



## European Network of Councils for the Judiciary (ENCJ)

## Réseau européen des Conseils de la Justice (RECJ)

**Address Venice Commission**

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**Lord Justice Geoffrey Vos**

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

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 (7 Observers).

The principal objectives of the ENCJ are the improvement of cooperation between Councils for the Judiciary and the members of the Judiciary of both the European Union member states and candidate member states, and the promotion of best practices to enable the judiciary to deliver timely, effective and quality justice for the benefit of all citizens.

Membership of the ENCJ assists Councils to contribute to the development of a European Judicial Culture.

The ENCJ establishes project teams every year leading to appropriate declarations of best practice and minimum standards in areas such as Judicial Ethics, Appointment and Promotion of Judges, Judicial Reform, Evaluation and Irremovability of Judges, Public and Mutual Confidence and Independence and Accountability.

The ENCJ promotes self-governance of the judiciary through independent Councils for the Judiciary.

The preferred option is for that governance to be undertaken by a Council for the Judiciary composed predominantly of a judicial membership. A compliant Council should have a broad mandate. It 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.

The ENCJ is now taking the next step in its development, having set down standards in many relevant areas, by placing greater emphasis on improvement to justice systems and compliance with the standards and best practices laid down.

In 2013 the ENCJ started an ambitious project that strives to develop and implement indicators for the assessment of the independence and accountability of the judiciary in the Member States. The project also developed a framework for independence and accountability and ENCJ's vision in this field. The framework and vision were adopted by the General Assembly in Rome.

The most important elements identified were:

1. The best safeguard of judicial independence is the provision of a high quality of justice for all in the form of timely, impartial and well-reasoned decisions.
2. A judiciary that claims independence, but refuses to be accountable to society, will not gain its trust. Independence must be earned.
3. The judiciary achieves legitimacy and the respect of its citizens by delivering high quality and transparent justice. If this is achieved, attacks on the judiciary's independence will receive diminishing support from citizens and from the media. But high standards will not be achieved without objectively determined court budgets, proper administrative facilities and adequate human resources.
4. A high quality of justice is not, however, enough to guarantee an independent judiciary. There is still a need for formal safeguards, such as the existence of a Council for the Judiciary responsible for improving the quality of judicial performance and informing the public about the justice system.
5. There are challenged judicial systems across the EU. An entirely compliant constitutional structure, including an apparently independent Council for the Judiciary, does not guarantee that the judicial system will be perceived as truly independent.
6. Judicial accountability is a function of public understanding. The more interest that citizens show in the operation of their justice system, the more likely it is to be truly accountable.
7. If politicians, citizens and judges alike recognise the need for real judicial independence, a lack of transparency and a lack of funding will not be tolerated. For that reason, education is key to ensuring that judicial systems progress towards appropriate independence and accountability.

Thus far the indicators have been adopted by the General Assembly and the various ENCJ Members are in the process of applying them to their own systems. The systems will then be scored and a clear overview of the strengths and weaknesses in the field of independence and accountability should be the result. The results will be evaluated by an expert group to ensure consistency and accuracy. They will form the starting point for a debate about improvements; for this purpose a number of dialogue groups will be established. The dialogue groups will be composed of four ENCJ member Councils and observers from across Europe, and will identify the underlying problems that each justice system faces, so as to suggest achievable remedial action.

It is quite clear that a lack of judicial independence can only exist in the dark. Thus, it is necessary for EU institutions and European networks to shine a light on areas of concern. Moreover, it may be hoped for as one outcome of the European Commission's Justice Scoreboard.

Judicial accountability is also a function of public understanding. The more interest that citizens show in the operation of their justice system, the more likely it is to be truly accountable. Public ignorance and disinterest allow judges to continue to exist within unaccountable justice systems.

ENCJ's vision is therefore, for more attention to be paid to the functioning of judicial systems in all parts of the EU and indeed Europe generally. If politicians, citizens and judges alike recognise the need for real independence and accountability of their judicial systems, a lack of transparency and a lack of funding will not be tolerated. For that reason, education is key to ensuring that judicial systems progress towards greater independence and accountability rather than the reverse.

The ENCJ cooperates with the European Commission on the EU Justice Scoreboard especially as regards the promotion of effective justice systems and safeguards for structural judicial independence.

The ENCJ promotes timely and efficient justice. No party to any proceeding should have to endure an unreasonable period of time prior to the conclusion of legal proceedings before the courts. In this regard, timeliness and the problems connected to delayed judgments and backlogs are a cause for serious concern particularly having regard to art 47 of the Charter of Fundamental Rights. ENCJ examined a variety of obstructions that hinder timely judgments and the remedies that may be utilised to overcome the difficulties. We have organised a very successful regional seminar in Warsaw in 2013 and London in 2014. The aim of these seminars is to increase awareness for the problems associated with timeliness, deepen the understanding of causes and remedies, and to discuss recommendations and cooperation between stakeholders. Organising these timeliness seminars at a regional level with participants from countries within a region with comparable culture and legal tradition allows for a concrete and operational approach which can only benefit individual systems.

The ENCJ operates a mechanism whereby member Councils and observer bodies can ask us for assistance in relation to the functioning of the Council or their judiciary. Our executive board then appoints senior people from other Councils to work with the requesting Council to resolve their problems.

I have recently worked with the High Judicial and Prosecutorial Council of Bosnia Herzegovina, and the High Council of Justice of Albania, in addition to working with the Councils of Slovakia and other countries in Europe at different times.

What has ENCJ to offer to Venice Commission

- Institutional capacity of all its 20 Members
- On the ground experience of how Councils and justice systems function in practice
- Direct contacts with the Councils and their judicial authorities