



“The role of magistrates’ associations in nurturing legal culture and protection of vulnerable groups”- International conference -Sofia, September 27th ,2024

Opening Address by Mariarosaria Guglielmi, President of MEDEL

On behalf of MEDEL, I would like to welcome you all and warmly thank our guest speakers, who accepted to be here to bring their knowledge and experience.

The topics we will discuss today are crucial for our understanding of how -in the current context - judges and their associations can contribute to the strengthening and defense of fundamental rights and to ensure effective access to justice, which is a pillar of both human development and the implementation of the Rule of law.

MEDEL wants to share today the *lessons learned* during the last years of severe democratic backsliding in Europe. Since its establishment in 1985, our association has been committed to pursuing, along with the defence of the independence of the judiciary and the values of the democratic Rule of law, the promotion *of a democratic legal culture*; the promotion and defence of the rights of minorities, of migrants and the most vulnerable, *in the perspective of their social emancipation*.

MEDEL's raison d'être lies in our collective commitment, as European magistrates, to the Rule of law and human rights: universal rights, written into supranational charters and constitutions, that are an *essential component* of democracy; fundamental rights that - as envisioned by our founding fathers - is be the ground on which an United Europe can be built.

Fundamental rights, as the most effective instrument for the emancipation of individuals, require effective access to judicial protection: judges responding to the demand for justice, acting as impartial guarantors of the rights' effectiveness; judges reaffirming fundamental rights when denied or violated.

Fundamental rights require independent justice.

This has been the red thread along which MEDEL's commitment has developed over the years. And fundamental rights are today the lens through which we can observe the different stages of the process of severe democratic erosion that is taking place in Europe: the attack on the independence of judicial

systems, as well as on individual judges and prosecutors; the systemic dismantlement of all checks and balances to provide the executive with a firm grip on the machinery of justice. This process, that in Poland took the form of a brazen defiance to the rule of law, and is still progressing in a subtle manner in other contexts, has a final goal: a society no longer based on the idea of the universality of fundamental rights, and the equal dignity of individuals, but rather on identity and exclusion. A new order where the space for civil society and freedoms would shrink and the role of independent and impartial judicial systems to protect rights - also through interaction with the European courts – is considered as an obstacle to get rid of.

In many contexts, as in France and Italy, judicial associations and their freedom of speech are under attack, because of their role in strengthening our common legal culture, for their presence in the democratic debate, and the dialogue with civil society on Rule of law and fundamental rights. Once again Poland offers the strongest testimony of how associations, through their collective actions and the on- and off-bench mobilization of judges and prosecutors, have been and still are active in the struggle to defend judicial independence.

But it is against this backdrop that European judicial associations have multiplied their joint initiatives in defense of shared values, supporting each other and individuals judges and prosecutors. And judicial associations started to be regarded as relevant advocacy actors at EU level.

The second part of our conference will specifically revolve around two prominent concepts of human rights law, **access to justice and vulnerability**: in the current context of increasing inequalities, the resilience of the human rights framework and the effectiveness of their judicial protection must be assessed against the backdrop of situations in which individuals are more likely to be harmed, due to personal or social conditions, or have their human dignity violated.

As a great comparative law scholar, Mauro Cappelletti, said, the concept of *access to justice* led to a Copernican revolution: from the traditional 'Ptolemaic' concept of Justice, which saw law only from the point of view of the *producers* and their *product* (the legislator and the law, the judge and the judicial decision), to the perspective of the *consumer of law and justice* and of the obstacles that stand between law and those seeking access to justice.

Effective access to justice according to Cappelletti can thus be seen as the most basic requirement – the most basic “human right” – of a modern, egalitarian legal system which purports to guarantee, and not merely proclaim, the rights of all.

The link between the principle of the respect for human dignity and the treatment of unprecedented or complex situations of weakness that come under the heading of “vulnerability” commits therefore the judge to play an active role in the protection of fundamental rights: it is the judge's duty to recognise these situations and the obstacles that compromise effective access to justice.

As it has been said, when judges grant protection to the most vulnerable, recognizing for instance international protection to asylum seekers, they are not driven by benevolent impulses, or by the unwritten laws of Antigone: they apply law, i.e. the complex legislation on the subject, and they have to interpret the law, in the light of Constitution and supranational sources.

Sharing concrete experiences and cultural views is necessary at a time when the law is no longer a formal command and requires instead patterns of interpretation that take into account the existence of multilevel systems for the protection of fundamental rights.

The role of judicial associations is crucial in nurturing a common legal culture and supporting our common perspective: despite the current dark scenarios for fundamental rights we are experiencing - new devastating wars, the European and national policies increasingly eroding the EU legal order based on its founding values vis à vis one the most dramatic current situations of vulnerability linked to migration - despite all this, our Charters can still guide us on the path towards human emancipation through fundamental rights and the guarantee of their effective judicial protection for all individuals.

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