



European Network of Councils  
for the Judiciary (ENCJ)

Réseau européen des Conseils  
de la Justice (RECJ)

**Contribution to INTERPARLIAMENTARY COMMITTEE MEETING  
“The situation of the Rule of Law in the EU”**

**Discussion on “The way forward on the Mechanism on Democracy, Rule of Law  
and Fundamental Rights ”  
9 December 2021**

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President of the ENCJ**

Mr Chairman, I am very grateful for the opportunity to address this distinguished audience today. I represent the European Network of Councils for the Judiciary which gathers councils for the judiciary in the EU or similar autonomous bodies that ensure the final responsibility for the support of the judiciary in the independent delivery of justice. The ENCJ is an institutional network representing the national institutions that have been set up to guarantee the independence of the judiciary and provide the all-important buffer between the judiciaries on the one hand and the executive and legislative branches of government on the other.

The ENCJ has co-operated since 2014 with the European Commission on the EU Justice Scoreboard in the field of judicial independence in particular in relation to the set up and functioning of Councils for the Judiciary, the appointment and transfer of judges and disciplinary proceedings. The ENCJ also contributed to the 2020 and 2021 Rule of Law report by mapping the legal framework in which Councils for the Judiciary function and the resources made available to them.

The level to which the rule of law is respected in the Member States plays a key role in ensuring mutual trust among Member States and in their legal systems and it is therefore of vital importance for the functioning of the Area of freedom, security and justice together with the internal market. In parallel, access to fair, independent and impartial courts is a key fundamental right. Without judicial independence, there can be no effective judicial protection and the Rule of Law cannot be upheld. This will ultimately also affect the level of respect for democracy and fundamental rights.

The separation of powers in a democratic state governed by the Rule of Law is to prevent the abuse of powers by providing for checks and balances, and to safeguard freedom for all. The other state powers need to accept that the judiciary as a whole is itself a branch of the state. This recognition is needed at national and EU level. The ENCJ therefore calls for a European dialogue between the state powers as a means to achieve effective protection against intervention by other branches of state. The ENCJ stands ready to play its part in that dialogue.

The European Union has at its disposal a multitude of instruments and processes to ensure the full and proper application of Treaty principles and values. Yet, the existing tools should be enforced and complemented to be adequate and effective.

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 recently expelled Poland's National Council of the Judiciary (KRS). The ENCJ found that the KRS does not safeguard the independence of the Judiciary and it does 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.

The ENCJ welcomes the efforts of the European Commission and European Parliament to systematically scrutinise the adherence of Member States to the Rule of Law. It is an important first step which should be part of a continuous process aiming to solve deficiencies. At the same time, efforts to protect the Rule of Law should not be limited to an annual report. The EU Institutions should use all available instruments to take legal action when called for. In addition, there is a joined responsibility for each Member State government and parliament to demand that the common values that the EU is built on are respected by the other Member States.

The ENCJ believes that the judiciaries of Europe are an important stakeholder in this field and therefore urges the European Institutions to endorse the central role the judiciaries and judicial networks play in promoting and protecting the Rule of Law. To strengthen the position of the judiciaries of the EU and to enable the judiciaries to fuel the debate on the future of the common Area of Justice we feel that there is a need for a recognized –informal- body that would meet regularly and serve as a sounding board for the EU Institutions and at the same time as a body that would represent the judicial perspective to the Institutions. In our view this body would serve as the link between the national judicial authorities and the Community bodies and could thus be charged with an early warning system when the quality and effectiveness of the judiciary and the judicial system in the European Union is at stake.

Lastly, an important finding of the Rule of Law 2021 report which the ENCJ strongly supports is that investing in human and financial resources and digitalisation of the justice system is indispensable to improve significantly the efficiency of the justice systems and effective judicial protection. The ENCJ calls on the European Institutions to encourage further investments by the Member States in their judiciaries and to ensure that Member States involve judiciaries in relation to reform or modernization plans.

I thank you for your time.