

Conference of the European Association of Judges

Porto, 28 April, 2022

Manuel Soares

Distinguished guests, asking for your permission and relying on your benevolence to relieved me from the duty of repeating all the formal greetings to the entities and personalities already welcomed by our speaker, I address you, Mr. President of the Supreme Court of Justice, to, on your behalf, greet and thank all guests for their honorable presence at this Conference.

As president of the Host Association, it is appropriate that I speak as little as possible and that I quickly give the floor to our guests.

So, let me start by fulfilling the obligation to express our thanks.

Although at a distance, the first word of gratitude goes to His Excellency the President of the Republic, for the support he gave to this initiative from the very beginning.

The second very special word of gratitude is for the Mayor of Porto, Mr. Rui Moreira, and to the Mayors of Vila Nova de Gaia, Mr. Eduardo Rodrigues, and of Guimarães, Mr. Domingos Bragança.

Thank you for your generous support to the organization of this Meeting of the European Association of Judges, which will bring well over a hundred delegates and foreign guests from 40 countries to your cities. I am sure that many of them will be captivated by the beauty, cultural richness and hospitality of Northern Portugal and will visit us again.

My dear friends José Igreja Matos and Nuno Ataíde, current and former presidents of this court, which is also my court, to you, our thanks for opening the doors of this beautiful room in this magnificent building that is the Palace of Justice of Porto.

A final word of thanks also goes to the Secretariat of the International Association of Judges and to my colleagues and collaborators of our Association, for your precious help in organizing this event.

My dear colleagues and friends from the European Association of Judges and guests, welcome to Portugal, to the cities of Porto, Gaia and Guimarães and to this house of Justice, which is also a house of the arts, with its dozens of sculptures and paintings.

In this room, for example, you can see two paintings by Jaime Martins Barata, which very well symbolize the pacifist and universalist nature of the soul of the Portuguese people.

To my right, the marriage of King João the 1st with the English princess D. Filipa de Lencastre, in 1383, which established the Treaty of Windsor, between Portugal and England, which is the oldest diplomatic alliance between States still in force in the whole world, establishing duties of mutual assistance in the event of a military attack and a declaration of free movement of people and goods between the territories of the two crowns.

And to my left, the departure of Infant Henrique, in 1415, in a fleet of 212 ships, heading for the city of Ceuta, in North Africa, on the voyage that would mark the beginning of the Portuguese maritime discoveries, in what would become the first process of globalization in commerce, communications and culture, when, from this small rectangle of land at the westernmost tip of Europe, a small and poor country dared to dream and set out on the immense sea in search of new worlds.

Having fulfilled the duty of a good host, which is to thank and welcome guests, I ask you for more 5 minutes to pay a tribute and to tell you why we chose integrity as the theme of this conference.

The tribute I want to pay is to the country of that flag and of the first musical theme we heard just now at the opening of this event.

Dear colleagues, friends and guests, the European Association of Judges is a community of brotherhood, friendship and shared values. We have no political or ideological nature. We are all Judges; as such, our politics is Justice and our ideology is democracy, rule of law and human rights.

Therefore, we have to feel deeply saddened by the horror that is happening in Ukraine and in solidarity with our colleagues from that country, members of our community of European judges, and we are obliged not to silence that feeling in a meeting like this.

I therefore address the two young colleagues present here, representatives of the Association of Judges of Ukraine, Mikola Korotun and Maryna Polishchuk, to greet the Ukrainian people and to express the wish that the bombs quickly silence, so that the deaths of innocent people and the destruction of a sovereign country that has the right to choose its destiny and to the integrity of its territory may stop immediately.

As for the topic of this conference – judicial integrity – let me tell you a little story that confused me at the time and much later taught me a lesson.

One day, at a meeting of judges, about 15 years ago, a colleague from a faraway country – no need to say which one – asked me with the utmost normality: how many Portuguese judges are in prison?

The question took me by surprise and left me unsettled. At the time, I had that defensive and traditional idea among judges, that the judiciary is incorruptible and that integrity is some kind of medicine

that we take at the beginning of our career and makes us immune against all ethical failures for the rest of our professional life.

Many years later, reality took care of teaching me a lesson in humility. One judge was convicted and expelled from her career for a criminal offense of embezzlement and another for money laundering. Recently, two judges were expelled from the judiciary for acts of corruption and have been indicted do face trial. And another judge is currently suspended and has also been accused of corruption.

Why then should we talk about it?

If we were just “the mouth of the law” – as Montesquieu said – and if our function was only to passively reproduce the will of the legislator, the legitimacy of our power would not be a problem. Our function would be legitimate because we limited ourselves to formally pronouncing the laws approved by the parliament elected by the people.

Justice, seen in this abstraction, essentially as a technical activity, makes it secondary the personal characteristics of those who apply the law. The integrity of the judge is practically irrelevant.

The problem is that this “mouth of the law” judge does not exist.

The judge is not limited to applying the law uncritically and automatically. Often, the judge has to create the normative solution for the specific case, when the law does not provide a direct and unequivocal answer. The judge may even have to refuse to apply the law when it goes against the fundamental principles of the legal system. In a certain sense, the law is more what the judge says it is than what the parliament states in the text.

This is why the democratic nature of the law is not sufficient to legitimize the power that judges exercise. The measure of the legitimacy of the activity that judges exercise results from the degree

of social acceptance of their decisions. And so, the judge's personal integrity is the source of his or her substantial legitimacy.

Here, then, is the answer to the question "why do we talk about this?" Because decisions that we make every day in the cases we have to adjudicate are not legitimate just because we are applying laws passed by democratic bodies; they are only legitimate if our ethical qualities deserve public trust.

This is the great challenge facing judiciaries around the world and particularly judges associations. Even if we do not like to admit it, in all justice systems, from the north to the south of Europe, in consolidated democracies and in young democracies, there are risks of deviant actions.

We must not hide this reality, run away from it, disguise it or ignore it. On the contrary, we must assume it as a real risk and make the necessary efforts to further strengthen the mechanisms for promoting judicial integrity and preventing and repressing all types of corruptive actions in the exercise of our function.

This is the challenge I leave here to the European Association of Judges: let us all be more attentive and more active in this matter.

Thank you for your attention