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JUDGES AND NOTARIES IN EUROPE: POSSIBLE COMMON DENOMINATORS

Distinguished representatives of the Notaries, distinguished organisers of this initiative, dear Colleagues, dear Friends,

It is a great honour and a pleasure for me to address you in the framework of this important event organised by the Italian notaries, in my capacity as Secretary-General of the International Association of Judges (IAJ) and also on behalf of its current President, Judge José Manuel Igreja Matos. I would like also to add that it is a particular pleasure for me to take the floor during an event organised by notaries, being myself a former teacher and lecturer for more than twenty years in the Notarial School of Turin.

As maybe many of you know, the main purpose of the IAJ is to reinforce the independence of the judiciary as an essential attribute of the judicial function, together with the protection of the constitutional and moral status of the judiciary and the guarantee of fundamental rights and freedoms.

The IAJ has consultative status with the United Nations (namely the International Labour Office and the U.N. Economic and Social Council, but mainly with the office of the UN Special Rapporteur on the Independence of Judges and Lawyers) and with the Council of Europe. As far as the latter is concerned, we have the status of observer within the *CEPEJ* (*Commission Européenne pour l'Efficacité de la Justice* – European Commission for the

Efficiency of Justice) as well as within the *CCJE* (*Conseil Consultatif de Juges Européens* – Consultative Council of European Judges).

The IAJ is governed by its Central Council, composed of representatives of the member associations, and also by the Presidency Committee, which is the administrative organ under the leadership of a President who is elected every two years, as are the members of the Presidency Committee, consisting of the President, six Vice-Presidents and, for a period of two years, the immediate past President.

The Association has four Study Commissions whose task it is to study a different topic each year in various fields:

- The first is engaged in the study of the status of judges, the independence of the judiciary, judicial administration and the protection of individual freedoms.

- The second commission is involved in the study of civil law and procedure;

- The third commission is engaged in the study of criminal law and procedure;

- The fourth commission is involved in the study of public and social law.

At meetings and congresses, the member countries try to gain a better knowledge of the country where the conference is being held, of its legal system, and of the problems encountered by its judges. Petitions and recommendations are produced at the conclusion of each congress.

Within the IAJ there are also four Regional Groups whose aim is to monitor closely specific questions relating to the judiciary in different parts of the world:

- the European Association of Judges (EAJ);

- the Ibero-American Group;
- the African Group
- the “ANAO” (Asian, North American and Oceanian) Group.

As far as the Studies Commissions are concerned, the one which is closer to your aims and activities is of course the second (civil law and civil procedural law).

Actually, since its creation, it has sometimes dealt with topics which may be of some interest for Notaries. Its conclusions for each annual meeting are available at the IAJ’s website (<https://www.iaj-uim.org/general-reports-and-conclusions-by-the-2nd-study-commission/>).

Let me mention just some of them:

- (1980) “Effects of foreign judgements in fields not covered by international conventions. Possibilities, means and methods of executing urgent measures in the field of family law;”
- (1981) “Protection of the interests of mentally handicapped in private law;”
- (1983) “The equality of husband and wife in family law;”
- (1985) “What legal rules should apply to the couples living together not being married, both between themselves and towards their common children;”
- (1989) “The judge and the co-operation of other Justice-related professions: Lawyers, Law-Professors, Public Notaries, professional experts, and other State officials;”
- (1992) “The Legal Status of Children after a) Divorce, b) Separation, c) Annulment of Marriage and d) Separation of Parents Having Cohabited Without Being Married;”
- (2004) “The powers of the judge in family matters;”

- (2005) “Alternative Dispute Resolution as a means of improving the delivery of justice and reducing the delays in civil procedure;”
- (2006) “Legal rules regarding patrimonial interests, succession and duties of couples living together but not being married;”
- (2011) “Cross-border issues in the face of increasing globalization – as reflected in a series of individual fact scenarios”.

As far as relations between Notaries and Judges are concerned, let me point out that already thirtythree years ago, during our Congress in Macau held on 23-27 October 1989, the IAJ approved, among other things, on the subject of “The Judge and the Co-operation of Other Justice-Related Professions: Lawyers, Law-Professors, Public Notaries, Professional Experts, And Other State Officials,” following conclusions:

“in the civil law countries which know the Latin Notary

- the Notary is a public official who advises the parties impartially and points out to them the legal implications of such deeds as they might wish to make, thereby preventing conflict between the parties,
- authenticated deeds drawn up by the Notary simplify evidence proceedings;
- the Notary represents the parties in Court in matters of voluntary jurisdiction;
- the Notary is further required by the Court to perform judicial acts such as inventories, divisions of property and affixing of seals;

it is desirable that the functions of the Notary be consolidated

and that resort to the notary's services in the administration of Justice be recognised and encouraged.”

The IAJ and the UINL have signed 28 years ago (on 29th September, 1994) a cooperation agreement.

Coming to present times, our two organisations have successfully co-operated in the framework of EU law training in English language for European notaries and judges, involving judges and notaries from Bulgaria, Hungary and Italy. The IAJ was also involved in the programme called “EU Cross-border Matrimonial and Registered Partnerships Proceedings: EU Regulations and E-Learning,” developed by the Italian Notarial Foundation.

More precisely, a project financed by the European commission was launched in 2019 in co-operation with the Italian National Notarial Council and the Italian Notarial Foundation on “Action grants to support transnational projects on judicial training covering civil law, criminal law or fundamental rights” (JUST-JTRA-EJTR-AG-2017).

The project officially started on September 3rd, 2018. The IAJ received European funds to finance the participation of judges from 3 countries (Bulgaria, Hungary and Italy) in training activities concerning family law. Seminars were therefore held in Italy, Hungary and Bulgaria. The last 2 seminars were held in 2020, by video link, due to the pandemic situation. On June 25th, 2020, a final seminar took place and I made a brief intervention on behalf of IAJ, mentioning our good relations to the International Association of Notaries and the excellent co-operation activities done during a long period. On September 2nd, 2020, a news was published on the IAJ website as well as a message spread among

the IAJ members as regards a handbook produced with the EU contribution, by the coordinator and under the coordination of the project leader.

More information on this activity is available here:

- [EULawInEN project : Handbook - Read more](#)
- [EuLawInEN project: sixth and last seminar - Read more](#)
- [EuLawInEN project: newsletter and last seminar - Read more](#)
- [EuLawInEN project: 5th seminar, in Sofia \(Bulgaria\) via streaming - Read more](#)
- [“EULawInEN” project: access the MOOC platform EMMA - Read more](#)
- [EuLawInEN project: 5th seminar, in Sofia \(Bulgaria\) - Read more](#)
- [March in Warsaw \(Poland\): article from the President of the Portuguese Association of Judges, Manuel Ramos Soares - Read more](#)
- [EuLawInEN project: 4th seminar, in Budapest - Read more](#)
- [EuLawInEN project - Read more](#)
- [Strengthening the rule of law within the European Union — Communication from the European Commission - Read more](#)
- [EuLawInEN project: first seminar Rome \(9-10 April 2019\) – videos - Read more](#)
- [EU law training in English language for European notaries and judges - Read more](#)

The above-mentioned co-operation has as well produced a handbook on EU civil law. The document is available at the following URL:

We know very well that, on the international level, we already have a whole array of instruments and declarations issued by international bodies such as the U.N. (see the so-called Basic Principles on the Independence of the Judiciary) and the Council of Europe (I am referring especially to Recommendation No. 12/2010 and to some opinions of the Consultative Council of European Judges), which are stressing the need to safeguard the autonomy, independence and impartiality of Judges. But if we reflect attentively on the fundamental issues at stake, we can easily discover that these very requirements are basically the same for the selection and training of Notaries.

Therefore, I think that, having in mind the highlights of those international principles, we could try to benefit from the experience of those legal systems in which qualified, objective and effective selection of legal professionals has been successfully developed for many years.

Actually, we do know that recruitment of legal professionals differs enormously in Common Law countries, when compared to Civil Law countries.

In this framework I would like particularly to emphasize the German experience of a common initial training based on two phases (*zweiphasige Ausbildung*): one more theoretical and the other one more practical, marked by two severe and very selective examinations (*erste Juristische Staatsprüfung*, *zweite Juristische Staatsprüfung*), between which a “Preparatory Service” (*Vorbereitungsdienst*) helps prospective Judges, Notaries and Lawyers with getting acquainted with the specific issues of each legal profession.

Another worth considering option is the experience of the French *Ecole Nationale de la Magistrature*, which since 1958 has been preparing young French law graduates to become Judges and Prosecutors. A model which helped during these decades training thousands and thousands of judges of the French speaking world and which was successfully exported in many other countries of Europe and of other continents. Other positive experiences are those of Spain, Portugal and of the Netherlands.

I am personally convinced that, as far as the judicial side is concerned, we should try to start a comparison among such systems in order to see what kind of “input” we can find for a prospective new system of selection and training of Judges and Notaries in a perspective which emphasises common aspects.

Let me also point out that, as already said, international bodies have been developing in these last years several legal instruments which could serve as a guide for singling out common denominators for judicial and notarial selection and training, so many are the aspect of our professions we share.

Both our professions need people who are not only legal experts, but who are able to cope with the awkward challenges of present times. Rather than people who know by heart thousands of legal provisions, which very often are bound to stay in force for a period no longer than... *l'espace d'un matin*, we need young men and women who are able to find solutions to unexpected problems raised by the dazzling and increasingly complex legal framework resulting from internal, international, supra-national, transnational and foreign legal provisions.

We also need honest, independent minded and courageous people, who are able to defend and protect day by day their own

autonomy vis-à-vis possible external undue influences of any kind. New ways of selection and training must encourage and foster such spirits among young jurists. At this level too a co-operation among Judges and Notaries is nowadays more and more needed. I am sure both our organisations will be able to find out common denominators for Judges and Notaries of 21st century.

Thank you for your attention.