



European Network of Councils
for the Judiciary (ENCJ)

Réseau européen des Conseils
de la Justice (RECJ)

Address Filippo Donati, President of the ENCJ

Riga, 20 May 2022

Annual conference of Latvian judiciary

Dear Mr Aigars Strupišs (President of the Judicial Council/Supreme Court)

Mr Egils Levits (President of Latvia)

Mr Jānis Bordāns (Minister of Justice),

Ladies and gentlemen, esteemed colleagues,

1. It is a great honour to attend the annual conference of Latvian judiciary and it gives me great pleasure to speak here today.
2. 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.
3. The ENCJ has 21 Members. 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.

4. In the ENCJ, we adhere to the separation of powers and the independence of the judiciary, because it is the fundament of our legal order. The separation of powers is one of the pillars of a democratic state governed by the Rule of Law. The other pillars are free and fair elections and the respect for civil and political rights. The separation of powers and the subsequent independence of the judiciary brings with it a responsibility for the judiciary to nurture and defend it and take care of it with prudence.
5. Respect for Democracy, Rule of Law and Fundamental Rights is not only the responsibility of the Executive the Legislature and the Judiciary. It is a responsibility of each citizen to respect and demand respect for these fundamental values. In light of demanding respect for the Rule of Law and its components, the ENCJ expelled Poland's National Council of the Judiciary (KRS) in October 2021. The ENCJ found that the KRS did not safeguard the independence of the Judiciary and it did not defend the Judiciary or individual judges in the face of any measures which threaten to compromise the core values of independence and autonomy. The expulsion has to be seen as an act in defence of the ENCJ and of the values it stands for such as Judicial Independence and the Rule of Law.
6. Personally, I strongly believe that the separation of powers and independence of the judiciary serve best the interests of the citizens and society. Furthermore, I think that, in democratic states there should be a proper understanding of the respective roles and responsibilities of each of the branches of the state and the need for them to work together – a form of interdependence. In order to make this work the other state powers should accept that the judiciary is also a state power, an institution, and not merely a group of individual judges, only independent in the specific case being judged. Therefore, it is important that each judiciary should have a structure of governance that can protect its institutional independence and, in doing so also the independence of individual judges. Councils for the Judiciary, are the obvious answer and are best placed to eventually, safeguard the rights and liberties of citizens.

7. The judiciary is responsible for the effective delivery of justice, and that is a grave responsibility. To achieve it, they must work with their governments to understand the necessary barriers between the pillars of state. There is an inevitable, tension between the executive and judicial power, such tension exists even in politically quiet times. The balance of powers implies that there is effort involved. Finding and maintaining an equilibrium between the three arms of the state demands continuous work by all state powers involved. This equilibrium can only be achieved, when there is a healthy measure of mutual respect between the judiciary on the one hand and the executive and the legislature on the other hand.
8. Unfortunately, there is a recent tendency in our legal order that the other state powers not only not maintain and strengthen the judicial power, but do not protect the judiciary against attacks by the media, members of Parliament or even the government. The reasons for these attacks are not always clear and differ from member state to member state. Sometimes it is ideological: a governing party does not believe in the separation of powers and an independent judiciary, and wants the judiciary under their control. Sometimes it is sheer convenience for those in power to do what they want without having to live up to the law. But it is also true that sometimes the judiciary is not living up to the reasonable expectations of the citizens, as to speediness for example.
9. There is a clear European standard that states that the independence of the individual judges is safeguarded by the independence of the judiciary as a whole. In the ENCJ we believe this to mean that judicial independence is best guaranteed when there is a certain degree of self-governance. In most European States there is a Council for the Judiciary or a similar institution, which is independent or autonomous institution distinct from the legislative and executive powers of the State and responsible for the independent delivery of justice. Some Councils are constitutionally established to guarantee and defend the independence of the judiciary, other Councils or autonomous Courts Administrations have particular responsibility for the

administrative management of the Courts, including financial management, human resources, organisation and information technology. Each Council for the Judiciary has its origin in the development of its legal system, which is deeply rooted in a historical, cultural and social context, all Councils nevertheless share common experiences and challenges and are governed by the same general principles.

10. A Council for the Judiciary must be an independent body, which operates in a transparent and an accountable manner. The structure, powers and processes of Judicial Councils must be designed to safeguard and promote judicial independence and efficient judicial proceedings. If adequate checks and balances are not in place, the Council for the Judiciary may become a pawn in the hands of the executive, legislative or powerful groups, thereby undermining judicial independence. Councils for the Judiciary must be granted adequate human and financial resources.
11. However, self-governance in it-self, does not safeguard the independence of the judiciary. The best protection for the judiciary against attacks is to gain the respect and the support of the citizens by delivering high quality justice in the form of timely, impartial and well-reasoned decisions. Independence goes hand in hand with accountability. A judiciary that claims independence, but refuses to be accountable to society, will not gain its support and trust. At the core of the relationship with citizens is trust. Trust is not earned by leaning back and staying in an ivory tower far away from the daily lives of citizens. In order to establish trust, it is first important that the judiciary is trustworthy. A judiciary that resists change and is perceived to be backward looking will ultimately lose the trust of the people and become vulnerable to external attacks in particular from the other state powers and the media. The judiciary must be willing to modernize, in order to remain relevant to modern society.
12. Moreover, training of judges is an indispensable element of promoting and enhancing the quality of justice. Training is important to teach the right skills to judges as part of a broader strategy to ensure high quality justice. Councils

for the Judiciary, where they exist, are responsible for promoting the quality of justice and as such should promote judicial training by setting guidelines and ensuring that judges are given the opportunity to partake in training, both on the national and European level.

13. Furthermore, it is essential that the judiciary, judicial councils and in particular judges and prosecutors be involved at each stage of development and implementation of reform plans. This is to ensure the independence of the judiciary, that reforms are effective and instil confidence.
In some situations, judges can be perceived as hostile to modernisation and reform of the justice system. This too should not be the case – provided always that the contemplated reforms are aimed at improving the quality of the justice system for the benefit of those that it serves. Judicial involvement in the reform process should provide the balance between the wishes of the elected government and need to maintain judicial impartiality and the rule of law.
14. Throughout Europe, these are challenging times for justice systems. In most countries, they have had to face reducing budgets and increasing workloads. Judges cannot stand apart from the economic realities that everyone else in their countries face. But they can and should insist on a meaningful voice in how the limited resources are deployed so as best to safeguard a high quality of justice for the citizen.
15. I believe that the Judiciary should strengthen its position as one of the three state powers. It should have a voice and use it. Citizens must be made more aware of the importance of independence, for instance by translating the importance of the judiciary to where it (potentially) affects everyday life of citizens. Low trust in the judiciary provides a basis for bad judicial reforms and challenges to the judicial independence, therefore public outreach must be a core element in strengthening trust in the judiciary, by extending constant efforts in informing citizens and building their trust in the judiciary. Active participation of Councils for the judiciary in the implementation of

techniques ensuring an effective communication and a better understanding of the changing needs of society is essential.

16. In 2017 the ENCJ adopted the Paris Declaration on Resilient Justice. We believe there is a strong need for resilient justice systems which can withstand external pressure whilst at the same time having the ability to adjust to the changing needs of society. We believe that we have a shared responsibility to uphold Democracy, the Rule of Law and Fundamental Rights in order for our societies to prosper and for the welfare of the people. And we believe that working together we can archive these goals. We live in challenging times, also for the judiciaries. More than ever before the judiciaries in Europe need to support each other and cooperate. 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.