

Minutes Steering Committee ENCJ

Venue: Netherlands Council for the Judiciary THE HAGUE
Date: Friday February 17th 2006

1. Opening and news

Opening and welcome by the President.

Due to illness Susan Denham and Brendan Ryan were both unable to attend the meeting,

2. New National Developments

Brief presentations by members of current important developments and affairs in their respective countries.

France: Outreau case

The consequences of the Outreau case in France. A parliamentary commission of enquiry is hearing all involved magistrates. The French Council for the Judiciary and the Court of Cassation have written letters to parliament pointing out the possible conflict of the separation of powers.

In addition, the Minister of Justice has announced a proposed reform of the Council for the Judiciary, decreasing the number of elected magistrates in the Conseil to less than 50%.

Poland: Collapse of sports hall

In Poland judicial independence is under some pressure now that judges might face actions by parliament if a judgement proves wrong. In a case two years ago between an insurance company and the owner of a sports hall the judgement stated that the owner was not obliged to take the snow off the roof. After the recent collapse of the same sports hall, presumably because of the snow on the roof, an accident killing 60 people the Minister of Justice said that it was the mistake of the judge and called for disciplinary action. The Council has issued a statement in this matter, pointing out the constitutional position of judges.

England & Wales: Case management by Judges

In England & Wales many changes are foreseen. A.o.: Constitutional reform; all powers to Judicial appointment commission. Reforming the Judges Council. New disciplinary system in which the powers of the Lord Chancellor and the Lord Chief Judge are arranged for differently.. The judges are criticized by the bar because they do not manage all cases effectively. Increasing the powers of the police officers and prosecutors. Major terrorist trials give rise to discussions on the rights of defendants and the appropriateness of trial by jury.

Belgium: Evaluation of all Presidents of the Courts

Legal changes in the laws on the mandates of presidents of Courts. All positions will have to be renewed in 2006/2007. In the Commission on the evaluation of Presidents the Ministry of Justice will be represented which is not in accordance with the separation of powers. A magistrate school will be set up; it will be an agency of the government under control of the Ministry of Finance and Ministry of Justice.

Spain

A proposal to establish Regional Judicial Councils is being discussed by government. Introduction of a new judicial rank: 'juge de proximité' is expected. This also implies the introduction of new lower courts. Cassation laws are being changed aiming at diminishing the workload.

Commento [M1]: Ook bij Italië genoemd, maar ik had het ook voor Spanje genoteerd.

Italy: elections

Parliamentary elections are due in April; with a new parliament things might change. Some parties have already stated that the laws on the judicial reforms will be stopped or reviewed. Court of Cassation changes and will no longer be a court of review but a court of decision. Budget cuts of 30% are foreseen.

Netherlands:

Parliamentary Conference on the Separation of Powers; in which Parliament, the Executive and the Judiciary (Supreme Court, Council for the Judiciary, judges) participated, to discuss the role of the three powers.

PRESS STATEMENT

The President of the Network states that we all face the same problems and suggest that the Network should make a statement referring to the present situation in our countries. The ENCJ can express its hesitation on the developments. There is a necessity to underline the importance of the concept of the separation of powers.

All agree. A press statement is drawn up and will be distributed to the French and European press. All members of the Steering Committee get a copy to distribute in their own country. It will be put on the web site.

3. Visits

a. EU Court of Justice (16 January 06)

The Secretary General gives a short summary.

b. Visit to the Consultative Council of European Judges CCJE (25 November 05)

The ENCJ was invited to attend the CCJE meeting as an informal observer. The CCJE adheres to the position of the Council of Europe that only formally established legal entities can acquire formal observer status. The ENCJ was invited to collaborate with the CCJE in the next Judges Conference (see under point 5) on the role of Councils for the Judiciary. Interestingly, the CCJE uses in French the term *Conseils de la Magistrature* but in English the term *Judicial Service Commission*. This will be one of the points to elaborate upon.

c. Visit European Commission and possible co-operation with EJTN (16 February 06)

- The President and the secretariat met with representatives from the European Commission. The following subjects were discussed:
 - Invitation of the ENCJ for Commissioner Frattini to address the Wroclaw Annual Conference: the commissioner would like to accept the invitation but needs to adjust his vacation plans for this.
 - Cooperation with the EC on the implementation of The Hague program, particularly in the field of carrying out judicial exchange programmes. It was agreed that the ENCJ will – in close collaboration with the EJTN – initiate a number of pilot exchanges in 2006 and will develop a more extensive programme for 2007, all to be funded by the Commission. As the EJTN has already legal status, funding can easily be channelled through the EJTN, but another possibility is direct funding of the involved national institutions.
 - The commission is willing to consider structural funding of the ENCJ, once the ENCJ obtains legal personality. In this respect it is relevant to note that the Commission is presently developing a new financial perspective, to be completed by June.
 - In September, the Commission intends to publish a Communication on the evaluation of the quality of EU criminal justice instruments. Major issues are (1) the concrete implementation of the EU instruments in the national jurisdictions and (2) how mutual confidence can be reinforced. For this purpose an expert meeting will be organised, probably in May. The ENCJ will be invited to attend this meeting.
 - The Communication on judicial training is expected to be published shortly.
 - Lastly, the ENCJ reminded the Commission of its successful activities in the field of the European Payment Order and suggested that this approach could also be valuable in the field of criminal justice. The Commission representatives were very interested in this suggestion and it was agreed that both parties would come up with more specific proposals.

Decision: The Steering Committee requests the Secretariat to discuss the development of exchange programmes and the possible collaboration with the EJTN. The Steering Committee also instructs the Secretariat to prepare a proposal for the various activities in the field of criminal law and mutual confidence.

4. Preparation of visit by CCJE representatives mr Lacabarats and ms Wisniewska

See point 5.

5. Visit by mr Lacabarats and ms Wisniewska of the CCJE (11.00 hrs)

The CCJE has been invited to discuss the possibilities for co-operation between the ENCJ and the CCJE in the preparation of the European Conference of Judges, planned for 2007.

Introduction by mr Lacabarats.

M Lacabarats proposes a task force to be formed for determining the subjects based on a questionnaire. The task force should exist of approximately three representatives of the ENCJ and an equal number of the CCJE.

The task force will have to start working soon because all countries have to find budget as the CCJE does not have a large budget. From the CCJE side participation of Estonia, Italy, France and a Nordic country is considered

ENCJ:

It should be well discussed to whom the questionnaire will be distributed. The secretariat of the ENCJ will distribute the questionnaire among its members and observers. The CCJE is kindly asked to put their ideas on the conference and the reasons to have this central theme on paper on which the ENCJ can base its decision. The ENCJ will look into the possibility of involving its working group on Mission and Vision for Councils for the Judiciary. The annual report published by the French CSM may also be an appropriate source.

Interested in participating are: Spain, Belgium, France, England and Wales. A final decision about ENCJ representation will be made once the CCJE has formulated more precise terms of reference.

6. Working groups progress reports (all reports attached)

- a) Case management: co-ordinated by England and Wales, work has been done and questionnaires have been disseminated, it is important that they are filled out by the different countries
- b) Judicial Conduct: co-ordinated by Italy. A progress report is being presented by mr Salme
- c) Mission and Vision: developing a strategy for the council: co-ordinated by Belgium
Belgium presents a progress report.
- d) Judiciary and Media, co-ordinated by the Netherlands. The Netherlands present a progress-report.

7. ENCJ Web site

Reflection on the standing committee meeting of February 3rd

The minutes of the meeting have been presented by Spain. In the news area a map for all countries might be added to put information on national developments in.

The Standing Committee and the Secretary-General should promote the use of the web site.

8. Annual Conference in Wroclaw (Poland) , May 25th –26th 2006

May 26-27 the pope will be in Poland. This might cause a problem with plane reservations.

The question is raised whether the General Assembly should be open to all other countries i.e. Russia/Argentina etc. and whether we should distinguish between Council of Europe members and other countries.

Decision: The majority agrees that countries can attend as special guests under the condition that they have a council.

Programme

The draft programme is attached.

Attention should be paid to the following:

- The General Assembly should provide ample possibilities for active participation and exchange of views
- The oral reports from the working groups should therefore be short.
- There should be plenty of time for active debate in smaller groups
- All groups should get the same questions concerning public confidence in an independent judiciary that are to be discussed within the theme of the working group.
- The working groups should be followed by a plenary session with rapporteurs of each working group presenting the work of the working groups.
- The new members and observers have to be welcomed. The Secretary General and Steering Committee should commend on their work in the last year. New working groups should preferably be set up in advance, similarly to the working method in Rome.
- New ENCJ organs will be elected. Time will be reserved for these activities
- The speeches by guests should not be too long and should fit into an overall theme on enforcing mutual trust and improving the area of freedom, justice and judicial cooperation.

9. External relations

- ***EJN European Judicial Network***

Members of the Steering Committee are asked to what extent their organisations are involved in the activities of the EJN, a network run by the European Commission. Apparently the involvement varies to a large extent. Members of the Steering Committee agree that it is desirable to have a sound judicial representation in this network, in agreement with the various mandates of the Councils for the Judiciary. The Steering Committee decides to inform the European Commission about its views on the EJN.

- **European Commission**

See point 3.c.

- **European Council, CIVCOM**

The Steering Committee is informed about the plans of the European Council for the Civilian Headline Goal 2008: summarized 300 judges from all member states are recruited by the EU to participate in EU Rule of Law programmes in post conflict states. Similar programmes have already been carried out in Georgia and for Iraq. A programme for Bosnia is currently considered. Several members of the Steering Committee are not aware of these initiatives of the European Council. The Secretariat will look into the possibilities of informing the Council about the formal involvement of the national judiciary organisations in this programme.

10. Activity plan 2006

- Possible topics for new working groups:
 - Liability of Judges (France);
 - Suggestion of the European Court of Justice: Knowledge of European law as a requirement for judicial appointment.
 - Role of the Councils in Judicial Documentation (Spain)
- All current working groups should advise on the continuation or conclusion of their work so that the General Assembly can make a decision.

11. Invitations

International EUROsocial Justice activity

Brief presentation of the work of Eurosocial Justice by Spain.

Decision: EUROsocial Justice activity will be informed that the ENCJ secretariat will act as an interface in order to disseminate documents.

12. Other matters arising

None

13. Minutes meeting October 7th (attached)

Approved

14. Next meeting: Wednesday May 24th in Wroclaw

Preparation will be done by e-mail. The meeting of the Steering Committee will start at 14.00 hrs. All members are kindly requested to arrive in good time.