



European Network of Councils
for the Judiciary (ENCJ)

Réseau européen des Conseils
de la Justice (RECJ)

ENCJ STRATEGIC PLAN 2018-2021

PROJECT FICHE 2020-2021

Project: Independence, Accountability and Quality of the Judiciary (continuation)

1. Brief description of the topic / problem:

Access to fair, independent and impartial courts as the key institutions of an independent judiciary is a fundamental right, as also laid down in article 47 of the EU Charter of Fundamental Rights. One of the ways in which ENCJ strives to protect this right is by providing support for the independence, accountability and quality of judiciaries in Europe and promoting understanding of and respect for judicial independence. Following recent developments within several member states of the European Union, it must be concluded that some countries are deviating from the principles of the Rule of Law and therefore their judiciaries struggle to uphold the above-mentioned fundamental right. The judiciaries are under pressure and therefore it is necessary to monitor the state of affairs and promote the ENCJ standards for an independent yet accountable and high-quality judiciary.

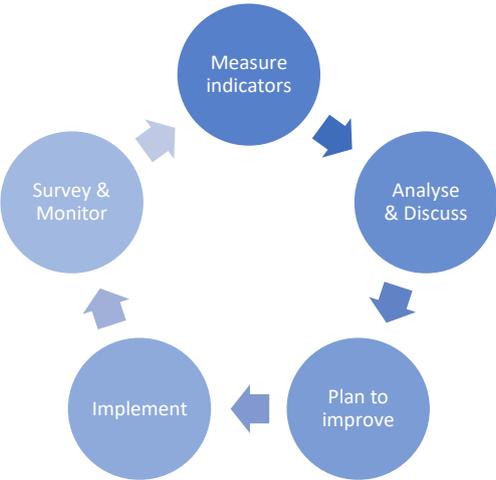
The project of Independence, Accountability and Quality of Justice seeks to do this by introducing a cycle of improvement, the basis of which is the measurement of judicial independence and quality. In the view of ENCJ quality and independence are interrelated concepts in a well-functioning judicial system. Quality of justice is the ultimate goal and independence – which cannot exist without a certain level of accountability – is a prerequisite for this.

Cycle of improvement:

In order to measure independence and quality within the European judiciaries, the Project Team has developed an indicator system identifying good practice based on ENCJ standards, which assesses the judicial systems of ENCJ Members and Observers. Two sets of indicators with accompanying questionnaires have been developed, one for Independence and Accountability and one for Quality. These questionnaires are sent out on a tri-annual basis. In the year after the questionnaires have been answered, the results are discussed and areas of improvements are identified. Members and Observers are encouraged to develop an action plan for improvement on the national level. In the following year there is time for implementation of the action plans. Next to this, surveys on the *perceived* independence are conducted. The surveys ask judges and lawyers about their perception of independence. This way, not only is the *formal* independence monitored (rules and regulation) but also the views of judges themselves is ascertained. This illustrates how the formal rules and regulations operate in practice.

The results of the surveys are included in the indicators questionnaire that is sent out the year after again, which indicates the start of a new cycle. This way, the cycle of improvement makes sure

monitoring takes place on a regular basis, while also promoting positive change within the judiciaries. In the last year, the project team focused on the measuring part of the cycle, which means that both indicator questionnaires of Independence/Accountability and Quality were answered by Members and Observers.



1. Figure: Implementation cycle

The development of the indicators system and complementary questionnaires also brought some other essential activities to the table. For example, with the survey among judges and the survey among lawyers that was introduced in 2018, the perceived independence of several groups can be recorded and included in the set of indicators . Also external data regarding the perception of the independence of the judiciary by the general public and companies is considered.

However, one important group is generally missing in the review system, which is the court users. This is because data on how court users perceive independence and their experience of courts in general is lacking in most countries. Therefore, the ENCJ proposed to develop a format for a court user survey which could be used by judiciaries to research the satisfaction levels of court users. A court user survey should address both the areas of independence and quality. The ENCJ developed a format for the survey, which was reviewed and adjusted to ensure that it was fit for use by the public , and a pilot in four judiciaries was conducted.

The previous surveys of judges and lawyers on the independence of the judiciary which also took place last year, has led to new insights. In some countries the perceived independence has increased, however in some countries a decrease can be noticed. The survey results should be reviewed by all participants and lessons learned should be discussed and assessed on a national level.

In 2017/2018 the ENCJ defined its vision on Quality of justice. In this vision a need was expressed for councils to define their role in guaranteeing quality of justice within their judiciaries. For those Councils whose role in relation to the promotion of quality is limited or unclear , the quality indicators will probably not lead to improvements initiated by the Councils on the national level. It is intended to ascertain those areas where councils have competence and thus the possibility of initiating improvements in light of the outcomes of the survey on Quality conducted last year. The ENCJ intends to define national quality frameworks in the coming year as part of its work on this project..

In 2018/2019 the methodology and the indicators of independence have been improved, drawing in particular on the reports on the external validation conferences held with European organisations

and the scientific community. Also, the concept of accountability that the ENCJ uses has been clarified to consist of transparency about the functioning of the judiciary, involvement of civil society in judicial governance and existence of mechanisms to promote and maintain the ethical standards of the judiciary. The project also continued the development of a set of quality indicators that were tested in the pilot.

In 2019/2020 the measurement of the improved indicators has taken place using a standardised questionnaire. The questionnaire was completed by the Councils (in the absence of a Council, by other governance bodies). In order to increase the reliability and credibility of the indicators the answers to the questionnaire were validated by national expert groups with members mostly from outside the Judiciary. The validation contributed to the quality of the measurement of the indicators. In many countries discussions have taken place about the institutional arrangements and their (potential) impact on independence. In several countries these discussions have led to changes in the answers, compared to the last time the indicators were measured which was in 2017. Also, a few common issues came up that need further consideration. The indicators provide a current insight in the independence and accountability of most of the judiciaries of Europe, as far as it can be gleaned from the formal safeguards and perceptions of independence. The outcomes are presented in the form of country profiles, as the purpose of the indicators is to stimulate the improvement of judicial systems and not to make rankings of judiciaries.

The main findings of the project are the following:

- ❖ In most judiciaries there is still much room for improvement with respect of independence as well as accountability, judging from the difference between the actual scores and what are considered to be good arrangements (100%).
- ❖ Compared with the previous measurement of the indicators in 2017, there are gains and losses with respect to independence, while the scores on accountability have improved nearly across the board. As to independence, the mean scores on organisational autonomy and finance have declined, while the scores on court management and human resource decisions have improved. The perception indicators on independence have not changed much. With regard to accountability, periodic reporting, external review and complaint procedures get markedly higher scores on average. The relations with the press, however, deteriorated.
- ❖ As to the formal arrangements, the worst scores in most countries concern the funding of the Judiciary. Judiciaries are often not involved in budgetary processes and dependent on discretionary decisions by the government.
- ❖ With regard to human resource decisions (appointment and promotion of judges), full compliance with the standards does not guarantee a high opinion of the judges about the outcome of the human resources procedures.
- ❖ With regards to perceptions, most countries have very low scores on the indicators about the independence of the Judiciary as perceived by court users and as perceived by lawyers. The cause is that most judiciaries still do not conduct court user surveys, and not low satisfaction about independence.

- ❖ The scores on perceived corruption show that corruption remains a major challenge in a number of countries. The perceptions about adherence to ethical standards and the adequacy of actions by judicial authorities to address judicial misconduct and corruption differ much between judges and lawyers, and this should be cause for concern.
- ❖ The relatively low scores on formal safeguards in North-West Europe have much to do with the separation of powers that is not based on strict formal arrangements but on custom and mutual trust. An issue that needs further discussion is whether or not formal and even ceremonial roles of the other state powers with regard to the judiciary that have never been abused, are innocent from the perspective of the independence of the Judiciary.

Plans for 2020/2021 – the next steps of the project:

1. The discussion on the outcomes of indicators in dialogue groups of members and observers with a view to analysing the outcomes together and to set priorities for improvement plans.
2. Development of improvement plans to address weaknesses and/or to build on strengths in the period from January until June 2021.
3. Preparation of the next edition of the surveys among judges and among lawyers. The surveys are to be held in the first quarter of 2022.
4. The work with the Court Users surveys will focus on re-examining the questions and refine them further. The project team shall consider if the questionnaire should be divided into professional and non-professional users. A closer in-depth analysis of the pilot results should also be considered, and the pilot study should be extended with more countries and more respondents including per country several courts and instances.
5. In the area of Quality the steps to be considered in 2020-2021 are the analysis of the results of the questionnaire against existing external data about Quality of Justice for their use in the indicator system. The indicators and scoring should be subjected to further review by the project team in light of the results of the Questionnaire and further observations from Members and Observers.
6. Progress should be made on the development of a quality framework for each judiciary, defined by the Councils for the Judiciary.

2. Overall objective of the project:

The project aims to increase awareness on the state of independence, accountability and quality in the judiciaries in Europe and promote positive change within judicial systems in Europe.

3. Expected results: the impact of the project

Independence & Accountability

- ❖ Improved and current insight into the position regarding independence and accountability in European judiciaries and ways to improve it

Quality

- ❖ Increased awareness on the quality of European judiciaries and the role of the Councils in this area
- ❖ A Quality framework defined within the national judiciaries

Both I&A and Quality

- ❖ Increased awareness for the need to and ways how to measure court user satisfaction

4. Boundaries of the project:

The quality indicators will be improved, but not finalised yet. It is an ongoing process that demands critical review.

The project team will work towards a format of a court user survey which can be used by Members and Observers when conducting a survey themselves. The possibilities for the implementation of the survey at the same time in all countries will be examined by extending the pilot.

The second wave of pandemic caused by COVID-19 makes us reconsider to organize small-group thematic workshops and remote meetings instead of ordinary dialogue meetings. A format for remote dialogue group meetings will be developed and implemented.

5. Coherence with other projects or work done by other organisations:

The project is building on the reports and outcomes published in previous years. The project ensures that there is no unnecessary overlap with other organisations or projects. To that end the project team engages with its network and monitors projects of partners.

6. Risks

The project involves quite a number of activities. Presidents, judges and policy advisors involved in the project usually have to carry them out on top of their everyday tasks. Lack of time and therefore commitment can be a widespread problem and possibly affect the quality of the outcome of the project. It should be noted that full cooperation of all participants is needed to achieve good results.

The pandemic causes travel restrictions that affect negatively the cooperation between the participants of the project team. The project team can overcome these difficulties by organizing smaller break out groups. The smaller group can increase the effectiveness of the discussions, however it is harder to coordinate for the moderators.

7. Methodology and expected output

Independence and Accountability:

Work stream 1 Dialogue meetings to discuss outcomes of the Independence and Accountability indicators and development of national improvement plans on Independence & Accountability

Workstream 2 Preparation for surveys among judges and lawyers to be done in 2022

Work stream 3 Further development and possible roll out of court user survey

Quality

Work stream 4 Developing Quality frameworks

Work stream 5 Improving Indicators Quality of Justice

Throughout the year 2020-2021 a total of 4 meetings (excl. the General Assembly) will be organised in line with the progress of the project.

8. Organisation of the project

The coordinators of the project are National Judicial Council of Hungary (OBT), The Courts Service of Ireland, The Danish Court Administration (Domstolsstyrelsen) and the High Council of Portugal (CSM). Each of the members is responsible for a specific part of the project.

- ❖ Hungary (Viktor Vadász): Overall coordinator of the project
- ❖ CSM Portugal supported by Rvdr Netherlands: Responsible for the Independence & Accountability outcomes, dialogue groups and development national improvement plans, and the preparations for the surveys
- ❖ Domstolsstyrelsen Denmark: Responsible for the development of a court user survey
- ❖ Courts Service Ireland: Responsible for the Quality indicators questionnaire and the Quality frameworks that are to be developed

9. Timeline

02.10.2020	Remote meeting plenary morning session / afternoon break out groups.
November-February	Dialogue group meetings
10-11.12.2020	... (Berlin / remote tbc)
February 2021	... (TBC)
April 2021	... (TBC)

10. Communication within the project and with the Executive Board

Contact person of the project team is Viktor Vadász, member of the Hungarian National Judicial Council (OBT). He will communicate with project team and ENCJ Board to give insight into the progress of the project group.