



European Network of Councils
for the Judiciary (ENCJ)

Réseau européen des Conseils
de la Justice (RECJ)

**Contribution to LIBE meeting on DRF mechanism
29 June 2020**

**Filippo Donati
President of the ENCJ**

Mr Chairman, I am very grateful for the opportunity to address your Committee this morning. I want to spend the few minutes available to me to explain very briefly what the ENCJ believes could be done to uphold, preserve and restore the Rule of Law.

The ENCJ 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 deals with judicial systems and not judges individually. It is an institutional network (and therefore not a professional 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 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 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.

Central to the mission of the ENCJ is the reinforcement of independent, yet accountable judiciaries in the European Union to guarantee to citizens access to fair, independent and impartial courts. To this end, the ENCJ is working systematically to promote and further develop standards and guidelines for the self-governance of the judiciary and the legal and practical arrangements of essential functions such as the appointment of judges. The ENCJ also seeks to enhance the impact of its activities in the judicial systems of the Member States with the aim to improve justice systems across Europe for the benefit of citizens generally.

The ENCJ is involved in a more systematic assessment of the judicial systems. 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.

In addition in 2013, the ENCJ has embarked on a major project aimed at identifying indicators for the independence and accountability of the judiciary. 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 state of Independence and Accountability of judiciaries in European countries; address challenges and threats to independence and accountability and to help to improve justice systems. The project also includes a survey among judges on their independence.

The ENCJ has designed an improvement cycle for Independence and Accountability of the Judiciary. The First indicators for the independence and accountability of the judiciary based on international European and ENCJ Standards have been drafted. Each 4 years ENCJ Members and Observers are asked to fill out a questionnaire based on the indicators. For each indicator a score can be obtained between 0 and 10. This year for the first time on the national level external validation committees were set up. Councils for the Judiciary would fill out the questionnaire and the replies were validated by a committee consisting very often of academics or representatives of the judges association. In particular when the committee consisted of academics interesting discussions took place and replies were re-considered. The ENCJ feels that this was an important step towards obtaining reliable data.

Now that the replies have been processed a score for each judiciary and indicator has been published. The next step in the improvement cycle is that the ENCJ Members and Observers will study the results, with a focus on the bad scores; the weaknesses. A round of dialogue group meetings will be organised in which 4 national Councils will have in depth discussions among each other on the issues on which they had a weak score. In the next phase each Council for the Judiciary will be asked to draft a national improvement plan and present it to the General Assembly. In the last phase the Councils will be asked to report on the implementation. Surveys among judges about their own independence and accountability and of their colleagues will also be organised in that phase to monitor progress.

I wanted to explain to you what we have been doing in this area, because I think there are some similarities with what the Parliament aims to do and the European Commission is doing with the new Rule of Law report. The main issues we encountered were:

- How to obtain reliable data? In our case we have tried to address this by setting up external validation committees and also by using data from various sources especially in the area of perceptions (ENCJ surveys / Eurobarometer / World Justice Project / World Economic Forum).
- How to ensure implementation with a view to improvement? In the case of ENCJ the exercise is geared to improvement. The process does not stop at mapping weaknesses but should lead to reflection and action. Please note that it is an instrument for self-assessment, each Council will draft national plans only. It is a voluntary exercise. Councils for the Judiciary will use the outcomes for discussions with the other branches of the state and suggest changes to the legislative framework.
- A consistent finding is that formal arrangements to safeguard judicial independence are often less in line with European and ENCJ standards in North-Western Europe than in Central Europe. The relatively low scores on formal safeguards in North West Europe have much to do with the separation of powers that is not based on strict formal arrangements but on custom and mutual trust.
- Measuring de facto or de jure independence. It is important to look at formal arrangements and at perceptions. State of the art formal arrangements do not guarantee independence in practice. The ENCJ is contributing to the mapping of perceptions by initiating a survey among judges asking them to assess their own independence. In cooperation with the CCBE a survey among lawyers

on the independence of judges was held. In addition the ENCJ is currently in the process of setting up a method by which the independence of the judges is assessed by asking parties in a court case. All of this remains of course perceptions and will not provide an assessment of de facto judicial independence.

Now, I would like to turn to another issue that is particularly important to the ENCJ, Councils for the Judiciary and judiciaries and judges across the EU. In June 2019 the ENCJ adopted its ENCJ Bratislava Manifesto which sets out the issues that the ENCJ believes should be addressed by the European Institutions in the 2019-2024 mandate.

Access to fair, independent and impartial courts as the key institutions of an independent judiciary is a fundamental right which, is also laid down in European Law and is fundamental to the functioning of the Area of Freedom, Security and Justice together with the internal market.

Without judicial independence there can be not 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. In a recent Flash Eurobarometer on the perception of the general 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. And in the FRA report, *“what do fundamental rights mean for people in the EU?”* that was published earlier this month , around a quarter of the interviewed believed that, in their country, judges are never able to do their job free from government influence or they can do so only rarely.

As an effective protection against intervention by the other branches of state, a democratic state governed by the Rule of Law should be based on 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. The other state powers need to accept that the judiciary as a whole is itself a branch of the state. This recognition is needed on the national and EU level. The Commission and Parliament could play an important role in positioning the judiciary of Europe. 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.

Furthermore, there is a need for a formalised status within the EU, for judicial networks as representatives of the European judiciaries. The other branches of state have their own formalised EU level bodies that enable them to advise the EU Institutions. The national judiciaries of the EU do not have such a representative body. The ENCJ therefore urges the European Institutions to endorse the central role the judiciaries and judicial networks play in promoting and protecting the Rule of Law and formalise their role in any future Rule of Law evaluation mechanism.

Over the last few years, ways to better protect and promote the Rule of Law have been debated by the European Institutions. It is important to involve the judiciaries of the European Union in this process. The ENCJ and the other judicial networks are best placed to help understand the situation on the ground and provide a judicial perspective on relevant developments.

The ENCJ therefore calls for a continuous dialogue between the branches of power of the EU achieved by establishing communication channels developed with the representatives of all the other branches.

I hope I have provided the members of the LIBE committee with some food for thought based on the experiences of the ENCJ. We will follow closely the developments in this field and we stand ready to contribute when and where appropriate.

I thank you for your time.