



European Network of Councils
for the Judiciary (ENCJ)

Réseau européen des Conseils
de la Justice (RECJ)

Address Kees Sterk, President of the ENCJ

Vienna, 30 November 2018

Conference on the effectiveness of justice systems

Sehr geehrter Herr Doktor Moser,

Dear Ms Jourava,

Dear Mr Lenaerts,

Fellow panellists,

Esteemed colleagues,

Ladies and gentlemen,

1. First of all, I would like to say what a great honour it is to have been invited to speak at this important conference organised by the Austrian Presidency of the European Council and the European Commission on the effectiveness of justice systems.
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 judicial 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 most of you probably know). In some Member States Councils do not exist. For example, Austria the Czech Republic 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. Ladies and gentlemen, how do Councils ensure that a justice system of our common legal order complies with the Rule of Law? How do Councils ensure that a justice system works, and works effectively, for the benefit of society and citizens? Important questions which are not easy to answer, certainly not in the eight minutes I probably have left for my speech. In my contribution I will try to give you an idea of the vision of our network, the work already done, and the work to be done. I will touch upon standards and indicators, the role of Councils and the relation of Councils to the other state powers.

Quality framework

5. In the ENCJ we believe that citizens demand speedy, high quality decisions of judges which contribute to the solving of their problems. This is very challenging to the Judiciary because of several reasons. To mention one: society seems to operate in an increasingly faster way. So, speediness is key.

6. The first answer to these demands is independence and accountability. Without it, there can be no high quality nor effective decisions of judges. Individual judges and justice systems must be independent from the other pillars of the state. Not to serve their own interests, but because they must decide issues that arise in every possible legal area between the citizen and the state.

The ENCJ started a few years ago with the development of standards and indicators on independence and accountability. In the first years progress was slow because we had to learn to understand each other and the various legal traditions and culture. But we managed to catch the core of independence and to formulate standards and indicators. We use these standards and indicators to assess the level of independence and accountability in a member state. In addition, we question judges and lawyers about their perception of independence. We then ask our

members to identify the main shortcomings and actions to remedy these. In short, we established a mechanism, which not only strengthens the independence and accountability of the Judiciary in member states, but eventually also the mutual trust between the Judiciaries in the Union.

7. The second answer to the demands of the citizens is the development of standards and indicators for quality (including effectiveness) of the judicial systems similar to the framework for independence and accountability. We have already adopted a vision on quality and have formulated a few standards and indicators. We find the work on quality even more challenging, because the concept of quality is less precise than that of independence, and the differences between legal systems and cultures play an even larger role.
8. For example. A particular complex area is the quality of judicial decisions. Judicial decisions are at the heart of what a quality judicial system is about. Therefore, it is essential that the quality of decisions is promoted and guarded, foremost by judges themselves, but also by others involved. The assessment should never be about the merits of the judgments but be confined to the “craftsmanship” of the decision. What makes this work also difficult is that in some countries it is felt that the data of these assessments may

be used against individual judges. So, mistrust between the Judiciary and other state powers as a barrier to an effective justice system.

The role of Councils

9. What is the role of Councils in the questions I mentioned earlier? Besides guaranteeing and developing a framework to promote independence, accountability and quality of justice, the Councils are to listen to the demands of society and its citizens. If they fail to do so, they damage the core of the relationship between the Judiciary and citizens. Trust is not earned by leaning back and staying in an ivory tower far away from the daily lives of citizens. The judiciary must be willing to modernize and innovate in order to remain relevant to modern society and its citizens. Councils should play an active role in the modernization and innovation of the Judiciary.

10. More than ever Councils should - so to speak – be “guardian angels” to each other. They should promote the standards together all over the Union, help each other to realize them, warn each other in case of an impending fall back, stand by each other in case of a fall back, and learn from situations in other countries for their own benefit. In my view, this

guardianship is of the utmost importance to the Rule of Law.

11. In case the legislature promotes modernization, the Councils should always be involved at all stages of any modernization process through appropriate consultation. The reason behind this is that modernization should strengthen judiciaries and its effectiveness, and not be an excuse to weaken their independence. The ENCJ framework on independence and accountability and quality of judicial systems could be helpful in fulfilling this consultation task.
12. Last but certainly not least, Councils should play a distinctive role as representative of the third state power to safeguard the independence of the Judiciary, because independence is a pre-condition to an effective justice system.

The relation with other state powers

13. Now I will briefly address the relation between the Judiciary and the other state powers. The Judiciary is responsible for the effective delivery of justice. To achieve this, it must listen to the needs of society and its citizens and work on modernization. They must understand that they need to cooperate with other state powers in this modernization

process. And, although it is inevitable that a natural tension exists between the state powers, this modernization process will not be successful without a healthy measure of mutual respect and an ongoing dialogue between the state powers.

14. In this respect, we in the ENCJ 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. Attempts for major judicial reforms that we can observe in a number of EU Member States should be assessed against the European Standards developed by the ENCJ and other relevant bodies in particular the Council of Europe. Member States are free to organize their judicial systems in a way that they see fit, but there are minimum standards that safeguard the independence of the judiciary that have to be complied with. If not, an effective justice system is out of reach.

15. Each judicial and legal system is deeply rooted in a historical, cultural and social context but there are common denominators. These shared values are a result of comparative analysis of the different legal cultures in

Europe. These principles have evolved over time and have been codified by legal practitioners, academics and ultimately by politicians, for instance in the 2010 recommendation on the Independence of Judges by the Committee of Ministers of the Council of Europe, and can now be seen as European standards that are part of an evolving EU legal order.

16. The mentioned recommendation of the Council of Europe and the ENCJ framework of independence contain examples of standards which articulate so well, and so concrete our shared values, and are so fundamental to our EU legal order, that, I firmly believe, at some stage, they will be upheld by the courts in the Union. Recent decisions of the Court of Justice already seem to point in that direction.

Conclusion

17. Let me conclude. Judiciaries must listen to the demands of society and its citizens: they want speedy, high quality judicial decisions which contribute to solving their problems. Councils for the Judiciary (and other judicial authorities) should promote modernization. In order to achieve this Councils should work with other state powers on the basis of mutual respect and in an ongoing dialogue. Key to a successful modernization is respect for the independence of the Judiciary, as defined in the standards

of the ENCJ and other European bodies. Some of these standards must be upheld by the courts. Without respect for the independence of the Judiciary the effectiveness of the justice system will be destroyed.

18. Ladies and gentlemen, we live in challenging times, also for the Judiciaries. More than ever before, the Judiciaries and stakeholders in Europe need to support each other and voice solidarity. We share a common responsibility to uphold the fundament of our common EU legal order, especially the Rule of Law and the independence of the Judiciary within that order. In the end, we all pursue the same objective – namely an independent and accountable, high quality and an effective judicial system in every Member State for the benefit of citizens of our Union.

I thank you for your attention.