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Full Length Research Paper

Building limits abroad to settle clashes at home. Preparatory comments on the European strategy of lawful instruction and legal preparing in CEECs

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A triadic structure is key to ensure the legitimacy of the judge, that is, a prototype of the mechanism of dispute settlement adopted in complex and advanced societies. In order to promote the enforcement of the rule of law in the new member States, the European Union and the Council of Europe enacted several policy instruments, all of them aiming at providing judges and prosecutors with new arenas where they may socialize, exchange views and information, share ideas. Lawyers and private attorneys are almost absent from the targets addressed by the European policy of rule of law promotion. Therefore, know-how and capacities are strengthened on one side of the bench – the side of the judicial actors – whereas the private side – the lawyers – seemed to be neglected. Relying on an innovative data set constructed alongside a five years of research conducted by the author, this paper addresses the issue whether or not these policy instruments will prove able to positively influence the legitimacy of the adjudication in the new members. In the last section, some hypotheses are suggested to set down a tentative research agenda for the very next future.

Key words: Judicial training, conflict resolution, capacity building, rule of law, European enlargement.

THREATENING THE TRIADIC STRUCTURE OF COURTS BY PROMOTING THE RULE OF LAW

This paper aims at providing legal and social scholars with some new clues about the potential impact they may expect from the European policies of rule of law promotion as for the structure of the trial in the new EU member States. The rationale of the argument put forth herein is one of a preliminary investigation, aiming to raise rather than to test hypotheses.

This notwithstanding, the pages that follow point out a number of critical aspects of the policy of rule of law promotion that make full reference to the results of a preliminary empirical investigation carried on by the author between 2004 and 2008. These data comprise both secondary literature based data (the reports drafted by the IOs and the Council of Europe on the judicial systems of the member States) and on the field research based data (interviews conducted by the author on the base of a semi-structured questionnaire answered by prosecutors, judges and representatives of the bar associations and a survey conducted at the supranational level among the members of the judicial networks created by the Council of Europe: data are annexed to the present article).

The work here presented relies on a qualitative type of methodology, even if quantitative data about the number of judges, lawyers and legal scholars of the countries considered into the research will be presented.

Among the many aspects encompassed by policies of rule of law promotion, the "promotion of a triadic disputes settlement" has been formally said the most important aim pursued by international donors (Open Society Institute, 2001 and 2002; World Bank, 2004; European Commission, 2006; ABANET, 2007; Trubek, 2004) . In the case of European policy of rule of law promotion addressed to post communist countries the creation of arenas where judicial actors exchange information and ideas has drawn the largest part of the resources – financial and symbolic – allocated in the enlargement policy (Grabbe, 2002; Cremona, 2003; Vachudova, 2005; Piana, 2007). Since the participation to these arenas has not been equal for all the legal professions (judges, prosecutors,

barristers) it can be argued that the influence exercised by the European Union in these countries may end up with undermining the achievement of a truly triadic adjudication, an achievement which many observers and scholars expected from the breakdown of communist regimes (Solyom, 2003; Sadurski, 2004).

In the following pages, I will raise a number of key issues associated with the institutional capacities of new European member States in solving disputes by mean of adjudication. I decided to concentrate my remarks on three Central European countries, which shared a "Rechtstaat" tradition: Poland, Czech Republic and Hungary (This choice is based on methodological and theoretical reasons. It frames the analysis in a comparative perspective based on the criterion of "the most similar cases". Then, it will allow us to critically review the legal positivist ideology, shared in the German area of influence. The legal positivism basically reduces the knowledge used to adjudicate to the "legal knowledge". As soon as this legal ideology has been exposed to the inputs coming from outside the domestic legal system, it unfolded a crucial shortcoming, related to the week capacity of the judicial actors socialized in a positivist environment to manage a complex and multi-layered set of legal rules and judicial behavioral standards). This choice is due to the fact that the *Rechtstaat* tradition acknowledges to the legal knowledge (the knowledge of legal norms and doctrine) a particularly high significance in legitimizing judicial decisions. Fairness and legitimacy derive from a formally correct application of legal norms (Caenegem, 1987; Kommers, 1997; Merryman, 1977) . My remarks address both the mechanisms of influence enacted by the European Union and the actors targeted by those mechanisms. Far from being enabled on the basis of the knowledge I have at the moment to provide the readers with a final assessment of the impact of the European policy, I would argue that it is possible to uncover potential drawback and shortcoming in this policy due to the type of actors targeted by the programs of legal education and training funded by the EU. In a word, actors targeted consist mainly in public judicial actors, whereas the capacities of the bar and of lawyers have been largely neglected.

The text is organized as it follows: the theoretical framework is introduce to present in detail the concept of legal complex and the ideal-type of a triadic mechanism of conflict resolution; secondly I will provide a comprehensive description of the changes underwent by the CEECs' legal complexes during the '90s before the beginning of the pre-accession strategy. Lastly, the paper will present an overview – fairly innovative in the current literature on the field – of the activities of socialization and training promoted by the EU after the mid '90s. Clues for a further investigation and hypotheses for an empirical research to be conducted on the ground are then suggested in the end.

MULTI-LEVEL LEGAL COMPLEX AND TRIADIC SITUATIONS OF ACTION

During the last decades scholars increasingly contested the monopoly of national States in creating and enforcing legal norms (Zürn, 2000; Risse, 2005). Indeed, they showed that national States are embedded in a multi-level system of legal norms, procedures, routines, that have completely transformed the international and the domestic law-making (Abbott and Snidal, 2000; Young, 2001). Due to this fact, legal actors are forced to deal with a multiple- centered set of sources of legal norms and values (De Sousa Santos, 2005) (It is maybe worth to be noticed for our purpose that the multi-layered feature of politics goes beyond the phenomenon labeled as "normative transfer" or "legal transfer". While transfer of legal norms occurred by establishing bilateral relationship between two institutions, a multiple-centered system of norms normative inputs are exchanged horizontally and vertically).

Beside the withdrawn of sovereignty enacted by the proliferation of supranational hard and soft law (Before being a feature of the process of law making, the importance of experts characterizes the processes of policy making. Therefore, the multi-level organization of political actors and the multi- level interaction of legal experts seem to be, so to say, "two faces of the same coin". This general statement holds also in the case of the European integration (Stone Sweet, Sandholtz and Fligstein, 2001, p. 14)), an extensive effect might be arguably expected as for the transmission of the legal knowledge. In fact, instead of being exposed to a flux of inputs coming from her national legal system, any judge is exposed to the legal knowledge (By the concept of "legal knowledge" we refer not only to the knowledge of the law, but also to the knowledge of the legal doctrine and the ideologies more or less explicitly incorporated into it) that comes from several sources, none of them clearly ranged in a clear and stable hierarchical order in which domestic law occupies straightforward a clear position (Mokrà, 2007; Zemanek, 2003; Dezalay, 2007; Teubner, 2005). The effect this has on the triadic structure of the adjudication should not be underestimated. Beside the burden of adjudicate a case any ordinary judge is called nowadays to accomplish many others choices, some of which consist into providing a reasoned, acceptable, but still contingent and bond to evolve order of norms taken from different sources, sometime offered by scholars of different nationalities or embedded in different legal cultures.

Furthermore, an increasing number of cases feature a supranational nature: they emerge from disputes involving actors placed in different countries or they require the intervention of several judicial institutions, not all of them located under the same domestic rule of law.

The impact of legal ideologies is, as a consequence, much higher than in a traditional institutional setting

(Allard and Garapon, 2007; Priban, 2002), which was basically grounded on the State's monopoly of law's production. In different terms, systems that have exhibited a firm preference for a *Rechtstaat* model and a positivist approach are eventually subjected to a steady pressure, as they should somehow take distance from a conception of legitimate adjudication simply based on the knowledge of the domestic legal norms. This impact is arguably stronger in countries whose legal culture is centered on legal doctrine of scholars. This happens for several reasons. Not only the domestic character of the legal knowledge is questioned and finally puzzled by the globalization and fragmentation of law (De Sousa Santos, 2005), but also the merely legal character of norms used to shape the arguments provide in adjudicating a case is somehow less sharp and clear than it was before. Norms come from quasi legal systems. In some cases, they incorporate non legal norms, as managerial principles and performance – based standards (Langer, 2005; Piana, 2009a). Constitutional principles that remain unwritten and this notwithstanding get a fairly high importance in leading judicial interpretation, finally standard of time frame in adjudicating a case, as it is the case in Europe (Piana, 2009b; Albert, 2008; Frydman, 2007) where the European Court of Justice, adjudicating on *Sciortino vs Italy* supported her argument also on the base of the infringement Italy committed against European standards of trial time frame (Fabri, 2005; Langbroek, 2005).

Lastly, legal scholars, professors of law are the foremost frontrunners in opening up national systems as they are more inclined than other institutional actors to get in touch with colleagues who work abroad (Caenegem, 1987). The more their voice is important, the more one can expect external inputs in terms of legal doctrine are facilitated to enter the domestic system (even though this last remains at the stage of an interpretative hypothesis that should be tested on empirical basis).

The consequence of this manifold change is that supranational judicial epistemic communities (Haas, 1992) come out as being very influential arenas, where knowledge and ideas are exchanged among their participants (Pointing out the importance of multiple networks (Wedel, 2000; Jessop, 2004) scholars stressed the differential impact they have. These differences depend on the identity of the actors who are in a position to adopt inputs from abroad and implement them at home. Such actors played as gate-keepers (Piana, 2007), because they exploited at the domestic level the cognitive skills and the expertise provided by the supranational institutions (Risse, 2005; Lundvall and Tompson, 2002)). Due to this influence, the participation of judicial actors to the activities of supranational epistemic communities may have a deep impact upon the very structure of the trial (Madsen and Vauchez, 2005) (Arguably, this impact will be higher in the cases that require an international treatment. This is by the way the kind of cases heard by the courts under the provision of the European Arrest Warrant. More generally speaking, during the period of pre-accession, one of the concerns of the European Union was exactly the capacity of the new member States of receiving and executing the judicial decisions taken by any other European court. Furthermore, the capacity of the judicial offices of exchanging the data and the evidence concerning controversial cases has represented for years one of the most challenging objectives pursued through the pre-accession strategy (Grabbe, 2002; Piana, 2006b)). By taking part to the meetings, the seminars, the conferences organized by these communities and by being involved in the communicative actions that these communities encourage judicial actors are enabled to construct capacities (cognitive capacities but also capacities of interacting, entering in touch with international organizations and supranational arenas) and gain a stock of knowledge that they may use at home. International communication empowers actors (Morlino and Magen, 2008; Risse and Sikkink, 1999; Slaughter, 2004) by providing them information of other judicial systems and connection with colleagues.

The considerations deployed above are of the utmost importance for a better understanding of the impact the promotion of the rule of law enacted by the European Union in the post communist countries had on the structure of the trials of these countries. Even if a final assessment can't be yet provided, still some points can be raised. During the pre-accession period, the European Union exercised its influence in CEECs in different ways (Kochenov, 2004; Kubicek, 2000). It casts several mechanisms to strengthen the capacities of judicial actors (European Commission, 1998, 1999 and 2006). These actors have been strongly encouraged to enter as members in epistemic communities or networks (Piana, 2007 and 2009). To do so, the EU used four kinds of policy instruments: monitoring; training; networking; twinning. First of all, the European Commission regularly monitored the judicial reforms adopted in the candidate countries and established a dialogue between judicial actors, representative of judicial institutions, and the experts who work with the European Commission. Second, the European Commission introduced *twinning* (European Commission, 1997). The twinning (Interview with the Head of the Financial Instruments Unit of the DG enlargement, Brussels, November, 2004) relies on the appointment of experts within public administrations. These experts introduce experiences and patterns of problem-solving, successfully adopted in other public administrative agencies. Twinning projects are intentionally addressed to support a *transfer of best practices* from the old member to the prospective new member (Phinnemore and Papadimitriou, 2004; Piana, 2006) (National administrations still remain accountable for the project to the European Commission, even if external experts are appointed (European Commission, 1998)). Therefore, the twinning

projects have represented a model to export patterns of behaviors, procedures, and rules. Thirdly, judicial training has been put on the political agenda of the European Union, since it has been considered as a key- leverage in the construction of the European legal space (European Commission, 2006) (Interview with Lorenzo Salazar, member of the cabinet of Franco Frattini, vice president of the European Commission, Brussels, May, the 30th 2007). Not only training has been promoted by financing the programs of training (ENJT, 2005 and 2006), but also by financing the creation of by Judicial Schools in the new member States (Maitrepierre, 2005; Piana, 2007). Last, but not least, together with the Council of Europe (As the paper shows the Council of Europe champions the rule of law promotion. It witnesses a strong commit-ment into the process of judicial cooperation. This is also due to the formal mandate of the Council of Europe. Since its institutional status is equivalent to an interna-tional organization, the legitimacy of its policies relies upon the mandate of the member States. See Council of Europe, 2005), the European Commission encouraged the creation of judicial networks (Potoki, 2006), that is, networks almost composed by judges and to a less extent by prosecutors.

These networks set new standards of quality of justice (Fabri, 2005), delivered recommendations regarding the implementation of the judicial independence. Doing that, they enforce their routines and their ways of interaction. This has been done to reinforce the mutual trust among their members (European Commission, 2006) (Interview to a member of Lisbon Network, Strasburg, 24th November, 2007). Transnational communication (Dolowitz and Marsch, 2000) encouraged within the networks (Interview to a member of the CCJE; on the point, interview to Giacomo Oberto, legal expert of the Council of Europe and judge of the Appeal Court of Turin, May, the 25th 2006) has allowed judges and prosecutors coming from CEECs to discuss exchange and spread off new ideas and legal ideologies (Interview to Jan Passer, judge at the Czech Administrative Supreme Court, Prague, 3rd June, 2007).

To better uncover the asymmetric effect that one can expect from the European policy of rule of law promotion, as it concerns judicial actors, it may be promising to rely on three notions: the legal complex, the concept of capa-city, and the concept of situation of action. A legal com-plex is "the structure and the dynamic of the judges, law-yers, and the diversity of legal occupations" (Halliday, Feeley, and Karpik, 2007). Empirical researches show the importance of the cognitive and communicative relation-ship that exists among the parts of the legal complex (Halliday and Karpik, 1997). For capacity I will mean to the resources owned by an actor to do something, to perform a role, to execute a command. Capacity is a potential stock of resources, which is transform in actual behavior in dependence with the availability of opportunities of action. Capacities of actors who take part to the legal complex should be proportioned and possibly symmetric. Moreover, as interactive behaviors are able on their own to construct capacities and to empower actors who are more proactive in interactions (Selznick, 1957; March and Olsen, 1989), it is of the utmost importance that actors who belong to the legal complex interact on equal basis. Asymmetric interactions, which may for instance be more accessible to judges and prosecutors and less to lawyers, will end up in asymmetric empowerment and therefore in asymmetric distribution of capacities.

In order to be able to trust the judge as an impartial mechanism of dispute settlement, individuals should believe that she will adjudicate on the base of her legal knowledge (This knowledge is a kind of "know that" (knowledge of the legal rules) and a kind of "know how" (knowledge of the standards and the routines followed to legitimately behave as a judicial actor). Judicial ethics belongs to this second type of knowledge. In some cases, the "know how" is made explicit and encapsulated into a legal ideology. We will not go through the analysis of the relationship between these kinds of knowledge and the legal culture (internal and external). We believe that the distance between the two kinds of legal cultures defined by Friedman depends on socialization, institutionalization, and functional differentiation featured by each sociopolitical system), example, as *a tertium super partes* (Shapiro, 1981). Thus, the cognitive basis of adjudication directly touches upon the triadic structure of the trial, since the legitimacy of the role of the judge depends on the expectations the parts have about the impersonality of the approach she will adopt to adjudicate. In this context "impersonal" means "based on the knowledge of impersonal and abstract rules" (idem, p. 111). In principle, the delegation of the dispute settlement to a *tertium super partes* irreparably discontinues the relationship the parts have with the judge. Once the power is delegated to the judge, the costs the parts pay to monitor the judge herself inescapably increase (In the countries that have adopted a bureaucratic judicial system, these costs are also formalized into a structural asymmetry of knowledge that countersigns the relationship individuals have with any bureaucratic institution). However, the triadic structure of the trial ensures also the parts about the equality of the costs both of them are going to pay to interact with the bench.

This holds for any type of part, private or public it might be. Thus, knowledge shared by the judge exclusively with one of the parts creates a dramatic asymmetry and eventually transforms the triadic structure into a dyadic pattern of interaction (For instance, in criminal cases the amount of knowledge the judge shares with the prosecutor is proportional to the costs imposed to the defendant to control what is going on in the trial. The judicial systems have fabricated number of different devices to overcome

this asymmetry. For instance, the communication and the socialization are powerful mechanisms to drive judicial and not judicial actors to share a core of knowledge and standards. However, these mechanisms might be counterbalanced by a clean-cut distinction in the appointment of the actors involved into the trial, judges, attorneys and prosecutors. All depends on the institutional settings and on the legacy of the system considered) . Collectively recognized (recognized by the parts and by any potential part in a trial) legal knowledge is in this respect *a type of institutional capacity that is deemed to be pivotal in solving legitimately conflicts* . The triadic structure is not but a "kantian ideal". It has been never fully instantiated into the history of the constitutional liberalism. This notwithstanding, to the extent adjudication gets closer to it, it also gets a higher degree of legitimacy: people who expect to have an impartial adjudication will accept to bear the costs of being the losers of a trial (Tyler and Belliveau, 1995; Besson, 2005) . Hence, challenging the triadic face of a trial is a way to potentially undermine its social legitimacy (Jensen and Heller, 2003) (According to Max Weber, this legitimacy depends on a normative collective rationality (Weber, 1922). This is a aggregate effect of two beliefs: the collective belief that each individual into a society will comply with judicial decisions if they are taken impartially and the belief that individuals should comply with the judicial decisions only if it has been taken impartially).

To preserve the triadic structure of the trial, actors should share the same core of values but also should be provided with comparable resources. If a trial may be considered as a process in which power is exercised, actors who are involved into the trial should be enabled to play on a fair basis. Also their expectations about how others should behave should be coherent and correspond by and large to what the others actually do. A mutual adjustment between expectations and behaviors is fairly more likely if actors know each other or at least if actors have the chance to interact on a regular basis (Merton, 1957) (This phenomenon is not new in judicial policy making. Some scholars have disclosed it by showing the importance of the academics as a group of reference for judges and prosecutors (Caenegem, 1987; Guarnieri, 2007)).

A situation of action is the framework where actors regularly interact. In a "situation of action actors can be characterized by four sets of variables" (Ostrom, 1990): resources that an actor brings to a situation; values that an actor assign to actions; opportunities of action; routines (patterns of interaction consolidated in the past and shared by decision makers who already act within the arena; new decision makers, the new entries, should learn routines through a process of socialization and imitation (Boudon, 1990 and 1993).

In a triadic situation of action communication capacities should feature a prototypical distribution: Each part has equal capacities to address the judge and to settle a relation of trust with the judge. However, knowledge is asymmetrically distributed. The judge is the expert of the law together with the legal representative of the defendants, the defendant are equally as for the knowledge they have about the stage, the situation and the development of the trial.

All the aforementioned aspects of the dynamic of the legal complex are tremendously sensitive in a democratizing political system (Halliday and Karpik, 1997; Brink, 2007) . As soon as an external influence changes the balance between the parts and the judge it may threaten the triadic structure of the trial (By the way, this is something that per se has nothing new. In many institutional settings the judicial power is far from being organised in a triadic structure (the new constitutionalism for instance encourages the fact that the courts take distance from a triadic situation of action). Nonetheless, this perspective is very promising to critically review the impact that the policies of rule of law promotion have in the countries where they explicitly aims at providing citizens with an impartial and fair judiciary). In the next two sections I will try to provide evidence to put forth some hypothesis on the potential impact one may expect as for the European influence on CEECs' legal complex and, by consequence, on CEECs' adjudication.

POST COMMUNIST CAPACITIES AMONG LEGAL AND JUDICIAL ACTORS

This section shall provide a comparative view of the post communist legal complex. It will consider three countries, Poland, Czech Republic and Hungary, from the 1989 to the 1997. In all these countries the legacy of the Austro-German constitutionalism was strong before the establishment of the communist rule (Öhlinger, 2003). After the fall of the communism, all these countries set up a fairly robust constitutional setting, restrained the arbitrariness of political power and guaranteed the implementtation of individual rights. In 1997 all of them opened the pre-accession negotiations (We stress the similarities among these countries, being aware that in a more adequate comparative analysis we should consider also countries with a weaker constitutional tradition and with a different legal tradition (a French one instead of an Austro-German one). Since the paper is framed in a broader research project, we can fully report here the analysis we have done on other CEECs, for instance Bulgaria (lower constitutional tradition) and Romania (French legacy)). Beyond these similarities, these three countries differ with regard to: (1) the degree of influence of the communist regime on society and intellectual elite; (2) the pattern of democratic transition; (3) the distribution of resources among legal actors entailed by the communist regime (more resources to public legal actors; the abolition of private legal professions; the eventual

Table 1. Changes into the composition of the Polish legal complex from 1980 to 1995.

Type of legal actor	1980	1990	1995
Advocates	4.411	6.902	7.277
Professional judges total	3.018	5.089	6.341
Assistant judges	439	657	809

Source: Ministry of Justice, Polish Chamber of Advocates and National Legal Advisors Council.

abolition of legal scholarship in the academies).

Poland

Poland was the first of the Communist regimes to install legal institutions such as the High Administrative Court in 1980, a Constitutional Tribunal in 1985 and a Commissioner for Civil Rights in 1987. In the 1980s these institutions were not entirely independent in their actions nor their decisions always binding (Krygier and Czarnota, 1999). Nonetheless, they laid the foundations for the present day system of independent judicial institutions. In 1989 Poland was also the first Communist country to establish a National Council of the Judiciary. The Council was given the prerogative of proposing all nominations for judges and all promotions to the President of the Republic in an attempt to establish firmly the judiciary's independence from political interference. It is composed of parliamentary representatives, the Minister of Justice, Presidents of the high courts but a representation of elected judges holds a majority. The Council was created following the suggestion of legal scholars, who claimed that judicial independence would have made possible only by isolating the judiciary from any political influence (Interview with Adam Czarnota, Polish Professor of constitutional law, November, 2006) . The creation of the High Judicial Council came together with the creation of the Association of Judges (Iustitia) . Iustitia is deeply involved in judicial training programs (Open Society Institute, 2001).

The Ministry formally maintained its power in the field of judicial training. Actually, nonetheless, the Presidents of the Appeal courts were *de facto* vested of the power of training. Therefore, they maintain their influence also socializing young judges. At the local level, indeed, the relationship established during the last period of communist regime between the Presidents of the court and the local social groups played an important role: “Courts are often too weak to counter the local networks. Trade unions, parties and the Catholic Church are interested in their own power basis whilst also lawyers look to their self-interest. Few public interest firms and NGOs exist and civil society does not seem to get off the ground” (Blankenburg, 2000).

Beyond this aspect, which has been held responsible for the few phenomena of bribery occurred in the judiciary after the 1989 (Greco, 2001), the capacities of advocating and of lobbying of social groups has allowed a fairly rapid growth of the advocates in the first period of democratic transition (Table 1).

The advocates and the judicial staff follow two separate *cursus honorum*. Most advocates are self- employed or work in relatively small offices, although big international firms are getting more popular with young advocates just starting their career. Although the government does not control the income, it does set minimum fees for various kinds of cases. A young advocate often earns more than a judge (Blankenburg, 2000). The costs of communication among legal actors seemed to be fairly high, since no legacy of mutual trust neither any legacy of common practical training were features by the Polish legal complex.

With regard to the legal culture (Cotterrell, 1997); the faculties of law with a Catholic tradition remained during the communist regime the reservoir of the constitutional legal culture, which was recalled as the first experience of constitutionalism occurred in Poland in 1793: “Since 1989 the number of universities offering law has grown rapidly. All twelve Polish universities have Law and Administration departments. Law is also offered by a growing number of private universities. More and more of these private universities are allowed to offer full magister programs” (Blankenburg, 2000).

The catholic tradition in law entailed a hierarchical conception of the sources of legal norms, whose legitimacy derived from the most general norms. Legalism and legal positivism were quite diffuse among judges. A particularly important role was played by the Commissioner for Human Rights, an institution created in 1987 and entered in force in 1991. The influence of the Commissioner on judicial policies is due to the leadership of the person who occupied time to time this institutional role (Schwartz, 2000). Only high scholars of law and prominent leaders in legal affairs have occupied this place.

Czech Republic

Legacies coming from the past made Czech legal tradition close to Austro-German model of constitutionalism (Charles University, one of the oldest in Europe (1348), has had an independent Faculty of Law since 1373. The law faculty at Charles University has almost always been the largest of the faculties in the Charles University (with approximately 4,660 students in 1933-1934 and approximately 3,000 students in the seventies). A second law faculty was founded in Brno after the fall of the Austro-Hungarian Empire and the birth of Czechoslovakia as an

Table 2. Changes into the composition of the Czech legal complex from 1980 to 1995.

Type of legal actors	1980	1990	1995
Advocates	Na	762	6.093
Professional judges total	1326	1430	2178

Source: Czech Chamber of Advocates and Czech Ministry of Justice. (Figures include Slovakia for 1990).

independent state in 1918). For instance, the Austrian influence, exercised during the period of the Austro-Hungarian domination, explain the creation in 1920 of the first constitutional court in Europe. It was organised on the base of the Kelsenian model of Supreme Court.

The positivistic legal culture, dominating before the communist regime, conquered again its prominent position after the Velvet Revolution.

Unlike Polish judiciary, the Czech judicial system suffered an intensive penetration of the communist ideology after the Second World War. Judges were exclusively appointed on the base of their political reliability. Lawyers and legal advisors were not allowed to exercise their profession. The Bar was dismantled and any legal advisors were obliged to deliver his services through a public bureau (Czech Bar Association, 2004).

Czech legal scholars faced several and severe repressions during the communist regime. Many of them left the country, whilst those who stayed knew who the enemy was, and the enemy knew who they were. Even after the fall of the regime, the legal profession did not play a major role: the reformers who took over after the Velvet Revolution in 1989 were economists and intellectuals, not lawyers. Since 1989 university law studies have been considered to be a general and uniform legal preparation, after which graduates do practical training for three years. The training programs differ for the different judicial careers of advocate, judge, notary or public defender. According to Mrs. Wurstová, spokeswoman for the Czech Chamber of Advocates in Prague (*eská Advokátní Komora*), future advocates have to pass more rigorous exams than other law professionals. In some cases the Czech Chamber of Advocates may recognize other professional examinations in the field of legal practice as adequate substitutes; this happened on a large scale shortly after the fall of Communism in 1989, when many judges and university professors left their jobs to move to the more lucrative job of a lawyer (Czech Bar Association, 2004) (This point has been confirmed by Jan Passer, Judge of the Czech Supreme Administrative Court, May, the 18th 2007).

In 1991, before the separation from Slovak Republic, the lustratia act was passed by the Parliament (Williams, 2003). The absence of the post communist leaders among the new political elites allowed the new democratic rulers to purge public offices. Judges and prosecutors who took their office during the communist regime were obliged to left their office. Lustrating the judicial staff, the new political elite maximized its capacity to control the high levels of the judicial systems. At the same time, they decreased the number of senior judges and the prestigious of the judicial staff (Table 2) . Judges were frequently subject to the attacks of the media and the public opinion. Young legal scholars appointed judges dramatically needed an adequate training system.

More than other CEEcs, High Courts fought to maintain their legal leadership. Judges at regular courts saw the professionalism of their traditional schooling in strict positivism. Under changing political regimes, the fortress of resistance is made from the bricks of strict interpretation of statute law. This is what the justices of the High Court (the Supreme Court), with its tradition of civil and criminal jurisprudence, hold against their colleagues of the Constitutional Court: the constitutional interpretation of valid law has to remain within the framework of the wording of statutes; otherwise the High Court will not obey the decisions of the constitutional court. Generally speaking the ideologies and values are defined by High Court.

Seminars and conferences are organized by High Courts, which use their building to host Czech judges and foreign legal scholars. The Supreme Court and the Constitutional Court play a prominent role in defining the core values of the legal culture (Wagnerova and Gills, 2001).

Hungary

Among the three countries considered here, Hungary features the highest degree of continuity with the past (Szelényi and Szelényi, 1995). First the communist regime did not penetrate entirely within the life of civil society. Therefore, a part of the resources of legal actors, very few actually, remained during the communist rules. For of all, during the communist regime, legal studies continued even if slowly to be supported by the State. Law faculties's programs were attended by a higher number of students than in other CEECs (Kryger and Czarnota, 1999). Also from the institutional point of view, lawyers continued to be allowed to exercized their profession, even if as law-advisors (*jogtanácsos*) of state companies. In the past decade, the number of practicing lawyers has grown enormously (Table 3).

Immediately after the overthrow of Communism, the democratic elite choose not to purge the judiciary. Therefore, all legal values endorsed judges and prosecutors after the communism have been the outcome of an internal transformation. Even the constitutional court, championing the Hungarian constitutionalism as a constitutionalism strongly committed to the defense of basic legal freedoms (also for people loyal to the communist

Table 3. Changes into the composition of the Hungarian legal complex from 1980 to 1995.

Type of legal actors	1980	1990	1995
Advocates	1.600	1.800	5.500
Professional judges	1.351	1.816	2.325
Lay judges	9.725	11.398	9.956

Source: Hungarian Chamber of advocates and Office of the National Council of the Judiciary.

rule), ruled out the *lustratia* as an unlawful policy. Old rules have been used to shape the transition, without any rupture with the past. This holds also for the text of the socialist constitution, which has been transformed but not abolished. With regard to advocates, they grew in number, and this growth continued as a result of the lucrative business under the new political and economic conditions.

From the point of view of the legal knowledge, legal norms consolidated in the past, before the communism, were restored: "in building new institutions, academics, as well as high court judges, frequently refer to pre-war Hungary" (Blankeburg, 2000). The Austrian civil code which had been valid in 19th century Hungary formed the backbone of civil law (Varga, 1995) . Nevertheless, a strong principle of the unity of judicial interpretation was applied. The National Judiciary Council established in 1997 defines judicial autonomy more strongly than any Western legal system. On the other hand, the introduction of a Constitutional Court brought a new element of judicial hierarchy into play. Ordinary courts can ask to the Constitutional court whether a binding law would violate constitutional norms. This has played as the most important avenue for constitutionalising the Hungarian tradition of legal positivism (Solyom, 2003; Halmai, 2002).

Judges and prosecutors followed a separate training and a separate career. Training for judges was provided by the High Judicial Council, since its creation. Also judges and lawyers follow a different path of training. Lateral recruitment is allowed (lawyers can be appointed judges after passing an examination).

Beyond the differences enlightened here, in the three countries judges and jurists played a prominent role in promoting constitutional values and in supporting the renewal of political liberalism. The legitimate sources of legal norms were either the High Courts (Czech Republic) or the academy (Poland). In Hungary the legal actors are able to bring resources and to interact with judicial actors. This makes the legal complex more pluralistic than in the other two countries. There are also some similarities. In the three countries judges organized themselves by creating a Union (Poland and Hungary) or an Association (Czech Republic) (Unlike the Association, the Union is the representative of the collective interests of a body. It would be interesting to analyze the relationship between the existence of a Union and the continuity with past. Put simply, in Hungary and in Poland the judiciary has not been purged. The cohesion of the judicial body might be stronger than in Czech Republic, which lustrated the judiciary). In the three countries the relationship with external actors expanded rapidly after the democratic transition. Constitutional judges and prestigious legal scholars enhanced their ties with the international epistemic communities (Bartole, 2000; Wyrzikowsky, 2000).

A set of interviews I conducted in Poland, Czech Republic and Hungary among legal experts and judicial actors suggests that in the field of judicial training, each country adopted a different solution. In Poland, the Ministry of Justice is responsible for judicial training. The National Training Centre for the Officials of the Common Courts of Law and the Public Prosecutor's Office is financed by the Ministry of Justice. Training sessions are also provided with the organizational support of the Union of Judges. Locally, the Appeal Courts regularly organize training sessions (Lisbon Network, *Poland Report*, 2006). In Czech Republic, the Ministry of Justice is fully responsible for judicial training. Some courses are offered to the judges of the High Courts by the High Courts themselves. In Hungary, the High Judicial Council provides training programs for judges, while the Department for Human Resources and Administration of the General Prosecutor Office offers training sessions to the prosecutors.

Trainers are chosen among legal actors, lawyers, social scientists and jurists (Lisbon Network, Hungary Report, 2006). Legal pluralism is stronger than in Poland and Czech Republic. In all these countries the High Courts are the "reservoir" of constitutional values. They give a great contribution to the change of the legal culture and provide judicial actors with new legal ideologies. This notwithstanding, there is not convergence among High courts themselves with regard to the kind of constitutionalism they have in mind. While Supreme courts (court of Cassation) claim for a hierarchical order of positive law and mainly endorse a legalistic approach, the constitutional courts endorse a more creative and autonomous attitude, claiming for the defense of a non-statutory set of legal values. These values are actually the ones to which judges should refer when they interpret the law (Dupré, 2005; Czuczai, 2001) (The role played by the Constitutional Courts in the post communist democratic transition has been deeply investigated by scholars. Among many several contributions, I mention here Boulanger, 2003; Dupré, 2005. This point has been confirmed by Jan Passer, judge of the Supreme Administrative Court of Czech Republic, interview in Brno, June, 4th 2007. Adopting a classical distinction, it seems that the supreme courts stick to a conception of *Rechtstaat*, while the constitutional court pledge for a neo-constitutionalism views of law).

If one sticks to the premise from which this article moved, one can arguably say that legacies, numbers

(staff), and access to legal education programs are associated with an endowment of resources, i.e. of capacities. Actors, whose number are higher and provided with better legacy in terms of legal knowledge and access to leading judicial institutions (as Supreme courts) are by consequence more empowered than actors who are in a backstage position.

JUDICIAL NETWORKS AS EMPOWERING ARENAS IN NEW EUROPE

Looking retrospectively, the words pronounced by Guy Canivet at the Plenary Session of the Network of the Supreme Courts – which was held in Paris in 2007 are perhaps more saying than any empirical evidence we might provide in this paper: “Judges have the responsibility to create Europe by law” (G. Canivet, *Les Announces de la Seine*, Paris, Cour de Cassation, Lundì 8 Fevrier, 2007, p. 4). This statement, which came out from one of the most leading and prestigious European judges, reveals *ex post* the nature of the European model of political liberalism promoted in the post communist region. Today, when the enlargement has been fully achieved, judges and prosecutors are pointed out as the pivotal actors in enacting the mechanisms of judicial cooperation in Europe (Madsen and Vauchez, 2005). Despite this evidence, when the European Union and the Council of Europe began to play as “rule of law” promoters in the post communist region, their legal ideologies were not made clearly explicit. The main premise was indeed the “European” nature of the constitutionalism promoted in that region. Therefore, the official documents provide rather poor evidence to enlighten the conception of political liberalism promoted in the CEECs. In order to overcome this shortcoming, we have analyzed the policy instruments adopted by the EU and by the Council of Europe: twinning, monitoring, training and networking. The official documents that described the activities of judicial cooperation supported by the European institutions witness the model of European constitutionalism much better than any other official source of information.

As said above, in 1997 when the pre-accession negotiations began, the European Commission decided to financially support the institutional reforms aiming at modernize the State. This objective was pursued by introducing a new policy instrument, the twinning. According to the twinning regulation, experts appointed by a public institution of one of the old member States should work within a public institution of one of the candidates as project advisor. Twinning projects realized in the CEECs' judiciaries covered the 26% of the funds allocated by the European Commission. Most of them addressed directly judicial training, while a large part of them allowed judges and prosecutors to socialize with colleagues working in old member States. Activities financed by the projects include: the drafting of legal reforms; the enhancement of judicial training programs or the creation of judicial schools; visits in old member States for judges and prosecutors; the participation at seminars and conferences in old member States (judges were often hosted in judicial schools). Judicial actors are the almost majority of the participants in twinning projects.

The Table 4 shows the actors involved and the objecttives pursued by twinning projects. With regard to actors, the continuity between the distribution of resources determined during the transition and the distribution of Resources determined by the EU by twinning project is high. Actors empowered during the transition exploited the opportunities of action offered by the EU and become the leading actors in the field of training. Twinning provided them information and opportunities of action. Therefore it reinforces the asymmetry of post communist legal complex. With regard to the objectives, most twinning projects aimed at creating a new training institution. Moreover, for each project, a part of the financial resources was allocated to support the organization of seminars, conferences and meetings. Therefore, twinning is a mechanism that encouraged social learning and lesson drawing.

The importance of socialization and transnational communication comes out by looking at the inclusiveness of the judicial networks created by the Council of Europe and by the European Commission (Table 5). When the pre-accession period began, the international network of Centers for judicial education represented one of the most promising tools for linking national systems to international scenes. The multilateral meeting «The training of judges and public prosecutors in Europe» held in Lisbon in April 1995, aimed at promoting European co-operation in the field of training for judges and prosecutors. The participants supported the implementation of a European information exchange network between persons and bodies in charge of the training of judges and public prosecutors. The Lisbon Network is part of the network coordinated by the Council of Europe Directorate of Legal Affairs. In October 2000, the French Presidency of the European Union proposed an initiative to formally create a European judicial training network which would improve mutual understanding of Member States’ legal systems amongst judges and prosecutors, and increase the practical implementation of judicial cooperation within the European Union. This network, the European Network for Judicial Training, has obtained the support of the European Commission (In October 2000 Antonio Vitorino, Commissioner for the General Direction Justice and Home Affairs of the European Commission, participated in the Conference in which the Network was created (Vers un espace europeen de formation judiciaire, Proceedings of the seminar held in Bordeaux, October 12-14, 2000)), which in 2005 made a financial contribution for the administrative facilities of the building and the secretarial offices located in Brussels. The Network

Table 4. Twinning projects in the field of judicial training: actors and objectives (The table summarizes the data provi-ded by the DG Enlargement of the European Commission. The source is represented by the project fiches and the project covenants signed by the twinning partners and by the European Commission. We are grateful to the DG Enlargement these data).

Country	Actor empowered by the transition for judicial training	Participation in a twinning project addressing judicial education
Poland	Ministry, with a strong role played by the academy.	Ministry of Justice; Union of Judges.
Czech Republic	Ministry, with a strong role played by the Union of Judges.	Ministry of Justice; Union of Judges.
Hungary	High Judicial Council, with a strong role played by the Union of Judges.	High Judicial Council; Union of Judges.

Sources: Archives of the DG Enlargement European Commission.

Table 5. Inclusiveness of judicial networks and participation of domestic actors.

Organizational unit	European network	Membership	Dominant actor (among PL, CZ, HU)
Constitutional Court	Venice Commission	All	PL, HU
Supreme Court	Network of the Presidents of the Supreme Courts	All	HU; CZ (both of them wished to strengthen the network
Center for judicial training	Lisbon Network	All	None (a)
Ordinary judges	CCJE	All	PL (two out of six plenary conferences)
Ordinary Prosecutors	CCPE	All	PL (two out three plenary conferences)
Public Prosecutors responsible for international judicial cooperation	EuroJust	All	None
Ordinary Judges	European Judicial Network	All	None (a)
High Judicial Council	ENJC	PL, Hu, CZ is qualifying as an observer.	One conference organised in Poland.
Center for Judicial Training	ENJT	PL, CZ, HU is under treatment.	None
National Union of Judges	European Union of Judges	All	CZ

includes representatives of institutions in charge of the training of judges and prosecutors in member States. It acquired legal status in June 2003; it receives subsidies within the framework of the civil program and the AGIS program (Interview with the vice-director of ACOJURIS, Paris, November, 2004. The purpose of AGIS is to help legal practitioners and law enforcement officials to exchange information and best practice among member States and candidate countries. It supports projects of judicial cooperation of a maximum of two years (Council decision 2002/630/JHA, OJ L 203, 1.8.2002, p. 5, on the basis of Article 30(1), Article 31 and Article 34(2) (c) of the Treaty on the European Union)). The aims of the network are: to further mutual knowledge of legal and judicial systems; to improve the knowledge of European and international instruments; to exchange experiences and identify training needs; to encourage the coordination of judicial training programs planned by the Member States; to develop training curricula for members of the judiciary. The European Judicial Training Network was welcomed by the European Union because it fits perfectly with the European Council's call for increased judicial cooperation in the European legal arena (http://europa .eu.int/comm/justice_home/fsj/criminal/training/fsj_crimina l_training_en.htm). Today, the European Commission is going to present a Communication on Justice and Legal Affairs asking to the European Council and to the European Parliament a stronger engagement in the field of judicial training. To put a stress on the argument of the Communication presented in 2006 on Judicial Training, the European Commission will devote an important part of its resources to finance a fully fledged "European" offer of training for judges and prosecutors (Interview to Lorenzo Salazar, member of the cabinet of the Vice President of the European Commission, Commissioner for Justice and Home Affairs, Brussels, May 30th 2007). Judges and prosecutors are indeed the key recipients of the programs delivered in Brussels and in Trier by the

training centers members of the ENJT. The inclusiveness of the ENJT is quite high. Each new training center created in CEECs has become member of the ENJT. The membership of the Judicial Academy created in September 2006 in Budapest will be soon formally notified.

The political commitment to train legal actors by providing them suitable programs on EC law witnesses the awareness that the European institutions have about the role played by legal knowledge in the process of European integration. The policies enacted by the European institutions aim at providing legal knowledge and legal culture as well; a consequence is that legal judges become familiar with the "European constitutionalism". This aim was firstly pursued by the creation of a first example of legal epistemic community, the Venice Commission. Established by the Council of Europe in 1990 with the explicit purpose of supporting, advising and monitoring the constitutional courts created in post communist countries (Bartole, 2000), the Venice Commission played as clearing house for constitutional judges, in particular providing them with many several recommendations and opinions about the most suitable way of using the instrument of judicial review. The Venice Commission is composed by internationally recognized legal scholars, internationally recognized professors of constitutional law and representatives of the constitutional courts. It was the first arena where two parts of the post communist legal complex have been enabled to regularly interact: judges and jurists. The main premise of the Venice Commission activity is that "democracy can be created by the law".

The Council of Europe is the leading actor in the field of judicial cooperation. Beyond the legal instruments of the international law (Conventions), it has developed several mechanisms of legal cooperation that rely upon soft law (recommendations and opinions). In the framework of DG I Legal Affairs, in the '90s legal actors have been encouraged to organize themselves within four judicial networks:

Consultative council of European judges (CCJE)

It is composed by magistrates, the large majority of which come from the High Courts; it has the task of drafting recommendations and opinions concerning the principles of judicial independence and the policies that should be adopted by national governments to implement it: "judges, as prosecutors, should always be able to voice their experience, the task of judges consists not only in adjudicating legal affairs, but also in saying how affairs can be better adjudicated" (Raffaele Sabato, President of the CCJE, Speech of the President).

Consultative council of European prosecutors (CCPE)

It is composed by national representatives of Public Prosecutors Offices. It has the same tasks of the CCJE. Both these judicial networks provide the Committee of Ministers of the Council of Europe – which is its steering board – with recommendations and opinions. These texts set the standards of judicial independence and provide a laundering list of reforms or policies that are recommended to national governments.

Commission for the evaluation of the efficiency of the judiciary (CEPEJ)

It is composed by legal scholars, experts of public administration and representatives of the judicial institutions. It is the arena with the most prominent participation of non judicial actors – experts of public administration take part quite often to the meeting of the working groups of CEPEJ. CEPEJ has two main tasks. First, it scrutinizes the judiciary from the organizational point of view and publish each four years a comparative analysis of the judicial systems of the member States. Then, it promotes the exchange of best practices of court management and case management. Judges and experts of public administration have the opportunity to interact and communicate in four working groups, each one of them is responsible for the implementation of best practices in a sample of pilot-courts.

Network of the Presidents of the Supreme Courts: "They have been holding regular meetings since 1995. A whole series of conclusions and resolutions on the role which supreme courts should play in defining and consolidating democratic rule-of-law standards have been adopted in this context" (Council of Europe, Network of the Presidents of the Supreme Courts, official web site).

The agenda of these four judicial networks represent the bulk of the overall activities promoted by the Council of Europe in the field of judicial cooperation. It should be noticed that lawyers, notaries and clerks are taken into consideration by the Council of Europe: "it helps to harmonize the rules on lawyers, who play a key role in safeguarding the right to a fair trial [...] it is working with a number of countries (example, Albania, Romania, Moldova and Ukraine) on bar reform and the training of lawyers". Nonetheless, it goes without saying that the influence of the activities organized by lawyers, notaries and clerks is much weaker than the influence of the activities organized by judges, jurists and prosecutors, all together. First these last are members of institutionalize networks. They recommendations and opinions are taken into consideration by the Committee of Ministers – while recommendations drafted by the Committee of Ministers are addressed afterwards to lawyers, notaries and clerks. Then, they organize in Strasbourg number of conferences, seminars and training sessions, which nowadays are replied quite often in the capitals of the new members States. Warsaw and Budapest hosted in the last years

more than two international conferences per year organized by the judicial networks, while in Brno – where the Czech Constitutional Court seated – conferences and training sessions are organized in partnership with the Supreme Courts. Last, but not least, to each meeting of the CCJE, CCPE and CEPEJ the European Association of Judges is admitted as observer.

The Council of Europe does not act alone in that field. After the approval of the Hague Program, which aimed at strengthening the judicial cooperation in Europe, the European Union has created three judicial networks:

(1) Judicial European Network, composed by ordinary judges; it has the task of supporting the exchange of information on civil and commercial cases.
(2) EuroJust, composed by the national representative of the Public Prosecutor Offices; it coordinates investigation and judicial procedures among member States.
(3) European Network of Judicial Training, created in 2001, with the status of NGO. It coordinates the training programs of the national training institutions and organized regularly training sessions, which are hosted by the most influent national training institutions (for instance Ecole Nationale de la Magistrature located in Paris, the Institute for Training of Magistrates located in Bucharest, the Escuela Judicìal located in Barcelona).

Judicial networks created by the European institutions represented a model for many several judicial institutions. Beyond the networking supported by the Council of Europe and by the EU, we can find out several other cases of networking promoted by the judicial institutions themselves. Top down and bottom up activities seem to converge toward the common aim that consists into strengthen the mutual trust of judicial actors. The leader of the bottom up activities is the European Network of Judicial Council. It is composed by the representatives of the High Judicial Council and it has developed an increasing-gly influent policy of standard setting (During its last meeting, hosted by the Italian High Judicial Council, the representatives of the Councils have discussed the status of the Council, its institutional role and the organizational features it should have). In 2006 it has been recognized by the European Commission as institutional partner.

It is extremely risky to assess on the basis of the current knowledge the impact of these activities of networking. However, one may raise few issues and question whether or not it is reasonable to expect that these activities construct symmetric capacities among the ideal members of an ideal-typical legal complex.

First of all, one may expect that networking decreases the transaction costs among judges and among prosecutors of different nationalities. It is also reasonable to expect that it creates a diffuse consent among judges and prosecutors, since these judicial networks produce policy frameworks and legal ideologies. According to one of the leading actors in European judicial networks, meetings and seminars held in Brussels and Strasburg provide national actors with arguments, concepts, which are cognitive resources and, indirectly, can be considered as capacities to interact, take position, argue, exercise power *latu sensu*. The more national actors know about them, the more they can use their legal ideologies at home. Furthermore, in some cases, it is not unlikely that these activities decrease the costs of judicial coordination. This is particularly important within the management of complex judicial procedures. Indeed, it is not out of coincidence that the European Commission put a stress on the strategy of judicial training in order to build trust among national judicial institutions (European Commission, 2006). Finally, empirical evidence about partnerships built up by mean of twinning projects, show that new judicial school or new high judicial council entered into the "club" of the judicial networks. This is not the only reason explaining why national States adopted judicial academies or high judicial councils. But we would argue that it is one of the main reasons explaining the activism of the new judicial institutions, not only at home but also abroad.

It should be noticed that lawyers are not completely excluded from the activity of networking. Starting from the 1960 the Council of Bar and Law Society in Europe (NGO) has voiced the position of lawyers with regard to the European legal integration process. In particular, "in order to facilitate the policy work already described, the CCBE has regular institutional contacts with those European Commission officials, and members and staff of the European Parliament, who deal with issues affecting the legal profession" (http://www.ccbe.org). It includes members coming from the new members States: Polish, Czech and Hungarian lawyers are members of it. It does not receive any financial support from the European Commission. For the first time in more than four decades of activity, the CCBE is going to organize in Warsaw in September 2007 an international conference on European legal and judicial training (http://www.ccbe .org). The main difference between the CCBE and the networks described above consists into the timing of its creation. Unlike the judicial networks, the CCBE exists since 1960. Hence it does not seem to be neither the outcome of the process of enlargement nor the effect of the judicial cooperation programs.

However, inclusive effects of networking among judicial actors is fairly higher than networking among lawyers, at least as far as the participation to processes of standard setting is concerned (see annex 2 for data). In the Table 6 all networks involved in setting standards of quality of justice are listed. The Table shows that all the judicial institutions and at least a judge of a CEEC High Court have become member of these networks.

The last column shows the degree of participation at the activities of the network. We have chosen two indicators: the number of the conferences (or of training

Table 6. A hypothetic description of the legal complex after the accession: tentative proposal.

Country	Poland	Czech Republic	Hungary
Ideologies	Jurists as main sources legitimate interpretations of law	Judges of the High Courts as main sources of legitimate interpretations of law	Judges of the Constitutional Courts as main sources of legitimate interpretation of law
Routines of interaction	High interaction among judges and jurists; low interaction with the Bar Association	Low interaction between jurists and judges at the level of ordinary and regional courts; higher interaction between High Courts and legal scholars; no interaction between the Union of judges and the Bar Association	High interaction between legal actors
Cognitive resources shared by legal actors during the initial training or the career.	Separate training; lateral recruitment in judicial institutions is possible, but rare	Separate training; lateral recruitment in the judiciary is possible and rather diffuse at the highest level of judicial institutions	Separate initial training; lateral recruitment in judicial institutions is possible and diffuse at the highest level of judicial institutions.
Communication Costs	High	High	Medium

sessions) hosted within one country, the number of leaders coming from one country.

Despite empirical evidence and investigation in depth are still missed, so to make any final assessment of the impact of the pre-accession strategy in terms of capacities of legal and judicial actors fairly impossible at the moment, prospective tentative hypotheses may be put forth as the reshaping effect the strategy of networking and twinning enacted by the EU could have provoked in the candidate States.

The Table 6 presents these hypotheses. Again, I want to make clear that the table is a first proposal, which should by all means be submitted to empirical verification in order to accept it as a description of the current status quo of the post communist legal complex. One may reasonably suggest that differences featured by the three countries remained the same after the accession.

For instance, in Czech Republic high judges play a dominant role, much stronger than jurists and legal scholars. Czech high judges have been more influence than for instance Polish high judges within the European judicial networks. In Czech Republic, due to the persistent attacks coming from the policy makers and the public, judges have been endorsed a strong corporative attitude (Interview to Jan Passer, Judge of the Czech Supreme Administrative Court, Prague, 18th May, 2007).

The Union of Judges is very active at home and it is also one of the most active unions at the European level. In Hungary the hierarchical control of the judiciary has been maintained. The Hungarian Supreme court and the Hungarian Judicial Council are very active at the European level.

In Poland, where locally Presidents of judicial offices are still very influent, the trend seems to be more favorable to the participation at networks as the CCJE and CCPE (these networks indeed are composed by individual judges) (It can be useful to mention here that in Poland judicial independence is referred to single judge, not to the judiciary as a branch)).

Generally speaking, the mechanisms of influence used by the European Union to spread off its view of "constitutionalism" were unable to redistribute resources and power allocated during the transition. Furthermore, these mechanisms have strengthened the positions of the most influent judicial actors. In that way, the European influence has decreased the transaction costs among judges and jurists, but not among judges and lawyers. The legal complex that comes out from the pre-accession seems to be dominated by public legal actors, which means not only by judges, but by judges and prosecutors. We will develop this point in the next section.

Conclusion

Whose capacities of conflict resolution?

In this article I touch upon a crucial issue associated with the expansion of international policies of rule of law promotion, enacted both by governmental and non-governmental organizations in all democratizing geo-political regions. As these policies engage in strengthening programs of legal education and judicial training, they may influence the mechanism by mean of which traditionally judicial institutions and legal systems maintain their own coherence and the capacity of working as a legitimate tool of dispute settlement. Knowledge, as argued at the beginning of this article, is pivotal in justifying the delegation to a judge the solution of conflicts. I suggested that the influence exercised by the European Union might have provoked, more or less intentionally, some crucial changes in the judicial institutions, which should be shortly enlightened. If my argument holds, it would be

worth to explore in depth these consequences in the very next future by mean of empirical research on the field.

First of all, the epistemic communities empower their members in terms of cognitive resources. In particular, they spread off legal ideologies concerning the standard of justice (CCJE, CCPE, CEPEJ, ENJC), or legal interpretations (Commission of Venice), which altogether represent a crucial endowment of power. This power seems to be distributed among the functional parts of a trial in an asymmetric way. Only 2 out of 47 members of the CEPEJ are barristers, none of the members of the CCJE and of the CCPE have ever worked as a barrister; definitely the bar is not represented in the ENJC. Less then 10 members of the Commission of Venice – if we consider the membership over a period of 17 years – have been barristers, while all of them belong to the academy. The evidence I provided shows that the participation of bar's representatives to the meetings and conferences organized by these networks is almost rare (from the reports of the conferences organized in there last four years the members of the national bar association officially invited were very rare, and in particular in the cases they did take part to the meetings they represent a largely less significant portion of the audience attending in the room.

Many different scenarios could be figured out once this evidence is adequately taken into consideration. These scenarios outline *potential* drawbacks in the process of institutionalization of a fully fledged liberal-democratic political system, which was one among the main goals pursued by the EU with the pre-accession strategy. Of course, the truthfulness of the scenarios depicted here below should be empirically tested. Here I am just put forth some hypotheses. Despite they point at different aspects of adjudication, all the scenarios I present share the common concern for the need of ensuring the triadic face of adjudication.

First the preferential communication established – or at least encouraged – by the European judicial epistemic communities between the judges and the prosecutors may entail disruptive effect for the triadic structure of the trial. Indeed, in the countries that have adopted a hierarchical organization of the judiciary, the public prosecutors are held accountable to the higher levels of the hierarchy, due to the mechanisms of recruitment, promotion and disciplinary control. In a way, this mechanism of control ensured the due behaviors of the public attorneys, because it establishes a linear relationship between the compliance to judicial ethical standards and the chance of being upgraded. The introduction of multi-level mechanisms of socialization in that structured and functionally differentiated system (the seniors prosecutors occupied the upper positions and spread off the dominant legal values, by socializing younger prosecutors) weakens these mechanisms of hierarchical social control. Indeed, members of the European judicial epistemic communities are quite often young judges and prosecutors, whose leadership will be enormously influenced and empowered by their "international allure". This holds true *a fortiori* for the countries that have experienced in the recent past a *lustratia* of the judiciary (whose effects have had an extraordinary echoes in the prokuratura, where the core of the ancient regime was settled). As interviewed persons witnessed, in the post communist countries considered in this article the judicial actors involved in the activities of social learning, communications, socialization, are young. It might be argued that the leadership gained abroad in these cultural activities will be spent at home to escape (more or less openly) to the control of the upgraded officials.

Then if the triadic structure of the trial is taken seriously, one may argue that any step back from it represents a potential risk of running ahead in a partial (rather than impartial) adjudication. This remark should not be underestimated when the conditions for the implementation of the European Arrest Warrant are considered. Indeed, the EAW hold the ordinary judges responsible for the execution of any judicial decision taken over the European judicial space from whatever court it might come. In criminal cases, where the prosecutors are active in providing evidence and in frame (cognitively and argumentatively speaking) the cases, a preferential communication among the judges and the prosecutors over Europe might arguably entail a much easier convergence of the judicial reasoning toward a frame that is well known, familiar, or at least much reliable because of the mutual trust established in numbers of cultural common activities. It should be remind here the huge amount of evidence we have on the comparative advantage held by any actor who is endowed of a sound or reliable policy frame, available at the very beginning of a process of decision making.

Even though any of these remarks can just allow us to wonder whether or not the triadic structure of the adjudication is not catalyzed by the EU policy of rule of law promotion, this article is still far from being able of giving readers a final assessment. I more modestly decided to present evidence that helps figure out problems and questions.

Pointing out the impotence of any human being in front of the judicial black box, The Trial of Frank Kafka uncovered a controversial aspect of adjudication. With a sharpness that has no equal in the Western literature, the kafkanian fiction unfolded the relationship that exists between knowledge and judicial power. Devoid of any information about the evidence taken before the court, deprived of any legal expertise, Joseph K. was trapped into a trial that had lost its "triadic" face. As a matter of fact this last one is the pivotal feature that makes adjudication a legitimate tool to settle and resolve conflicts (Shapiro, 1981; Stone Sweet, 2000; Garoupa and Ginsburg, 2009). At the end of the trial, far gone in a

comedy of absurd, Joseph K. encountered the guardian of the building of the law. Endeavoring entrance in order to finally know the *truth*, he sadly realized that he would have been steadily and irreversibly detained from the access. Why, if law is for anybody and for nobody? Access is a question of power, capacity and resources. Kafka knew that pretty well…

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