



European Network of Councils
for the Judiciary (ENCJ)

Réseau européen des Conseils
de la Justice (RECJ)

Address Nuria Díaz Abad

President of the ENCJ

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Extraordinary Congress

of Polish Judges

1. First of all, I would like to say what a great honour it is to have been invited to speak at this extraordinary congress of Polish Judges.

I. Who we are

2. Let me start by explaining very briefly who we are. For those of you that do not know, the ENCJ consists of the Councils for the Judiciary in Member States – they are independent of the executive and legislature, and are responsible for the judiciaries and justice systems. In addition, Ministries of Justice in Member States that do not have such institutions may be granted observer status (8 Observers), as can Councils for the Judiciary from European Union candidate Member States (6 Observers) and the Court of Justice of the European Union.
3. The principal objectives of the ENCJ are the improvement of cooperation between Councils for the Judiciary and the members of the Judiciary and the promotion of best practices to enable the judiciary to deliver timely, effective and quality justice for the benefit of all citizens.
4. Over the last 11 years, the ENCJ has laid down a whole series of standards, best practices and guidelines in every area of judicial activity: appointment, promotion, evaluation of judges, judicial ethics, judicial discipline, and the establishment of Councils for the Judiciary to name but a few. Recently, the ENCJ has embarked on a major project aimed at identifying indicators of the independence and accountability of judges. We are now extending that project to look at

indicators of the quality of a justice system. All this has fed in to our cooperation with the European Commission in the production of its important Justice Scoreboard.

5. The ENCJ also undertook a survey among judges about their independence. In the autumn of 2016 we will repeat this survey and we hope that many Polish judges will participate and express their ideas about their own independence.

II. The situation in Poland

6. The ENCJ has been following the developments in Poland with growing concern. The ENCJ has its General Assembly last June in Warsaw and was duly informed about the situation by the National Council of the Judiciary and various other stakeholders.
7. My predecessor was given the opportunity to speech at a reception hosted by President Duda in his Presidential Palace and he said amongst other the following: *“It should not be forgotten that judges need to be wholly independent from the state because they have to decide cases between the citizens and the state in a whole variety of subject areas – administrative, criminal and family amongst them.(...) If judges are not appointed, governed and disciplined by wholly independent processes, free from improper influences from the executive and the legislature, the citizens will not have confidence that their cases against the state are being decided by an impartial tribunal free of bias.”*
8. In the same vein the ENCJ General Assembly adopted the Warsaw declaration in which it stated that :*“In relation to the developing situation in Poland, the ENCJ emphasises the importance of the executive respecting the independence of the judiciary, and only undertaking reforms to the justice system after meaningful consultation with the Council for the Judiciary and the judges themselves. The ENCJ will continue to monitor developments in [Turkey and] Poland to ensure that the core principles underlying the independence of the judiciary are respected.”*
9. In the communication on the Establishment of a EU framework to strengthen the Rule of Law, which is now applied by the European Commission in relation to Poland the ENCJ is mentioned as one of the organisations that might be consulted in order to advice the European Commission.
10. Since 2012 the ENCJ runs a system whereby it could provide assistance to Councils for the Judiciary in the implementation of its recommendations, guidelines and standards, and in problem solving. The concept is that such assistance will be provided in the form of co-operation in response to a request from the Council concerned. The ENCJ is ready to assist the National Council of the Judiciary when they would call for this assistance.

III. Focus on the some of the main issues in Poland

11. I would now like to focus on some of the most urgent issues in Poland. I would like to do so by explaining the ENCJ standards in relation to the role and composition of Councils for the Judiciary, the Standards for selection and appointment of judges and for judicial reform.

a) Councils for the Judiciary

12. The separation of powers is a fundamental principle of a democracy. Judicial independence requires the Judiciary to govern itself. The preferred option is for that governance to be undertaken by a Council for the Judiciary composed predominantly of a judicial membership elected by their peers. The Minister of Justice and the executive should, in general, have no influence over the Council for the Judiciary (save for a formal role in relation to, for example, appointments).

13. A compliant Council should have a broad mandate. In the ENCJ we have never adopted a standard on the length or termination of the mandate of the members of the Council. It simply did not occur to us that this would ever be necessary. It is unimaginable that mandates of Council members especially judicial members elected by their peers, could be cut short by the government.

14. The Council should have primary responsibility for the organisation, finance and decision-making of the Judiciary. It should have a supervisory role in relation to the courts.

15. The Council for the Judiciary must be an independent body which operates in a transparent and accountable manner. The structure, powers and processes of Judicial Councils must be designed to safeguard and promote judicial independence and efficient judicial system

b) Selection and appointment of judges

16. The most relevant standards developed by the ENCJ on this issue are the followings:

- Judicial appointments should only be based on merit and capability.
- The selection process should be conducted by an independent judicial appointment body, be open to public scrutiny and be fully and properly documented, be undertaken according to published criteria and promote the diversity of the range of persons available for selection.
- An unsuccessful candidate is entitled to know why he or she failed to secure an appointment; and there is a need for an independent complaints or challenge process to which any unsuccessful

applicant may turn if he or she believes that he/she was unfairly treated in the appointment process.

- If the Government or the Head of State plays a role in the ultimate appointment of members of the judiciary, the involvement of a Minister or the Head of State does not in itself contend against the principles of independence, fairness, openness and transparency if their role in the appointment is clearly defined and their decision-making processes clearly documented, and the involvement of the Government or the Head of State does not impact upon those principles if they give recognition to decisions taken in the context of an independent selection process. Besides, it was also defined as a Standard in this field that where whoever is responsible for making the ultimate appointment (the Government or Head of State) has the right to refuse to implement the appointment or recommendation made in the context of an independent selection process and is not prepared to implement the appointment or recommendation it should make known such a decision and state clearly the reason for the decision.

c) Reform of the Judiciary

17. The Judiciary should always be involved at all stages of any reform process, whether directly or through appropriate consultation.
18. Judges should not be hostile to modernisation and reform of the justice system, provided always that the contemplated reforms are aimed at improving the quality of the justice system for the benefit of those that it serves. Judicial involvement in the reform process should provide the balance between the wishes of the elected government and need to maintain judicial impartiality and the rule of law.

IV. Closing

19. In closing, I want to return to the protection of the independence of individual judges and ensuring their impartiality. Three factors ensure the independence and impartiality of judges. First, their appointment and promotion on the basis of merit and capability alone; secondly, their close and collaborative involvement in the reforms to the judiciary and the justice system; and thirdly, the existence of durable constitutional safeguards that ensure proper finance and facilities for the operation of the justice system. Each of these three factors contribute to enhance public confidence in a quality justice system.
20. I know that these are challenging times for the Polish Judiciary. Please know that we share your concerns and we offer you our assistance and cooperation when and where needed. In the end we all share a common objective— namely a reliable independent and accountable justice system in every country for the benefit of all the citizens of Europe.

Thank you very much for your attention.