking skills (analysis, synthesis, evaluation), the direction in training can be set with a cognitive taxonomy, such as the one created by B. Bloom¹⁴ as a conceptual tool:

1. **Knowledge:** participants can recall and repeat the information presented.
2. **Comprehension:** Comprehension requires participants to translate the information into their own words. They can explain, give examples, and summarise.
3. **Application:** Participants can apply the information or skills in new situations. They can interpret, modify, and use concepts and skills.
4. **Analysis:** At this level of thinking, participants can break a complex whole into its parts. They can distinguish, outline, and subdivide ideas and skills.
5. **Synthesis:** The ability to synthesise enables participants to use information to create a new idea or apply knowledge to developing plans of action or solving problems.
6. **Evaluation:** Evaluation involves critical thinking, the ability to make judgments based on a set of criteria.

Support List of action verbs:

KNOWLEDGE

Define, List, Match, Name, Observe, Quote, Recall, Recognise, Relate, Reproduce, Select, State, answer the questions: what... when...where...how...etc.

COMPREHENSION

¹⁴ Bloom's Taxonomy was created in 1956 under the leadership of educational psychologist Dr Benjamin Bloom in order to promote higher forms of thinking in education, such as analysing and evaluating [concepts, processes, procedures, and principles](#), rather than just remembering facts (rote learning). It is most often used when designing educational, training, and learning processes.

Ask, Classify, Compare, Contrast, Demonstrate, Discuss, Estimate, Explain, Express, Extend Generalize, Illustrate Indicate, Interpret, Match, Observe, Outline, Predict, Rephrase, Report Restate, Review, Summarise etc.

APPLICATION

Act, Apply, Associate, Calculate, Categorize, Choose, Classify, Connect, Correlate, Develop, Identify, Illustrate, Interpret, Interview, Perform, Plan, Practice, Relate, Select, Simulate Solve, Summarise, Transfer etc.

ANALYSIS

Analyse, Arrange, Categorize, Cause and Effect Extraction, Classify, Distinguish, Divide, Establish, Examine, Find, Inference, Investigate, List Motives, Omit, Organise, Point out, Prioritize, Rank, Re-organise, Separate Similar to Simplify etc.

SYNTHESIS

Adapt, Add to Build Change, Choose, Combine, Delete, Design, Develop, Discuss, Elaborate, Estimate, Experiment, Extend, Formulate, Integrate, Modify, Plan, Predict, Revise, Rewrite Solve etc.

EVALUATION

Agree, Argue, Assess, Conclude, Consider, Convince, Identify Criteria, Debate, Decide, Defend, Determine, Estimate, Evaluate Explain, Give reasons, Judge, Justify, Opinion Statement, Prove, Value etc.

Examples:

- List the most commonly violated canons of the code of judicial conduct and discuss strategies for avoiding violations.
- Distinguish between ethical and unethical judicial conduct.

- Resolve potential conflicts of interest by applying the authorities that govern judicial conduct to everyday situations in and out of court or of the prosecution office.
- Apply legal reasoning to analyse the facts of a case.
- Analyse the principles of damages and restitution in civil cases.
- Make appropriate evidentiary rulings.
- Evaluate witness and expert credibility.
- Describe the impact of bias and stereotyping on court or on prosecution office proceedings.
- Summarise relevant case law, oral arguments, and trial presentation.
- Examine the appropriate parameters of judicial discretion.
- Share trial management techniques with faculty and colleagues.
- Control potential courtroom disruptions.
- Issue findings of fact and conclusions of law.
- Write clear and concise judgments.
- Deliver clear and concise oral judgments.
- Manage trial proceedings effectively.
- Participate in media interviews without compromising the code of judicial conduct.
- Preside over cases with self-represented litigants.

ANNEX 9a – seminar agendas during 2018 – 2019, seminar for judges

Consejo General del Poder Judicial, Barcelona, Spain

[RoL/2018/02]

Background to the project:

Following the decision of the European Commission (DG Justice and Consumers Directorate-General) to allocate a grant to organise a series of seven seminars and one webinar; to draft the Manual/Practitioner's Guide on aspects of rule of law, and the Training Strategy Guide on the rule of law to be used by EJTN members in 2018 and 2019, together with Tipik communications agency, EJTN responded and agreed to implement these tasks. The tasks form part of the European Commission's strategy for the effective implementation of the EU Charter of Fundamental Rights.

The main objective of these 7 seminars is to make the participants reflect on the international and national standards of the rule of law, and to address aspects of the protection of fundamental rights and the rule of law as reflected in ECJ and ECHR case law, by increasing understanding of the role and daily obligations of judges and prosecutors of the EU Member States and six Western Balkan nations (Albania, Bosnia and Herzegovina, Macedonia, Montenegro, Serbia and Kosovo) in their private and professional duties.

The seminars, together with the other deliverables, aim to increase coherence and complementarity among existing training module materials on the topic of the rule of law across the EU and six western Balkan nations (Albania, Bosnia and Herzegovina, Macedonia, Montenegro, Serbia and Kosovo).

Background to the seminar:

Judicial independence is an important principle, and can be regarded to be a cornerstone of the Rule of Law. While most people have an idea of what judicial independence entails and why it is important, it is not always clear where the boundaries of judicial independence lie. There are many "grey area" where it can be debatable whether or not judicial independence is at stake.

Closely linked to judicial independence is judicial accountability – they are two sides of the same coin. But what does accountability mean, why is it important? How do these two concepts interact; either by strengthening or by weakening each other?

These issues form the main focal point for this seminar. They will be introduced and discussed further in interactive workshops.

Required profile of the participants:

- Judges
- A good command of the English language
- Willing to participate actively in discussions and to share experiences in the field of judicial independence

The goal of the seminar is:

- 1) To enhance participants' knowledge about the principle of independence (including impartiality), as laid down in key documents, such as the Bangalore principles¹⁵, CoE recommendations (including CCJE principles), Venice Commission Rule of Law Checklist, national codes, and as expounded in the case law of the CJEU and the ECtHR.
- 2) To raise participants' awareness of how this principle could and should play a role in their daily (professional) lives, in particular when interplaying with different forms of accountability and quality requirements;
- 3) To boost the skills of the participants in recognising issues relating to judicial independence/accountability in their everyday work and life and quality, and how to (re)act;
- 4) To hear experiences of European colleagues and to increase mutual understanding.

Outcomes. After the seminar, it is expected that the participants will have:

- Increased knowledge of the concepts of independence and accountability in general;
- Experience in reflecting on how these values influence their work and lives as judge (their own as well as that of their European colleagues);

Ideally, increased awareness and knowledge of how to protect and uphold these values in their work as judges.

¹⁵ See for instance "Matters of Principle": <https://www.rechtspraak.nl/SiteCollectionDocuments/Matters-of-principle.pdf>

Draft Programme

Day-and-a-half training comprising four lectures and one workshop. Participants in this event will devote their time to being introduced to the elements and principles of the Rule of Law. All the lectures and workshop sessions will be led by experienced judges, practitioners and trainers, who will guide the selected Judges through the course of their work.

The training will also serve as a forum for the exchange of knowledge and best practices between judges from across the EU and six Western Balkan states.

29 October 2018

Moderator: Franciso Puig

08.45-09.00	Participant registration	
9.30-10.00	Welcome Address Presentation of the European Judicial Training Network and of the Project	Ms Nuria Diaz Abad
10.00-10.45	Topic Opening speech/Keynote speech: ‘The elements of the rule of law, including judicial independence’ <ul style="list-style-type: none"> - <i>What is the Rule of Law?</i> - <i>Where/how has it been laid down / where can you find it?</i> - <i>Why and how is Rule of Law (all the various aspects) important for judges in their everyday work and practice?</i> Q&A	
10.45-11.15	Group Photo & Coffee break	
11.15-11.45	Topic ‘The grey areas of judicial independence’ <ul style="list-style-type: none"> - <i>How and why is judicial independence (including impartiality) important for judges in their daily work?</i> - <i>Judicial independence ‘in the books’ versus Judicial independence ‘in action’ and the grey areas in between</i> Q&A	Mr Dovydas Vitkauskas
11.45-13.00	Working Group sessions (4 parallel sessions) – case studies / dilemmas on the grey areas of judicial independence <i>In these sessions, the participants are invited to reflect upon and discuss a number of fictitious but realistic situations and dilemmas related to judicial independence, for instance judges’ need for reserve vs freedom of speech and association, independence of an individual judge vs the need for consistent case law, discretion of a judge to interpret the law vs the separation of powers, independence vs allocation of cases, etc.</i> <i>References will be made to relevant documents on judicial independence from the United Nations, Council of Europe, European Union, as well as to case law of the CJEU and the ECtHR.</i>	Break-out sessions in four groups: working under guidance of a coordinator’s group (for each group, the coordinator will be one of the trainers) on one or more topics established before the start of the seminar by the trainers and using the methods mentioned above. All topics must, as a minimum, have a common thread, common features. Group 1: Dovydas Vitkauskas Group 2: Andrea Chis Group 3: Herman van Harten Group 4: Stanislas Adam
13.00-14.30	Lunch Break (TBC)	
14.30-16.00	Continuation of the working group sessions on the grey areas of judicial independence <i>The participants will work in the same groups as they did in the morning</i>	
16.00-16.30	Coffee Break	
16.30-17.30	Continuation of the working group sessions on the grey areas of judicial independence <i>The participants will work in the same groups as they did in the afternoon</i>	

17.30	End of First Day	
19.30	Official Seminar Dinner @ (TBC)	
30 October 2018		
Moderator: Franciso Puig		
09.15-09.30	Arrival and registration of the participants	
09.30-10.00	Topic ‘Tensions between judicial independence, accountability and quality’ <ul style="list-style-type: none"> - <i>How do judicial independence, accountability and quality interact?</i> - <i>Where can they strengthen each other, and where are there tensions?</i> Q&A	Andrea Chis
10.00-11.15	<p>Working Group sessions (4 parallel sessions) – scenarios and mapping tensions between judicial independence, accountability and quality.</p> <p>In these sessions, the participants are invited to reflect upon and discuss about questions such as:</p> <ul style="list-style-type: none"> - <i>What are the participants’ experiences of the interaction between judicial independence, accountability and quality?</i> - <i>Where they have experienced tensions: what did they do about it or would like to be done to resolve the tensions?</i> - <i>What challenges do the participants see in their own work environment in the (near) future; and how do they think they will (be able to) react?</i> 	<p>Group 1: Franciso Puig (TBC)</p> <p>Group 2: Andrea Chis</p> <p>Group 3: Herman van Harten (TBC)</p> <p>Group 4: Stanislas Adam</p>
11.15-11.45	Coffee break	
11.45-12.30	<p>Closing Session: ‘Bringing all together’</p> <p>By: Franciso Puig</p>	
12.30-12.45	Closing remarks, Next steps for the project. Evaluation of the Training by the Participants (Submission of Evaluation Forms)	
12.45	Departure of the Participants	

SPEAKERS

Andrea Chis

Dovydas Vitkauskas

Francisco Puig

Stanislas Adam

Herman van Harten

ANNEX 9a – the RoL seminar’s agenda for prosecutors

10 -11 December 2018

National Institute for Magistracy, Bucharest, Romania

[RoL/2018/03]

Background to the project:

Following the decision of the European Commission (DG Justice and Consumers Directorate-General) to allocate a grant to organise a series of seven seminars including one webinar; to draft the Manual/Practitioners Guide on aspects of rule of law, and the Training Strategy Guide on the rule of law to be used by EJTN members in 2018 and 2019, together with Tipik communications agency EJTN responded and agreed to implement these tasks. The tasks form part of the European Commission's strategy for the effective implementation of the EU Charter of Fundamental Rights.

The main objective of these 7 seminars is to make the participants reflect on the international and national standards of Rule of law, and to address aspects of the protection of fundamental rights and the rule of law as reflected in the ECJ and ECHR case law, by increasing understanding of the role and daily obligations of judges and prosecutors in their private and professional duties, and fostering and enhancing awareness among judges and prosecutors of the EU Member States and 6 Western Balkan countries.

The seminars, together with the other deliverables, aim to increase coherence and complementarity among existing training module materials on the topic of rule of law all across the EU and six Western Balkan nations (Albania, Bosnia and Herzegovina, Macedonia, Montenegro, Serbia and Kosovo).

Background to the seminar:

International documents¹⁶ emphasise the crucial role of the prosecution services and prosecutors in contributing to the rule of law being guaranteed in all European legal systems.

Prosecutorial systems vary throughout Europe and they are rooted in different legal cultures: there are important differences between systems which are adversarial in nature and those which are inquisitorial, systems that are driven by the legality principle (prosecution is mandatory) and others driven by the opportunity principle (the prosecutor has discretion to prosecute or not according to the public interest), systems recognise the interests of the victim (as a *partie civile/complainant*) in the outcome of criminal proceedings, while others recognise only a contest between the prosecutors representing the public interest or the state and the individual accused¹⁷.

Despite this variety, there are common values that demonstrate that in all European systems, prosecution services and prosecutors ensure that the rule of law is guaranteed, specifically by the fair, impartial and efficient administration of justice in all cases and at all stages of the proceedings within their competence.

This seminar will be held in Bucharest, and its objective is to stress the common values of the rule of law principles for prosecutors and prosecution services, despite the variety in prosecution systems throughout Europe.

The starting point for the seminar is that prosecutors in all European legal systems know the key issues and the common values of the Rule of Law. But what it is important for them is to know how these different systems respond to the various challenges relating to the Rule of Law and how to implement mechanisms to prevent, correct and sanction abuse of the Rule of Law system in their daily activities.

Required profile of the participants:

- Prosecutors, from EU Member States and the six Western Balkans countries
- A good command of the English language
- Willing to participate actively in discussions and to share experiences in the field of prosecutorial tasks and duties

The goal of the seminar is:

1. To stress the common values of the rule of law principles for prosecutors and prosecution services, despite the variety in prosecution systems throughout Europe.
2. To familiarize prosecutors from across the European Union with key issues and common values of the Rule of Law
3. To know how these different systems respond to the various challenges relating to the Rule of Law and how to implement mechanisms to prevent, correct and sanction abuse of the Rule of Law system in their daily activities.

Additional objective for the project:

- 1) To collect information and materials that can be of use for drafting a Training Strategy and Practitioner's Manual.

After the seminar, it is expected the participants will:

¹⁶ International documents: Opinion No.9 (2014) of the Consultative Council of European Prosecutors to the Committee of Ministers of the Council of Europe (here the Rome Charter); Conference of Prosecutors General of Europe, 6th session, European Guidelines on Ethics and Conduct for Public prosecutors – "The Budapest Guidelines", 31 May 2005.; Recommendation Rec(2000)10 of the Committee of Ministers to member states on codes of conduct for public officials, 11 May 2000.; 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.; 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; 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; Consultative Council of European Prosecutors (CCPE), Opinion No. 8(2013) on relations between prosecutors and the media, 9 October 2013; UNODC/IAP Guide on the status and role of prosecutors (2014).

¹⁷ See the Rome Charter and Venice Commission: Report on European standards as regards the independence of the judicial system, Part II – the prosecution service.

- Have increased awareness of prosecutors' role and duty in promoting rule of law, as well as awareness of the importance that prosecutors internalise rule of law doctrine and rule of law values;
- Know how to apply the rule of law in daily decision-making;
- Know how to apply ECHR and ECJ case law and standards as a guiding hand when making decisions and exercising discretionary powers, thereby ensuring that the rule of law is respected;
- Boost the ability of prosecutors to preserve public confidence in upholding the rule of law by demonstrating that they themselves are also subject to the same laws;
- Have increased awareness of the importance of transparency in prosecutors' decisions;
- Know how to apply human rights standards in supervising and when cooperating with police in order to maintain the rule of law.

Ideally, increased awareness and knowledge of how to protect and uphold these values in their work as prosecutors.

Draft Programme

Day-and-a-half training comprising three lectures and four workshops. Participants in this event will devote their time to being introduced to the elements and principles of the Rule of Law. All the lectures and workshop sessions will be led by experienced prosecutors, practitioners and trainers, who will guide the selected prosecutors during the course of their work.

The training will also serve as a forum for the exchange of knowledge and best practices between prosecutors from across the EU and the Western Balkan states.

10 December 2018

Moderator: Rainer Franosch

08.45-09.00	Participant registration	
9.00-9.15	Welcome Address Presentation of the European Judicial Training Network	Wojciech Postulski (EJTN Secretary General)
9.15-10.30	Topic: Opening speech/Keynote 'The challenges of the Rule of Law and of international and European standards of the Rule of Law, as it relates to prosecution systems' <ul style="list-style-type: none"> What Is the Rule of Law? The international standards regarding the rule of law for prosecution services and prosecutors (international documents, the ECJ and ECtHR case law); Why is Rule of Law important for prosecution services and prosecutors? <p><i>Followed by a Q&A (moderated by the day's chair, who also keeps track of time)</i></p>	Francis Cassidy Peter McCormick
10.30-10.45	Group Photo & Coffee break	
10.45-12.00	Workshop I 3 Working groups on the topic of 'specificity of the principle of the rule of law' <i>The group of participants will be split into three groups. The programme will be the same for all groups, but the outcome of the discussions may be very different in the different groups. 'Participants in each working group would be asked to address one or more concrete case studies related to the topic aimed at helping participants apply 'theory' to their daily practice'.</i>	Group 1: Varga Romulus Group 2: Slavica Dokic Group 3: Rainer Franosch
12.00-12.45	Plenary, General comments on: "Is criminal procedure only a matter of the state?" <i>All states regard criminal prosecution as a core function of the state: a crime is a wrong against society (although in many cases is a wrong against an individual too). This is why most states provide for a monopoly on criminal prosecutions by the state or a body of the state:</i> <ul style="list-style-type: none"> Do 'parallel justices' threaten the Rule of Law in European countries? Is criminal justice a monopoly of the state or could certain communities (Roma people, Muslims communities etc.) be permitted to have their own judiciary (informal tribunal, police, a kind of prosecutorial system)? The mandatory/legality principle or the discretionary/opportunity principle of whether or not to prosecute in a specific case: does discretionary prosecution contradict fundamental human rights, such as the principle of equality and the presumption of innocence, and does it ensure the right to a fair trial? Does the 	Rainer Franosch

	<p>mandatory/legal principle of whether or not to prosecute infringe the independence/autonomy of prosecutors?</p> <ul style="list-style-type: none"> The prosecutor's possibility of reaching a plea agreement with the accused: advantages and risks of this possibility related to fundamental human rights (the presumption of innocence, the right to a fair trial etc.) <p>Followed by a Q&A (moderated by the day's chair, who also keeps track of time)</p>	
12.45-13.30	Lunch Break @ National Institute for Magistracy	
13.30-14.45	<p>Workshop II</p> <p>3 Working groups on the topic "Is criminal procedure only a matter of the state?"</p> <p>The group of participants will be split into three groups. The programme will be the same for all groups, but the outcome of the discussions may be very different in the different groups. 'Participants in each working group would be asked to address one or more concrete case studies related to the topic, aiming to help participants apply 'theory' to their daily practice'.</p>	<p>Group 1: Varga Romulus Group 2: Slavica Dokic Group 3: Rainer Franosch</p>
14.45-15.00	Coffee Break	
15.00-15.30	<p>Moderators of the working groups will present the outcome of discussions of each working group of workshop 1 and workshop 2.</p> <p>Q & A – the speaker of the plenary will address the participants to put questions related to the outcomes.</p>	
15.30-16.00	<p>Plenary on the topic, "Understanding and abiding by prosecutorial ethics in the exercise of prosecutorial decision-making"</p> <p>'A transparent and robust prosecution service with strong ethics and integrity based on the rule of law guarantees the independence/autonomy and impartiality of prosecution services and prosecutors, especially in making decisions as to whether to charge an accused person, whether to discontinue proceedings, what information to disclose etc.':</p> <ul style="list-style-type: none"> How do professional ethics interact with the duty of prosecutors to 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; How and why it is essential for the proper administration of justice and for the respect of the highest professional standards the sharing of common legal principles and ethical values by all prosecutors involved in the legal process; Should codes of professional ethics and of conduct based on international standards be adopted and made public? Why or why not do codes of ethics and of conduct need be adopted and why or why not should they be made public? <p>Followed by a Q&A (moderated by the day's chair, who also keeps track of time)</p>	<p>Francis Cassidy</p>
16.00-17.00	<p>Workshop III</p> <p>3 Working groups on the topic "Understanding and abiding..."</p> <p>The group of participants will be split into three groups. The programme will be the same for all groups, but the outcome of the discussions may be very different in the different groups. 'Participants in each working group would</p>	<p>Group 1: Varga Romulus Group 2: Slavica Dokic Group 3: Rainer Franosch</p>

	<i>be asked to address one or more concrete case studies related to the topic aiming to help participants apply 'theory' to their daily practice'.</i>
17.00-17.30	<p><i>Discussion of the results of Workshop III</i></p> <p><i>Moderators of the working groups will present the outcome of discussions of each working group.</i></p> <p><i>Q & A – the speaker of the plenary will address to participants to put questions related to the outcomes.</i></p>
17.30	End of First Day
19.30	Official Seminar Dinner @ Lacrimi și Sfinți str. Șepcari, Bucharest 030167, Romania (up to 10 minutes' walk from the hotel)

11 December 2018

Moderator: Rainer Franosch

08.45-09.00	Arrival and registration of the participants	
09.00-9.30	<p>Plenary, General remarks "Understanding the role of the hierarchical system of the prosecution services"</p> <p><i>"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" (Rome Charter):</i></p> <ul style="list-style-type: none"> <i>How do independence or autonomy, accountability and quality interact with hierarchical or non-hierarchical prosecutorial systems?</i> <i>Is impartiality in the conduct of a criminal prosecution assured in the hierarchical structure of the prosecutorial system?</i> <i>Should guarantees of non-interference in the prosecutor's activities be developed in both systems, hierarchical and non-hierarchical? What is the content of these guarantees and how could the existence or non-existence of these guarantees influence the daily work of prosecutors?</i> 	Peter McCormick
9.30-11.00	<p>Workshop IV</p> <p>3 Workshop groups on the topic "Hierarchical system..."</p> <p><i>The group of participants will be split into three groups. The programme will be the same for all groups, but the outcome of the discussions may be very different in the different groups. 'Participants in each working group would be asked to address one or more concrete case studies related to the topic aiming to help participants apply 'theory' to their daily practice'.</i></p>	<p>Group 1: Varga Romulus</p> <p>Group 2: Slavica Dokic</p> <p>Group 3: Rainer Franosch</p>
11.00-11.15	Coffee break	
11.00-12.00	<p><i>Discussion of the results of Workshop IV</i></p> <p><i>Moderators of the working groups will present the outcome of discussions of each working group.</i></p> <p><i>Q & A – the speaker of the plenary will address to participants to put questions related to the outcomes.</i></p>	
12.00-12.15	Closing Words 'Bringing it all together' and Evaluation of the Training by the Participants (Submission of Evaluation Forms)	
12.15	Departure of the Participants	

SPEAKERS

Romulus-Dan Varga	Chief Prosecutor at the Prosecutor's Office attached to the High Court of Cassation and Justice (HCCJ) (Romania)
Slavica Dokic	Deputy State Attorney at the Municipal State Attorney's Office in Pula, seconded to the State Attorney's Office (Republic of Croatia)
Rainer Franosch	Deputy Head of the Department for Criminal Law, Hessian Ministry of Justice (Germany)
Peter McCormick	President, Consultative Council of European Prosecutors, Council of Europe (Ireland)
Francis Cassidy	National Member for Ireland at Eurojust (Ireland)

ANNEX 9a – the second RoL seminar’s agenda for justice leaders

4-5 April 2019
Scuola Superiore della Magistratura – Villa Castel Pulci Scandicci/
Florence

[RoL/2019/03]

Draft Programme

Day-and-a-half training comprising five lectures and ten workshops. Participants in this event will devote their time to the exchange of knowledge and best practices between members of Judicial Councils and of Prosecutorial Councils from across the EU and the Western Balkan states.

Audience of the seminar: members of Judicial Councils and of Prosecutorial Councils

- A good command of the English language
- Willing to participate actively in discussions and to share experiences in the field of judicial independence

4 April, 2019		
08.50-09.00	Arrival and Registration of the participants	
09.00-9.10	Welcome by the Scuola Superiore della Magistratura	Luisa NAPOLITANO , Deputy-President of the Scuola Superiore della Magistratura
09.10-9.20	Welcome by EJTJN	Giorgos KLIS , EJTJN Secretariat
09.20-9.30	Welcome by ENCJ	Kees STERK , President of the European Network of Councils for the Judiciary (ENCJ) and vice-chairman of the Netherlands Council for the Judiciary.
09.30-09.40	Opening by the activity coordinator	Luca PERILLI , Member of the Board of Directors of the Italian School for the Judiciary (SSM) and representative of the EJTJN HFR SWG
	FIRST SESSION INDEPENDENCE comparative perspectives Chair Andrea Anna Maria CHIS Representative of the European Network of Councils for the Judiciary (ENCJ) and member of the Romanian Council of Magistracy	
09.40-10.10	Plenary: Speech 1 The rule of law. The role of judicial Councils	Kees STERK , President of the European Network of Councils for the Judiciary (ENCJ) and vice-chairman of the Netherlands Council for the Judiciary.
10.10-10.40	Speech 2 The rule of law. The prosecutors.	Richard BARRETT , Chair of the Venice Commission's Sub-commission on the Judiciary
10.40-11.20	Debate	
11.20-11.50	Coffee break	
11.50-13.00	(division of participants into four groups coordinated by four facilitators, according to the snowball methodology) Group 1: Recruitment of judges and prosecutors/ Irremovability Group 2: Appointment of presidents of courts and chief prosecutors Group 3: Promotion of judges and prosecutors/Career (special focus on High Courts)	Break-out sessions in four groups using snowball methodology and according to guidelines established in advance. Group 1 (Judges and prosecutors) – Richard BARRETT Group 2 – (Council members) Kees STERK Group 3 – (Judges and prosecutors) Luca Perilli Group 4 – (Council members) Andrea Anna Maria CHIS

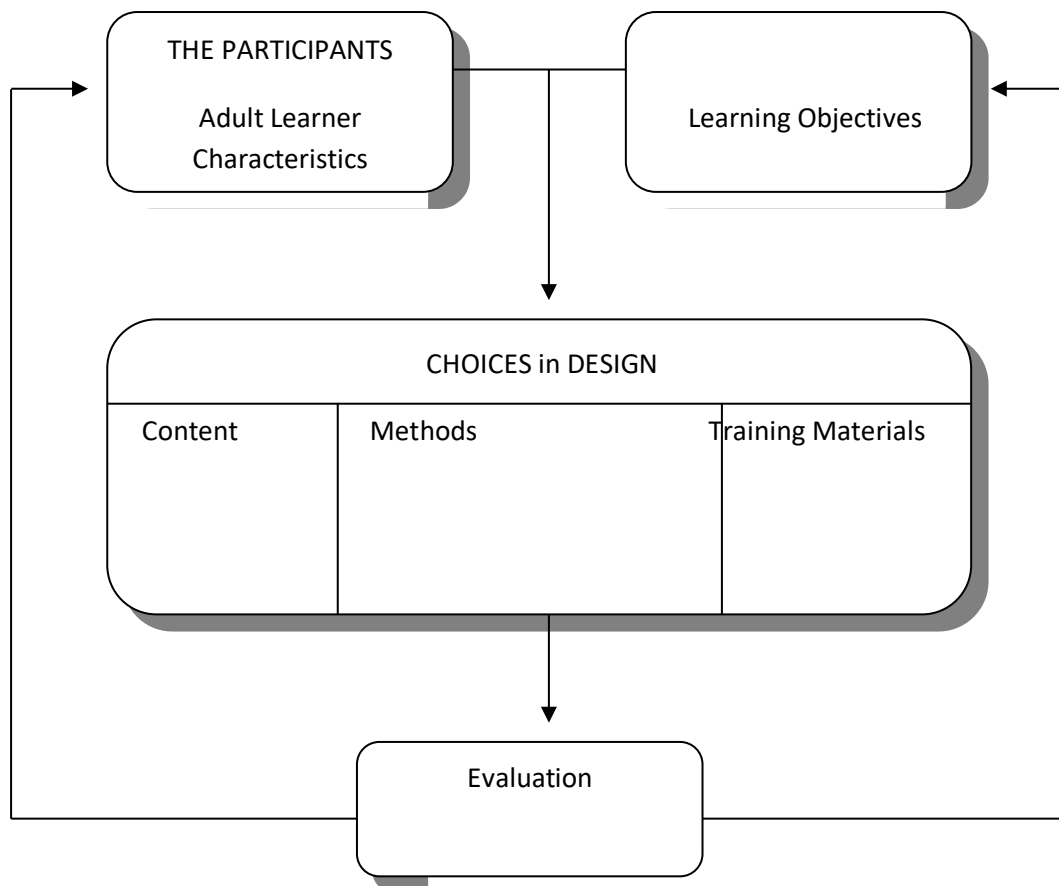
	Group 4: How to defend the judiciary as a whole and individual judges and prosecutors from external attacks or influences.	
13.00-13.45	Lunch Break	
13.45-14.15	Visit to the Villa Castel Pulci	
14.15-14.45	Reports from the groups' work (5 minutes per rapporteur)	
	SECOND SESSION ACCOUNTABILITY Chair Filippo DONATI , <i>President of the (ninth) international commissio of the Italian High Judicial Council (CSM)</i>	
14.45-15.15	Plenary: Speech 3 Judicial accountability	Philip LANGBROEK , Utrecht University
15.15-15.45	Debate	
15.45-16.00	Coffee Break	
16.00-17.00	(division of participants into three groups coordinated by four facilitators, according to snowball methodology) Group 5: Transparency of Councils' procedures and decisions Group 6: Judicial review of Councils' decisions Group 7: Individual professional evaluations of judges and prosecutors. Aims and outcomes.	Break-out sessions in three groups using snowball methodology and according to guidelines established in advance. Group 5 – (Council members) Philip Langbroek Group 6 – (Council members) Andrea Anna Maria CHIS Group 7 – (Judges and prosecutors) Luca Perilli
17.00	End of First Day	
19.30	Official Seminar Dinner @ (TBC)	

5 April 2019

09.00-09.20	Reports form the groups' work (5 minutes per rapporteur)	
	THIRD SESSION EFFECTIVENESS comparative perspectives Chair Luca Perilli Member of the Board of Directors of the Italian School for the Judiciary (SSM) and representative of the EJTN HFR SWG	
09.20-10.20	Plenary: Speech 4 The quality of justice. Speech 5: Trust and communication	Francesco Contini , IRSIG-CNR Andrea Anna Maria CHIS Representative of the European Network of Councils for the Judiciary (ENCJ) and member of the Romanian Council of Magistracy
10.20-10.50	Debate	
10.50-11.20	Coffee break	

11.20.12.20	<p>(division of participants into three groups coordinated by four facilitators, according to snowball methodology)</p> <p>Group 8: Efficient allocation of resources (human, financial and capital).</p> <p>Group 9: External transparency and external communication.</p> <p>Group 10: Evaluation of the quality of judicial performance and judicial service.</p>	<p>Break-out sessions in three groups using snowball methodology and according to guidelines established in advance.</p> <p>Group 8 – (Council members) Luca Perilli</p> <p>Group 9 – (Council’ members) Andrea Anna Maria CHIS</p> <p>Group 10 – (Judges and prosecutors) Francesco Contini</p>
12.20-12.40	<p>Reports form the groups’ work (5 minutes per rapporteur)</p> <p>Q&A – Discussion</p>	
12.40-12.50	Closing Words ‘Bringing it all together’ and Evaluation of the Training by the Participants	
12.50-13.00	Final remarks (by EJTN/host/chair of the seminar), Next steps for the project	
13.00	Departure of the Participants	

A MODEL FOR A COURSE DESIGN



1. Set the course goals and learning objectives

Ask the questions: 'How should the participants be different when they finish this course' (attitude)? What should they know or be able to do after this course? (knowledge and skills). Describe the goals in terms of behaviour (use verbs!)

2. Consider the learner characteristics

Adult learner characteristics:

- *background and pre-knowledge on the subject*
- *their motivation to take the course*
- *group profile*

3. Select course content

Make sure the most important topics are included. Strike a balance: there must be sufficient content to make the course challenging but not so much content that you will have to rush from one topic to the other.

4. Choose a method and technique for training

A wide range of training methods are described below but their utility very much depends on the goals and learning objectives of the course and the profile of the adult learners.

5. Plan the course.

Use the structure: introduction, core, evaluation. Create a logical chain for the learning process.

6. Select and prepare reading materials and activities (media, devices)

Think of a combination of textbooks, articles and other media for reading material.

7. Write the course material and the assignments for the participants

Work out everything you need during the course: sheets, notes, handouts, abstracts, assignments, answers to assignments, appendixes etc.

8. Design the evaluation tools

You want to know whether the participants have achieved the goals and how they felt about the course. This is the information you need for revision.

ANNEX 10a

Content of training: Key elements

The structure and topics tackled in the six seminars about the RoL in 2018 and 2019 may provide an idea of the key elements that should be the objectives for training in the RoL.

SEMINAR NR. 1: Upholding the Rule of Law in practice, a crucial role of judges and Prosecutors

Speeches: Setting the Scene: International and European standards.

Independence/activism in the age of Populism

Working Groups:

Relationship between judges and prosecutors in work environment and vis-à-vis other state powers (with four subgroups with different topics)

Security of tenure of judges and prosecutors (with four subgroups with different topics)

Public discussion and criticism of judges and prosecutors: the role of the media and public trust (with two subgroups)

SEMINAR NR. 2: Independent Judges as a cornerstone of the Rule of Law.

Speeches: Elements of rule of law. Theoretical approach.

Elements of rule of law: European case Law.

Working Groups:

The Grey Areas of judicial independence: judicial independence in the books vs. judicial independence in action: the grey areas in between.

Tensions between judicial independence, accountability and quality

SEMINAR NR. 3: The prosecutors and their essential role for the Rule of Law

Topic 1: The challenges of the Rule of Law and of international and European standards of the RoL related to the prosecutorial system. Introductory speech, plus WGs on particular aspects.

Topic 2: Is criminal procedure a matter only for the state? WGs: Parallel Justice; discretionally in prosecution and equality; plea arrangements and the RoL.

Topic 3: Understanding and abiding by prosecutorial ethics in the exercise of prosecutorial decision making. How professional ethics interact with the duties of prosecutors; why share ethical values - should they be included in international standards, should they be made public.

Topic 4: Understanding the rules of the hierarchical system of prosecution services. The question of independence in the hierarchical system and its guarantees.

SEMINAR Nr. 4: Upholding the Rule of Law in practice, a crucial role of judges and Prosecutors

Speeches: Setting the Scene: International and European standards.

Independence/activism in the age of Populism

Working Groups:

Topic 1: i. Selection of judges and prosecutors: the role of peers and of outside influences.

ii. Career development of judges and prosecutors, and possible changes in work positions (e.g. organisational changes, transfer, assignment of cases and term of office)

iii. Behaviour of judges and prosecutors inside and outside the court room (e.g. relationships to one another; political activities; private life activities etc)

iv. Interaction between prosecutors and judges, between courts and between judiciary and other state powers (e.g. guarantees against outside pressure; possible removal from office, possible action).

Topic 2: Selected aspects of independence:

Topic 3: Judicial and prosecutorial integrity: standards of ethical and professional conduct

- i. Concept of accountability vis-à-vis independence and public trust
- ii. Transparency of the judiciary and the prosecutor's office
- iii. Pre-determined activities that judges and prosecutors are forbidding from pursuing.
- iv. Critical voices within the judiciary/prosecutor's office.

Topic 4: Public discussion and criticism of judges and prosecutors: the role of the media and public trust.

SEMINAR NR. 5: The Rule of Law: Independence and Accountability of the Judiciary and Effective Judicial Protection

Topic 1: INDEPENDENCE

Speeches: The rule of law: the role of judicial councils

The rule of law: prosecutors

Working Groups:

- i. Recruitment of judges and prosecutors. Irremovability
- ii. Appointment of presidents of courts and chief prosecutors
- iii. Promotion of judges and prosecutors/career
- iv. How to defend the judiciary as a whole, and individual judges and prosecutors, from external attacks or influences

Topic 2: ACCOUNTABILITY.

Speech: Judicial accountability

Working Groups:

- i. Transparency of the council's procedures and decisions
- ii. Judicial review of council decisions
- iii. Individual professional evaluation of judges and prosecutors.
Aims and outcomes

Topic 3: EFFECTIVENESS

Speeches: The quality of justice

Trust and communication

Working Groups:

- i. Efficient allocation of resources (human, financial and capital).
- ii. External transparency and external communication
- iii. Evaluation of the quality of judicial performance and judicial service.

SEMINAR NR. 6: The Rule of Law: Independence and Accountability of the Judiciary and Effective Judicial Protection

Topic 1 INDEPENDENCE

Speeches: Independence of the judiciary

Independence and autonomy of prosecutors

Working Groups:

- i. Allocation of cases to judges. Non-voluntary transfer of judges to different tasks.
- ii. How to ensure consistency of case law. Guidelines., best practices.

- iii. Assignment and re-assignment of cases to prosecutors, Non-voluntary transfer to different tasks. Effective organisation of prosecutorial offices. Hierarchical structure. Instructions.

Topic 2: ACCOUNTABILITY.

Speech: Judicial accountability

Working Groups:

- i. Ethics
- ii. Individual professional assessment for judges
- iii. Individual professional assessment for prosecutors

Topic 3: EFFECTIVENESS

Speeches: Organisation of judicial offices

External communication

Working Groups:

- i. Plans to reduce of trial backlogs and duration, planning and reporting.
- ii. Transparency and external communication. Social balances

ANNEX 10b

THE ROL TRAINING AGENDA.

Checkpoints

WHEN PLANNING A TRAINING PROGRAMME – there are eight checkpoints that we recommend in the design phase:

C 1: What is the topic of the training seminar?

C 2: What is the profile of the participants? (judges, prosecutors, mixed group, leaders in the judiciary etc.)

C 3: What are the learning objectives? (what knowledge/skills/ professional attitudes is the learning aiming to achieve?)

C 4: Which learning points will be covered in the time given?

C 5: What are suitable training methods for achieving the learning objectives?

C 6: What training materials, reference materials and equipment should be used?

C 7: What evaluation tool is used?

C 8: How will the impact of the training programme on the future activities of the judges/prosecutors be measured?

ANNEX 11

DISCUSSIONS

To use them in an effective way, discussions can be structured in different ways depending on the results sought:

Brainstorming is the name given to a situation when a group of people meet to generate new ideas around a specific area of interest. Using rules that remove inhibitions, people are able to think freely and move into new areas of thinking and generate numerous new ideas and solutions. The participants come up with ideas as they occur to them. All of the ideas are noted down on a flip-chart by the trainer and are not criticised. Only after the brainstorming is over does the trainer point out the conclusions and make the necessary corrections.

Snowballing. This method has been designed to facilitate work with complex ideas. It might start with a task to be solved in pairs. Two pairs share their ideas and summarise them. The group of four joins another group of four and they discuss their two main ideas on the problem to be solved and again reduce them to one. The two groups of eight participants, if the large group is of 16, discuss their common understanding of the issue under discussion. The final set of ideas are evaluated in the plenary.

The question-answer procedure is the skeleton of **the guided discussion**. It can be used before or after any presentation. It can be a lead-in exercise in which the trainer introduces the subject matter, or it can be a break in the trainer's presentation to check whether the participants are tuned in, interested and in the right area of learning.

Small groups of 2-3 participants can be involved in exercises before or after a PowerPoint presentation. Judges can be asked to analyse a particular problem, solve it and then report back, answer a specific question and report back. The discussions in small groups are informal. It is a way to keep the large group concentrating if the presentation is about a complicated topic.

In contrast to lectures, **debate** uses hypothetical questions to ask the judicial trainees to draw conclusions through their own reasoning process. The aims are to stimulate thinking, reasoning and debate. There is no correct answer from the standpoint of the trainer. The hypothetical question merely offers the trainees a mechanism to process the ideas, leading to a conclusion. At the end of each successful debate session, each participant will adopt a standpoint on the issue (either on a voluntary basis or by appointment).

The Socratic method is the method of inquiry and instruction employed by Socrates, especially as represented in the dialogues of Plato and consisting of a series of questionings whose scope is to elicit a clear and consistent expression of something supposed to be implicitly known by all rational beings.

ANNEX 12

PROBLEM SOLVING

Problem solving is a training method used to identify problems, analyse them and find suitable ways to correct them. The manner in which solving problems can be approached varies from one problem to another. Here is a list of possible approaches:

A **case study** is the presentation of a specific incident, or scenario, with relevant background information, that is analysed in detail with a view to the identification of a solution. It creates an opportunity to understand and apply principles and rules to a real or imaginary scenario. Case studies do not usually provide clear-cut answers. They are intended to raise questions and allow participants to work through the decision-making process to find their preferred solutions.

A case study can occupy a session unit within a training event or can be undertaken on an extended basis, being worked through as the training progresses (e.g. fully analysing a case from beginning to end, with requests for participation by trainees during different phases).

Critical incidents are short scenarios that present a concrete situation proposed by the trainer to be analysed by the participants. The scenarios are the content/judicial problem prepared by the trainer to facilitate the sharing of experience in finding solutions. Group discussions can be in small groups (up five participants) or large groups (20-25). In this case the discussions are facilitated by the trainer.

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