



European Network of Councils
for the Judiciary (ENCJ)

Réseau européen des Conseils
de la Justice (RECJ)

Address to the JURI Committee of the European Parliament

15th June 2015

Nuria Díaz Abad

President of the European Network of Councils for the Judiciary

Mr. Chairman, it is an honor to me to participate this morning in this workshop on the common minimum standards on civil procedure. As my predecessor, Lord Justice Geoffrey Vos, had already the opportunity to explain in this Committee, the European Network of Councils for the Judiciary is an institutional network, made up now of 24 members, Councils for the Judiciary from 20 Member States, and 15 observers, the Court of Justice of the European Union, 8 bodies governing the Judiciary in those Member States that have no Councils for the Judiciary and 6 Councils for the Judiciary in candidate Member States.

The ENCJ allows the EU's Councils for the Judiciary to engage in a dialogue aimed at improving cooperation between them so as to promote best practices to enable judiciaries across the EU to deliver timely, effective and high quality justice. It is not a secret that these are challenging times for some judiciaries even in EU Member States. The members of the ENCJ work together to improve their justice systems. The ENCJ facilitates the interaction between the judiciaries of Europe. It encourages collaboration and stimulates the exchange and implementation of best practices so that, step by step, a common European Judicial Culture can be realised. For that purpose, we need to identify and promote shared values, goals and practices. The ENCJ's activities increase mutual understanding amongst the Councils for the Judiciary and the members of the judiciary.

Over the last 11 years, the ENCJ has laid down a whole series of standards, best practices and guidelines in every area of judicial activity: appointment, promotion, evaluation of judges, judicial ethics, judicial discipline, and the establishment of Councils for the Judiciary to name but a few. Recently, the ENCJ has embarked on a major project aimed at identifying indicators of the independence and accountability of judges. We are now extending that project to look at indicators of the quality of a justice system. All this has fed in to our cooperation with the European Commission in the production of its important Justice Scoreboard.

The ENJC is the only truly institutional EU judicial network and in that sense we can offer the EU institutions a judicial perspective on legal and other issues affecting the administration of Justice and we can also give advice in the preparation of EU legislation. Most of the members and observers of ENCJ are competent, according to national legislation, to express opinion on draft normative acts concerning the judiciary and the judges and to provide advice on legal matters. In that sense, ENCJ could deliver a judicial perspective to the EU Institutions in this preliminary legislative work. Therefore the invitation to participate in this workshop is of high interest for our network.

Coming now to the issue of this workshop what has to be said first of all is that the identification of common standards and principles for civil procedures in the EU Member States is a positive element for strengthening the Area of Freedom, Security and Justice, since it contributes to enhance mutual trust.

Nevertheless, the development until now of EU legislation in the field of judicial cooperation in civil matters lacks of coherence and requires a stronger coordination. Therefore ENCJ welcomes the idea of identifying minimum standards for civil procedure law, since this exercise on the one hand will contribute to order and give coherence to the “acquis” that already exists and on the other will reinforce the principle of mutual trust, allowing that the different legal systems offer equivalent rights to the parties in the procedure.

The EU legislation on judicial cooperation in civil matters has been established on two different legal basis: article 81 TFEU and article 114 TFEU. In the first group we can find regulations and directives with a cross-border element (like the Regulation (EU)

2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency procedures or the Regulation (EU) 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters). Article 114 TFEU has been used in legislation with no cross-border elements, linked to the functioning or establishment of the internal market, like consumers' protection, intellectual property rights etc. As a result of all this, the evolution of civil procedural rights is not uniform and lacks of coherence and clarity. The project in this field from ELI-UNIDROIT is a good opportunity to establish the basis for a uniform civil procedure by fixing minimum standards that are accepted by all the Member States. This would also contribute to increase legal certainty and the protection of fundamental rights in the procedure, like the right of access to justice (article 47 of the Charter of Fundamental Rights of the European Union) and the right to a fair trial (article 6 of the European Convention on Human Rights). The judges, under modern constitutionalism, guarantee and protect human rights.

Three considerations have to be made as an introduction: First, that in regard to the position of the United Kingdom, Ireland and Denmark, according the Protocols 21 and 22 of the TFEU, no common legislation will be possible for the 28 Member States if the legal basis should be article 81 TFEU; secondly that the question of the legal basis to be used (article 81 TFEU, article 114 TFEU or both) has to be clarified by the Legal Services of the EU institutions and last, that in the view of ENCJ a step by step approach is the most convenient, taking into account the differences between the continental and the common law systems.

If we accept the step by step approach, the most suitable instrument might turn out to be the Directive. Nevertheless the approach has to be cautious, considering the importance of the issue. Therefore it would be necessary that the EU institutions wait until the outcomes of the ELI-UNIDROIT project are carefully examined. Once this has been done, one or more Directives could be prepared, depending on the matters to regulate. These Directives could either cover different areas (like the ones defined by the working groups in which the ELI-UNIDROIT project was divided (e.g. access to information and evidence or provisional and protective measures) or limit themselves to fix fundamental principles of a common civil procedure. My personal view is that this

second option is a better starting point, so that first the EU should regulate a common structure for the civil proceeding and its basic elements and then go further into detail, regulating the different aspects of these common elements.

Regarding the fundamental rights, besides articles 47 of the Charter and 6 ECHR, also article 13 of the United Nations Convention on the Rights of Persons with Disabilities, which was approved on behalf of the European Community by Council Decision 2010/48/EC of 26 November 2009 (OJ 2010 L 23, p. 35), has to be taken into account. This articles states in its first paragraph that *“States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.”*

There are 80 million people with disabilities in the EU. We have to promote equal access to Justice for them and guarantee their legal protection. In Member States that uphold the Rule of Law, ordinary judges, whether they act within a common law or codified law system, a concentrated or diffuse constitutional jurisdiction, do not just have the task of defending fundamental rights, but also of ensuring that the public powers give them real content and do not reduce them to mere rhetorical declarations devoid of effectiveness.

To conclude, I would like to stress out that, in establishing minimum common standards for civil procedure in the EU, ENCJ could contribute to this process by offering assistance though its members and observers in gathering information on practical questions. The ENCJ can also provide observations on draft rules from the point of view of judicial independence and accountability.