Small Castles,

Strong Bulwarks

Entrenching the European Rule of Law in the Republic of San Marino through a Socio-Legal Approach to Impartiality and Responsiveness

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The “impartial spectator” is an imagined third party

who allows an individual to judge objectively

the ethical status of his or her actions.

Adam Smith, The Moral Sentiments, 1795.

Summary

Acknowledgments

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This work draws widely upon the research outcomes and the methods that the author, as principal investigator or in teamwork, carried on at the international scale. They have been developed over the last fifteen years with a focus on judicial governance, judicial independence, judicial impartiality across the European legal space and in the European member or accessing States. The author is deeply indebted to Cristina Dallara, Carlo Guarnieri, and Luca Verzelloni for co-authoring and co-coordinating highly significant parts of the above-mentioned research agenda. The echo of the results reached together permeates the chapters and the proposals of this work. In many loci of the book the reference is to the co-authored Dallara and Piana *Networking the Rule of Law. How Change Agents Reshape Judicial Governance in the EU* (con Cristina Dallara), Londra, Ashgate, 2015. Without that book part of the analytical premises applied herein would have not been possible.

The parts and the arguments that refer to the San Marino Republic future are the outcome of two years research carried on individually by the author under the auspices of the San Marino Legal Institute. It has been enormously supported by the scientific contribution of Giovanni Canzio, Fabio Giovagnoli, Giuseppe Severini. The endorsement and the trust awarded by the director of the San Marino Legal Institute, Paolo Pascucci, have been of an incommensurable value.

Chapter 1 owns to previously published works the preliminary results related to the mechanisms and the leverages of the European promotion of the rule of law, as they have been discussed in *Networking the Rule of Law. How Change Agents Reshape Judicial Governance in the EU* (con Cristina Dallara), Londra, Ashgate, 2015 and *Legal Education and Judicial Training in the EU* (con T. Berkmanas, O. Hammerslev, P. Langbroek, O. Pacurari), Eleven Publishers, 2013.

Chapter 2 draws inspiration from *De la qualié du droit à la qualité de la justice*, en « Simplification et qualité du droit », Conseil d'Etat, 2016, La Documentation Française, pp. 241-246. 23; *Judicial Independence and the Rule of Law: Exploring the European Experience*, (with Carlo Guarnieri) in "The Culture of Judicial Independence", Leiden, Boston, MA : Martinus Nijhoff Publishers, 2012, p. 113-124 and *Judicial Governance* (con Patrizia Pederzoli), in R. Coman and C. Dallara (eds.), "Handbook of Judicial Policies", Iasi, European Institute Publisher, 2011.

Introduction

Heading Europe, Making the Law into Actions.

Since the late 70s of the XX century, European institutions crafted a wide range of legal instruments to approach governments and societies willing to "join the Club"[1].

Countries headed the EU alongside an incremental, and modular strategy, consisting to adaptation of legal norms, administrative and institutional capacity building, and implementing public policies.

This strategy comprises a wide range of policy instruments that vary as to their legally binding scope and force, especially in those policy sectors and competencies where the self-determinacy and the monopoly of the State were particularly sensitive both in the EU and within the domestic systems.

This was – and still is even if to a lesser degree – the case for the judicial policies and the comprehensive package of policies altogether covering the formerly called "third pillar". The EU did not hold an exclusive competence on judicial matters since the early stage of the European integration. Beyond the need of ensuring an equally enforced and predictable maintained set of norms to

[1] Criteria developed along the path of European integration hit the apex of legal and institutional degree of deepness and compelling force during the so called "Big Enlargement". These criteria have been widely addressed by scholars with a multi-disciplinary analysis covering today a vast range of works. The wording "Club" refers to the idea of creating a membership conditionality associated to the criteria of Copenhagen. Beyond an exhaustive picture of scholarship touching the complex and compound phenomenon that can be here synthetically referred as "enlargement and accession" it would be significant for the purpose of this work to refer to Cerutti and Lucarelli, 2011 and Schmidt, 2006.

regulate the internal market, a range of sovereign competences remained in the hands of the domestic legal entities, especially those that more deeply and significantly impacted on the balance of power and the core values of the national identity. The set of guarantees enjoyed by courts to adjudicate under conditions of systemic and individual independence is a good example of the above stated description of the division of labour, so to say, between the transnational and the national levels of governance. The States remained (and remains) free to opt for a specific model of judicial governance alongside a continuum of variations that goes from a self-governing judiciary to a judiciary that integrates specific functions ensured by the executive or the legislative.

This room of manoeuvre notwithstanding, the protection of the judicial impartiality and the access to an impartial bench are entrenched into the European constitutional identity and, consequently, in the European legal pillars. [2]

The interplay between the associated, the accessing, and the Member States takes place alongside a range of differential sets of instruments, legally binding and hitting several functions of public governance and the life of citizens and companies.

Beyond the differential approach that reflects the equally differential depth of integration that legal entities build incrementally and mutually ensuring trust and reciprocity, the role of the law and of the capacities that play a role when a public institution enforces a legal act is unquestionably at the core of the European action of cooperation, dialogue, and integration.

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[2] This is a further topic very widely debated by scholars. It would be useful to complement the analysis herein proposed to refer to the two works by Dimitry Kochenov, *The Enforcement of EU Law and Values* (Oxford, 2017 with András Jakab); *EU Citizenship and Federalism* (Cambridge, 2017); *Reinforcing Rule of Law Oversight in the EU* (Cambridge, 2016, with Carlos Closa).

This does not entail exclusively the absorption of the legal norms that are part of the European "acquis". Once the laws are part of the formal endowment of the States a wide range of factors having the nature of professional capacities, organizational capitals, policies, and tools, altogether making practical and concrete the formal statements entrenched into the laws is deemed to play a strategic and unavoidable role.

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The association agreement of the San Marino Republic with the European Union came to light at the crossroads of a compound matrix of changing paths alongside which the entire spectrum of public institutions is experiencing an unprecedented transformation. Domestic and external factors are certainly playing a role. What matters afterward is the centrality held by the so-called "rule of law complex of institutions" covering all legal and judicial structures of the Republic and all administrative services that belong to the public governance. For this reason, focusing on legal culture, administrative capacity, public integrity, and transparency, means touching straight on the enabling factors that will make the whole difference in transforming the accessing strategy into a success.

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The institutional context against which the research outcomes and the policy proposals herein outlined and discussed is strategically and historically highly meaningful. For a couple of decades, the Republic of San Marino has been with uneven pace and uphill efforts approaching European institutions and fora. The overarching rationale of these efforts is also reflected in the set of reforms adopted especially in the judicial sector to ensure that laws are not only properly enforced but also socially accountable and responsive to the needs of citizens and stakeholders.

The professional quality and ethical stance of the judicial actors, as well as the professionalism and deontology of the entire epistemic community, which includes all legal scholars, rank first among the priorities on the agenda.

Combining the arguments above recalled a distinctive notion of the law and law / society interplay comes to light. In scholarship this is the overarching epistemological foundation of an entire policy paradigm (Sabatier, 1990). In operational terms, underneath the policy discourse that irrigates the European approach to association, membership, and enhanced collaboration a distinctive notion of law and law/society interplay is at work. To word this in short one may safely say that despite the oversized law-making machinery that marks the European experience of integration – a subject that has met a wide variety of criticisms internally and externally from the spectrum of European institutions – the actual notion of the rule of law that is at play within the policies adopted to ensure the diffuse, reliable, readable, and lasting enforcement of the ideal of the rule of law is largely and essentially pivoting on a factual, functional, and cultural understanding of the judicial impartiality and the quality of the bench. It has been argued that the European institutions embarked on a comprehensive and unprecedented strategy of rule of law promotion anchoring the credibility of such a strategic – and geopolitically demanding – action to the models of judicial governance that resonated more appropriately if assessed against the European principles and standards.

This is part of a much larger policy discourse though, part of which got enriched and deepened by a more nuanced and multi-faced understanding of judicial professionalism. In other words, on the one hand judicial independence guarantees are expected to be entrenched into institutional models that provide a structural shape to the principle of the separation of power, on the other hand, the judicial impartiality and the quality of the legal and justice institutions are

conceived as a multi-dimensional phenomenon. This leads to a compound as well as layered approach to the rule of law promotion in relationship to law enforcement and the law internalization processes. They are deemed to be deeply affected by a combination of factors, behavioral, cultural, organizational, and professional. Accordingly, the law in action is meant to be firstly conceived and secondly promoted as a socio-legal fact, rooted into the legal culture featured by the implementing context and entrenched into patterns of behaviors and organizational ways of doing things within the jurisdictions and across legal services.

A socio-legal notion

Even before standing as the ideal backbone of a constitutional setting the rule of law denotes a method of coordinating persons and trajectories through a set of fundamental rules that feature impersonality and stability. As Charles Tilly rightly points out human beings abide by the law because they learn to do it, they assign a value to the stability of their life, and they are in the position of getting a (even if unprecise) glue about the positive effects this may entail. Any attempt to opt for only one of these three forms of rationality, normative, instrumental, or practical, ends up falling victim to a shortcoming understanding of social orders. Human beings are not either norm-oriented or self-interest-oriented. They are both and a modular notion of social identity would be most welcome at the core of the policy agendas that address human behaviors (such as regulative policies). Nor human beings are either reflexive or rule-following. They are both. This explains their capacity to adapt to social contexts, to ensure continuity and to embark into changing practices and initiatives at the same time.

The concept of the rule of law, if analyzed from this modular anthropological perspective, takes a new allure that seems to be less rigid and formal than we are used to saying and believing. However, once admitted that the rule of law is not only rooted in our constitutional settings and the Bill of Rights, as precious and irreplaceable they might be, we do not have yet a solid and reliable framework to cast light upon the different components of the rule of law and to disclose to both scientific researchers and policymakers, which are the building blocks of the "rule" and of the "law" when we observe them from the point of view of citizens, social groups, communities, societies.

An extreme mental experiment may put us in the right cognitive position where to stand to have a better understanding of the role played by these "building blocks". Imagine having a perfectly designed institutional setting, maximizing the respect for the impartiality of the law enforcement mechanisms and the impersonality of the law-making processes. And yet imagine that none is feeling for being abided by the laws. Rather imagine that each person feels free to adopt their own rule, metaphorically in the same vein as Humpty Dumpty was challenging the semantics of the natural language by suggesting that the meaning of a word may be the "meaning" that one person may like to assign to it. In other terms, out of metaphor, the empirical meaning of the principle of the rule of law (not its legal precipitate) requires that we observe social practices, and social meanings assigned to the fact that individuals are law followers and, even more importantly, that are law interpreters. They know to what extent a situation may justify a marginal adaptation of the laws, and they understand to what extent a fair application of the law should be accepted even though it entails a personal disadvantage, they may transmit and transfer through words (and mostly through practice) a law-oriented attitude.

This is not to argue that human nature is per se altruist or se incapable of committing crimes or violating the rules. This is just to say that we need an epistemology that enables us to explain and understand both change and continuity, respect and violation of the norms, dissent, and adherence to the rule of law. This is the reason leading to including in the herein presented framework the notion of the 'impartial spectator' as it is portrayed by Adam Smith in the Moral Sentiments. Instead of taking the semantics of this notion as a factual understanding of things, the argument sketched out in the third chapter stems from a heuristic understanding of this concept. Judicial impartiality is ultimately embedded into the individual cognition of the judge and the legal/judicial stakeholders. It functions as a normative device preventing behaviors that would not only violate the formal norms but also hollow out ethical standards and professional principles of good behavior. The impartiality is accordingly an epistemic stance of the judge, which is reflected in her/his practical rationality – how she/he behaves. As such, it is meant to result from a process of internationalization and socialization that takes place within the domestic arenas of cultural and educational promotion – such as schools, universities, research institutes, and vocational education and training institutions (Benvenuti, 2014). Furthermore, it is deeply and relentlessly influenced by the dialogue among peers. Here it comes out of the distinctive feature of the microstates. In microstates, the group of peers is small and informal in the pattern of interaction. More than in large domestic systems – big States and regionally integrated systems – judges are comparatively more influenced – for good or bad – by the informal interactions with their peers. The thesis that stands underneath the proposal put forth in the final chapter of this work argues that in microstates the process through which judicial impartiality is shaped and embedded into the individual cognition is comparatively more impacting on the consolidation of the rule of law since the formal institutions

and the impersonal machinery of the State is – once again, if assessed on a comparative base against the ones featured by big States – more porous and fragile. This should not be taken – as it is shown in the typology presented and discussed in Chapter 2 – as an indicator of a poorly developed historical embeddedness of the values and principles that stand as anchors of the State identity.

In the case of microstates where the long-standing tradition of autonomy and sovereignty is not only a fact but also an institutional fact – which means that it has the value of a normative and a performative principle – the respect of the domestic tradition and the protection of the State as a compass of legal culture come out to face the litmus test of the interaction with the international fora. How shall the microstate combine the strong value of self-determinacy and the equally strong will to bind to the European rule of law? This work suggests on the base of a sociolegal understanding of the rule of law promotion, adoption, implementation, and internalization that networking, socialization, and horizontal dialogue turn out strategically and institutionally essential. The last two mechanisms – horizontal dialogue through networking and socialization – shape and embedded into the reflective rationality of reputational costs and rewards the impartial spectator, or, out of metaphor, the impartial stance of the judge who will be supported in her / his reasoning and behaving by the certainty that her / his (Europeanised) group of peers is approving and praising her / his stance.

Judicial impartiality and responsiveness rank first on the San Marino policy agenda

Beyond the legal determinants that have been mostly addressed by ambitious institutional programs, aiming to set up formal guarantees of equality, dignity,

fair treatment in case of conflicts and disputes, notably in those circumstances that are related to the interactions individuals may have with the bench, the rule of law is unquestionably tied up to scripts individuals adopt to deal with social diversities, rule-oriented behaviors, rule-based judgments of other's behaviors, as well as economic strategies to reach better conditions of life for themselves and their acquaintances and relatives.

Little surprise that this view easily encounters the consensus of most. Intuitively we all understand that it would be hard to rule a system under conditions of fairness and equality if these same concepts do not correspond to the principles that give shape and orientation to the daily actions of individuals. It would be a chimera a rule of law-based system where actors rather prefer to violate the rules, and the maintenance of the order is generally ensured by sanctioning and punishing strategies.

And yet once the consensus elicited on these general and not contended views much more controversial remains the avenue we shall adopt to entrench these principles into the policies that institutions set up to educate children and young people about the rule of law and to create favorable conditions along the entire lifelong learning process for adults who are confronted almost each day with innovations, risks, uncertainty, conflicts, differences, and still are expected to handle all these challenges based on conduct inspired by the principle of the rule of law. This becomes even more crucial in the case of individuals who serve as public officers or as judges/prosecutors / high-ranked functionaries in the rule of law institutions, such as the police, the home affairs offices, the customs offices, migration departments, etc.

This is the assumption the reader finds at the base of the following pages. This work is therefore inspired by two ideational goals. The first is sharing the results of an innovative, interdisciplinary, and comparative analysis of the rule of law

promotion, consolidation, and enhancement in microstates carried on between 2022 and 2024. The second is designing a comprehensive cultural strategy to support, value, and expand the potential of the legal epistemic communities operating in the Republic of San Marino.

The reasoning unfolded herein takes the shape of an evidence-based thesis that, drawing from empirical results – these achieved through a research design that accepts as a foundational premise the assumption of the (rule of) law as a socio-legal fact – to engage in outlining a cultural and institutional strategy for the Republic of San Marino in the incremental approaching of the adaptation, integration, and appropriation of the European rule of law that is entailed by the association agreement.

The proposal offered to the reader is meant to sketch the timing, the mechanisms, and the stakeholders of the abovementioned strategy. It aims at strengthening judicial impartiality by valuing the professionalism of the legal and judicial actors. It suggests that higher education and cultural institutions may become frontrunners in pioneering training programs combining theoretical and practical approaches as well as horizontal dialogues with other domestic jurisdictions and legal epistemic communities. This leads to value the most the role that judicial networks may play at the crossroads of standard setting and internationalization of a European understanding of the rule of law in action across key policy sectors, such as fighting money laundering, market regulation, public procurement, artificial intelligence and digital infrastructures regulation.

Underneath the remarks and proposals herein outlined and discussed a compound notion of accountability is at play. By authoring this volume the implicit assumption that judicial actors and judicial institutions should be deemed to be subjected to a multi-dimensional set of accountabilities (the plural

is the key) leads to argue in favor of a layered and functionally differentiated approach to the rule of law implementation and the consequent adaptation to the European rule of law. A notion of accountability that has been deeply discussed in previous scholarly works (Bovens, 2006; Piana, 2010 and 2011; Canzio and Piana, 2024) covers five dimensions that are associated with five types of normative principles:

- Respect to the formal rules of positive state law.
- Compared to formal career mechanisms
- Respect for forms of professional socialization
- Compliance with organizational and management quality standards
- Compliance with the rules of transparency and public readability.

Drawing the necessary consequences from this assumption means singling out the different mechanisms using which inputs and factors influence the institutions, encouraging actors to undertake a process of transformation, and enhancing the capacity of a State to enforce the principle of the rule of law. Besides the formal mechanisms – stemming from the legal and institutional dimensions of accountability – the volume acknowledges the empirical significance of other mechanisms such as learning, socialization, monitoring, and assessing, which, altogether, impact professional, managerial, societal, and public accountability. This is the reason the following pages strongly support the design and the implementation of an accession strategy that builds in the Republic of San Marino the capacities competencies and methods associated with the professional, managerial, and societal accountability for the judicial institutions. As it will be argued in the next two chapters, microstates feature a

distinctive pattern of accountability which is structurally influenced by the low monitoring costs, the high reputational costs, and the peculiar balance between informal and formal institutions – in favor of the first ones – and, in the unique case of San Marino a strongly and deeply rooted legacy of historical identity. These are the preconditions that should be taken into consideration in the prospect of the accession strategy.

CHAPTER 1

Rule of Law in Action as a Socio-Legal Phenomenon

Back to the premises

This work is founded upon a compelling question: to what extent is the rule of law and judicial impartiality embedded into the legal, cultural, institutional, and social engine of the daily functioning of a microstate?

How the response to this question may cast new light on the concrete and operational strategy that should be adopted by a microstate featuring a deeply embedded legacy of self-determinacy – such as the Republic of San Marino – in the context of the accession to the European Union?

Since the rule of law promotion is permanently evolving, in terms of actorness and policy methods of the international community and the multidisciplinary toolkit that we have got during more than thirty years of programs, initiatives, and actions, the combination of these different factors and actions deserves a thorough treatment. To this goal aims the current chapter.

At the core of this comprehensive range of policies, the design of legal and judicial models of governance and court management holds a priority rank. Since the late 80s, when the so called Law and Development Movement (Trubek and Triubek, 2007) launched a paradigm pivoting on the implicit premise that through better law – and impartial law enforcement – economic development is linearly reached, the promotion of the rule of law continues in its support of the judicial policies enacted in associate, accessing, member countries as well as by supporting the diffusion of best practices of justice governance and administration in democratic institutions.

Before delving into the variety of strategies and instruments deployed by the ever-growing community of legal and judicial experts promoting the rule of law

worldwide, it is worth to devote some notes and remarks to clarify the semantic that is adopted in this book to refer to judicial governance, justice system, justice administration, and quality of justice.

In the box 1 the notions that are used herein are briefly clarified through an explicit anchoring, institutional and scientific in its nature.

BOX 1

Governance: system of rules, formal and informal, stemming from legal, social, managerial, and functional normativity, adopted to govern in a scope of actions, to build new rules, to make previously adopted rules enforced. In the justice and legal sector, the notion of governance covers the judicial governance and the organization of the courts without being exclusively referred to these.

Quality of justice: this notion is introduced to move from a procedural approach to the rule of law promotion and endorse a broader perspective where the services, the efficiency, the reliability from the point of view the citizens are considered. It has taken progressively a pluralistic connotation – instead of speaking of quality the international debate is keen to refer to the qualities of justice.

Source: author readaptation from Piana, 2010 and 2023.

As the reader can see the notion of quality of justice, initially introduced to refer to the court administration and the services delivered to citizens by the judicial institutions got over the two decades that mark a paradigm turn since the 2000 a much broader significance. It has been discussed the plural dimension of the quality and accordingly this notion has been afterward used as "qualities". To which system these qualities refer? This is a further semantic evolution that entails a paradigm shift. Instead of speaking about formal qualities – those that relate to

the formal guarantees of judicial independence, for instance – it has been accepted in the international discourse that the qualities refer to the justice system. The justice system features formal and informal characteristics and accordingly can be observed and assessed based on a pluralistic notion of qualities, covering also the capacities of the system to conduce trust, to be transparent and understandable for the lay people, and to be substantially impartial.

The shift consists both in expanding the scope – from the court system to the justice system – and in expanding the object's features – from a formalistic view to a multi-dimensional normativity covering laws, ethics, organizational standards, and social norms. [3]

To briefly describe the first step made internationally toward a multi-dimensional notion of normativity with which address the promotion of a high-level quality justice system the managerial turn that took place around the late 90s and across the early XXI century deserves mentioning. The effort deployed by the EU to modernise the judicial sector by promoting the diffuse adoption of IT-based systems of case filing and case management, injecting into the court management tools inspired by a user-oriented approach, and more generally enhancing the managerial capacities of the judicial offices (Jean, 2004; Pauliat, 2007; Frydman, 2012) is framed in a broader policy paradigm pivoting on the idea of making the public sector more efficient.

Before touching the courts, the impact of this paradigm has involved other public sectors such as local administrations, and central units of the executive branch (Hood, 1991; Frazmand, 2006; Horton, 2015). This comprehensive process of policy change stands as the most evident outcome of a new way of conceiving the

[3] This notion has been discussed by the author in Piana, 2009 and 2010; accepted at the international level and mirrored in the assessment exercises that are today on-going – see the European justice scoreboard.

rule of law, in which one can work with an output-oriented approach as opposed to a rule-oriented one.

Despite the wide consensus this approach raises, as the following pages will highlight, in the context of microstates a shift from a purely formal and structural paradigm to a multi-dimensional understanding of the quality of justice turns out to be very adequate and appropriate to inspire and frame strategies and actions of rule of law strengthening.

In the third chapter it is argued that this process goes hand in hand with the rise of the judicial networks (Dallara, 2015; Piana and Raniolo, 2019). Actors got involved in a comprehensive and cross-borders process of the rule of law promotion and implementation. To what extent does this 'method' turn out to be effective? Is there any specificity when the comparative scholarship developed so far on the European promotion of the rule of law applies to the realities featured by microstates?

This question receives an answer starting from a deep and multi-level analysis whose conceptual and theoretical centre is represented by *an agency*. The core thesis of this book can be summed up as follows: actors are prominent and critical factors in the adoption as well as in the implementation of the rules promoted in the large variety of strategies and actions undertaken by international and transnational organizations to promote the rule of law and the quality of justice. The empirical validity of this statement increases in those organizational and institutional contexts where the mechanisms of hierarchical control – both political and professional – are weaker and where the judicial systems display a loose pattern of internal ties and intra-organizational links.

To state it differently, we put forth the hypothesis according to which *actors play a bigger role where institutions are weaker and the mechanisms of intra-organizational control are looser* (Weick, 1977; Van Dijk, 2007; Sarat and Scheingold, 2005).

Moving from this general assumption, this work tries to assess the potential influence and the learning potential that come from the interplay between microstates – more specifically the Republic of San Marino – and judicial networks.

It is therefore timely to discuss the "strategies, the instruments, and the resources that actors draw on, build, exchange, and expand through networks. This means discussing the role played by *networking*, *i.e.* the activities carried out through judicial networks" (Dallara and Piana, 2015) in the context of the path the Republic of San Marino will outline and adopt.

The reader will not find here a view of of judicial networks whereby networks are conceived as mere tools of socialization, whose significance in the transnational processes of policymaking can be appreciated by observing the cultural change of judges and prosecutors that become members of these networks (Alasdair, 2007): "some scholars hold that socialization triggers processes of change impacting culture on judicial behavior. We do not deny that, among other factors, to some extent, socialization also takes place as a spill-over effect of networking activities. But we do not assume socialization to be the key mechanism using which transnational norms – hard and soft – impinge upon the behavior of judicial actors" (Dallara and Piana, 2015).

Networks are also arenas where norms are shaped and discussed, legitimated and promoted. Therefore, through networks policies aiming to strengthening the rule of law are impinging on different factors, all of them involved – in a way or in an other – in shaping the judicial governance and the quality of justice that is delivered to citizens.

These factors, combined, result in institutional changes, both formal and informal in their nature. By this means, the combination of actors and new arenas – such as those represented by transnational institutions where networking activities are promoted and consolidated – facilitates the production and distribution of

cognitive and political resources that can be used in the domestic context to promote changes.

None of these causes are here conceived as *deterministic mechanisms* pushing or pulling judicial behavior. In other words, the analysis unfolded in the following pages does not endorse a linear view of the process of judicial and administrative reforms that is requested by the accession to the EU. It considers the context – comprising legacy, political and cognitive resources, organizational boundaries, and opportunities – as an intermediating factor bridging macro and micro variables, namely, between structure and agency, norms and actors.

However, the argument disentangled following upon a long-standing scholarship in comparative political science and sociology points to the critical factor that may hinder or expand exponentially the paramount outcome of the reforms. This factor is directly related to the culture and the cognitive stance of the institutional individual actors. Despite this argument is not new in the scholarship that discusses the processes of change (Scharf, 1990; Morlino, 1990), in the context of the microstates the role of the individual culture, capacity, and ethical stance gets a comparatively amplified significance.

In other words, this means that the professional, cultural, and ethical qualities featured by the judge and the legal actors heavily impact the effective protection of the quality of justice and the enforcement of a fair trial.

Whereas formal guarantees of judicial independence are necessary, they are far from being enough to ensure the actual protection of the rule of law. This holds a comparatively bigger magnitude in microstates because of the relatively higher weight that the agency's factor plays – as opposed to formalized and structured institutions. [4]

[4] Once again this is widely and deeply discussed in Dallara and Piana, 2015 without specific reference to microstates.

Therefore, both the promotion and the enhancement of the rule of law seem to be capable of triggering institutional changes without entailing necessarily not only the change of the formal rules that govern the judiciary. We might well observe a judicial system where the formal mechanisms of judicial appointment, promotion, and evaluation of judges and prosecutors remain untouched whereas, meantime, the practices of court management, case filing, of users' communication, are so deeply and widely transformed to change from the 'within' the judicial governance as it is put into motion (Piana, 2024). A much wider process of change should be at play, engaging culture and ethical standards as well.

Domestic actors involved in the promotion and diffusion of norms and principles related to the rule of law seem to be protagonists at the forefront of an extremely variegated pattern of rule of law implementation. In fact, the rise of agency as opposed to the rise of norms and structures seems to be a dominant feature of the European area.

These considerations impact also the manner *judicial governance* needs to be conceived. In a State-centred order, where the judicial function is legitimated to the extent it complies with the legal norms, judicial governance can be designed to ensure the capability of the courts to enforce the rights of all members – but exclusively of these latter – of the society. The key point of such a system of governance is the impartiality of the judiciary. Legal certainty and predictability are pivotal.

Judicial decision-making, despite the differences that exist between the cases brought before courts, was required to comply with a uniform, homogenous normative order. Any point in the national territory, and, consequently, any individual living there, fell under the same rule and expected to be ruled in the same way as anywhere else, and therefore any other individual, living in the same State.

Expanding and deepening the rule of law across national borders

The distinctive mark of modern justice systems stems from their State-centred structure and takes the prominent shape of being bounded and separated from the other branches of the State. From an organizational and sociological point of view the functional differentiation featured by the separation of power is somehow blurred up as modernity enters post-modern stages and institutions reshuffle their competences and jurisdictions. As an example of this systemic readjustment of functions and jurisdictions it is worth mentioning the unbalanced toward the executive branch of the law-making function – delegated legislator – and the global expansion of the judicial function (Tate and Vallinder, 1990; Hirsh, 2001; Piana, 2013).

The political significance of this pattern of change is associated with the change of the inner nature of the bounding functions played by formal and institutional procedures and norms. In the context of the justice systems the courts have been traditionally, structurally, and symbolically bounded to be protected from undue influence (Shapiro, 1971) and ensure impartiality. Moreover, in the same vein, the State-centred institutions – such as the courts – legitimately act within the scope of action that mirrors exactly the territorial borders of the State.

Therefore, judicial governance and the rule of law are tied up in a strict and compelling relationship. It is because of judicial governance that the rule of law is made possible. It is because of the rule of law that the authoritative allocation of values that any court is in the position to make is legitimized.

Two macro-scaled phenomena challenged this system (which has been established with the Enlightenment and marked deep modernity). The first one is the fragmentation and the expansion of normative pluralism featured by our contemporary world. Comparative political, and socio-legal scholars engaged in scientific research activities have already highlighted the multiplicity of possible institutional settings suitable from the point of view of the rule of law principle.

The historical development of European States, to narrow our reasoning to a homogenous area, brought about several different models of judicial governance, spanning from a self-governed judiciary to a judiciary headed by the Ministry of Justice.

Beyond the vast scholarship that has addressed these topics when the European promotion of the rule of law is considered and analysed from a dynamic, historical perspective, the incremental expansion of the transnational initiatives to bridge across boundaries comes to light with unquestionable evidence.

This move has been made in three discursive and strategic steps: from government to governance; from system centric to actors centric, from legal studies to multidisciplinary professionalisms.

1. Governance, in this context, takes on a broad meaning, covering several institutional and procedural dimensions, all of them connected with the rules, values, and normative inputs that provide a common framework whereby adjudication and prosecution are carried out. Hence, the rise of judicial networks connects directly with the reshaping of the balance of power between the EU and domestic judicial systems as well as with the rebalancing of the power and competencies within the national judicial governance. More precisely we will disclose how and why change processes can take place within some judicial offices and, in doing so, they can intentionally reshape the capacity of the centre – either the High Judicial Council or the Ministry of Justice – to set down the standards of quality of justice within the domestic legal space of the States that interact, under different legal conditions – membership, association, cooperation, accessing – with the European institutions. The strategic choice made to combine in an unprecedented pattern of rule of law promotion the national sovereignty and the European promotion of "European-driven" models of quality of justice is made expanding the target of impact and the scope of

action. After the adoption of the Copenhagen principles (Cremona, 2000) the European Union started to act as a rule of law promoter by targeting courts and justice services with an increasing attention devoted to role played by actors within the court system and in between society and law. Governance – instead of government – takes the meaning of a compound system of formal and informal rules touching upon the procedural law as well as the legal ethics, covering the formal guarantees of judicial independence as well as the substantial cultural stances endorsed by legal actors to behave impartially. The shift toward the governance of the justice system is a "door open" toward the pluralisation of the standards against which the justice systems are expected to be assessed.

2. The second phenomenon that is worth considering here as a macro-scale factor challenging the modern system is the outbreak of an international discourse appointing court administration and court management as pillars of the rule of law. *Some scholars labeled this process as the expansion of the performative approach into the law* (Garapon, 2009; Priban, 2024; Piana, 2011). The thesis shared by these scholars is the shift from a procedure-oriented legitimacy featured by the judiciary (judicial decisions are legitimate to the extent they comply with the norms and result from the pure application of legal procedural codes) to a performance-oriented legitimacy (judicial decisions are legitimate to the extent they comply with efficiency and effectiveness). Without efficient, transparent, and accountable management the rule of law would not be considered fully and properly implemented. Therefore, the focus of policymakers moved from the macro level – i.e. the national judicial system – to the level of the judicial offices, where the practices of court and prosecutor administration come under the spotlight. In other and more synthetic terms, judicial governance today means a multi-level concept, ranging over the governance of the judicial system and the governance of the judicial offices. Promotion of the rule of

law incorporates this new facet by promoting highly developed blueprints designed to improve the organization of the judicial offices and drafting multiple checklists to guide judicial policymakers in their reform. Observation of this variety of court management schemes, IT tools, initiatives aiming to ensure that a good service is offered to the citizens, human resources management, in-service training, etc. finally arrives at the following question: does the "networked rule of law" correspond to the primacy of the law as it is traditionally conceived? Does it correspond to an order ensuring equality of citizens before the law regardless of their location within the European space? Is the networked rule of law an institutional order in the classical, traditional sense of the word? Or are we facing a new order which looks like a compound, and not necessarily even, order?

3. At the aftermath of these double change – in the scope of action and in the standards of quality that are endorsed by rule of law promoters – stands the third innovation that consists in the design of a new format of standard setting, models sharing, culturally influence, and mutual learning: judicial networks. "Judicial network" is a multi-faced notion. As rightly argued in Dallara 2015 and Amato 2022 the large spectrum of judicial networks one can observe within the European Union and the Council of Europe deserves some specific remarks. Networks are either made by the national representatives of the States or made by experts and practitioners. Most of the time the representatives are appointed for that role by the judiciary or by the government. In general, the networks are expected to work out programs and strategies promoting the rule of law through a wide range of tools covering standards, training sessions, guidelines, handbooks, and regular cycles of monitoring and assessing. The influence of social, managerial, economic, mathematic, and technological expertise gained momentum. Moreover, judicial networks started operating on specific topics and highlighted policy sectors, such as refugees and migrants

protection, fight against corruption and money laundering, protection of fundamental rights in prisons and probation institutions, to mention few of them.

The three shifts mentioned above, for briefly and far from exhaustively considered – for a more comprehensive discussion the reader can refer to Dallara and Piana 2015, Benvenuti 2014, Amato, 2019, Coman, 2022 – pave the way for a more extensive role played by horizontal mechanisms of interaction between the transnational level and the domestic justice systems. These mechanisms took the shape of the socialisation, the mutual dialogue, and the transfer or exchange of good practices. These formats proved to be respectful of the national sovereignty as well as effective in engaging actors within the justice systems and within the broader institutional setting of the State in a "journey" heading the European democratic rule of law.

The pages that are to follow here show the reader that judicial networks perform as multi-functional bodies:

- they create an arena to discuss domestic judicial policies
- they develop a transnational policy discourse on judicial policies
- they set up standards of quality of justice
- they award the recognition of highly performing country or badly performing country and accordingly allocate moral costs
- they empower national representatives that participate in the meetings and seminars organized by judicial networks

The reader can draw already from this list that this work, which considers the judicial networks and investigates the process of networking the rule of law as a complex and multi-layered process whereby actors have the opportunity to adopt, promote, diffuse, and learn rules related to the justice administration, is about

judicial professionalism, the quality of the judicial culture, and the judicial impartiality, meant to be social facts.

The vast scholarship developed at the crossroads of political sociology and comparative politics on the democratization processes and the anchoring effect triggered by the rule of law promotion in countries that are approaching the European model of constitutional democracy did not delve into the detailed and distinctive patterns of change that unfold within the microstates. For peculiar it might be the path each microstate followed toward the achievement of a sovereign status and modern structuring of the power exercise – through the separation of power and the entrenchment into the constitutional provisions of guarantees of judicial independence – microstates remain an empirical field worth investigating. If models developed on the interplay between agencies and mechanisms of change maintain a certain degree of empirical adequacy, it is a matter of consensus among scholars that the size of a complex system – such as a State – makes the difference as to the relative weight played by the different factors that intervene in determining the patterns of change.

The importance of the context to make constitutional principles and constitutive norms of a society ruled by the law

The premises of the reasoning are therefore drawn from an empirical scientific and theoretical approach that considers the actual modus operandi of political systems as empirical evidence, and which accepts as relevant variables both formal institutional constraints/opportunities and culture as a co-factor. -participant in the elaboration and acceptance of behaviors and decisions, both the individual behaviors of the actors who play an institutional role.

The cognitive value of the case study must therefore be noted in the context of research, of which this work represents one of the outcomes, which made use of a

properly mixed methodology, combining the tools of empirical analysis of the functioning of institutions and processes of change institutional in a comparative key with the qualitative in-depth tools aimed at outlining in detail the interactions between dimensions of a model that is intended not only to be multifunctional but also multilevel. The functionality of the institutions of the rule of law that intervene along the entire path of creation, adoption, implementation, and value promotion of the norms of law is plural, just as the arena in which the actors who make those norms find themselves is multilevel. Guarantors and interpreters in compliance with national constitutional provisions and guided by the values of the European democratic rule of law. Thus, therefore, a case study sheds light on those functional hubs which, although existing, as functions, in all countries and all national systems, acquire, in the case of the microstates to which the case belongs, a specific form of institutional behavior that is expressed in that multilevel arena not only between a microstate and European level but also horizontally, between microstates and between each microstate and the other states with which it shares similar cultural orientations.

In literature and doctrine, in the context of studies of constitutional law and comparative politics, the question underlying the establishment and promotion of an instance - concentrated or widespread - having as its distinctive function that of exercising control over the constitutionality of legislative activity which finds legitimacy in the legislative body is located, beyond schools of thought, at the crossroads of the balance of two principles. The first principle concerns the necessary democratic legitimation of the exercise of power, this being the adoption of primary legal norms. The second principle concerns the protection of any expression of a society that is neither represented hic et nunc in the legislating majority nor consensual in the future concerning the previously adopted norms nor yet otherwise protected from the risk of distortive use of legislative power even if it were through electoral legitimized.

The balancing of these two principles finds different configurations in the different political systems and is certainly affected both by the legacy and the historical-cultural tradition, both by the structure of the form of government, and also by the situation in which the balancing, first *de jure* and then *de facto*, finds, respectively, its concrete precipitation in the adoption of specific mechanisms for controlling the constitutionality of norms and in institutional behavior.

Assigning the entire burden of guarantees to the constitutional design is empirically unsustainable, even though this is the preliminary and necessary condition for any form of behavior to be implemented.

Three reasons of an empirical nature strengthen this first assumption of the reasoning outlined here.

The first concerns the multifaceted and plural nature of the source of the normative nature of law. Society must therefore be considered as a) source and b) humus of strengthening the rule-making and rule enforcement mechanisms having a direct impact both on the demand for positive law - where there is a weakness, a shortcoming, an erosion of credibility of non-state law - centric - both on the exercise of tacit control, such as to influence the extension and intensity of the control vacuum exercised both at an individual and systemic level. In this sense, the constitutional judge must be understood in his individual and collegial dimension. The control of constitutionality must comply with the scope of respect for the law, without incurring the forms of distortion of judicial activism, widely discussed in comparative literature.

Two corollaries can be deduced:

1. Formal institutions cannot fully absorb informal institutions. The degrees of combination of the two forms depend on culture and context.

2. The context is characterized by the costs of monitoring between institutional actors, by the degree of continuity of formal and informal

institutions, and by the type of previous experiences that have left a trace in the memory of the system.

We will call the "context" the action situation.

The second empirical premise that is interesting to consider here concerns the qualification of the concept of acting. In this context, it is important to consider an action of elaboration of thought and deliberation, decision-making, and structuring of the argument which has as its reference "public" an epistemic and professional community whose dominant characteristic is a function of the professionalism of judicial and forensic recruitment, even of doctrinal socialization, or rather the more or less widespread presence of an extra-systemic dimension - such as that of foreign systems - which is considered as a reputational, professional, institutional reference, or rather the three things together.

In many ways judges can refer to norms that are shaped and legitimated in a complex and multi-layered system. Among these norms, some of them are hard and formal – legally binding – some of them are soft – non legally binding. Beyond the set of norms that are shaped at the transnational levels through the mechanisms of standard setting, jurisprudence, law making, an increasing number of norms are not only informal in their nature but also relate to the cultural and professional normative references to which the judge refers. In other words, to understand which institutions must be introduced to strengthen the protection of the rule of law, it is necessary to disaggregate the functions of the "action" of the judge because different control-verification-response mechanisms will act on each component function which we will call accountability.

Several factors have an influence on this complex combination of cultural, formal, and behavioural norms:

1) Legal culture. This is the most elusive factor to measure and evaluate empirically. However, a qualitative analysis of the programs offered to legal

scholars (in undergraduate and graduate schools) and the cultural ties that judges have with other legal professions (lawyers) can provide very in-depth information on this point.

2) The authority and prestige of the court. Courts established in countries where national law is not considered the exclusive source of rules are more likely to consider extra-systemic jurisprudence as a legitimate alternative. As an example, constitutional courts demonstrate that they act rationally by considering the cost/benefit ratio in the case in which they would opt for a decision that is also based on non-national legal rules, compared to the case in which they would opt for a decision that is based exclusively on non-national legal rules. National legal rules. Then there is a specificity. Where informal institutions are particularly important, external anchoring turns out to be equally beneficial. More generally courts are held accountable not only toward legal norms, but also toward normative criteria that relate to the social readability of their decisions, transparency, and timeliness.

3) The professional profile of the ecosystem of legal professions. This goes as far as suggesting the need to ensure the professional quality of the judge's staff.

4) The quality of management and organizational resources ensured to courts and legal services has an impact on the overall quality of justice and thereby to the effectiveness of the rule of law.

CHAPTER 2.

UNPACKING RULE LIFE CYCLE DISCOVERING MECHANISMS OF CHANGE

Beyond the architecture

Constitutional models and political regimes in microstates have been, for not widely diffuse, one of the topics addressed by scholars making an investigation on the shape, the structure, and the specific varieties of types of power organization featured in distinctive geographical and historical contexts, such as microstates. Largely, and predominantly, the trajectories unfolded by microstates toward new shapes of governance, and more specifically toward the constitutional States, date back to historical conjunctures where the role of the international organizations and the transnational networks was less prominent, at least if compared to today's role. This is not to say that external factors did not play a role or an influence on the path and the shape of these trajectories. On top of that it is compelling the more recent – relatively if assessed back to a longue durée perspective – that transnational networks have been playing to engage a horizontal dialogue including microstates. If this caveat to the above-stated premise referring to the relatively low dominance of the international organizations and judicial networks is accepted even more significance should be acknowledged to the role played by judicial networks operating in the spectrum of the Council of Europe ecosystem, among which the Venice Commission is unquestionably one of the more active and the highly prestigious for the extraordinary combination of political and technical profile of the membership.

This chapter stems from a comparative analysis of the peculiarity featured by microstates that have been framed in a functional, empirical, and sociopolitical perspective. The scholarship here mentioned as a background is mostly drawn

from the seminal research conducted by comparative political scientists on the increasingly expanding voice and leadership played by international organizations and judicial transnational networks in promoting democracy and the rule of law namely leveraging through the so-called democratic conditionality. This first stream of literature has been combined with a further pathbreaking scholarship pointing to the "situation of action" that policymakers willing to promote reforms and changes are facing in each set of institutional constraints. The notion of veto player has been introduced to define the situation – operationalized in terms of numbers of veto players and potentially active veto players – in which changes may be introduced. The vast number of studies published since the seminal work of Tsebelis and Putman is based on the overall assumption that the veto players chain is punctual and, consequently, may be traced, unpacked, and analyzed with a cost/benefit analysis approach. Besides this, a reading of microstate reforms based on an actor-centred approach with a functional, strategic, and empirical view of power exercise, influence, and patterns of interaction, remains missing. The rationale of this work and the arguments provided herein is driven by the observation of the increasing salience that the dialogue undertaken between judicial networks and sovereign States in matters that belong to the autonomous determination of the sovereignty and yet do have a deep and unavoidable impact on the quality of life of citizens and international/transnational interactions. This general statement holds also for microstates. Once again, this may be safely deemed to be highly and utmost important when the judicial systems and the judicial independence of the courts are promoted, strengthened, and observed.

The thesis prospected here is based on three premises: 1. Constitutional and judicial reforms should be reframed as processes of change where actors and situational variables deserve attentive and deep considerations, 2. the process of change should be unpacked because actors intervene in different ways and with different resources (reputational, political, cognitive), facing different setting of costs/benefits ratio when they endorse a change; 3. A map of the distribution of

the intervening variables that have an impact depending on the timeframe and the timing of the process of change triggered by reform is essential to the judicial networks to have a view of the leverages that can be jointly internally – it means "domestically" – and externally activated to make the reform become a happy end story.

Since the object of this study is not the legal norm as such but the change process that starts with the prospect of the legal norm' introduction and ends with the internalization of the normative behavioral consequences that stem from that legal norm for each player that is situated alongside the entire chain of policy-making, therefore the thesis suggested here refers to culture, socialization, horizontal dialogue, as key leverages of change, maybe less disruptive in the short term that other mechanisms of democratic conditionality, but surely better combining the need of preserving the sovereign determination of a microstate with the possible support that judicial networks may give to reforming, modernizing, elite, and change players, who are willing to invest political, technical, professional, resources to improve the functioning of the rule of law.

In the following pages, the reader will find a framework and the rationale to link its key building blocks – notably the actor-centered approach – to the international scholarship in comparative politics and comparative administrative science as well as to the mainstream named "neo-institutionalism". This will be elaborated originally with a thorough attention devoted to the distinctive features of microstates such as the combination of informal and formal institutions which turns out into a unique pattern of informal and formal constraints as well as a peculiar pattern of networking through and in between the sectors of the States (Checkel, 2001; Dallara and Piana, 2015). The key notions of the situation of action, actorness, and change agent get therefore a specific significance resulting from the accentuation of the actorness-dimensions already stated in sociology, such as the social bonds, reputational constraints, socialization, peer groups' isomorphism, and normative reasoning, and traditional versus impersonal

legitimacy (Piana, 2006 and more recently 2024; see the foundational works of Boudon, 1990 and the more recent applications of these approaches in Costa Pinto and Morlino 2013).

Having these premises as a background this chapter addresses the following points:

1. How and with which kind of specific pattern microstates experience the entrenchment of the rule of law?
2. How different mechanisms of change are triggered in microstates?
3. The differential distribution of power across branches and layers of State organization makes a difference in the pace and the pattern of transnational anchoring.
4. How do judicial transnational networks become catalyzers of change in the three momenta of chance – rule adoption, rule implementation, and rule internalization?

The proposal sketched out herein stands at the crossroads of three streams of scholarship and aims to provide judicial networks and domestic judicial institutions in microstates with a common framework to cooperate on a scientifically sound base.

From the conceptual perspective the innovation that inspires this work consists of the first step back from the systemic and structural analysis, which will be trapped into the original presupposition – namely the type of State structure – and endorses a functional view of the three dimensions of normativity:

- Adoption. Adoption is the process through which a change agent – a leader – prospects and leads through the institutional arena a norm, a reform.
- Implementation. Implementation is the process through which the adopted reform is implemented all along the chain of policymaking from the highest

level to the lowest level of a bureaucracy, and jurisdiction, a sectorial branch of the States.

- Internalization. Internalization is the process through which all players that belong to a sectorial ecosystem endorse the normative behavioral consequences of the adopted norm and therefore acknowledge to that norm the significance of a value, rather than the significance of a pure constraint.

In this view, a change agent is an institutional actor that plays an entrepreneurial role by introducing an idea of reform and elaborating on the rationale of that.

Combining a set of hypotheses stemming from the sociolegal analysis of comparative judicial systems and political jurisprudence to a comprehensive view gained by the scholarship developed applying an institutionalist vision of the judicial governance within the dynamics of the domestic political systems, this work represents an innovation both in methods and in the matter.

The primacy of the rules we made altogether[5]

The rule of law is both a principle and a desirable living condition, enabling individuals and social groups with different values, visions of good life and good society, interests, origins, and prospects to live together in a peaceful and predictable context.

If the ancient understanding of it poses as a first-ranked priority the illegitimate standing of every person outside the boundaries of the laws, the subsequent evolution of the notion and its *corrolarium* binding each instance of power – *no legibus solutus* - may be portrayed as a long never-ending journey strolling around the very same ideal: binding humankind using impersonal rules. And yet this side

[5] This paragraph draws from Piana, 2015.

of the rule of law as a principled ideal inspiring the design of the organization of power must join a second half – not less important than the first thought – of the rule of law as a socially embedded notion.[6]

Over the centuries, the development of modern States and the practices of Western liberal institutions gave birth to two different, but related, formal mechanisms to limit the power of the sovereign (and broadly speaking to limit the power of the executive branch): first, its subjection to the law, in an early stage to natural law and then afterward to the parliament; second, the separation of powers, based on the assumption that the three branches of government (legislative, executive and judicial) handle three different kinds of power. It then recommends that these branches perform their functions under the control of mechanisms of inter-institutional (inter-branch) accountability, which ensures that no branch prevaricates and overrules the others. Independently of the way the power has been bounded, judicial institutions always have been placed in a critical position concerning implementing the constitutional principle. On the one hand, courts are of paramount importance in keeping public officials accountable to the law. On the other hand, the judicial branch is crucial in implementing the principle of separation of powers (Bellamy 2005).

To say in short a centuries-long tortuous story the rule of law posits the primacy of the rules that are fabricated using transparent, politically legitimate, and fully respectful equality and freedoms, and equally posits that to ensure the capital role of the primacy of the rules within the actual functioning of the power the instances

[6] A socio-legal understanding of the rule of law (in action) stands at the crossroads between Morlino, 2011; Piana, 2009; Waldron, 2016. The Venice Commission states: "The Rule of Law is linked not only to the protection and the promotion of Human Rights, but also to Democracy. The participation of the citizens in the strengthening of the Rule of Law is thus paramount. That is what the Venice Commission calls an "enabling environment". The Rule of Law can only flourish in an environment where people feel collectively responsible for the implementation of the concept". https://www.venice.coe.int/WebForms/pages/?p=02_Rule_of_law&lang=EN

of the exercise of power would never handle the whole of the authority and will be rather mutually bounded and balanced. Accordingly, the entire legitimacy is made by both the *auctoritas* and the *ratio juris*, whereby "ratio juris" one should mean both the creation of the rules and their implementation/enforcement using impersonal powers/branches.

Within the scope of action of the European institutions rule of law is meant to refer to a complex of conditions and structures, altogether imping upon the impartial, independent, fair, and human rights-driven enforcement of laws and the related put into motion of the principle of checks and balances:

BOX 2

"The rule of law is enshrined in Article 2 of the Treaty on European Union as one of the common values for all EU Member States. Under the rule of law, all public powers always act within the constraints set out by law, in accordance with the values of democracy and fundamental rights, and under the control of independent and impartial courts. Respect for the rule of law is essential for the very functioning of the EU: for the effective application of EU law, for the proper functioning of the internal market, for maintaining an investment-friendly environment and for mutual trust.

The EU has developed a number of different instruments to promote and uphold the rule of law. The EU's rule-of-law policy approach rests on three pillars: the promotion of a rule-of-law culture in the EU, which involves deepening common work to spread understanding of the rule of law in Europe; the prevention of rule-of-law problems where they emerge in a Member State, having the capacity to intervene at an early stage and avoiding the risk of escalation, including in particular the European Rule of Law Mechanism, with the annual Rule of Law

Report at its centre; the ability to mount an effective response when a problem of sufficient significance has been identified in a Member State, including the procedure under Article 7 of the Treaty on European Union.

Along with having a functional democracy and respect for human rights, including the rights of persons belonging to minorities, the rule of law is also one of the political criteria that countries wishing to join the EU have to meet".

This wording is the outcome of a combination of factors and streams of actions unfolded across decades and deeply boosted by the responses designed by the European Union to the challenges rising from the accession of new member States as well as from the reshuffling processes of powers and competences within the European political system. The concern about the legitimate exercise of power stands at the core of the European narrative since the early stages of the European integration process (Rosemond, 1991; Tocci, 1990; Coman, 2003). From the institutional point of view, the exercise of power is being distributed among a variety of actors in multiple procedural combinations: the Commission, the Council, the European Parliament, and the European Court of Justice. These supranational institutions, exercising broadly multilevel governance, engage in a dialogue and negotiate with the national executive and administrative levels as in a public arena.

One of the consequences of the European integration as a unicum worldwide method to build, entrench, maintain, and exercise power across levels and sectors, in a way that combines room of manoeuvre for all the institutional power holders that are playing within the system, is the centrality of the law. This statement should not be read as a simple acknowledgement of the importance the process of law-making holds. Underlying that of the production of law, we no longer find the primacy of a source such as the law of the State: in the first place, the European institutions operate through a variety of instruments, not only of hard but also of

soft law, of a contractual nature. Secondly, as far as hard law is concerned, they favor acts that leave room for transposition by the Member States, respecting the general principles of the Union, including those of subsidiarity and proportionality. Thirdly, since the European Court of Justice plays a fundamental interpretative role among the producers of law at the European level, and is increasingly oriented towards a widespread evaluation of constitutionality, it binds European law to respect fundamental rights as they are inferred from common constitutional traditions (Morlino, Piana, Sandulli, 2019, p. 9).

Yet, more than this is at stake. Laws are expected to be enforced across levels of institutional jurisdictions and scopes of action that are uneven and differentiated in several respects:

- The institutional capacity to ensure law enforcement – related mostly to the organization of the public governance system
- The professionalism featured by institutional actors and their related patterns of recruitment and promotion
- The overall institutional culture featured by the public institutions with a particularly delicate and sensitive aspect of differentiation related to the local levels – sub-national.

Accordingly, once the laws are adopted by the European regulator or the European legislator, a entire cosmos of actions, interplays, variables, and factors intervene within the domestic systems at all levels.

Conditions impacting on this cosmos and on the actual legitimacy of the laws as they are delivered – in actions – to citizens and societies depend partially on choices that fall beyond the appropriate spectrum of power held by the European Union. This is the case for the governance of the judiciary.

Along the decades and especially with the accession processes launched by the European Union with partnering States, neighbours, and associate countries, the

notion of the rule of law gained a boost in terms of political priority and operational refinement.

Two rationales stand making sense of these evolutions. The first is the logic of appropriateness (March and Olsen, 1989). The intimate connection that ties up the inspiring principle of the rule of law and the European dream is brilliantly phrased by Paolo Grossi in his "The Europe of the Law". The is an essentially foundational truth in the words put forth by Paolo Grossi "We trace back alongside the stepping of legislators, judges, and savants as well as of the laypeople and the business, to draw the line of history marked by the never-ending dialectic between localism/particularism and universalism". The very idea of Europe is built upon a dynamic equilibrium between local interests/realities and common bridges/values. This dates to the far Middle Ages. Despite a proper analysis of this cultural heritage would deserve a much larger space to make justice to its depth, it is worth recalling here the extent to which diversities and commonalities represent since ever the building blocks of European history and, not too much surprisingly, this is so also within the evolution – and the involution – of the European integration process. Despite the essentially common ground that is portrayed in the mainstream narrative about the European rule of law as one of the pillars of European history and, accordingly, of the European identity, the differences between the domestic ways to go about the rule of law entrenchment into the constitutional designs of the States are patent evidence. Not only this touches directly upon the role assigned to the constitutional review of the legislative acts – as rightly highlighted in Kochenov, 2016 -, not only this is mirrored in the overall pattern of separation of power and the consequent scope of action granted by the constitution (written or not, as in UK) to the ordinary court system that in the rule of law inspired European dream still plays a vital role as rule enforcing mechanism, but also and foremost in the differential patterns of democratic processes that unfold in between the different instances of power.

Alongside the argument made by comparative scholars, domestic systems feature a wide range of variations when one comes to observing the democratic dynamics, the mechanisms by means the representative (and elected) institutions are held answerable to the law and the public, the mechanisms using which the legitimacy is built through the consensus when the institutions engage into the process of rule-making and finally when one observes the autonomy *de facto* enjoyed and the independence *de jure* granted to the over-sighting institutions, such as the courts and the technocratic bodies – central banks, administrative authorities, etc.

The second rationale is consequential in its nature (Redaelli, 2004; Borzel, 2008).

The existence – *de facto* and *de dicto* – of a common playfield for all stakeholders playing within the European Union is essential for the European Union and for the reflexes of legitimacy that emanate from the very fact of being parts of the system. States that join alongside different – and still binding – patterns of cooperation, interaction, integration – the European Union are increasingly featuring a sort of distinctive method of dealing with the exercise of power. Autonomy and sovereignty are protected and acknowledged with regard to the choices made in terms of judicial governance and yet the ultimate guarantee of an impartial readable and accountable law enforcement is shared and should be shared by the entire ecosystem of the governmental, intergovernmental, regional, and non-governmental agencies and actors that have a say and a competence across the policies and the services delivered to citizens and societal actors.

A unique combination of differences and common principles has been therefore shaped along the decades. Why are these differences so important? Because they intervene as – crucial – intervenient variables within the complex process of legitimization of the European fabrication of the rules. In fact, the core business of constitutionalism is bounding power and thereby making fundamental rights effective and enforced, beyond specific and time-space-determined conditions.

As a concept "theory and history-laden" (Laudan, 1977, Palombella, 2010; Piana, 2011), it describes the normative principle ("ought to be") according to which any power should be limited. Limits may come equally from different sources of norms, which should, however, be capable of ensuring both rule enforcement and legitimacy. In the European space, the idea of constitutionalism has taken on different meanings and different emphases, dependent on several factors, for instance: the role granted to the written laws in bounding the exercise of power; the status granted to parliamentary sovereignty as opposed to the primacy of the constitution (even in cases where the majority could be overruled); the role expected to be played by judicial institutions in imposing limits on the actions of the public institutions (ordinary and administrative courts).

One of the axes along which the *European norms* limit the exercise of power is the one that links the European level of rights enforcement with the national level of policymaking. In most cases, these norms are legal in nature. Therefore, they instantiate the ideal type of "hard law" (Abbott and Snidal, 2000). However, most recently, starting from the early 2000s, the European institutions embarked upon a comprehensive process of rulemaking, the nature of which is not statutory but, rather, practical. The norms that are shaped through this process belong to the ideal type of "soft law". Despite the variegated nature of the soft law – encompassing several different sub-types of normative tools – one may safely argue that soft laws are not legally binding and therefore their capacity to impinge upon institutional decision-making is intimately related to the will of actors that endorse these norms as normative principles or behavioral models. Although soft law and its concrete instantiations, such as standards, guidelines, policy recommendations, and so on, have become the object of flourishing scholarship, very little has been said regarding the kind of constitutionalism that lies where soft law stands beside, or in the place of, hard law. In general, it may easily be argued that soft laws come from a process of rule-making that features salient differences from the traditional processes of rulemaking used to produce hard laws. If hard laws are the output of

the legislative arena and the interplay between the executive and the legislative, mostly, soft laws are unlikely to come from the legislative process of rulemaking.

Usually soft laws – and standards – are shaped by specialized bodies, whose ties with the democratic institutions traditionally vested with the responsibility of adopting the laws are indirect if not absent. In some cases, standards are set by explicitly independent bodies, that is, bodies whose legitimacy is substantially technocratic. In some other cases, standards and soft laws in general are adopted by networks of experts, partly appointed by the domestic institutions that are represented in these networks (Dallara and Piana, 2015). Therefore, the relationship between a traditional type of constitutionalism, where power was limited through hard laws, and a new type of norms, such as soft laws, is far from being clear and unquestionable.

Hand to hand with the entrenchment of the rule of law notion into the European process of integration democracy and democratic principles played an equally important role in 1) drawing the lines of the scope of action of the European institutions under the recurrent waves of European renewals and 2) set in stone the core identity of the European understanding of the democratic rule of law.

This historical premise sketches the overall background against which the next paragraph will cast light on the comparative – and differential – dynamics that are featured by domestic political systems with a specific reference to the entrenchment and the consolidation of the rule of law by means of patterns of judicial governance that ensures judicial impartiality and quality of justice.

Framing domestic processes of change: actors, mechanisms, and times [7]

[7] This chapter draws extensively from Guarnieri and Piana, 2012; Piana and Pederzoli, 2011; Piana 2023.

Judicial power stands as the safeguard of individual rights against the potential abuse of power:

'Preventing the abuses of powers means having in the legal system safeguards against arbitrariness; providing that the discretionary power of the officials is not unlimited, and it is regulated by law.'

Beyond the vast range of models and policies relating to the functioning of the judiciary, judicial independence stands as the azimuth of all actions performed by the judicial function, either in discontinuing authoritarian traditions (see the example of the Southern European or Latin countries) or in strengthening the capacity to put into motion the principle of the rule of law (Larkins, 1996). In a way, the vast array of policies (setting up a Council of the Judiciary, reforming the mechanisms of judicial appointment, revising the mechanisms of judicial evaluation, incorporating into the court organization managerial tools optimizing resource allocation, to offer just some examples) to structure or strengthen the judicial function is inspired by a clear desire for an effective rule of law (Garoupa and Ginzburg, 2009).

A lack of guarantee of judicial independence may be fatal for the effectiveness of limitations of power and consequently, the effective implementation of the rule of law, as low guarantees of judicial independence may leave judges unprotected from external influences. Judicial independence is, however, meant to refer to different aspects of the judiciary.

Scholarly doctrine and institutional practices advocating, elaborating, and putting into motion judicial independence have been also extended to reflect upon the application of some key notions, such as external and internal independence of the status of the prosecutor (see on authoritarian regimes Salomon, 1990). Scholars addressing the issue of the status of prosecutorial functions within the scope of the liberal institutions have largely investigated the role of these within the criminal procedure, having in mind a typology based on the degree of autonomy enjoyed

by public prosecutors in pursuing a crime and the structural stance public prosecutors take about judicial function. In countries where judges and prosecutors belong to the same body, several other aspects – such as career paths, or common versus differential cultures – are considered by comparative scholars (see Damaska, 2019).

When scholars investigate the legal conditions of judicial independence they refer to *de jure* judicial independence, which in many countries is entrenched in the constitutional architecture of the State. This is the case in continental European, North American, and Latin American countries and has been seen in recent transitions to democracy such as those in the Mediterranean region and some of the MENA countries (Choudry and Bass, 2014). *De jure* judicial independence is the primary goal for political regimes that shift from an authoritarian setting toward – even minimally – a set of constitutional guarantees, such as civil and political freedoms. The example of the Balkans countries is telling in this respect. Despite the varieties of paths followed to reach the standards of the so-called European model of the rule of law, in all cases, *de jure* judicial independence was adopted in the constitutional setting of the State. The isolation of the judiciary from undue influences marked the shift from authoritarian rules to democratic or hybrid regimes during the Arab Spring.

Judicial independence applies to the judicial function at the macro and the micro levels. It refers to the status of the judiciary among the other branches of the State, the status of the individual judges within the judiciary, the highest-ranked justice, and the external environment.

The differential functioning of judicial governance must be assessed in terms of a multi-dimensional analytical grid to critically assess – without a priori preferences for one model of democracy – the different combinations of the same functional "ingredients" as they are featured by each Member State. The notion of judicial power refers to the decision-making processes enacted by a judge or by the system

in which the judge operates notably the court. This concept comprises both the semantics of 'courts' and those of 'judiciary'. If 'court' is prevalently used to refer to the 'agency' dimension of the judicial power – under an 'as if' clause that assigns to the court the nature of a sole actor – the emphasis of the judiciary is on systems, branches, and structures, in which are embedded organizational, professional and institutional norms conferring the authority to the agency – whether a single judge or a collective body, such as a court section – that adjudicates a dispute between private interests or between private and public interests (Raz, 1972). While there is a long tradition of scholarship addressing the 'ought to be' of a judicial branch in a constitutional State, empirical (and behavioral) analysis of the functioning of the judiciary dates to the early 1960s – especially in the United States, where courts have been innovatively framed in the broader spectrum of the political institutions and, consequently, analyzed as actors (Dahl, 1957; Weingeist, 1998). This has been most prominent in the context of analysis of the supreme courts, interpreted as counter-majoritarian agents (Hirsch, 2004) or, in a different perspective, as devices adopted by political incumbents to secure the protection of the fundamental guarantees of freedom and equal access to power in democratic regimes (Ginzburg, 2003; Epstein et al., 2001).

In the 1970s, and more widely in the 1980s, the judiciary began to be observed as an arena in which social groups, especially disadvantaged ones, mobilize resources to put pressure on rulers in a prospective way – as in pressure on the rule adoption of the legislative or the executive branch – or, in a retrospective view, to revise and mitigate the effects of previously adopted legal provisions (Epp, 1998; Commaille and Lacour, 2019). Comparative perspectives since then have cast light both on the civil versus common law dichotomy – and the trespassing of its differences (Cappelletti, 1989; Langer, 2004) – and on the different models of judicial procedures in the civil and criminal justice fields.

Several disciplines are interested in the behaviors, organization, institutional nature, and cultural stances of judicial actors and judicial institutions. Beyond the

large varieties of approaches, to project scholarly attention toward the judiciary in the 21st century it is worth bearing in mind the following. The law and economics address the impact that legal provisions have on the behavior of social and economic actors and stem from a rational choice model of agency (Posner, 1973); the law and society field – mostly developed in North America up to the end of the 1990s – addresses the interplay between social forces, groups, values and stakes within the law in action, that is, within the scope of action of the courts (Santos, 2006); and comparative politics is interested in the evolving patterns of the interplay of the branches within a State, or in the patterns of change featuring the judiciary as a system of multiple actors, such as prosecutors and judges, with judges at different ranks. Alongside a variety of epistemological positions on the role played by norms in sociopolitical systems and ultimately on the agency/norms matrix. These fields relate to legal scholarship, which covers both ordinary courts and supreme courts, as well as what has been called political jurisprudence (Shapiro, 1984).

Entering the XXI and even more critically addressing the new challenges that hit the European Union as a space where laws and impartiality of law enforcement are expected – both for reasons of principles and healthy functioning of the legitimisation circuit – the European Commission launched a comprehensive and newly shaped strategy to uphold the rule of law, under article 7: "The objective of the rule of law framework is to prevent emerging threats to the rule of law to escalate to the point where the Commission has to trigger the mechanisms of Article 7 of the Treaty on European Union (TEU). This is done through dialogue with the EU country concerned". This entails a three stages-process, covering the assessment, the recommendations, and the monitoring exercises carried on by the European Commission within the domestic institutions of the States. The judicial governance maintains in that a centrality.

The engagement of the European Commission in that field as a promoter of the rule of law takes a shape and a format that are of utmost importance for the

prospect of the association processes as well. As a matter of fact, within the rule of law mechanism the European Union embarked in a more refined articulated and actor-centred framing and envisioning of the rule of law.

In concrete terms, if someone is willing to raise the question: which is the concrete significance of the rule of law according to the European Union with a special reference to the judicial governance the answer lays within the rule of law toolkit and especially within the European set of dimensions and indicators that are under the spotlight in the assessment and recommendation stages of the entire process.

Not only judicial models of judicial independence – which means patterns and mechanisms of recruitment and promotion of judges – but also the effective capacity of the courts to deliver quality services in terms of transparency of the judicial decision-making process, readability of the legal reasoning justifying the sentencing, accessibility of an impartial bench for all citizens, integrity and ethical excellence of the judicial staff.

This wider and more ambitious spectrum of criteria adopted to assess finds a deep and wide echo in the positions held by the Council of Europe in the vast range of programs and actions that altogether impinge upon the effectiveness and the responsiveness of the rule of law as it is put into motion within the member States.

A functional typology of microstates in the perspective of networking the rule of law

The focus of the analysis is put on actors and, more specifically, on "change agents." Change agents are those actors who are strongly committed to provoking and steering processes of change. We draw inspiration from the use of this concept in Morlino and Magen (2008), where the concept of the change agent (which comes from an earlier definition of Finnemore and Sikkink, 1998) features a highly intensive preference for change. From the point of view of the concept of

operationalization, a change agent might be driven by a myriad of motivations (reasons) ranging from her expectations of professional upgrading to her idealistic engagement in a policy approach, comprising also office-seeking and rent-seeking motivations. Whether an agent fits one of these motivations is a question that should be answered based on empirical research. The concept is abstract enough to cover different options of motivations and preferences. What is important in our analysis is the levels of governance and the institutions through which change agents act. To support her motivation to promote change and to steer the process of change accordingly a change agent needs resources, which can be of any kind: material (financial resources, for instance), cognitive resources (an experienced agent can be better situated than a non-experienced one), communicative resources (if a policy needs the support, the broad public communicative resources may play a crucial role in promoting it), and political resources (which stem from the position the agent has in connection with the political elite or any other type of elite).

Resources are not given—at least not necessarily. Change agents can gain resources via participation in different institutional actions and programs. This results in their empowerment. A footnote is worth adding here: empowerment is relevant to individuals and is considered a transformation process that affects individual capacities to act. A hidden premise stands at the base of this way of reasoning. Change processes are costly; they need time, legitimacy, capacity, ideas, and connections. And once they are launched, they demand again time, legitimacy, capacity, ideas, and connections to make sure that they will reach the promised goals. Finally, this never actually happens. Change processes are open processes by their very nature. Therefore, the expected goals are always different from the goals reached. This is a strong point in favor of several accountability mechanisms that force change agents to be responsive and responsible for what they do, when they need to adapt their strategies or redefine their goals.

To go back to the levels of governance and the institutions that represent different contexts where change agents can play, we need to depict this reflection in more detail.

In a traditional institutional setting, such as the one featured in a modern State, change agents are located at the apex of the public institutions, at the interface between politics and administration. They play as brokers of new ideas and solutions which, once agreed by the political elite, are consequently applied with hierarchical mechanisms of rule enforcement. The lowest level of the bureaucracy is not allowed to play as a change agent. In this model inputs for change come from the highest level of the pyramid, which is politically—electorally, in a democratic State—accountable.

Contemporary politics performs in a radically different way. Inputs to change organizational practices adopted in the public sector come from a variety of sources, located at different levels of the systems of governance and displaying different rationalities (public or private ones).

In the judicial sector, things are made even more complex by the coexistence of two different types of input: legal and non-legal ones. Legal norms descend from the legal system, which nowadays features a highly marked transnational dimension. In the case of the European Union, the primacy of EU law within the Member States triggers an unpredictable, revolutionary, and still under-explored process of change in the national jurisdictions. The flow of legal arguments, norms, and jurisprudential interpretations across the national borders of European countries in strict relationship with the activity of judicial networks is not the subject of this work (but see Bobek, 2013; Claes, 2006; Groppi and Ponthoreau, 2013 for a critical approach to this phenomenon).

However, what should be mentioned here is the intertwining of national and supranational jurisdictions as one of the drives for legal and judicial change. This entails that rather than the legislative being the unique source of legal changes, in

a postmodern setting, the judiciary eventually becomes the crucial source of legal and judicial changes, first using jurisprudential developments.

Changes observed and explained in this work do not exclusively concern the legal norms. It also entails a shift from a purely domestic display-centered approach in the judicial training, and in some cases in the career promotion scheme, to a more Europeanized approach. Such a shift varies in intensity and durability from one domestic system to the other. However, overall one can safely argue that judges and prosecutors are nowadays referring to a legal system that covers transnational norms as well as foreign (from other domestic jurisdictions) norms: "the supremacy principle which establishes the primacy of EU law throughout the whole of the EU, even overruling domestic law, has represented for more than three decades a formidable power pushing through the integration of radically different legal systems (Piana and Guarnieri, 2012, p. 139; see for a broader analysis Arnull, 1994; Dehousse, 1998).

Not only does the process of transnationalization of the law entail an increasing transnationalization of the processes of law-making and a profound transformation of the process of law enforcement (Garapon, 2010). It also triggers processes of change due to the high salience of domestic systems to external inputs and, consequently, to the capacity of domestic judicial offices to enter into communication with other similar organizational units (courts and public prosecutor offices situated in different, but still European jurisdictions). Among the many aspects of these phenomena of radical change experienced by judicial institutions, dialogue among courts has proved to be one of the most effective mechanisms of institutional change put into motion (Alter, 2000; Goodwin-Gill and Lambert, 2010).

In short, here, we will summarize what this work is going to present in precise detail; judicial networks are instruments, institutional tools, created to respond to a functional need shared by some—not all—domestic judicial institutions and

more likely some representatives of them: there is a need to create new arenas where fresh sources of legitimacy are available to judiciaries. Such legitimacy can be instantiated in several ways, such as: 1) gaining the approval of a transnational— i.e. apolitical from the domestic point of view—epistemic community in cases of contested judicial reforms; 2) referring to transnational standards to strengthen the domestic representation of the judiciary; 3) referring to a transnational source of norms when the European Commission needs asking an EU Member State to reshape its judicial reforms or to respect the European directives in the field of civil and penal judicial cooperation (Leaf and Alegre, 2004; Jimeno-Bulnes, 2010; Guild and Geyer, 2008).

Hence, the rise of judicial networks connects directly with the reshaping of the balance of power between the EU and domestic judicial systems as well as with the rebalancing of the power and competencies within the national judicial governance. The strategies adopted by actors did not aim to intervene in the judicial system with the same goal in mind. Policy objectives appear to be differential and consequently entail a different logic of action.

In most cases, actors tried to adopt new rules, including the concept of both hard and soft law. The rule adoption is a strategy governed by a logic of action where external pressure plays a key role. Despite the differential reaction of incoming Member States to the conditionality exercised by the EU and the Council of Europe, one can say that under the effect of external pressure, the acceding countries adopted new rules fitting with the general principles and standards supported internationally and transnationally. However, rule adoption alone does not cover the entire spectrum of the process of networking the rule of law. A further step should be considered, which is rule implementation. Here the role played by domestic judicial actors emerges as critical and, in most cases, almost dominant. Without the will of domestic judicial actors to put into motion the rules adopted, none of these rules has become a permanent part of the judicial governance. Finally, the rules implemented in only a few cases have been transformed into part

of the frames accepted and endorsed by judicial actors to regulate their behaviors. The transformation of explicit rules into implicit regulative behavioral principles needs the intervention of processes of training and cultural reinforcement that in similar cases took place across borders, between domestic arenas and transnational ones.

Networks enter this broad phenomenon as *arenas* to begin with, even though in those cases where judicial networks are recognized by external institutions—such as the European Commission—they act as if they were unitary actors. This "as if" is of the utmost importance. It means that once the recognition of an external actor ends, the judicial network will not necessarily act as a unitary actor. The nature of a unitary actor is, consequently, not intrinsically of the network. It can emerge under certain conditions.

Here the main point concerns the way domestic and international factors intervene and trigger the process of change: what causal role do they play? Are they concomitant factors or rather is the domestic dimension dominant whereas the international influence comes in only to the extent it makes sense for national players?

Some scholars have argued the opposite, that international pressure, also created using comprehensive processes of institutional imitation and isomorphism, drove national institutional changes and somehow created opportunities for these latter to converge. Some others have rather been inclined to support a different view where national policymakers and elites managed to exploit and take benefit from international resources, such as financial programs, legitimate norms, and values, and ended up being influenced by international conditionality only to the extent that this latter impacted upon the expected pay-off of the different options and strategies they had at hand to undertake the national reforms.

Here comes a very important point in breaking through analysis.

What is a change agent? Change agents or "norm entrepreneurs" (Finnemore and Sikkink, 1998) could be defined as "domestic actors that mobilize to pressure decision-makers to adopt … rules; they also engage domestic decision-makers in processes of persuasion and social learning to redefine their interests and identities" (Magen and Morlino, 2009). This broad definition should be narrowed to fit with the empirical field analyzed herein. This can be done by referring to the following empirical observation: transnational non-legally binding norms are often transferred into the organizational unit by individuals (Piana, 2007a; Radaelli, 2005) who play the role of normative entrepreneurs, i.e. catalysts of organizational and cultural changes (Kelley, 2004; Finnemore and Sikkink, 1998). They often bridge between exogenously originated norms and their working place, their organization (Piana, 2009). These actors are located at the micro level, i.e. within the judicial offices, either the courts or public prosecutor offices. Most of the time they are the chief justice or the chief public prosecutor, but this is not necessarily always the case.

From this point of view, judicial networks work first using participative actions carried on in transnational arenas with which change agents can be connected. The exchange of expertise and knowledge is also part of the activities carried out by judicial network members. Therefore, judicial networks are instrumental to communication, which is a key mechanism in getting national public officials involved in a common activity, to help them share common views, ideas, and frames. Moreover, judicial network actors can undertake other types of activities in which norms and values are spread out, shared, and transmitted: most are training activities. Training may take place in transnational arenas or may be offered at the national level using programs that incorporate transnational standards and policy guidelines. Also, deontological codes, which are nowadays widely adopted and taught to young public officials through initial and in-service training, may reflect norms set down by actors through judicial networks.

Previous research has shown that change agents are not necessarily members of judicial networks. They may be inspired by the frames, the norms, the policies, and the routines shared by representatives of judicial institutions through the communicative activities running through the judicial networks. This inspiration can come in direct or indirect ways. Direct, because to legitimate an initiative entailing organizational changes a change actor should refer to a not contended and not contestable source of norms. Indirect, because in some cases external sources of norms etc. are used as sources of legitimacy by experts appointed as leaders in projects aiming at promoting organizational innovations—fitting with transnational inputs—or appointed by external agencies that run projects of organizational innovations under the financial programs set up by the European Union.

Patterns of change in microstates: delving into the situations of actors from change agents to anchoring players

According to Bertolini (2019), microstates can be identified based on a two-entry typology, which combines the size of the population and the geographic extension. This means that in the type are included States featuring a population size of less than 500.000 units. In this type, a distinction is made depending on the historical path followed by the microstate, either traditionally autonomous or decolonized. From the point of view of this work, this dichotomy is reworded through a proxy, namely the degree of traditional anchoring of the State and the degree of continuity of the institutions that are inherited from the past. From that perspective, Andorra, the Monaco Principate, Liechtenstein, and San Marino belong to the first type, while featuring a differential degree of continuity of the institutions. The decolonized microstates are marked by a distinctive discontinuity due to the critical juncture of the Declaration of Independence and more generally feature an identitarian stance related to that discontinuity's narrative, despite in fact the

institutional framework adopted to move toward the structure of a State is influenced by the closest reality in terms of legal culture and institutional models – most of the time the previously dominant State.

This premise is for the current study complemented by a deep and functional analysis of the situations of action that are experienced by policymakers in these organizational settings. To make this analysis the research has moved toward the full exploitation of the lenses provided by the empirical analysis of the institutional behaviors, by the comparative administrative science, and by the organizational studies. This leads to a focus on four variables:

- change agents and their patterns of interaction with the consolidated elite in the microstate

- the pattern of veto players that is featured by the institutional setting in each microstate

- the degree of administrative capacity and institutional capacity featured by a microstate

- the diffusion of epistemic communities that are rooted in the microstate

For reasons related to the size, the potential emergence of change agents in microstates is, ceteris paribus, less high than in macro-states. The costs of cognitive dissonance of those who promote changes, the reputational costs, and the adaptative expectations of the possible consequences that may take the shape of a barrier to the incoming elite or to the social group to which one player belongs reduce the possibility for disruptive change agents to break out. The clause "ceteris paribus" will be deepened further. The pattern of veto players very rarely takes the format of a formalized, radicalized, polarized, or highly conflictual set of vetoes. This is not related to the structure of the State – in terms of institutional and legal setting – but rather to the organizational nature of a system where the State organization features a very strong set of impersonal, informal, and consensual

ties. The bureaucratic bounding and the closure of the sectorial segments of the administrative services do counterbalance the social fact that consists of a deep, tacit, and widely accepted shared knowledge of everyone with everyone else. From the point of view of the administrative capacity and the institutional capacity microstates may feature a unique combination of formalized procedures and strong informal social institutions that permeate the formalized sectors of policy-making. The diffusion of epistemic communities is consequently particularly connected to the identity and the historical continuity of the legal, institutional, and administrative tradition. Therefore, one may expect that this characteristic is more prominent in San Marino than in decolonialized microstates, with a modular intermediate degree featured by historical microstates such as Andorra, the Monaco Principate, and Liechtenstein.

Tab. 1. Change players' Situational Typology of Microstates

Traditional legitimacy of the institutional setting	Degree of continuity Strength of path dependence	
High	San Marino (Republican unicum	Andorra Monaco Principate Liechtenstein
Low	Decolonialized microstates	

One of the first inference that this perspective allows to elaborate regards the counterintuitive behaviour that is featured by microstates if assessed against the predictor of the veto player theory, which states that when veto players are higher in number the possibility to introduce a change – a reform – is lower. In the context of the microstates this is not necessary the case because on the opposite it is very rare to have strong, harsh, and firm veto expressed by players that do belong to the same social group or social network. On the top of that the dynamic of the

alternation in the government is very moulded and weakened due to the small numbers of persons that can play in the majority or in the opposition.

In states with institutions that are in fact full of actors all sharing a strong need to keep reputational costs low and therefore not to go against even a possible new majority that is created given the possibility of a very easy flag transfer as well as equipped with administrations with a low rate of real division of powers and skills with weak transparency mechanisms, veto players are not very predictable and largely protected by the system when faced with a change agent, an actor of change. In this case the rule implementation becomes the place where the real game is played. Even when the discontinuity wants to be marked on the level of formal rules.

It is now possible to join the scholarship on change processes and on the triadic timeframe featured by those: "we are considering preliminarily the development or improvement of the rules, governing institutions, administrative structures that are necessary to implement the required and possibly adopted changes. That is, to have any implementation process there has to be prior development of institutional and administrative capacity (IAC). In our view this is one of the key factors explaining the institutional "decoupling". Accordingly, "RI means the acceptance of transferred rules, beyond formal adoption among state bureaucracy, political elites, relevant groups and the wider public, that is, a slower and gradual sub-process of legitimation of both the adopted rules and the institutions that were set in motion, making the RA and the development of IAC more than a superficial result without actual meaning. We can assume that only when RI gradually takes place does the implementation […institutional *nda*] anchoring involves 'cycles', as well as layers of change.

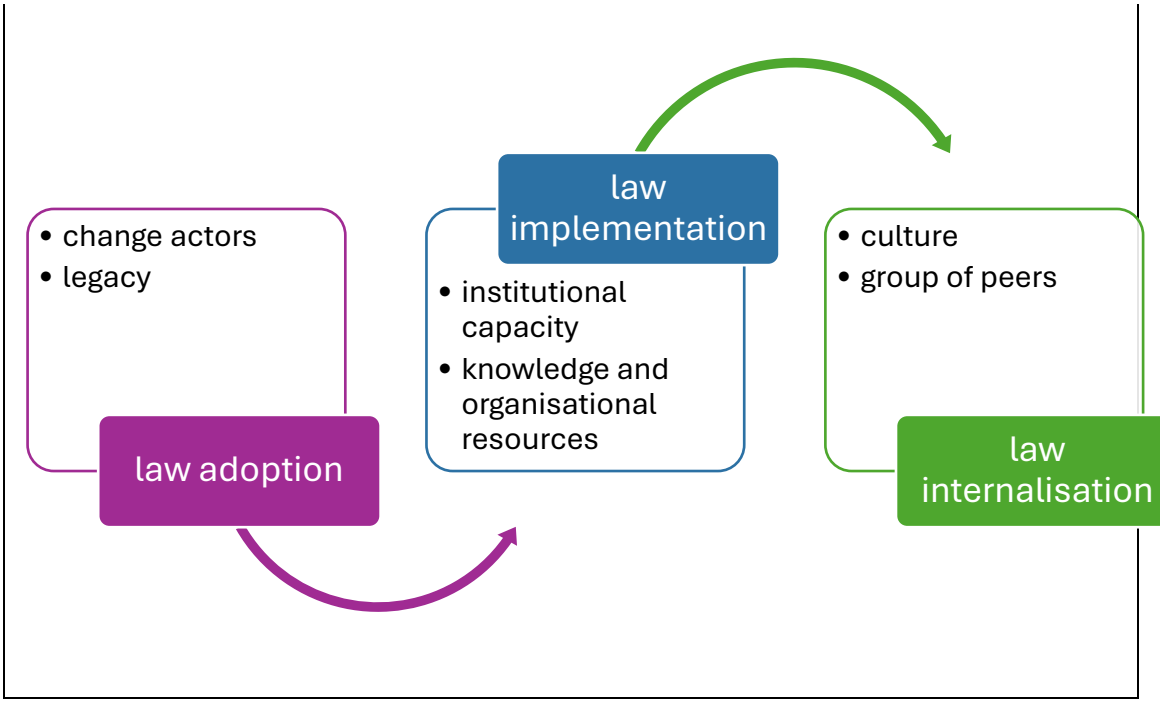


Fig. 1. Cycle of judicial reforms: three stages.

Legend: coloured in green the sub-cycles (LA, Lim; Lint); coloured in yellow the intervening variables as leverages of change for each sub-cycle (LA: CA&L; Lim: IC&KR; Lint: C&GPeers).

In figure 1 the three-phases process of change that is triggered by the judicial reforms is depicted. For each stage – LA (rule adoption), LI (rule implementation), Lint (rule interiorisation) – the intervenient variables are made explicit. Change actors may emerge suddenly but most of the time in microstate a policy window for a change opens if there is a potential expected benefit which may be created by a prospect of growth – both economic and political. Change actors do not necessary belong to the domestic political elite. They may feature a technical profile. Change actors would play if the law promoted as driver of the judicial reform can be worded and drafted according to credible models. Scholars have argued that change actors may have been a professional trajectory that has in the meantime

gained in legitimacy not necessarily related to the consensus awarded by the domestic elite. This pattern seems to be extremely interesting for microstates. Legacy refers to the strength of the tradition and the institutional setting. If the change prospected disrupts the traditional institutional setting the way toward the law adoption featured a patent hardship. In fact, in microstates the adaptative expectations of post law adoption costs should be considered. Rarely change actors will aloud promote disruptive changes that are not coherent with consolidated and widely accepted tradition. However, legacy may play as a resource is it refers to previously experienced or historically well know models – such as in the case of decolonialized microstates.

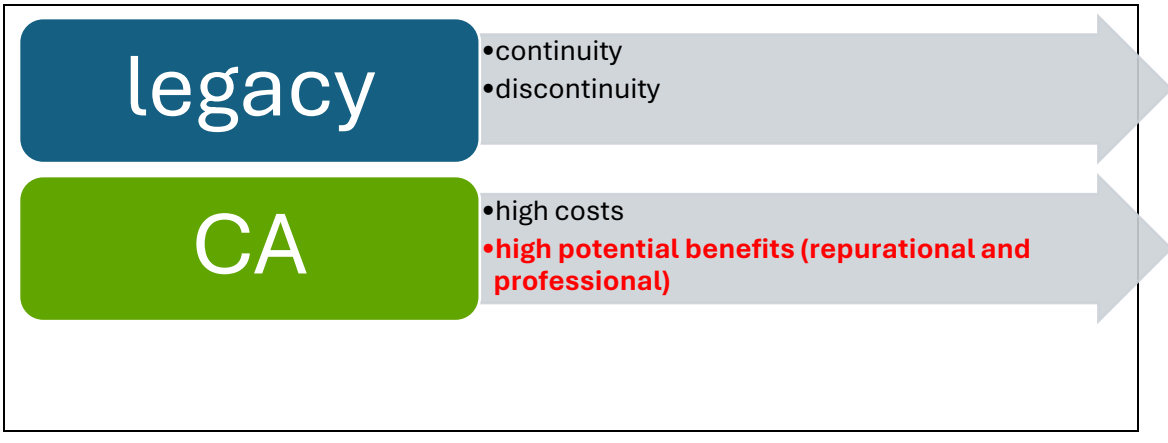


Fig. 2. Granularity of relative weight of the intervenient variables in microstates in law adoption.

Legend: In red targetable leverages for judicial networks

Once the law of a judicial reform it has been adopted, new intervenient variables gain importance. As it is showed in figure 3, the institutional capacity and the organization of resources and the availability of knowledge are assets to make the law adopted a "law in action". This means, in the context of the judicial systems, that

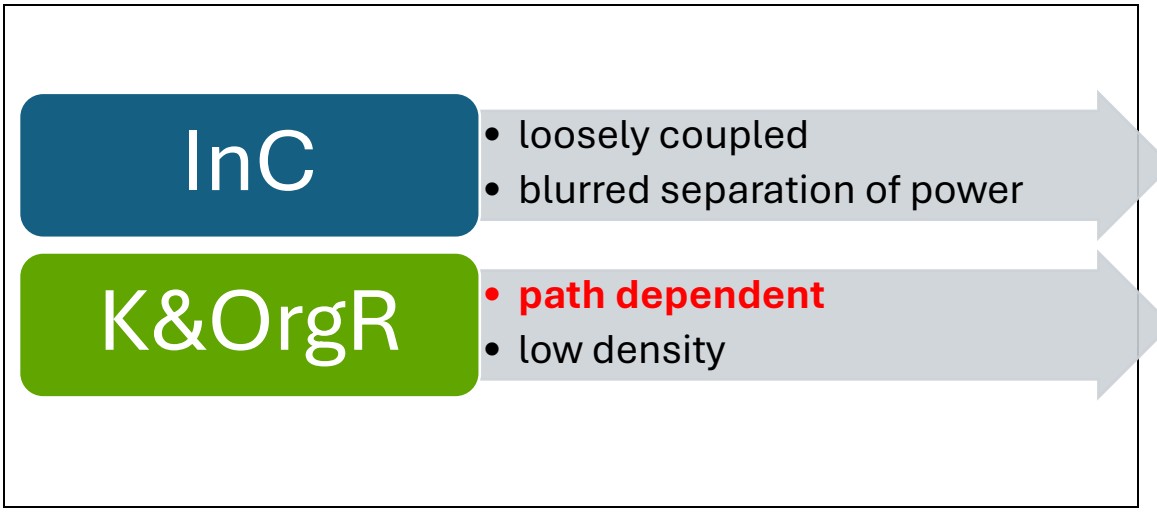


Fig. 3. Granularity of relative weight of the intervenient variables in microstates in law implementation.

Legend: In red targetable leverages for judicial networks

Figure 3 adds to the herein prospected reasoning the premise according to which the quality of the organization of the courts and the management of the case flow as well as the quality of the codified knowledge in legal and organizational matter are highly impacting facilitating variables in bridging between the adoption of a reform and its implementation. This relates also to the existence of monitoring tools and strategies that are handled routinely by the justice system stakeholders.

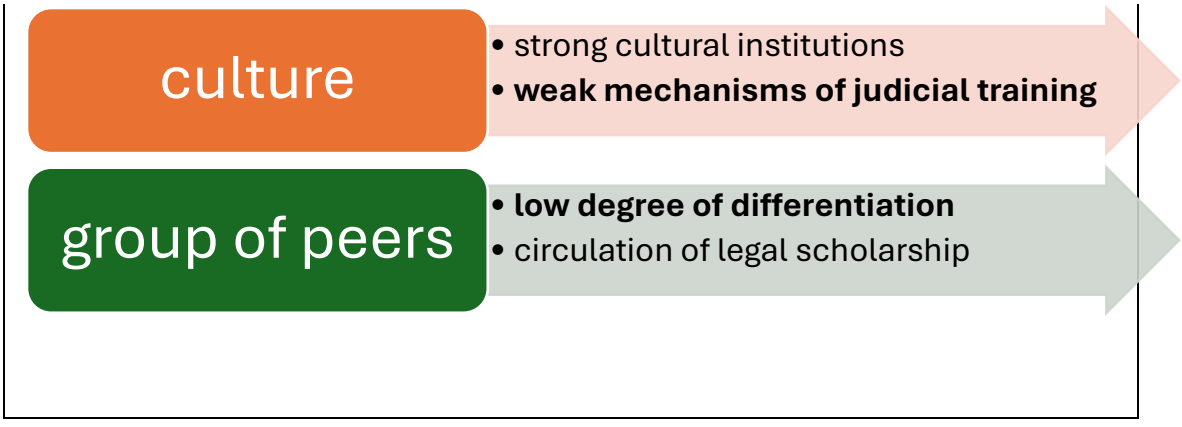


Fig. 4. Granularity of relative weight of the intervenient variables in microstates in law internalisation.

Legend: In red targetable leverages for judicial networks

Finally in figure 4 the relative weight of variables that influence the effectiveness of the internalisation is outlined. Here the point made relies on the widely accepted scholarship pointing to the importance of epistemic communities and socialising mechanisms that facilitate the diffusion and the entrenchment of legal principles. Once stated by formal norms, the transformation of these norms into normative behavioural guidelines accepted – intentionally – and internalized – cognitively – by justice ecosystem stakeholders represents a turning point.

Figure 5 sketches a synopsis of the intervenient variables that enter the pattern of change process. It does so with a specific focus on microstates and highlights those variables that are sensitive to the supportive and facilitating influence of judicial networks (in red). From this figure the subsequent reasoning goes toward a tool of potential leverages that can be triggered by judicial networks in microstates to promote the rule of law through technical professional and institutional support in case of judicial reforms.

Tab. 2. Synopsis of the different leverages and the different stages through which judicial networks can facilitate and join the microstates effort in the promotion or strengthening of the rule of law

Stage of change / intervenient variables	Law adoption	Law implementation	Law internalisation
Change actors	Higher expected benefits if the rule of law takes the shape of an anti-corruption, pro-transparency, and a better public procurement procedure (economic oriented incentives)		
Legacy	Higher appropriateness of possible models if coherent (or not in clash) with past traditions		
Institutional capacity		Provisions of tool kit to monitor the advancement of the implementation	
Knowledge and organisation of resource management		Best practices and catalogue of solutions provided to show how the knowledge	

		can be codified and entrenched Training on management transparency monitoring	
Culture			Judicial training; events and conferences that value the specific path followed by one microstate
Peer groups			Judicial networks building an "eye of an impartial spectator" set on a transnational epistemic community

The framework herein presented and the subsequent parts break down into three stages the dynamic of actorness within the specific situation of action that change agents, implementing agents, and actors that are subjected to the process of socialization to new normative behavioral principles stemming from the adopted reforms are meant to cast light on the differential patterns of leveraging and conditionality faced by transnational judicial networks. Transnational judicial networks do not act through a set of formal and compelling constraints. They could – and they do – exercise a promotion of quality judicial reforms through the enhancement of the domestic capacities to act, which take different shapes depending on the stage.

In the first stage, it can be argued that change agents cannot be "determined" by external influence. However, there is a specific condition under which change

agents may encounter a facilitated path toward reform, especially if this reform aims at promoting a better interaction with the microstate and the external economic world. It seems that due to the small size and the vibrant sensitiveness associated with autonomy, self-government, and sovereignty, the importance of the costs and benefits that change agents encounter from the point of view of the potential impact caused by the reform in the economic growth of the state and the attractiveness toward international investors and business stakeholders takes strong emphasis. Therefore, reforms that are framed in terms of transparency promotion, rule of law operationalized in terms of anti-corruption, better regulation, and predictability of public procurement procedures, may – comparatively and ceteris paribus – meet the domestic interests of the political stakeholders in a consensual and cross-partisan perspective.

Models and solutions that can be prospected through horizontal dialogue may be easily supported if coherent and in synergy with the tradition of the domestic institutional settings, or in line with *longue duree*.

Much broader and more detailed is the target of leveraging the potential that is opened during the second stage, namely the law implementation. Transnational judicial networks can easily support technically the implementing institutions by providing tools, models, and best practices blueprint, to achieve a more predictable management of the change process. Furthermore, it is during the implementation stage that transnational judicial networks can support the process of knowledge coding, the consolidation of organizational know-how, and the increase of cognitive, technical, and professional resources devoted to ensuring that the law adopted turns into a "law in action".

During the last stage, the law internationalization, judicial networks can intensively operate. One of the most compelling and still diffuse hindering conditions in the long process of rule of law strengthening or promotion is represented by the so-called peer pressure. This refers to the well-known

mechanism that in sociolegal studies has been defined as the audience of the judge or more widely the social reference group toward which a stakeholder turns his or her expectation of being acknowledged, accepted, and perceived as a qualified member of the group. In institutional settings that have a strong informal connotation and preserve a non-impersonal pattern of interaction the situation of action where actors play features a high pressure of horizontal peers. For microstates that have a long-standing tradition and a very diffuse anchoring of the institutions the society and the State entertain a deep and tightly coupled set of ties.

Which is the shape that transnational judicial networks support can take?

Chapter 3.

Toward a successful accession

Cultural and professional factors under the spotlight

Why does a successful accession rely on effective implementation and internationalization?

As mentioned earlier in this work the accession agreement between a sovereign legal entity and the European Union is meant to create a new "institutional fact", which consists of a pattern of formalized, mutually and internationally acknowledged – and enforceable – cooperation on a wide range of matters. The association is a legal instrument framed in the set of tools crafted by the European Union to modulate based on political, economic, cultural, and geographical reasons the depth and intensity of mutually binding interplays with external legal entities that are States. It is officially presented as "The Association Agreement is an agreement that regulates the participation of a third state in a part of the activities of an international organization. Regarding the association with the European Union, the third state does not become a member of the Union (a status it would obtain through an accession process), it will have no economic obligations towards the European Union and, although it will not have any political representation, it will have consulting power. While in accession agreements the EU negotiates the transposition of the entire EU *acquis communautaire* - i.e. the 35 chapters of EU law which are binding for the institutions, the EU member states and their citizens and economic operators - in the negotiation of an association agreement, the transposition of the entire acquis is reduced. The associating third country is not required to fulfil all the obligations of the Member States, but rather to ensure the transposition of a part of European law. Indeed, one of the main legal

features of the Association Agreement is the fact that the associating country must ensure the continuous transposition of the EU acquis, which is constantly evolving".

Alongside the reasoning unfolded in the previous chapter two words above are worth further analysis and consideration. The first is transposition. This is not meant to be synonymous with law adoption. It entails more than the formal adoption, for it should be ensured. Transposition goes as far as putting the law into action and, consequently, creating favourable conditions for this to happen. Sociological and political scholarship developed across a wide number of researchers and case studies showed that favorable conditions promoting changing processes are organizational, cultural, behavioral, and communicational in nature. The second word worth considering is evolving. Member States and associate countries acknowledge that the European acquis communautaire is permanently changing, due to the interplay of different mechanisms. Part of the change is brought about by the primary legislative law-making process. Part of the change comes from the jurisprudence and the case law of the transnational courts and their constant dialogue with the domestic courts. Part of the change takes the shape of a new set of soft laws covering very sensitive subjects, such as technology, science, and nowadays digital society and market. The capacity to meet the functional needs of adapting the domestic system to the normative innovations featured by the European Union does not belong to the exclusive realm of the formal institutional capacity. As scholars pointed out in the sociopolitical analysis of the Europeanisation processes substantial conditions and micro-factors – such as the professional quality and the ethical stance of individual actors – turn out to heavily impact on the overall effectiveness of the adaptation to the European (evolutive) *acquis*.

In the case of microstates, this statement should be considered as marked by a comparatively higher salience. The Association Agreement between the European Union and San Marino is divided into the following sections: institutional

framework, common for all States, Country protocols, one per State, regulating aspects related to the specificities of each country, and a section relating to the 25 annexes of the acquis, including the legislation to be transposed into the legal system. These annexes concern the 4 fundamental freedoms (free movement of goods, persons, services, and capital), as well as some horizontal EU policies (competition, consumer protection, electronic communication services, transport, environment, etc.) containing secondary legislation acts (legislative, delegated and implementing acts).

Once adopted and adapted the legal domestic system the most compelling and challenging task of the institutions will have the nature of a continuous, open, evolutive, and demanding process of change hitting all the institutional and cultural dimensions of the Republic of San Marino daily life. This is the significance brought to the Republic's future institutional life by the official act adopted in March 2024 by the Consiglio Grande e Generale, which "hopes that the XXXI Legislature, following the upcoming electoral consultations, provides the country with an administrative and technical apparatus with the aim of supporting an agreement that will arise at the centre of the political life of the Republic and which can, even in its implementation phase, involve all the social and economic representatives of the country and its citizens; also believes that it is appropriate to ensure the functioning of the work of the Mixed Commission established for this purpose in the transition period towards the new legislature and guarantee appropriate information activities of citizenship; and finally hopes that the State Congress of the XXXI Legislature wishes to continue to deepen the programmatic lines of implementation of the agreement, interfacing with the competent bodies of the administration and social representatives and economics of the country and ensuring the European Affairs Directorate and the Permanent Mission the appropriate resources from the EU, according to the procedures in force, for the management of the new phases of implementation of the Agreement.

In the same official document, it is launched the idea of sharing the opportunity to establish, in collaboration with UNIRSM, bodies, and associations, a Task Force capable of assisting the presence of San Marino entities and companies in the financed projects from the European Union.

Framing the adaptative changes and the associated transformations that will be triggered by the European acquis's adoption, implementation, and internationalization as an effort of project management, stakeholders' engagement, and long-term commitment, entails in short, a shift of the institutional and practical emphasis from the formal adaptation to the substantial participation. In different terms, the Republic of San Marino has already set the cornerstones of a lasting strategy that transforms the accession into a participative process of governance having as its target impact the culture, and the ways of doing things, beyond the formal level of acquis adoption. Research carried on during the 80s and the 90s as well as the aftermath of the so-called "big enlargement" in the CEECs showed that the policy strategies and instruments targeting culture and behaviors found in the financed projects an arena where changing processes unfolded rather than an exogenous factor impinging linearly upon a domestic system. Projects are set up, designed, and managed by ecosystems of actors comprising both domestic and external players, who enter a permanent dialogue and collaboration.

In the Republic of San Marino, which features a deeply rooted historical legacy valuing the identity of the Republic and the sovereignty of the State, the patterns of interaction between the exogenous factors – such as the European acquis – and the endogenous processes of change will be more appropriate if shaped and structured in terms of horizontal dialogue. This does not mean that the formal adoption can be disregarded. On the opposite, it means that in the case of the Republic of San Marino, the experience of accessing the partnerships and agreements with the European Union is likely taking the form of a process of transformation of the factors that impinge upon the rule of law implementation

and the rule of law internalization – as they have been singled out in the previous chapter.

As for the administrative capacity, it will be particularly salient in this context the process of learning good practices of knowledge management within the rule of law institutions, such as the judiciary and the legal units within the spectrum of public governance. This goes in the direction of valuing and framing the cognitive added value that is embedded in the case law, in the doctrine, in the studies, and research, to enable a reflexive approach to the legal culture that is embodied into the daily practice of making policies and making organizational politics. Within the judicial sector raising the administrative capacity entails consolidating daily procedures, standard routines, and patterns of interactions among different legal offices and services, as they participate in shaping the docket's information handled by the clerks and the judges. Standardization does not come in a vacuum. If actorness makes the difference, especially in small-sized systems, therefore one can reasonably expect that the prospect of creating quality routines and standards in court management, in court communication, and in the prevention of not inappropriate behaviors – much earlier than enacting a disciplinary sanction – rely for the most on the co-design of good governance. This is going to be facilitated by horizontal cooperations with other countries, being them small States – such as Luxemburg – or rather big States with which the Republic undertakes traditionally deep and comprehensive collaborations.

Cast against this overall setting, the role played by judicial schools or institutes that provide legal and judicial training in a vocational educational and training perspective comes out as the catalyzing factor facilitating change and embedding transformation.

Aiming to strengthening judicial impartiality

Judicial impartiality is an overarching and foundational principle of rule of law and democracy. It takes different institutional forms and functional reflexes alongside the differential patterns of cultural, historical, institutional, conditions where the rule of law principle is entrenched. Yet, beyond the variety of institutional design a core of dimensions altogether making the whole of the empirical spectrum that should be considered when judicial impartiality is studied and promoted are in the possible reach of scholars, policy makers, justice stakeholders. Combining comparative approaches, multilevel observations – at the individual and at the systemic level – to a firm endorsement of universal principles look like the most promising intellectual strategy to go about judicial reforms and institutional designs[8].

Delving into the empirical meaning of the rule of law entails the endorsement of a comprehensive approach where factors of different genus and operating at different levels are considered as building blocks of a system of interdependence. It is a common sense in doctrine and in practice that judicial impartiality and efficient court management are interlaced. If justice is delivered much beyond a reasonable timeframe as a regular pathology of a system of justice, despite the formal and constitutionally entrenched guarantees of judicial independence, the differential capacity of citizens to stand before a long wait to get settled a dispute, the overall effect of potential discriminatory delivery – more favourable to those groups or citizens that can afford waiting than to those whose resources are locked in throughout the trial timeframe – can't be prevented by the mere formal protection of the independent status of the bench. In the same vein, it is widely acknowledged that advanced programs of training and professionalism for justice stakeholders will be shortcoming to meet the needs of impartiality of citizens if the public

[8] (3) See e.g. 'The European Commission for the Efficiency of Justice' (www.coe.int/en/web/cepej) and the 'European Union Justice Scoreboard' (https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3127).

discourse about justice goes relentlessly against the judicial branch and jeopardizes the legitimacy of actors that are serving through it the democratic values.

To briefly state what can be expressed in long analysis the interdependent nature of the different factors that intervene to ensure in fact the impartiality and to promote in re and in dicta the capacity and the representation of the impartiality in the daily functioning of the judiciary should be taken safely as a premise of the reasoning outlined herein.

To follow up the key premise that endorses a functional understanding of the judicial governance where structural and formal factors are part of a broader picture where cultural behavioural and communicational factors are equally taken into consideration, the vision of the rule of law as it put in to motion draws from the acknowledgement of the essential role played by two factors:

- The quality of the judge
- The culture of legality featured by the peers and the professionals within whom the judiciary interacts for functional, communicational, institutional, and procedural reasons.

A recent work developed by the European Network of Judicial Training pointing the interdependence of factors intervening in the process that determines the rule of law in action highlighted the nexus that links the quality of the judge to the public confidence that citizens and societal actors grant to the judiciary and ultimately to the law: "We developed the following definitions of each of these eight values in our previous work: Independence (…); Impartiality (…), Transparency (…); Accountability (…); Participation; Responsive Justification; Efficiency" (Devlin, 2024).

This idea is due to the European Judicial Training Network outstanding research on rule of law and impartiality[9] joining the international scholarship developed by the International Union of Magistrates, the OECD, the Council of Europe system of norms and values, and the wide range of bodies and fora committed to promote judicial independence and judicial accountability for a better and higher quality justice for all.

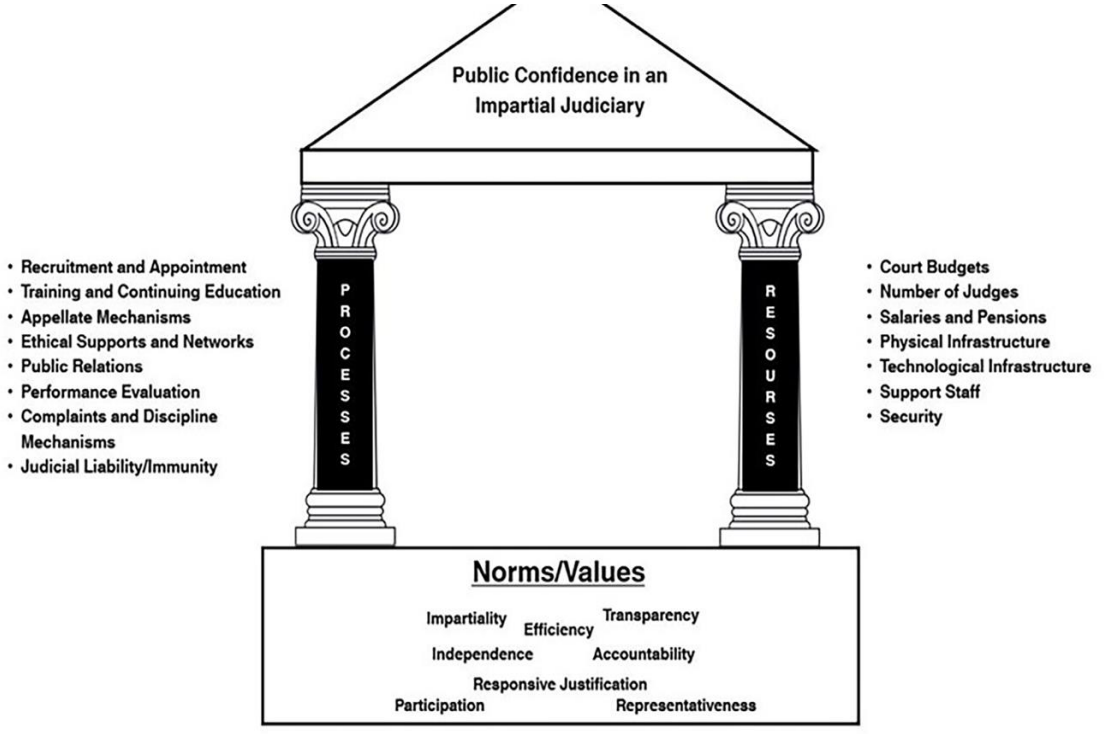
The interdependence model of judicial impartiality shows ostensibly the circular and integrated nature of the qualities featured by justice systems and the essential role played by actor-centred features. In different words, judicial impartiality is a method of judicial cognition even before being a goal to be achieved by formalized guarantees entrenched into the constitution or in the statutory laws. In case these latter are designed and adopted in perfect accordance with the European acquis the ultimate result that is desirable – notably, the effective put in to motion of the rule of law – depends on the cultural and cognitive commitment of actors.

If the analysis of a domestic system is based on a socio-legal approach the cultural and cognitive variables come entirely to light. This leads:

- To detect the major and convergent challenges that may jeopardize judicial impartiality. Contemporary exogenous waves of changes – such as media, artificial intelligence – as well as long terms phenomena – such as the incremental expansion of the scope of action courts may have within democratic systems – are particularly emphasized.

[9] See Stanislas Adam, Ingrid Derveaux, Gianluca Grasso, Fernando Vaz Ventura, *The Rule of law and Good Administration of Justice in the Digital Era/ L'État de droit et la bonne administration de la justice à l'ère numérique,* Larcier Intersentia, 2024, where the « temple » metaphor is presented at p. 57 (chapter authored by Richard Devlin, Good Governance). See also R. Devlin and S. Wildeman (eds), *Disciplining Judges: Contemporary Challenges and Controversies*, Cheltenham, Elgar Law Publishing, 2021.

- To reflect to potential convergences across different domestic legal systems as to the leverages that turn critical and strategic to protect or to raise impartiality.
- To highlight the pivotal role played by the quality of the judge, which directly relates to the culture and the overall professionalism of justice stakeholders.



Source: Stanislas Adam, Ingrid Derveaux, Gianluca Grasso, Fernando Vaz Ventura, *The Rule of law and Good Administration of Justice in the Digital Era/ L'État de droit et la bonne administration de la justice à l'ère numérique,* Larcier Intersentia, 2024, where the « temple » metaphor is presented at p. 57

One key point can be worded as it follows: judicial impartiality is the outcome of interactional patterns within the jurisdictions, across the branches of the State, among different professionals that have a voice and a role within the proceedings.

Ex ante and structural guarantees are necessary but far from being sufficient. Challenges and attacks hitting judicial impartiality in many different countries are telling much about the importance of the quality of the judge as an essential condition of judicial impartiality. On his turn judicial professionalism is the target of cultural evolutions. Consequently, the dialogue among professions engaging in making the rule of law a living institutional fact turns out an essential pillar.

Building bridges, sharing impartial epistemic stances

The nexus between the rule of law promotion and judicial training stems from an abstract principle, which deems judicial professionalism to be an effective barrier against any kind of (unlawful) influence endangering the impartiality of the adjudication. This reasoning does not exclusively refer to the context of the rule of law promotion. In any political system, the judicial function works in two ways: on the one hand, it represents a way of dealing with conflicts (Shapiro, 1981), while, on the other hand, the law must be correctly applied, and judges are entrusted with the task of doing so. A sound and legitimate system of judicial education is required for both functions to be carried out adequately (Guarnieri, 2004 and 2007).

The impartiality of adjudication therefore depends on the effectiveness of the judicial education system, and it is this second aspect that is the crux of constitutional democracies. Indeed, only impartial judges can legitimately adjudicate. Hence the reform of programs of judicial education is a turning point in the transformation of a non-democratic regime into a democratic one. In transnational regimes, such as the European system of governance, judicial education seems to play an even more complex role. Judges should be able to handle conflicts not only by applying the law but also by interpreting legal principles, constitutional norms, and international laws (Slaughter, 2000;

Baudenbacher, 2003; Jacobs, 2003) and by referring to norms and procedures that have validity across the national borders.

They play a fundamental role in adapting domestic legal norms to supranational principles and jurisprudence (Garapon, 1996; Groppi, 2012; Klersch, 2005): accordingly, in such an institutional setting, legal expertise is also used to create, select and interpret legal norms.

What should be highlighted is also the fact that judicial professionalism is not built only using judicial training. Learning how to behave as a judge is a much more comprehensive and somehow partially tacit process than the one that is triggered simply by being exposed to judicial training programs. Surely by training judicial staff, any institution is aiming to build capacities and skills. This does not only target the individuals – judges and prosecutors – but also the offices where these individuals work. Therefore, the comprehensive analysis of the mechanisms of capacity building that takes place within the judiciary to make the judicial staff capable of performing properly its role should cover in principle the analysis of the judicial training as well as the analysis of the mechanisms of intra-organizational control that hold within the judicial offices where the appointed judges are trained.

This notwithstanding, one can't deny the crucial role played by these latter in ensuring a well-functioning judiciary. Furthermore, and even more importantly for the EU, judicial actors and in a broader sense legal scholars and experts are expected to share a common language which creates a professional group or, in some cases, especially where judges and prosecutors are appointed according to a bureaucratic scheme, an epistemic community. In any case, legal knowledge is a platform and a symbolic divide, which creates a boundary between those who do not master it and those who handle it with skill. Within the promotion of the rule of law, the emphasis put on judicial training seemed always to follow the endorsement of these general considerations.

General principles – as referred to in the interdependence model of rule of law in action – are altogether put in a tight connection with the judicial professionalism and culture of integrity and impartiality. They are conveyed into a vast array of strategies, policies, and programs of the rule of law promotion and, within this broad policy stream, of judicial training. The main lesson one can draw from them is the dominance of one principle, working underneath as an inspiring guideline for all these activities: if judges and prosecutors are trained, this will help the absorption and the implementation of the rule of law principle.

The launch of a European discourse regarding judicial training happened in 1997 when the European Commission embarked on the pre-accession strategy whose main goal was regulating and ensuring the process of institutional and legal adaptation of the candidate countries located in newly associated countries (Piana, 2024). Among the actions undertaken in this context, judicial training can be considered as one of the key tools used by the European Commission to promote the rule of law. Due to the specific context represented by small states, the European Commission may preferably adopt the support of new programs and deliver mechanisms of judicial training to convey to the countries a ''European rule of law''. By this means, the European Commission aimed to promote a European conception of law and more pragmatically a skilful, competent judiciary. The concern of the European Commission (acting as an agent of the Member States) was twofold.

On the one hand judicial actors appointed during the non-democratic era were to be re-socialized to re-orient their legal culture toward a standard closer to the European concept of rule of law. On the other hand, these countries, which were at that time experiencing a comprehensive process of legal change entailing the transformation of domestic laws, were asked to accomplish a supplementary effort, namely, to adopt the acquis communautaire.

Judges and legal practitioners, trained in national legal disciplines, were now under double pressure: renew their knowledge of the domestic legal system (since this latter was changing rapidly) and incorporate the competence of EU law into their knowledge. Despite judicial training can be treated as a minor policy issue, far away from the contested issues of hard politics such as reform of the institutional setting governing the magistracy it represents a terrain where many resources and capacities have been spent to speed up the process of 1) modernization of the judiciary; 2) European rule adoption; 3) European integration. This did not go without conflicts and resistance.

The promotion of judicial training institutions has been framed – and this happened in an unprecedented way – within the pre-accession strategy adopted by the European Union in the context of the Eastward enlargement. However, this ran in parallel – and in some cases with interconnections – to the promotion of closer coordination among the judicial schools already set up to pave the way for better and closer cooperation among judges and prosecutors located in the different areas of the EU.

A further level of reasoning, which partially intertwines with the first level, concerns the target of European standards in this field. Two key aspects should be mentioned. European standards are founded on the idea that a European judicial culture should be either disclosed – being that it already exists but somehow forgotten – or strengthened and enhanced. The target of European influence is accordingly the content of the judicial training programs. They are expected to include EU law courses and courses of comparative law to provide a general knowledge of the European legal systems and the European legal system.

An important aspect discussed herein is the need to ensure that judicial training is not captured or kept hostage by the budgetary policies of the executive. In other words, the idea here is that the judicial school should be autonomous not only in the design of the programs but also in the budget.

Judicial education has shown itself to have dramatic leverage in transforming the legal environment. Indeed, if only judges and prosecutors can be entrusted to be fair and predictable actors in implementing the law, economic transactions can be realized efficiently, without the supplementary costs that may arise because of arbitrariness and patronage in legal enforcement. Judicial education has been considered one of the key conditions allowing judicial actors to be independent of possible influence by political and corporate power, a requirement laid down by the Council of Europe on behalf of the international community.

To promote the exchange of information and international communication, the European Union introduced twinning, a political instrument adopted in 1997 within the strategy of streamlining pre-accession, as outlined in Agenda 2000 (European Commission, 1998). Twinning — which is a praxis commonly used in the German administrative tradition — relies on the appointment of experts within public administrations who introduce experiences and patterns of problem-solving that have been successfully adopted in other agencies of public administration.

Adequate judicial training requires that all judges, prosecutors, and judicial staff be provided with sufficient knowledge of European cooperation instruments and that they make full use of the European Union's primary and secondary law. Such training should cover all the aspects that are of relevance to the development of the internal market and the areas of freedom, security, and justice. It should contribute to adequate knowledge of the law and legal systems of the other Member States of the European Union and promote relevant courses of comparative law. Training in official languages of the European Union, other than the mother tongue of the person concerned, started to be considered very important to enable and facilitate direct contacts between judicial authorities of different Member States, and to create an interest in and openness towards the legal culture and traditions of other Member States. Language training can also contribute to allowing judges, prosecutors, and judicial staff to participate in exchange programs, as well as in training activities that are held in other Member States.

To foster a genuine European judicial and law enforcement culture, it is essential to step up training on Union-related issues and make it systematically accessible for all professions involved in the implementation of the area of freedom, security, and justice. This will include judges, prosecutors, judicial staff, police and customs officers, and border guards. The objective of systematic European Training Schemes offered to all persons involved should be pursued. The ambition for the Union is that a substantive number of professionals will have participated in a European Training Scheme or in an exchange program with another Member State, which might be part of training schemes that are already in place. For this purpose, existing training institutions should be used. States have the primary responsibility in this respect, but the Union must give their efforts support and financial backing and be able to have its mechanisms to supplement national efforts.

Over the last thirty years a vast array of experiences – taking the shape of twinning projects, bilateral or multi-country cooperation – arose. In fact, in the field of judicial and legal training, the European Council considers that EU and international cooperation aspects should be part of national curricula. For the training of judges, prosecutors, and judicial staff it is important to safeguard judicial independence while at the same time, the emphasis should be placed on the European dimension for professionals that use European instruments frequently. Transnational bodies should play a key role in the training of law enforcement personnel and border guards to ensure a European dimension in training. Training of border guards and customs officers is of special importance to foster a common approach to an integrated border management.

This reveals the attempt to keep the balance between the constraints represented by national traditions, embedded into the legal and judicial cultures of the member States, and the opportunity to open a new policy window, i.e. the European policy of judicial training.

In 2020, the Commission published an ambitious plan in the field of European judicial training. In the words of the Commission, European judicial training is seen as a cornerstone for the development of a 'European judicial culture', or a 'true European judicial culture'. It forms an important part of the implementation of the Stockholm Program on the development of a European area of freedom, security, and justice. Article 67 of the Treaty on the Functioning of the European Union (TFEU) is the founding provision for the establishment of the area of freedom, security, and justice. It stipulates in paragraph 1 that 'the Union shall constitute an area of freedom, security, and justice with respect for fundamental rights and the different legal systems and traditions of the Member States.'

The expected target of impact is twofold. On the one hand, the professionalism of judges and prosecutors is expected to be created in a truly transnational arena, across the domestic borders. The program promotes the participation of judges and prosecutors in training initiatives set up in different member states than the one where they work. On the other hand, the fact that trainers and trainees get in touch create also a transnational communication mechanism, which enhances possible imitative behaviors among the judicial training institutes. One of the key points on the EU agenda is the integration of EU law courses in the initial and service training. This happens also using mutual knowledge. The possibility of observing the EU law programs offered in different countries might help adopt similar ones or the ones focusing on the sub-topics that are mostly requested. We do have already empirical evidence to see to what extent the networking process set up by the European Union in the field of judicial training has originated the desired effects.

The largest part of the initiatives consists of short-term exchanges: "Those can follow a one-to-one scheme, in which the visiting judge/prosecutor shadows a counterpart (tutor) in their daily practice in a court/prosecutor's office of the hosting country or they can be organized as a group exchange, in which several

judges/prosecutors from different countries go on the same exchange, thus increasing the "cross-fertilization" aspect of the experience" (ENJT, 2022, p. 5).

Back to the premises inspiring the entire European way of ensuring rule of law and impartiality put into motion in the daily functioning of the judiciary one detects two assumptions:

- The combination of a focus on judicial independence with a focus on judicial accountability.
- A multiple notion of judicial accountability whose implications is deemed to cover both formal and informal accountabilities – among which cultural and social patterns of rule internalisation as it is conceptualized herein – chapter 2.

The sociolegal nature of the impartiality and the rule of law in action becomes the pivoting and distinctive mark of the paradigm with which all actors see, ensure, and protect – *de facto* beyond the pure *de jure* level – the rule of law. In fact, it happens in the human sciences that the choice of the object of study is oriented by objectives of a scientific and social nature, where the intention is to contribute to a public debate whose consequences have a widespread and profound significance on the way in which institutions, social actors and politicians, media. In this sense, the epistemic value of verbal evidence, expressed in words, must be balanced with the equally significant cognitive value that comes from gestural evidence, from orality and from silence. In contexts where the word intervenes in the form of the legal category, i.e. of the case for substantive law, and of the procedural institutions that give substance to the marked, regulated, predictable and transparent organization of the action, the social phenomenology that is expressed in a "non-word" is of particular moment to open a passage and carry out not simple but necessary empirical research actions on what happens as a "social fact" even before as a "legal-institutional fact". Accordingly, how judges behaves, how judges communicate along with gestures, ways of being within the societal context, ways

of delivering words officially to media, all these aspects relate to the impartiality as a “sociolegal” phenomenon.

The oversized need of an impartial bulwark

In modern societies, legislation and regulation are an institutional fact whose authority depends on the procedures with which a public body defines its terms, perimeter, and methods of implementation. The State thus qualifies itself as the protagonist, since then, of a political and juridical reality that sets the rules for everyone in an abstract way. Society is nevertheless far from being inactive or less significant in the exercise of power. Economic actors, financial institutions, intermediation and professional representation organizations, and market dynamics, intervene by forming regularities of behavior and methods with which each culture solves problems. These include the creation of institutionalized pathways and ways - therefore not dependent on the arbitrariness of the moment - of creating wealth, distributing goods and services, ensuring equity in access to these, and, the architrave or foundation of all this, the effective protection of rights. For this to be possible, beyond the enormous differences that exist between constitutional systems and regulatory choices, the guiding star for everyone is to strive to have certain, clear, intelligible guarantees, capable of functioning as an effective bulwark against abuses of power and potential subversions of the primacy of the rule of law due to the asymmetries of power that reality physiologically creates in every society and every State.

The rule of law is the premise, the method, and the result of these guarantees and their evolutionary life cycle, because the action of an independent judiciary, a quality jurisdiction, constitutional protections, and transparent and impersonal procedures, ensures that no position of power can "capture" the space of the res publica in which that social glue which is law in action is rooted. Now, very little has been reflected on the fact that the size of the space within which social and

state actors move makes a difference to the effects of monitoring costs, change times - in a positive or negative sense - and error correction times. – including illicit acts – of the real behavioral and functional postures of independence and impartiality that can *de facto* be created and maintained. However, we believe that today it is extremely necessary to bring the "size" variable back into the discussions and processes of quality evaluation and standardization that are carried out in the prestigious forums of the international epistemic and legal communities.

The specificities of a microstate concern above all the type and extent of risks to which the structure of the democratic-constitutional system is subjected, which combines the separation of powers with the non-availability of fundamental rights. These are two aspects that combine, one being a condition of the other, but also a consequence of the effectiveness of the exercise of these, in ensuring the exercise of a power subject to limits and obligations of accountability, both of a horizontal - between powers - and of a vertical nature - between the governed and the governors. The dimension of the microstate makes the autonomy of the single power more vulnerable compared to other social and political powers. The main form of this vulnerability is that of personalization or the improper exercise of power.

At this stage, the arguments developed in this work are, altogether, leading the reader toward the acknowledgement of a distinctive feature of microstates. This feature is functional in its nature. It stems from the comparative weight structural and behavioural factors feature in framing the context where judges perform their functions. The higher influence exercised by informal institutions in microstates than in macro states goes hand to hand with the higher significance of the actor-related variables. These premises justify supporting the thesis stating the high potential of rule of law strengthening by means of training, education, and cultural policies. These can be viewed also as spaces / arenas where the dialogue among peers facilitates strengthening the cognitive/cultural component of the rule of law in action.

It is with these general principles as the cornerstone of the reasoning that a specific study dedicated to outline the future strategy that the Republic of San Marino can launch to build durable and effective facilitating conditions in making the rule of law into a social and institutional fact.

Conclusions.

A call for action for anchoring the European rule of law in the Republic of San Marino

Culture of impartiality as a compound quality for judges and legal professionals

In the established international framework regarding the rule of law and promotion of the quality of justice, the quality of the judge's behavior is associated both with the guiding principles that inspire institutional design and the planning of constitutional and regulatory reforms, and with the effects that are from this behavior generated on the trust and reliability of the justice system.

In 2022, Opinion 3 of the European Advisory Committee of Judges places the cornerstone of trust/reliability at the head of the remaining soft law rules and from here infers the consequences both in terms of behavioral guidelines and operational principles to be adopted, respecting the traditions of individual countries, in the context of professionalism evaluation and policy.

It therefore appears fundamental here to remember the necessary behavioral adherence of the judge to a principle not only of self-restraint, in matters of communications with the outside, but also of self-governance, placing on the autonomy combined with the strong awareness of the magistrate the responsibility to avoid any form of even perceived personalisation, distortion, discrimination, not only in the facts, but also in the aspects perceived and transmitted to the public.

Given these premises, aspects of professional quality must generally be kept distinct from those of behavioral quality relating to the contribution/impact that the magistrate's behavior has on the image of the justice system. Similarly, the Opinion clearly distinguishes the profiles of criminal liability.

In the differentiation of forms of accountability, the disciplinary one therefore appears to be the most strongly connected with the guarantees of protecting the image of the judicial power, identifying abstract and impersonal legitimation as an asset to be protected transversally, with a view to maximizing even the forms of minimum guarantees.

It was nevertheless subsequently asserted by Opinion 7 that, following a strong international preference for codification in ethical principles within a regulatory format capable of being implemented in a transparent and predictable way, the social and cultural context may require specificity that the soft law allows.

Hence the need to enhance what emerged on the level of empirical evidence in the context of the research "Rule of law in micro-States", where some specific elements require not only cultural attention, but also an operational forecast in the context of regulatory reforms and procedural:

- The comparatively higher degree of elasticity of the system to the impact of individual behaviour, due to the relatively low "critical mass" of the resilience of the institutional system;

- The comparatively lower degree of possibility of rotation and therefore of protection of impersonality through this.

- The comparatively highest degree of significance of each individual judicial decision, in terms of marginal impact on the value of systemic trust.

- The highest demand for predictability of soft law implementations in the face of lower – comparatively speaking – impersonal proceduralization and bureaucratization.

Taking into account these specificities, three instruments of binding legislation are deduced which intervene in the context of the quality of the magistrate.

1. The code of ethics. The codification of the rules and principles of an ethical nature that apply to the jurisdictional functional profile is not alone capable of entirely supporting the weight of the functional demand of a small State in terms of guarantees. This codification must also be associated with the need for strengthened motivations in the face of a burden of accountability that applies both to the judiciary and to the individual magistrate, precisely due to the marginally high value of the impact generated on the former (the judicial body) by the behaviors of the second. The strengthened justification must be requested if there is conduct that risks damaging the trust of society and the economy in the impartiality of the judiciary.
2. The evaluation of professionalism. In the evaluation of professionalism, internal and external evaluations must be combined, taking care to evaluate with a different temporality between the first and the second so that they are not evaluations elaborated on the basis of the effects/generated by decisions on individual proceedings - which, as mentioned, have a higher marginal weight than what happens in systems where decisions on proceedings are numerically high due to the size of the political system. The evaluation of professionalism will include elements of management of the role and relationships with the parties, as well as elements of management of one's career, inserting a reward device if the magistrate contributes with de-personalization behaviors or proactive promotion of impersonality to consolidate the degree of trust in the justice system.
3. As far as the disciplinary procedure is concerned, the activation of the tool following a combined assessment requiring a) presence of protracted behaviors at risk of personalization should be considered; b) absence of strengthened motivations with respect to the choice referred to in a); c) there is a vulnerability to systemic trust in the judiciary which requires a signal to restore the legal balance based on impartiality.

These remarks deliver a message that should be strengthened in the age of the digital transformation and the artificial intelligence. Exactly because we are living in an era where non-human sources of inputs are part of the daily social living and institutional functioning by strengthening competences and cultural standing of judges and legal professional the protection of an effectively human rights and impartiality-oriented enforcement of the laws are of utmost importance and are going to have the deepest and widest impact on the quality of the society we are building. As an example of the consequences that these overall view entails, in the contexts of small states, the use in the endo-procedural phases in which evidence is acquired with the experts of preliminary screening carried out by automated forms of data analysis which are capable of introducing an element assisting the identification may have a strengthening value of values from which it will be easier for the magistrate to distance himself in decision-making and argumentation, when these values are indeed explicit.

In other and more general terms, the principle of maximizing the deep and wide protection with respect to the risk of weakening the image of impartiality applies, to which principle it is not possible to give an answer through the sole proceduralization and formalization of ethical and professional norms. More extensively if the human capacity to play as ultimate bulwark of rule of law protection is nowadays a necessary condition against risks and hindering consequences of the digitalization and data-driven intelligences a comprehensive, multi-stakeholders, and multi-level strategy of human capital, culture, and integrity enhancement and expansion is reasonably expected to play as real, living, and effective protection of the rule of law.

Having these premises as a background, actors, and situations of action become the effective and more prominent target of external technical support using judicial training and socialization. The prospect of this work for the future design of training addressing justice stakeholders is to have as a metaphoric focal point the notion of an impartial spectator. In the work by Adam Smith, the impartial

spectator is an epistemic stance that is incrementally built within the cognitive spectrum of the individual where normative orientations take the shape of the capacity to see her own or his action from the point of view of an impartial spectator. In such a way, impartiality is expected to be a form of reflexive rationality that helps decision makers to mirror the eyes of an "impartial spectator" which internalizes the acceptability of their decisions and actions.

In microstates shaping impartiality means expanding the spectrum of peers that is taken physiologically into consideration within the boundaries of the sole State. Through networking, horizontal dialogue, and mutual learning judges and justice stakeholders can enhance their ties with a transnational epistemic community, which may become the source of ethical, cognitive, and behavioral models and standards.

The accession agreement in the digital age and the agenda ahead

For many years the promotion of the rule of law and the quality of justice has deemed to be an essential method to leverage democracy and governmental quality. In Europe, this has taken progressively the shape of a combination of conditionality mechanisms, socialisation processes, and monitoring exercises. These altogether were expected to ensure compliance to the European acquis and to the European jurisprudence. For countries that embark in the accession process today new challenges and new opportunities are at play. First, the European acquis got deepened and widened in new fields, such as the digital society, digital market, and crypto activities. For all these fields, the European acquis covers today a wide range of legal instruments, regulations as well as directives, outlining the level and the shape of the new bulwarks that States willing to interact with the European Union must set up or put into motion. Secondly, an unprecedented expansion of public economy and public investments created over the last five years – and with particular emphasis after the pandemic – an apex of economic exposure of the

governmental actions in the partnerships with private or third sector stakeholders. It is a significant shift that entails the functional need of new and adequate guarantees of public transparency and accountability in relationship to the capacity of the judiciary to ensure the impartial enforcement of the rules. In some economic fields, the capacity of the public institutions to maintain a posture of substantial and cognitive impartiality can not be based exclusively on the strength of the legal procedures.

Two contextual conditions ("action situation") must be considered here to bring the sociopolitical system towards a functioning that is capable not only of compliance with international standards of rule of law but also of consolidation and institutionalization. There is "institutionalization", with Hungtinton, when a rule becomes not only an obligation, i.e. a constraint but also a value.

In the context of the Republic of San Marino three variables are relevant:

- The balance between State and society, i.e. between formal institutions and informal institutions, with great importance for the latter. The Republic of San Marino, rooted in a long tradition of independence and republicanism, experiences the dimension of society as a source of norms. This element qualifies as a potential element of public and professional accountability. Where the context situation must have experienced a vulnerability to the independence of the law and the actions of the judge, a situation emerges in which a small state suffers from a functional need for a strengthened anchoring in control of the constitutionality of the law primary and secondary legal.

- The importance of the professional profile of the judge, even of the jurist, strongly oriented towards historically considering the external impact of the Republic of San Marino and certainly today oriented towards looking at the cultural complex of the Council of Europe as that of the epistemic community of reference.

- The recent historical situation has seen the San Marino political system in need of engaging in a path of change capable of giving the system internally and externally the unequivocal signal of a mandatory restoration and a reasonable expectation of strong accountability concerning the five dimensions of accountability mentioned above.

The framework just outlined and the specific context, connected with the favorable situation given by the window of opportunity for positive visibility acquired at the Council of Europe by the experience of regulatory and procedural reform of the Republic of San Marino, support the proposal for a strengthening reform. It is also believed that trajectories of comparative reflection on microstates should arise precisely from the discussion of the perspectives that inspire this strengthening, which must be understood as cases with sub-genus historical and cultural specificities such as to justify a comparative study to map the relative weights in individual countries of the effectiveness of the forms of accountability to which the institutional device that we have classified as the constitutional supreme court is subject and responsive to.

Finally, and for the future, judicial networks have been increasingly marking the international setting and the cross-national efforts to ensure dialogue and coordination across domestic judicial systems. Combining a wide range of differential patterns of governance and participation the scholarly with the professional origin of the individual membership, on the one hand, with an ever-growing and structuring deployment of actions and instruments comprising measuring, data collecting, data analysis, standard setting, horizontal learning, and best practices sharing, judicial networks prove to be influential players on the stage of the promotion and the enhancement of the rule of law. Within the Republic of San Marino an ecosystem of actors and institutions should engage as an integrated system of rule of law adoption, implementation, and internalization, comprising the courts, the university and the research institutions, as well as the legal professions representative institutions. A strong and structured cooperation among

those is the prominent and strategic domestic condition to enter a dialogue with transnational arenas and institutions, to strengthen the domestic embedment of the European rule of law, and to create a high bulwark for the judges and the legal professions in their daily work.

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