



European Network of Councils  
for the Judiciary (ENCJ)

Réseau européen des Conseils  
de la Justice (RECJ)

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**MEDEL Conference Bulgarian Judges Association**

**Session On the Safeguards for Judicial Independence - Best and Possible  
Practices**

Ladies and gentlemen, esteemed colleagues,

1. It is a great honour to attend this event and it gives me great pleasure to speak here today to the esteemed members of the Bulgarian Judges' Association.
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 24 Members (of which one is currently suspended, as you probably all know). 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 EU-order and we strongly believe it to be in the best interest of society. 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. Also, 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.
6. 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.
7. 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.
8. 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 an 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 responsibilities 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.

9. 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. Unfortunately, this worst-case scenario has become a reality in Poland, where the government and parliament have effectively taken control over the Council as part of a broader judicial reform with devastating effects. The existence of a Council, if captured by the other State powers, then turns against the independence of the judiciary and de-facto should not be called a Council for the Judiciary at all.
  
10. 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.
  
11. 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. The project aims to find an answer to the following questions:
  1. What is required for a judge to be independent and accountable in a broad sense, personally and organizationally?
  2. To what degree are the requirements met in the member states of the EU, and

are their judges actually independent and accountable? Do they behave accordingly?

3. What can be done to improve their independence and accountability?
  
12. The objective was to develop and implement indicators for the independence and accountability of judicial systems including the Councils for the Judiciary. We have looked at the objective state of affairs and the subjective (perceptions) state of affairs. The project also includes a survey among judges on their independence. The survey among judges was last done in 2016. Indicators for the objective independence of the judiciary as a whole include: the legal basis for the guarantees of the independence of the Judiciary; the degree of organisational autonomy of the Judiciary, the funding system of the judiciary and the arrangements in place for court management. Indicators for the objective independence of individual judges look at who is in charge of the selection, appointment, promotion and discipline of judges, the arrangements to guarantee the non-transferability and aspects of internal independence such as the existence of binding or non-binding guidelines.
  
13. If you allow me, I would like to talk about the Bulgarian situation as it arises from the ENCJ survey on Independence and Accountability. In Bulgaria many of the legal texts have been changed for the better. It looks like there is a strong legal basis for an independent judiciary. My question though is, whether the texts have effectively strengthened the independence. In the most recent progress report of the European Commission on the Cooperation and Verification Mechanism positive progress is reported. The report says it might even result in the mechanism being concluded in certain areas. I wonder whether this conclusion is justified and wise. To me the reasoning for the conclusion is not very strong and seems preliminary. For instance I do not see any words as to the effectiveness in reality and the sustainability of the reforms. Furthermore, the perceptions of independence lag behind. The perception of the independence by citizens is low. From the ENCJ survey among judges that was filled out by 247 Bulgarian judges (around 10%) we learn that the judges score themselves 8.4 out of 10 for their independence. But when asked if judges thought their colleagues were independent, there is an average score of only 6.6 out of 10.
  
14. I would be very interested to hear from you why you think the perceptions of citizens, companies and even judges of the independence are not overly positive and what can be done to remedy the situation.
  
15. The survey among judges also shows that almost 60 % of the judges that replied do not feel that their independence has been respected by the media. That is a very worrying score. Again, as I have said before, the best protection against any attack, is excellent

performance. However, more actions seem to be necessary to strengthen the image of justice. In that regard, we believe that, 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. Councils for the Judiciary should be instrumental in helping educate society about what judges do. In several countries judges go into 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. 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 independence. Judges should be closer to the people and need to be spotless. Judges' reserve and discretion involve a balance between the rights of the judge as a citizen and the constraints linked to his function. However, the obligation of reserve cannot provide a judge with an excuse for inactivity, especially when democracy and fundamental freedoms are in peril; a judge's reserve may yield to the duty to speak out.
17. The ENCJ, in 2017 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.