

## The role of magistrates in the construction of democracy - a European perspective

What role do magistrates play today in building and sustaining democratic regimes?

In a national context where the political culture remains marked by bonapartism and the hegemony of the executive, the question may seem incongruous to some. From a European perspective, however, it is as obvious and fundamental. Since the end of World War Two, courts have been regarded as one of the pillars of the humanist legal order set up on the continent in response to the massive human rights violations committed during this period. A legal order which, as the preamble to the Council of Europe's founding statute of May 5 1949 recalls, promotes the idea that "all genuine democracy" is founded not only on the "principles of individual freedom and political liberty", but also on the "rule of law" and, in particular, the freedoms guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms of November 4 1950. This concept echoes that of the European Union, which is officially "*founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities*"<sup>1</sup>.

To ensure such pre-eminence, judges and public prosecutors must necessarily be at the forefront. In the runner-up to the European Parliament elections, we feel it would be useful to highlight once again the foundations, modalities and limits of the role played by judges in preserving the democratic rule of law. For, more than ever, the democratic rule of law needs to be safeguarded, if not consolidated. For the latter remains more than ever, if not to be safeguarded, then at least to be consolidated. And, as the examples of Poland and Hungary show, magistrates who want to guarantee the rule of law for their fellow citizens sometimes have to fight a real institutional battle that exposes them personally. In this battle, the links they can forge directly with other players in civil society often prove decisive to their success and, more broadly, to the democratic vitality of public debate. In turn, however, this commitment raises legitimate questions as to how it fits in with the duties of independence and impartiality that judges and prosecutors are required to observe. In this respect, the European Court of Human Rights reminds us that "*the freedom of expression of judges to address matters concerning the functioning of the justice system may be transformed into a corresponding duty to speak out in defence of the rule of law and judicial independence when those fundamental values come under threat.*"<sup>2</sup> How can we put these principles into practice? How can the dialogue between citizens and their judges be brought to life for the benefit of democracy? These are just some of the questions that the association Magistrats Européens pour la Démocratie et les Libertés (MEDEL) and the Syndicat de la Magistrature are proposing for discussion at this symposium.

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<sup>1</sup> Art. 2 TUE

<sup>2</sup> ECHR Zurek v. Poland n°39650/18, 06.16.22, n°222

## AGENDA

- 10 a.m.: Special welcome by the President of the Paris Judicial Court
- 10:15 a.m.: Opening of the symposium by the President of the Syndicat de la Magistrature

### 1) 10:30 am: Magistrates as guarantors of the democratic State governed by Rule of Law

#### **Chaired by Simone Gaboriau, Honorary Magistrate**

- Historical introduction: the place of judges in the construction of the European legal order after the Liberation: Mathieu Touzeil-Divina, professor of public law;
- Defending the independence of the judiciary through litigation. How can we prevent the rule of law from becoming politicized? Carsten Zatschler SC Senior Counsel
- Mobilizing European law to protect citizens' freedoms: a double-edged sword
  - The example of consumer law: Simon Chardenoux, Judge
  - The case law of the Court of Justice of the European Union and economic and social rights: Ismaël Omarjee, Professor at Paris Nanterre University
  - Questions and answers

Lunch break

### 2) 2:30 pm: Magistrates, actors of the democratic debate

#### **Chaired by Lara Danguy des Déserts, editor in chief, *Délibérée Law and Society Review***

- The means of dialogue with society: European guarantees of judges' freedom of expression: Isabelle Boucobza, Professor at Paris Nanterre University ;
- Dialogue between judges and citizens in Poland: Dorota Zabłudowska,
- Dialogue between judges and citizens in Poland: Dorota Zabłudowska, judge, and PaulinaKieszkowska, member of the NGO "the free courts initiative",
- Dialogue in Italy in the context of the fight against the mafia: Fabrizio Vanorio, anti-mafia prosecutor in Naples;
- Questions

4:30 pm: Closing address: Mariarosaria Guglielmi, President of MEDEL