1. What would you identify as best practice to safeguard transparency of

a) Court proceedings

Open and public court proceedings are mandatory.

The presence of public, including journalists, is essential to provide transparency and accountability. The exceptions must be reserved to protection of intimacy of victims, especially children. Lack of transparency of court processes implies the impracticality of media and civil society to monitor court activities and expose judicial misbehaviour.

b) Selection of judges

Merit Criteria should be the only one to be used on the selection of judges.

To scrutinize the merit of the candidates is essential to have an open and public competition, a wide and disseminated advertising of the vacancies, enhancing diversity of the candidates and an anonymous assessment of the written exams accompanied by a plural composition of the oral exams. Finally the final selection must be reasoned and publicized allowing the possibility of being challenged.

In cases when an institutional body outside of the judiciary has a final say on choosing the candidates and there is, for instance, a graduated list of names, the choice should respect the graduated list. If not, a written reasoning must be delivered based again on arguments sustained only in merit circumstances.

c) Administration of the judiciary?

The internal independence of the judiciary constitutes an increasing concern in modern judiciaries.

Therefore the most important in the administration of the judiciary to safeguard transparency is to assure a regulated and reasoned management by Court Presidents imposing clear restrictions in their powers when dealing with the judicial decisions of each individual judge.

High Judicial Council composed by a majority of judges with elected judges from each instance is also important to ensure a transparent and accountable administration of the judiciary. The functioning of the Council must by transparent and a clear and accessible regulation should define the cornerstones of judge’s careers. Decisions regarding disciplinary procedures should be published in the website, preserving confidentiality issues, and must be scrutinized by the courts.
Do you have experiences with such practices? Which?

Yes. The recent developments of websites and informatics platforms are important tools towards a more transparent judiciary. For instance, the Portuguese Council has an internal web, accessible only by judges, where is available important information regarding judges careers like for instance the minutes of the deliberations of the plenary of HJC and all the important internal regulations determined by the Council for the management of courts.

Also the court proceedings are now more open to public scrutiny. In this regard, when dealing with more mediatised trials, judges should have a previous meeting with journalists defining the rules of procedure and how to deal with their presence; obviously, communication cabinets will be ideal but, if they are not existent, like in Portugal, each judge must be open to deal openly with journalists establishing a communication that permits a positive “feed-back” from them.

2. What would you identify as best practice to support and promote integrity of judges? Do you have experiences with such practices? Which?

A constant awareness to integrity issues is mandatory. The manner in which judges interact with social media, for instance, is becoming a mounting problem nurturing concerns about manifestations of partiality in comments about politics or sensible cases. The integrity is put in peril through these situations since social media is not private and can provoke criticism for those who have access to judge’s interventions.

In these cases, it’s important to have ethical trainings and advisor commissions in High Judicial Council or in School of Judges to help prevent and solve possible problems.

3. What would you identify as best practice to prevent corruption within the judiciary? Do you have experiences with such practices? Which?

A good practice could be a commitment towards a Code of Ethics preferably prepared by judges itself. This Code must be seen as a pledge or a commitment assumed by judges; its dimension should not be disciplinary or sanctionatory. The Portuguese Association has already approved one in 2009 available in English here: http://www.asjp.pt/wp-content/uploads/2010/04/2-Vers%C3%A3o-em-ingles-PORTUGUESE-JUDGES-PLEDGE-OF-ETHICS.pdf
A proper training on issues of ethical conduct at an initial and permanent level is mandatory in order to ensure a permanent awareness regarding corruption prevention. The training should include a close cooperation with Bar Associations using real-case scenarios and working actively with all legal professions.

Another best practice is connected with a expeditious procedure to avoid that a judge who is suspected of having a corrupted behaviour continues to decide cases. Consequently, if there is any objective suspicion of this kind of behaviour, the respective judge must immediately be suspended. The inquiry will take normally several months but it is crucial, even to protect the concerned judge, he/she will not have any cases assigned or any court powers.

High Judicial Council has a fundamental role in preventing and punishing unethical behaviours. An effective and agile disciplinary body is essential to present results on this particular domain. In fact, unfair or ineffective processes for the discipline and removal of corrupt judges tend to be accompanied in same countries to the removal of independent judges for reasons of political expediency.

The prevention of corruption on judiciary depends heavily on improving lawyer’s conduct regarding deontology. In fact, as academic studies demonstrate continuously, lawyers open the front door to corruption in judiciary; thus it’s essential to have a closer vigilance on their ethical behaviour. In this sense, to raise awareness towards a misconduct of a lawyer demands the intervention of all judicial professions especially bar associations but also, in close cooperation, judges and their associations. In Portugal there are an increase of undue conducts of lawyers concerning criminal acts.

4. What are the major threats, in your experience, to transparency and integrity and a non-corrupt judiciary? How are those threats best combatted?

In a European point of view, regarding a country that is a “EU” member, there are no serious problems regarding corruption of individual judges.

However is fundamental to maintain and even reinforce mechanisms to prevent, if not corruption, all improper behaviours mainly connected with traffic of influences and ethical faults, expressed, for example, by partial and compromised opinions expressed in social media or an excessive proximity to political or media protagonists.

The major threats to a transparent and integrate judiciary for the futures are, namely, on social media but also on an excessive fragmentation of judge’s careers. The specialisation of courts and the way of life of modern societies, among other factors,
tend to isolate each judge creating a more fragile connection with the other judges – in that sense, the associations of judges are essential to reinforce the judiciary allowing judges to be more active and a with an effective “esprit de corps” also on essential matters like the fight against corruption.

Therefore, heightened visibility of associations of judges, also in an international level, could be a solid measure allowing, for instance, that common standards regarding judicial ethics are more readily accepted. Associations of judges can have also a major contribution to the renewal of judicial ethics, instigating an internal dialogue aimed at improving the quality of their decision-making.

Of course, a proper remuneration and a prospect of an attractive professional career are mandatory to have judges fully committed with their duties and rigorous and critical when assessing the behaviour of their fellow colleagues. Vulnerability of judges is higher when occur insecure working conditions, including unfair processes for promotion and transfer.

The responses provided above applied mainly for countries of Civil Law tradition with a consolidated judiciary based on Judicial High Councils with a mixed composition like the case of Portugal.

Please send your answers – not later than 20 June 2016 – to the board of the First Study Commission: first_sc@aij-uim.org