

For an Effective Training of Magistrates

JOÃO BATISTA LAZZARI †

TABLE OF CONTENTS: 1. Introduction; 2. The importance of Judicial Training in the Constitutional Plan of Modern Democracies; 3. Fundamental Principles of Judicial Training; 4. Pedagogical Guidelines to Inspire Effective Training of Magistrates; 5. Final Considerations.

ABSTRACT: This article assumes that proper training of magistrates is essential for society to have a democratic, independent judiciary and to provide a fair process, as judges ultimately pronounce on life, freedoms, rights, duties and assets of citizens. From this perspective, the present study aims to identify the pedagogical principles and guidelines to be observed for effective training of magistrates. In order to obtain a satisfactory answer to the presented problem the inductive method was used, concluding that the training of magistrates must be of a practical and multidisciplinary form, aiming at transmitting professional values and techniques that complement the legal formation and must seek the development of capacities and competences capable of providing efficiency and legitimacy in the judicial proceedings. Judicial training, therefore, is paramount in order for magistrates to be able to perform their tasks properly and to understand the human and social realities with which the justice system interacts.

KEYWORDS: *Magistrates; Formation; Principles; Guidelines; Skills*

JEL CODES: *A1, K11, Y19*

UNIVERSITY OF BOLOGNA LAW REVIEW

ISSN 2531-6133

[VOL.4:1 2019]

This article is released under the terms of Creative Commons Attribution 4.0 International License

1. INTRODUCTION

In recent decades there has been an intensification in the access to justice in contemporary democracies unleashing a great challenge to the Judiciary, namely to provide society with an efficient and fair jurisdictional provision, with reasonable duration of proceedings.

In this scenario, it is up to magistrates to decide ultimately on the lives, freedoms, rights, duties and assets of citizens. It is therefore essential that the domestic legal systems of each country promote the independence and impartiality of judges so that they can conduct judicial proceedings in an appropriate manner, while respecting the fundamental rights and guarantees of the parties.

As the Italian scholars Guarnieri and Pederzoli rightly point out in the work “Il Sistema Giudiziario”, in a constitutional state, defined by its concern to adequately protect the rights of its citizens, the role of the judge is to resolve disputes, especially between the state and the citizen, and its independence has guaranteeing impartiality as its main objective.¹

To ensure that the performance of forensic activities occurs with efficiency, legitimacy, and independence, it is essential that training be provided for this purpose, which must occur from the investiture of the position and continue in a gradual and permanent manner throughout the judicial career.

Thus, in order to provide training in line with the human and social realities experienced in democratic and open societies, Judicial Schools should promote educational programs focused not only on the

[†] Post-Doc in Law and Constitutional Justice by Alma Mater Studiorum - Università di Bologna (Italy), Doctor in Public Law from the University of Perugia (Italy), Doctor and Master in Legal Science from the University of Vale do Itajaí (Brazil), Federal Judge in Florianópolis (Brazil). Scientific production related to Postdoctoral research in Law and Constitutional Justice, focusing on the Judiciary and Judges Training, at Alma Mater Studiorum - Università di Bologna (Italy), under the guidance of Professor Dr. Luca Mezzetti.

¹ CARLO GUARNIERI & PATRIZIA PEDERZOLI, IL SISTEMA GIUDIZIARIO: L'ESPANSIONE DEL POTERE GIUDIZIARIO NELLE DEMOCRAZIE CONTEMPORANEE [THE JUDICIAL SYSTEM: THE EXPANSION OF THE JUDICIARY IN CONTEMPORARY DEMOCRACIES], 129–130 (2017).

transmission of legal concepts but, above all, on the development of skills,² ethics and humanism.

Based on this perspective, it is fundamental to identify the pedagogical principles and guidelines to be observed for the effective training of magistrates (judges)³, as well as the formative actions that can be performed by the Judicial Schools. Faced with this reality, the question is: what are the pedagogical principles and guidelines to be observed in order to obtain an effective training of magistrates?

To reach a satisfactory answer to this question, the research was structured into three topics. The first was to demonstrate the importance of judicial training in the constitutional plan of modern democracies in view of the fundamental role that judges play. The second, aimed at recognizing the fundamental principles of judicial training with a focus on those adopted in the Member States of the European Union (hereinafter E.U.). The third, reserved to identify pedagogical guidelines that could inspire effective formative actions of magistrates.

In this way, it has sought to obtain elements that can help Judicial Schools develop training programs that address the need to provide efficiency and legitimacy in the jurisdictional practice.

The investigation, data processing and the elaboration of the report of this research were carried out based on the inductive method, using the techniques of the referent, the registration of works and consultations in the worldwide computer network.

² See ENFAM, PEDAGOGICAL GUIDELINES, 10 (2017) (“It’s the ability to act in Expected and unexpected situations quickly and efficiently, articulating tacit and scientific knowledge, social and work experiences, behaviors and values, desires and motivations developed over the life trajectories in increasingly complex contexts. Competence, therefore, is linked to the capacity to solve problems, mobilizing, in an inter- and transdisciplinary way, - specific, complex cognitive and behavioral - knowledge, capacities and skills, transferred to new situations, i.e. implies to act mobilizing knowledge and resources.”).

³ Judicial training is important and necessary for all legal practitioners, so that they can acquire the skills necessary for the performance of their duties. In many countries, especially members of the E.J.T.N., the term “magistrates” is adopted for judges and members of the prosecution service. However, for the purpose of this research, the reference to magistrates focuses on the judges.

2. THE IMPORTANCE OF JUDICIAL TRAINING IN THE CONSTITUTIONAL PLAN OF MODERN DEMOCRACIES

The need for training of magistrates lies in the constitutional framework of modern democracies in view of the fundamental role that judges play, namely of resolving conflicts and enforcing the law, functions that must be carried out with complete independence and impartiality in order to ensure the effectiveness of judicial systems.

These guarantees are essential for a fair trial and, therefore, for a balanced protection of rights.

According to professor Luca Mezzetti the complexity of the jurisdictional function, means that it requires multiple guarantees, especially when privileging citizens' freedoms. This is why constitutional norms must provide for an organizational system inspired by the principles of the rule of law, especially the principles of legality, independence and impartiality of judges.⁴

Moreover, according to professor Boaventura de Sousa Santos, the courts require more efficiency, more speed, more quality and more social proximity. These challenges are gigantic for a routinized system in a bureaucratic and socially distant operation. Thus, the judicial system does not overcome the challenges that the new social context poses if it does not transform its model of recruitment and training of magistrates.⁵

As for the growing importance of judiciary training in Europe, Carlo Guarnieri argues that it is linked to the need to enrich the professional skills of the magistrate with new and different contents considered essential for

⁴ LUCA MEZZETTI, *MANUALE BREVE DIRITTO COSTITUZIONALE* [BRIEF CONSTITUTIONAL LAW MANUAL] 395 (2017). See ZAGREBELSKY GUSTAVO ZAGREBELSKY, VALERIA MARCENÒ, FRANCESCO PALLANTE, *LINEAMENTI DI DIRITTO COSTITUZIONALE* [OUTLINES OF CONSTITUTIONAL LAW] 400 (2014) (according to Zagrebelsky, "the subjection of judges only to the law results in their independence").

⁵ BOAVENTURA DE SOUSA SANTOS (COORD), *O SISTEMA JUDICIAL E OS DESAFIOS DA COMPLEXIDADE SOCIAL: NOVOS CAMINHOS PARA O RECRUTAMENTO E FORMAÇÃO DE MAGISTRADOS* [THE JUDICIAL SYSTEM AND THE CHALLENGES OF SOCIAL COMPLEXITY: NEW PATHS FOR THE RECRUITMENT AND TRAINING OF MAGISTRATES] 453-454 (2011), http://www.smmp.pt/wp-content/relatorio_formacao_16jun_final.pdf.

the proper functioning of the judicial system which faces the challenge of continuous growth of new cases addressed to it.⁶

It should be noted that the United Nations (hereinafter U.N.) provided for the adoption of the Bangalore Principles of Judicial Conduct, which is a project of the Judicial Code in global scope, based on other national, regional and international codes and statutes, among them the Universal Declaration of Human Rights of U.N..

This Code recognizes that in addition to the basic knowledge that every judge needs to acquire early in his career, a judge is committed, from nomination, to perpetually study and learn and that such training is indispensable, given the constant changes in law, technology and the possibility that in many countries a judge will take on new responsibilities when he takes up the new post. In this context, the Judiciary should play the leading role, or be responsible for organizing and supervising the training of judges, so that its members are kept informed of relevant developments in legislation, including international conventions and human rights standards.⁷

For Luca Mezzetti, the internationalization-universalization of human rights has matured as a consequence of the evident inability of nation-states to adequately protect fundamental human rights. The globalization of human rights implies a close synergy between international law and national laws to protect the same rights and, before

⁶ CARLO GUARNIERI ET AL., ANATOMIA DEL POTERE GIUDIZIARIO: NUOVE CONCEZIONI, NUOVE SFIDE [ANATOMY OF THE JUDICIARY: NEW CONCEPTS, NEW CHALLENGES] 67 (2016). In the same vein is the approach taken by the Superior Council Of The Judiciary of Italy, which defines training as a set of activities designed to ensure that magistrates are given the up-to-date knowledge and in-depth scientific and professional studies necessary to perform the judicial functions with the utmost competence and preparation. For this reason, the training has always been considered one of the main guarantees of autonomy and independence of the judicial function. See also *Magistratura: Il Percorso Professionale*, CONSIGLIO SUPERIORE DELLA MAGISTRATURA [Judiciary: The Professional Path, Superior Council of the Judiciary], <https://www.csm.it/web/csm-internet/magistratura/ordinaria/percorso-professionale>.

⁷ See United Nations Office on Drugs and Crime (hereinafter U.N.O.D.C.), *COMENTÁRIOS AOS PRINCÍPIOS DE BANGALORE DE CONDUTA JUDICIAL [Comments on the Bangalore Principles of Judicial Conduct. Translation by Marlon da Silva Malha, Ariane Emilio Kloth]*. BRASÍLIA: CONSELHO DA JUSTIÇA FEDERAL [BRASÍLIA: THE COUNCIL OF FEDERAL JUSTICE], 129-141, N 118 (May, 2008).

that, to create prerequisites (peace, well-being, equality, solidarity) that make the degree of effectiveness acceptable everywhere.⁸

Then, professor Carlos Gómez Ligüerre in drawing up a study based on the constitutions of several European countries and analyzing the functioning of their legal systems, concluded that: a) all legal cultures seem to be aware of the relationship between the preparation of judges and the correctness of decisions which resolve the conflicts that are presented to them; b) it is wise to allocate resources (and do so efficiently) to the preparation and training of those who will judge; c) the better the training and preparation of the magistrates, the greater the quality of their work.⁹

In that sense, the E.U. believes that the training of legal practitioners, both materially and procedurally, is important for the development of transnational cooperation. In view of this, the Treaty on the Functioning of the E.U. establishes officials and servants of justice in civil and criminal matters as fundamental support for the training of judges (Article 81, paragraph 2 and subparagraph “h”; Article 82, paragraph 1 and subparagraph “c”).

It should also be mentioned that training in law is part of the Charter of Fundamental Rights of the E.U. for initial and continuing training at the national level, in view of the need for the proper exercise of judicial or professional functions. In addition, the diversity of courts and positions held by magistrates has led to the creation of international study groups with a dual purpose, namely to facilitate judicial cooperation and to promote more successful measures in the organization of the judiciary. Among the various initiatives in force, the one that undoubtedly stands out is the European Commission for the Effectiveness of Justice.¹⁰

⁸ LUCA MEZZETTI, *TEORIA COSTITUZIONALE: PRINCIPI COSTITUZIONALI – GIUSTIZIA COSTITUZIONALE – DIRITTI UMANI – TRADIZIONI GIURIDICHE E FONTI DEL DIRITTO* [CONSTITUTIONAL THEORY] 372 (2015).

⁹ CARLOS GÓMEZ LIGÜERRE, *JUÍZES NA EUROPA: FORMAÇÃO, SELECÇÃO, PROMOÇÃO E AVALIAÇÃO* [Judges in Europe: Training, selection, promotion and evaluation], 32 (2014).

¹⁰ *Id.* at 25.

In order to facilitate the European training of the national judges of the Member States, the European Judicial Training Network (hereinafter E.J.T.N.) was created, representing the interests of more than 120,000 European judges, prosecutors and judicial trainers from all over Europe.

In its work, E.J.T.N. seeks to identify training needs and develops training standards and curricula, coordinates exchanges and programs of judicial training, disseminates specialization in training and knowledge and promotes cooperation between judicial training institutions in the E.U..

This complexity of performance is related to: - the set of rules of law that countries have to apply; - social relations established that increasingly require the intervention of justice; - the multiple and often incompatible rights and expectations which must be recognized and guaranteed; - the growing public influence of individuals and social groups; - the need for social order and security; - the expectations of non-discrimination and reduction of inequalities - social equity and redistribution; and - the limits of available resources that may create tensions and make it more difficult and delicate to ensure, in practice, the necessary balance. Ligüere also emphasizes that the specialization of jurisdictions, proper to contemporary judicial systems, has a reflection on the training and selection of judges.¹¹

Similarly, the 2010 Magna Carta of European Judges of the Council of Europe (hereinafter C.C.J.E.) emphasizes that initial and continuing training is a right and a duty of judges and that training in general is an important element in safeguarding the independence of judges and the quality and efficiency of the judicial system. For the Advisory Council, the magistrates that will integrate the legal systems belonging to the Common Law or Civil Law must undergo a necessary initial training.

Following this legislation, for example, the Superior Council of the Judiciary of Italy, in approving the guidelines related to the training of magistrates, adopted as presuppositions: (a) that the formative moment,

¹¹ *Id.* at 37.

as a legitimating basis for the magistrate's function, is an objective of collective, shared and general interest, of paramount importance; (b) for each magistrate the formation is one of the conditions for the legitimacy of his work and his independence; (c) in conjunction with the system of professional assessments, disciplinary procedures and criteria for the organization of work, training helps to improve the level of professionalism and become an essential objective in consideration of the new political-institutional position of the judiciary.

In addition, in Report No. 4 (2003), the C.C.J.E. presents a series of recommendations, among them the need to take into account the peculiarities of designation methods for directing and adapting training programs in an appropriate way and indication of the need for compulsory initial training with programs adapted to the professional experience of the selected candidates.¹²

Given this context, there is a need to identify who should take the responsibility for training of magistrates.

Following what the Italian Judge Giacomo Oberto argues, the independence of the judiciary and freedom of education are the two pillars of the training of magistrates. If there is acceptance of these two principles, the answer to the question concerning the identification of the person responsible for training can only be as follows: a body that trains judges should not only be independent of other branches of government, but also must be equipped with a considerable degree of autonomy in the institution responsible for the self-government of the judiciary. But the real problem today is not so much the "labeling" of the formal institution in question (academy, school, institution, center, etc.) but the relationship between this body and the authorities responsible for "administering the judicial system."¹³

¹² *Id.* at 35-36.

¹³ Giacomo Oberto, *La Formazione Professionale dei Magistrati Italiani nell'Ottica della Formazione del Giurista Europeo* [The Professional Training of Italian Judges in the Perspective of the Training of European Jurist], 8 Riv. Dir. Priv., 2003, at 173.

As a result of the recognized need for judicial training, it has become essential for democratic nations to create Judicial Schools to account for this assignment. And, as a rule, the Judicial Schools were structured with organizational, didactic, functional and managerial autonomy to carry out their functions.¹⁴

Likewise, the E.J.T.N. has been distinguished by the creation of a European area of justice and by promoting knowledge of the E.U. legal systems, thus increasing the understanding, trust and cooperation between judges and members of the prosecution service within the Member States of the E.U.. Still, among the results already achieved, it is the extension of the scope of actions for training – adding new fields of law, as well as non-legal training.

In addition, according to professor Boaventura de Sousa Santos, “training should give equal importance to technical-juridical preparation, to the understanding of social phenomena and renewing of the legal culture.”¹⁵

Judicial training faces challenges in the face of a globalized context and the growing need for an environment of cooperation and international dialogue among magistrates, especially for the application of criminal law, the fight against organized crime and corruption affecting modern democracies. Thus, the training of magistrates needs to add new insights into the social context of law and judicial processes and develop skills to interact with the public and the media in order to preserve the independence of judges and the quality and efficiency of the judicial system.

¹⁴ “La scuola è una struttura didattica autonoma, con personalità giuridica di diritto pubblico, piena capacità di diritto privato e autonomia organizzativa, funzionale e gestionale, secondo disposizioni del proprio statuto e dei regolamenti interni e nel rispetto della legge.” [“The school is an autonomous didactics structure and a legal person under the public law, with a full legal capacity under common law and organisational, functional and management autonomy, according to its statute and rules of procedures and in compliance with the law.”] See GIULIANO SCARSELLI, *ORDINAMENTO GIUDIZIARIO E FORENSE* [JUDICIAL AND FORENSIC SYSTEM], 123 (2013).

¹⁵ SANTOS, *supra* note 5, at 504.

3. FUNDAMENTAL PRINCIPLES OF JUDICIAL TRAINING

The Brazilian jurist, Miguel Reale works the “principles” category from the logical point of view, in the perspective of statements admitted as conditions or bases of validity of the other assertions that make up the field of knowledge, founding truths of a knowledge system.¹⁶

Based on this concept, it is assumed that “principle” is a more generalized idea that inspires other ideas in order to deal specifically with each institute. The principle can be considered as the foundation of the legal norms of a country or a community of nations, that is, the foundation of the phased construction of the legal-positive order.

In line with this guideline, the U.N. has endorsed the Basic Principles formulated for Member States to ensure and promote the independence of the judiciary. One of the most important is number one (1), which establishes that the independence of the judiciary must be guaranteed by the State and incorporated into the Constitution and laws of the country and that it is the duty of all governments and other institutions to respect and observe the independence of the Judiciary.¹⁷

Another principle of the U.N., which is fundamental to the selection and training of magistrates, is number (10), which establishes that persons selected for judicial activity should be individuals of integrity and ability with appropriate training or legal qualifications. This stipulates that any method of judicial selection shall prevent nominations made for incorrect reasons and that in the selection of judges there shall be no discrimination against the person on the basis of race, color, sex, religion, political opinion or other opinion, national or social origin, possession, birth or status.

Further, according to the Bangalore Judicial Conduct Principles, judgments must be equitable, fair and public, conducted by an independent and impartial court. From this conception the connection between independence and the education of magistrates is clearly seen, as

¹⁶ MIGUEL REALE, *LIÇÕES PRELIMINARES DE DIREITO* [Preliminary Law Lessons] 303 (2003).

¹⁷ U.N.O.D.C., *supra* note 7, at 45.

evidenced in Principle no. 6, named “value 6: competence and diligence.”.

This principle points out that competence in the performance of judicial duties requires legal knowledge, skill, thoroughness and preparation. “The professional competence of the judge should be evident in the performance of his duties.” Also, the “judge must take reasonable measures to maintain and increase his knowledge, skills and personal qualities necessary for the proper execution of judicial duties, taking advantage, for this purpose, of training and other resources that may be available under judicial control for judges.”¹⁸

On October 6th, 2016, the E.J.T.N. held an important assembly bringing together the institutions responsible for training judges and prosecutors from 28 Member States of the E.U., in which nine fundamental principles on judicial training were adopted, which were also adopted by the European Network of Councils of Justice, bringing together the Superior Councils of the Judiciary of twenty-eight Member States of the E.U.. These principles recognize the importance and specificity of training for magistrates, who work in democratic societies and, at the same time, serve as a guarantee of competence and professionalism.¹⁹

For the development of this research, the principles of judicial training were chosen, as they properly reflect the foundations to be followed by the magistrates of democratic countries to carry out their functions with efficiency and legitimacy.

The use of these founding elements is also justified by the fact that “the nine principles of judicial training constitute both the common ground and the horizon which unites all the judicial schools of the E.U., in addition to the diversity of legal systems and training models of magistrates in Europe.”²⁰

¹⁸ U.N.O.D.C., *supra* note 7, at 129-141.

¹⁹ See European Judicial Training Network (E.J.T.N.), *Judicial Training Principles*, (June 10, 2016).

²⁰ *Id.*

On the basis of these considerations, each of the principles considered to be fundamental to judicial training is listed, which is intended to guide and inspire the training of individual magistrates in the E.U., as well as in judicial training institutions outside the E.U. that wish to adopt the standards.

The first establishes that judicial training should be a practical and multidisciplinary approach which seeks, essentially, to transmit values and professional techniques that complement the legal training.

In a similar way and in line with this principle, the National School of Judicial Training of Brazil adopts the principle of interdisciplinarity that “requires the trainer to plan and organize pedagogical practices to develop the competencies that constitute the objective of training, in order to integrate knowledge and diverse knowledge, methods and resources that allow greater integration and contextualization of knowledge and actions through the protagonism of the training subjects.”²¹

The second determines that each magistrate must receive initial training before or at the time of his appointment, an essential condition for the exercise of the position.

The third provides that all magistrates have the right to receive regular training after their appointment and throughout their careers and are responsible for carrying out this training and that each Member State should put into operation a system to ensure that magistrates exercise this right and responsibility.

The fourth stipulates that the training is part of the normal professional life of a magistrate. Thus, all magistrates must have sufficient time to attend training within their normal working hours, except in exceptional circumstances when this would undermine the proper administration of justice.

The fifth indicates that in accordance with the principles of judicial independence, the design, the content and method of transmission of

²¹ ENFAM, *supra* note 2, at 9.

judicial training are determined exclusively by the appropriate national institutions.

The sixth designates that the training should be given, mainly, by magistrates with previous training for this purpose, valuing the formation of the trainers.

The seventh prescribes that in training, priority should be given to active and modern teaching techniques. Observance of active methodologies is essential to teaching them how to do.

The eighth sets out that the Member States must make available to the national institutions responsible for judicial training sufficient financial and other resources to enable them to meet their priorities and objectives.

The new and final set of principles calls on the highest judicial authorities to support judicial training.

In line with these principles is the E.J.T.N. Manual, which also draws the principles that judicial trainers should observe when they teach magistrates, such as:

- a) adults need to know why they should learn something;
- b) adults have to learn using their own experiences;
- c) adults approach learning as a resolution of problems;
- d) adults learn best when they see the immediate value of the theme;
- e) education of adults is an active process of reflection and discussion.²²

Once the fundamental principles of judicial training have been defined, the analysis of the pedagogical guidelines that can be considered adequate to give effect to the desire for effective training of magistrates is carried out.

²² E.J.T.N., HANDBOOK ON JUDICIAL TRAINING METHODOLOGY IN EUROPE 32 (2016).

4. PEDAGOGICAL GUIDELINES TO INSPIRE EFFECTIVE TRAINING OF MAGISTRATES

This topic intends to address the pedagogical guidelines that Judicial Schools must observe in order to succeed in the difficult task of effectively conducting initial and continuing training of magistrates.

Pedagogical guidelines include guidelines aimed at assisting judicial schools in curriculum planning, in the way these institutions should work, in the didactics to be used, in the monitoring and evaluation of educational actions, as well as in the achievement of training goals of magistrates. It involves the training nature, the process of knowledge production, the principles and pedagogical processes, skills development and evaluation system.

For the definition of an effective process of learning, we rely on David A. Kolb's teachings, educational theorist focused on experiential learning. For him, "learning is the process by which knowledge is created through the transformation of experience" and occurs when a person progresses following a cycle of four phases, namely: "(1) to have concrete experience followed by (2) observation and reflection on this experience, which leads to (3) the formation of abstract concepts (analysis) and generalizations (conclusions) which are, then, (4) used to test hypotheses in future situations, resulting in new experiences."²³

Yet, according to Kolb, learning is an integrated process, that is to say, "each phase mutually supports and feeds the next phase." He believes that it is even possible to enter the cycle in any one of the phases and follow it according to the logical sequence. However, the effective learning occurs only when a learner is capable of performing the four phases of the model. "Therefore, none of the phases of the cycle is effective in itself as a learning process."

In terms of judicial training, the guidelines contained in Report No. 4 (2004) of the Consultative Council of European Judges on Judicial

²³ DAVID A. KOLB, EXPERIENTIAL LEARNING: EXPERIENCE AS THE SOURCE OF LEARNING AND DEVELOPMENT (1984).

Schools are paramount. In view of the diversity of the systems applicable to the initial training of judges, this document sets out key recommendations, including the following:

- i. that, prior to their taking office, all candidates selected for judicial functions acquire extensive legal knowledge in the field of material and procedural law, at national and international level;
- ii. that more specific training programs for the exercise of the profession of judge should be determined by the training center, the trainers and the judges themselves;
- iii. that such theoretical and practical programs should not be limited to purely legal techniques, but rather should also include ethical training, as well as openness to other areas relevant to judicial activities, such as management of issues and administration of courts, information technology, foreign languages, social sciences and alternative modes of conflict resolution;
- iv. that training is pluralistic in order to ensure and strengthen the open-mindedness of the judge;
- v. that, depending on the existence and duration of a previous professional experience, the training has a significant duration with the purpose of preventing its purely formal character.²⁴

Regarding continuing education that seeks to meet the need for constant updating of magistrates, “should be seen as a right/duty closely linked to their ethical attitude, in which an obligation of permanent actualization is implicit, determined by an imperative of intellectual honesty.”²⁵

²⁴ LIGÜERRE, *supra* note 9, at 42.

²⁵ Mário Tavares Mendes, *A formação inicial e continua de magistrados: uma perspectiva do Centro de Estudos Judiciários de Portugal* [The initial and continuing training of magistrates: a perspective from the Center for Judicial Studies of Portugal], *REVISTA DO CENTRO DE ESTUDOS JUDICIÁRIOS* [R. CEJ], Jan.-Mar. 2004, at 23, 23-29.

The C.C.J.E. Report provides important recommendations/guidelines to be observed by the Judicial Schools regarding continuing education, namely:

- i. that the continuous training should, in principle, be based on the judges' will;
- ii. that, exceptionally, ongoing training may be imposed in certain circumstances, for example (if the judiciary or other body responsible has decided) when a judge accepts a new position or a job type or different function or private functions or on fundamental changes to legislation;
- iii. that training programs are defined by the authority of a judicial body, or other responsible for initial and continuing training, as well as the trainers and judges;
- iv. that these programs, put into practice by the same body, revolve around legal issues and around other questions concerning the functions of judges and respond to their needs;
- v. that the jurisdictions encourage their members to follow courses of continuing training;
- vi. that programs are in charge of promoting an environment in which members of different sectors and levels of jurisdictions can meet and share their experience and materialize common ideas;
- vii. that, although training is for the judge a deontological duty, Member States should also make available to the judges the financial resources, time and other resources necessary for continuing training.²⁶

In line with the recommendations outlined by the C.C.J.E., the E.J.T.N. Manual on Judicial Training in Europe is based on the assumption that the main idea is that adults learn best when they participate fully in training. That is, a conception of participatory training means that all people must be involved and active.

²⁶ LIGÜERRE, *supra* note 9, at 42-43.

Based on the discussion above, it can be said that among the guidelines to inspire effective training of magistrates is the use of methodologies aimed at learning, not only legal and judicial knowledge, but also multidisciplinary knowledge, skills and competences that a good judge needs to properly perform his tasks and have an understanding of the human and social realities with which the justice system interacts.

For example, the School of National Training and Improvement of Magistrates (hereinafter E.N.F.A.M.) has made a political-educational option focused on humanism and ethics as an ideal for training Brazilian judges, understanding “that the man-judge must be fully developed with knowledge that aim at competencies that go beyond technical rationality and that lead to the critical and creative awakening of the human being in the praxis of work.”²⁷

Similarly, professor Livingston Armytage argues that judicial education programs should be focused on skills development and should be designed to meet the specific learning characteristics of judges.²⁸

This understanding is also part of the Councils for the training bodies, published by the E.U., in the sense that “judicial training programs for professionals of justice should focus not only on the knowledge about law, but also include the development of competences and a wide range of non-legal skills, thus ensuring a greater openness to a modern society.”²⁹

Also, in accordance with these guidelines, the Superior Council of the Judiciary of Italy, in drawing the programmatic lines on the training and professional updating of magistrates, has chosen the most important questions to be explored in training activities, namely: a) the theme of ethics and professional ethics; b) ordinary themes and the organization

²⁷ ENFAM, *supra* note 2, at 8.

²⁸ LIVINGSTON ARMYTAGE, EDUCATING JUDGES: TOWARDS A NEW MODEL OF CONTINUING JUDICIAL LEARNING (1996). (*apud* ENFAM, *supra* note 2, at 9).

²⁹ European Commission, Directorate-General for Justice and Consumers, *Conselhos para os Organismos de Formação - Formação Judiciária Europeia*, at 5 (2016), available at <https://e-justice.europa.eu/fileDownload.do?id=fe5753d6-8434-4689-bd06-f6d6a8808dab> 5 (2016).

culture in a theoretical-practical perspective; c) the use of new technologies on the performance of judicial functions; d) procedural issues, not as a place of exasperated technicalities, but as a moment of loyal dialectical confrontation between the opposing positions of the parties; e) interdisciplinary themes, the so-called unification of knowledge to develop the capacity to reflect on yourself and on the main challenges; f) immigration, foreign minors and others that derive from them or that connect to them (prostitution, slavery, organ trafficking, trafficking human beings, small crimes, etc.), and also international terrorism.³⁰

In short, training in interpersonal skills should occupy a relevant place in Judicial Schools programs in all educational initiatives. Based on this premise, formative actions should be planned and executed following methodologies that provide the development of capacities and skills that go beyond the acquisition of new legal knowledge. Therefore, a modern judge must be connected with the reality that surrounds him and attentive to the innovations coming from a globalized and interconnected way and to be able to understand the social phenomena for a correct and complete legal evaluation of the concrete case.

Another fundamental guideline to generate an effective training and provide the necessary institutional confidence is the understanding and appreciation of the role and competences of the trainer in the use of modern methodologies for the development of training actions.

In view of this, participatory methodologies should be used. The main features of these methodologies are that trainee-centered training should be based on experience and often open to fit the group's needs for which it was designed.

E.J.T.N. recognizes that Judicial Training Methods (J.T.M.) represent a "thread" with all the actions that are implemented, since its purpose is

³⁰ See CONSIGLIO SUPERIORE DELLA MAGISTRATURA [SUPERIOR COUNCIL OF JUDICIARY], LINEE PROGRAMMATICHE SULLA FORMAZIONE E L'AGGIORNAMENTO PROFESSIONALE DEI MAGISTRATI PER L'ANNO 2018 (JUL. 27, 2017) [Outlines on training and continuing education of judges of 2018] (It.) [Resolution of 27th July 2017].

to propose the most efficient and concrete training methodologies, as well as strengthen the spread of best practices, essential requirements for any action of judicial training.

For this, the J.T.Ms. were organized according to three topics and three main fields of action: assessment/appreciation, ability and leadership. They aim to meet the following needs: a) sharing good judicial training practices among E.U. judicial practitioners, while defining new approaches towards knowledge and training; b) combining judicial training with quality of justice.³¹

It is up to trainers to identify the needs of training magistrates in order to sustainably improve their skills, competences and professional knowledge.

E.J.T.N. Manual states that “instead of confronting, or even overloading, merely passive and reactive participants with a substantial amount of theoretical content, the trainer should promote the professional development of (future) judges and (future) prosecutors in a practical way, demonstrating the importance of the topics addressed.”³²

This guideline adopts the concept of “lifelong learning” by requiring judges to constantly question their knowledge, skills and professional behavior. This is because we live in a constantly evolving and transforming scenario, and the role of the trainers is to make the participants see the need to “unlearn and learn” again.

Further, from E.J.T.N. Manual it is possible to extract a chronology guided by the “life cycle of training”, as specified:

- a) planning of a curriculum based on needs assessment;
- b) modern conception of actions and individual sessions of training;
- c) organizational management of the training action;

³¹ See E.J.T.N., EUROPEAN E-JUSTICE, https://e-justice.europa.eu/content_european_training_networks_and_structures-122 (last visited Feb. 03, 2018).

³² The evaluation questionnaires and a guide for the evaluation of training to promote the exchange of best practices among national training institutions are also highlighted as an important tool in the Manual of Methodology for Judicial Training in Europe of the E.J.T.N., *supra* note 22, at 9.

d) accurate assessment, which should also give ideas for future training actions.

Since the planning process in a modern training institution must follow three principles:

- 1) Any training program must be oriented toward the needs;
- 2) Any training program must use a variety of training formats. And, the approach must be “by measure”, i.e., that the content and method are chosen according to the group profile of trainees;
- 3) Planning must be oriented towards the needs and be integrated into a general conceptual framework.

In this sense, it can be said that the modern conception of judicial training can be carried out through methods involving lectures, group work, seminars, trial simulations, jurisprudence analysis, interviews, e-learning, courses, orientation, among others.

E.J.T.N. Manual highlights: a) the methodology to be applied shall use appropriate trainers; b) the methodology must respect and correspond to the chosen training format (conference, symposium, seminar, workshop, webinar, etc.); (c) training content should be practical (issues related to law, ethics, judges and prosecutors in society, methodological and behavioral skills and competences, etc.), (d) the expectations and capacities of the target group concerned should be taken into account.

It is thus evidenced that the Judicial Schools must invest in the development of electronic tools with the purpose of expanding the scope of training opportunities, making the universalization of the courses offered and the reduction of operational costs possible.

The extension of distance learning courses is an imposition so that the Judicial Schools can improve the administrative efficiency of the management of judicial programs, especially in the continuous training of magistrates. Distance learning courses format can also be adopted for the development of learning in mixed mode, that is, part with face-to-face meetings and part by online platforms.

For the improvement and evolution of these new training models with a view to an adequate use of potential of the training judges, it becomes pertinent that the Judicial Schools observe the recommendations contained in the C.C.J.E. Report No. 4 (2004), namely:

- i. that training programs and methods are regularly monitored by the bodies responsible for judicial training;
- ii. that the use of the potential of judges in relation to training is not, in principle, subject to a qualitative assessment, although it may be taken into account in the professional assessment;
- iii. the results of participants in training programs are, however, assessed in systems in which the initial training is an integral part of the nomination process.³³

In turn, the assessment model should be centered on the participant. The Kirkpatrick evaluation model is based on four levels:³⁴ a) reaction; b) learning; c) behavior; d) results. From the analysis of each of these four levels, one can understand how effective training was, that is, whether the objectives and defined goals were achieved and how they could be improved in the future.

It can be said in summary that the evaluation of a training action should cover three essential aspects, namely: a) the satisfaction of the participants; b) the increase of the capacities and competences of the participants; and c) the impact on the participants' jurisdictional practice.

Based on the pedagogical guidelines presented in this topic, it is believed that the effective implementation of programs aimed at the training of magistrates within the scope of the Judicial Schools is fully possible and that such educational actions are capable of providing the knowledge, skills and competencies that the judges need to fulfill the tasks assigned to them.

³³ LIGÜERRE, *supra* note 9, at 43.

³⁴ The model was first published in a series of articles in 1959 in the *Journal of American Society of Training Directors*. In 1994, a full publication of Kirkpatrick's decades-long studies was published for the first time under the title *Evaluating training programs: see DONALD L KIRKPATRICK, EVALUATING TRAINING PROGRAMS: THE FOUR LEVELS (1994)*.

5. FINAL CONSIDERATIONS

This study has identified that the training of magistrates is characterized as an indispensable element to ensure the independence and autonomy of the judicial function and should include, in addition to the legal and technical preparation, the understanding of social phenomena and the renewal of the legal culture.

Based on the deliberations of international bodies, including the Council of Europe, it was concluded that training should be conceived not only as a faculty of the magistrate, but as an expression of a deontological duty to update and grow professionally. Therefore, it is the responsibility of the Judiciary, through the Judicial Schools, to create the necessary conditions to guarantee to all the magistrates an adequate and independent formation.

Therefore, by identifying the fundamental principles of judicial training, it was perceived that they should be used as a foundation and source of inspiration to guide the activities of the Judicial Schools.

Among the principles enumerated, it is important to point out that judicial training should be a practical and multidisciplinary training, which essentially aims to transmit professional values and techniques that complement legal training. That is, the training courses should target a deontologically conscious judge, who identifies himself in his institutional role and therefore is more independent and impartial.

Regarding the pedagogical guidelines for effective training of magistrates, one may conclude that there are several methods, all of which must prevail for the development of formative actions oriented to the practice, that is, by the transmission of theoretical knowledge combined with active methods that allow an understanding of the material effects of the contents studied, enabling the development of abilities and skills that a modern judge needs to adequately perform his tasks.

Therefore, as a response to the research problem, which is based on the references mentioned in this study, it can be said that effective training of magistrates requires the observance of principles and guidelines aimed at learning, not only legal and judicial knowledge, but also of multidisciplinary knowledge, through the development of professional skills and competences as well as values for the performance of the activity in a critical perspective of application of law and social assessment of concrete cases.

To undertake a virtuous journey into the contemporary era, in order to “understand the updated awareness of the judge’s role”, it will be necessary to follow the path of organization and formation, combined with the management of processes, in the spirit of speed, but with respect to the fundamental rights of peoples, thus improving the judicial system without ever colliding with the noble values of democracy.³⁵

Finally, in order to stimulate the continuity of new research on this subject, we refer to the Portuguese jurist Boaventura de Sousa Santos, who warns:

[T]he formation must also pay special attention to the future, to which it does not reach the courts, to new rights to which in society is not likely to have the legal guarantees that the judicial system allows in democratic societies and to new dynamics of change in the management and governance of the justice system.³⁶

³⁵ See Mirella Delia, *La modernità del giudice e la B.D.D.C.: viaggio virtuoso fra le vie dell’organizzazione e della formazione*. [The modernity of judges and the Conciliative Database: an excursus among organisation and training] 1-2 *LA MAGISTRATURA* 192, 192-202 (2017) (It.), http://www.associazionemagistrati.it/rivista/numeri/nm_5.pdf.

³⁶ SANTOS, *supra* note 5, at 505.