



European Network of Councils for the Judiciary (ENCJ)

Réseau européen des Conseils de la Justice (RECJ)

Presentation to the Consultative Council of European Judges (CCJE)

15th Plenary Meeting

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Lord Justice Geoffrey Vos

President-elect of the European Network of Councils for the Judiciary

As many of you will know the ENCJ is an observer to the CCJE. I am very honoured to have been invited to address this 15th Plenary Session this morning.

I do not want to say much about the CCJE's excellent report on the evaluation of judges on which you have been working over the last two days. Save to say that I am delighted that there is so much common ground between your draft report and the ENCJ's "2012-2013 project group report on the Development of Minimum Judicial Standards III regarding evaluation of professional performance and irremovability of members of the judiciary".

Instead, I want, if I may, to report briefly on some of the ENCJ's recent activities. There is always significant scope for co-operation between our two bodies, and I hope that we shall be able to enhance that co-operation in my forthcoming term as President of the ENCJ.

For those of you that may not know, the ENCJ has 20 members who are Councils for the Judiciary in member states. It also has 15 observers who are Councils or equivalent bodies in member states and candidate member states. The ENCJ finds the CCJE's reports invaluable in relation to its work on standards and in numerous other areas.

As some of you may not know, the ENCJ is the only European body that brings together the justice systems of the member states rather than judges, court presidents, prosecutors or judges in particular legal subject areas. The ENCJ has recently introduced a process whereby a member Council or an observer can ask for assistance in relation to particular systemic problem that it faces. Several Councils have taken advantage of the opportunity and have had Council in other countries helping them to deal with problems of government interference in the judicial system or the appointment of judges or whatever it might be.

Last year, the ENCJ had two main projects:-

- (1) Independence and accountability
- (2) The allocation of cases.

This year the ENCJ will have two main projects again:-

- (3) Independence and accountability (2)
- (4) The disciplining of judges.

The independence project is our flagship. Our report is available on the ENCJ website. We developed indicators for the independence and accountability of any judiciary, and then applied them to 4 members initially: Romania, Netherlands, Ireland and Italy. The results were very interesting. We spent much time distinguishing between subjective and objective independence, between subjective and objective accountability, and between the independence of the justice system as opposed to that of the individual judge, and finally between the accountability of the entire justice system as opposed to that of the individual judge.

Objective independence is, of course, that which may be judged from the formal legal and other safeguards that are in place to protect the institutional independence of the justice system or of the individual judge.

Subjective independence of the justice system or of the individual judge is the way in which it is seen by the public, by the politicians, by the judges themselves, and by court users.

An individual judge may be accountable if his or her hearings are accessible to the public and he/she publishes all his decisions as soon as they are pronounced. The system will only be accountable if these aspects are effective across the board, and the public has confidence in the justice system and a high proportion of the public and court users have confidence in the accessibility of the justice system and in the quality of justice that is delivered.

The project identified a number of risks to the independence and accountability of the judiciary:-

- The main risks to the objective independence of the judiciary were identified as being inadequate investment in the courts and judicial structures, increases in case complexity and workload, gratuitous criticism of judicial decisions by politicians, parliamentarians and the executive, and inadequate staffing and administrative assistance for judges.
- Risks to the objective independence of the individual judge included changes to the retirement ages for judges, challenges to the security of tenure of judges, reduction in judicial pay and pensions and adverse changes to judicial conditions. Threats were posed across Europe from inappropriate pressure on judges arising from media comment. In some places, threats existed from internal pressure on judges exerted by court management, Councils for the Judiciary, or more senior judges. Increases were also observed in groundless complaints about judges personally or specific judicial decisions.
- The main risks identified to the accountability of both the judiciary as a whole and of the individual judge were the failure of judges to reflect changes in civil society, and their being out of touch with ordinary citizens. Moreover, problems were created by judges having an online presence, for example by joining social networks, and by still prevalent judicial corruption in some member states. Accountability risks were also posed by the absence of a functioning press office to advise judges involved in newsworthy cases.

Next year's phase of the ENCJ's independence project will involve 5 main areas:-

- Applying the indicators we have developed to all of our 35 Member Councils and Observers

- Setting up an expert group to assist in evaluating the results so as to make sure that Councils properly understand the questions and do not give inappropriately favourable answers.
- A survey of judges to ascertain how judges across Europe subjectively perceive their own independence and accountability.
- Setting up dialogue groups of 4 Councils or observers to discuss with the results of the application of the indicators, and consider how improvements can be made in the justice systems and in ameliorating lapses in independence and accountability of the judiciary in those states.
- The development of an analogous set of indicators relating to the independence and accountability of prosecutors.

In addition, our standards project group is considering and reporting on appropriate standards for judicial discipline.

Another major aspect of our work in the coming year is to develop greater co-operation on judicial training with the EJTJN.

Finally, we expect a busy time in terms of offering cooperation to Councils that have requested ENCJ assistance. These are challenging times. I have no doubt that the strength of the Councils for the judiciary is extremely important for the quality, strength, independence and accountability of all our justice systems in Europe.