

AIKOS PROGRAMME

ITALY – SCUOLA SUPERIORE DELLA MAGISTRATURA (SSM)



Description and objectives of the AIKOS Programme

The EJTN AIKOS Programme is addressed specifically to future and early-career judges, giving them the opportunity to learn about other judicial systems and training curricula, enhance their knowledge of EU law and judicial cooperation instruments as well as meet with their counterparts and develop useful contacts for their future professional life.

The AIKOS Programme's objectives are:

- To bring together future or newly appointed judges from different EU Member States;
- To foster mutual understanding of different European judicial cultures and systems;
- To raise awareness of the European dimension of their (future) work.

Specificity of the host institution

Our programme is conceived as a proper exchange. This means that we, in the SSM, identify not only the subjects matter of the exchange (effectiveness of criminal justice, effectiveness of civil justice, Rule of Law, Quality of Justice and ethics and social media) in advance but also a list, supported by a description, of the relevant topics per subject matter (session). This concept note is sent to the participants some weeks ahead of the exchange. Participants are asked to prepare a presentation on certain selected topics. The presentation should not exceed 10 minutes for each participant and is followed by a discussion facilitated by the expert coordinator of the session.

We ensure a diversified and proportionate contribution, in term of Countries represented in the exchange, in each session.

All participants, European and Italian, have a role in exchange.

The facilitators are among our best national experts in the field. They are appointed and remunerated by the SSM (fees and expenses).

The presentations by the participants take place in three morning days.

In two sessions held in one afternoon and one morning (on Wednesday and Friday), participants take part in groups' work about *Rule of Law* and *Ethics and social media*. They work on a case studies, being asked to reply to two open questions, according to the snowball methodology.

One day is devoted to visiting the courthouse and attending hearing. For the participation in the hearing, a short description note is usually prepared in advance. Before and the haring a judge or a prosecutor discusses with the participants the main outcomes of the hearing and the specificity of the



Italian procedural law.

Two afternoons are left free for social activities, recommended or organised by the SSM.
A social dinner is organised by the SSM.

- **Key points for the host institution's programme**

Participants are invited to select one of the following topics and prepare an oral presentation of 10 minutes that will be followed by a discussion with all the participants. The topics have been identified considering potential tensions between different requirements that have to be fulfilled to achieve a high quality of justice understood as efficient, timely and lawful decisions taken by impartial and legitimate judges. The exercise is not addressed to find “the one best way” to solve the tensions but to trigger the discussion and the reflection among participants in a collaborative learning environment.

The list of the topics is not exhaustive. If participants want to develop a different topic, they can write an email to the SSM to agree on a different one. Please, note that, for the sake of simplicity, in the outlines the topics we have mostly used just the terms judge/ judicial. However, the same topics are relevant and can also be developed for prosecutors and prosecutors' offices.

First session - Effectiveness of Criminal Justice

- 1) Common principles of cooperation in fighting transnational crimes and the use of Joint Investigation Teams.
- 2) The role of Eurojust, European Judicial Network, Interpol and Europol in matter of investigative cooperation in fighting criminal activities.
- 3) Cooperation tools in criminal matters in the European judicial panorama: European Arrest Warrant (EAW), European Investigative Order (EIO) and Freezing Orders (FO).
- 4) Searching and confiscation of illicit assets as fundamental instrument in fighting organised crime.
- 5) Victims protection in the European judicial panorama: from witness protection programs to the incentives for those who decided to cooperate with justice.
- 6) Conflicts of jurisdiction between EU States and mutual trust: between mandatory prosecution and lack of a European judge able to regulate them.
- 7) “National” or “European” magistrate? The need for a common training in criminal field.
- 8) The independence of judges and prosecutors as fundamental guarantee for an efficient and fair criminal trial.
- 9) Procedural tools to speed up the criminal trials.
- 10) The slowness and inefficiency of criminal justice and the damage to the honest people.



Second session – Rule of Law

- 1) Independence of Judges and prosecutors. Role of the Judicial Councils. Composition, systems of elections. Competences¹.
- 2) Accountability of Judicial Councils: transparency towards judges and society. Pre-established procedures and reasoned decisions².
- 3) Council for prosecutors³.
- 4) Political pressures, reforms and judicial independence.⁴
- 5) Internal independence and impartiality of judges (and prosecutors)⁵.
- 6) Internal independence of judges and prosecutors: the career⁶.
- 7) Internal independence of judges and prosecutors: the career. The appointment of Presidents of courts and Chief prosecutors⁷.
- 8) Judicial accountability vs judicial independence.⁸

¹ Councils for the judiciary are independent bodies, established by law or under the constitution, that seek to safeguard the independence of the judiciary and of individual judges and thereby to promote the efficient functioning of the judicial system.

Possible questions: in order to safeguard the independence of the judiciary, how should be the composition of the Councils? What the best system for the election of its members? What competences should the Councils be tasked with?

² Councils for the judiciary bear an important task: ensuring the judicial independence. At the same time, Councils for the judiciary should not affect the independence of the individual judge.

Possible questions. Should the Councils be accountable, *vis a vis* the individual judge and the society as a whole? Which system could ensure such accountability?

³ In some European Countries, independent Councils for prosecutors are established; in other Countries (like Italy and Romania) the same Council “governs the careers” of both judges and prosecutors.

Possible questions. Should the independence or autonomy of prosecutors be ensured by Councils for prosecutors, similar to those for judges? Should judges and prosecutors be “governed” by the same Council?

⁴ Judicial independence at the service of the impartiality and neutrality of the judge is a pre-requisite of justice administration. Nevertheless, in some European judiciaries, there are attempts to undermine independence (more generally judicial safeguards) and transform the judge into a bureaucrat accountable to the judicial hierarchy and, or, to the government.

Possible questions. Have you experienced this kind of pressures in your country? How are they affecting the quality of justice? Are senior judges (head of the offices/division, senior judges, the court of appeal) making pressures on “junior” judges to decide cases in a given way? Is the professional evaluation of judges considering the content of the decisions? How this is affecting the delivery of justice?

⁵ **Possible questions.** Are hierarchical judicial organisation compatible with individual independence? And with the autonomy of prosecutors? Can superior courts address instructions to judges, to which extent? What about prosecutors? What criteria should guide the allocation of cases to judges and the withdrawal of cases from judges? What about prosecutors?

⁶ **Possible questions.** Which criteria should guide the appointment of judges and of prosecutors? Should judges and prosecutors be subject to a career system? How do you intend the concept of promotion of judges and prosecutors? What criteria should guide the promotion of judges and prosecutors?

⁷ **Possible questions.** What qualities a President of court or a Chief prosecutor should be vested with? Which criteria should guide the appointment of Presidents of court or Chief prosecutors.



- 9) Individual accountability of judges and prosecutor. Discipline and ethics⁹.
- 10) Individual accountability of judges and prosecutors. Individual professional evaluation¹⁰.
- 11) Civil and criminal liability of judges and prosecutors¹¹.
- 12) Professional organisations.¹²

Third session – The quality of Justice

- 1) Predictability of Justice (and independence).¹³
- 2) Appeal reversals, judicial errors, and impartiality.¹⁴
- 3) Procedural justice and legitimacy.¹⁵

⁸ Judicial accountability is often considered to contrast judicial independence and, as such, may represent a threat to a delivery a justice of high quality. On the other hand, independent judges and judicial institutions require effective forms of accountability to grant transparency and allow the public scrutiny on individual and institutional behaviors. If both principles have to be fulfilled at the same time some sort of balancing or harmonization has to be identified.

Possible questions. Is the tension independence and accountability affecting your justice system? How is it affecting your justice systems? Are in place effective accountability mechanisms? Which types of accountability mechanisms are compatible with independence and impartiality.

⁹ **Possible questions.** What is the difference between disciplinary and ethical rules for judges and prosecutors? What are the conditions for ensuring disciplinary accountability of judges and prosecutors without infringing their independence? Is it advisable to use the feedbacks of the lawyers in the judicial evaluation process as with the 360 degrees evaluation methods?

¹⁰ **Possible questions.** Should judges and prosecutors be periodically assessed for their performance? According to which criteria and which procedure. Is it advisable to use the feedbacks of the lawyers in the judicial evaluation process as with the 360 degrees evaluation methods?

¹¹ **Possible questions.** Would it be appropriate for a judge or a prosecutor to be exposed, in respect of the purported exercise of judicial functions, to any personal civil or criminal liability, even by way of reimbursement of the state?

¹² **Possible questions.** Should judges and prosecutors be free to form and join professional organisations whose objectives are to safeguard their independence, protect their interests and promote the rule of law? What task these organization should perform?

¹³ Predictability of judgments (or legal certainty) is a key requirement of well functioning judicial systems. However the multi-layered complexity of legal sources (national and European), together with the variety of jurisprudential orientations - protected by judicial independence - may lead to low a predictability of judgments. Hence, predictability and judicial independence may enter into conflict.

Possible questions. Is this dynamic affecting your judiciary? In which way? Which mechanisms are in place to improve (or keep high) the level of predictability (ex. advise of senior/specialized judges, chamber meeting, etc.)? Are there interactions if such mechanisms with independence and impartiality?

¹⁴ The Appeal review is the traditional means to check the quality of judicial decisions. In some European countries, however, appeal reversal rate, or similar indicators are used to evaluate the performance of individual judges.

Possible questions. To what extent reversals indicators can be used to evaluate the judge(s) who made the quashed decision(s)? To what extent- or in which cases - quashed decisions entail judicial errors? How does the use of appeal judgments to evaluate judges interacts with independence and impartiality? Are there smart ways to use the feedback provided by the courts of appeal to improve legal quality?



- 4) Public opinion, trust in judicial institutions and the media.¹⁶
- 5) Artificial intelligence and quality of justice.¹⁷
- 6) Productivity pressure and legal quality¹⁸
- 7) Political pressures, reforms and judicial independence,¹⁹

¹⁵ No doubt, European judges are legitimate from a legal perspective. They have been appointed following legal procedures, cases are assigned based on national rules, and judicial procedures establish mechanisms that allow the judge to abstain from deciding a given case or the case parties to challenge the judge. But is this enough or the judge (magistrate) should also be legitimate in front of the parties? Procedural justice research (Tyler year, AJA year) shows that small changes in judicial behavior significantly increase the social legitimacy of the judge and the effectiveness of judicial remedies.

Possible questions. Are procedural justice or the legitimacy of judicial institution an issue in your country? Do you think the parties believe the judge is a neutral, respectful, knowledgeable adjudicator and hence legitimate from a social perspective? Are there policies or guidelines to promote procedural justice in your country? To what extent procedural justice may increase the effectiveness of the justice system?

¹⁶ As revealed by Eurobarometer surveys while the public trust of some European judiciary is high in other is very low. The lack of public trust or the idea that judges are not independent undermines legitimacy and effectiveness of the system with negative consequences on the quality of justice. This dynamic can be the consequence of multiple factors as media representation of the judiciary, political confrontations, and unpopular judicial decisions, as well as of cases of judicial corruption, or unethical behaviors criticized by public opinion to mention a few possible causes.

Possible questions. Is a low level of trust, or a reduction of such level an issue in your country? For which reasons? How is it affecting the quality of justice? Are there initiatives taken to rebuild trust? Is there a judicial responsibility in current the level of confidence in the judicial institution?

¹⁷ Some judiciaries already use artificial intelligence to support judicial decision-making. The promise is ambitious: provide objective information to the decision maker about case law and evidence checking, predict judicial decisions and behavior, but also profile judges and lawyers regarding jurisprudential orientations, strategies, personal networks, preferences. Decision predictability, individual accountability, as well as effectiveness and efficiency, are some of the AI promises, but the risk of undue influence on judicial proceedings is there.

Possible questions Is AI already used in your judiciary? Do you think AI will affect the quality of justice? In which way? What measure can be taken to make AI serving high-quality justice? And what actions can be taken to avoid having judges "manipulated" or influenced by technology?

¹⁸ The productivity pressure to decide more cases in less time is a common state of affairs in European judiciaries. Justice delayed is justice denied. This pressure, however, often reduces the time individual judges have to collect evidence, study the legal aspects of the case, write understandable and well-motivated decisions, or act based on the principles of procedural justice. The dynamic may lead to unfair decisions or unfair procedure, two other ways to deny justice.

Possible questions. Is this dynamic ongoing also in your country? How is it affecting the handling of judicial procedures and decisions? Are there means to balance productivity and legal quality? Are such means working well? Are there means, approaches that can help to improve productivity and legal quality at the same time?

¹⁹ Judicial independence at the service of the impartiality and neutrality of the judge is a pre-requisite of justice administration. Nevertheless, in some European judiciaries, there are attempts to undermine



- 8) Co-production and institutional cooperation vs. independence and impartiality.²⁰
9) Judicial accountability vs judicial independence.²¹
10) Access to justice.²²

- **Content of the host institution's programme**

See last agenda below.

independence (more generally judicial safeguards) and transform the judge into a bureaucrat accountable to the judicial hierarchy and, or, to the government.

Possible questions. Have you experienced this kind of pressures in your country? How are they affecting the quality of justice? Are senior judges (head of the offices/division, senior judges, the court of appeal) making pressures on "junior" judges to decide cases in a given way? Is the professional evaluation of judges considering the content of the decisions? How this is affecting the delivery of justice?

²⁰ The administration of justice requires the cooperation of several independent institutions. From an organizational perspective, the outcomes of the justice systems are always the result of a co-production of judges, prosecutors, and lawyers. At the same time, the institutions and the professionals involved require independence and functional autonomy that may hinder the cooperation needed to deliver high-quality services. These phenomena occur at any level: governance bodies, courts-prosecution office - bar, but also at the individual level among judges, prosecutors, and lawyers.

Possible questions. Which is the state of affair in your country? What is the level of collaboration between the governance bodies (ministry/council/national bar)? Are improvements needed? If yes, which one? In which areas? And what should be the role of the judge? Should she meet lawyers/prosecutors to discuss a better organisation of the procedures assigned to her or her chamber? May such meetings impact the perception of independence and impartiality?

²¹ Judicial accountability is often considered to contrast judicial independence and, as such, may represent a threat to a delivery a justice of high quality. On the other hand, independent judges and judicial institutions require effective forms of accountability to grant transparency and allow the public scrutiny on individual and institutional behaviors. If both principles have to be fulfilled at the same time some sort of balancing or harmonization has to be identified.

Possible questions. Is the tension independence and accountability affecting your justice system? How is it affecting your justice systems? Are in place effective accountability mechanisms? Which types of accountability mechanisms are compatible with independence and impartiality? Are salaries based on individual performance acceptable? Is it advisable to use the feedbacks of the lawyers in the judicial evaluation process as with the 360 degrees evaluation methods?

²² More and more often, cash-strapped parliaments increase court fees, downgrade fee-waivers programmes, or the right to appeal with degrading consequence on the legal safeguards. This common choice affects the quality of justice in various ways: fewer cases means improved timeliness and more time to dedicate to the case parties and the study the facts, but also a reduction of the legal safeguards the state can offer to the citizens (justiciables).

Possible questions. How this dynamic is affecting your country? In which ways access interacts with other key values to be fulfilled by the justice system? Which are the consequences on the quality of justice? Is it possible to improve the quality of justice without reducing access to justice?





AIKOS EXCHANGE PROGRAMME FOR JUDICIAL TRAINEES

VILLA DI CASTEL PULCI – SCANDICCI (FI)
20 - 24 May 2019

PARTICIPANTS: 27 trainees from 6 EU Countries
WORKING LANGUAGE: English

DRAFT PROGRAMME

MONDAY – 20 MAY 2019 – Villa Castelpulci
First session - CRIMINAL JUSTICE

Coordinator: Marco ALMA, Court of cassation

1,40 p.m. – Meeting of participants at Santa Maria Novella railway station (Florence)²³.

3,00 p.m. – Welcome and introduction to the AIKOS programme.

3,10 p.m. – *Criminal Justice. The criminal procedure. The effectiveness of criminal justice.*
4 Interventions (10 minutes each) prepared by trainees on the topic of the session.

3,50 p.m. – Debate

4,00 p.m. – Break

4,30 p.m. - *Criminal Justice. The criminal procedure. The effectiveness of criminal justice.*
4 Interventions (10 minutes each) prepared by trainees on the topic of the session.

5,10 p.m. – Wrap up of the session by the sessions' coordinators **Marco ALMA**

6,00 p.m. – End of the first day

²³ Every day a shuttle will bring the participants to Castel Pulci and back to Florence. Directions will be provided.



TUESDAY – 21 MAY 2019 – MORNING - COURTHOUSE OF FLORENCE

9,15 a.m. - Meeting with the tutor in front of “Aula Bunker” of the Florence Courthouse, via Paolieri n. 3, Florence (from Santa Maria Novella, buses 14, 23 and C2 connect to Via Paolieri in around 25-30 minutes).

9,15 a.m. – 12.00 p.m. Courthouse of Florence, Aula Bunker

- Attendance of hearings

Tutor: **Beatrice GIUNTI**, Florence Prosecution Office

1,00 p.m. suspension of works

TUESDAY – 21 MAY 2019 – AFTERNOON -

Social Programme: visit to Florence

WEDNESDAY – 22 MAY 2019 – MORNING - Villa Castelpulci

Second session - RULE OF LAW

Coordinator **Luca PERILLI**, member of the Italian School for the Judiciary’s Board of Directors

8,15 a.m. – Meeting of participants at Santa Maria Novella railway station

9,10 a.m. Rule of law

3 Interventions (10 minutes each) prepared by trainees on the topic of the session.

9,40 a.m. – Debate

10,00 a.m. Rule of law

4 Interventions (10 minutes each) prepared by trainees on the topic of the session.

10,40 a.m. – Debate

11,00 a.m. Break

11,30 a.m. – Rule of law

Wrap up of the session by the sessions’ coordinator **Luca PERILLI**, **12,20 a.m.** – Debate

12,20 a.m. Suspension of activities

12,20 Visit of Castel Pulci

1,00 p.m. –Lunch

2,30 Rule of law

Work in groups applying the Snowball methodology

4,00 p.m. Break



4,20 p.m. Reports and discussion

5,00 p.m. – Bus departure to Florence

7,30 p.m. Social dinner in Florence

THURSDAY – 23 MAY 2019 – MORNING – VILLA Castelpulci

Third session – THE QUALITY OF JUSTICE

Coordinator **Francesco CONTINI** researcher CNR – IRSIG

8,15 a.m. – Meeting of participants at Santa Maria Novella railway station

9,10 a.m. – **The Quality of Justice** - 5 Interventions (10 minutes each) prepared by trainees on the topic of the third session.

10,00 a.m. – Debate

10,30 a.m. - Break and group photo

11,00 a.m. - **The Quality of Justice** - 5 Interventions (10 minutes each) prepared by trainees on the topic of the third session.

11,50 a.m. Debate

12,15 p.m. Wrap up of the session by the sessions' coordinator **Francesco CONTINI**

1,00 p.m. – Lunch.

2,00 p.m. Bus departure to Florence

THURSDAY – 23 MAY 2019 – AFTERNOON - FLORENCE

Social Programme: free visits to Florence Museums

FRIDAY – 24 MAY 2019 – MORNING- VILLA CASTELPULCI

Fourth session - ETHICS

Coordinator **Pasquale PROFITI**, Trento Prosecution Office

8,15 a.m. – Meeting of participants at Santa Maria Novella railway station

09,10 Ethics and social Media

Work in groups applying the snowball methodology.

12,15 p.m. Reports and discussion

1,00 p.m. – End of the AIKOS exchange and lunch.

2,00 p.m. – Shuttle to Santa Maria Novella railway station in Florence





European Judicial Training Network



- **Additional information**

Report compiled by
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With financial support from the Justice Programme of the European Union