



European Network of Councils
for the Judiciary (ENCJ)

Réseau européen des Conseils
de la Justice (RECJ)

Recommendation of the ENCJ workshop on the selection and appointment of judges

Madrid

10 - 11 December 2018

Representatives of the following ENCJ Members and Observers gathered in Madrid on 10-11 December 2018:

HRJ/CSJ Belgium, VSS Bulgaria, DSV Croatia, JAC England and Wales, CSM France, SJC CCJ Greece, SJC AJ Greece, OBT Hungary, Court Service Ireland, CSM Italy, CPGA Italy, TP Latvia, TT Lithuania, Rvdr Netherlands, CSM Portugal, Sudna Rada Slovakia, Sodni Svet Slovenia, CGPJ Spain, KLD Albania, MoJ Austria and the MoJ Czech Republic.

The objective of the seminar was to promote access to fair and impartial courts and to further the implementation of ENCJ guidelines and standards in the fields of independence, efficiency and quality of Justice. The ENCJ has been developing minimum judicial standards and the relevant indicators in particular fields as a tool for self-evaluation for judicial systems. It is believed that this would further the approximation and ultimately the improvement of the judicial systems in Europe and contribute to the development of independent Councils for the Judiciary and contribute to the attainment of a European judicial culture. The workshop was the first one in a series of workshops where awareness for these standards will be furthered and compliance enhanced.

The idea of the workshop, was not to compare the various systems, but to analyse to which extent each of the systems are in compliance with the standards set out, if they do not how this could be remedied, if they so how could the system be improved.

The workshop also addressed the issue, which requirements for the selection of judges are taking into account, such as judges need to be open for change (2018 ENCJ Lisbon declaration), accountable to society (ENCJ Project on Independence, Accountability and Quality), resilient (2017 ENCJ Paris declaration), be digitally capable, reflect the diversity of society etc. In short, do we select the right people to ensure the best justice for the future?

The members and observers gathered in Madrid on 10 and 11 December 2018, have agreed on the following recommendations and conclusions:

As regards the ENCJ Standards for the Selection and Appointment of Judges and its impact:

1. The ENCJ Standards on the Selection and Appointment of Judges as laid down in the report of 2012 are still a good reflection of the current systems in place in Europe and are a helpful instrument for self-assessment.
2. An objective and transparent appointment process is an important element to keeping and gaining public trust in the judiciary.
3. The public perception is influenced by the way the members of the judicial appointment body or Council are appointed and the procedure should therefore guarantee the independence of all members (judicial and non-judicial members).
4. Written and reasoned decisions in all stages of the process for appointment and non-appointment are fundamental and contribute to the trust in and transparency of the judiciary.
5. It was reaffirmed that the competencies for candidate-judges should include certain soft skills, such as communication skills sensibility, sociability, integrity, unflappability and the ability to co-operate.

In relation to the perception of and trust in the impartiality of the selection and appointment procedures especially among judges:

6. To ensure that the selection and appointment procedures are merit based, rules and criteria should be law based, public and transparent. Written, reasoned decisions on appointment and promotion need to be made available to each candidate.
7. Councils should adopt an active approach, and reach out to bar associations and universities to explain how judges are appointed. More generally, the judiciary could organise outreach activities by organising internships for students and sending judges to lecture in schools and universities. Judges have a responsibility to reach out and explain the importance of the Rule of Law and an independent judiciary.
8. Training of new Council members on interviewing technique is in place in some countries and is recommended for all Councils and appointment bodies. Improved interview techniques could strengthen the perception that the procedure is merit based.
9. In most countries first appointment into the judiciary is, and is perceived to be, merit based. The further appointments or promotions cause more debate and the perception of it being merit based is lower.

Looking at the future, and the question if the right people are selected to ensure the best justice for future generations:

10. Long term strategies for the judiciary are in place in only a few countries. It is not clear who should be in charge of these strategies. It could be argued, that it is not the sole responsibility of the Judiciary, but a shared responsibility with the other State Powers. Issues to be addressed in the long-term strategies would be the need for specialisation of judges and the need for diversity within the judiciary to reflect society.

11. The judiciary must be, and must be seen to be more connected with society. This connection needs to be balanced with the need to maintain its authority and independence.

12. The authority of the judges used to be source based and automatic, nowadays it needs to be earned and maintained throughout the career.

13. A way of strengthening the links with society and avoiding the perception of the judiciary being a closed shop, would be to get legal professionals to enter the judiciary later in their career.

14. More efforts must be put in providing continuous training for judges to make them more effective and efficient. Their social position and remuneration must be in line with the position they assume in society.