



Report of the Seminar on
The Role of Judicial Associations for an Independent and Accountable Judiciary
International Network of Judicial Reformers
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By Simone Benvenuti

Speakers:

Simone Benvenuti - Associate Professor of Comparative Public Law, Department of Law of University Roma Tre/Italy

Jan Olszanovski - Assistant professor, Department of Administrative and Administrative Judicial Procedure, University of Poznań / Judge in district court Poznań/Poland

Silvio Roberto Vinceti - Researcher of Comparative Constitutional Law, University of Modena and Reggio Emilia/Italy

Moderator:

Madona Maisuradze - Judge of the Criminal Court of Rustavi City/Georgia

Problem statement

Judicial associations are “*voluntary* organizations designed to serve the professional interests of judges” (Beers 2012). As such, they are an increasingly relevant phenomenon in pluralist democracies (Pederzoli – Guarnieri 2008) but also in authoritarian systems of government (International Commission of Jurists 2016). International instruments also recognize them (Kneievik Bojovic – Misailovic 2022), notably CCJE Opinion No. 23 of 2020 “on the role of associations of judges in supporting judicial independence”, while aid programmes and international cooperation in general commit to promoting judicial associations in transitioning countries (Beers 2012).

This increasing relevance notwithstanding, judicial associations are largely overlooked by scholarly inquiry, and few studies give a contribution to understanding their actual role (Trochev 2018, Castillo Ortiz 2017, Beers 2012) notwithstanding calls to assess the role of other actors of judicial governance (Kosař 2018). The reason for that lies probably in the fact that judicial associations have no recognition in constitutional or legal documents with few exceptions, and are not conferred public or state functions. Among European Union countries, only Greece and Spain provide in their respective constitutional documents that “the establishment of an association of magistrates shall

be permitted”, and that the “law shall make provision for the system and methods of professional association for judges, magistrates and prosecutors” (Bojovic – Misailovic 2022). No other Constitution contains similar references. Some explicitly ban judges from participating in certain types of activity, notably political or economic activity, or to be part of political parties and trade unions.¹ This might imply that judges, as any other citizen in a constitutional democracy, has a right to establish and be a member of a professional association. Indeed, this right for judges is also protected by the case law of the European Court of Human Rights (Gisbert 2022).

In any case, beyond all constitutional or legal recognition, judicial associations do actually exist, are often crucial actors for judicial governance and definitely represent judicial interests in interactions with the state and the public, be these interests sectoral or not (Golubovic 2009). Their actual impact on judicial governance is not however clear, nor the conditions under which such impact can be positive or negative. This seminar aimed precisely at setting the ground for analyzing the different dimensions that need to be taken into account to assess from a comparative perspective the role of judicial associations – understood as *national* judges’ associations only and not as *international* networks or associations. The final objective is to provide an analytical framework to apprehend the conditions under which judicial associations can affect independence and accountability, either positively or negatively, and to provide some guidelines as to their formal regulation.

Main findings

During the seminar, four main dimensions have been discussed:

- a) the functions of judicial associations;
- b) the types of judicial associations;
- c) the structure of the system of judicial associations;
- d) the impact of and the risks for judicial associations.

a) *Functions of judicial associations*

Associations carry out several functions. One typical function of judicial associations is to **advocate the labour, or more broadly professional interests of judges**: salaries, working conditions, training, etc. This function is mentioned in the statutes of almost any judicial association, even those that correspond to the ideological model of judicial association (see *infra*). Thus, in Poland one of the statutory aims of the Association *Iustita* is to “represent the professional and social interests of the judiciary” and to foster “integration of the community of judges and providing support and

¹ The Polish Constitution that a “judge shall not belong to a political party, a trade union or perform public activities incompatible with the principles of independence of the courts and judges” (Similarly to what foreseen by the Spanish Constitution: “Judges and magistrates as well as public prosecutors, whilst actively in office, may not hold other public office nor belong to political parties or unions”). The Lithuanian Constitution provides that “judges may not participate in the activities of political parties and other political organization”. The Slovenian Constitution states the incompatibility of Judicial of the judicial office “with office in other state bodies, in local self-government bodies and in bodies of political parties, and with other offices and activities as provided by law”. According to the Ukrainian Constitution, “judge shall not belong to political parties, trade unions, take part in any political activity, hold a representative mandate, occupy any other paid office, engage in other paid work except academic, teaching or creative activity”. The Slovak Constitution bans judges from participating in any economic activity.

The Portuguese and the Romanian Constitutions are the only ones stating in general terms stating the incompatibility of judgeship with any other public or *private* office, setting out few exceptions relating to teaching.

assistance to judges, former judges, including those who are unemployed or retired, including their families that may be in difficult circumstances". Among the aims of the Hungarian Association of Judges *MABIE* is to "continuously improve the living and working conditions of judges" and for that purpose it "represents the social and material interests of judges in cooperation with other professional bodies of judges and lawyers and trade unions". In France, the *Union Syndicale des Magistrats* defines itself as apolitical association that defends judges' independence and their material and moral interests. In Portugal, the *Associação Sindical dos Juizes Portugueses* "ensures the representation and defence of judges' social, cultural, moral, professional and economic interests" and "defends and promotes solidarity and cohesiveness of members of the judiciary". In Spain, the *Asociación Profesional de la Magistratura* "defends professional rights and interests of its members".

Partly related to the latter, is the function of contributing to **build the professional identity of judges** (Beers 2012). The CCJE Opinion of 2020 pays broad attention to this aspect:

"An obvious objective of an association of judges is the creation of a network among its members. It brings together judges who exercise their tasks on their own or in a panel of judges, having nevertheless common interests and needs. Providing the opportunity of dialogue and critique between judges helps to improve independence by self-criticism from within the judiciary and to develop a strong value-based justice system. Being together in an association leads judges to an exchange of experience and best practices. This is most fruitful in the case when judges of different court levels and jurisdictions come together. Associations of judges may also be the place for deepening the knowledge of specialised judges and in that way contributing to the consistent application of the law. And last, but not least, associations of judges help in developing a common spirit for the independence of the judiciary, human rights and the rule of law."

This important function of judicial associations can concretize in different kinds of activities, from conferences, seminars, meetings, discussions, editing judicial journals, to organizing training sessions and drafting ethical codes of conduct (Zeller 2019). According to its statutes, the Polish association *Iustitia* is committed to "supporting members in raising their professional qualifications and acquiring knowledge useful for the performance of the function of a judge" and in "strengthening the independence of courts and the independence of judges". After recent constitutional developments concretizing in measures to capture the judiciary, the Association of Polish Judges *Iustitia* struggled to rectify "false information [about the judiciary] disseminated by the media [...] protecting the image of justice and the reputation of the judiciary in society", and played "an important integrative role and setting standards of ethical conduct for judges who face new challenges to their independence". (Sledzinska-Simon 2018). In Hungary, *MABIE* "organise courses, lectures, professional meetings, support events for the intellectual and cultural development of judges, publish the Journal of Judges", and promotes "the entry into force of the Code of Ethics for Judges". Indeed, *MABIE* drafted an ethical code in 2005, that was replaced by a new code in 2014 following a change in legislation endowing the National Council for the Judiciary with this task (Gyöngyi 2020). According to its statutes, the French *Union syndicale des magistrats* contributes "to the progress of law and of the judicial system, with the aim of enhancing access to justice, and effective, trustworthy and humane justice"; the Portuguese *ASJP* promotes "a constant respectableness of the judicial function, notably by protecting and safeguarding true independence of judges and promoting the establishment of institutions for its safeguard".

Beyond statutory provisions, there are good examples of judicial associations playing a crucial role in the professionalization of the judiciary. Silvio Vinceti showed in his presentation on the Italian

case the relevance of judicial associations in this regard all along the 1960s and the 1970s. The Italian National Association of Magistrates also drafted an ethical code in 1994. In Czech Republic, the Union of Judges (*Soudcovská Unie České Republiky, SUĚR*), besides strongly advocating for judicial reforms during its existence, created an “Education Commission” in 1999 organizing training programs when a judicial school did not exist, then supporting the establishment of a judicial school in 2005. Also in Slovakia, the Association of Judges backed since the mid-1990s the establishment of a judicial academy, that came eventually into operation in 2004 (Spáč – Šipulová – Urbániková 2018). In the Netherlands, the Dutch Association for the Judiciary (NVvR) adopted in 2011 a judicial Code of conduct.

Judicial associations also play a role towards society and politics. As to the former, judicial associations, as private associations, are **important actors of the civil society**, bringing legal expertise in the public debate and connecting civil society to legal and constitutional processes. In his presentation, Jan Oszanowski brought strongly attention on this aspect referring to the participation in Court proceedings before international courts (ECJ and ECtHR) or the participation in the broader societal debate through conferences or organization of other social events, or more institutional activities such as drafting bills (Grabowska-Moroz – Sniadach 2021). Another example from Poland is the establishment by judicial associations with other NGOs of a Justice Defense Committee in June 2018 (Sledzinska-Simon 2018).

The Italian example is particularly relevant in this regard: besides the manifold activities such as public conferences and meetings, Silvo Vinceti referred to the stance taken by the ANM in the Congress held in Gardone in 1965, entailing a special relationship between judges and the Constitutional court. Again, in Portugal the statutes of the *ASJP* includes among its tasks: “to propose to the competent sovereign bodies reforms conducive to the improvement of the judicial system and to demand the consultation of the Association in any reform relating to the relevant matters; [...] to promote the realization of cultural activities, notably the organization of symposia and conferences and the awarding of fellowships for stages in foreign countries, and establishing of exchanges with similar institutions; [...] to promote the publication and the diffusion of legal writings”. Also, one can think about the role of this association in the groundbreaking *ASJP* Judgment of the European Court of Justice. In Romania, the Judges Forum submitted an *amicus curiae* brief to the Constitutional Court challenging the constitutionality of legislative measures (Selejan-Guțan 2018).

Judicial associations play a **political role** by acting as counterpower in the broader system of checks and balances, but also as mere power structures. Polish association *Iustitia* is committed to the promotion and protection of civil liberties, rights and freedoms, equal rights of women and men, and actions supporting the development of democracy. While this association has not been along its life overly politicized, the new political context after 2015 transformed it into a vocal opponent of the Government and actor of the civil society, which has been indicated as the main positive consequence of recent judicial reform (Sledzinska-Simon 2018). Hungarian association *MABIE* takes “action against statements challenging the judges and the authority of the courts”. The French *Union Syndicale des magistrats* ensures “the independence of the judicial function, as an essential safeguard of citizens’ rights and freedoms”. The Portuguese *ASJP* fights “pela defesa dos direitos fundamentais do Homem e pela adopção de medidas que garantam a realização de uma justiça acessível e pronta”² (for the defense of fundamental human rights and for the adoption of measures

² Trade Union Association Portuguese Judges, Statutes, Published in BTE (1st Series, nº 12, of 29MAR01), available at: <https://www.asjp.pt/2010/03/17/estatutos/>.

that guarantee the realization of an accessible and prompt justice). Even in the Netherlands, where the judicial culture does not encourage judges' politicization, the judicial association, lacking any formal competence in the system, stood as representatives of the judiciary vis-à-vis State organs and the Dutch Judges' Association became an active actors by developing reform guidelines (Mak 2018).

Finally, some associations **participate in judicial governance activities**, being incorporated in the institutional system and participating (e.g. through their representatives in judicial councils) in a number of legally framed functions: judicial appointments, disciplining of judges, etc. This is what Silvio Vinceti termed in his presentation as "public law significance" of judicial associations. This institutional incorporation of judicial association can be multifaced. In Italy, the law endowed the ANM the drafting of an ethical code, while in France associations are recognized a role in the formation of the *commission d'avancement* and of the *Conseil supérieur de la magistrature*. Another similar example where judicial associations are important in the selection of judicial council members is Slovakia, making them important actors for selection, promotion, and disciplinary procedures (Spáč – Šipulová – Urbániková 2018). In Spain, Article 572 of the Organic Law on the Judicial Power provides that one of the options for a judge to candidate as a member of the judicial council is to be supported by a legally established association (Torres Pérez 2018). The Belgian case is interesting in that a law of 1999 established a "consultative council of judges" (*Conseil consultatif de la magistrature*) as a forum where dialogue happens between the relevant authorities and judicial associations (Bojovic – Misailovic 2022).

Through such involvement, in some cases judicial associations acquire greater power being able to distribute rewards, as the Italian (Guarnieri 2013) and Spanish case witness (even though recent reform of the Spanish council has relatively disempowered judicial associations). The risk of this institutional involvement is however the gradual transformation of judicial associations into power structures and the shadowing of equally important functions carried out at a more informal level.

b) Types of judicial associations

Based on this different set of functions (either formalized in the statutes or not), an even superficial overview of existing judicial associations tell us that *not all associations are the same* (Castillo Ortiz 2019). An important distinction has already been made between associations aimed at gathering judges from all court levels – we can call them "generalist associations" –, from specialized associations. That said, associations can be categorized according to many criteria, and the presentations highlighted at least five of them.

Judicial associations can be distinguished according to their **aims, with a politico-ideological model opposed to a corporatist/trade union model**.³ This distinction builds on scholarship opposing judicial associations representing political views of judges and those that are more oriented to the professional dimension whose aim is to gather all members of the judiciary (Bell 2006). To be sure, in modern societies any reflection on the professional dimension of judgeships entails ideological and broadly speaking political stances. What is meant here however is that while some associations are more interested in the broader socio-political issues and how these connect to judgeship, other associations aim to protect corporatist, labour or professional interests of judicial professionals. In

³ As mentioned *supra* fn 1, these are the Spanish, Polish or the Ukrainian Constitutions.

that sense they move towards the trade union or to the professional model. Empirical observation indicates that within the same system, ideological associations coexist with rather professional/unionist associations; the same association can even be ideological and trade unionist and /or professional at the same time.

According to Bell, the ideological model of judicial association is widespread in Latin countries (Bell 2006). Italy is often identified as a country where judicial associations have a clear ideological stance. This entails more or less hidden connections to political parties (Garoupa – Ginsburg 2009). In this respect, for Italy Silvio Vinceti identified two progressive associations, two conservative associations, one centrist association and one independent association. In Spain, scholars inferred the political links of judges sitting at the Supreme Court through their affiliation to and links with judicial associations (Garoupa – Gili – Gomez-Pomar 2012; Lopéz Guerra 2001). Also, as is common knowledge, institutional reforms of 1985 and 2001 concerning the election of judicial council members, as well as further reform proposal in 2011 – promoted by different political majorities – were clearly provoked by the aim of fine-tuning the influence of judicial associations on the main judicial self-governance body (Torres Pérez 2018).

This does not exclude that in both Italy and Spain the same judicial associations at times just defended their professional interests against the political élite. Thus, in Italy judicial salaries increased following strong lobbying by judicial associations (Pederzoli – Guarnieri 1997). While in France – where the trade union model otherwise prevails – judicial associations can incorporate strong ideological stances too. This tells us that the two models are not necessarily opposing and mutually exclusive, because the same association can incorporate both characters.

Furthermore, also in non-mediterranean countries there are examples of politicized judicial associations. The Polish case, as analyzed by Jan Olszanowski, is a good example of that. Not by chance, the chair of the second largest judicial association, *Themis*, was recently the target of disciplinary measures (Grabowska-Moroz – Sniadach 2021). In Slovakia, the Association of Judges of Slovakia, which is the largest existing judicial association, was at times harshly critical of Mečiar’s government, their members suffering retaliation through disciplinary proceedings by Supreme Court President Harabin for that (Spáč – Šipulová – Urbániková 2018). In Czech Republic, the only existing judicial association overly participated in public discussion on the judiciary and its reform, pushing for legislative initiatives, albeit abstaining from sheer politicization.

On the contrary, in Germany, the *Deutsche Richterbund* is more on the trade union side of the spectrum (Bojovic – Misailovic 2022), even though an process of politicization of judicial associations there exist (Wittreck 2018). In Romania too, the Association of Romanian Magistrates abstained from political activism focusing on issues related to salaries and judges’ workload, being criticized for this (Beers 2012). This stance seems to relate with the prevailing judicial culture in that country, where judges until 2004 has been legally barred from joining NGOs. In Slovenia, the Association of Judges (*Sodniško društvo*) is seen also mainly as a trade union mostly interested in salary, which on some occasions resorted to strikes for successful bargaining with the Government (Avbelj 2018).

Another distinction is that **based on internal structure between hierarchically organized vs. horizontal-type associations**. In the former, court presidents and the top judiciary play a greater role, while in the latter rank-and-file judges have the lead. Scholars underlined that the hierarchical or rather horizontal type of judicial association depends “on the relative strengths of the ruling patronage network(s), rigidity in the judicial hierarchy, and the intensity of the intra-judicial conflict” (Trochev 2018). A good example of non-hierarchical association is the Cyprus Judges Associations, whose Statutes excludes Supreme Court judges from becoming members of the association. For

different reasons, Italy and France are also examples where judicial associations are not hierarchical. On the contrary, in Ukraine associations tend to look as groups led by judicial oligarchs.

This last distinction hierarchical-horizontal might couple with a **distinction based on internal relations, between patronage networks of judges and judicial groupings based on reputation**: the former mostly focusing on the exchange of concrete rewards and threats, the latter on exchanging information about the regime's threats and rewards, expanding judicial autonomy and enabling mobilization of judges when needed. However, this distinction can be misleading. In his presentation, Silvio Vinceti showed that the Italian judicial associations can act as mere power-structures.

A further criterion is **value-based, opposing conservative vs. progressive associations**. This means looking at associations as groups of magistrates sharing common institutional and broadly speaking ideological views, originally gathered on the basis, among else, of their specific understanding of the role of the judiciary in the society. To understand this point, it is possible to contrast two ideal-typical approaches. The first one could be labelled as a conservative approach where claims for judicial independence are coupled by a traditional approach entailing: a relative deference to existing hierarchic structures, and the presumption that magistrates are insulated from the outer (extrajudicial) world (formally apolitical stance). On its opposite, is the "progressive" approach that understands judicial independence as strictly interlinked with the model of a pluralistic society and the objective of incorporating into the legal system the demands of the broader society. In principle, it is thus possible to somehow locate judicial associations according to their sticking by one of these two approaches.

This opposition seems rather clear in France and in Germany, with the *Syndicat de la magistrature* and the *Neue Richtervereinigung* respectively being clearly positioned on the left, and the *Union Syndicale des Magistrats* and the *Deutscher Richterbund* being rather on the conservative/christian democrat side of the spectrum (Vauchez 2018; Wittrech 2018). Jan Olszanowski described one of the Polish associations, *Iustitia*, as committed to defend the foundations of Polish democracy such as freedom and civil rights. Similarly, the Polish National Association of Judges of Administrative Courts aims at strengthening the independence of courts and judges and disseminating the principles of democracy, human freedoms and rights. As reported by Silvio Vinceti, in Italy the National Association of Magistrates approved the final resolution at the Congress of Gardone in 1965 committing the judiciary to the direct enforcement of constitutional principles, against the prevailing legal culture at the time, after a period where judicial associations tended to be rather "apolitical".

Finally, one can consider a formal **criterion based on membership, opposing open vs. closed associations**: i.e. whether judicial associations are composed by judges (or more generally magistrates) only, or they are composed by lawyers and other legal professionals (e.g. clerks) as well.

c) *Structure of the system of judicial associations*

Lastly, the system of judicial associations can have a more or less pluralist structure. This should not be understood in quantitative terms only, i.e. in relation to the sheer number of associations of judges within a system, but also in qualitative terms. Do existing groups actually reflect different views, e.g. on the ideal-type of the judge, or different power interests? Also, it is important to take into account the representativeness of judicial associations. A system with ten associations

gathering 30% of judges overall, and a system with three associations gathering 90% of all judges, have indeed quite different implications.

In general, it is possible to make a distinction between fragmented/competitive/pluralist systems, and systems characterized by greater uniformity. Different factors account for the more or less pluralist structure of the system of judicial associations. Among these, there is certainly a cultural factor, in turn related to socio-political cleavages reflecting within the judiciary. Size also matters, where we can expect greater pluralism in bigger countries and bigger judiciaries.

Among **systems marked by greater uniformity**, the Czech Republic is a good example. There, only one association exists – defined as “one of the strongest judicial associations in Europe” – that gathers over half of the members of the Czech judiciary (Beers 2012). Other countries count one association only such as Croatia, Cyprus, Denmark, Slovenia, Portugal, or Estonia.

Other systems are characterized by a relative degree of uniformity, due to the existence of a predominant association, even though other associations exist. This is the case of Slovakia (Spáč – Šipulová – Urbániková 2018; Kosař – Spáč 2021), Romania, Hungary, Germany or France. However, in some of these countries, such as Ireland, Hungary, Bulgaria, other associations besides the predominant one do not gather judges from ordinary jurisdictions at all court levels, but their membership is rather formally delimited to certain types of courts or judges (e.g. family courts/judges, or women judges’ associations like in Georgia and other jurisdictions). On the contrary, in some countries other associations besides the predominant one do gather judges from ordinary jurisdiction at all court levels.

This is the case of Poland as shown by Jan Olszanowski, where one main association and a minor one exist, *Iustitia* and *Themis*. In Romania, the Association of Romanian Magistrates (*Asociația Magistrilor din România*), founded in 1993, has been largely predominant, even though it is now challenged by a new organization, the National Union of Romanian Judges (*Uniunea Națională a Judecătorilor din România*), and by the Romanian Judges Forum (*Forumul Judecătorilor din România*) (Beers 2012; Selejan-Guțan 2018). Among western democracies, in France too there is a traditional monopoly of the *Union syndicale des magistrats* (USM, before named UFM), which has never been challenged by the *Syndicat de la magistrature* (SM), which is also a “generalist” association. In the Netherlands, the Dutch Association for the Judiciary (*Nederlandse Vereniging voor Rechtspraak*) is the main association gathering approximately 70% of all judges, but minor associations exist (Mak 2018). In Germany, the traditional *Deutscher Richterbund* has the largest membership of 16000 out of 25000 judges and prosecutors, but a new association was then established, the New Association of Judges (*Neue Richtervereinigung*) comprising around 550 members (Wittreck 2018).

Finally, there are **more heterogeneous systems**, notably Italy and Spain. As described by Silvio Vinceti, in Italy the system is built around the Associazione Nazionale Magistrati (National Association of Magistrates), which gathers approximately 96% of members of the judiciary (i.e. judges and prosecutors). Yet, ANM is in turn divided in the so-called “correnti”. The ANM is thus a federation of sub-associations that have very different views on administrative, policy and constitutional issues. The peculiarity of the Italian case is thus the relatively fragmented landscape with six associations, four main of them, and the existence of a common institutional platform, the *Associazione Nazionale Magistrati*, able to foster discussion among judicial associations and bring them together on specific issues. This entails the coexistence of intrinsic differences with the ability to further internal dialogue avoiding outright clashes and mutual de-legitimization. When in exceptional conditions higher magistrates in the 1960s left the ANM and created the *Unione*

Magistrati Italiani (UMI) as a separate and parallel organization, the consequence was tellingly the isolation of higher magistrates and UMI was soon dissolved.

In Spain, where according to 2017 data 2977 judges belonged to judicial associations, out of a total of 5364 judges, there are three main judicial associations, the *Asociación Profesional de la Magistratura* (conservative, counting slightly more than 1300 members), the *Asociación Francisco de Vitoria* (moderate, around 800 members), *Jueces para la Democracia* (progressive, around 500 members), but minor judicial associations also exist, such as the *Foro Judicial Independiente* (around 300 members) or the *Asociación Nacional de Jueces* (Torres Pérez 2018) Among non-EU countries, Ukraine is possibly one of the most fragmented countries in this regard. Nine generalist associations exist there, some of them reflecting different opposing oligarchic groups within the judiciary (Trochev 2018).

d) Impact of and risks for judicial associations

Judicial associations are often seen as vectors for greater judicial independence. However, the presentations and subsequent discussion raised some doubts on whether this always holds true.

First, the question arises of the actual impact of judicial associations. Silvio Vinceti conceptualized three ways for associations to bear influence at the politico-constitutional level: informal influence through public opinion (statements, official stances, press releases, interviews, etc.); semi-formal influence through general legal/formal tools (e.g. the right to strike, resorted to by judges in some countries such as Italy, France, Spain, Portugal, etc., but not in Germany or common law countries); formal influence through the incorporation of judicial associations in the institutional framework for judicial governance (participation in judicial councils, endowment of specific tasks such as drafting the ethical code of conduct, etc.). Jan Olszanowski stressed how the lack of judicial associations' representativeness, which is the case of Poland among others, potentially weakens the official stances of associations.

Second, the question arises whether judicial associations are always conducive to positive outcomes (in terms of judicial independence, accountability, etc.), or not. As to the Polish case presented by Jan Olszanowski, a number of risks for judicial associations have been pointed out. For instance, there is a natural risk for associations to become instruments of selfishness and corporatism, to be moved by a "guild-mentality". Corporatism should be understood as an approach aiming at promoting sectoral interests within the judiciary, rather than the common good for justice. Furthermore, and related to this, judicial associations may be used to achieve particular purposes within but also outside the judiciary. The Italian case is a good example of these risks too, as reported by Silvio Vinceti in his description of the Palamara Affair. Similar criticism, notably "corporatism and domination by judicial associations", has been voiced with regard to Spain, where "those who belong to the most powerful judicial associations [...] stand better chances for promotion because of the weight of the judicial associations in the selection of Council members". Also, "scholars have already recognized the importance of ideological and personal proximity in the promotion to high judicial positions" (Torres Pérez 2018).

Jan Olszanowski furthermore pointed out that in carrying out their social and political functions expounded above, the need for associations to reach the largest possible audience also entails a risk of mediatization, simplification of complex issues and possibly delegitimization of the judiciary as a consequence of polarization. Also, the need to cooperate with political actors (notably political parties) in order to achieve desired policy outcomes may be detrimental to their independence.

More in general, Silvio Vinceti inferred from the Italian case study the need to look at judicial associations as both counterpowers and power structures to be controlled. This is especially true when judicial associations are endowed directly or indirectly with important powers in judicial governance (Garoupa – Ginsburg 2009). Thus, judicial associations can play a positive role where the institutional system provides for actual judicial accountability to politics and society. Where there is a lack of accountability, risks are real and judicial associations end up playing a negative role. As Silvio Vinceti put it: “a strong and activist presence of judicial associations makes sense within a constitutional arrangement where the judiciary is effectively accountable to the political (ie democratic) power. In the Italian framework, insufficient constitutional arrangements for judicial accountability expose judicial associations to power-grabbing temptations that eventually imperil judicial impartiality and independence”. The correctness of this point of view might be confirmed by the fundamental changes undergone by Italian judicial associations since the 1990s. Until then, strong political parties balanced the strength of judicial associations, while the dramatic crisis of parties put judicial associations in a very different position (Morrone 2021). Overall, this accounts for the divergence between the Italian case study and others like the Polish one. On a similar vein, it has been observed that in Slovakia the judicial council “was hijacked by judges who used their powers to capture the judiciary from inside, and they have used their powers in such a manner that helps them to protect their interests” (Spáč – Šipulová – Urbániková 2018).

Issues raised by the audience

During the Q&A session, the following issues have been raised.

The first issue concerned the participation of judges and their associations in the process of drafting legislation. In this regard Simone Benvenuti referred to examples of judges and judicial associations participating in the drafting process. Using Silvio Vinceti’s conceptualization, this can happen at the informal, semi-formal, or formal level. At the formal level, judicial associations in Italy participate through their representatives in the judicial council. According to the law, the Ministry of Justice must indeed consult the judicial council on draft legislation relating to justice. At the semi-formal level, even in recent times the right to strike has been practiced by judges to oppose the adoption of pieces of legislation. Finally, in Italy judicial associations entertain informal relations with and within the Ministry of Justice, where government bills on justice are drafted. Thus, there is a general ability of Italian judicial associations to participate in the drafting of justice-related legislation. In other countries such as Poland there has been an ability of judicial association to shape legal reforms too (Grabowska-Moroz –Sniadach 2021). This might be different from the French case, where the role of judicial associations in this regard is much lower. For instance, it is a task for ministerial commissions (which can include judicial representatives of the higher hierarchy and not as judicial associations’ representatives) to play a role in the process of drafting.

A second issue concerned concrete examples of the role of judicial associations as bridges between justice and the society, which is an important aspect of CCJE Opinion 23 of 2020. Examples for Italy are the role of judicial associations during the '60 and the '70 reflecting the broader discussion within society, or the case recalled by Silvio Vinceti of the anti-rave legislation in autumn 2022.

A third issue concerned the impact and tangible results of the recent demonstrations and rallies of Polish judges and their colleagues, that is very difficult to assess. According to Jan Olszanowski, these demonstrations were very important from the perspective of Polish judges not feeling isolated from

society, but from the perspective of the reality and the outcomes of the policy process, notably in the coming into force of the muzzle law, the effect was very weak.

The issue was also raised whether it is possible for any authority to assess the legality of judicial appointments and what is the role of the associations in the process. In Italy, it is possible to challenge such a decision before the Council of State. Actually, the huge litigation before the administrative jurisdiction is indirectly related to the role judicial associations have in appointments. Indeed, often these appointments are made based on loyalty criteria (loyalty to a judicial association) and not just merit, and this reflect on inadequate motivation of the relevant decisions by the judicial council. Recently, this even happened for the appointment of the president of the *Corte di cassazione*.

Further issues relate to the management of the associations, whether non-judges can hold executive positions in the association; to funding of judicial associations; and to the availability of public information about judicial associations (public reports, etc.). As for non-judges spokesperson/executives, it was highlighted that in EU countries only judges are members of judicial associations and act on behalf of it. The case of lay spokesperson or executive directors for judicial associations seem to be a typical feature of non-established democracies. This supposedly strengthens the watchdog role played by judicial associations. Interestingly there is one case of such concerning Turkey, under scrutiny by the European Court of Human Rights in *Eminağaoğlu v. Turkey*. According to the ECtHR:

“It should be borne in mind that, at the material time, the applicant was also the chair of the association Yarsav, which defended the interests of members of the judicial professions and the principle of the rule of law. It should be pointed out that, in the proceedings before the HSYK, the applicant explained that he had made the disputed statements in his capacity as chair of that association. In this connection, the Court has accepted that when an NGO draws attention to matters of public interest, it is exercising a public watchdog role of similar importance to that of the press (see Animal Defenders International, cited above, § 103) and may be characterized as a social “watchdog” warranting similar protection under the Convention as that afforded to the press” (par. 134).

The discussion highlighted that normally these kinds of problems are not that common in other EU countries.

As to funding, judicial associations can get funding from membership fees as any other association and from national or international/foreign grants. In Poland, foreign grants were used to attack judicial associations as not being independent. As to the lack of public information available on their activities, which seems to be a problem of judicial associations in Georgia, judicial associations in EU countries usually have rich websites publicizing their activities and also manage their own journals.

Summary of Findings and Recommendations

The great variety relating the functions judicial associations carry out, to their different types and to the overall structure of a judicial association system entails a non-straightforward relationship between judicial associations, independence and accountability. Sure enough, there are cases where judicial associations seem to play a positive role. Based on a report of the 2014-2015 Report of the European Network of Councils of the Judiciary on Independence and Accountability of the Judiciary and of the Prosecution, Polish judges considering their associations as not respecting their autonomy was insignificant (only 1 per cent); in Denmark too, the perception of judicial associations

as a threat to independence is notably low and in Lithuania there is a good assessments of judicial associations; Romania and Slovenia too has low perceptions of corruption and of disrespect to independence by associations.

However, without denying their role as institutions of self-governance conducive to positive effects in terms of independence, whereas poorly functioning judicial associations can also bear a 'potentially harmful impact' (Beers 2012). According to his analysis of the Ukraine case study, Alexei Trochev observed that judicial associations help in monitoring and enforcing the loyalty of members to both judicial bosses and political patrons. This collective self-discipline could, in turn, be used for other purposes, such as managing judicial recalcitrance (Trochev 2018). In Slovakia, the infamous Supreme Court President Harabin was supported by some judicial associations (Kaosar – Spac 2021 p. 126) and there is a perception of disrespect to independence by associations and of corruption. In Spain, as judicial associations are formed according to political views and with informal and subtle, but undeniable, links to political parties, there is a substantial degree of influence of political parties on the composition of the Council (Garpoupa et al. 2012). Different yet problematic examples have been added during the seminar. As mentioned, with reference to the Polish case, risks arising from judicial associations cannot be ruled out; and, with reference to the Italian case, judicial associations definitely entailed some negative effects on the judiciary. Altogether considered, it is therefore risky to create a necessary link between judicial associations, on the one hand, and independence and accountability on the other. From a general perspective, judicial associations can work as corporatist devices – and their role not conducive to greater independence – whereas the institutional design for judicial accountability towards the democratic power is not satisfactory.

However, any recommendation must take into account country-peculiarities. For that purpose, a systematic assessment of the dimensions highlighted in the first part of this Report is important. The increasing relevance of judicial associations and their potential misuse from within and from outside the judiciary make it important to have the right of judges to create associations – as voluntary associations under private law – recognized at the constitutional level as for any other citizen. This would provide further legitimacy to judicial associations, avoid the use of membership as a criterion for professional (negative) assessment, and any risk of having judicial associations banned.

Legal regulation of judicial associations is essential whereas any restriction of the right is to be provided. In such cases, as also stated by the European Court of Human Rights in the decision *N.F. v Italy* (Gisbert 2022), extraordinary clarity in the law is fundamental. Also any restriction must be reasonable. In his analysis of the Polish case Jan Olszanowski thus reminded that the so-called 2019 Muzzle Law imposed a duty for judges to disclose their membership to any association (Sanders 2020).

The direct incorporation of judicial associations in the formal architecture of judicial governance should be carefully assessed, by contextualizing all measures within the framework for judicial accountability. The risk is indeed always present for judicial associations to be misused and become power structures that need to be controlled. In that sense, the inclusion of judicial associations in consultative bodies as provided in Belgium or in Bulgaria might be a good compromise.

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