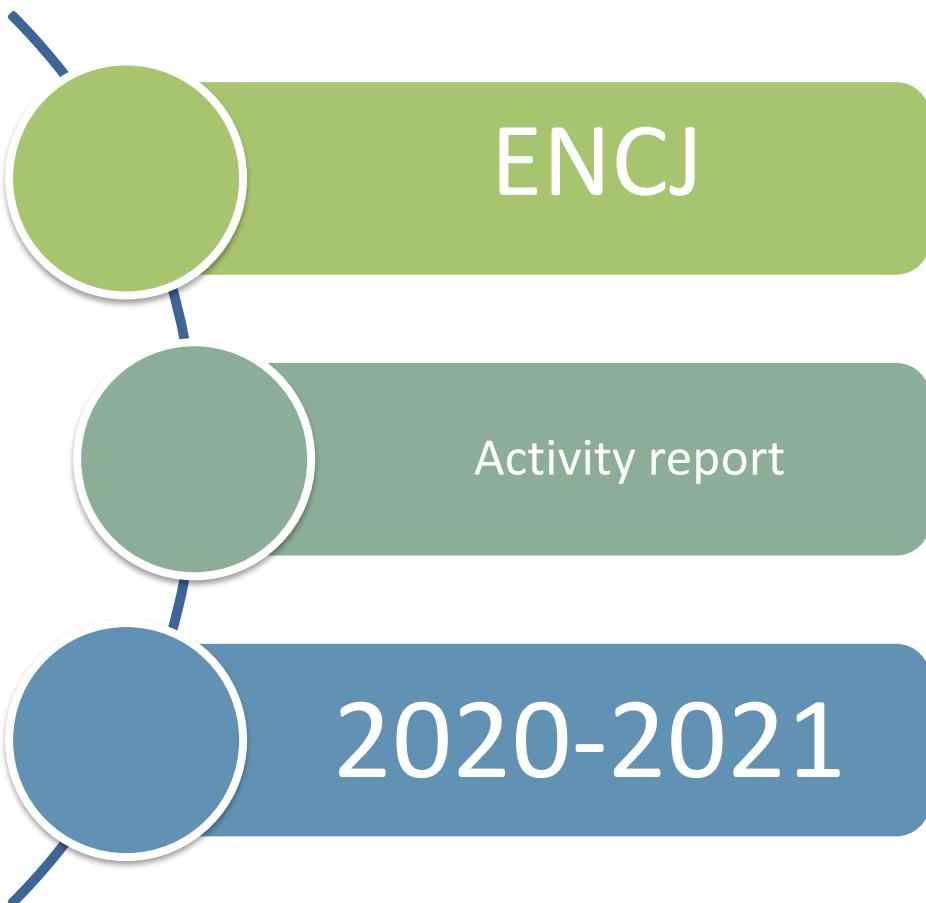




European Network of Councils
for the Judiciary (ENCJ)

Réseau européen des Conseils
de la Justice (RECJ)



INTRODUCTION

At the General Assembly in Paris in June 2017 the ENCJ 2018-2021 strategic plan was adopted. The 2020-2021 work plan set out the actions that the ENCJ wished to undertake from July 2020 to June 2021 with the aim of attaining the strategic objectives set out in the 2018-2021 Strategic Plan.

The implementation of the 2020-2021 workplan was seriously hampered by the outbreak of the Corona virus and the subsequent measures taken to control it by the various governments.

1. THE FUNCTIONING OF THE ASSOCIATION

1.1. The General Assembly

In 2020, the first part of the General Assembly, a members only session that dealt with the functioning of the association was organised remotely on 10 June. During the meeting 4 Board Members and a President were elected. The three UK Councils were granted observer status. In addition, the Finnish Judicial Council (Court Administration) which started its work in January 2020, became an ENCJ member. The second part of the General Assembly was organized on 11 June and dealt with the Rule of Law.

1.2 The Executive Board

1.2.1 Functioning of the Association

The Executive Board is responsible for the running of the organization in between General Assemblies. It follows developments in the Member States in relation to judicial independence and judicial reform. It deals with the financial issues of the Association, the functioning of the organs and the external relations of the ENCJ.

Meetings

Four virtual meetings of the Executive Board were held, two in September and November 2020, and two in February and May 2021. An extra meeting was held in April to discuss the draft Strategy 2022-2025. There have not been any 'in person' meetings in the period of reference. In between meetings the Board communicated through emails. Reports of the meetings were sent to the ENCJ Members after the meetings.

New ENCJ Strategy 2022-2025

In the Autumn of 2020 the ENCJ Members and Observers were asked to give feedback on the current Strategic plan, on the impact of ENCJ, its challenges and opportunities. Based on the input a first version of the plan was drafted by the ENCJ Office and discussed with the Board, and then the Members, Observers were asked for input and feed-back at an online meeting on 20 April. The Board then adopted the final draft at its meeting of 7 May 2021. The draft was sent to the General Assembly for approval.

Protecting the Rule of Law and Advocacy

The Executive Board followed closely the developments in some particular Member States, such as, in Poland, Hungary, Spain and Slovakia.

- On 27 October 2020 the ENCJ's Board sent [a letter](#) to the European Commission in which it calls upon the Commission to act in the case of the recent appointment of the President of the Supreme Court (Kuria) of Hungary.
- On 8 December 2020 the ENCJ Executive Board published [a statement](#) on the situation of the Judiciary in Turkey.
- On 18 January 2021 the Presidents of the ENCJ and of the European Judges Association (EAJ) [drafted a letter](#) on the decision to set up a Forum for Judges in Europe. The letter was sent to the Ministers of Justice of the Trio Presidency of EU (Germany, Portugal and Slovenia).
- In January 2021 the ENCJ's President sent a contribution for joint committee on European Affairs Oireachtas Ireland on the EC Rule of Law report.
- On 10 May 2021 the ENCJ's sent a letter to the Judges' Association of Serbia in response to their request on the compatibility of the High Judicial Council office with membership and presidency of a professional association of judges in Serbia.

Poland

The Board was particularly engaged with the evolving situation in Poland.

During the 2020 Virtual General Assembly on 10 June, as regards the proposal of the Executive Board to put the expulsion to the General Assembly of the ENCJ, it was agreed that an extraordinary meeting of the General Assembly would be organised to decide on this matter. During the ENCJ Board meeting on 23 November 2020, the ENCJ Board agreed on the conclusion that the situation further deteriorated. The rule of law in Poland is constantly under attack. No progress has been made, no actions have been taken by the Polish authorities with regard to respect for the rule of law and judicial independence. Moreover, there are no signs that this situation is set to improve in the future. Moreover, the proposal to expel the Polish National Judicial Council from the ENCJ is still being considered by some of the ENCJ Members, although most Members have indicated that they would support an expulsion.

The ENCJ engaged with the ECHR and was given the leave to intervene as a third party in the three following cases: *Grzeda* (2019), *Zurek* (2020) and *Tuleya* (2020) all vs Poland.

1.2.2 Finances of the Association

The Executive Board is responsible for the budgetary issues of the Association. The ENCJ is currently financed through an annual operating grant under a Framework Partnership Agreement 2018-2021. As a consequence of the Corona virus outbreak the workplan and budget on which the subvention is based has not been fully achieved. In May 2021, the ENCJ submitted a proposal for the Framework Partnership Agreement with the European Commission to secure a subvention for the period 2022-2025.

1.2.2 The Permanent Office

Staff

The Executive Board is responsible for the functioning of the ENCJ's Permanent Office. The current staff of the ENCJ Office consists of Monique van der Goes, full time, director; Natalie Callebaut, one day a week (till the end of June 2021), management assistant. From 1 January 2021 the ENCJ Office staff has been extended and Aleksandra Switalska, full time, policy and administrative support officer joined the team.

1.2.3 Co-operation and external relations

European Commission and European Parliament

The ENCJ continued cooperation with partners to promote and preserve the Rule of Law. For this purpose, ENCJ cooperates with DG Justice in the further development of the Justice Scoreboard; contributes to the Rule of Law report 2021 by providing an overview of current challenges; continues to be an interlocutor for the European Commission on issues such as the functioning of Councils for the Judiciary, Judicial Independence, Quality and Efficiency of Justice and engages with the European Parliament especially in relation to the Rule of Law and Judicial Independence through the ENCJ President active participation in the LIBE committee meetings (LIBE event on the establishment of a permanent EU Rule of Law Mechanism; The first Annual Rule of Law Report by the Commission and the role of national Parliaments, DRFMG meeting on the situation in Poland; LIBE/AFET Exchange of Views on situation of Lithuanian judges).

The ENCJ contributed to the European Commission Rule of law report 2021. The ENCJ also contributed, through its members, to the 2021 EU Justice scoreboard. The 2020 Rule of Law report was presented to the ENCJ Members and Observers in an online event in October 2020.

Court of Justice of the European Union

The CJEU is an observer to the ENCJ. In September a bilateral meeting between the President of the CJEU and the ECJ President was held. The CJEU also contributed to the ENCJ Strategic plan by replying to the SWOT analysis.

Council of Europe

The ENCJ has approached the CCJE that is currently working on an update of the opinion number 10 on Councils for the Judiciary (2007) to see how the ENCJ could be involved in the drafting of the opinion. The CCJE assured that the ENCJ position would be taken on board.

Academy of European Law

The ENCJ received a request by the European Law Academy to have a representative in their Board of Trustees. The ENCJ has been represented in the past as well. It provides a good opportunity for the ENCJ to be seen as one of the key stakeholders in Europe representing the judicial power. In May 2021, ENCJ's President and Director participated to a virtual meeting with the ERA's representatives to discuss further details.

Other

The outreach of the ENCJ and impact within the judiciaries and courts in the EU was strengthened by continuing the cooperation with the other main judicial networks (European Judges Association, ACA-Europe, Network of Presidents of the Supreme Courts of the EU). The Presidents meet every first Monday of the month online to discuss developments in Europe and to present their work and actions. The ENCJ President was invited to speak at the General Assembly of the European Judges Association in May 2021. The meeting was cancelled. In addition, the President was invited by the ACA-Europe to attend their General Assembly in May 2021.

The President participated in two round-table meetings (6th and 7th Expert Roundtable) organised remotely by the OSCE/ODIHR office about the Rule of Law in Poland. He also

participated as a speaker in the High-Level Conference “Rule of Law in Europe”, jointly organised by the Portuguese Presidency of the Council of the European Union and the European Commission on 17 and 18 May 2021.

2. IMPLEMENTATION ENCJ STRATEGIC PLAN

The ENCJ Strategic plan 2018-2021 was adopted at the Paris General Assembly on 7 June 2018. The plan served as a basis for the EU Framework Partnership Agreement, which will guarantee the annual Operating Grants from the European Commission.

ENCJ strategic objectives 2018-2021

Within the framework of protecting the Rule of Law, to provide support for the independence, accountability and quality of judiciaries in Europe and to promote understanding of and respect for judicial independence

To promote access to justice in a digital age (measured in terms of efficiency, cost and timeliness) for the benefit of all citizens in the EU

To strengthen mutual trust among the judiciaries of Europe

2.1.1 Main projects

Main project 1 Independence, Accountability and Quality of the Judiciary

In 2019/2020 the work of the project consisted of several activities in the area of Independence and Accountability and Quality of Justice. The activities followed the cycle of improvement introduced in the previous period of the project. The question of judicial independence and quality requires constant attention, especially following recent developments within several member states of the European Union where adherence to the principles of the Rule of Law give rise to concern.

Central to the mission of the ENCJ is the reinforcement of independent, yet accountable judiciaries in the European Union to guarantee access to fair, independent and impartial courts. To this end the ENCJ is working systematically to develop standards and guidelines for the governance of the judiciary and the conduct of essential functions such as the appointment of judges. To assess the extent to which standards and guidelines are realized a set of indicators on independence and accountability has been developed and implemented. These indicators focus, on the one hand, on the formal safeguards and mechanisms that are essential for judicial independence and accountability and, on the other hand, on the perceptions of independence by stakeholders. Work on assessment of quality of justice has

been broadened and includes specific focus on the perception and experience of court users of the independence of the judiciary.

The project continued in 2020/2021. There were three workstreams:

- The Independence and Accountability Indicators;
- The Court Users survey;
- The Quality of the Judiciary.

Independence and Accountability of the Judiciary

The first phase of the cycle is the measurement of the indicators took place last year (2019/2020). This year 2020/2021 the focus was on discussion of the outcomes in dialogue groups and making a start with planning of improvement.

To be more precise, at the 2020 General Assembly the following steps were agreed for 2020-2021:

1. The discussion of the outcomes of indicators in dialogue groups of members and observers in the period from September until December 2020 with a view to analysing the outcomes together and to set priorities for improvement plans.
2. Formulation of an ENCJ opinion with regard to formal and ceremonial roles of government that in principle can reduce the independence of the judiciary.
3. Development of improvement plans to address weaknesses and/or to build on strengths in the period from January until June 2021.
4. Preparation of the next edition of the surveys among judges and among lawyers in 2020-2021. The surveys are to be held in the first quarter of 2022.
5. Follow-up with regard to the court user surveys (see below).

The pandemic has hampered work on these subjects, and some of the activities were delayed. The state of affairs on the above activities is as follows.

1. The dialogue meetings to discuss the outcomes of the indicators took place from January till the beginning of March 2021 in a format adjusted to online meetings. In total 10 dialogue group meetings were organized, in which 21 judiciaries participated.

The following dialogue meetings were held (participants and dates):

- Finland, Greece, Norway and Romania on 15 December 2020 and 11 January 2021
- Bulgaria, Denmark, Slovenia, Sweden on 21 January 2021 and 15 February 2021
- Austria, Hungary, the Netherlands, Slovakia, UK-England and Wales on 7 and 29 January 2021
- Latvia, Lithuania, Portugal, Spain on 12 February 2021 and 2 March 2021
- France, Ireland, Italy and Scotland on 2 February 2021 and 25 February 2021

The main issues discussed during the dialogue groups meeting have been incorporated in the new ENCJ Strategic Plan for 2022-2025.

It is up to the individual Councils to make the remedies identified during the dialogue groups meetings concrete by developing specific objectives to be reached and activities to be undertaken to reach those objectives. Dialogues meetings are a step in the improvement cycle about independence and accountability, and the next step is the

development of national improvement plans. Previously an improvement plan template was produced for the Members and Observers, and this template is still valid.

Development of improvement plans to address weaknesses and/or to build on strengths, has been delayed, as the dialogue meetings happened later.

The survey among judges has been updated and improved and is on track for the first quarter of 2022. The survey among lawyers has to be discussed further with the CCBE.

Survey among judges

The previous edition of the survey among judges about independence took place in the first quarter of 2019. The next edition is foreseen for the first quarter of 2022. To prepare for the next edition the methodology of the survey was reviewed. Also, the questions of the survey were critically evaluated.

Court user surveys

Perceptions about judicial independence are of particular importance in the indicator system. The perception of court users - paying attention to the court users' perception and experience of the independence during their visit in the court - are usually lacking from the available data. During the last years, ENCIJ has been working on a format for a court user survey that could be used across the judiciaries of Europe on the perception of the court users on independence.

In 2018/2019 the ENCIJ group drew up some preliminary questions and in 2019/2020 the preliminary questions were reviewed and refined, and a pilot was conducted in four countries. Based on the results and experiences from the 2019/2020 pilot, it was decided that the work to develop and test a questionnaire for court users should be continued. It was concluded that the 2019/2020 questionnaire was useful, but that the experiences gained from the pilot suggested that it would be relevant to re-examine the questions and refine them further linguistically.

In 2020/2021 the questionnaire has been discussed in three remote meetings. Suggestions were made on linguistic refinement, on combining or excluding questions and on adding questions on other topics to the questionnaire. It was also considered whether it was appropriate to use the same questionnaire for professional users and non-professional users of the court. The group concluded that most questions in the revised questionnaire are relevant to both professional and non-professional users, and that an appropriate solution would be for all users to receive the same questionnaire with one exception. The result of the work in 2021 is a consolidated questionnaire.

Quality of Justice

In 2020/2021 the quality subgroup held several online meetings. The biggest difficulty has been to consider the questionnaire by reference to the outcomes in each country and to analyse whether the questionnaire was adequately capturing quality in a judicial system in respect of each of the indicators.

The participants were asked to suggest ways in which the indicators could be changed to improve the questionnaire and the validity of the results from the questionnaire.

Due to the length of the working process, it has been proposed to postpone the work on the scoring to the next year and to work on the quality questionnaire. It was considered that face-to-face meetings were essential to progress the work in this area.

Pilot case study economic value of the judiciary

The report was finalised. The ENCJ is sponsoring the Open Access publication of the final report.

2.1.2 Other activities

2.2 To promote access to justice in a digital age (measured in terms of efficiency, cost and timeliness) for the benefit of all citizens in the EU

Project 2 to guaranteeing the right to an effective remedy to a fair trial in times of emergency

In times of crisis, there is a risk that access to fair and impartial courts may be restricted. The aim of the project was to study the rules for guaranteeing access to justice in a system of exception. The main objective of the project was to identify minimum standards for guaranteeing the right to an effective remedy and to a fair trial as laid down in article 47 of the EU Charter for Fundamental Rights in times of emergency. These minimum standards concern, in particular, respect for the rule of law, guarantees of access to the courts, preservation of the security of legal professionals and users, follow-up of cases, impact of the use of new technologies. The project focused on lessons learned from the Corona virus crisis that has affected all member states. For this purpose, a survey was sent to the ENCJ Members and Observers in October 2021 which enabled an evaluation of the measures implemented to define the course of action to be taken in time of emergency. The replies were used to define minimum standards to guarantee the right to a fair trial of a crisis including a clarified role played by the Councils for the Judiciary in time of emergency.

Project 3 to promote Digital Justice

The COVID-19 crisis has considerably impacted the functioning of the judiciaries and has accelerated developments in digitalisation of the judicial systems. Due to the Covid-19 pandemic it was decided to organise a series of online seminars on Digital Justice. However, as soon as conditions allow it, a plenary meeting will be organized.

The first seminar took place on 11 December 2020 and aimed to clarify the differences between data collections, data use, algorithms, machine learning and artificial intelligence.

The second seminar took place on 26 February 2021 and dealt with publication of court decisions, anonymisation, machine anonymisation and GDPR.

The third seminar took place on 21 May 2021 and focused on positive aspects of digitalisation to take forward. All reports and presentation are published on the Members part of the ENCJ Website.

Main project 4 to promote access to fair and impartial courts

The objective was to further the implementation of ENCJ guidelines and standards in the fields of independence, efficiency and quality of Justice. The workshop on implementation of ENCJ work done between 2017-2020 planned for 2020-2021 did not take place.

2.2.1 Other activities

To promote other aspects of access to justice

Fundamental Rights Agency

The European Union Agency for Fundamental Rights launched a call for proposals to host a session at the Fundamental Rights Forum 2021 (RightsForum21) which will take place on 11 and 12 October 2021 and will be addressing a variety of challenges, among others, the rule of law, with two topics running through the discussions: our response to the effects of the pandemic, and the youth of Europe. ENCJ- EAJ- ACA-Europe agreed to host a joint session at the forum. The aim would be to engage with Civil Society organisations (NGO's) and see how the judiciary and civil society organisations could work together to strengthen the Rule of Law in Europe.

2.3 To strengthen mutual trust among the judiciaries of Europe

Activities and projects

ENCJ Lunch seminars

To promote mutual knowledge and trust among the ENCJ Members and Observers, especially in times of remote meetings, the ENCJ started to organise regular lunch seminars. Every 3rd Tuesday of the month a seminar around a central theme is organized. External speakers and other stakeholders may be invited to join. The following seminars have been organized:

- Restarting of the Courts after the Summer (September 2020);
- The situation of the Judiciary in Turkey (October and November 2020);
- The situation of the Judiciary in Poland (January 2021);
- The relation between Councils for the Judiciary and Associations of Judges (February 2021);
- The situation of the Judiciary in Hungary (March 2021);
- Discussion on the ENCJ's Strategy for 2022-2025 (April 2021);
- Judicial reform in Spain (May 2021);
- Presentation on ENCJ's Projects' reports (June 2021).

To promote mutual trust among judges

European Judicial Training Network - EJTN

The ENCJ continued the co-operation with EJTN and participated in the annual meeting with EJTN and its partners.

To improve mutual knowledge and understanding of judicial systems

Request for Information

The sharing of information and best practices between the Members and Observers of the ENCJ is an important feature of the network. In 2020/2021 many questionnaires were shared among the Members and Observers.