



European Network of Councils  
for the Judiciary (ENCJ)

Réseau européen des Conseils  
de la Justice (RECJ)

# Funding of the Judiciary

## ENCJ Report 2015-2016



Co-funded by the Justice Programme of the European Union

*This publication has been produced with the financial support of the Justice Programme of the European Union. The contents of this publication are the sole responsibility of the ENCJ and can in no way be taken as the views of the European Commission.*

### Recommendation One

Budgets will always be subject to Parliamentary scrutiny as they involve the expenditure of public resources. However, the creation of the budget should be systemically and practically free from inappropriate political interference. Courts should not be financed on the basis of discretionary decisions of official bodies but on the basis of **objective and transparent criteria**.

### Recommendation Two

To ensure and strengthen the separation of powers, **the Council for the Judiciary, or a body on which the Judiciary is represented**, should be closely involved and fully informed at all stages in the budgetary process and should have an opportunity to express its views about the proposed budget to Parliament<sup>1</sup>.

### Recommendation Three

The **preparation of the budget for the judiciary**, including the administration of courts and the training of judges, should be wholly or at least partly under the control of a Council for the Judiciary or of equivalent independent and autonomous bodies. If a Council does not exist, judges should still have a decisive influence on the budgetary process.

### Recommendation Four

Courts must be resourced to a level which enables them to discharge their obligation to provide an effective and efficient system for the delivery of justice. Each State should therefore allocate **adequate resources, facilities and equipment** to the courts to enable them to function in accordance with the standards laid down in Article 6 of the European Convention on Human Rights and to enable judges and court staff to work efficiently.

### Recommendation Five

The maintenance of the rule of law ("Etat de droit") requires long-term financial stability in the funding of the judiciary.

Courts should **not be funded on an annual basis** but should have the certainty of longer-term financial budgets. Funding of courts should be protected from fluctuations caused by political instability.

**Budgetary constraints** effect the efficient functioning of justice at the risk of denying or delaying access to justice for potential litigants. This can take the form of budgetary restrictions but can also be the result of budgetary stagnation in the face of adverse influences such as an increase in caseload. Moreover, the structure of budgets can be quite different from one State to another which makes it difficult to compare.

There exists throughout Europe a great diversity in methods of funding the judiciary. It is a subject in itself. Whilst most budgets, for instance, include the cost of judicial salaries and judicial pensions,

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some budgets include the cost of judicial training whereas others do not. A minority of judicial budgets includes the cost of the penal system; some include the cost of court security. In some countries, caseload is an essential factor in allocating resources; other countries place greater emphasis on the budget agreed for past years. In most countries, the budget for the judiciary is separate to that of the prosecutors. It is therefore not possible to list comprehensively all those items which ought to be included in the budget for the funding of the judiciary<sup>2</sup>.

Budgetary constraints should not have consequences for the quality and delivery of Justice.

### Recommendation Six

Budgetary constraints may lead to the necessity for prioritization in the allocation of resources. Any **prioritization must be determined by the judicial authority** itself. These budgetary priorities must be defined in collaboration with the relevant judiciary according to transparent criteria such as caseload and the number of judges.

Budget transparency involves the extent to which citizens and members of the judiciary or other public groups can access information about and provide and/or obtain feedback on government revenues, allocations and expenditure. Therefore we distinguished: transparency around the sources of data and information used to frame decisions on revenue priorities and expenditure allocations, and transparency in the budget process.

### Recommendation Seven

To meet the present and future legitimate expectations of society, the judicial system must have the **resources to innovate and modernize** such as information and communication technology.

### Recommendation Eight

Budgetary constraints, which obviously must be taken into account, must not by themselves dictate the procedures to be followed.

It is therefore necessary to make sure that budgetary constraints must not be the determining factor in:

- the case management of trials and the rules governing the right of appeal,
- the promotion of alternative dispute resolutions,
- any attempt to diminish the role of the judge in the determination of disputes (for example, by the introduction of fixed awards or penalties by non-judicial procedures).

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<sup>2</sup> See Questionnaires answered by ENCJ members and observers

## Recommendation Nine

An increase of judges' workload can lead to the inability of judges to satisfy all the requirements of how cases should be properly handled.

Prioritization of litigation should be avoided. Nevertheless, if the resources of the Judiciary require it, such prioritization should only be effected after consultation with all relevant stakeholders.

**Any prioritization policy should be open and transparent.**

## Recommendation Ten

Judicial independence is a central pillar of any constitutional system. It is fundamental in any democracy that individual judges and the judiciary as a whole are independent of all external pressures and improper influence from the other branches of government, including funding bodies. The minimum conditions for judicial independence include financial security, i.e. the right to a salary and a pension.

In order to retain and attract the highest quality judges and maintain judicial independence, judicial remuneration must at all times be **commensurate with their professional responsibilities, public duties and the dignity of their office**. The remuneration must be based on a general standard and rely on objective and transparent criteria, not on an assessment of the individual performance of a judge. Judicial remuneration includes salary, sickness pay, paid maternity/paternity leave and pensions.

The remuneration of judges must be **constitutionally guaranteed** in law and not altered to the disadvantage of judges after their appointment. Save in times of economic emergency, when there is a general reduction in comparable public service salaries and judges are treated no less favourably than others paid from the public purse, there should be no reduction in judicial remuneration.

There should be an independent body established to make informed recommendations to the government in relation to judicial remuneration, which governments should accept and implement. Where such recommendations are not followed, the reasons should be clearly and publicly explained by the government.

## Recommendation Eleven

To guarantee the quality of justice, adequate funding must be made available to ensure that judges are **appropriately trained, initially and continuously** throughout their career.

## Recommendation Twelve

If members of the judiciary are given responsibility for the administration of the courts, they should receive appropriate training and have the necessary resources in order to perform that function. Such judges should therefore **be trained in relevant accounting and budgetary procedures**.

## I. Executive Summary

The Project Team on the “Funding of the Judiciary” by the European Network of Councils for the Judiciary (ENCJ) was initiated in September 2015 as a result of the ENCJ work plan 2015-2016 approved by the General Assembly held in The Hague on 3<sup>rd</sup>-5<sup>th</sup> June 2015. The Project Team was established as a continuation of the work of the ENCJ on the establishment of minimum judicial standards and strengthening mutual trust between judges and other judicial authorities. In the ENCJ Strategic & Action Plan 2014-2018, the ENCJ identified the necessity for a project to consider and report on the financing and support of ENCJ members and observers, Councils for the Judiciary and the individual justice systems. The Plan emphasised the importance of the identification of minimum judicial standards and the relevant indicators in particular fields of the justice sector for the improvement of the judicial systems in Europe. Minimum judicial standards and the relevant indicators provide a tool for self-evaluation of judicial systems and further the improvement of judicial systems in Europe. This supports the development of independent Councils for the Judiciary and contributes to the attainment of a common judicial culture.

Independent and accountable judiciaries are an essential component of high quality, effective and efficient justice systems, and a prerequisite for a well-functioning EU area of justice. Adequate funding of the judiciary is a key element in ensuring and safeguarding the independence of the judiciary and judges because it determines the conditions in which the courts and judges perform their functions. Funding of the judiciary is a wide issue including fund allocation, but also local and national management of these resources. The ENCJ are fully aware of the financial and economic climate and the budgetary constraints within which governments operate. However, even in times of economic crisis, an appropriate level of funding must be made available to enable the judiciary to manage its functions properly. Access to justice and the right to fair proceedings are not properly guaranteed if a case cannot be considered within a reasonable time by a court that has appropriate funds and resources in order to perform efficiently. Funding of the judiciary is an important issue for all of society, and particularly the economy, and the implementation of cutbacks should not be done in a manner that undermines the independence of the judiciary, impedes access to justice or which supports ill-intentioned outside interventions.

The ENCJ previously considered the issue of funding of the judiciary in its 2006-2007 Report on *Courts Funding and Accountability*. One of the specific aims of this project is to update the 2007 report, particularly in the light of developments including the economic crisis and subsequent austerity measures and the notion of the economic value of a well-functioning justice system. Since

the economic crisis in 2008, extensive consideration has been given by the ENCJ to the challenges and opportunities for the judiciary in the changing economic climate, particularly in its 2011 *Vilnius Declaration* and the 2011-2012 Report *Judicial Reform in Europe*. The *Vilnius Declaration* stresses that cost cutting cannot be allowed to undermine judicial independence, providing that

“The independence of the Judiciary and of every single judge is to be preserved as a prerequisite for the delivery of a fair and impartial justice in protecting human rights and fundamental freedoms. No necessity for cost cutting can be allowed to undermine judicial independence. It is the essential task of Councils for the Judiciary to maintain and strengthen the independence of the judiciary.” [Recommendation 10]

In terms of the opportunities the new economic climate provides for improving the efficiency of the courts, recommendation 3 of the Declaration provides:

“The new landscape necessitates taking the opportunity to undertake measures aimed at improving the efficiency of the Courts, a situation not necessarily perceived and dealt with in better times to rethink the judicial map, to introduce and reform the procedures and the internal organisation of the courts and the integration of the innovative information and communication technologies which are essential features to increase this efficiency of the court system.”

The Project Team has endeavoured to ensure the consistency of the recommendations and indicators in this Report with the principles provided in the previous ENCJ documents and reports.

The Report takes account of the diversity of legal systems throughout Europe and has proposed recommendations to assist all judicial authorities in financial and budgetary management. The Project Team comprised nineteen members of the ENCJ (Belgium, Bulgaria, Denmark, England and Wales, Hungary, France, Ireland, Italy, Latvia, Lithuania, the Netherlands, Northern Ireland, Poland, Portugal, Romania, Scotland, Slovakia, Slovenia, Spain), as well as representatives from four observer countries (Albania, Austria, Germany and Norway). The Project Team was co-chaired and co-coordinated by Ms. Soraya Amrani Mekki (Conseil Supérieur de la Magistrature, France) and Mr. John Hedigan (Courts Service of Ireland).

For the purpose of drawing up the current report and its appendices, the Project Team held its first meeting in Paris on 24<sup>th</sup> & 25<sup>th</sup> September, 2015 and two additional meetings in Brussels on 30<sup>th</sup> November & 1<sup>st</sup> December, 2015 and in Dublin on 29<sup>th</sup> February & 1<sup>st</sup> March, 2016.

## II. Introduction

### II.1. Goals and Methodology of the Project

**Goals and Expected Results** During the first meeting of the Project Team, the members of the Project Team discussed the objectives and intended outcomes of the Project. The overall objective of the Project is to promote independent and accountable justice systems in the EU and wider Europe. The specific objective is to assist Councils for the Judiciary involved in court management in relation to both resource definition and financial/ budgetary management by highlighting good practices in this field. Another goal of the project is to identify how economic pressure affects the work of the judiciary.

The members of the Project Team agreed that the following would be the main aspects of the Project:

- 1) The summary of established budget policies in all ENCJ member and observer states
- 2) The development of indicators in the field of funding the judiciary in light of the experiences of members and observers
- 3) Research and development of good practices with regard to the methodology and role of Judicial Councils in budget allocation and implementation
- 4) The consideration of potential consequences of budgetary constraints on legal procedures
- 5) The presentation of a comprehensive report of the activities of the Project Group to the ENCJ General Assembly in Warsaw on 1<sup>st</sup>-3<sup>rd</sup> June, 2016.

### Scope of the Project

In general, the efforts of the current Project Team were targeted on developing recommendations and relevant indicators (where possible) in the field of funding of the judiciary. However, considering the need to determine the boundaries of the Project and the main problematic points which arose during the introductory session, the members of the Project Team agreed that the Project should not include in its remit the costs of security and the cost of legal access. The Project Team also discussed the link between funding and independence and agreed that the Report should not be used to measure the quality of justice.

## **Actions**

The Project Team agreed to undertake a number of actions:

1. An overview of Justice budgetary policies, which involved:
  - updating the ENCJ 2006-2007 report “Courts’ Funding and Accountability” and considering the work of other bodies on this subject
  - a description of relations between ENCJ members & governmental bodies on budgetary issues
  - the outlining of indicators used to evaluate court activities
2. An examination of fund management by the Judiciary and the consequences on judicial practices, the involvement of other stakeholders such as lawyers and civil society and whether financial constraints influence legal procedures.

## **Methodology and Activities**

Regarding the methodology and activities to be undertaken by the Project Team, it was decided to structure these activities in the following way:

1. **Collection of the relevant information on national systems of funding the judiciary** by means of a questionnaire addressed to the ENCJ members and observers represented in the Project Team and to other ENCJ members and observers:
  - i) The Project Team discussed and defined the main relevant issues for the development of common standards on the funding of the judiciary (as well as relevant indicators). A questionnaire was drafted for the collection of such information. Since the main findings of the Project Team are partially based on the analysis of the answers to the questionnaire, specific attention was paid to the formulation of the questions, which were answerable, definite and comparable in order to create an effective comparative tool.

- ii) The questionnaire was circulated among ENCJ members and observers and a reasonable period for providing the answers was set. The completed questionnaires provided by some ENCJ members and observers<sup>3</sup> are available in [Annex II](#).
2. **Research, compilation and analysis of existing reports or opinions issued by relevant stakeholders in the field of funding of the judiciary** (e.g. EU Institutions/Council of Europe CCJE/Venice Commission, UN).
  3. **Discussions about the information collected in connection with each of the main areas of the subject of funding of the judiciary** (both on national systems and international sources) by the members of the Project Team during the several working meetings. As the outcome of the discussions, recommendations and indicators were defined by the Project Team.
  4. **Drafting and approval of the Final Report of the Project Team** defining the recommendations and indicators in the field of funding of the judiciary.
  5. **Presentation of the Final Report developing the standards and indicators at the ENCJ General Assembly** for final approval.

The draft report was presented to the ENCJ General Assembly which met in Warsaw 1-3 June 2016. The report and the standards and recommendations that it entails were adopted by the General Assembly on June 3<sup>rd</sup> 2016.

## **II.2. Consideration of European and International Sources related to Funding of the Judiciary**

The Project Team has attempted to identify all relevant opinions and reports in relation to the funding of the judiciary and to analyse those materials summarising European and International standards. The purpose of this research is to ensure that the recommendations and indicators outlined in this Report are fully consistent with other ENCJ and international documents and reports which have some connection with the issues of the funding of the judiciary. ENCJ Reports considered include:

- ENCJ Report 2013-2014 *Independence and Accountability of the Judiciary*
- ENCJ Report 2012-2013 *Distillation of ENCJ Guidelines, Recommendations and Principles*
- ENCJ Report 2011-2012 *Judicial Reform in Europe*

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<sup>3</sup> Albania, Belgium, Croatia, Denmark, England and Wales, Estonia, France, Germany, Hungary, Ireland, Italy, Lithuania, Montenegro, The Netherlands, Norway, Northern Ireland, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain,

- ENCJ Report 2010-2011 *Development of Minimum Judicial Standards Report*
- ENCJ Report 2010-2011 *Councils for the Judiciary*
- ENCJ Vilnius Declaration on *Challenges and Opportunities for the Judiciary in the Current Economic Climate* (2011)
- ENCJ Budapest Declaration on *Self Governance for the Judiciary: Balancing Independence and Accountability* (2008)
- ENCJ Report 2006-2007 *Courts Funding and Accountability*

**International sources considered include the following:**

- CDL-PI(2015)001, Compilation of Venice Commission Opinions and Reports concerning Courts and Judges (approved by the Venice Commission in 2015)
- CDL-AD(2010)004, Report on the Independence of the Judicial System. Part I: The Independence of Judges (adopted by the Venice Commission at its 82nd Plenary Session (Venice, 12-13 March 2010))
- Report of the Special Rapporteur on the Independence of Judges and Lawyers, Gabriela Knaul, submitted in accordance with resolution 17/2 of the Human Rights Council. UN General Assembly, 67th Session, 13 August, 2012, A/67/305
- Recommendation CM/Rec (2010) 12 of the Committee of Ministers to Member States on Judges: Independence, Efficiency and Responsibilities (adopted in November 2010)
- The UN Basic Principles on the Independence of the Judiciary (endorsed by the UN General Assembly in November/December 1985)
- The Universal Declaration on the Independence of Justice (The Singhvi Declaration) (approved by the UN in 1985)
- The Universal Charter of the Judge (approved by the International Association of Judges in November 1999)
- Consultative Council of European Judges (CCJE) Opinion No. 2 for the Attention of the Committee of Ministers of the Council of Europe on the Funding and Management of Courts with Reference to the Efficiency of the Judiciary and to Article 6 of the European Convention on Human Rights (adopted in November 2001)
- Consultative Council of European Judges (CCJE) Opinion No. 10 to the Attention of the Committee of Ministers of the Council of Europe on the Council for the Judiciary at the Service of Society (adopted in November 2007)

- Consultative Council of European Judges (CCJE) Opinion No. 11 to the Attention of the Committee of Ministers of the Council of Europe on the Quality of Judicial Decisions (adopted in December 2008)
- European Charter on the Statute for Judges (adopted by the Council of Europe in July 1998)
- Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct (the Implementation Measures) (adopted by the Judicial Integrity Group in January 2010)

Appendix I contains a summary of the international sources relating to funding of the judiciary prepared for the consideration of the Project Team.

Six principles were identified from these international sources which it was considered should form the basis of the Report:

#### **Principle 1 : Independence**

The independence of the Judiciary and of every single judge must be preserved as a prerequisite for the delivery of fair and impartial justice in protecting human rights and fundamental freedoms. No necessity for cost cutting can be allowed to undermine judicial independence. Decisions on the allocation of funds to the courts must be taken with the strictest respect for judicial independence.

#### **Principle 2 : Adequate resources**

Each state should allocate adequate resources, facilities and equipment to the courts to enable them to function in accordance with the standards laid down in Article 6 of the European Convention on Human Rights and to enable judges to work efficiently. This includes physical facilities appropriate for the maintenance of judicial independence, dignity and efficiency; judicial and administrative personnel; and operating budgets.

Courts should not be financed on the basis of discretionary decisions of official bodies but in a stable way on the basis of objective and transparent criteria. Funding of courts should not be subject to political fluctuations.

#### **Principle 3 : Council for the Judiciary**

A Council for the Judiciary should control its own finances and activities independently of both the legislative and executive branches of government. Councils for the Judiciary must have adequate

financial and administrative resources properly to carry out their functions. The Council must have the power and capacity to negotiate and organise its own budget effectively.

#### Principle 4: Role of Judiciary in budgetary process

To ensure and strengthen the separation of powers, the judiciary, or a body in which the judiciary is represented and has an effective role, should be closely involved at all stages in the budgetary process and should have an opportunity to express its views about the proposed budget to Parliament.

The Judiciary should be responsible for the financial management of the courts individually and as a whole, within the budgets allocated to them. If judges are given responsibility for the administration of the courts, they should receive appropriate training and have the necessary support in order to carry out the task.

#### Principle 5 : Remuneration of judges

The remuneration of judges must remain at all times commensurate with their professional responsibilities, public duties and the dignity of their office. Judges' remuneration should be sufficient to shield them from inducements aimed at influencing their decisions. Remuneration must be entrenched constitutionally or guaranteed in law so as to preserve judicial independence and impartiality. All discussions and negotiations relating to judicial remuneration should involve the judiciary.

The salaries of the judiciary should not be altered to their disadvantage after their appointment. An exception to the principle of non-reduction of salaries may be made at a time of economic difficulty if there is a general reduction of public service salaries and the judiciary is treated no differently.

The remuneration should be based on a general standard and rely on objective and transparent criteria, not on an assessment of the individual performance of a judge. Bonuses and non-financial benefits which include an element of discretion should be excluded.

There should be provisions for the periodic review of judges' remuneration to overcome or minimise the effect of inflation. Judges' remuneration should provide appropriately for illness, maternity or paternity leave.

Judges should receive pensions after their retirement, which should be adequate and should be in a reasonable relationship to their level of remuneration when working.

## Principle 6: Control by the Judiciary

The financing of the judiciary, the administration of courts and the training of judges should be wholly or partly under the control of a Council for the Judiciary or of equivalent independent and autonomous bodies. If a Council does not exist, judges can still have a decisive influence on decisions with respect to the responsibilities outlined.

High quality training must be available throughout a judge's professional career. Proper training promotes high quality and prompt judicial decisions, which themselves strengthen predictability and legal certainty. The body responsible for judicial training, if not the Council for the Judiciary itself, should be autonomous and have its own budget. The body responsible for judicial training should work in conjunction with the judiciary. It should be supervised by and/or bound by guidelines promoted by the Council for the Judiciary. Funding for judicial training should be provided by the State.

### II.3. The Report

The overall objective of the Project is to promote independent and accountable justice systems in the EU and wider Europe. The specific objective is to assist Councils for the Judiciary involved in court management in relation to both resources definition and management by highlighting good practices in this field.

Part III of the Report provides recommendations on funding the judiciary. Twelve recommendations have been described. The recommendations have been included under two headings: budgetary process and budgetary constraints. The section on budgetary process contains recommendations one to five. Recommendations six to twelve are set out in the section on budgetary constraints.

Part IV sets out the relevant indicators to inform the recommendations and the standards that need to be set. The indicators have been divided into five sub-headings: budgetary process; the adequacy of the budget to the requirements of the judiciary; budgetary constraints; judges' remuneration; and training.

### II.4. The Questionnaire

In order to discuss and develop recommendations and indicators, the Project Team decided to collect information on the practices in existence regarding funding of the judiciary. The information was collected through a questionnaire on a series of specific topics linked to funding of the judiciary,

which was answered by the members of the Project Team and other ENCJ members and observers. ENCJ members and observers were asked to answer the Questionnaire based on their experience, specifying how things are organized in their country, if there is a debate on matters in their country concerning the issue and to mention good practices in operation in their country. They were also asked to outline their views as to the ideal arrangements for funding. The responses to the questionnaire have been collated and may be accessed in [Annex I](#).

The responses to the questionnaire provide detailed information on national systems of funding of the judiciary concerning the specific areas subject to analysis by the Project Team. The questionnaire contained seventeen questions and numerous sub-questions in four specific areas:

**1. Components of the Budget concerning the Judiciary**

- The components of the budget.
- Whether it includes specific matters such as penitentiary administration.
- Whether court security is included.
- Whether there is a specific budget for judges or if prosecutors are also included.

**2. Budgetary Process**

- The process by which the budget is funded.
- Whether an amount or percentage of the budget is guaranteed for the judiciary. If so, the amount or percentage guaranteed and whether it is established by law or practice.
- Who sets the salary of judges and the process by which it is set? Whether judges' salaries are guaranteed and if so, the mechanism by which they are guaranteed.
- The identification of the authority that provides funds for the judiciary. Whether funds for the judiciary includes courts fees and if so, the process by which the fees are evaluated.

**3. Management of the Allocated Budget or Administration of the Agreed Budget**

- The identification of the authority that decides on the administration of the budget.
- The process by which funds are allocated.
- The criteria for allocating funds.

- The authority in charge of setting the criteria and whether the judiciary is involved in such issues. If the judiciary is involved, the manner and extent of the involvement.
- The criteria those answering the questionnaire consider the most important.
- Problems experienced, if any, with the misuse of these criteria.
- Suggestions as to good practice when using these criteria.

#### **4. Consequences of Budgetary Constraints**

- At national level
- At court level

The questionnaire required a description of the current situation in each country and -in some cases- of the relevant initiatives already undertaken or to be undertaken in the fields subject to analysis, thus providing an overview of the countries concerned, and also recommendations of best practices in relation to the funding of the judiciary. Nevertheless, the aim of the questionnaire was mainly as a guide -an easy reference- for seeking further information and not as a thorough comparison of the position in each jurisdiction on each topic. Some responses contained very detailed information on specific topics, whereas others did not. As a consequence, the responses on each issue in the questionnaire were various in style, length and number. When reading the questionnaire, the reader should keep this in mind, since the fact that some members left out information on an issue in the questionnaire does not imply that the country in question does not have a regulation or a policy similar to that described in the answers from other countries. The comparison of quantitative figures from different countries revealing varied geographical, economic and legal situations is a delicate task. It should be approached with great caution by the readers consulting the report and the answers to the questionnaire and, above all, by those who are interpreting and analysing the information contained in the answers to the questionnaires. In order to compare the various states and their systems, the particularities of the systems, which might explain differences from one country to another must be borne in mind (different judicial structures, organisation of courts and the use of statistical tools to evaluate the systems, etc.).

Further, more detailed information regarding the topics subject to analysis by the Project Team could be provided through the relevant national institution (whether the Council for the Judiciary, Court Administration or Ministry of Justice). On the other hand, keeping in mind that the aim of the ENCJ is to share experiences between members and observers, the Project Team suggests that the

questionnaire could be completed with information from members and observers of the ENCJ who have not yet responded and also updated by the responding countries on a regular basis.

## The Report

The independence of the Judiciary is to be preserved as a prerequisite for the delivery of fair and impartial justice in protecting human rights and fundamental freedoms. Decisions on funds allocation to courts and funds management must be taken with the strictest respect for judicial independence.

This obviously concerns the independence of the judicial institution with regards to political powers but also the independence of judges faced with external pressures which can lead to the risk of judicial corruption. Both are essential to guarantee an independent and impartial justice to potential litigants in order effectively to ensure compliance with the principles of a fair trial within reasonable time limits.

The link between financing and independence is so important that several European and international declarations have emphasized it is an indispensable guarantee of the rule of law (“Etat de droit”)<sup>4</sup>.

The ENCJ project team devoted to this subject has always kept in mind that the 2008 economic crisis gravely threatened the economic and financial stability of most of the European Union member states.

The following recommendations have been discussed with full regard to and awareness of the economic and financial context. However, the economic constraints which weigh upon the State must be balanced by the need to guarantee sufficient resources to the judicial institution so as to ensure the fullest support for the rule of law (“Etat de droit”).

Despite a very wide diversity of national arrangements, the following criteria should be regarded as fundamental to ensure to European citizens a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.<sup>5</sup>

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<sup>4</sup> See summary attached of the international sources relating to financing the judiciary prepared for the consideration of the project group

<sup>5</sup> ECHR article 6

### III. Recommendations

#### **Budgetary process**

Looking across Europe at how the budget for the funding of the judiciary is drawn up and agreed reveals a very diverse picture.

In some countries, where there is a federal structure, the process is decentralized. In several member States the drawing up of the budget is entrusted to a part of the executive power, for example the Ministry of Justice or the Ministry of Finance. Several countries adopt a “bottom-up” technique; that involves looking at the required budget for each court and creating a general budget at state level from the aggregate of all the individual budgets. It is, however, rare for the judiciary to play a major part in the initial preparation of the budget<sup>6</sup>.

Once prepared, the process for submitting the budget reveals an equally diverse picture. In many countries, the budget is submitted directly to the legislative authority, the Parliament. In others the draft budget is presented to the executive power. A third group of countries submit the draft budget to an independent authority<sup>7</sup>.

#### **Recommendation One**

Budgets will always be subject to Parliamentary scrutiny as they involve the expenditure of public resources. However, the creation of the budget should be systemically and practically free from inappropriate political interference. Courts should not be financed on the basis of discretionary decisions of official bodies but on the basis of objective and transparent criteria.

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#### **Recommendation Four**

Courts must be resourced to a level which enables them to discharge their obligation to provide an effective and efficient system for the delivery of justice. Each State should therefore allocate

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adequate resources, facilities and equipment to the courts to enable them to function in accordance with the standards laid down in Article 6 of the European Convention on Human Rights and to enable judges and court staff to work efficiently.

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The maintenance of the rule of law (“Etat de droit”) requires long-term financial stability in the funding of the judiciary.

Courts should not be funded on an annual basis but should have the certainty of longer-term financial budgets. Funding of courts should be protected from fluctuations caused by political instability.

#### Budgetary constraints

Budgetary constraints affect the efficient functioning of justice at the risk of denying or delaying access to justice for potential litigants. This can take the form of budgetary restrictions but can also be the result of budgetary stagnation in the face of adverse influences such as an increase in caseload. Moreover, the structure of budgets can be quite different from one State to another which makes it difficult to compare.

There exists throughout Europe a great diversity in methods of funding the judiciary. It is a subject in itself. Whilst most budgets, for instance, include the cost of judicial salaries and judicial pensions, some budgets include the cost of judicial training whereas others do not. A minority of judicial budgets includes the cost of the penal system; some include the cost of court security. In some countries, caseload is an essential factor in allocating resources; other countries place greater emphasis on the budget agreed for past years. In most countries, the budget for the judiciary is separate to that of the prosecutors. It is therefore not possible to list comprehensively all those items which ought to be included in the budget for the funding of the judiciary<sup>9</sup>.

Budgetary constraints should not have consequences for the quality and delivery of Justice.

### Recommendation Six

Budgetary constraints may lead to the necessity for prioritisation in the allocation of resources. Any prioritization must be determined by the judicial authority itself. These budgetary priorities must be defined in collaboration with the relevant judiciary according to transparent criteria such as caseload and the number of judges.

Budget transparency involves the extent to which citizens and members of the judiciary or other public groups can access information about and provide and/or obtain feedback on government revenues, allocations and expenditure. Therefore we distinguished: transparency around the sources of data and information used to frame decisions on revenue priorities and expenditure allocations, and transparency in the budget process.

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### Recommendation Seven

To meet the present and future legitimate expectations of society, the judicial system must have the resources to innovate and modernize such as information and communication technology.

### Recommendation Eight

Budgetary constraints, which obviously must be taken into account, must not by themselves dictate the procedures to be followed.

It is therefore necessary to make sure that budgetary constraints must not be the determining factor in:

- the case management of trials and the rules governing the right of appeal,
- the promotion of alternative dispute resolutions,
- any attempt to diminish the role of the judge in the determination of disputes (for example, by the introduction of fixed awards or penalties by non-judicial procedures).

### Recommendation Nine

An increase of judges' workload can lead to the inability of judges to satisfy all the requirements of how cases should be properly handled.

Prioritization of litigation should be avoided. Nevertheless, if the resources of the Judiciary require it, such prioritization should only be effected after consultation with all relevant stakeholders.

Any prioritization policy should be open and transparent.

### Recommendation Ten

Judicial independence is a central pillar of any constitutional system. It is fundamental in any democracy that individual judges and the judiciary as a whole are independent of all external pressures and improper influence from the other branches of government, including funding bodies. The minimum conditions for judicial independence include financial security, i.e. the right to a salary and a pension.

In order to retain and attract the highest quality judges and maintain judicial independence, judicial remuneration must at all times be commensurate with their professional responsibilities, public duties and the dignity of their office. The remuneration must be based on a general standard and rely on objective and transparent criteria, not on an assessment of the individual performance of a judge. Judicial remuneration includes salary, sickness pay, paid maternity/paternity leave and pensions.

The remuneration of judges must be constitutionally guaranteed in law and not altered to the disadvantage of judges after their appointment. Save in times of economic emergency, when there is a general reduction in comparable public service salaries and judges are treated no less favourably than others paid from the public purse, there should be no reduction in judicial remuneration.

There should be an independent body established to make informed recommendations to the government in relation to judicial remuneration, which governments should accept and implement. Where such recommendations are not followed, the reasons should be clearly and publicly explained by the government.

#### Recommendation Eleven

To guarantee the quality of justice, adequate funding must be made available to ensure that judges are appropriately trained, initially and continuously throughout their career.

#### Recommendation Twelve

If members of the judiciary are given responsibility for the administration of the courts, they should receive appropriate training and have the necessary resources in order to perform that function. Such judges should therefore be trained in relevant accounting and budgetary procedures.

### IV. Indicators

This report can be used by national judicial authorities, Councils for the Judiciary and other State powers in assessing their systems of funding the Judiciary and in the planning of any reforms. It should also assist in ensuring the independence of judges, and increase public confidence in the Judiciary and the judicial system as a whole. The report should also raise awareness and improve understanding of the different legal systems, and the common values of those systems.

It is therefore important to establish the indicators in the field of funding the Judiciary in order to inform the standards that need to be set.

The Project Team has considered the European and International Standards and Instruments relevant to this topic and the principles, recommendations and findings are the basis for the indicators which follow, namely:

#### Budget process

- 1) Is the system designed to decide the budget for the judiciary free, as much as is practically possible, from any inappropriate political interference? For instance, an inappropriate political interference is one which could aim to influence the financial resources allocated to the Judiciary in order deliberately to reduce the independence of judges.
- 2) Are the courts financed wholly on the basis of objective and transparent criteria? Are these criteria established in collaboration with the relevant Judiciary?

Are the criteria provided by law?

Are the criteria publicly available?

Are there transparent criteria for the preparation of the budget?

Are there transparent criteria to establish budgetary priorities?

Is the budget process public?  
Is the budget for the judiciary publicly available?

- 3) Alternatively, are the courts financed, whether in whole or in part, on the basis of discretionary decisions?
- 4) Even if this is the case, is such financing on a long-term, sustainable basis? Programmes such as Medium Term Budget Programme (MTBP) guarantee the independence and the sustainable development of the Judiciary because the budget is drafted based on programmatic information, tied to policy goals and institutional objectives and integrated into programme planning.
- 5) Is the budget for the judiciary vulnerable to fluctuations caused by political instability?
- 6) Is the Council for the Judiciary, or a body on which the judiciary is represented, closely involved in all stages of the budgetary process? Does this involvement include direct negotiation with the deciding authority (Ministry of Finance and Parliament) in order to ensure a greater understanding of the requirements of the judiciary?
- 7) Is the financing of the judiciary wholly or partly under the control of a Council for the Judiciary or of equivalent independent and autonomous body? If a Council or such a body does not exist, have judges a decisive influence on the budgetary process?

### The Adequacy of the Budget to the Requirements of the Judiciary

- 8) Does the judiciary allocate budgets once these have been determined to ensure an appropriate correlation between requirements and resources?
- 9) Are the opinions of courts required?
- 10) Is the Judiciary accountable for the management of its budget?
- 11) Is the judiciary resourced to a level that enables it to discharge its obligations to provide an effective and efficient system for the delivery of justice in accordance with international standards?
- 12) Is the judiciary provided with sufficient and stable funding so as to enable the judicial system to innovate, for example by the introduction and sustained development of technologies for optimization of court procedures and financial efficiency?

### Budgetary constraints

- 13) Are budgetary constraints so great that they are capable of restricting the fundamental right of citizens to have effective access to justice through the courts? Have such constraints been the underlying basis of reforms in the case management of trials and the rules governing the right of appeal?

- 14) If there is any prioritisation of the listing of cases, is it sufficiently transparent and has it been the subject of consultation with all relevant stakeholders in order to create a sufficient acceptance and predictability for court users?

### Judges remuneration

- 15) Is the remuneration of judges guaranteed by law and commensurate with their professional responsibilities and public duties?
- 16) Is Judges' remuneration based on objective and transparent criteria? Is there an independent body established to make informed recommendations to the government in relation to judicial remuneration, which governments should accept and implement?
- 17) Is Judges' remuneration periodically reviewed, independent of the executive, in accordance with the average development of salaries in the country for higher-level civil servants and with inflation?
- 18) Is there a specific mechanism to keep retirement pensions in line with inflation, provision for reasonable salary payment during illness and during maternity/paternity leave?

### Training

- 19) Is the Council for the Judiciary or an equivalent independent and autonomous body involved in the training of judges, in the field of the training programme and/or involvement in the budget planning and allocation and/or the appointment of organs of the training institution?
- 20) Is there a sufficient budget to allow for proper training?
- 21) Is there an appropriate environment to allow judges to have effective access to training (workload management, financial and organisational means to participate?)
- 22) Are members of the judiciary, who have responsibility for the administration of the Courts trained in accounting and budgetary procedures?