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**The quality of the training of Magistrates and common European
standards
for judicial training**

THEME 3

Assessment of the quality of training

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ASSESSMENT OF THE QUALITY OF TRAINING SESSIONS

- I. Assessment of the training sessions. It is actually necessary?
How to do it?
- II. Assessment of conditions that have to precede good-quality training
- III. Assessment of each training session
- IV. Assessment of the outcome of training sessions
- V. Conclusions

I. Assessment of the training sessions. It is actually necessary? How to do it

The necessity

1. High-quality justice relies on high-quality training. Therefore, any institution that becomes committed to this kind of task will have to assess and measure the quality of training sessions that have been held in order to make sure – above all – that justice, as a public service, is provided at a high-quality.

2. Therefore it should be pointed out along these lines that creating a European Justice Area without European training standards is hardly conceivable.

The European Justice Area relies on several pillars: common institutions, unified legal norms and European magistrates to apply them. As far as institutions are concerned, we speak of a European Prosecutor's Office and a European Judicial Police; a European Tribunal is already in place and covers two jurisdictions and it is desirable to have a European training school for magistrates in the not so distant future. Joint training of magistrates involves – by its very nature – the quality standards mentioned above.

Magistrates sharing a minimum set of values, sensitive to the European matters, able to communicate among themselves and capable to apply the common norms uniformly, all these issues are as many necessary ingredients. The unified legal norms and the magistrates who have a European vocation to apply these norms call for well-trained and well-informed magistrates so much the more.

Even in a wider framework, the outset of training activities for magistrates open to any participant, regardless of their home country must rely on joint pre-existing standards of training quality.

3. It should also be pointed out that the training of magistrates is part of a wider approach concerning the establishment of quality standards, as a culture which is ever more concerned with quality and with the evaluation of these standards. It comes in as obvious that justice could not be left out of that. So much the more as, since, when we are talking about justice reforms, it is precisely the training institutions that should be supporting these changes.

4. Not lastly, on top of everything, we should also be considering the recent changes that have occurred in terms of how the public relates to magistrates. In fact, the growing demand of the public calls for more specific obligations of the latter in terms of ethics, transparency and quality. Which makes one more reason to take high-quality training into consideration.

These are the reasons why we are approaching the assessment of the quality of training and even a European quality standard of training activities.

Actually the Consultative Council of European Judges¹ has already stressed the need to assess training activities: "*in order to improve the quality of the training of magistrates constantly, the body in charge of training should control the programmes and methods on a regular basis*".

How to do it

The assessment of the quality of training relies on the definition of the following notions: **assessment**, **quality** and **training**.

There is whole range of **assessment** types, methods and manners. We can assess the programmes, the trainers, the trainees, the material conditions, the instruments, the context of the training session; we can also assess the state of affairs from time to time or the progress that has been made over a certain span of time; we can make an objective or subjective assessment; we can also resort to summative assessment – *i.e.* at the end of the process, the assessment of the whole process - formative assessment – *i.e.* during the actual training course, to check whether the training session is on the right track; there is also a type of comparative assessment which relates to other types of training, also self-evaluation etc.

¹ Avis no 4 (2003) par. 38 et 42;

All of these forms, methods and types of assessment are not necessarily applicable in the case of assessing how magistrates are trained. There is a number of specifics of the profession of magistrates that restricts the range of choices. Independence runs against a too scholarly assessment of the outcome of training sessions². The fact that this is a profoundly intellectual profession plus the standing characteristic of constantly more information being acquired in the process of doing this job, which is inherent to it, adds more complexity to the assessment. And measuring the impact that training of every magistrate has on the quality of justice proves to be even more difficult a task.

Therefore, we must resort to alternative or indirect ways of measuring the quality of training. An alternative method of this kind would be to measure the organisation of the training session: more specifically, control the way in which the training session is organised, to see whether every measure has been taken to make sure that training is of good quality. Secondly, we must also try to measure indirectly the outcome of the training session, at least when it comes about continuous training of sitting judges and prosecutors. But that involves the existence of justice quality standards: the existence of a mechanism/system based on which to measure these standards and the identification, as part of this system, of the criteria that training may influence and the need to measure the evolution of these elements.

Following the same approach used for the assessment, we can – as far as **training** is concerned – only focus on what the trainer actually does during the training course so that trainees learn the same thing (the teaching engineering); or, widening the scope, to include in the scope of the analysis the architecture of the training course (the training engineering), the examination of the purposes and objectives of the training institution, the choice of the training methods, which actually means to look into the policy of that educational institution (the engineering of the steering process).

Lastly, in what concerns **quality**, we have to research into the content of the notion, in the context of magistrates' training. As far as we are concerned, high-quality training means training which focuses successfully on the needs of the system, training that reaches its target, that is adjusted to the social context and makes efficient use of the resources it has. Once more, we believe that the development of justice quality standards and of a mechanism to measure them on a regular basis is essential.

² “The in-service training of sitting judges can only bear fruit if their participation in training programmes is unrestricted and not influenced by career-wise considerations” – Consultative Council of European Judges (CCEJ), Opinion no. 4 (2003) par. 39 et 42;

Given all of the considerations above, the conclusion is that the assessment of training quality has to be taken into account as follows:

- At different times: before the actual training (the organisation of the training – the training and steering engineering), during the training (teaching engineering) and after the training (the assessment of the outcome – indirect methods to assess these results).
- sometimes, the analysis should take place separately for initial and continuous training.

The recommendations that have been made by means of various instruments of the Council of Europe in relation to this model will be presented. The Romanian experience will be added as the case may be.

II. Assessment of the preliminary conditions of high-quality training

Consequently, the assessment of the quality of training starts with a look into how the training institution is organised, how curricula are structured and what teaching projects that particular institution has.

As the answers to Mr. Sabato's³ three questionnaires suggest, Europe-wide there are highly diverse solutions that apply to the way in which training is organised. It is obvious that there is no universal recipe. In fact, the purpose of this paper is not at all to endorse a certain solution. This document is just an attempt to identify the elements that should be contemplated whenever someone starts analysing the quality of training. Still, reference will be made to the models proposed by the instruments of the Council of Europe.

In what concerns the **status** and the **organisation of the training institution**, most of the elements we have looked at from the angle of the three questionnaires⁴ (specifically Form A, in terms of structural and functional aspects of the training institutions that deal with judges and prosecutors) play a certain role in any analysis of the quality of training and stress lays particularly on the following:

- independence from the legislative power and the central government; separation from disciplinary bodies;
- allocation of a proper budget;
- recruitment the trainers;

³ Analysis of answers to the three questionnaires distributed by the Bureau to network members, par. 7, Raffaele SABATO, Judge, Naples Tribunal;

⁴ *idem*, par. 1;

- existence of enough human resources and training facilities⁵

In what concerns the **architecture of the training programmes**, the analysis should cover several points:

- the way in which data is collected on the training **needs of the justice system** and how these needs should be established clearly;

Whenever we collect information about the needs⁶, we also need to resort to every “point of observation” of how justice works: magistrates themselves, the partners that they have within the system (attorneys, clerks, notaries, bailiffs), statistical data on the number of court cases, reports on matters of law that have been resolved differently in practice, consultations of the government’s lawyer who works under the European Convention for the Protection of Human Rights and Fundamental Freedoms, the civil society etc.

Moreover, training programmes should be designed based on the experience of the past years, as contemplated from a multiple perspective: satisfaction of trainees, satisfaction of trainers, satisfaction of the beneficiaries of the training sessions (*e.g.* presidents of courts where justice auditors have been assigned to at the end of the initial training etc.).

In Romania’s case, which is particular and which probably applies to all candidates to EU membership, it is equally useful to analyse international reports identifying the problems of the system.

- Ways of ensuring **access** to training.

If, for the initial training, that would rather involve the issue of recruiting magistrates, for the in-service training, access to training is an extremely sensitive issue. This issue involves the possibility to identify the ideal proportions of voluntary and mandatory training; while voluntary training involves the issue of the choice of participants: who decides on this and based on what criteria.

In our opinion, the existence of a **teaching project** and of a medium-term and long-term strategy should be analysed independently of its contents. Anyway, such a teaching project should provide an answer to several questions:

⁵ For all of these issues, please also have a look at Avis no 4 (2003) par. 13, 14, 17, 18 et 37 CJCE;

⁶ Analysis of the answers to the three questionnaires that the Bureau distributed to Network Members, par. 15, Raffaele SABATO, Judge, Naples Tribunal.

- What is the type and profile of the magistrate that the system needs?
- What are the contents of the training session; how are they established?
- Who are the trainers?
- What is the policy of the training institution in terms of teaching methods?
- Which is the social context that surrounds the training institution?

The psychological and professional profile of the magistrate is a prerequisite that conditions proper recruitment and well-focused training. Starting from the specifics of this profile, someone could approach the other policies of the training institution: the design of the training programmes, the definition of the teaching targets, the recruitment of trainers and the teaching methods.

Such a profile could cover the following, without being limited to:

- The capacity to interpret and apply the law in a uniform manner,
- Perfect command not only of the legal requirements and institutions, but also of the techniques specific to this profession;
- Feeling of belonging to this professional category (a common sense of solidarity);
- Openness to matters of European and international law;
- Open-mindedness and social sensitivity.

In what concerns **the content** of the training session, apart from the issue of identifying the needs of the system apart from the need to review solutions on a regular basis (already approached above), there is also a number of areas that need to be consolidated in a particular manner⁷ :

- The shared European values (Convention for the Protection of Human Rights and Fundamental Freedoms and/or the community law);
- The foreign languages;
- The information technology;
- Social issues;
- Training on skills specific to this profession,
- Ethics and deontology (especially in the case of initial training), just like the issues of law that have been resolved

⁷ CJCE, Opinion no. 4 (2003) par. 28, 37 and 43;

differently in practice (especially in terms of in-service training).

In terms of **trainers**, several questions need to be approached in greater detail:

- Who decides, as part of what procedure and based on what criteria, on the selection of trainers?
- Which is the right balance between full-time trainers, part-time trainers and occasional trainers?
- What is the right balance between magistrates, academic staff and other legal professionals who teach in the training sessions?
- What is the proper balance between lawyer trainers and other professionals (psychologists, forensic pathologists, accountants, communication specialists etc.)?
- Is it necessary to organise train the trainers sessions?
- Specialists in educational sciences should be hired on a full-time basis?

In what concerns the **training methods**, we think it is important to dwell more on the following issues:

- Methods (expositive, participative, demonstrative and experimental) are selected depending on the teaching targets that are expected;
- Given that training focuses on adults and specifically on magistrates, it is not advisable to make extensive use of the expositive method; on the contrary, working on case files in small groups accompanied by a judge or prosecutor (for those who take initial training courses) and the exchange of legal practices (for the in-service training) are the best options when dealing with magistrates;
- The idea to have a policy of the training institution to individualise its own training methods, *[an idea]* which is supported by the need to professionalise the training activities offers reasons to have train the trainers session and to cooperate with educationalists.

Finally, the analysis of the **social context** in which the training institution works may help in identifying the priorities. Priorities that have been identified in this way in the Strategy of the National Institute for Magistrates over 2004-2007 are the following:

- European integration,
- Fight against corruption,
- The relationship with the media and the general public.

Looking at the preliminary conditions could bring in solutions specific to initial training (especially in countries where judges are recruited at the beginning of their professional career) and to in-service training, respectively.

For the initial training, at least the following should be indicated:

- The ideal share and succession of centralised training and practical traineeships,
- The need to avoid repeating what was taught in law school,
- Give as much practicality as possible to centralised training (the selection of trainers, an archive of case files that could be used for educational purposes, mock trials etc.)

We think the following elements are the most important for the in-service training:

- coordinate the centralised training and the deconcentrated training,
- secure a proper balance between the mandatory training (for instance, in the case of a change in position, of access to management positions, to specialised tribunals, sections or panels, for foreign languages, information technology, in case of unsatisfactory assessment of activity etc.) and voluntary training,
- implement the right to training (the right to take paid holidays every year for participation in in-service training, scholarships subsidised by the State etc.)⁸.

III. Assessment of each training session

This is the assessment of everything that a trainer does so that trainees learn the same thing (the teaching engineering). For that purpose, we have to assess every training-related activity starting from the very elements that teaching engineering is made of:

- who: the target-group; teaching targets and the selection of the participants should be consistent with each other;
- what: the content of the training course; we witnessed not long ago a transformation of the way in which the “what” is defined: whatever I want the trainees to know at the end of the course, rather than “what I want to teach them”.
- by whom: the choice of trainers, which has already been approached above,

⁸ You should also read the Analysis of the answers to the three questionnaires that the Bureau distributed to Network Members, par. 13, Raffaele SABATO, Judge, Naples Tribunal.

- where: operational choices cover centralised training or training in regional centres, in courthouses or on the premises of a prosecutor's office or at any other place and location;
- when: choosing the right time depending on participants and depending the calendar of jurisdictions, so that the activities are as least disturbed as possible; choosing the duration of training sessions;
- how: the selection of the right teaching method; distance training (by means of training video conference) or e-learning make headway ever more; lastly, we should also mention the training aids and, more generally speaking, the teaching tools – trainees could have them in hard copy or electronically at the end of the course year as material covering specific subject matters and topics (through a web portal, for instance) or on digital storage support.

To all these traditional elements, we should also add the “why” in order to ensure – above all – continuity and progress.

IV. Assessment of the outcome of training courses

For reasons that have already been mentioned, the outcome of training activities should be assessed separately for initial training, on one hand, and the in-service training, on the other hand.

Initial training (especially in countries where judges are recruited at the beginning of their professional careers)

Initial training may be assessed directly through the results of the justice auditors (entrance examination – as a starting measuring point, other examinations that trainees take throughout their initial training and the graduation exam). For that matter, several choices are available:

- the right proportion between the permanent assessment and the summative assessment (at the end of the training on a certain topic); between the assessment made during the centralised training and the assessment of traineeship activities; between marks and ratings etc.
- an independent jury for a part of the assessment (for instance, for the graduation examination).

At any rate, the training of the trainers on assessment techniques seems to be unavoidable.

Initial training programmes can also be assessed based on questionnaires that should be filled in by justice auditors (separately for the centralised period and for the traineeship time), trainers, presidents of the courts and heads of the prosecutor's offices where justice auditors were assigned at the end of the initial training.

Such assessment forms could cover the following: relevance of the teaching objectives, quality of the trainers, teaching methods and tools, organisation etc.

All these forms could be filled on the spot or later on, meaning to allow time to pass between graduation and the time when the form is filled in.

In-service training

First of all, in-service training may be assessed through the assessment forms, just as we indicated above.

Yet still, this kind of assessment has its limits: it is hard to use it to determine the impact of training sessions on how justice works as a system; moreover, it happens that this kind of assessment is not always relevant because forms are sometimes filled in just superficially.

Therefore, we have got to use other assessment methods.

For the legal systems that condition the promotion of a judge to higher jurisdictions and/or where people need to take a contest before they move higher to a management position, the result of such contests can provide indirectly information about the quality of the training courses.

The results of these two kinds of training – initial (especially if we examine the answers for the first jurisdictional level) and in-service training – could be measured, also indirectly, through system evaluating the quality of justice as a public service, in those countries where such a system is already in place.

The establishment of a global quality system, capable of controlling the performance of the justice system – according to our opinion – requires not only the existence of a control system easy to implement, but also its perception by judges as a support and not as a constraint or an attempt to restrict their independence.

Such a process should go through a number of stages: establish the norms, measure the quality, interpret the results, plan the corrective activities. In other words, such a system would involve above all the measurement of all “areas”: *e.g.* impartiality, integrity and the experience of the judges, their attitude towards the litigants, the consistent and fair application of the law and ultimately how fast justice is administered.

These areas will be appreciated based on performance indicators that range from 1 to 5. The attached table can give you an idea of how these indicators may be used⁹.

Secondly, it is obviously necessary to use a number of measuring tools: the assessment of the activity of jurisdictions through an audit, a poll on the clients (litigants but other players who have a so-called “repetitive role”), and the staff of courts.

The way in which some performance indicators develop may be influenced by the training of magistrates. Looking into how these indicators develop could provide information on the quality of the training courses that have been conducted.

Another mechanism whereby the quality of training can be assessed, which can also apply to both initial training and in-service training, consists of the training institution presenting an annual activity report, for instance in front of the Higher Council of Magistrates.

VI. Conclusions

Training institutions will probably not be spared by this quality culture that increasingly concerns the entire public sector. Very likely, certification procedures will be common in the future.

In what concerns the evaluation methods,

- **All these notions that are used should first of all be properly defined: assessment, quality (need to develop justice quality standards and a mechanism whereby to measure these standards on a regular basis), training; but also: profile of the ideal judge or prosecutor, training policies of the training institution (selection of trainers, teaching methodology, priorities etc.);**
- **Assessment methods are highly diverse; but not every method is applicable to the training of magistrates; hence, the necessity to tailor the assessment methods to the type of training whose quality is measured (alternative and indirect systems that should apply at least to the permanent training).**

⁹ This model is applied to assess the performance of the justice system in Holland;

Appendix 1

Table of performance indicators that measure the professional quality of the judicial system

Scope of Step I	Impartiality and integrity of the judges		
Output indicator	<i>The standards (on a scale from 1 to 5)</i>	<i>Measuring instrument</i>	Remarks
A. Record the secondary occupations of judges	<ol style="list-style-type: none"> 1. There is no record of that 2. There is a public record. 3. The record is up-to-date. 4. The record is complete. 5. An annual report has been published on how this record functions. 	Audit	The standard is cumulative: if we do not complete the first phase, then we cannot move to the next one.
B. Challenges against judges result in consideration of the impartiality criterion.	<ol style="list-style-type: none"> 1. There is one or several successful challenges against a judge. 2. There is no challenge against a judge. 	Registration	The standard represents one alternative. We cannot reach the scores: 3, 3 or 4
C. Case assignment procedure.	<ol style="list-style-type: none"> 1. There is no such procedure 2. The procedure is public. 3. The procedure is observed. 4. The procedure is tested systematically and regularly in order to check its proper functionality. 5. An annual report has been published regarding the way in which the procedure works. 	Audit	The standard is cumulative: if we do not complete the first phase, then we cannot move to the next one.
D. Complaint filing procedure	<ol style="list-style-type: none"> 1. There is no procedure to regulate the way in which complaints should be filed 2. There is one procedure 	Audit	The standard is cumulative: if we do not complete the first phase, then

Scope of Step I	Impartiality and integrity of the judges		
	3. The concerned parties are informed on the existence of a procedure that regulates the way in which complaints should be filed. 4. The procedure that governs the way in which complaints are filed is systematically and regularly checked in order to see how it works. 5. An annual report is published to describe how the complaint filing procedure works.		we cannot move to the next one.
E. Policy that regulates the assignment of fee substitute judges.	1. There is no such policy 2. There is a policy of the kind. 3. This policy is observed. 4. This policy is tested systematically and regularly in order to check whether the system works properly. 5. An annual report is published to describe how this policy works.	Audit	The standard is cumulative: if we do not complete the first phase, then we cannot pass to the next one.
F. Assignment of fee for substitute judges against the total number of judges.	1. $\geq 3\%$ 2. 2.5 to 3% 1. 2 to 2.5% 2. 1.5 to 2% 3. $< 1.5\%$	Registration	
G. 1. Perceived impartiality. Satisfaction of litigants. The percentage of “satisfied” and “very satisfied”.	1. $< 50\%$ 2. from 50 to 60% 3. from 60 to 70% 4. from 70 to 80% 5. $\geq 80\%$	Assessment poll conducted among the clients	
G.2. Perceived impartiality.	1. $< 65\%$ 2. from 65 to 70%	Assessment poll	

Scope of Step I	Impartiality and integrity of the judges		
Satisfaction of the professionals. The percentage of “satisfied” and “very satisfied”.	3. from 70 to 75% 4. from 75 to 80% 5. $\geq 80\%$	conducted among the clients.	