



European Network of Councils  
for the Judiciary (ENCJ)

Réseau européen des Conseils  
de la Justice (RECJ)

---

**Address Paul Gilligan**

**President of the ENCJ**

**Assises de la Justice 21 November 2013 Brussels**

**<<check against delivery>>**

The European Network of Councils for the Judiciary (ENCJ), of which I have the honour to be President, was formally established in Rome in 2004. Next year, we will celebrate our 10<sup>th</sup> anniversary and look back with pride on our achievements and look forward with new ideas as to how the ENCJ can continue its role in furthering the common area of justice. The ENCJ consists of the 20 Councils for the Judiciary and similar institutions presently in existence in the European Union. Our aim is to reinforce an independent yet accountable judiciary and to promote best practices to enable the judiciary to deliver timely, effective and quality justice for the benefit of all citizens. Membership of the ENCJ is open to all autonomous national institutions of Member States of the EU Union which ensure the final responsibility for the support of the judiciary in the independent delivery of justice. The status of observer is granted to the Ministries of Justice in EU Member States where no Council exists such as Germany and Austria in addition to Councils for the Judiciary from candidate Member States.

The ENCJ is a not-for profit association with an office in Brussels to support the functioning of the network and to liaise on behalf of its Members with the EU Institutions.

We consider the sharing of experiences and best practices in the judicial arena contributes to the development of a European Judicial Culture. Our *modus operandi* consists of setting up three to four project groups from amongst our members each year which then research the subject matter, discuss and prepare a report for approval at the following ENCJ General Assembly. The reports contain principles of best practice and/or minimum standards in

1

arrears such as ethics, appointment and promotion of members of the judiciary, judicial reform, evaluation and irremovably, public and mutual confidence and like topics which when adopted form part of the ENCJ *acquis*. We are currently working on reports relating to independence and accountability and the allocation of cases. An example of our work in action is the recent adoption by the Belgian Conseil Superieur de la Justice of our work on Judicial Ethics in their Guide pour le Magistrats "*Principes Valeurs et Qualités*" 27<sup>th</sup> June, 2012.

The ENCJ has long come to recognise since its foundation, the absolute necessity for the benefit of every citizen of Europe that there is in place an effective quality system of justice which contributes to social peace, economic development and security for all interested parties.

ENCJ membership brings together National Councils and has the benefit through dialogue of revealing strengths and weaknesses in a variety of local systems and thus assists Councils in reflecting on their own judicial systems and to identify areas of improvement.

As a consequence of the economic crisis systems of justice have come under strain. The volume of cases both civil and criminal has escalated and often essential resources requiring financial backing are not available. There needs to be greater support for Councils and an understanding that the judicial system must be adequately funded. It is very disappointing to see the budgets of Councils being reduced against an ever increasing workload and in certain instances changes being brought about in the nature of judicial representation in the guise of fiscal rectitude by the executive. To maintain an effective and quality system of justice, there has to be maintained in place an autonomous constitutionally established Council for the Judiciary which is properly funded by a ring fenced budget and established and constituted so as to protect the independence of the judiciary from improper influences.

Councils and the judiciary themselves need to identify problem areas and initiate and propose reforms. After all, it is the judiciary who work at the coal face of all justice systems.

The aim of reform should not be driven by financial considerations but should instead concentrate on improving ease of access to justice. It should also maintain and improve high quality justice delivery, ensure consistency of judgments and timeliness, provide an effective service to the public and protect judicial independence. The ENCJ has found over time that national judiciaries and councils for the judiciary are often not sufficiently involved in devising development strategy, which is drafted and adopted by the executive and legislative branches of government and subsequently enforced by legislation. Moreover, at times decisions are heavily influenced by financial considerations. The funding systems of the judiciary are often weak in themselves and judiciaries are vulnerable to ill-informed outside interventions. Furthermore, there can be a lack of awareness of the importance of a well-functioning, independent and accountable judiciary for society in general and the economy in particular. Balancing the scales of justice, judicial reform cannot be handled by the judiciary alone. Laws that regulate judicial procedures must from time to time be revised and judicial reform thus requires the cooperation of the three branches of governance but we do suggest that the judiciary should be involved at all stages of proposed reforms.

I pause simply to give an interesting example from the Irish judicial system, which in 2004 saw the setting up of a specialised Commercial Court in the High Court division\_which, since its inception, has been headed up by Mr. Justice Peter Kelly, who is assisted by three other judges. A litigant in commercial proceedings where the value of the case exceeds one million euro can apply for admission to the Commercial Court and upon entry the case will be very strictly case managed. Since 12<sup>th</sup> January, 2004, 1,799 cases have been entered into the Irish Commercial Court for hearing and 1,695 have been disposed of leaving 104 cases outstanding. The current average waiting period from entry to the Commercial List to the conclusion of the proceedings is 20 weeks and in a further breakdown, 50% of all cases have been concluded in less than 12 weeks. The Irish Commercial Court works exceptionally well and is the foundation stone for much inward international investment into Ireland. It could be a basis for a quality reform in many countries and will result in a much more effective system.

No party to any proceeding should have to endure an unreasonable period of time prior to the conclusion of legal proceedings before the courts. In this regard, timeliness and the

problems connected to delayed judgments and backlogs are a cause for serious concern particularly having regard to art 47 of the Charter of Fundamental Rights. We have examined a variety of obstructions that hinder timely judgments and the remedies that may be utilised to overcome the difficulties. We have organised a very successful regional seminar in Warsaw in 2013 and are planning a further seminar at a location in Western Europe in 2014. The aim of these seminars is to increase awareness of the problems associated with timeliness, deepen the understanding of causes and remedies, and to discuss recommendations and cooperation between stakeholders. Organising these timeliness seminars at a regional level with participants from countries within a region with comparable culture and legal tradition allows for a concrete and operational approach which can only benefit individual systems.

The ENCJ welcomes the initiative of the Justice Scoreboard and is of the view that it will assist the further promotion of effective justice systems in the European Union. The significant aspect of the Scoreboard involve components such as quality, efficiency and independence and we in the ENCJ would like to add a fourth element namely, accountability. We accept that it can be argued that accountability is an inextricable element of independence, but we are of the view that it is an aspect that in these modern times and from the perspective of both the executive and the judiciary is a vital ingredient in the justice system to ensure public confidence.

The ENCJ is providing its expertise by way of assistance. The indicators in the 2013 Justice Scoreboard give a general idea on the state of affairs in a justice system. The reports developed by our network distinguish how the Judiciary are central to reforms and effective justice systems and identify how change may be delivered in the day to day running of the courts. The Justice Scoreboard focuses in the 2013 version on the monitoring of court activities. ENCJ take the view that an effective justice system must assess itself against broad criteria relating to people's trust in justice and their sense of security. ENCJ has studied the various ways in which public confidence is measured across the EU with the aim to develop a tool that could be used to measure and compare public opinion on the functioning of the court systems in the EU. The result of this work could assist and feed into the Justice Scoreboard.

ENCJ is of the opinion that the Justice Scoreboard will have a positive effect and raise awareness in the Member States for a more effective justice system and its contribution to economic growth. We are aware that data as provided in the Justice Scoreboard can be subject to different interpretations and therefore wish to reiterate, that every economic measure however transitory which is likely to affect the judiciary must preserve the essential role of justice in a democratic society. The judiciary must continue to guarantee, even in stringent economic situations, the fundamental right of every citizen of access to justice, effective protection of fundamental rights and the delivery of quality justice in a reasonable time.

We agree with the Commission that the elements relevant to the structural independence of the judiciary are currently underexposed in the Justice Scoreboard. ENCJ has identified a number of important risks facing judicial independence, which have come about as a result of the current economically adverse conditions and political developments. Examples that are widely found include the risk of

- (1) Inadequate investment in the judiciary, courts and judicial structures.
- (2) Reduction in judicial pay and pensions and adverse changes to judicial conditions.
- (3) Challenges to the security of tenure and retirement age of judges.
- (4) The absence of a satisfactorily independent system for the selection, appointment, promotion, discipline and removal of judges.
- (5) Problems in recruiting judges of adequate quality, particularly for certain roles and in certain regions.
- (6) The absence of satisfactory systems for the appropriate allocation of judges to particular cases.
- (7) Gratuitous criticism of judicial decisions by politicians, parliamentarians and the executive, and how judges respond to them.
- (8) The failure of judges to reflect changes in civil society, and their being out of touch with ordinary citizens.
- (9) Increases in case complexity and workload.

It is necessary to find ways to deal with problems of this nature in order to uphold independent and fully accountable justice systems. The Justice Scoreboard is an opportunity to empower Judiciaries to withstand attacks on their independence. We are undertaking a project involving close collaboration with the European Commission which will result in a set of quantifiable indicators for the independence and accountability of the judiciary.

As Vice President Reding stated in her address on the Rule of Law, the ENCJ and other networks are working in cooperation with the EC on the Justice Scoreboard. We would like to emphasise that the Network of Councils for the Judiciary, the Network of Presidents of the Supreme Court and the Network of Councils of State represent on a European level the formally established national institutions covering the field of administration of justice. We have found that whereas the contact between the various judicial entities at an EU level is functioning well contact with the EU institutions could be improved. There is no system of structured dialogue in place. To strengthen the position of the judiciaries of the EU and to enable the judiciaries to fuel the debate on the future of the common Area of Justice we feel that there is a need for a recognized –informal- body that would meet regularly and serve as a sounding board for the EU Institutions and at the same time as a body that would represent the judicial perspective to the Institutions. In our view this body would serve as the link between the national judicial authorities and the Community bodies and could thus be charged with an early warning system when the quality and effectiveness of the judiciary and the judicial system in the European Union is at stake.

Thank you very much for your attention.