



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 **Conference on “The role of self-governing justice institutions in  
strengthening professionalism and performance of the judiciary”**  
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Speech topic: **Golden standards of evaluation and promotion of magistrates in the light of  
ENCJ vision for an independent delivery of justice**

Ladies and gentlemen, esteemed colleagues,

I am very grateful for the opportunity to address this distinguished audience today.

My name is Filippo Donati, I am the ENCJ President. The ENCJ is the body which unites all Councils for the Judiciary, or similar autonomous bodies, of the EU Member States and represents them in the EU. 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.

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.

The ENCJ Membership consists of the 22 Judicial Councils (of which one is currently suspended). As you might know, both the Italian CSM and the Albanian High Judicial Council participate in the ENCJ. While the Italian Consiglio Superiore della Magistratura is an ENCJ's Member, the Albanian High Judicial Council participates in the ENCJ as an observer.

At today's conference I will speak about the ENCJ's standards of evaluation and promotion of judges.

As part of the introduction, I would like to share some thoughts **on the independent delivery of justice.**

To start with, the article 19 TEU provides a concrete expression to the value of the Rule of Law stated in Article 2 TEU, and entrusts the responsibility for ensuring judicial review in the EU legal order not only to the Court of Justice but also to national courts and tribunals. The very existence of effective judicial review designed to ensure compliance with EU law is of the

essence to the Rule of Law. It follows that every Member State must ensure that the bodies which, as ‘courts or tribunals’ within the meaning of EU law, come within its judicial system in the fields covered by that law, meet the requirements of effective judicial protection.

As you are aware, in 2018, in the *Portuguese Judges case (ASJP, C-64/16)* the CJEU held that Member States are required by Union law to ensure that their courts meet the requirements of effective judicial protection, and that independence is essential to ensure such protection.

In order for that protection to be ensured, maintaining such a court or tribunal’s independence is essential, as confirmed by the second paragraph of Article 47 of the Charter, which refers to the access to an ‘independent’ tribunal as one of the requirements linked to the fundamental right to an effective remedy.

In addition, the European Convention on Human Rights states that “*everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. (...)*” (article 6§1) (right to a fair trial – independent tribunal) of the European Convention on Human Rights states that “*In the determination of his civil rights and obligations or any criminal charge against him.*”

The principle of the separation of powers which ensures that the judiciary can perform its responsibility to deliver independent quality justice is a fundamental cornerstone of any democratic society. It is a pre-condition that in exercising the judicial function the judiciary are autonomous from the executive and legislative power.

Already in 2006, in the Wilson case, the CJEU ruled that the notion of ‘judicial independence’ implies that judges must be protected against any external intervention that could jeopardise their independent judgment.

The ENCJ plays a crucial role in the maintenance of judicial independence. The ENCJ considers that it is important that Councils for the Judiciary should have taken action to address the issue which have been identified in order to strengthen and maintain the Rule of Law, in particular by providing support for judicial independence, accountability and the quality of the judiciary<sup>1</sup>.

The Councils for the Judiciary are in various ways responsible for the support of the judiciary in the independent delivery of justice. As guarantors of judicial independence, member states are to be encouraged to afford Councils the benefit of constitutional protection of justice as well as the independent expression of the opinion of each individual Council.

However, Councils for the Judiciary should be independent not only from the executive and legislative powers (external independence) but also from undue influence from within the judiciary (internal independence).

It should be mentioned **that in 2019 the ENCJ organised a survey on the independence of judges<sup>2</sup> among judges** and one of the main findings is that judges generally evaluate their

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<sup>1</sup> ENCJ Paris Declaration on resilient justice 2017, available at: [ENCJ heading](#)

<sup>2</sup>Page 4, available at : [Data ENCJ 2019 Survey on the Independence of judges.pdf \(amazonaws.com\)](#)

independence positively. On a 10-point scale judges rate the independence of the judges in their country on average between 6.5 and 9.8. Numbers show that many judges experience and - increasingly so – a lack of respect for their independence by the other state powers and the media.

The ENCJ is working systematically to develop standards and guidelines for the governance of the judiciary and the conduct of essential functions such as the appointment of judges. Therefore, each year as part of its *modus operandi* important topics are discussed in Project groups leading to appropriate declarations of best practice in areas, among others, appointment and promotion of judges, and evaluation of judges.

ENCJ considers that the identification of minimum judicial standards for the justice sector will further the approximation of the judicial systems in the Europe and thus contribute to the attainment of a European Judicial Culture.

#### **On standards:**

To accomplish its missions of reinforcing of independent, yet accountable judiciaries in the EU, the ENCJ has developed minimum judicial standards including on **appointment and evaluation** of judges.

**In 2013, the ENCJ published a report containing minimum Standards regarding evaluation of professional performance and irremovability of members of the judiciary<sup>3</sup>.**

Six years after the publication of the ENCJ Standards on the Evaluation of Judges as laid down in the report of 2013, **in December 2019 the ENCJ members and observers gathered in Rome to participate in a workshop<sup>4</sup>** organised by the ENCJ where awareness for previously set up judicial standards was furthered and compliance enhanced.

Having organized this workshop enabled to analyse to which extent each of the systems follow the standards set out and how could the system be improved.

During the workshop it has been agreed that the ENCJ Standards on the Evaluation of judges as laid down in the report of 2013 were (back in time) still a good reflection of the diversity of the systems in place in Europe. The ENCJ believes that those standards are still valid.

The ENCJ adopted recommendations as regards, first of all, **the aims of the evaluation of Judges (I), secondly, the body in charge of the evaluation and finally (II), criteria, process and consequences of evaluation (III).**

I. First of all, irrespective of the specificities of each system of evaluation of professional performance of judges, the main aims of the system of evaluation of professional performance are:

- To safeguard of professional quality of judges, in order to improve the service provided by the judicial systems to the public.
- Skill development of judges, including continuing training if this appears to be necessary in view of the outcome of the evaluation.

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<sup>3</sup> [encj\\_report\\_minimum\\_standards\\_iii\\_approved.pdf](#)

<sup>4</sup> [ENCJ heading \(amazonaws.com\)](#)

- To improve the motivation and satisfaction of judges in the development of their professional activities.
- And finally, to improve the efficiency of the judicial systems. This specific aim links evaluation of professional performance of judges with the systemic evaluation of the judicial systems.

II. Secondly, the participation of non-judges in the process is perceived to be positive in the few countries where this is part of the system. Non-judges such as academics, can be more free to express their opinion, because there is no peer-pressure and tend to be stricter. In most countries the evaluation body is composed of judges elected by their peers. If this is not the case, guarantees to exclude undue influence should be in place for instance in the second level of the evaluation process.

III. Finally, most systems use both quality and quantity criteria for assessing the performance of the judge. The question is how to balance these two criteria. Quality criteria should prevail, at the same time respecting judicial independence. In some systems the quantity of the work done, is seen as a quality aspect. Integrity criteria also need to be considered.

**The ENCJ adopted the following four recommendations as regards standards of the evaluation of judges:**

Recommendation 1 on the composition of the body in charge of evaluation: An external view may be useful for the evaluation of judges, the participation of lay members in certain parts of the evaluation process could be interesting and may contribute to the accountability of the judiciary.

Recommendation 2 on the link between evaluation and judicial training: Training, and further improvement of judges should be linked to the results of the evaluation process. This should not only be the case in when deficiencies have been established, but all judges should be involved in continuous training.

Recommendation 3 on the drawing up of evaluation criteria: The Councils for the Judiciary should be involved in the drawing up of criteria. It is not recommended that all criteria are regulated in the law; there should be ample discretionary authority for the judiciary.

Recommendation 4 on the quality of judgements: The quality of decisions should be considered when evaluating the performance of judges. However, quality should be determined not based on the merits of the decision, but on formal elements of the decision such as procedural issues and judicial craftsmanship

**Now, I would like to speak of the standards on promotion of judges<sup>5</sup> :**

First of all, it should be recalled that the promotion (as well as the appointment) of judges is one of the main competences of councils for the judiciary. It is also a core element when it comes to the protection of the independence of judges.

The general standard<sup>6</sup> concerning promotion of members of the judiciary in those jurisdictions where such promotion applies specifies that: Where promotion of members of

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<sup>5</sup> [REPORT \(ency.eu\)](https://www.ency.eu/REPORT)

<sup>6</sup> Development of Minimal Judicial Standards II Report 2011-2012, available at: [REPORT \(ency.eu\)](https://www.ency.eu/REPORT)

the judiciary is based on the periodical assessments of professional performance the assessment process must be conducted according to the same criteria and with the same guarantees as those provided for the initial selection and appointment process (i.e. it should be independent, fair, open and transparent, and on the basis of merit and capability) and should be based on the judge's past performance.

**The ENCJ adopted the following recommendations** as regards the body in charge of promotion (and appointment) of judges <sup>7</sup>:

- The body in charge of judicial appointments should comprise a substantial participation of legal professionals or experts and could also include independent lay members representing civil society, appointed from among well known persons of high moral standing on account of their skill and experience in matters such as human resources;
- in order to avoid political influence, the procedures for the recruitment, selection or (where relevant) promotion of members of the judiciary ought to be placed in the hands of a body or bodies independent of government in which a relevant number of members of the judiciary are directly involved;
- the body in charge of judicial selection and appointment could be the appropriate national Council for the Judiciary (or a specific committee or department within the Council for the Judiciary) or an independent national judicial appointments board or committee;
- Adequate resources and independent control over its budget;
- Adequate procedures in place to guarantee the confidentiality of its deliberations.

**Furthermore, the ENCJ recommends that the body in charge of promotion (and appointment):**

- Must create a sufficient record in relation to each applicant to ensure that there is a verifiable independent, open fair and transparent process;
- Must provide written, reasoned decisions for appointment and non-appointment as they are fundamental and contribute to a transparent appointment process;
- Must ensure that all appointments are merit based.

**Finally, according to the main findings of the ENCJ survey among judges of Europe conducted in 2019**, in many judiciaries, judges are critical about human resources decisions concerning judges and, in particular, about appointment and promotion. The survey asked judges to give a general assessment of their independence, but also to assess a range of aspects that affect independence. Among the questions asked was: Do you believe judges in your country have been promoted or appointed other than on the basis of ability and experience during the last two years?

When looking at survey's results, promotion of judges at the first instance and appeal courts draw very bad scores, especially in Croatia, Hungary, Portugal and Italy, and it is evidently difficult to organize in such a way across Europe that it is only based on ability and experience and it is seen and accepted to be a such.

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<sup>7</sup> *Idem.*

I believe that those results show that there is a room for improvement with respect to upholding and promoting the highest standards on both, the evaluation and promotion of judges. One of the Councils for the Judiciaries' tasks is to actively promote (push) for these standards and implement them.

The ENCJ will continue promoting its common standards for the set-up and functioning of Councils for the Judiciary.

I hope that I provided you with some interesting inputs about the ENCJ Standards on evaluation and promotion of judges.

Thank you for your attention.