



European Network of Councils  
for the Judiciary (ENCJ)

Réseau européen des Conseils  
de la Justice (RECJ)

**Mr Filippo Donati, President of the ENCJ,  
contribution to the ENNHRI High-Level Network Meeting: Revisiting our approach to joint  
work on rule of law**

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*Session on “addressing current challenges for rule of law - the voice of key rule of law actors”,  
access to justice*

Ladies and gentlemen, esteemed colleagues,

It is a great honour to attend the ENNHRI High-Level Network Meeting on the topic of revisiting our approach to joint work on rule of law and it gives me great pleasure to speak here 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. 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.

Central to the mission of the ENCJ is the reinforcement of independent, yet accountable judiciaries in the European Union to guarantee access to fair, independent and impartial courts.

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.

Membership of the ENCJ brings together national Councils for the judiciary and has the benefit through dialogue of revealing strengths and weaknesses within their operation thus, assisting Councils in reflecting on their own judicial systems and in identifying areas for improvement, and thus contributing to the development of a European Judicial Culture.

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, promotion and discipline of judges.

I would like to take the opportunity to explain what are the main challenges regarding access to justice and judicial independence and what actions does the ENCJ undertake to promote and protect the rule of law.

A fundamental cornerstone of any democratic society is the principle of the separation of powers which ensures that the judiciary can perform its responsibility to deliver independent quality justice. It is a pre-condition that in exercising the judicial function the judiciary are autonomous from the executive and legislative power. This is necessary to guarantee full protection for the basic rights of the citizen. Self-governance is a prerequisite for achieving and protecting this independence and autonomy.

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 or individual judges in the face of any measures which threaten to compromise the core values of independence and autonomy. Political attacks and disciplinary measures targeting judges increase the risk of creating a chilling effect on judges and the judiciary. Implementation of the judicial reforms aiming to give the Ministry of Justice extended competences over judiciary; reduce retirement ages, introduce budget cuts, etc. are endangering the separation of powers which is crucial to the maintenance of the Rule of Law.

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. There are a variety of ways in which the independence is ensured. 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.

The ENCJ plays an important role in protecting the values it stands for such as Judicial Independence and the Rule of Law. Besides promoting dialogue with the other state powers and speaking out in favour of judicial independence, the ENCJ will take action if judicial independence is at stake.

The expulsion of the Polish National Council of the Judiciary (KRS) from the network in October 2021 is one of the examples of actions taken by the ENCJ in defense of judicial independence. The ENCJ voted to expel the Polish KRS. 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.

Another example of action taken by the ENCJ was the submission of its observations to the cases before the European Court of Human Rights. Up to now, the ENCJ intervened as a third party before the ECHR and submitted its observations (mainly reiterating the ENCJ's standards on the governance structure of the Judiciary and the disciplinary proceedings against judges in the following three cases (all vs Poland):

• On 7 November 2019 the ENCJ submitted 3rd party intervention before the ECHR *Grzęda v Poland* case<sup>1</sup>, • In June 2020 the ENCJ submitted 3rd party intervention before the ECHR – *Zurek v Poland* case<sup>2</sup>, • On 08 January 2021 the ENCJ submitted 3rd party intervention before the ECHR – *Tuleya v Poland* case<sup>3</sup>.

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.

Justice systems must be effective in providing open access to justice<sup>4</sup> for all citizens and the governing bodies (Councils for the Judiciary) that protect that access to justice have to be independent. Citizens are entitled to access to an open and transparent system of justice, and to clearly reasoned judgements handed down in public. However, access to justice is being challenged in a number of countries.

The most common barriers to access to justice are digital barriers, barriers related to financial costs, complexity and excessive administrative burden (formalism), lack of access to legal aid, length of proceedings etc.

However, it should not be forgotten that it is not sufficient to enable citizens to go to the court and to exercise their rights if the courts' decisions are not enforced. The right of access to a court includes the right to have a court decision enforced. The failure to execute a judgment may unreasonably obstruct access to justice and violate Article 13 of the ECHR.

In the recent years, strong resistance and hostility of Member States courts and governments against the CJEU and ECHR have emerged. As an example, Poland is openly not enforcing judgments of the CJEU and CEDH concerning rule of law and judicial reforms. Even worse, the Polish government uses the Constitutional Tribunal to provide legal grounds for ignoring the decision of the CJEU (since the Constitutional Tribunal declared EU law to be incompatible with the Polish Constitution). The ruling undermines the protection of the judicial independence as guaranteed by Article 19 of the Treaty and as interpreted by the European Court of Justice. Without independent courts, people have less protection and consequently their rights are at stake.

Non-implementation of the CJEU and ECtHR judgments is a proof that human rights, democracy and the rule of law are under threat.

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<sup>1</sup> application no 43572/18: concerning the interruption of the term of office of a judge – member of the National Council of the Judiciary as a result of the 'reform' carried out in 2018 in Poland. Judgment 15/03/2022: violation of article 6§1 (right to a fair trial) of the European Convention on Human Rights.

<sup>2</sup> application no 39650/18: concerning the interruption of the term of office of a judge – member of the National Council of the Judiciary, and repressions associated with his role as spokesperson for the National Council of the Judiciary. Judgment 16/06/2022: violation of articles 6§1 (right of access a court) and 10 (freedom of expression).

<sup>3</sup> application no. 21181/19: disciplinary proceedings against Judge Tuleya. The intervention reiterates the ENCJ Standards on disciplinary proceedings against judges.

<sup>4</sup> Under EU law, Article 47 of the Charter of Fundamental Rights states: "Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article".

Art 13 CEDH (right to an effective remedy) states: "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity"

Among the ENCJ's strategic objectives for 2022-2025 is to protect and promote the Rule of Law by providing support for the independence, accountability and quality of judiciaries in Europe and promoting understanding of and respect for judicial independence.

To strengthen the position of the judiciary in a democratic state, the ENCJ will continue to strengthen the role of Councils for the Judiciary as guarantors of the independence of the judiciary especially vis-a-vis the other State Powers and the EU Institutions. The ENCJ will make public statements when and where relevant to draw attention to this issue and will promote its common standards for the set-up and functioning of Councils for the Judiciary. Moreover, the ENCJ will speak up for Councils for the Judiciary and actively make the point that the judiciary is the third State Powers and should be acknowledged by the other State Powers. The ENCJ will continue to promote dialogue between the three State Powers on the EU and the national level.

The ENCJ feels that 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.

The ENCJ believes that judiciaries in Europe need support at both the national and international level. While national organisations such as National Human Rights Institutions, Ombudsman organisations, judges' association, civil society organisations can bring support at the national level, international bodies, European Networks such as: ENNHRI and ENCJ, and NGOs can bring support at the international level.

Judiciaries should take all necessary steps to promote the public confidence in the courts. Openness, transparency, accountability, respect for the citizen, empathy with their situation, the development of courts' activity, the delivery of judgements and other judicial decisions in a clear and comprehensible language are essential features to achieve that purpose.

The ENCJ believes that Councils for the judiciary should be instrumental in helping educate society about what judges do, and it is therefore essential for the councils and the judiciaries to develop their communication with the general public. Furthermore, civil society organisations must also take an active role in such public education efforts.

Low trust in the judiciary provides a basis for bad judicial reforms and challenges to 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. According to ENCJ standards, the Judiciary should always be involved at all stages of any reform process, whether directly or through appropriate consultation. This is to ensure the independence of the judiciary, and also to ensure that reforms are effective in that they instil confidence.

Thank you for your attention.