



European Network of Councils
for the Judiciary (ENCJ)

Réseau européen des Conseils
de la Justice (RECJ)

ENCJ contribution to the discussion on effective justice systems in the EU

Key words: efficiency, quality and independence of the judiciary

1. Introduction

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

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

The ENCJ considers that sharing of experiences and best practices in the judicial arena contributes to the development of a European Judicial Culture. ENCJ's *modus operandi* consists of setting up three to four project groups from amongst our members each year which then research the subject matter, discuss and finalise a report for approval at the following ENCJ General Assembly. The reports contain principles of best practice and/or minimum standards in arrears such as ethics¹, appointment and promotion of members of the judiciary², judicial reform³, evaluation and

¹ <http://www.encj.eu/images/stories/pdf/ethics/judicialethicsdeontologiefinal.pdf>

² http://www.encj.eu/images/stories/pdf/GA/Dublin/final_report_standards_ii.pdf

irremovably⁴, public and mutual confidence and like topics which when adopted form part of the ENCJ *acquis*. Currently ENCJ is working on reports relating to independence and accountability and the allocation of cases.

ENCJ believes that the identification of minimum judicial standards (and relevant indicators) in these particular fields provide a tool for self-evaluation for the judicial systems and will further the approximation of the judicial systems in Europe. This will support the development of independent Councils for the Judiciary and contribute to the attainment of a European Judicial Culture.

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

2. Quality and effectiveness

In terms of quality and effectiveness, the ENCJ takes the view that Councils for the Judiciary must be autonomous, constitutionally established, and that self governance of the judiciary contributes to an efficient administration of justice. ENCJ membership brings together National Councils and has the benefit through dialogue of revealing strengths and weaknesses in a variety of local systems and thus assists Councils in reflecting on their own judicial systems and identify areas of improvement.

The ENCJ reiterates that an independent and efficient judiciary is of great economic value as it provides for a sound investment climate, necessary for the recovery of an economy.

The reduction of resources available to the judiciary may have undesirable side effects which would outweigh the intended effect of possible governmental savings. Delayed justice in important cases, such as public procurement, insolvency and labour disputes, may cause great damage to investment projects; it may delay the productive use of scarce assets; and it could undermine economic recovery.⁵ As a consequence of the economic crisis systems of justice have come under strain. The volume of cases both civil and criminal has escalated and often essential resources requiring financial backing are not available. There needs to be greater support for Councils and an understanding that the judicial system must be adequately funded. It is very disappointing to see the budgets of

³ http://www.encj.eu/index.php?option=com_content&view=category&layout=blog&id=31&Itemid=245&lang=en

⁴ http://www.encj.eu/images/stories/pdf/workinggroups/encj_report_minimum_standards_iii_approved.pdf

⁵ ENCJ Vilnius Declaration http://www.encj.eu/images/stories/pdf/opinions/encj_vilnius_declaration_final_10_june_2011.pdf

Councils and judiciaries being reduced against an ever increasing workload and in certain instances changes being brought about in the nature of judicial representation in the guise of fiscal rectitude by the executive. To maintain an effective and quality system of justice, there has to be maintained in place adequate funding by the executive.

Greater attention has to be paid to the ever increasing case load. Councils and the judiciary themselves need to identify problem areas and initiate and propose reforms. After all, it is the judiciary who work at the coal face of all justice systems.

3. Judicial Reform

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

The aim of reform has to be to secure a better quality and more effective system of justice.

More examples of successful judicial reform projects can be found in the ENCJ Judicial Reform reports.⁶

⁶ ENCJ Judicial reform reports

http://www.ency.eu/index.php?option=com_content&view=category&layout=blog&id=31&Itemid=245&lang=en

4. Timeliness

No party to any proceeding should have to endure an unreasonable period of time prior to the conclusion of legal proceedings before the courts. In this regard, timeliness and the problems connected to delayed judgments and backlogs are a cause for serious concern particularly having regard to art 47 of the Charter of Fundamental Rights. ENCJ examined a variety of obstructions that hinder timely judgments and the remedies that may be utilised to overcome the difficulties. We have organised a very successful regional seminar in Warsaw in 2013 and are planning a further seminar at a location in Western or Eastern Europe in 2014. The aim of these seminars is to increase awareness of the problems associated with timeliness, deepen the understanding of causes and remedies, and to discuss recommendations and cooperation between stakeholders. Organising these timeliness seminars at a regional level with participants from countries within a region with comparable culture and legal tradition allows for a concrete and operational approach which can only benefit individual systems.

5. Effective Justice and the Justice Scoreboard

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

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

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

6. Independence of the Judiciary

The effective safeguarding of the independence of the judiciary forms the basis of democracy in Europe and is a prerequisite for maintaining and enhancing mutual confidence between the judicial authorities of the various Member States and, in consequence, smooth cross-border cooperation in the common area of justice, based on the principle of mutual recognition as enshrined in Articles 81 TFEU (civil matters) and 82 TFEU (criminal matters);

National judicial systems must enable citizens to fully enjoy the rights under EU law and the independence of the judiciary is necessary to uphold these rights. Insufficient guarantees of judicial independence could negatively impact on the application of EU law and the right to an effective remedy before a tribunal as enshrined in the Charter of Fundamental Rights.

The European judicial area must be built on a shared judicial culture among practitioners. A common judicial culture needs to be created among members of the judiciary using the Charter of Fundamental Rights and other relevant European texts to promote the core values of the judicial profession by discussing and promulgating common professional ethics, the rule of law and key principles for an independent, impartial and professional judiciary thereby promoting the mutual trust necessary to make the common judicial area a reality⁷.

The ENCJ has instituted a project to articulate its position on the independence and accountability of the Judiciary and, in particular, to develop performance indicators for the objective and subjective

⁷ See also ENCJ reports on minimum standards for the selection and appointment of judges (2011-2012) and minimum standards for professional evaluation and irremovability of judges (2012-2013)

http://www.ency.eu/index.php?option=com_content&view=category&layout=blog&id=11&Itemid=16&lang=en

independence and accountability of the Judiciary. Our aim is that these indicators would be used within the framework of the justice scoreboard. We have found that it is not an easy task to develop and evaluate this set of indicators as we are dealing with “28 different best judicial systems”, to quote Ms. Reding. These systems are not always easy to compare. Still we are very confident that we will succeed in producing such set of indicators.

The question is what purpose the results of the various benchmarks will serve. In our view the Justice Scoreboard is, for now, a non-binding tool. But we need to address the question in what way the outcomes of the justice scoreboard and the benchmarking process of the justice scoreboard can be of assistance to the member states in improving judicial independence in a positive and practical manner. Another issue is how to collect independent and reliable data. If the data are not trusted and confirmed, the Justice Scoreboard itself will be discussed and not the outcomes.

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

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

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

7. Rule of Law mechanism

The ENCJ called for the establishment of a Rule of Law mechanism in its Sofia declaration of June 2013⁸. In our view such a mechanism should, amongst others, concentrate on protecting the independence of the judiciary and in ensuring the promotion of effective justice systems for the benefit of all citizens. A rule of law mechanism should not only be about heading off major crises; it should be about nurturing justice systems that are challenged, and assisting judges and court officials to improve the way in which justice is delivered to the people.

The ENCJ operates a “requests for assistance” approach whereby Councils for the Judiciary or similar bodies in member states and in candidate member states can ask for advice, help or assistance from another council. The fact of the matter is that a judge to judge conversation is often the most effective way of ameliorating problems faced by judiciaries and by justice systems. This is not about lecturing or dictating how particular justice systems should operate, but it is about working together to improve the way justice is delivered. We all, wherever we may be, North, South, East or West of Europe have something to learn. The rule of law is not an absolute. It is an ideal. It is a spectrum along which we all travel. Therefore judges can and should be involved at the heart of the creation of an effective rule of law mechanism, which can benefit and improve judicial systems throughout Europe

8. Strengthening the position of the judiciaries

As Vice President Reding stated in her address on the Rule of Law, the ENCJ and other networks are working in cooperation with the EC on the Justice Scoreboard. We would like to emphasise that the Network of Councils for the Judiciary, the Network of Presidents of the Supreme Court and the Network of Councils of State represent on a European level the formally established national institutions covering the field of administration of justice. We have found that whereas the contact

⁸ ENCJ Sofia Declaration on the Independence and Accountability of the Judiciary
http://www.encj.eu/images/stories/pdf/GA/Sofia/encj_sofia_declaration_7_june_2013.pdf

between the various judicial entities on the EU level is functioning well contact with the EU institutions could be improved. There is no system of structured dialogue in place. Where on the national level the judiciary should be fully involved in devising development strategies for the justice sector, as stated above, the same can be argued for the development of the future Justice policy of the EU. The Judiciaries of the EU should be fully engaged in this process. To strengthen the position of the judiciaries of the EU and to enable the judiciaries to fuel the debate on the future of the common Area of Justice we feel that there is a need for a recognized –informal- body that would meet regularly and serve as a sounding board for the EU Institutions and at the same time as a body that would represent the judicial perspective to the Institutions. In our view this body would serve as the link between the national judicial authorities and the Community bodies and could thus be charged with an early warning system when the quality and effectiveness of the judiciary and the judicial system in the European Union is at stake.