



European Network of Councils
for the Judiciary (ENCJ)

Réseau européen des Conseils
de la Justice (RECJ)

ENCJ Activity Report

2016-2017



Co-funded by the Justice Programme of the European Union

Introduction

The General Assembly in Warsaw adopted the work plan for 2016/2017, which included the normal functioning of the association and set out four main projects. They were:

- Project 1 Independence and Accountability and Quality of the Judiciary– continuation
- Project 2 Dispute Resolution/ Judicial Domain
- Project 3 Timeliness Seminar
- Project 4 Digital Justice Seminar

1. REPORT FROM THE EXECUTIVE BOARD

1.1. Meetings

The Executive Board met in July and November 2016 and an informal meeting took place in September 2016 in Rome on the first day of the Joint Meeting. In 2017, the Board met twice on 13th February and 8th May. Written reports of most of the meetings were sent to the Members and Observers of the Association.

1.2 Results

1.2.1 Functioning of the Association

Partnership agreement and Operating Grant

The Partnership Agreement providing a financial framework between the ENCJ and the European Commission for 2015-2017 was signed in June 2015. The ENCJ has been awarded a subvention for 2017. Besides the projects mentioned in the ENCJ 2016/2017 work-plan, which was adopted by the General Assembly in Warsaw, the budget foresees the renewal/ update of the ENCJ website.

Furthermore, the internship programme will be continued in a slightly different format. The programme will give the opportunity to two persons working for ENCJ Members to come to Brussels for a period of 2 weeks to learn about the functioning of the EU and the ENCJ. The internships are planned for the autumn of 2017. More information will follow in due course.

ENCJ office

No changes in the office staff occurred. The Office has a staff of 1.4 full-time equivalent (Director Monique van der Goes, 1 fte and assistant Natalie Callebaut, 0.4 fte). A bookkeeper is hired for the accounts for 25 hrs. a year.

1.2.2 Activities Executive Board

Relations with the Members and Observers



The past year the Board has had to deal with the developments in Turkey and later in the year with Poland. With a view to current developments in Europe and beyond, the Board decided to issue [a statement on 25 March 2017](#), the day that the EU celebrates the 60th anniversary of the signing of the Treaty of Rome. The statement stressed that the Rule of Law is one of the founding principles stemming from the common constitutional traditions of all Member States, and is one of the fundamental values upon which the European Union is based. Respect for the Rule of Law is a prerequisite for the protection of all fundamental values listed in the EU Treaties, including democracy and fundamental rights.

Poland

The Board also followed developments in Poland closely. The President was invited to [address](#) a conference in Warsaw, which brought together Polish judges. In January 2017, the Board received a request for co-operation and it drafted [an opinion](#) on the draft-legislation on the reform of the Polish National Judicial Council.

On 9 March the Presidents of the ENCJ, the Network of Presidents of the Supreme Courts of the EU and the Association of Councils of State and Supreme Administrative Jurisdictions (ACA-Europe) were invited for a meeting with the First Vice-President of the European Commission, Mr. Frans Timmermans. The aim of the meeting was to discuss the situation in Poland with regard to the Rule of Law. The networks expressed their solidarity with the Polish judicial authorities and offered their support to the European Commission in its efforts to uphold the Rule of Law and promote fair and impartial courts for the benefit of all.

An ENCJ delegation met a group of representatives of the Polish judiciary in April 2017 and was informed about the ongoing reform of the judiciary by the governing party. After hearing about the legislation under consideration and the reports of regular attacks upon the judiciary in the media by the executive and intimidation of individual judges, the Board published [an additional statement](#) expressing its grave concern about the developments.

Several ENCJ Members endorsed the statement of the Board and issues their own statement expressing concern about the planned judicial reform and its potential effects on the independence of the judiciary.

The President of the ENCJ attended the lawyers' conference in Katowice on 20 May to express ENCJ's solidarity with the Polish legal professions. Over a 1000 lawyers and judges gathered in for a congress to discuss the reform of the judiciary and the state of the rule of law in Poland. The congress was organised by the Association of Polish Judges "Iustitia", the Supreme Bar Council and the National Council of Legal Advisers. The President of the ENCJ Ms Nuria Diaz Abad [addressed](#) the audience and explained ENCJ's position and actions in relation to the planned judicial reform in Poland.

Turkey

The Board continued its discussions with the Turkish High Council for Judges and Prosecutors on developments in Turkey. Immediately after the attempted coup in July when the first course of action of the High Council for Judges and Prosecutors was the suspension of more than 2700 judges and prosecutors the ENCJ Board [issued a statement](#). The board condemned the attempted coup in Turkey but



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also expressed its grave concern and that there was reason to believe that a further purge of the judiciary was taking place under the pretext of the failed coup attempt. The Board reiterated its call to the Turkish Authorities to respect fully the main principles that guarantee the independence of judges and the principles of due process for all those affected. The Board followed developments and attempted to stay in a dialogue with the Turkish Council. Eventually the Board felt that the only solution left was to propose the suspension of the Observer Status of the High Council for Judges and Prosecutors of Turkey. The ENCJ also received many letters from individual judges that were suspended, dismissed and detained. The ENCJ has kept in close contact with the European Commission (DG NEAR and the Cabinet of Commissioner Hahn) to monitor developments.

Other

The Board was represented at conferences in Riga in the framework of the Project on Supreme Courts as guarantee for effectiveness of judicial systems in the European Union and in Slovakia for a conference marking the 15th anniversary of the Judicial Council.

Relations with the European Commission

A number of formal and informal meetings with European Commission representatives were held. Throughout the year there were informal contacts with the Commission in relation to the developments in Turkey and Poland.

On 19 September 2016, the ENCJ participated in an informal brainstorm session, which was organised and hosted by the European Commission. The session aimed to discuss the Quality and Independence of the Justice Systems. Besides the European Commissioner Ms. Vera Jourova and the staff of DG Justice, the participants were representatives of the three main judicial networks: ENCJ, ACA- Europe (Councils of State) and the NPSJCEU (Presidents of the Supreme Courts).

The ENCJ was represented by the President Ms. Nuria Diaz Abad, the former President Lord Justice Geoffrey Vos, Mr. Damir Kontrec (State Judicial Council of Croatia) and Ms. Monique van der Goes.



The discussion focused on the need to increase public confidence in a changing society. There was a particular focus on the EU Justice Scoreboard and the need to develop indicators for the Quality of Justice and to evaluate the effectiveness of the safeguards for the Independence of the Judiciary.

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The discussions with the Commission on the further development of the Justice Scoreboard also continued with a focus on the use of the work done by the Network on the Independence Indicators and the Survey among judges. The Members provided the relevant data for the 2017 Justice Scoreboard.

Relations with the European Parliament

On 15 June 2016 the President participated in a workshop by on the common minimum standards on civil procedure organised by the JURI committee of the European Parliament ([address](#)).

A telephone conference was held with MEP In't Veldt (LIBE committee) on the Pact on Democracy, Rule of Law and Fundamental Rights and the general state of the Rule of Law in Europe. The ENCJ expressed its concern and its willingness to work with the European Parliament on these issues.

Relations with CJEU

In October 2016 the President and director of the ENCJ visited the Court of Justice of the European Union with the aim to strengthen the ties with the Court. The CJEU is officially an observer in the ENCJ Meetings took place with the President, Mr Koen Lenaerts, and with the registrar of the Court. The main outcomes of the discussions were that a representative from the CJEU joined the project on Independence, Accountability and Quality of the Judiciary, the possibility for CJEU to send questionnaires to the ENCJ Members and Observers (CJEU used this instrument on the topic of broadcasting of court hearings) and the promotion of the use by national judges of the preliminary rulings.

The Fundamental Rights Agency

On 17th March the President of the ENCJ, Nuria Díaz Abad and the director of the ENCJ Office Monique van der Goes, had a meeting with the Director of the Fundamental Rights Agency of the European Union, Michael O'Flaherty, and with Jonas Grimheden of the Freedom and Justice Department.

The aim of the meeting was to search for synergies between the work of the two organisations and to discuss possible co-operation. Areas for cooperation identified during the meeting were; the Rule of Law, raising public awareness for fundamental rights including access to justice , in particular as regards disable people, and enhancing the participation of the judiciary in the bi-annual Fundamental Rights Forum organised by the FRA.

Cooperation with the Council of Europe

The ENCJ was represented at the meetings of the CCJE and the CEPEJ. The ENCJ kept the Venice Commission informed of its actions in relation to Turkey and Poland

Cooperation with EJTN (European Judicial Training Network)

The ENCJ was represented at the EJTN General Assembly in Amsterdam in June 2016.

The cooperation with EJTN and the implementation of the blueprint for co-operation continued. The Board felt that an evaluation of the current co-operation is necessary as the current project where ENCJ is acting, as a training-provider does not fit the remit of ENCJ. Nonetheless, at an event in Rome on 15-16 May 2017 the ENCJ principles were introduced to the audience that was consisted of court leaders.

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European Law Institute (ELI)

The ENCJ participated in the ELI General Assembly in Ferrara in September 2016.

This joint project was established to consider concerns that arise from the growth of different forms of alternative dispute resolution (“ADR”). There are many types of ADR, including mediation, early neutral evaluation, arbitration, online dispute resolution (“ODR”), and ombudsman determinations. We use the term “ADR” generically in this report. The joint project team held meetings in September (Brussels) and May (Vienna). A consultation paper was produced within the framework of the project and has been sent to the ENCJ Members and other stakeholders for input.

The expected outcomes of the project at the end of 2017 are:

1. A statement of European best practice in relation to the approach that courts and judges should adopt in interacting with all types of ADR processes.
2. A statement of European best practice in relation to the approach that those responsible for all types of ADR processes should adopt in interacting with courts and judges..
3. Recommendations as to the best European models that could be developed and applied for coherent access to DRPs in respect of different types of dispute, and towards which Member States might wish to progress.

Cooperation with CCBE (Council of Bars and Law Societies of Europe)

The President and a Board representative attended the CCBE conference on innovation and the future of the legal profession in Paris on 21 October 2016. The President delivered [an address](#) on the future of Justice: the judicial perspective.

The ENCJ and the CCBE have taken the next step in the joint-project to take stock of the views of lawyers on the independence of the judges. The board has drafted and submitted a set of proposed questions, based on the survey among judges. The CCBE expects to run the survey in June 2017 and aims to present their findings in the autumn of 2017.

Contacts with other organisations

The **UNODC** was invited to the meeting of the project on Independence, Accountability and Quality of the Judiciary to present [a new initiative](#) that they are launching. They are setting up a Global Integrity Network which aims to connect judges to support each other in upholding judicial integrity and preventing corruption within the justice system. By bringing together Chief Justices, members of judicial disciplinary bodies and judicial training institutions as well as other stakeholders inside and beyond the justice system from across the world, it will create the first ever, global platform dedicated exclusively to this issue. The network will be launched in August 2017.

The **IEEE** ([European Expertise and Expert Institute](#)) attended the Board meeting in May to explain their work and future projects. Their aim is to analyse the role of expertise in contemporary society. They hope that the results of their work could be disseminated through the ENCJ.



2. THE IMPLEMENTATION OF THE 2016-2017 WORK PLAN

Project 1 Independence and Accountability of the Judiciary

The project team met on four occasions; in Rome on 26/27 September, The Hague 8/8 December, Brussels 14 February and Vienna 16/17 March.



The project team in front of the Ministry of Justice of Austria, March 2017

In recent years the ENCJ has developed a framework and vision of independence and accountability of the Judiciary and a set of indicators to assess the state of independence and accountability of EU judicial systems. As part of this undertaking a survey among the judges of Europe was held about their independence in 2014/2015. Last year the indicators were reviewed and revised. Those revised indicators were put into practice this year and a revised survey was performed. This report presents the outcomes. In addition, a first version of a framework and set of indicators for the quality of justice is presented.

Independence and Accountability of the Judiciary

Performance Indicators

In total 23 entities - applied the indicators to their judicial systems. The outcomes are primarily meant to be used by each Judiciary to reflect on its strengths and weaknesses and to address the latter. Whilst improved, the data must be used with care, because it remains difficult to capture very diverse legal systems in indicators.

It can be concluded – largely consistent with the 2014/2015 results – that:

1. There is still much room for improvement with respect to independence as well as accountability.
2. The outcomes for subjective (perceived) independence are ambivalent. The perspective of court users is largely lacking, leading to low scores, whilst corruption is also an issue. On the other hand, citizens in general and judges are generally positive about judicial independence



and in nearly all countries the trust in the Judiciary is higher than the trust in the other state powers.

3. With regard to objective independence, funding of the Judiciary is generally not well arranged, and judiciaries are dependent on discretionary decisions by governments. Court management is still often in the hands - directly or indirectly - of ministries of Justice.
4. With respect to accountability, outcomes vary considerably among countries. Generally, external review of the Judiciary and (disclosure of) external functions of judges get low scores. External review is a complicated issue, because, if it is not commissioned by the Judiciary itself, it opens the door for outside interference with the Judiciary and thus detracts from independence.

Survey among professional judges about their perceptions of independence

One of the indicators with respect to subjective independence concerns the perceptions of judges themselves of their independence. To gather this data, for the second time a survey among the judges of Europe was conducted. This time in total 11,712 judges from 26 countries participated. The first time in 2014/2015 5,878 judges from 20 countries took part. The survey was conducted at the end of 2016. Some information was asked about the personal characteristics of the respondents: gender and experience. Gender has no impact on the score about the independence of the judges in the country. The impact of gender on the opinions about specific aspects of independence is also limited, although differences exist among countries and some countries jump out. The impact of experience is overall small, but in some countries substantial. There is a general tendency that very experienced judges score their independence higher than less experienced judges.

The main findings are the following.

1. As to the overall perception of independence, on a 10-point scale the respondents rate the independence of the judges in their country between 6.5 and 10 on average per country. Five countries have scores between 6.5 and 7.
2. When judges experience inappropriate pressure, the three most given answers as to whom exerts this pressure are: court management including the court president (25%), closely followed by parties (24%) and their lawyers and at wider distance by the media (16%).
3. As to the prevalence of bribes, three categories of judiciaries can be distinguished: (i) judiciaries in which nearly all judges believe that no bribes are accepted; (ii) judiciaries in which a small percentage (less than 4%) of judges believe that bribes are accepted, and 10 - 20% are not sure whether or not bribes are accepted; and (iii) judiciaries in which a higher percentage of judges believe that bribery occurs and many more than 20% (up to 55%) are uncertain whether or not bribes are accepted.
4. The appointment and promotion decisions about judges are major issues, with 22% of judges (average across countries) believing that appointment decisions are not based on merit and experience and 38% believing this to be the case for promotion decisions.
5. The impact of the media on the decisions of judges is large in most countries and is increasing. The influence of social media is much smaller than that of the traditional media, but it is increasing in nearly all countries.
6. 22% of all participating judges feel that the Judiciary is not respected by government and parliament, with 34% thinking the same about the traditional media. The differences among judiciaries are very large. The (lack of) respect shown in the social media is generally seen as less problematic.
7. On average 33% of the judges do not believe that Councils for the Judiciary have the appropriate mechanisms and procedures in order to defend judicial independence effectively.
8. Judges were asked what would contribute most to the independence of the Judiciary in their country. The responses were very consistent: better working conditions regarding work



load was mentioned most often, with working conditions regarding pay including pensions and retirement age in second place, and appointment and promotion based on ability and experience in third place.

Quality of the Judiciary

Starting from a broad perspective on quality of justice, four areas of quality were selected for elaboration in this first phase. These areas are linked with the following essential tasks of the Judiciary:

- Providing public access to the law to guide society
- Guaranteeing due process from the perspective of accessibility
- Adjudicating cases in a timely and effective manner
- Delivering judicial decisions

For these four areas, a concise framework and a set of performance indicators have been developed. The indicators focus on what might be described as ‘output quality’, rather than on ‘quality systems’ (with the exception of the assessment of the quality of decisions).

A distinction is made between the description of objective characteristics and the subjective assessment of performance. Quality is in part determined directly by the arrangements stipulated by law. In addition, some aspects of quality such as the duration of cases are objectively measurable. However, there are also many aspects that can only be assessed subjectively. Subjective assessments can be given by the Judiciary itself (councils/courts/judges) and by court users (parties/lawyers/observers). At this stage, very little is known about the views of court users. Subjective assessment is therefore necessarily limited to the views from within.

The set of indicators was piloted by three judiciaries, and the outcomes are presented in this report. It proved possible to measure the indicators. On the basis of the pilot, it is concluded that the approach to develop performance indicators for quality is useful and interesting. The outcomes can give impetus and priorities for change. The set of indicators is definitely not final. It needs further development, especially in the area of the quality of judicial decisions. Also, it would be important to standardize to some degree the process by which the questionnaire is answered, and in particular how the judges are involved.

As was the case for independence and accountability, it would be of great value to have all members and, if possible, observers of the ENCJ, participate in the measurement of the indicators as a starting point for jointly taking responsibility for quality of justice.

Project 2 Standards VI on Civil Society Representatives in Judicial Governance Structures

The Project Team focused on the relationship and mutual interaction between court proceedings and ADR proceedings, conducted in the context of judicial proceedings in civil law cases. The work of the Project Team presented a challenge since the dimensions of the ADR (in the context of judicial proceedings) are still relatively unknown to the judiciaries in EU, although different ADR techniques are present in all participating countries.

The project team set out to:

1. To examine what impact Court related ADR procedures have on judicial domain.
2. To examine the relationship of Court related ADR procedures and the right to access to justice and the right to trial without undue delay.

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3. To examine whether Court related ADR procedures should be legally regulated to protect the position of parties.
4. To examine the possibility or appropriateness of judges' participation in various Court related ADR procedures, save for arbitration.
5. To examine whether it should be a duty of judges and the courts to encourage parties to resolve their disputes alternatively.

The minimum standards identified as being necessary for Court related ADR in civil proceedings are:

1. The basic procedural safeguards in Court related ADR in civil proceedings should provide;
 - the right to an equal position/equality of arms;
 - that the solution reached within the ADR proceeding is truly the reflection of real and true will of the participants;
 - protection from disclosure of data revealed in ADR in further judicial proceeding;
 - the principle of confidentiality.
2. In order to support the above mentioned procedural safeguards:
 - Only those with training accredited by an appropriate professional body should be allowed to lead an ADR procedure.
 - Appropriate training should be available to all judges to recognise the advantages and risks together with the potential need for ADR procedure.
3. A judge who has led an ADR procedure should not play the role of judge in the following trial, unless in accordance with the domestic law, both parties express the wish to continue to proceed with the same judge and the judge considers the circumstances of the case are such that it would be appropriate for him/her to do so, taking in to account the need for objective independence and impartiality.
4. Parties should be adequately informed with regard to the rules and procedures of ADR.
5. Following the completion of an ADR procedure the settlement may, if approved by a Court, be formally enforced.
6. Parties should have the opportunity once the ADR is finalised, of reopening the case, but only in exceptional circumstances defined by domestic law.

Project 3 Regional Timeliness Seminar

The fourth and last seminar in the series took place in Madrid 28-30 November 2016 for France, Italy, Portugal and Spain. Best practices from the various countries were presented and discussed. Each session started with each of the delegations setting out their particular challenges in the various fields. The seminar focused on Case Load Reduction; Capacity Management; Case Management and Procedures.

The full report of the seminar is available on the ENCJ website.



Project 4 Digital Justice Seminar

On 31st March, the ENCJ organised a Digital Justice Seminar in the District Court of Amsterdam. The aim of the meeting was to identify the role and position of Councils and/or the Judiciaries in the Digital Justice Age. In many countries the judiciaries are not, or not sufficiently involved in the development of new e-justice applications. Participants will explore what the position of the judiciary is, or should be, in the whole digitisation process. The seminar also served to identify the ENCJ Strategy in this field.

The programme was organised around discussions on four themes:

1. Access to Justice in a Digital Age - presentation Merit Kolvart, Ministry of Justice Estonia
2. Big Data - presentation Bart van der Sloot, Tilburg University
3. IT systems: from being supportive to running the system
4. European e-Justice Strategy

Some of the general conclusions of the day were that Councils for the Judiciary should be:

- Advising MoJs
- Involved in IT development
- Ownership or control of (big) data
- Responsibility for data
- Ensuring quality, human rights, rule of law
- Responsible for legal self-help?
- For publishing court decisions? Free and online available?

The complete findings and conclusions can be found [here](#).



Impressions of the Digital Justice Seminar in Amsterdam, 31 March 2017

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Full list of ENCJ meetings 2016-2017

2016

4 July	Meeting Executive Board	Madrid	Spain
26-27 September	Joint meeting new ENCJ Projects	Rome	Italy
21 November	Meeting Executive Board	ENCJ Office	Brussels
28-30 November	Regional Timeliness Seminar	Madrid	Spain
8 December	Extra-ordinary General Assembly	The Hague	Netherlands
8-9 December	Meeting PT 1 Independence and Quality	The Hague	Netherlands
12-13 December	Meeting PT 2 Judicial Domain	Bratislava	Slovakia

2017

13 February	Meeting Executive Board	ENCJ Office	Brussels
14 February	Meeting PT 1 Independence and Quality	ENCJ Office	Brussels
13-14 March	Meeting PT 2 Judicial Domain	Ljubljana	Slovenia
16-17 March	Meeting PT 1 Independence and Quality	Vienna	Austria
31 March	Digital Justice Seminar	Amsterdam	Netherlands
13 April	Co-ordinators meeting PT 2 Judicial Domain	ENCJ Office	Brussels
8 May	Meeting Executive Board	ENCJ Office	Brussels

