



European Network of Councils  
for the Judiciary (ENCJ)

Réseau européen des Conseils  
de la Justice (RECJ)

## **Address Kees Sterk, President of the ENCJ**

**Brussels, 19 October 2018**

### **Meeting with CCBE**

Ladies and gentlemen, esteemed colleagues,

1. First, let me say, that it gives me great pleasure to have been given the opportunity to speak here today. I would like to start by introducing the organisation that I preside. I will also set out the concerns ENCJ has in relation to the status of the Rule of Law in various Member States. Finally, I will explain why we think it is important to have close links between the CCBE and the ENCJ and call on you to assist us in our survey on the independence of judges.
2. Next month it is 25 years ago that I became a judge. I have been working in a district court, a court of appeal and the Supreme Court. In all these courts I was in a committee in which the court and the local bar tried to help each other - in an informal way - to uphold and improve the quality of the work of judges and barristers alike. My experience is that is the task of such a committee is a rather delicate one. However, delicate and difficult as the committee's task may be both judiciary and bar understood perfectly well that they have a common responsibility - each within their own office - for the functioning of the delivery of justice. Given the present situation in our European Union, I would add: a common responsibility for the Rule of Law.
3. The ENCJ gathers the councils for the judiciary or similar autonomous bodies that ensure the final responsibility for the support of the judiciary in the independent delivery of justice. The ENCJ deals with justice systems and not judges individually. It is an institutional network of the Councils for the

Judiciary that provide the all-important buffer between the judiciaries on the one hand and the executive and legislative branches of government on the other.

4. The ENCJ has 24 Members (of which one is currently suspended, I will get back to this later on). In some Member States Councils do not exist. For example Austria and Germany. From these countries, the Ministry of Justice, responsible for the management of the judiciary and the courts, participate in the ENCJ as an observer.
5. Our objective, having spent the first 10 years concentrating on laying down a series of standards and guidelines for independent, accountable and effective justice systems, is now to take effective measures to help our member Councils for the Judiciary and Observers to put these standards fully into practice. This is not easy, because many forces try to prevent this.
6. We see a slight change in the character of the organization. We started as a network of cooperation and exchange of best practices and are now evolving into a support network where discussed standards are used as an important framework for national judiciaries. At the same time, the status of the standards that have been developed over the years by the network is changing and the European Commission is now recognizing them as a part of the European standards on judicial independence.
7. In 2013, the ENCJ has embarked on a major project aimed at identifying indicators for the independence and accountability of judges. We are now extending that project to look at indicators of the quality of a justice system. All this has fed in to our cooperation with the European Commission in the production of its important EU Justice Scoreboard.
8. The ENCJ's direction of travel is towards working with its Members and a number of Observers across the EU and beyond to help them attain the standards that we have developed, and to improve the quality of justice in all these countries.

9. The ENCJ project on independence and accountability was inspired by the EU level debate and discussions with European Commission; events in various member states because of austerity measures and political developments. The project aims to:
- assess the actual state of Independence and Accountability of judiciaries in European countries;
  - address challenges and threats to independence and
  - help to improve justice systems
10. The objective was to develop and implement indicators for the independence and accountability of judicial systems including the Councils for the Judiciary. The project also includes a survey among judges on their independence.
11. The ENCJ's vision, arising from its work, is therefore, for more attention to be paid to the functioning of judicial systems in all parts of the EU.
12. However, efforts to strengthen the quality, independence and efficiency of the judiciary are currently weakened by actions of the other State powers. The judicial power, at least in recent times, has shown to be vulnerable to attacks, in particular by the other state powers and in their slipstream the media.
13. We also observe a worrying trend or at least attempts towards increasing the powers and competences of the executive powers and decreasing the powers of the judicial branch. The Rule of Law and the independence of the judiciary should not be issues that politicians can negotiate with. The Rule of Law is the very core on which the EU has been built. There are clear redlines that cannot be crossed by Member States. Otherwise, the mutual trust rule in the European Union has no meaning.
14. Populist movements across Europe appear less convinced of traditional concepts by which democratic states based on the Rule of Law are governed.

The separation of powers and the independence of the judiciary are not constant factors. They need maintenance and strengthening continuously. As stated earlier, the judiciary is the most vulnerable of the three branches of the state even when the constitutional guarantees are in place. Therefore, Councils and judiciaries should assume a new role to achieve a better balance of powers and strengthen the position of the judiciary by expressing and explaining the role of an independent and accountable judiciary within a State governed by the Rule of Law.

15. Councils should be instrumental in helping educate society about what judges do, for example by sending judges to schools and talk to children, as part of an overall effort to explain how the judiciary is a vital, and independent, part of any democracy.
16. This should be part of more general efforts to make the judiciary more visible, relevant and understood by the public, by lawyers and non-lawyers alike.
17. In this regard, I would like to mention another project the ENCJ is currently working on, the Project on Public Confidence and the Image of Justice. Various aspects are being looked at, one of which is the relations between and communication with the lawyers. We will be addressing the CCBE within the framework of that project to discuss the development of communication instruments between the judiciary and lawyers, taking account of the fact that lawyers are one of the most influential actors in terms of promoting public confidence and the image of justice.
18. Turning back to the state of the Rule of Law and specific Member States that raise concern, I need to mention Poland. The ENCJ has taken a difficult decision in September 2018 and has suspended the membership of the Polish National Council for the Judiciary; the KRS. The main reason for suspension was that the KRS, after a number of far-reaching legal reforms, no longer fulfilled the conditions of ENCJ membership, which is that Councils should be independent of the executive and legislature and ensure the final

responsibility for the support of the judiciary in the independent delivery of justice.

19. Other judiciaries and Councils that need to be mentioned here are Hungary, Romania and probably Bulgaria as well. Even though the particular issues are different in each Member State, there are serious concerns about the amount of pressures from the other State Powers on the Judiciary and individual judges. We have also learned that in a number of Member States politicians are inspired by the Polish model and more problems are likely to occur in the future. The Judiciaries in Europe, but also the other actors in the justice fields such as the bars, need to follow developments closely and act if and when appropriate. These actions include speaking out in favour of the fundamental values and the Rule of Law. Please allow me to compliment the CCBE in this regard for taking its responsibility and speaking out in the defence of the Rule of Law and the independence of the judiciary.
20. Looking at what the judiciaries can do to protect themselves from attacks by the other state powers, I would like to mention that, a structure in compliance with European Standards and constitutional and legal guarantees alone does not earn the trust and respect of the citizens in the judiciary. The judiciary achieves legitimacy and the respect of its citizens by delivering high quality justice in the form of timely, impartial and well-reasoned decisions.
21. The ENCJ aims to initiate a dialogue with the other State Powers on the national and the European level. I personally, strongly, believe that we need to re-establish what an independence judiciary entails and how Councils for the Judiciary can strengthen the independence. The 2016 ENCJ survey among judges shows that judges do not feel respected by the other State Powers. In the most recent Flash Eurobarometers on the perception of the public about the independence of the judiciary, interference from politicians and the government is mentioned most frequently as reason for a negative perception of the independence of the judiciary. This is an issue that needs to be addressed and discussed by all stakeholders including the lawyers.

22. I briefly mentioned the ENCJ survey among judges in which we take stock of the perception of judges of their own independence. We are planning to organise the survey again in early 2019. The survey provides an excellent insight in the pressures judges experience and is a critical assessment of the functioning of the Councils and the other judicial authorities. The ENCJ believes that the lawyers can also provide a very valuable insight in the independence of the judges. Therefore, in 2017, the ENC asked the CCBE to conduct a survey among lawyers on the independence of the judges. Unfortunately, and probably for a number of very sound reasons, the reply rate was extremely low and the results could not be qualified as being reliable. We would hope to repeat the survey among lawyers in 2019 at the same time with the survey among judges.

23. On behalf of the ENCJ, I call upon all bars to help us in getting the views of the lawyers on the independence of the judges. As I have tried to set out today, the judiciaries of Europe need to excel to gain the much-needed trust of society. To enable us to improve, we need the feedback of the lawyers who are best placed to give a critical review of how they perceive the independence of the judges.

24. Let me conclude. Mr. President, dear colleagues, we know that these are challenging times for the whole justice sector and it is important that we stand together to defend the core principles and the fundamental values of the European Union. In the end, we all share a common objective— namely a reliable independent and accountable justice system in every Member State for the benefit of all the citizens of Europe.

I thank you for your time.