



European Network of Councils
for the Judiciary (ENCJ)

Réseau européen des Conseils
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Let me start by saying what a great honour it is to have been invited to speak at this conference. I represent the ENCJ, which unites the national Councils for the Judiciary and similar autonomous bodies in the European Union. We do not represent individual judges, but the bodies governing them. 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. Over the years ENCJ has developed a series of standards and good practices in several fields regarding judges and judicial systems. Those standards reflect the shared principles and values of the EU Member States, which guarantee a proper functioning of a democratic system based on the Rule of Law. Therefore it is important for all of us to try to fulfil those standards, since we are living challenging times in Europe and all our efforts should go to reinforce the basic values on which Europe has been built, namely democracy, fundamental rights and the Rule of Law. Today I would like to focus on the standards regarding judges, from the perspective of the Councils for the Judiciary, and on the standards regarding Councils for the Judiciary.

Standards regarding judges

When we look at the reports ENCJ has been producing for the last 14 years we can distill general principles regarding the judges. I will sum them up in two groups: judicial ethics and independence and accountability.

As regards **judicial ethics** our 2009-2010 Report is the main document in this field. We thought it was necessary to produce this report in order to strengthen public confidence in the Judiciary and to allow a better understanding of the role of the judge in society.

ENCJ addressed this issue in a positive manner, emphasizing the common founding values of a judge's work and establishing a distinction between values or merits (like independence, integrity, impartiality) and qualities or virtues of a judge (wisdom, humanity, courage etc.).

I would also like to point out that the report includes aspects of the private life of the judge.

ENCJ understands that matters of judicial discipline and ethics should fall under the authority of Councils for the Judiciary or other independent and autonomous bodies to avoid the danger that disciplinary proceedings may be used as a tool to intimidate the Judiciary. Therefore a code of conduct and ethics should be drawn up by judges or a Council for the Judiciary. It should state the types of breach of the principles of judicial conduct or ethics which would be unacceptable, including conduct which is capable of bringing the Judiciary into disrepute.

As already mentioned, judicial integrity is regarded in this report as one of the values or merits that try to answer to the question of what society and citizens expect of a judge. The report says that the judge fulfills his/her role with integrity, in the interest of justice and society. Two duties result from this principle: the duty of probity and the duty of honour. Under the duty of probity the report numbers several obligations, like to refrain from any tactless or indelicate behavior, exercise his/her functions without favoritism, ensure the correct use of resources or refuse to accept gifts or advantages for himself or herself or for those close to him or her. The duty of dignity and honour includes the obligation to exercise his or her functions by applying loyally the rules of procedure, by showing concern for the dignity of individuals and by acting within the framework of the law. It also includes that courtesy governs his or her relations with other professionals within the justice system and that the judge ensures through his or her professional practice and person, that he or she does not jeopardise the public image of the judge, the court and the justice system.

The report also points out that judges must be impartial and that impartiality means that judges should act and appear to act in all matters without prejudice or preconceived ideas.

Some other reports produced by ENCJ are related to the question of judicial integrity. To mention the most recent let me point out our 2016-2017 Report on Independence, Accountability and Quality of Justice, that includes in the evaluation on accountability a question on the code of ethics to try to find out if the Judiciary in the country has a code on ethics and, if the answer to this question is positive, if this code of ethics is available to the public. We also asked if there is judicial training on ethics and if there is an independent body with responsibility to provide judges with guidance or advice on ethical issues.

The 2004-2005 Report on Evaluation of Judges came to the conclusion that few countries address ethical aspects in the evaluation of judges and, where this is taken into consideration, it is related principally to professional activities.

And the last of our reports I would like to mention in this context is the 2014-2015 Report on Disciplinary Proceedings and Liability of Judges in which the links between disciplinary and judicial ethics are analyzed and minimum standards and indicators regarding these areas are established.

A second group of ENCJ standards linked to judgeship are our **standards on independence and accountability**. In 2013 we started to work on this issue. We understand that independence and accountability go together, since accountability is a prerequisite for independence. For the Judiciary to be independent, the Judiciary as a whole must be independent and the individual judge must be independent. Actual independence depends

on his or her behavior and shows in his or her decisions and this is reflected in the independence as perceived by society. It is also important that society perceives the Judiciary to be accountable.

Our Report on Independence, Accountability and Quality of Justice 2016/2017 includes on the one hand the results of a questionnaire on objective and subjective indicators on independence and on indicators on accountability and, on the other hand, a survey among judges on the perception of their own independence in which more than 11.000 judges from 26 countries in Europe participated.

It has to be mentioned that the indicators have not been developed to create rankings of the judicial systems, but rather to discuss the strengths and weaknesses of the judicial systems and try to improve them. As a general conclusion we can say that there is still much room for improvement. Let me point out that Poland is one of the countries with the highest rank in trust of the Judiciary by society.

The 2016 ENCJ survey among judges 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. These included:

- a perception by judges across Europe that judges have been appointed and/or promoted on grounds other than on capacity and experience;
- a perception that judicial independence is not adequately respected by other state institutions;
- a perception that judges are under pressure from a media which similarly does not respect their independence; and, finally,
- a perception on the part of substantial number of judges that their Council lacks appropriate mechanisms and procedures to defend judicial independence effectively.

In the survey among judges we included a question on corruption, regarding the existence of bribes, and found out that there are judiciaries where nearly all judges are sure that no bribes are accepted, while in other countries a small percentage of judges (less than 4%) believe that bribes are accepted and even in a third category of countries more than 20% of the judges think that this occurs, although I have to underline that they seldom expect this to happen regularly.

If we have a look on the questions regarding pressure on judges in Poland 74% of the judges that answered the survey understood that the Government does not respect their independence and 72 % considered that the Parliament does not respect their independence, while 62% answered that they do not feel their independence respected by the media. When asked what would contribute most to the independence of the Judiciary, Polish judges answered that better working conditions regarding caseload, appointment and promotion of judges strictly on the basis of ability and experience and less pressure from the media.

Standards regarding Councils for the Judiciary

Coming now to the standards regarding Councils for the Judiciary we have worked out some criteria on the composition of these bodies, the election of their members, their autonomy and competences.

To start with the composition of these bodies, Councils for the Judiciary should have at least 50% of their members chosen by their peers and the Minister of Justice should not be a member.

Councils for the Judiciary shall control its own finances and activities independently of both the legislative and the executive branches of government.

As regards their competences in our Report on Councils for the Judiciary of 2011 we enumerate a series of issues that should fall wholly or partly under the control of the Council or an equivalent independent and autonomous body, like appointment and promotion of judges, training of judges, judicial discipline and judicial ethics or proposing legislation concerning courts and the Judiciary, to name but a few. I wish to highlight 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 not be done to judges or justice systems without a meaningful consultation to them. At the same time, judges should not be hostile to modernisation and reform of the justice system, provided always that the reforms are aimed at improving the quality of the justice system for the benefit of those that it serves. Sadly we note that this principle is not followed in Poland where a wide-reaching reform is being planned without a meaningful consultation of the Judiciary or the Council for the Judiciary.

The Executive Board of the ENCJ has already had four opportunities to express his view on the ongoing reform of the Polish KRS. In our opinions of 31 January, 17 July, 13 October and 5 December 2017 we have clearly expressed that the absence of participation of the Judiciary in the judicial reform, the appointment of the judicial members of the Council by the Parliament and the planned termination of mandate of current judicial members of the KRS, who have been elected by their peers in accordance with the law, are against our standards. Therefore we regard the ongoing reforms with concern.

I would like to close by saying the ENCJ has recently set out its strategy for the next period. One of the main objectives we want 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 2016 survey among judges shows that judges do not feel respected by the other State Powers. 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.

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. We 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. And we believe that working together we can archive these goals.

I thank you for your attention.