



European Network of Councils
for the Judiciary (ENCJ)

Réseau européen des Conseils
de la Justice (RECJ)

**Interparliamentary Committee Meeting on the Establishment of an EU Mechanism on
Democracy, Rule of Law and Fundamental Rights**

**Address on the role of National Parliaments in upholding Democracy, Rule of Law and
Fundamental Rights**

Brussels, 22 June 2017

**Nuria Díaz Abad
President of the ENCJ**

First of all, I would like to say that it is a great honour to have been invited to speak at this interparliamentary committee meeting.

I represent the ENCJ, which unites the national Councils for the Judiciary and similar autonomous bodies in the EU. Councils for the Judiciary play an important role in the defence of the independence of the Judiciary as a separate state power from the legislative and the executive. During the years ENCJ has developed a series of standards and good practices in several fields regarding judges and judicial systems. Let me mention but one of these standards, namely the ethical duty of judges to speak out when democracy and fundamental freedoms are in peril.

Two weeks ago we had our annual General Assembly in Paris at which we adopted our 2016-2017 report on Independence, Accountability and Quality of the Judiciary. This project itself began by identifying the indicators of an independent and accountable judicial system, and applying those indicators to each of the justice systems operating in our Members' and Observers' countries. We identify and score the indicators of objective and subjective independence and accountability of both the individual judge and the judiciary as a whole, and we also identify the challenges to the independence of the judiciary that all systems and judges face. After mapping the strengths and weaknesses we organise dialogue groups during which remedies are sought to address the weaknesses identified.

The project also sought the views of the judges in Europe on the perception of their own independence. In 2016 a survey among judges was conducted for the second time. Over 11.700 judges from across Europe participated in the survey. The survey shows that, on average, judges rated their own independence as being 8.9 out of 10 and the independence of judges generally in their own country as being 8.3. The survey also revealed a number of

other important issues, including a perception by judges across Europe that judges have been appointed and/or promoted on grounds other than on capacity and experience and a perception that judicial independence is not adequately respected by other state institutions. In the most recent Flash Eurobarometer 447 (April 2017) on the perception of the general public about the independence of the judiciary, interference from politicians and the government is mentioned most frequently as reason for a negative perception of the independence of the judiciary. This issue needs to be addressed and I believe that all three branches of the state have a shared responsibility in this regard.

To understand the true and appropriate limits of judicial independence it is useful to consider just two well-known and well-established principles promulgated by the ENCJ.

The first one is that Judges should be appointed on the basis of merit and capability alone. It is at this stage that I want to turn to the representatives here today. The appointment of judges is an area where you, the national Parliaments, have a specific responsibility. In most Councils part of the Members of the Council, who are responsible for the appointment of judges, are themselves appointed by the Parliament. ENCJ set out minimum standards in relation to the appointment of non-judicial members in order to avoid politicization of the Council. The ENCJ believes that where non-judicial members are appointed by parliamentary bodies, the process of selection, election or appointment of non-judicial members should be merit based and transparent. Non-judicial members should be persons of high moral standing who bring to Judicial Governance acknowledged skills and experience from outside the judiciary. In order to secure the voice of civil society, non-judicial members should not be politicians or persons with political affiliations.

The second main principle I wish to highlight is that the Judiciary and the Council for the Judiciary should be closely involved in the formation and implementation of all plans for the reform of the judiciary and the judicial system. Reforms should only be done to judges after a meaningful consultation of the Judiciary or the Council for the Judiciary. As parliamentarians, you are in a crucial position in this regard and you need to hold the government to this principle and oblige it to seek the views and cooperation of the Judges and Councils for the Judiciary for any judicial reform.

The outcomes of this year's project and developments across Europe show that these are challenging times for justice systems throughout Europe. Respect for the independence of the judiciary, as the key element of the Rule of Law, is being challenged in a number of countries.

The ENCJ is especially concerned with the situation in Poland. In January this year we received a formal request of cooperation from the Polish Council for the Judiciary (KRS) to advice on two new legislative proposals. The Board of the ENCJ concluded that the draft laws could harm the independence of the judiciary in Poland. In April the Board adopted a second statement reiterating its concerns and pointing out that to uphold and protect the Rule of Law is responsibility of both the judiciary and the other State Powers. After this statement several of our Members and Observers have adopted individual statements to express their concerns on the situation of the judiciary in Poland. Finally, in the Declaration

adopted in Paris we reiterate our concerns and underline that a key requirement for maintaining and enhancing mutual trust between judicial authorities in the EU, as a basis for mutual recognition, is the independence, quality and efficiency of each of the judicial systems and respect in each state to the Rule of Law.

I would also like to point out that ENCJ is one of the judicial Networks mentioned in the Communication from the Commission to the European Parliament and the Council on a new EU framework to strengthen the Rule of Law. In this regards we were invited to a meeting in March by the First Vice President of the Commission, Mr. Timmermans, to examine the situation of the Polish judiciary.

Therefore, in my view, the involvement of ENCJ in the analysis of the situation of the Judiciary in a Member State is valuable. And an independent Judiciary is a key element of the Rule of Law.

I now wish to turn to the relations between the three branches of the state. The executive and the legislature need to have a clear understanding of what judicial independence and accountability entail. The ENCJ has recently set out its strategy for the next period. One of the main objectives it wants to pursue is to provide support for the independence, accountability and quality of judiciaries in Europe and to promote understanding of and respect for judicial independence. The ENCJ aims to achieve this, amongst others, by initiating a dialogue with the other State Powers on the Rule of Law and the role of the judiciary in a democratic state, both on the national and the European level. The ENCJ is eager to follow-up on today's meeting with initiatives that would allow a meaningful dialogue on this subject.

In Paris the ENCJ adopted a declaration on resilient justice. We believe there is a strong need for resilient justice systems which can withstand external pressure whilst at the same time having the ability to adjust to the changing needs of society. It is essential that judiciaries have appropriate structures of governance in the form of Councils for the Judiciary and that Councils for the Judiciary support any judiciary which is under attack and do all they can to persuade the executive and legislature to support the action which they are taking in this regard. In any democratic state it is essential that there is a proper and informed understanding of the respective roles and responsibilities of each of the branches of the state and the need for them to work together in an effective and mutually respectful manner.

In closing, I want to return to the theme of this session. I sincerely believe that we have a shared responsibility to uphold Democracy, the Rule of Law and Fundamental Rights in order for our societies to prosper and for the welfare of the people.

I thank you for your attention.