Conference report

Rapport de la conférence

The European Network of Councils for the Judiciary (ENCJ)

General Assembly

Le Réseau Européen des Conseils de la Justice (RECJ)

Assemblée Générale

Wroclaw

25-26 May 2006

le 25-26 mai 2006

Conference report

I. Conference report – General Assembly of ENCJ
Wroclaw, 25-26 May 2006

Introduction

The second official meeting of the General Assembly of the European Network of Councils for the Judiciary (ENCJ), after its foundation in 2004, took place in Wroclaw on 25-26 May 2006.

The Polish National Council of the Judiciary and the Supreme Administrative Court of Wroclaw organised and hosted the meeting. Representatives from 34 countries participated in the conference, including all ENCJ members (15) and observers (13), several potential members and a number of special guests.

Moreover, representatives from different European Networks and from the European Commission actively contributed to the conference by discussing the possibilities for future co-operation between ENCJ and various European networks and institutions.

Programme

The general theme of the conference was 'Public confidence in an independent judiciary in Europe'. The objective of the conference was twofold: on the one hand discuss the role of ENCJ in the European judicial area and co-operation with other institutions, and on the other hand determine priorities for future co-operation within the network itself. There was also ample opportunity to exchange experiences and further strengthen contacts between ENCJ members and observers.

On the **first day** of the conference, two new observers were welcomed to the network. Furthermore, four representatives from different European institutions and networks took the floor and presented their view on the role of European networks in the European Union.

The ENCJ Working Groups on *Mission and Vision, Case management, Judicial Conduct* and *Judiciary and the Media* briefly presented the results of their activities of the past year to the audience.

Thereafter, the participants split up to meet in smaller subgroups in order to discuss issues currently important to their respective judiciary organisations. These interactive sessions resulted in a list of topics giving rise to inspiration for future activities of ENCJ.

On the **second day** of the conference, this list of topics was presented to all participants, and the General Assembly decided to establish six new Working Groups on the following topics:
1. Liability of individual judges and independence;
2. Performance management of judges by judges;
3. Mission and Vision (III);
4. Courts funding and accountability in relation to independence;
5. Strengthening mutual confidence in the EU;
6. Internal organisation of ENCJ.

Subsequently, a preliminary meeting of these new working groups took place, to elaborate the contents and activities of the working groups.

In addition to the official programme, the Supreme Administrative Court of Poland organised a welcome reception at the Architecture Museum, and the mayor of Wroclaw invited all participants for a dinner at the monumental City Hall in the centre of town.

May 25 – Morning session

After being welcomed by ***Mr. Rafal Dutkiewicz (mayor of Wroclaw)***, the participants were welcomed by ***Mr. Stanislaw Dabrowski (Chairman of the Polish National Council of the Judiciary)***. He referred to the theme of the conference expressing that effective execution of judiciary power is not possible without social confidence. Society needs independent judges and courts and the executive power should not interfere in their tasks. However, the executive power has a number of competences related to the work of the courts, for example in the field of budgeting, nominations and disciplinary matters and independence could be at stake. One of the main tasks of the Polish National Council, which is also enshrined in the constitution, is to protect the independence.

Professor Luigi Berlinguer (President of ENCJ, Member of the Italian High Council for the Judiciary) started by presenting a letter that was sent on behalf of the ENCJ to the Turkish Council of State about the shooting incident in Ankara in May 2006. Furthermore he officially welcomed the High Council for Judges and Prosecutors of the Republic of Turkey and the Ministry of Justice of Luxembourg as new observers to ENCJ.

In his opening speech, professor Berlinguer underlined that the ENCJ fulfils a particular need in the field of European justice: building a bridge between the EU institutions and the world of justice. In several countries the topic of justice is subject to a growing tension, in the field of efficiency, security, public opinion and relations with the political powers. In addition, the public opinion on matters of justice is becoming more and more important. The judiciary should be aware of the citizens' needs and not remain too limited in the solely technical aspect of law.
The next conference of the Council of Europe (in 2007) will focus on self-governance systems for the judiciary and the ENCJ has offered to collaborate in preparing for the meeting. The principle of separation of powers in modern times creates its own challenges, and is applied in different ways in different countries.
ENCJ also strives for contributing to European judicial co-operation and the European area of justice by responding to proposals and suggestions from the European Commission. In this way, ENCJ members are working together towards mutual recognition and creating a European legal culture. This common legal culture is a key factor for harmonisation and mutual trust.
Finally, ENCJ must reflect on its organisational set up, in order to achieve these ambitious goals.

Mr. Franco Frattini (Vice-President of the European Commission, Commissioner for Justice, Freedom and Security) expressed the wish of the European Commission to become involved in the activities of ENCJ relating to the improvement and strengthening of mutual knowledge and reciprocal trust.
All over Europe, there is a growing demand for justice, caused by the increased complexity of modern societies. More citizens have contact with the judiciary nowadays and therefore the public's confidence in judicial systems is very important. This of course depends primarily on the quality of justice, which also plays an important role in the European dimension. Quality of justice is a prerequisite for mutual trust between EU member states as well, enabling enforcement of judicial decisions throughout the territory of the Union. The quality of justice is also crucial to the economy: an effective legal environment and a solid, reliable justice system are an asset in global competition.
The European Union is developing several types of instruments to strengthen mutual trust. For example legislative actions in the field of criminal and civil law, attaining to approximate substantive as well as procedural law in order and to promote coherence within the European

judicial system. The implementation of legislation is also facilitated by the EU, for example in the field of judicial training. The EU supports the work of the European Judicial Training Network (EJTN) and would like to strengthen networks like ENCJ as well. The EU is of the opinion that this kind of networks have a crucial role to play in building the common judicial culture that the Hague Programme has pinned its hopes on. Another key area that the Commission wants to focus on to strengthen mutual trust is evaluation of European policies in the field of justice. This evaluation should contribute to promote high quality standards of judgements eligible for enforcement in the European Union. These judgements can only be enforced when mutual trust is a reality. To achieve this, one of the first conditions is reciprocal knowledge of the organisation of the judicial systems in the EU. ENCJ has an important role in this respect.

Mr. Guy Canivet (President of the Network of the Presidents of the Judicial Supreme Courts in the European Union (EUSJC)) discussed the practical implications of legal systems in the strengthening of mutual confidence between judges and member states of the European Union. Mutual recognition presupposes mutual confidence, but this mutual confidence is not a natural thing and has to be put in effect by way of specific actions. In order to do so the reasons for the reservations in terms of confidence and trust (incurred by the differences between the judicial systems) have to be examined. There are cultural (different concepts, languages) as well as structural causes (institutional differences, differences in qualifications of judges, etc.). Subsequently, practical means by which mutual confidence can be strengthened have to be examined and implemented. This requires the direct and strong involvement of each judicial system. Justified confidence is created by knowledge and by exchange. Knowledge of each other's systems, institutional mechanisms and for example knowledge about the appointment and training of judges and prosecutors. Exchanges need to be undertaken to learn from each other in practice and to become familiar with each other's systems. Furthermore, standards of quality should be established. At this moment, various European institutions are working on developing a system of evaluation of the quality of justice.
In the long run, perhaps a European Council for the Judiciary, a representative body of European judicial power, should be created. All judges in Europe will become more and more European judges and apply a common (European) law and they should be represented in such a body.

Mr. Gilles Charbonnier (Secretary General of the European Judicial Training Network - EJTN) underlined the joint effort of all European networks and institutions in working on 'the European project'. This project enables the different systems to transcend the differences, turn the attention to building a common future and construct a single European Judicial Area. Each network has its particular field of specialisation, but co-operation is indispensable on certain topics.
The EJTN was established as a result of a need expressed by judges and prosecutors for better training in EU matters, mechanisms for judicial co-operation and the characteristics of the different judiciaries throughout Europe. Consequently, the EJTN organises judicial exchange programmes, publishes a catalogue with training courses in different countries and develops training modules. As far as relations with the ENCJ are concerned, the judicial exchange programme would offer a starting point for joint action. A partnership between the two networks could furthermore contribute to an exchange of information on a more regular basis and co-operation in other joint projects regarding issues of common interest.

Mr. Orlando Afonso (Member of the Consultative Council of European Judges – CCJE)
The Consultative Council of European Judges was established by the Committee of Ministers of the Council of Europe to strengthen the role of judges in Europe. The CCJE is composed exclusively of judges and has an advisory task to the Council of Europe on topics related to independence and impartiality. In 2001, the CCJE has submitted an opinion on standards concerning the independence of the judiciary and the irremovability of judges. Independence is a guarantee for impartiality of the judge towards the citizen. The task of the councils for the judiciary should be to guarantee the independence of the judiciary. In the near future, the CCJE will involve ENCJ in its conference on the topic of self-governing bodies for the judiciary.

During the **Forum discussion,** chaired by ***Mrs. Edith van den Broeck (Chair of the High Council of Justice of Belgium)***, Mr. Canivet, Mr. Charbonnier, Mr. Afonso and Mrs. Jegouzo (on behalf of Mr. Frattini), discussed *various questions.*

The first one related to the expectations of the European Commission towards the role of the different networks in Europe. Mme Jegouzo (EC) indicated that the networks have a role in promoting a so-called European legal culture and more in particular, in stimulating judges to use the instruments that the EU has provided to facilitate judicial co-operation. Moreover, the

networks play an important role in strengthening mutual confidence. In addition, the EC will request the networks to provide opinions and participate in consultations on certain topics of European legislation. The networks should develop concrete activities, such as drawing up reports in specialised working groups and implementing exchange programmes.

The second question related to the risk of overlap in the work of the networks.
The representatives of the networks think that the EC has an important role in exchanging information with all networks and then make specific requests to the relevant network(s).
Also, the networks should exchange information between themselves and try to achieve synergy and avoid repeating each other's work. With relation to topics that the networks have in common this is even more important. The networks should create practical ways of joining their efforts and make strategic plans in this respect for the future. One example is the co-operation between the EJTN and the EUSJC in the field of 'pédagogie en ligne'. Another example is the future co-operation between the CCJE and the ENCJ on the 2007 conference of the Council of Europe on self-governing bodies of the judiciary.

A *third question* concerned the expectations of the networks towards the European Commission. A number of remarks were made by the representatives of the networks:
The networks should be involved in the evaluation of (the quality of) judicial systems that the EU (in co-operation with the Council of Europe) is undertaking, and more specifically, judges should be involved.
Furthermore, the networks expect that the European Commission takes into account the input from the networks resulting from their activities. On the other hand, the networks want to know what the European Commission requires from the related professions and in addition, whether funds are available to make the implementation of these requirements possible.
The EC responded by making clear that the professional parties will indeed be involved in the evaluation programme. With regard to funding: for 2007-2013 a substantial amount has been set aside for the justice sector, including possibilities for the networks.

In her concluding remarks, Edith van den Broeck indicated that the Hague Programme explicitly refers to the work of the Networks. These networks should be able to respond to the requests from the European Commission. It is their responsibility to contribute to the European area of freedom, security and justice. In order to be able to do so, the networks

should cooperate on a structural basis and have the necessary funds at their disposal to fulfil these tasks.

May 25 – Afternoon session

Working Groups 2005-2006

The ENCJ working groups that were created in Barcelona in 2005, all presented their results to the General Assembly.

1. Working group *Mission and vision – developing a strategy for the council* (Working group co-ordinator: Belgium) - Mr. Geert Vervaeke

This working group, in which 11 countries participated, presented a comprehensive report. In this report the aims of strategic management and an action framework for strategic management are presented. Moreover, the experiences and lessons learned from a number of countries are included. The members of the working group met four times and exchanged information by e-mail. The action framework for strategic management that was designed can serve as a guideline and a source of inspiration for those councils that want to develop a strategy for their organisation. In general, strategic management should be seen as an ongoing process, a learning process. Its aim is to increase public confidence in the judiciary, by opening out and making the intentions, processes and performances of the organisation more transparent. The working group proposed to continue its activities in 2006-2007, in the field of performance assessment.

2. Working group *Case management* (Working group co-ordinator: England and Wales) - Sir John Thomas

Case management has strong links with quality and with judicial independence, according to the working group. Therefore, the involvement of judges in setting standards and determining targets is crucial. There should be a balance between efficiency and quality in dealing with caseloads. Litigants expect their cases to be dealt with within a certain time limit, but also according to certain quality standards. Public confidence can only be increased if both these aspects are taken seriously.

The working group on case management decided to limit the scope of the work to two main issues:

a. the provision and management of resources; and

b. the timeliness within which cases are decided.

In its report, the working group dealt with different aspects of these two issues.

3. Working group *Judicial Conduct* (Working group co-ordinator: Italy) - Mr. Giuseppe Salmé

By means of a questionnaire, this working group collected information from 18 countries on the meaning of judicial conduct in the different systems. Reference is made in the final report to instruments that have been developed already in the international context in this field (UN, Council of Europe). In the report a distinction is made between disciplinary liability and professional conduct: disciplinary wrongdoing entails the violation of a principle of judicial conduct, whereas the reverse is not necessarily true.

Codes of judicial conduct have been adopted in a small number of countries in Europe, including principles relating to impartiality and independence.

Judicial conduct determines to a great extent the image of the judiciary towards the public. In order to strengthen public confidence, it is therefore an important element in the system of the administration of justice.

4. Working Group *Judiciary and the Media* (Working group co-ordinator: The Netherlands) - Mrs. Marlies Bouman

The media directly influence the public confidence in the judiciary, because the public receives most of the information on the judiciary through the media. This information is not always correct and the education of journalists is crucial in this respect. This was one of the conclusions of the participants of the working group. Furthermore, the role of the Council for the Judiciary in press relations was discussed as well as the organisation of media relations in daily practice. The working group formulated a written reaction on the opinion of the CCJE on the topic “Justice and society”.

The working group concluded that the development of a European model for the organisation of media relations is not necessary, however it could be useful to organise an inventory of best practices in the field of communications and press relations. Other relevant topics for future discussion that were proposed by the working group: publication of judgements on the internet, spokespersons in the courts, guidelines for the press, camera’s in the court room, and a public information programme. The working group could discuss such issues once every couple of years.

The reports of the working groups are available on www.encj.net.

After the presentations by the working groups the participants split up in small groups to discuss current important issues in the national judiciaries. Each group selected a number of issues relevant for further action within the framework of ENCJ, which were presented to the other participants on the second day of the conference.

Appointment of ENCJ Organs

A proposal (from the Steering Committee) to renew the terms of office of the President, the Secretary General and the Steering Committee was approved by the General Assembly. The position of President will be fulfilled by Italy until the end of April 2007, and subsequently Belgium will fulfill the position until September 2008.

May 26

Mr. Bert van Delden (Secretary General of ENCJ) looked back on the past 3,5 years in which the ENCJ has been initiated, founded and has developed to become an organisation with representatives from almost all judiciary organisations in the European Union. A number of activities has been undertaken and the question now is how to move on. Exchange information on topics of common interest between the members, or focus more on a representative role in the European context? It is important to identify a common ground, acceptable and meaningful to all – there should be something in it for everyone. Therefore, the Steering Committee has opted for the participatory approach of the subgroups, which offered the opportunity to discuss important issues on a smaller scale. The results should offer a basis for new activities.
But there are also ongoing activities that are important, like the work of the Standing Committee on the ENCJ website, co-ordinated by the Spanish Council.

Presentation of results of subgroups (by Mr. Luigi Marini, Italian High Council for the Judiciary)

The issues that were listed by the (seven) subgroups were collected and could be divided into four different categories:

1. Public needs
    - Diversity and multiculturalism

- Mass media (pressure of public opinion on decisions) and public confidence
- Spokesperson for the judiciary (Supreme Court or Council?)
- Quality of judicial services

2. Magistrates' affairs
   - Human resources (Salaries, pension, terms, conditions, qualifications)
   - Performance management of judges by judges
   - Liability of individual judges
   - Judicial conduct - common principles
3. Organisation and efficiency
   - Assessing performance of organisations (Council –department – courts)
   - Implementation of European instruments in relation to independence and efficiency of the judiciary
   - Standards of security in courts
   - Courts Funding and accountability in relation to independence
   - Temporary mandate of judges
   - Case handling
4. ENCJ and Councils
   - Atlas of national judicial systems
   - Role of Councils/Network and appointment of judges in European courts
   - Electronic ways of sharing information among Councils
   - Role of Councils in international judicial co-operation
   - Mission and vision (continuation of working group)
   - Organisation and functioning of the ENCJ

The co-ordinators of the subgroups proposed five **new working groups** to the General Assembly:

a. Liability of (individual) judges and independence

b. Performance management of judges by judges

c. Mission and Vision (III)

d. Courts funding and accountability in relation to independence.

e. Internal organisation of ENCJ (proposal by the Spanish Council)

The General Assembly decided, in addition to those five working groups, to establish a sixth working group on the **Strengthening of mutual confidence in the European Union**. Mutual

confidence is a precondition for the implementation of European instruments and ENCJ is the appropriate forum to define and develop mutual confidence between EU members. The representative from the European Commission, Mrs. Isabelle Jegouzo underlined this and strongly encouraged ENCJ to organise a working group directly related to European affairs.

After the agreement on the six new working groups, a preliminary meeting of the new working groups took place, to elaborate the contents and activities of the working groups.

Prof. Luigi Berlinguer (President of ENCJ) officially closed the conference by concluding that ENCJ is moving forward and that the content of this conference has proven that another step has been taken. The European Commission is now requesting ENCJ to provide input in the work of the Commission, whereas not so long ago, ENCJ presented itself to the EC as a new organisation. EU policy has its impact on member countries and the EU is asking ENCJ to support the efforts in strengthening mutual confidence and the exchange of information. The ENCJ working groups have been very productive in this last respect, however they should be more concrete in indicating steps to be taken. Another future challenge for ENCJ is to co-operate with the other European networks such as the EJTN and the EUSJC.
One of the key elements of judiciary systems remains the independence of the systems and their magistrates. In most countries the executive power has competencies in the field of budget – this could breach the independence of the judiciary. The conference of CCJE in 2007 will offer opportunities to further discuss these issues and to ENCJ and CCJE to co-operate in the near future. Independence is an important condition for a certain degree of public confidence. This confidence is of the utmost importance, as the citizens (our 'customers') are the ones who benefit from independent judicial institutions and the work of judges and prosecutors.
Professor Berlinguer thanked the Polish colleagues for their very efficient organisation of the conference and abundant hospitality.

Mr. Ryszard Pek (President of the Voivodeship Administrative Tribunal in Wroclaw) expressed words of gratitude to all participants and organisers.

The full text of the speeches is included in Chapter II of this report.

II. Speeches

Mr. Stanislaw Dabrowski – Chairman of the Polish Council for the Judiciary

On behalf of the Polish Council for the Judiciary and myself I am greeting you cordially.

I am so happy that we can host such eminent persons in Poland. I am sure that our meeting will enable us to articulate some common problems of the judiciary as well as will help to solve them. I consider that the main topic of the conference is "Public confidence in an independent judiciary in Europe" is very well chosen. Without confidence from the public, effective execution of judiciary power is not possible.
Without this confidence, any verdicts - even objectively correct - will not be accepted by litigants or public opinion.

Independence is not a privilege of judges, but it is a guarantee of execution of judiciary power, administering justice in agreement with the law. So it is a value serving not only judges, but society as well. Unfortunately, this is not always understood, especially by politicians. Protection of independence of judges and courts is a basic constitutional role of the Polish Council for the Judiciary. In these kind of questions, in relationship with other state power organs, our position is very strict. However, in the Polish system executive power has a real control over administration and provision of finances. What's more, executive power is trying to enlarge its large competence.

In this context we can see several questions which clearly have international dimensions. What are possible limits of administrative competence of executive rule over the courts? Is independence not endangered by the competence of the executive power like making the budget and court officers, nominating and removal of judges, setting standards in terms of number of cases given to judges and discipline of judges.

Is it consistent with court independence, when the office which is completely responsible for training the candidates for judges is completely controlled by the executive power? How to improve the system of nominating new judges in order to get the best lawyers (in terms of

morality and professionalism) to become judges? What should be the systems of training of judges and evaluation of their work to keep the consistency with demand of independence and at the same time to motivate them for professional development?

I hope that the conference that is beginning today, and following meetings organised by ENCJ, will help to solve the problems important for the judiciary in European countries. Maybe we will be able to set common European standards...

Professor Luigi Berlinguer – President of ENCJ, Member of the Italian Superior Council for the Judiciary

Dear friends and colleagues,
I would first of all like to greet all the illustrious speakers who will take the floor this morning;

Greetings to the member countries of the network;
To new participants and guests;

Special thanks to our Polish hosts who have welcomed us here in Wroclaw.

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Our network is two years old. A very young age.
It is a young, light body without its own resources. It does not have great powers.
More than anything, it is a forum for comparison, for mutual knowledge and experience, necessary for the European area of freedom, security and justice.
In spite of all this, the ENCJ receives a lot of attention, we have new members, the EU Commission wants our collaboration, and the Council of Europe does too. The Supreme Court and judicial training networks have also broached the subject. I would like to thank them all for this attention.
I believe that the ENCJ's success is mostly due to the fact that the formula of networks is now becoming commonplace in Europe as the method of Europeanisation from the bottom up, with smaller structures. However, I believe that it is also due to the possibility that we have in responding to a particular need in the field of European justice: building a bridge between the EU institutions and the world of justice.
After two years, we can ask ourselves "what's next" for our network. The Secretary General will provide an initial answer to that later in the day. I would only like to draw your attention to the fact that there are signs of tension surrounding the subject of justice in European countries that we must not neglect.

Moments of social emotion around judicial matters, a growing demand of dissatisfied justice, problems of efficacy and efficiency in systems, the need for security and certainty, a few disputes with the political powers and sometimes with public opinion. Our steering committee intervened in brief just a few months ago on these matters, and I think it did the right thing. We must, however, go deeper in our analysis and make a comparative evaluation of the phenomenon to decide on the ways in which the ENCJ can adapt its work.

There is once again a problem of autonomy and independence for the judiciary compared to political power. There is also a problem of efficiency and accountability for the judiciary. In which way can we contribute to a positive evolution of these matters in a European context and as individual countries? We have begun to look at certain aspects, such as evaluation, the judicial conduct, media relations, case and court management, for example: in which way do these specific aspects merge into the general view? I believe that the judiciary must get used to carefully considering the sensitivity of public opinion on matters of justice, looking at the citizens' needs and not remaining too limited in the solely technical aspect of law.

Initiatives have been adopted in several European countries to aid relations and communication between courts of justice the citizens, apparently with good results. I believe that this is an example to be extended more widely.

I consider the next Council of Europe Conference on self-governance systems for the judiciary in the various member states, which will be held in 2007, to be of the utmost importance. The ENCJ has offered to collaborate for this occasion. I also believe that the subject of this conference is a crucial one for justice, as it will look at where judicial self-governance is heading. It will have to examine the new, modern problems and forms of the principle of the separation of powers, the different ways of exercising that power in the various countries, the good and bad points of the various practices and the new tension that is looming on the horizon. Some past experiences of profitable collaboration between the three powers for this matter must not be forgotten, without jeopardizing the principle of separation of the roles. Careful consideration must be given to the ENCJ's contribution to European judicial cooperation and the European area of justice. We will later listen to Commissioner Frattini, whom I would like to thank for coming to this meeting and who has always given us his attention and support. I think that the ENCJ must be in a position to respond quickly and concretely to the proposals and suggestions that come from the Commission, whether they concern very specific matters (let me recall the payment order and the ne bis in idem issues), or whether they are aimed at involving us in broad-ranging initiatives such as the evaluation

of European law making and the latest cooperation initiatives as for their acceptance by and impact on the judicial systems of the various countries.

In this connection, I have a point to raise: I was struck by the circumstance that while we are succeeding in improving European judicial cooperation, we are working towards mutual recognition and we are hoping for the harmonisation of domestic laws, we are also witnessing some new initiatives concerning justice in some countries that are deteriorating a situation of much differing laws and that increase the distance between and the incompatibility of systems. As an example, let me refer to the recent laws on the *juges de proximité*.. Therefore, the issue arises of fostering not only law-making initiatives, which are not our responsibility, but above all a European legal culture, a shared conceptual and technical ground, as this is a key factor for harmonisation and mutual trust. I can think of the significant example provided in the past by constitutional tradition or the field of human rights, in terms of what they have represented in European legal civilisation and in its basic unity.

A final suggestion. After two years, the ENCJ must perhaps begin to reflect on its organisational set up, on the operation of its organs, on its budget and legal nature. Our Spanish colleagues are proposing the creation of an opportunity for reflecting on these matters in the next few months: I think that would be a good idea.

During our meeting today, we will be able to discuss in the plenary as well as to split discussion in subgroups, with the purpose of favouring the widest possible participation in the discussion. I do hope that we will be debating all these issues profitably and in depth, especially in view of the growth of our network.

Mr. Franco Frattini – Vice-President of the European Commission, Commissioner for Justice, Freedom and Security

Mr president,
Representatives of the Judiciary Councils,

- First of all, please allow me to express my delight with – and congratulate you on – this third General Meeting, firstly because of **the very existence of your association**, and secondly because of the **particularly interesting work that you have undertaken** over these past years.

- You represent the institutions that ensure the independence of the judiciary in each Member State, and as a former magistrate myself, I am particularly aware of **the crucial democratic role** that you fulfil.

- I am also particularly pleased to speak to you today because of the theme that you have chosen for your work. **Public confidence in the judiciary is one of the conditions for an effective democracy**, as citizens' access to a quality justice system is one of the central pillars of States governed by the rule of law.

- Particularly in our Western societies, many matters that, in the past, were regulated by the government, the family or the church, are now dealt with by the judiciary, which has become the supreme arbitrator in numerous disputes. The complexity of modern societies combined with scientific progress gives rise to new problems for courts of law to tackle. The result is that, everywhere, **we are seeing growing demand for justice**, leading to a rise in the contact citizens have with the judiciary, which increasingly plays the part of adjudicator in a great diversity and frequency of conflicts. Therefore, **the public's confidence in judicial systems** is becoming all the more important as they are assigned increasing responsibility.

- Judiciaries everywhere are faced with a **paradoxical situation**: while demand from citizens for access to quality justice is growing, the workload of judicial systems is also increasing, making ongoing adaptation of working methods and resources essential if the quality of the justice dispensed is to be maintained. These adaptations

must often be made under difficult budgetary conditions, which further complicates the process.

- At the level of the European Union, this question has a special dimension. With the exception of the Luxembourg Court, **the organization of justice is the exclusive domain of individual Member States**. The European Judicial Area is being built by encouraging 25 different judicial systems – each of which is the product of a specific legal tradition and history – to work together.

- In an area where citizens can move freely, often without border controls, it is **important to be able to enforce judicial decisions quickly and easily throughout the territory of the Union**. In order to achieve this objective, at its 1999 meeting in Tampere, the European Council presented the principle of mutual recognition, the cornerstone of constructing the European Judicial Area. The **essential nature of the principle of mutual recognition** has been reaffirmed regularly since then, in particular in relation to the adoption of the Hague Programme and the action plan for its implementation, which was adopted last June.

- In line with the principle of mutual recognition, a series of measures have been adopted, in the areas of both civil and criminal law.

- **For mutual recognition to work well, there must be a very high degree of mutual trust between Member States**. 5 years after the principle of mutual recognition was proclaimed essential, and in the light of initial experiences, the Hague Programme underlined the importance of enhancing mutual trust, expressly linking its development to the quality of justice by stating that (I quote) "in an enlarged EU, mutual trust must be based on the certainty that all European citizens have access to a judicial system meeting the highest standards of quality". **Mutual trust between Member States goes hand in hand with the confidence that citizens must have in their judiciary, and that primarily depends on the quality of justice**. Indeed, anyone who moves around the Union must be able to expect to find a judicial system that meets high standards of quality wherever they are: this is our duty to the citizens of Europe and a **necessity for our democracies**.

- It is also a **necessity for our economies** as several studies, notably by the World Bank, underline the **link between confidence in judicial systems and economic**

dynamism. More precisely, the quality of justice is a criterion which is taken into account by those making investment choices between one or other region of the world. **An effective legal environment and a solid, reliable and diligent justice system are certainly an asset in global competition, and the European Union must monitor Member States' efforts in this respect.**

- The European Union is developing several types of action to strengthen mutual trust between Europe's judiciaries, a corollary of citizens' confidence in their justice systems. I will look at legislative actions and then other support actions such as training or evaluation.

- Our **legislative action** is developing in several directions. In both criminal law and civil law, implementation of the principle of mutual recognition plays an essential part.

- **In criminal matters**, since the adoption of the European arrest warrant, other **mutual recognition instruments** have been adopted or are under discussion *(warrant for obtaining evidence, or the framework decision on the effect of criminal sentences in the event of new proceedings).* These mutual recognition instruments will not work satisfactorily unless they are accompanied by other legislative instruments geared towards the approximation of national laws in certain areas.
- This comprises all the texts adopted by the Union and instruments intended to **approximate substantive criminal law**. They have largely focused on organized crime (fighting trafficking in human beings, terrorism, cybercrime, etc.) in order to **ensure that certain behaviours are condemned and sanctioned in a similar manner in all Member States**. **By approximating criminal legislation in this way, we contribute to increasing the confidence of our fellow citizens in the coherence of the European judicial system**. However, it is not a question of harmonizing substantive criminal law. Mutual recognition must be accepted and work effectively for non-harmonized crimes and offences as well.

- Secondly, legislative action must be developed in **procedural matters**.

    1. To approximate the laws of the Member States, particularly with regard to guaranteeing prosecution (see framework decision on minimum procedural

guarantees). Knowing that these procedural guarantees are observed throughout the European Union would serve to strengthen public confidence.

- *The Commission proposal encompasses the following rights: (1) access to legal representation, both before and during trial; (2) access to interpretation and translation; (3) adequate protection for vulnerable suspects and defendants; (4) consular assistance for foreign detainees and the right to inform a third party of the detention and (5) notifying suspects and defendants of their rights.*
- *Some Member States oppose this initiative, criticizing it for either lacking any legal basis, favouring common standards which are too low or going too far and violating the principle of subsidiarity. The Commission is prepared to exercise great flexibility in order to reach a consensus.*

2. At the end of 2005, the Commission also adopted a **Green Paper on Conflicts of Jurisdiction and the Principle of *Non Bis In Idem* (double jeopardy)** in criminal proceedings.

- *On the one hand, we must clarify application of the principle of* non bis in idem*, which is reaffirmed by the Charter of Fundamental Rights of the European Union, and must be fully enforced within the Union for the benefit of citizens, while on the other hand, we must specify the rules for conflicts of jurisdiction in order to avoid cases of double jeopardy upstream.*
- Judicial decisions will be so much more easily recognized within the EU that it will put an end to debate regarding the full and unlimited jurisdiction of the courts that have taken them.

3. More recently, the Commission adopted another Green Paper on the **Presumption of Innocence**. Once again, the aim of this Green Paper is to stimulate debate about the possible different interpretations of this fundamental principle within the EU, with a view to enhancing mutual trust. By the end of this year, this Green Paper will be supplemented by a second **Green Paper on Taking Evidence**.

- *Differences between Member States with regard to taking evidence are often an obstacle to mutual recognition, and can sometimes destabilize mutual trust. Here too, it is important to clarify the situation at the Union level.*
- *The Commission intends to launch a debate with professionals, and we obviously consider a network such as yours as being central to this debate.*

- In the area of **civil law**, our objective is to completely abolish the exequatur.

  - ***The framework for any future action remains the "Brussels I" Regulation of 22 December 2000,*** *which replaces the 1968 Brussels Convention, and since 2002 has ensured the free movement of judgments on matters relating to property rights in Europe based on a greatly simplified procedure. It is now time to take this action further.*
  - *The Regulation creating a* ***European enforcement order for uncontested claims****, which came into force on 21 October 2005, is a step in this direction. Subject to certain conditions, mainly concerning the service of documents in the case of a judgment by default, it effectively dispenses with all intermediate measures in the executing Member State, if the debtor does not contest the nature or amount of its debt.*
  - *Continuing along this route, in 2004, the Commission proposed the creation of a* ***European order for payment procedure****, which is currently under discussion in the European Parliament and the Council. Its purpose is to establish a uniform procedure, in all Member States, to quickly obtain, at a lower cost, an enforcement order which is valid throughout the EU, abolishing exequatur.*
  - ***In family law****,* ***the "Brussels II" Regulation of 29 May 2000*** *has been replaced, since 1 March 2005, by an extremely innovative regulation, referred to as* ***"Brussels II bis"****, which establishes the free movement within the EU of judgments on matters of parental responsibility.*
    - *This regulation guarantees the right of the child to maintain contact with both parents, abolishing exequatur for judgments concerning rights of access.*

        - *And, a major development is that it **establishes rules designed to solve the problem of child abduction within the EU**.*
        - *I would like to mention in passing that in conjunction with the European Civil Judicial Network, a practical guide to the application of this vital instrument has been circulated to judges of all the Member States.*
    - *In future, to deepen mutual recognition, the Commission has presented two proposals which aim to create a **European small-claims recovery procedure** and facilitate the **effective recovery of maintenance claims** in Member States, involving the abolition of exequatur in maintenance-related matters.*

- Alongside legislative action intended to approximate national laws, the Union must become increasingly involved in **actions to facilitate the implementation of the legislation adopted**. Following an intense phase of legislative activity, from the entry into force of the Treaty of Amsterdam and the adoption of the Tampere Programme, the EU now has a relatively substantial legal corpus, and must look more closely at arrangements for ensuring its implementation. Moreover, this marks an initial milestone in the maturity of the area of freedom, security and justice.

- In this respect, several areas of work must be developed, with the stepping up of **judicial training** heading the list.

    - The Hague Programme underlines the importance of training on several occasions. First and foremost, this is a matter for the Member States, each of which has specific arrangements to train their judges and prosecutors. **At the national level, effective training mechanisms are one of the keys to a quality judiciary, and consequently, to winning citizens' confidence in their justice systems**.

    - At the EU level, the creation of a "common judicial culture", which is one of the objectives of the Hague Programme, will be achieved through judicial training.

- Development of the principle of mutual recognition means that judgments have an impact which extends far beyond national borders. **The European dimension of the judicial function must be fully integrated into training programmes, at all stages of the careers of judges and prosecutors**.

- At the request of the European Parliament, since 2004, the Commission has been operating a **judicial exchange scheme for magistrates, as a pilot project** alongside the AGIS Programme. This programme is ongoing and I am **delighted about the draft agreement between the Judicial Training Network and your network, which will enable members of the Councils for the Judiciary** to take part in the exchanges organized.

- **In the coming weeks, the Commission is due to publish a communication on judicial training in the European Union**. It is expected to outline perspectives for stepping up training in the years to come.

- Of course, the European Union must not interfere in the organization of national training systems, which reflect the legal and judicial traditions of Member States. However, **in order to strengthen mutual trust, this training must be sufficiently developed with sufficient resources being devoted to it. Judges, barristers and prosecutors must receive training of an equivalent level and quality. The time dedicated to training must be sufficient to both ensure a high level of quality of the judicial system and allow for the development of a significant European component in syllabuses.**

- For this purpose, from 2007, the Union has decided to increase the funding available for judicial training, which will be enhanced in 3 main directions:

    - Improving knowledge of the legal instruments adopted by the EU;

    - Improving language skills in order to enable the judicial authorities to communicate directly with each other, as envisaged by the majority of those instruments;

- Developing knowledge of Member States' legal and judicial systems, which will strengthen the sense of belonging to a common whole.

  - In order to stimulate the enhancement of judicial training, the Commission hopes to **develop closer dialogue with the national institutions in charge of training and the institutions that act in this field at the European level**, and I am delighted that, among the Councils for the Judiciary represented here, there are several institutions which are involved in training. I have no doubt that you will seize the opportunities that emerge, to develop actions designed to strengthen a sense of 'belonging to Europe' among judges and prosecutors.

- Generally, **the financial outlook for the 2007-2012 period sees an appreciable increase in the budget devoted to the area of freedom, security and justice**. Specifically concerning justice, in 2005, the Commission prepared three framework programme proposals, one of which addresses justice and fundamental rights. In this programme, of an annual total of almost 70 million euros, **some 42 million are dedicated to the specific "criminal justice" and "civil justice" programmes**.

- In fact, one of the actions that we plan to back with the help of these programmes is the **strengthening of networks like yours**, as we are deeply convinced that you have a crucial role to play in building the common judicial culture that the Hague Programme has pinned its hopes on.

- This programme must be seen as an opportunity to **rethink the type of support that the EU can give to improve people's confidence in their justice systems**. In addition to existing actions, we may wish to promote an increase in exchanges of experiences between jurisdictions, addressing issues such as support for victims of crime, the modernization of courts, language learning or improving citizens' access to justice, for example. These are some areas that it would be useful to explore.

- Another key area that the Commission intends to focus on to strengthen mutual trust is **evaluation**.

  - The Commission will shortly adopt a communication on evaluation with regard to the area of freedom, security and justice. In particular, this communication will propose mechanisms for evaluating implementation by

Member States of policies adopted at the EU level. **In the autumn, it will be joined by a second communication specifically addressing justice**.

- Indeed, the conclusions of the Hague programme advocate the implementation of "a system providing for objective and impartial evaluation of the implementation of EU policies, while fully respecting the independence of the judiciary". In the context of strengthening mutual trust through the certainty that judiciaries producing judgments eligible for Union-wide enforcement meet high quality standards, this evaluation must make it possible to **look beyond the implementation of individual Union instruments and provide a fully comprehensive view of the national judicial systems**.

- The principle of mutual recognition leads Member States to enforce decisions taken by the judicial authorities of other Member States, implementing minimal controls. They have agreed to make such decisions enforceable for the first time, as until now, only national decisions were enforceable. This enforceability will even apply when Member States do not have control over the legal mechanisms that led to the adoption of the decisions concerned. **Here, mutual evaluation could offer Member States a benefit in return for this important concession, by granting them a minimal right to inspect their respective judicial systems**. This process would also contribute to strengthening the **sense of shared identity and responsibility** among legal practitioners. Moreover, last year the European Parliament adopted a recommendation in which it encourages the setting up of a European system to evaluate the quality of justice.

- **A meeting will be organized by the Commission on 12 July to prepare this communication. Your network will of course be invited, and we are particularly counting on your input**.

- One of the projects that we are considering is **the creation of a permanent forum for the evaluation of European policies in the field of justice**, which would bring together representatives of the Member States, legal practitioners and civil society. The role of this forum would be to contribute to evaluating specific justice needs in the area of European judicial cooperation, evaluating practical conditions for

implementing EU instruments, and a more general evaluation of the functioning of the justice system, in order to ensure that judicial decisions meet high quality standards, thus promoting mutual trust between judiciaries.

- I consider your work on the evaluation of judges to be particularly representative of the type of approach that we should develop in the future. I think that a lot can be learnt from the fundamental distinction that emerges when comparing systems which favour the individual evaluation of judges and those which consider individual evaluation as inseparable from the overall evaluation of the institution's performance. Of course, it is not for the European Union to interfere in the internal judicial organization of Member States. However, we do hope that the national systems can maintain regular contact in order to facilitate the spread of best practices, for instance. Thus, one of the objectives of the forum could be to organize an in-depth comparative study of the justice system evaluation mechanisms of the different Member States, producing recommendations where necessary.

- One of the first conditions of mutual trust is mutual knowledge and understanding. It is important **to deepen our reciprocal knowledge of the organization of the judicial systems in the EU**, and it will undoubtedly be by comparing ideas and systems that a more vigorous common judicial culture will emerge. We envisage systematically using studies into different aspects of national judicial systems, and the way in which they often come up with similar solutions to identical issues. Study themes such as treatment in courts, access to justice, the justice budget of the Member States, the status and treatment of victims of crime, the administrative organization of jurisdictions and the management of mass litigation may be envisaged, giving rise to debates within the forum, in order to identify best practices and gradually prepare common solutions. I would be very interested to hear your opinions on these proposals.

- I also take this opportunity to invite you to participate in the **"European Day of Civil Justice 2006"**, the aim of which is to bring European citizens closer to civil justice, helping them to gain a better understanding of how judicial systems work.

- In particular, I draw your attention to the second consecutive year of the **European "Crystal Scales" prize**, which is designed to reward innovative and effective ways of

conducting civil proceedings in Europe's courts, with a view to improving the functioning of the public civil justice service. All nominations will be welcomed.

- **To conclude**, I would like to thank you once again for engaging in this debate on confidence in justice, today. It is important to work together at the European level, particularly to facilitate comparison, mutual knowledge and consequently, reciprocal trust. This will provide a challenging and exciting project for us to work on over the years to come, and the Commission is ready to get fully involved.

  Thank you.

Mr. Guy Canivet - President of the Network of Presiding Judges of the Supreme Courts of the European Union

The practical implications of legal systems in the strengthening of mutual confidence between the judge and the Member State of the European Union

1 – Since the adoption of the Tampere programme, the principle of mutual recognition has formed the cornerstone of European judicial co-operation. While the Member States have shown themselves reticent with regard to the harmonization and unification of standards, the route to co-operation has been developed on this principle, the corollary of which is mutual confidence. We therefore speak of "mutual recognition", of the "free circulation of court decisions", of "mutual confidence", and we have at our disposal judicial instruments intended to facilitate co-operation, such as, for example, the European arrest warrant or the Brussels II b ruling. But is the European credo of mutual recognition and confidence actually practical? Initial evaluations of the implementation of the European arrest warrant are disturbing: On the one hand, it makes co-operation into a reality by granting judges in each of the Member States powers over the whole territory of the Union, but, at the same time, it also crystallizes national reactions of distrust.

2 – The topic of "the practical implication of legal systems in the strengthening of mutual confidence" leads to the questioning of the commitment of the systems of justice themselves to the European structure, at a time at which its pursuit on an institutional basis seems to have slowed down, and when reactions by way of withdrawal are also emanating from certain judicial bodies, sometimes in a spectacular manner. What is certain is that "mutual confidence" will remain nothing more than a buzzword unless each national legal system actually puts the notion into effect by way of specific actions. Among our courts, however, the European judiciary is a reality. Applications for mutual aid in criminal or civil matters are multiplying, and the European arrest warrant has become a familiar instrument. European citizens travel from one Member State to another for professional, commercial, or private reasons, to pursue their studies or simply as tourists. They accordingly create legal links in terms of family matters, property, business, work, consumerism, and so on, which in turn generate disputes leading to judgements. But do the decisions by the courts circulate as easily as the economic wealth and the people subject to jurisdiction themselves? Is the welcome that our colleagues accord them a vote of confidence? Is the notion of the European judiciary

growing as rapidly as the European market and European society; is it capable of meeting the expectations of freedom, security, and justice which the Union aspires to?

3 – We are all aware today that "mutual confidence" is not something that will come about by itself, and however much we may deeply and sincerely want to create a Europe of justice, this positive sentiment is not a natural thing among us. With regard to the decisions by a court originating from a foreign state, whether it be a neighbour or whether it be close to us in terms of its legal culture and legal institutions, we know that prudence always prevails, and that it persists with regard to states outside the EU. The law takes account of this reservation of confidence by way of various different mechanisms, in particular the exequatur. Beyond this, the system of justice is one of the fundamental elements of the sovereignty of the State, in such a way that, ordinarily, in the area of mutual aid, international multilateral or bilateral conventions are signed by the States and any application must then pass through diplomatic channels, and then via the executive before arriving at the appropriate court of jurisdiction.

4 – Transforming this negative attitude, this withholding of confidence, in the light of the essentially positive principle of recognition, therefore amounts to a real revolution, a fundamental change in mental attitudes. Replacing the traditional routes, the diplomatic, state-oriented approach, all of them expressions of national sovereignty which keep recalling the existence of frontiers, there is now free circulation, a free exchange of applications for investigation and judgements, an approach which does away with the traditional, and which constitutes a real challenge in a Union of 25 countries.

5 – Asking ourselves about the practical means which are open to the judicial institutions of each country to strengthen mutual confidence requires us in the first instance to reflect on the nature and origins of our reserved attitude with regard to foreign judgements. The current climate within the Union justifies most particularly our deliberating on the reasons why we do not ourselves spontaneously exude confidence with regard to a decision from an outside judiciary, while in principle we would be happy to do so with regard to a judgement from a national court. Misunderstanding, ignorance, prejudice towards any judicial system which is not our own, suspicion of bias or corruption, the overtones of incompetence, perplexity with regard to the fundamental rights and principles of fair trial, the fear that advocates cannot give assurance of a good quality defence, that access to an advocate may even be impossible in the absence of legal aid, may well be legitimate concerns if there were not an "a priori" belief in

the superiority of our own law and our own procedures which is essentially what that doubt is based on. All prejudice, suspicions and doubts, and senses of superiority, which are very often the result of imprecise or incomplete information, rumours, or ignorance: The reasons for lack of trust are many.

6 – We should start, therefore, by examining the reasons for the reservations in terms of confidence and trust incurred by the differences between our judicial systems, and then take a look at the practical means by which this mutual confidence can be strengthened.

1 – Reservations with regard to confidence

7 – Looked at more closely, the causes of reservations with regard to confidence are both cultural and structural; cultural because they derive from mental attitudes, and structural in that they are founded on social or institutional realities.

1.1. Cultural causes

8 – Before examining some of the institutional and procedural questions, we need to be reminded of the intuitive causes of the distances between the judicial systems, such as the spontaneous belief in the superiority of one's own judicial institutions and the language barrier. There are few judges of our generation who have received any in-depth training in comparative law, few of us can express ourselves with ease in several European languages, and this closed form of training has imbued us with a logic, a kind of reasoning, which is centred on our national systems which makes it difficult to understand others. Apart from this, even if the judicial institutions are able to detect correspondences from one system to another, the legal concepts sometimes do not have any equivalent. The civil legal traditions and the Common Law are separated by an undeniable line of partition within Europe. Difficulties in understanding the concepts, in grasping the legal reasoning behind a rejection or precedents is just one step. In the first instance, while there might be a certain richness in the diversity of our legal systems, this scarcely inspires confidence. While scientists the world over may handle the same concepts and use the same references, the same cannot be said of jurists.

9 – Add to this a linguistic factor which is all too obvious. Not having access to the court's decision in the language of origin, having to make recourse to a translation, and coming up

against alien modes of expression complicate the situation still further. Jurists use particular formulations, judgements use turns of phrase which on occasion are archaic and often incomprehensible to the uninitiated. The translation too may remain just as obscure to the foreign judge. Take a ruling from the French Supreme Court of Appeal and a ruling from the Chamber of the Lords, and translate them. How would the Law Lord understand the means of reasoning, the French arrangements, and how are French, Belgian, or Luxembourg judges to appreciate the British form of reasoning? The same applies in everyday instances of mutual assistance in criminal cases. It might be expected that letters rogatory has today become a universal expression, but nothing is further from the truth. The formulation of the investigations applied for, the hearing of witnesses, interrogations, searches, seizures – all can be very delicate matters from one language to another. The description of the facts presented, themselves referenced to a basis in criminal law, the constituent elements of the offence, the law of evidence and of procedure, dealt with automatically by every judge, leads to a recital of procedure or a presentation, which in the best of cases may appear curious, and in the worst case scenario is incomprehensible or incoherent when read by a neighbouring judge.

10 – True, new generations of jurists today are learning law in a European context, many are practising in one or two foreign languages, some of them study in another European country and obtain double qualifications. True, the European judicial instruments and European jurisprudence of Luxembourg and Strasbourg are developing a European legal language. But these phenomena have still to demonstrate their full effects, and will not be able to replace the richness and complexity of each national system of law which will continue to be expressed in each of our twenty languages.

1.2 The structural causes

11 – When considering the reasons for the reservations in confidence which relate to the institutional aspects, it is only natural to refer to the European Convention of Human Rights. All the Member States of the European Union adhere to this, all of them have to respect it, and those subject to their jurisdiction are entitled to invoke it and lodge appeal before the Court in Strasbourg. But how to put distrust to the test? Are our reservations without foundation, or disproportionate? Assuredly, from an objective point of view there are still institutional differences relating to independence, differences in the qualifications of the

judges, the variable levels of protection for the fundamental guarantees, or even the material considerations relating the manner of custody or the situation with regard to prisons.

12 – **The independence** of the foreign judge may in the first instance be the object of questions in several respects, in relation to executive and legislative powers, in relation to the parties, and with regard to the public prosecutor.

13 – It might be thought that the constitutional arrangements adopted in every European country, guaranteeing the independence of judges, would be sufficient to reassure us about the reality of their independence, and to persuade us that in all cases this condition is fulfilled. This is in fact not the case. First, and perhaps even more with regard to the foundation of the law or the procedure, the judge has his own institutions as a point of reference. The conditions for the appointment of the most senior judges as well as for those of the lowest courts, and the involvement in these mechanisms, in the most diverse ways, of political power, may be taken over from one system to another if the institutional checks and balances and the democratic traditions in each of these States are not well understood. Naturally, these institutional investigations are of an abstract nature, and it is not likely that an application for international aid or even the judgement in question would lead to their being resolved directly. Nevertheless, the feeling of trust is universal, and affairs of a political dimension are not so rare that such investigations might be considered unwarranted. We all know of such cases.

14 – Fears with regard to the independence of the judge in respect of the parties may likewise arise. Before discussing the persons subject to jurisdiction, we should mention the public prosecutor. The closeness which exists in certain legal systems between judges and prosecutors is of such a nature as to encourage mistrust, both on the part of the persons under jurisdiction and of the foreign judge. Accordingly, in France judges and prosecutors, who are designated without distinction, as in Italy, as “magistrates”, may make their career passing from the bench to the Public Prosecutor’s office, including at the Ministry of Justice. They are members of a “corps”, the unity of which is well established, coming from the same background, the same training colleges, and entering into privileged relationships, much closer than with the members of the bar. This factor alone causes astonishment among British judges, and surprises our Nordic and Central European colleagues so much that they have adopted what is in general a much stricter separation in recruitments, careers, and functions

between judges and prosecutors, particularly on the recommendation of the Council of Europe.

15 – With regard to the other parties, suspicions may arise with regard to the rules applied by the jurisprudence of the Strasbourg Court, particularly with regard to functional or personal impartiality. It seems to me, however, that the suspicions of corruption which may weigh on a judicial system are a much more serious affair, since this may involve corruption on the part of the judge, the officers of the judiciary, or the police themselves. These suspicions may be based on "pre-accession" assessments, on the reports from non-governmental organizations such as Transparency International, or on individual testimony. Without doubt, this constitutes the biggest impediment to the principle of mutual confidence.

16 – **Professional qualification** is another aspect which determines the status accredited to the judge. To hand down decisions of quality, founded on law, it is essential to have sufficient legal knowledge, to have mastered the rules of procedure and methods of judgement, and to possess a know-how drawn from training supplemented by experience. In this sector, the differences in methods and reasoning may nurture prejudice. But beyond that, there is also reticence with regard to the method of recruitment and training which can be attested with regard to the foreign judge. In the "pre-accession" mechanisms, initial training and ongoing training play a fundamental part, in particular for the taking up of Community posts. Other aspects of the judicial organization which are inherent in guaranteeing the skills of the judge throughout his career should not be overlooked. The evaluation which is made of the professional qualities of the judge by the hierarchy are important in career systems which start after higher education. This hierarchical evaluation, combined with methods of appointment by a high council of justice should lead, in an ideal system, to a management of human resources which simultaneously guarantees independence, the ability not to be swayed, and competence.

17 – **Respect of basic rights** relates both to procedural and institutional aspects, and it would be a lengthy and tedious business to list them all. We may restrict ourselves to some very specific aspects relating to fair trial and involving the judge directly and others relating to the advocate or the police services and the prison system.

18 – There are many reasons for doubting that the principle of fair trial is respected. The sentences pronounced by the Strasbourg Court put the spotlight on our respective careers and almost every day show how fallible we all are. Other reasons for perplexity may be provided by those who make use of the justice system: The losing party, the debtor party, the person being prosecuted or sentenced, all have reason for claiming that their basic rights are not being respected by a system which has sentenced or non-suited them, if not de jure then at least de facto, in order to escape from the implementation of the decision. If the judge lends a favourable ear to these arguments because he himself doubts that this legal system or that jurisdiction is respecting the Convention and the jurisprudence of the European Court with regard to human rights, then serious obstacles will continue to arise with the free circulation of decisions.

19 – The fear that basic rights may be at risk does not always relate to the judge and the procedure which he applies. It may also involve the quality of the defence of the interests of the person subject to jurisdiction, whether this be a civil or criminal matter. Do not the absence of an advocate, and the lack of financial resources and effective legal aid, mean that the case will be lost? Are the advocates who do act really providing a quality service? Is the profession correctly regulated? The rights of the defence, guaranteed by the Convention, do not in reality correspond to a guarantee of competence on the part of the advocate, nor of the quality of the counsel appointed.

20 – Other sources of unease are specific to the criminal sector, involving for example the behaviour of the police and the prison system. These have been expressed during the application of the European arrest warrant. Accepting the principle of handing over our nationals to the judicial authorities of another country amounts to a real revolution in some European countries, which exclude the extradition of their citizens. Whether to send their citizens to the cells of prisons elsewhere in Europe is not a matter which a national judge will do with equanimity, or at least with the peace of mind which he would have if this involved a place of detention in his own country. The state of the prisons, the length of the sentence, access to legal counsel, access to care, the maintaining of family links, are all questions which the judge may legitimately pose, who may guarantee certain liberties with regard to his own system but not yet with regard to others.

21 – So, how then not to feel discouraged in the face of these question marks, these multiple obstacles to confidence and trust, these sometimes legitimate grounds for mistrust? The role of the judge is not to act blindly but with discernment, to exercise reasonable doubt, to guarantee the respect of the law, and it is perfectly normal, if one questions one's own procedures, to question those of others as well. At the same time, every European judge wants the European judicial space to become a reality in order for the pursuit of dangerous criminals not to stop at the territorial limits of the States, and for it no longer to be possible for the respecting of a divorce judgement to be used to prevent a child from being recovered from beyond a frontier. So, how can each legal system specifically function in order for spontaneous reticence to become acquired confidence? How to move from confidence with reservations to confidence with justification?

2. Confidence with justification

22 – Developing and strengthening mutual confidence between European judges needs the direct and strong involvement of each judicial system, and in this respect, their highest representatives are burdened with a heavy responsibility. In effect, it is incumbent on them in the first instance to get to know and recognize their opposite numbers. The links which the higher organs of the justice systems nurture within their own networks can be seen as a form of mutual recognition aiming at the establishment of mutual confidence. This is essential, but it not enough. The recognition of the different judicial systems and recourse to the comparative legal system play a major part in the strengthening of mutual confidence, as does the specialization of magistrates in matters of European co-operation. The application of Community standards of quality of justice and independent mechanisms of evaluation are all also essential in alleviating the most persistent fears and remedying the real problems which these pose. Justified confidence is created by knowledge and by exchange; we need to know the legal systems, to make exchanges between them, and to establish standards of quality.

2.1 Getting to know ourselves

23 – Distrust is the result in the first instance of ignorance, of prejudice, and the first step is for each to explain how his own system works: Who are the judges? Who are the prosecutors? How are they recruited and trained? How are they appointed? What guarantees do they benefit from? How is their particular discipline organized? How much do they get paid? It is

with simple questions like these that we need to find out about our European colleagues. Today, the Internet is available as a tool and universal vector on which this kind of information can be distributed, as far as possible in several languages. Making this information available to others and taking note of the information they provide in return, or at least knowing where to find the information, contributes to making our judicial systems more familiar to one another. This approach has led to the establishment of the Internet site of the Network of the senior judges of the supreme courts of the Union. Each court presents itself and puts forward a link to its site and other pertinent judicial and institutional sites.

24 – Added to the description of the institutional mechanisms is the presentation of comparable data, a more delicate but equally necessary task. While it is easy enough to get an idea of what a judge at the supreme court is, it is a more delicate matter to understand what a commercial judge or a judge of first instance does. The European Commission for the Effectiveness of Justice, created by the Council of Europe, has produced a very valuable report on this issue, entitled "European judicial systems in 2002", which allows for statistical comparisons to be made, relating in particular to the number of inhabitants. Having available this information about the legal institutions, both descriptive and comparative, and making it known to all the judges in our country contributes towards reducing ignorance, a priori assumptions, approximations, and altogether mistaken ideas. It is likewise recommended that such data be gathered within the Union, as suggested by the Euro MP Antonio Costa in a report adopted by the Commission on civil liberties, justice, and internal affairs in February 2005.

25 – Recourse to law appears to be a complementary tool with regard to the confidence accorded to the substantial law, institutions, and methods of reasoning adopted by other European judges. In this sector, it is the responsibility of the supreme courts, the guarantors of the unity of national law, to set the example. Taking account of decisions taken by other supreme courts on new social questions, and even referring to them, on judicial problems with profound economic repercussions, or on trans-national questions, a judge at the supreme court will come to be familiar with other laws and express a form of recognition with regard to his foreign opposite numbers, which will exert an influence on the judges of lower jurisdictions. This procedure also shows a concern for coherence, and even of harmonization in a European society, in which the market is unified and in which lifestyles are becoming less and less differentiated. Finally, the comparative approach testifies to the fact that European judges feel

themselves to be members of the same community of law. In practice, recourse to comparative law needs access to reliable information not only with regard to the organization of the judiciary, but also with regard to the cultural, economic, and social context in which the judges operate. An approximation is to be done away with: It is essential to be able to transfer the legal solution adopted by another European court into the framework of one's own national law.

26 – In order to make research into foreign jurisprudence easier, legal databases are being created. In the French-speaking sector of the Community, the JURICAF database already allows for access to the jurisprudence of the supreme courts of most of the French-speaking countries. In the European context, the Network of senior judges of supreme courts has established links, from its Internet site, with national jurisprudence sites which are accessible to the public. A project is also being launched for a jurisprudence portal, which, with a generator for its own software, is intended to allow for a simultaneous search of all the supreme court databases. More simply, when a court decision is taken, the references of the comparative law have become essential in giving us food for thought, in particular with a view to possible legal reforms. In a familiar pattern in processes of reform, the comparative law reinforces mutual confidence and trust.

2.2 Exchanges

27 – The training of judges in every European court today includes a European dimension, which involves instruction in Community law and the law deriving from the European Court of Human Rights. On the other hand, the European judicial systems and comparative law are less systematically considered, even if the situation is improving thanks to the European judicial training network. Apart from training procedures supported by the European judicial training network or organized by the Academy of European Law in Trèves, each legal system, college, supreme court, senior figure in jurisdictions, or minister responsible for implementing a training programme or organizing a seminar should today work hard at taking account of the creation of the European judicial space, by inviting teachers, judges, and advocates from neighbouring countries. This is more and more often the case, and we can only feel enthused by this. On the subject of training, it is also appropriate to recall that the teaching of foreign languages is to be encouraged in particular in the training of judges.

28 – **Training courses** in different jurisdictions and **direct exchanges** between them also provide an excellent way of promoting familiarity and mutual confidence. The European Commission has set up a programme of exchanges between judicial authorities (PEAJ) which deserves to be mentioned here, given that the relationships which are fostered and the information exchanged within this framework are so fruitful. Practising law in another country, established within its jurisdiction, is a familiarization factor without parallel. This process of circulation of judges completes and surpasses the bilateral co-operation relationships which have long been developed at the regional or bilateral level. These are not without importance, however. In this respect, one might mention as an example the Franco-British judiciary co-operation committee which periodically organizes joint consultation sessions between judges from France and Great Britain and exchanges of trainees for deepening their knowledge of specific matters. Other regional initiatives for allowing judges from border provinces to work together are producing some remarkable examples of practical local co-operation. The same is true for judges practising specific disciplines, such as in matrimonial affairs.

29 – The **specialization** of a small number of magistrates is a particularly effective complementary tool It would not in fact be required of each judge in Europe that they know how all the other systems work, the elements of co-operation, and the principles of civil and criminal law of the other countries. On the other hand, having available a number of magistrates who are very familiar with European legal systems is an added advantage in developing mutual confidence. France took the pleasing initiative, more than a decade ago, of creating a network of liaison magistrates by sending French magistrates to the Ministries of Justice of other countries in order to improve interaction in civil and criminal matters, and develop co-operation and awareness of institutional procedures. Responding in a spirit of reciprocal co-operation, a number of other European states have followed suit, and there are now British, Spanish, Italian, German, and Dutch in particular working in Paris. They have become sources of reference for French judges and prosecutors who are encountering difficulties with interaction and have need of advice or precise information about the judicial system from which these people come. In addition to this, they are consulted by colleagues in the host country on questions of interaction, comparative law, or approached within the framework of procedures in the administration of justice and internal affairs.

30 – This specialization by liaison magistrates cannot, however, be generally applied to the 25 Member States, in terms of resources or of opportunity. An area of specialization within the areas of jurisdiction themselves is imposed. The European Commission is at the origin of this procedure. It oversaw the setting up of the **European Judicial Networks**, one of them specializing in criminal matters, and the other in civil and commercial affairs. These networks have a correspondent in each Member State, responsible for maintaining it at the national level and conducting exchanges with their European opposite numbers. Within the different jurisdictions, in general at the level of the courts of appeal, a network of correspondents has been established. The correspondent is responsible for disseminating information about European co-operation, and must be able to answer questions from his colleagues and contact his European corresponds whenever necessary. This specialization is determinant. If we take, for example, the practice of the Brussels II b ruling, with regard to which one would expect all European family court judges to have had training, we still need to recognize that a judge who has to apply it for the first time risks having questions asked about it and will need to exchange information on the subject. Centralizing these questions and exchanges on a correspondent who is close at hand, who himself works in a network with his colleagues at the national and European level, allows for a close mesh to be formed on a European scale, which is particularly favourable to the development of confidence. It is to be hoped that these judges will continue to pursue their specializations and remain active within the Network as well as they can in the course of their career, in order for the solidity of the network to rest equally on experience as well as on personal links. From this point of view, it would be appropriate for every legal system to be able to take advantage of this experience by way of a true management of human resources. The Internet sites of these networks, open to the public for civil matters and of restricted access for criminal cases, provide legal records, legal tools, and lists of members of the network in order to make their tasks easier as well as disseminating information about each judicial system.

31 – Side by side with this initiative by the Commission, other networks of specialized judges have seen the light of day, for example in the commercial sector, the sector of environmental law, and in mediation. Those of the senior judges of supreme courts or legal counsellors, nowadays combined, are further illustrations. The networks formed in this way are integrated into the direct system of exchanges between European judges, all helping to build mutual confidence.

2.3 Establishing standards of quality

32 – However, neither a better awareness nor direct exchanges between judges will be able to allay the more tenacious suspicions with regard to basic rights or corruption. The new member countries have had to prepare themselves for evaluations by experts from the European Union throughout the admission period. Similar procedures are now being employed to ensure that the guarantees being offered by the judicial systems of Romania, Bulgaria, and soon Croatia. The Council of Europe is also familiar with methods for evaluating judicial systems. During the transition to democracy of the ex-Eastern Bloc, it produced experts, evaluations, and advice in order to establish the legal institutions which conform to the notion of the state founded on law. Currently the Human Rights Commissioner of the Council of Europe is preparing national reports which also include evaluations of numerous aspects of the judicial systems.

33 – So how does one implement nowadays a system of evaluation of the quality of justice within the European Union? The preparation of a common frame of reference and a regular evaluation of the quality of each legal system are the only methods which will allow for confidence to be established objectively and in a way which will last. Such is the recommendation which the European Parliament has made to the Council of Europe on the basis of the report by MP Antonio Costa on the quality of criminal justice and the harmonization of criminal law among the Member States. The drawing up of a charter for the quality of criminal justice in Europe is being mooted. This would bear on the independence of the judge, the respecting of the principle of fair trial, the method by which criminal proceedings are played out, and includes the implementation of sentences. To guarantee that it will be respected, a mutual evaluation mechanism will be put in place. It is intended to rest on a comparative and statistical database, “benchmarking” exercises, the dissemination of good practices, and the annual publication of an evaluation report on the implementation of the charter. At the present time, we are awaiting a communication from the Commission on the subject of the evaluation of the quality of justice. It is possible that the European Agency of basic rights, in the course of establishment, may take part in the evaluation process. In any event, normalization on the basis of objective criteria of the quality of justice is the gauge of the homogeneity of judicial systems, which is itself conditional on the mutual recognition of decisions. If mutual confidence is to play a part in this mechanism, it is essential that the active participants in the judicial systems are involved in the considerations in progress, in

particular in drawing up the evaluation criteria. This is the decision which has been taken at the level of the senior judges at the European supreme courts.

34 – In practice, it would be necessary for the evaluation tasks to be entrusted to persons who are recognized, independent, and with judges among them, drawn in particular from the European networks. The European Parliament is recommending that they be joined by parliamentarians, representatives of non-governmental organizations, and advocates. Assuredly, the appointment of the experts itself must accord with the rules of the greatest possible transparency, but emphasis must also be placed on the importance of judges participating in the evaluation missions. This is not a matter of corporatism, but because the view taken by someone who exercises the same profession, is aware of its particular difficulties, and who can afford to be intransigent. Their criticism, if it arises, will be better accepted by the party being evaluated. For this reason, and in order to be able to take account of the independence of the jurisdictions, there are even some who take the view that judges alone should be involved in this.

Conclusion: Towards a European Council of Justice?

In conclusion, the practical implication of European judicial systems in the strengthening of mutual confidence presupposes that our community of law becomes a community of judges. No doubt, we are aware that we apply a common law with regard to human rights, that we are the judges of common law from Community law, and we are aware that our decisions circulate within the European judicial space, but we nevertheless still do not have the feeling that we belong to the same jurisdictional community. Working and thinking together, sharing our knowledge, comparing the ways our systems work, and defining common standards of quality are in this sense procedures which are absolutely essential. Should we not go further still and create an instrument which is representative of the European community of judges?

More precisely, is it not in fact necessary to structure the European judicial power around a European Council of Justice in order to create this feeling of belonging to this community? This Council of Justice, deriving in part the national judicial systems, could then proceed to the appointment of European judges in accordance with a uniform and transparent process, at least to monitor their independence, their qualifications, and their judicial experience. It would then be possible to organize the training of judges at the European level,

to formulate the deontological recommendations, to establish and verify the minimum standards of quality of justice, and create a link between the national judicial bodies and the Community bodies.

In a word, given that the draft of the constitutional treaty may have studied the question, has the moment not come at which a representative body of European judicial power should be created?

Mr. Gilles Charbonnier - Secretary General of the European Judicial Training Network

The President of the European Network of Councils for the Judiciary,

Dear colleagues,

Ladies and Gentlemen,

For me, it is a great honour to be able to speak to you today, at the Annual General Meeting of the Network of Councils for the Judiciary.

As a member of the French judiciary, I am fully aware of the importance of the tasks that are entrusted to Councils for the Judiciary, particularly with regard to affirming and defending the independence of the judicial system. I am also aware of the difficulty of successfully achieving this task which is essential for democracy, in a constantly changing world, in which, ultimately, nothing can be taken for granted.

In 2003, you took the decision to unite within a network, the European Network of Councils for the Judiciary, to share your experiences, exchange your opinions and work together to develop joint initiatives. You have done this, despite the differences in your systems, the disparate tasks assigned to you and the diversity inherent in the histories of your institutions. You have managed to overcome these difficulties, thanks to the only project which is preparing the future for our generation and subsequent generations: the European project.

Indeed, for we judges and prosecutors, legal professionals, responsible in our respective countries for the service provided to our citizens within the framework of a quality justice system which is both ambitious and effective, what project other than the European project can enable us to transcend our differences, set aside our everyday concerns and confidently turn our attention to building a common future, in which everyone has a contribution to make? Did the Amsterdam Treaty, which came into force in 1999, not call for the construction of a single European Judicial Area of freedom, security and justice? And it

was with a view to realising this grand design that the institutions responsible for training judges and prosecutors in a Europe which, at the time, had 15 members, decided in 2000 to create the European Judicial Training Network.

Their initiative was prompted by the needs clearly expressed by judges and prosecutors in the various European countries for better training in EU matters, mechanisms for judicial co-operation and the characteristics of the different judiciaries throughout Europe. It was essential for the heads of these institutions to respond to this expectation, organize themselves, get to know each other and exchange their analyses of the training needs of the judiciary in order to define and lead joint training actions to then meet those needs.

Established as an international not-for-profit association (or AISBL) governed by Belgian law, the EJTN now has 28 members, which are the judicial training institutions of 24 of the 25 countries in the European Union, plus the ERA – the Academy of European Law – which is active in training. A point that is worth underlining, is the great variety of member institutions in our network: Universities (France, Portugal, Spain, etc.), Ministries of Justice (Finland, Germany, Austria, Poland, etc.), Public Prosecutors' Offices (Hungary, some of the Baltic countries, etc.), not forgetting High Councils of Justice (Belgium, Italy). 5 observers have also been admitted, including the Council of Europe and the judicial training institutions of the candidate countries. Since 2005, its budget has consisted of the fees paid by its members and an operating grant from the European Union.

The structure of the EJTN ensures its real independence and a high degree of internal democracy. Each year, the General Meeting of its members evaluates the activities carried out, decides on directions for the future and, every 3 years, elects the other bodies of the Network. The steering committee, which meets roughly once every 3 months, oversees implementation of the decisions of the General Meeting and, for this purpose, has initiative and decision-making powers. The Secretary General is responsible for co-ordinating activities, managing a Brussels-based secretariat, general administration and external representation of the Network. Three working groups meet regularly to prepare and monitor joint projects in the areas of training programmes, the website and online learning and the Network's external relations.

In just over 5 years, thanks to the strong commitment of its members and support from the European institutions, the EJTN has managed to develop a varied range of activities in response to the essential needs of the judiciary, with a view to setting up the common area of freedom, security and justice. Allow me to look more closely at 4 of our priorities:

First priority: shaping conditions that favour the emergence of a cross-border common judicial culture in Europe, by spreading knowledge of European law, the legal and judicial systems of the different EU Member States and co-operation tools. Since 2003, each year the EJTN has published an online catalogue containing a total of more than a hundred training actions, organised by its members and open to all judges and prosecutors in Europe. This initiative has met with great success, as last year more than 900 colleagues (40% more than in 2004) received training together in areas of law of interest to the judiciary (European law, competition law, civil, commercial and criminal law) as well as in social issues, language practice, and so on.

Second priority: encouraging judges and prosecutors in the European Union to venture beyond their borders to see how foreign judiciaries work, therefore developing mutual trust which is vital for the success of a common area. This is the thinking behind the Judicial Exchange Programme set up by the EJTN, with the help of generous funding from the European Union. In 2006, this programme will enable more than 250 judges and prosecutors, both young professionals and seasoned practitioners, to attend a 2-week jurisdiction immersion course in one of the EU member or candidate countries.

Third priority: increasing training capacity. An initial stage will focus on training instructors, particularly at the decentralised level, with the second stage addressing content. The EJTN has started work on putting together reusable training modules (on the European arrest warrant or mediation techniques, for example) and establishing partnerships with institutions and organisations that work in the judicial system at the European level.

Fourth priority: information announcements, to ensure the visibility of our activities in order to rally the support of training institutions, of course, but also that of judges and prosecutors. To achieve this, the EJTN has launched a website in English and French (www.ejtn.net) as well as a four-monthly newsletter. A lot of work has gone into providing essential information in the different languages of the EU.

In its specific field – the training of judges and prosecutors – the European Judicial Training Network is striving, in various ways, to make an effective contribution to the creation of a common area of freedom, security and justice, which the European Union would like to see develop and which we feel is in the interests of the justice system, the judiciary and the public as a whole.

Of course, the European Network of Councils for the Judiciary is also involved in this initiative, in its own specific field.

It is therefore not illogical, I would even say that it would be desirable, for our two Networks to consider a partnership, which respects the powers of each one.

In recent months, significant steps have been taken in this direction, which I am very pleased about. On this subject, I would like to commend your Chairman, Luigi BERLINGUER, a member of the Italian High Council of the Judiciary (the *CSM*) and Edith VAN DEN BROECK, Chairwoman of the Belgian High Council, who are both members of our two Networks, and have worked to create the conditions for an active and fruitful partnership between the European Judicial Training Network and the European Network for Councils for the Judiciary. I have also had the pleasure of meeting your Secretary General, Bert VAN DELDEN, and his team in The Hague last April. We discussed concrete prospects for co-operation, and I must thank them for their warm welcome.

Concrete prospects…

The Exchange Programme, which I mentioned earlier, could be a real opportunity to bring this partnership alive. In fact, in a spirit of great openness, the European Judicial Training Network is currently designing this programme which is due to start in 2007.

Within the framework of this project, exchanges between High Councils of Justice could be organised from 2007, in the form of study visits, for example. That would enable Councils to get to know each other better, exchange their practices and experiences… and finally, to become closer to each other. The European Network of Councils for the Judiciary would, of course, define the content and objectives of these exchanges and would select and

assess projects. It could be supported by the logistical resources, procedures and general framework set up by the European Judicial Training Network for the organisation of these exchanges. Such a system would be quite similar to that which we set up two years ago with the Network of the Presidents of the Supreme Judicial Courts, whose Chairman – Guy CANIVET – I congratulate, as this partnership has proved very beneficial. This experience could serve as a basis for the work that we are going to need to start very soon together, if you really want to go down this path with the European Judicial Training Network, to enable the first exchanges to take place in 2007.

Other collaborations could also be explored in a partnership between our Networks. For example, there could be a regular exchange of information about activities, one-off joint projects addressing issues of common interest, and so on.

In any event, we are currently at a key juncture. The implementation of the Hague Programme and the entry into force of the Justice and Fundamental Rights Framework Programme in 2007 are generating new opportunities that we must seize. In the space of just a few years, you have all seen the considerable progress that has been made. A lot remains to be done to achieve this common European judicial area.

The Networks which have formed at the European level all have legitimacy to act in the fields in which they specialise. They all respond to real needs and have the necessary energy to ensure their development. Therefore, we can but support the wish expressed by the Commission for strong synergies to be created between them, insofar as we are working towards the same ultimate goals: establishing a common judicial culture in Europe, guaranteeing the independence and quality of justice, defining European standards and developing mutual knowledge and trust between judiciaries.

To conclude, please allow me to quote a French philosopher who wrote that “of course Europe needs a common policy and currency, but above all, it needs a soul”. That is something else that we should work towards together.

I have no doubt that the quality of the work carried out here in Wroclaw over these two days will enable us to make a big step forward together. And all the more so because the

work setting we have been given is absolutely magnificent and the welcome we have received from the Polish authorities has been particularly warm, for which I think them sincerely.

Thank you for your attention.

Conclusions from discussion of the role of networks and co-operation between the networks and the EU

For a number of years the Union has been aware of the fact that founding an environment of liberty, security, and justice implies not only that the members of the judiciary are familiar with the legal instruments available in Europe, but also requires the establishment of mutual trust and understanding, as well as the progressive creation of a European judicial culture. In the Hague programme, the Council of Europe has expressly recognized the important role played in this respect by the networks of judicial organizations and institutions, and has again confirmed that it is entirely in keeping for the Union to support them.

In the light of this declaration of support, but above all with regard to the enormous expectations of the Union with regard to the networks, it is important that they prove themselves worthy of this support, and that they have the capacities and maturity to live up to these expectations.

For reasons of transparency, efficiency, and economy, dialogue and co-operation between the networks is absolutely essential. This in turn must allow for the missions of the different networks to be identified and delimited.

Mutual respect between the respective missions is a sine qua non if effective co-operation is to be established with the institutions of the Union, which need to be able to identify rapidly and easily the right person(s) to contact with regard to each specific subject that relates to justice.

Fruitful and effective co-operation between the networks and the organs of the European Union is only possible within a framework of a transparent and structured dialogue, in which the right contact persons are well established and the mutual expectations are well known.

Accordingly, if the networks succeed in offering real added value to the creation of a European environment of justice, they will be worthy of the support of the European Union in all its different forms.

The greatest support for the networks today, however, is the ability to ensure the continuity of their function in the face of the major challenges posed by the creation of the European environment of liberty, security, and justice to which they so vigorously wish to contribute.

Mr. Bert van Delden - Secretary General of the European Network of Councils for the Judiciary

What's next for the ENCJ?

1. Looking back
2. achievements
3. expectations
4. possibilities
5. relation with conference design

When, in 2002, we invited our Irish and Belgian colleagues for an introductory meeting, mainly and simply to get to know each other, the three of us had no inkling that only 3,5 years later we would be gathered in the beautiful city of Wroclaw, Poland, at the Third Annual Conference of the European Network of Councils for the Judiciary. As you will have noticed, we are here with almost all judiciary organisations from the European Union, and even quite a few beyond.

In those 3,5 years our network organisation has become - as you could say – a fact of life. Many of us have been working enthusiastically in working groups on a variety of subjects, meeting in Rome or Barcelona, in Budapest or The Hague and in many other European capitals.
We published reports on the Evaluation of judges, the Mission and Vision of Councils, we went to Brussels and Strasbourg and Brussels again to represent our Network, and we set up an web site to make ourselves known to the world.

In 2005 and 2006 we were invited several times to the European Commission to discuss prospects of collaborating in the implementation of The Hague programme. We participated as an observer in the meeting of the Consultative Council of European judges in the Council of Europe and we were invited by the CCJE to participate in the organisation of the European conference of judges, planned for 2007. We visited the European Court of Justice in Luxembourg, to make ourselves known there as well.

I think that this growth of what initially began as a very small and modest exchange, should be seen as some kind of proof that many European judiciaries are searching for ways to deal with the international dimension and their role and function in a slowly unifying Europe.

But what exactly are we looking for? What are the expectations of everybody present here? Have these been met in the past couple of years? And how should we move on?

Some of us will emphasise the exchange of information and best practices amongst members and observers, making perhaps this information also available to interested third parties through our web site, or by publications or exchange visits.

Others might be particularly interested in actually collaborating on certain topics that are of common interest and relevance.

And finally some may think that we should specifically focus on advocacy and our representative role in the European context.

Probably the views on the functions the ENCJ should or could fulfil will always differ to some extent, both among members and observers. It is therefore of utmost importance to identify a common ground, a foundation that is acceptable and meaningful to all of us.

In this respect a few considerations are relevant.

First of all: there should be something in the Network for everyone. However, we may aspire too much when we expect all issues to be relevant always for everybody. In this respect our experience with the European Payment Order could serve as a model. We worked together with a limited number of interested parties, under the umbrella of the network and thus we managed to join forces regarding the necessity of an electronic form that could be equally applicable in all participating judiciaries. Thus we may increase access to justice on the one hand and reduce translation costs for judiciary organisations on the other hand.

Secondly, in the Network we should promote a participatory approach, as much as possible bottom up instead of top down. Applying as much as possible interactive working methods will strengthen the ENCJ in all respects.

Thirdly, we need to acknowledge that formal external representation of all members in European fora is probably unattainable in the short term. National judiciaries (like for instance The Netherlands) experience already considerable difficulties when advising on legislative proposals on behalf of the judiciary. On whose behalf can we submit our points of view and to what extent can we represent independent individual judges? Taking this issue one step further, to what extent and when and on what conditions could we take a formal position as a Network in the international arena? I fear these are questions that cannot be answered in the next few years.

On the other hand, we are indeed in a position to address the first two elements.
There can be something in it for everyone, and we could apply the participatory approach right away!

Taking on this challenge has led the Steering Committee to design this conference in a different manner compared to previous years. As you have noted, an important assignment was included in the conference documents, homework you might say.
We have asked all of you to consider issues that are currently relevant and important in your judiciary back home. Yesterday we split up in small groups, consisting of members, observers and special guests with a maximum of approximately 4 countries. In these groups, we presented to each other those issues to our colleagues, and subsequently discussed the existence and relevance of such issues in other countries.
In fact, the Steering Committee has been sharing issues in this manner during the last meetings and every time the result was rather unexpected and remarkable. On many occasions it turned out that these issues were not isolated events but part of greater trends, usually equally experienced in several other countries. The theme of our conference: "Public confidence in an independent judiciary in Europe" was actually conceived in this manner. Recognising similar positions will clear the way to embark on joint activities.
You have been requested by the leads of these groups to try to prioritise the issues on the basis of a number of considerations.

- Are the issues recognised and shared by colleagues?
- Are these issues relevant to the objectives of the ENCJ?
- Would it be possible to address these issues in working groups or would other methods be more suitable?

The leads of these subgroups reported back to the organising committee and a list of topics will be presented by one of them shortly. We hope the General Assembly will then be able today to prioritise in a more general manner selecting working groups that are as much as possible in accordance with the ideas and interests of the members. Perhaps there will be topics that are not sufficiently general to warrant a full-fledged working group. For those topics the Steering Committee will look into the possibility of different working methods, like one time seminars or conferences, or even bilateral consultancies.
In this manner we hope to contribute the ENCJ Agenda for the next year.

Of course this will not be the entire agenda. The Standing Committee for the web site will also continue its important work, further developing the web site to a genuine provider of judicial information. In addition, the Steering Committee will set up an internal working group addressing the question whether the present organisational and administrative set up of the Network is sufficient to meet future needs.
You see, there is a lot of work to do. Let's continue today.

III. Annexes

List of participants - Liste des participants

Albania/l 'Albanie
High Council of Justice
Mrs. Rozeta Shkembi
Mrs. Violanda Theodhori

Argentina/Argentine
Argentine Magistrate Council
Mr. Juan Carlos Gemignani
Mr. Pablo Gustavo Hirschmann
Mr. Joaquin da Rocha

Austria/l'Autriche
Bundesministerium für Justiz
Mr. Germ Hermann

Belgium/la Belgique
Conseil Supérieur de la Justice / Hoge Raad voor de Justitie
Mrs. Edith van den Broeck
Mr. Marc Bertrand
Mr. Jacques Hamaide
Mr. Xavier de Riemaecker
Mr. Jean-Marie Siscot
Mr. Geert Vervaeke

Bulgaria/la Bulgarie
Supreme Judicial Council
Mrs. Sabina Hristova
Mr. Alexander Vodenicharov

Croatia/la Croatie
State Judiciary Council
Mr. Nediljko Boban
Mr. Miho Mratovic

Cyprus/Chypre
Supreme Court
Mr. Savas Raspopoulos

Czech Republic/la République tchèque
Ministry of Justice
Mrs. Marta Pelechova

Denmark/Le Danemark
Domstolstyrelsen
Mrs. Birgitte Holmberg Pedersen
Mr. Adam Wolf

Estonia/l'Estonie
Ministry of Justice
Mr. Timo Ligi

Finland/La Finlande
Ministry of Justice
Mrs. Liisa Heikkilä
Mr. Sakari Laukkanen

France/la France
Conseil Supérieur de la magistrature
Mrs. Christiane Berkani
Mr. Jean Paul Sudre
Mr. Valéry Turcey
Mr. Raphael Weissmann

Germany/l 'Allemagne
Bundesministerium der Justiz
Mr. Martin Petrasch

Hungary/la Hongrie
National Council of Justice
Mr. Sandor Fazekas
Mr. Laszlo Gatter
Mr. Arpad Orosz

Ireland/l'Irelande
Courts Service
Mrs. Susan Denham
Mr. William Hamill
Mr. John Quirke
Mr. Brendan Ryan
Mr. Esmond Smyth

Italy/l 'Italie
Consiglio Superiore della Magistratura
Mr. Luigi Berlinguer
Mr. Carmelo Celentano
Mrs. Milena Falaschi
Mr. Giuseppe Di Federico
Mr. Giovanni Mammone
Mr. Luigi Marini
Mr. Wladimiro de Nunzio
Mr. Giuseppe Salme

Latvia/la Lettonie
Ministry of Justice
Mr. Kaspars Berkis

Lithuania/la Lituanie
National Courts Administration
Mr. Raimondas Baksys

Judicial Council
Mr. Vytas Milius

Luxembourg/le Luxembourg
Ministère de la Justice
Mr. Marc Mathekowitsch

Malta/Malte
Commission for the administration of Justice
Mr. Joseph Galea Debono

Montenegro
Judicial Council
Mr. Zahid Camic
Mr. Dragan Rakocevic
Mr. Ratko Vukotic

Netherlands/ les Pays-Bas
Raad voor de rechtspraak
Mrs. Marlies Bouman
Mrs. Marieke Breimer
Mr. Bert van Delden
Mrs. Marja van Kuijk
Mr. Maurice van de Mortel

Norway/la Norvège
National Courts Administration
Mrs. Anne Mari Borgersen
Mr. Karl Arne Utgard

Poland/ la Pologne
National Council for the Judiciary
Mr. Stanisław Dąbrowski
Mrs. Ewa Barnaszewska
Mrs. Ewa Chałubińska
Mr. Jarosław Chmielewski
Mrs. Teresa Flemming-Kulesza
Mr. Lech Gardocki
Mrs. Barbara Godlewska-Michalak
Mr. Mirosław Jaroszewski
Mr. Roman Kęska

Mr. Zbigniew Merchel
Mrs. Krystyna Mielczarek
Mrs. Beata Morawiec
Mrs. Małgorzata Niezgódka-Medek
Mr. Mieszko Nowicki
Mr. Ryszard Pęk
Mr. Stanisław Piotrowicz
Mrs. Irena Piotrowska
Mrs. Jarema Sawiński
Mrs. Ewa Stryczyńska
Mr. Janusz Trzciński

Appeal Court in Katowice
Mrs. Barbara Kurzeja

Voivodeship Administrative Tribunal in Kielce
Mr. Andrzej Jagiełło

District Court in Poznań
Mr. Piotr Górecki

Appeal Court in Warsaw
Mr. Krzysztof Strzelczyk
Mr. Marek Celej

Supreme Administrative Court in Warsaw
Mr. Grzegorz Borkowski

District Court in Wroclaw
Mr. Wacława Macińska

Voivodeship Administrative Tribunal in Wrocław
Ms. Dagmara Dominik
Mr. Michal Kazek

Ministry of Justice
Mr. Krzysztof Józefowicz

City of Wroclaw
Mr. Rafal Dutkiewicz

Portugal/le Portugal
Conselho Suprior da Magistratura
Mrs. Maria José Machado
Mr. Rui Moreira

Romania/la Roumanie
Superior Council of Magistracy
Mrs. Lidia Barbulescu
Mr. Cristian Deliorga

Mrs. Raluca Galea
Mrs. Irina Zlatescu

Slovakia/la Slovaquie
Judicial Council
Mr. Jozef Hrabovsky
Mr. Milan Karabin

Slovenia/la Slovénie
Republika Slovenija Sodni Svet
Mr. Zlatan Dezman

Spain/l'Espagne
Consejo General del Poder Judicial
Mr. Juan Pablo Gonzalez Gonzalez
Mr. Javier Martinez Lazaro
Mr. Javier Laorden Ferrero
Mrs. Pilar Ruiz Carnicero
Mr. Francisco Puig Blanes
Mrs. Reyes Goenaga Olaizola

Sweden/la Suède
Domstolsverket
Mrs. Charlotte Brokelind
Mr. Peder Jonsson
Mr. Staffan Leven

Turkey/la Turquie
High Council for Judges and Prosecutors
Mr. Celal Altunkaynak

Ministry of Justice
Mr. Celalettin Dönmez

Ukraine
State Court Administration
Mrs. Olga Bulka

United Kingdom/le Royaume Uni
Judges' Council of England and Wales
Ms. Barbara Flaxman
Mr. John Thomas
Mr. Michael Walker

Supreme Courts of Scotland
Mr. Alexander Featherstonhaugh Wylie

Other institutions/guests

Mr. Franco Frattini, European Commission (EC)

Mr. Lorenzo Salazar, European Commission
Mrs. Isabelle Jegouzo, European Commission
Mr. Guy Canivet, Network of the Presidents of the Judicial Supreme Courts in the European Union (EUSJC)
Mr. Gilles Charbonnier, European Judicial Training Network (EJTN)
Mr. Orlando Afonso, Consultative Council of European Judges (CCJE)

Members and observers to the Network

I. Members of the ENCJ:

Member state	Organisation
Belgium	Conseil Supérieur de la Justice / Hoge Raad voor de Justitie
Denmark	Domstolstyrelsen
France	Conseil supérieur de la magistrature
Hungary	Országos Igazszázolgáltatási Tanács
Ireland	An tSeirbhis Chúirteanna/Courts Service
Italy	Consiglio Superiore della Magistratura
Lithuania	Nacionaline Teismų Administracija
Malta	Commission for the Administration of Justice
Netherlands	Raad voor de rechtspraak
Poland	Krajowa Rada Sądonictwa
Portugal	Conselho Suprior da Magistratura
Slovakia	Súdna rada Slovenskej republiky
Slovenia	Republika Slovenija Sodni Svet
Spain	Consejo General del Poder Judicial
United Kingdom	Judges' Council of England and Wales

II. Observers to the ENCJ:

State	Organisation
Austria	Bundesministerium für Justiz
Bulgaria*[1]	ВИСШ СЪДЕБЕН СЪВЕТ/Supreme Judicial Council
Croatia*	Državno sudebno vijece Republike Hrvatske
Cyprus	ΑΝΩΤΑΤΟ ΔΙΚΑΣΤΗΡΙΟ ΚΥΠΡΟΥ/Supreme Court
Czech Republic	Ministerstvo Spravedlnosti
Estonia	Justiitsministeerium
Finland	Oikeusministeriö
Germany	Bundesministerium der Justiz
Latvia	Tieslietu Ministrija
Luxembourg	Ministère de la Justice
Romania*	Consiliul Superior al Magistraturii
Sweden	Domstolsverket
Turkey*	Hakimler ve Savcılar Yüksek Kurulu

III. Qualifying for member or observer status to the Network:

Greece
Northern-Ireland

* = EU Candidate Member State