

## **SPEECH**

### **Upholding the Rule of law in Europe: time for action**

- Mesdames et Messieurs les juges, membres des Conseils de la magistrature,
- C'est un honneur de prendre la parole devant votre réunion, malgré des circonstances difficiles, qui nous empêchent de nous réunir ici à Bruxelles, sur invitation du Conseil supérieur de la Justice.
- I would first like to thank Mr Kees Sterk, who steered the Network for the last two years so well, often dealing with challenging events. I am confident that your readiness to speak out, to engage and defend the rule of law in public will become a permanent *modus operandi* of the Network, which is becoming ever more active. I also wish to congratulate the president elect Mr Filippo Donatti who is taking over in the time when the EU is making bold new steps in upholding the Rule of law, and needs stakeholders

like the Network to contribute, cooperate and work alongside to achieve the same goals.

- I am happy that the European Network of Councils for the Judiciary has been one of the key pillars in guaranteeing the rule of law in Europe: you have not only discussed the rule of law – you also took concrete measures to uphold it! In the last year, when faced with a member whose manner of appointment of its members and actions no longer complied with your Statute, you first decided to engage in a dialogue, then moved on to act!
- Commission did not and will not stay inactive either. As the Commissioner in charge of upholding the Rule of law with the EU, this is exactly my objective. To act in concrete cases to uphold and protect the Rule of law. After years of discussions, the Commission is putting in place the comprehensive European toolbox for the protection of the rule of law. It sets up three key areas of action: promotion, prevention and response.

- First, promotion is about building knowledge of existing jurisprudence and rule of law standards, and building a common rule of law culture. In this area, I see a great synergy with the work of your Network, because you have been developing guidelines and sharing best practices on the rule of law relevant topics already for years.
  
- Second, prevention is about an early detection of rule of law concerns to prevent them from developing, as well as cooperation and support to strengthen the Rule of Law at national level; I will say more about the key new preventive tool later.
  
- Third, response is about enforcement at Union level when national mechanisms falter. In that respect I would like to underline that the Commission is committed to use all the tools at its disposal whenever it is necessary to uphold the Rule of law.
  
- More concretely, the Commission has not hesitated to launch infringement procedures when necessary. The Commission has already launched four infringement

procedures in order to protect judicial independence in Poland. In two infringement procedures, concerning the retirement regimes of ordinary and Supreme Court judges, launched in 2017 and 2018, respectively, the Court of justice in 2019 already delivered judgments, confirming the position of the Commission in full. In April 2019, the Commission launched the third infringement procedure concerning the disciplinary regime applicable to Polish judges. In particular, in this infringement it is contesting the independence and impartiality of the Disciplinary Chamber of the Supreme Court. Furthermore, following a request from the Commission to impose interim measures, on 8 April 2020, the Court of Justice ruled that Poland must immediately suspend the functioning of the Disciplinary Chamber with regard to disciplinary cases concerning judges. Only last week, I sent a letter to Polish Minister of Justice regarding the measures taken by Poland to implement the interim measures ordered by the Court of Justice. In the letter I explained our concerns and asked for clarifications and further information from Poland which was requested to reply by 24 June 2020.

- Finally, end April 2020, the European Commission launched the fourth infringement procedure by sending a Letter of Formal Notice to Poland regarding the new law on the judiciary adopted in December 2019. The Commission considers that new law on the judiciary also undermines the judicial independence of Polish judges and is incompatible with the primacy of EU law. The Polish Government has now two months to reply. All this action clearly shows the Commission's dedication to uphold the Rule of law.
  
- Let me now elaborate more on our new preventive tool. As justice Commissioner, I have been asked to lead and coordinate the setting up of an annual Rule of law Report, a key priority of the Commission. This report, which will cover all Member States, will form the backbone of monitoring the rule of law in the European Union. It will act as a preventive tool, deepening dialogue and joint awareness of rule of law issues. The objective of the Rule of law report is to follow challenges, but also to present positive developments and practices. It will cover four pillars, the justice system, anti-corruption framework,

media pluralism and other institutional issues related to checks and balances.

- The objective of the Report is also to trigger a genuine discussion in the EU institutions and at national level. We need to discuss the challenges for the Rule of law, based on a common framework and a regular collection of facts. Without a doubt, rule of law challenges in some countries are well known. However, such an annual report should bring to the front some lesser-known topics, where improvements could be made, either in the legal framework or practice. Finally, we plan to bring up also good practices, success stories, through which Member States and institutions can learn from each other.
- European Councils for the Judiciary are essential stakeholders in setting up this Report. I would first like to thank the Network for transmitting a valuable and very useful contribution in the consultation we have launched – it shows, once again, just how active the Network is in promoting and also upholding the rule of law the European Union.

- I would also like to thank the individual Councils for their contribution to the Rule of law Report. I know that many of you have already had a videoconference with DG Justice and other Commission colleagues and discussed the situation in your country. I would like to thank you for taking your time and providing your views and insight. You are a crucial partner that helps the Commission to better understand the situation on the ground, to learn about the challenges made to judicial independence, and the independent functioning of courts.
- It is no secret that the preparation of the new Rule of law report would not have been so smooth, without a long established cooperation between the Commission and your Network. Every year, the Councils provide an instrumental contribution to the EU Justice Scoreboard. Without your replies to the annual judicial independence questionnaire, the chapter on Structural independence in the Scoreboard would not have been possible. The level of comparative knowledge on judicial independence that we have jointly collected is unprecedented. It would be

difficult to find a more detailed examination of legal safeguards for guaranteeing judicial independence. And we have gone further, looking into how these legal safeguards are applied in practice.

- Why was all this work we have done together so important? Because it laid the groundwork on monitoring developments in judicial independence at national level. It is far easier for the Commission to examine a complex area such as judicial independence, knowing how the national frameworks are set up. This is particularly important in areas such as judicial appointments or disciplinary proceedings against judges, on which the Court of justice has already given its decisions.
- Your action was only possible because of your strong tradition in promoting the rule of law. Every year, you embark on a new analysis in the areas of rule of law, or more specifically the independence, quality or efficiency of justice. All this work is helping Councils for the Judiciary across Europe to improve their functioning, to assert their powers with confidence, including in front of

other branches of government, who sometimes wish to control them.

- I would like to thank you for all your work. I am looking forward to cooperating with you also in the future!