



# **FREEDOM OF EXPRESSION OF LEGAL PROFESSIONALS: FACING THE RULE OF LAW CHALLENGES IN EUROPE**

ONLINE CROSS-BORDER TRAINING WORKSHOP FOR JUDGES, PROSECUTORS,  
LAWYERS AND OTHER LEGAL PROFESSIONALS

Date 20-21 October 2021

Time 13.30-17.00 and 13.30-16.15, CET

Host Faculty of Law, University of Ljubljana

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## **Call for Participants**

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The training is offered within the European Commission's funded project *TRIAL - TRust, Independence, Impartiality and Accountability of judges and arbitrators safeguarding the rule of Law under the EU Charter* (project no. 853832, JUST-JTRA-EJTR-AG-2018). The TRIAL Project provides training activities and tools for judges, lawyers, prosecutors, and arbitrators on the European rule of law, mutual trust, judicial independence, impartiality and accountability (see the dedicated website [here](#)).

### **What is the Cross-Border Training Workshop about?**

This Cross-border training workshop will address two interconnected topics: the freedom of expression of legal professionals and the rule of law in Europe.

In the last few years, several Member States have witnessed an unprecedented decline in the rule of law, one of the core EU values upon which the EU is founded according to Article 2 TEU. Polish and Hungarian judicial "reforms" led to a structural breakdown, which no longer makes it possible to talk about independence and impartiality of their judiciaries (e.g. C-791/19, § 64). While other Member States endure for the moment, it is becoming increasingly questionable, whether their institutions are robust enough to withstand the present and future attempts to undermine the independence of their justice systems.

These developments have triggered a response from the CJEU and the ECtHR. Both courts have for example extensively dealt with questions regarding the compatibility of domestic accountability systems with EU law and ECHR (C-585/18, C-624/18, and C-625/18, C-83/19, C-127/19 and C-195/19, C-355/19; C-791/19, *Baka v Hungary, L.P and Carvalho v Portugal, Guz v Poland, Kövesi v. Romania, Panioglu v. Romania*). This workshop therefore looks at the most recent European standards on accountability of legal professions and freedom of expression, and seeks to understand their role in addressing the threats to the rule of law, emanating not only from the (populist) governments, but also from within the third branch. Traditionally, legal professionals, especially judges and prosecutors, have refrained from voicing their opinion in order to ensure their impartiality and the authority of their

institutions. The duty of restraint has been regarded as a prerequisite for public confidence, necessary for successful fulfilment of the role of the judiciary in a democratic society. However, nowadays legal professionals more often than ever find themselves in a difficult position: they have a (moral) duty to speak out in the face of affronts to the rule of law, yet fulfilment of such a duty could expose them to disciplinary and other sanctions.

Could the current challenges to independent judicial systems be regarded as a call for a re-examination of duty of discretion and perhaps for adjustments to the existing norm, especially as perception that legal professionals should show restraint could be abused as an excuse for disciplining the independent-minded? What are the risks of leaving more freedom (of expression) to legal professionals? What are the downsides of upholding the rule of law in concrete legal proceedings and what could be the advantages of exploring new means to defend this fundamental EU value? What about threats from within the judiciary, how to address these without harming the authority of the court? Do short-term benefits of sanctioning critics of the judiciary outweigh the potential improvement of the judicial system that their criticism might bring in the long-term? This workshop will raise these and other intriguing questions, without necessarily providing clear-cut answers. Instead, it will strive to equip the participants with legal knowledge on the scope and content of their fundamental right to free speech as well as on procedural guarantees and avenues for its protection, ultimately empowering them to better defend the rule of law in their daily work and beyond.

## Methodology

You will learn through:

- a 2-half day online workshop, including:
  - lectures and discussion sessions on wider socio-political context, affecting the judicial systems and the everyday challenges of legal professionals as well as on the most relevant European and national case law;
  - a hypothetical case session, where participants will discuss real legal issues through a case, replicating real life scenarios, in small groups;
  - interactive discussion roundtable.
- preparatory materials distributed to registered participants in advance of the training. Notably, you will be provided access to the TRIIAL online training platform featuring a module, designed especially for this workshop, a background module on the European rule of law and the mechanisms for its enforcement, and a module on accountability and freedom of expression. You will also be given access to a data-base gathering a selection of the most relevant European and national case law, which is summarized and analysed in English.

## Who should attend?

Judges, public prosecutors, lawyers and other legal practitioners.

There will be at least **30 participants** from any EU Member State.

The participation is free of charge. Participants will be provided with certificates of participation.

## Language

The working language will be English, with the exception of the final roundtable discussion, which will be in Slovenian, with simultaneous translation to English.

## What you can expect after the completion of the training?

This Cross Border Workshop will strive towards enabling you:

- to understand and explain the main legal issues relating to the European rule of law;
- to acquire the knowledge and the ability to assess the European legal pathways for defending freedom of expression of legal professionals;
- to understand the threats to the rule of law from outside and from within the judiciary, and your role in upholding this fundamental EU value;
- to become familiar with the ECtHR standards concerning freedom of expression of legal professionals and with the recent CJEU case-law, providing a new avenue for protection of this right;
- to identify the standard of effective judicial protection under Article 19 TEU and to become familiar with the differences in scope, purpose and threshold between Article 19 TEU, Article 267 TFEU and Article 47 CFREU;
- to understand the different underlying premises that govern the freedom of expression of different groups of professionals within the judicial system;
- to become familiar with the national case law concerning freedom of expression of legal professionals;
- to determine, whether the Charter of Fundamental Rights of the EU is applicable in a certain case or not;
- to be able to establish whether the solution of the pending case requires the involvement of the Court of Justice through the reference for preliminary ruling;
- to become part of a network of legal practitioners and scholars dealing with similar issues that could provide support for future questions.

## Selection Process

The workshop is open to 30 legal practitioners (judges, public prosecutors, lawyers, arbitrators, policy makers, public officials, representatives of ministries) from any EU country. Applicants are invited to submit their application, in accordance with the requirements as specified below, by **28 September 2021** to [mohor.fajdiga@pf.uni-lj.si](mailto:mohor.fajdiga@pf.uni-lj.si).

## Application requirements

1. A full CV in English or Slovenian;
2. A brief motivation letter in English or Slovenian explaining the candidate's reasons of applying, how he or she would benefit from and contribute to the project. This letter should not merely restate the candidate's CV.

Applicants will be notified about the result of the selection process by 4 October 2021.

## Selection criteria

The selection process aims to identify participants who will effectively and substantially contribute to dissemination of project results. Thus, candidates are expected to have a general knowledge of and experience in the topic of the workshop. However, applicants are neither required to have participated in similar training programmes before, nor will recent participation in similar training programmes necessarily prevent them from being accepted. English is not a requirement, but an advantage in the selection procedure.

The selection will ensure the following criteria:

1. Single participation principle: applicants that already took part to TRIIAL training activities

may be selected exceptionally. Exceptions are at the discretion of the University Ljubljana, in agreement with the Project Coordinator, the Centre of Judicial Cooperation of the European University Institute;

2. Gender balance;
3. Age balance.

Participants are asked to devote the necessary time to this training. If selected, participants must attend all sessions of the workshop. They are also asked to prepare for the workshop by reading the relevant materials in advance. The selected candidates are expected to be ready to commit to the active participation in the workshop.

### Contact person and general information

For any information on the workshop or doubts concerning the call for application, please contact Mohor Fajdiga: [mohor.fajdiga@pf.uni-lj.si](mailto:mohor.fajdiga@pf.uni-lj.si).

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## Programme

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Wednesday, 20 October, 13.30–17.00 (open to all interested)

### 13.30 Welcome Address and Presentation of TRIAL project

Jerca Kramberger Škerl | Vice Dean and President of Committee for Research and Development of the Faculty of Law, University of Ljubljana  
Saša Zagorc | Member of TRIAL and Vice Dean of the Faculty of Law, University of Ljubljana

### First panel: Legal Institutions under Stress: Lessons Learned, Questions Ahead

Moderator: Madalina Moraru | članica skupine TRIAL, Centre for Judicial Cooperation, European University Institute | Judicial Studies Institute – JUSTIN, Masaryk University

### 13.45 Can Law Protect Democracy? Legal Institutions as “Speed Bumps”

Bojan Bugarič | School of Law, University of Sheffield

### 14.05 The Lawyers v. Law Graduates: on the Role of *LAWYERS* in Upholding the Rule of Law

Tomasz Koncewicz | member of TRIAL, University of Gdansk

### 14.25 Coping with the Authoritarian Takeover of Justice: The Polish Experience

Jarosław Gwizdak | member of TRIAL, Institute for Law and Society – INPRIS | former Polish judge

**14.45**      **Backsliding into Judicial Oligarchy? The Cautionary Tale of Georgia's Failed Judicial Reforms, Informal Judicial Networks and Limited Access to Leadership Positions**

Nino Tsereteli | Judicial Studies Institute – JUSTIN, Masaryk University

**15.05**      **Discussion**

**15.20**      Break

**Second panel: Protecting Freedom of Expression of Legal Professionals: Standards and Avenues**

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Moderator: Raluca Bercea | Member of TRIIAL, National Association of the Romanian Bars (UNBR) | Faculty of Law, University of Timișoara

**15.30**      **The Freedom of Expression of the Judge under Article 10 ECHR**

Sietske Dijkstra | Judge at Court House of Groningen

**15.50**      **The Role of EU Law in Protecting the Freedom of Expression of Legal Professionals**

Nicole Lazzerini | member of TRIIAL, Assistant Professor of EU Law, University of Florence (Department of Legal Sciences).

**16.10**      Break

**16.15**      **Freedom of Expression of Legal Professionals before the National Courts: Presentation of national Case-law**

Tiago Fidalgo Freitas | Lisbon Public Law, University of Lisbon

Federica Casarosa | Centre for Judicial Cooperation, European University Institute

Mohor Fajdiga | member of TRIIAL, Faculty of Law, University of Ljubljana

**16.45**      **Discussion**

**17.00**      **End of First Day**

Thursday, 21 October, 13.30–16.15 (only for selected participants)

## **Freedom of Expression of Lawyers versus Protection of the Authority of the Judiciary: Hypothetical Case Scenario**

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**13.30 Hypothetical Case: Introductory presentation**

Mohor Fajdiga | member of TRIIAL, Faculty of Law, University of Ljubljana

**13.45 Discussion in Three Parallel Working Group Sessions**

**14.30 Conclusions of the Working Groups in the Plenary Session**

**15.00 Break**

## **Roundtable Session: Judges as Citizens - Time to End of Self-Isolation?**

(in Slovene with simultaneous translation to English)

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Moderator: Saša Zagorc | Member of TRIIAL and Vice Dean of the Faculty of Law, University of Ljubljana

**15.15 Views of the Panellists**

Vesna Bergant Rakočević | Vice President of Higher Court of Ljubljana | President of the Slovene Association of Judges

Simona Toplak | Editor in Chief at Finance Business Daily (Largest Slovene Business Online Media)

Jasna Zakonjšek | Attorney at Zakonjšek Law Firm

Boštjan Zalar | Senior High Court Judge at Administrative Court of Slovenia | Professor at the University of Ljubljana | Chairman of the European Chapter of International Association of Refugee and Migration Judges | Ad Hoc ECtHR judge

**15.35 Discussion**

**16.10 Concluding Remarks**

Saša Zagorc | Member of TRIIAL and Vice Dean of the Faculty of Law, University of Ljubljana

Mohor Fajdiga | member of TRIIAL, Faculty of Law, University of Ljubljana

**16.15 End of Second Day**