



European Network of Councils  
for the Judiciary (ENCJ)

Réseau européen des Conseils  
de la Justice (RECJ)

## **Report of the working group Public Confidence**

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### **1) Introduction**

*The replies were received from the Councils for Judiciary (or similar bodies) of the following countries: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, England and Wales, Estonia, Finland, Hungary, Italy, Lithuania, Netherlands, Poland, Romania, Spain, Sweden, Turkey.*

*Please notice that because of the great diversity of the answers that we have received, it was not always possible to give the precise interpretation of the answers, so that some of the answers are just a summary of given information.*

*In the context of a law state, the importance of law is a substantial issue for the very assertion of society. Order and social peace are not possible without the respect of law. The application of the law becomes a fundamental obligation for all public powers. However, according with the theory of partition of powers, the last requirement of law, the granting of human rights and hence the fulfillment of the efficiency of the legal-social regulation is an exclusive function of the Judiciary Power . The importance of this Power is an undisputable and ever-increasing fact in modern societies. There is no talking about an authentic Judiciary Power without independency, responsibility, and impartiality. And,*

***finally, there is no possible authentic Justice without the confidence of the society it has been designed for. In order to provide satisfaction to this society, Justice that aims at guaranteeing the law must have its confidence.***

## **QUESTIONNAIRE OF THE WORKING GROUP "PUBLIC CONFIDENCE"**

***Although all the competencies of the Councils can be supposed to contribute towards increasing the confidence of citizens in the judiciary, the first aim of this working group is to collect as specific and concrete as possible information concerning the activities you are developing in this matter. The main purpose, in the end, is to offer suggestions for a particular policy in increasing confidence in the judiciary.***

### **2) Analysis of Replies to the questionnaire**

#### **I. Public opinion research**

*Italy did not answer the questions of the Part I and II of the questionnaire, because of the fact, that according to the Italian Council of the Judiciary, this questions do not apply to the Council but to the Italian Ministry of Justice.*

1. Has any public opinion research concerning public confidence to the judiciary/ public prosecutor's office ever been conducted in your country?

*Yes/no*

The answers of nearly all respondent countries were positive, with the exception of Lithuania and Cyprus.

If so:

a) Who commenced and conducted such research?

*In all respondent countries the researches were conducted by The Ministry of Justice or Public Opinion Research Center, the Councils for the Judiciary have only inspired the researches. In Belgium the Council is the sponsor of the triennial "Justice barometer".*

b) What was the investigated group?

c) On the basis of what criteria were the members of the investigated group chosen? What questions and issues were included in your research?

*There were great differences in the amount of the members of the investigation group and in the choice criteria what have had an impact on comparability of the researches.*

d) What were the results of your research in comparison with public confidence to government or parliament? What have been done with this results by Council?

*In respondent countries, where such a comparison has been made, the public confidence to the judiciary were larger than public confidence to the government and parliament with the exception of Belgium and Spain where public confidence to parliament (5,3 points) were larger than public confidence to the courts (4,5 points).*

e) have you made them available to public opinion, have they been discussed by scholars or

worked on by the Council, Ministry of Justice or any other state organs?

- have the results of the research been used in practice (please, give more details)?

*The interpretation of the answers has shown, that the practical use of the researches were insignificant for the Councils although there were some exceptions: in Spain the researches were used for the supervision purpose, in Sweden the researches stressed the importance of this topic and were an impulse to create the Trust Inquiry (the first Part of Trust Inquiry apply to media), in Belgium the research results confirm that it is necessary that the judiciary continues to improve its functioning and communicates its objectives and results to society. In Turkey the results rendered an opinion that a judicial reform is needed. As a result of this MoJ started to joint works with universities. The aim of them is to have reliable scientific research methods and techniques supported by universities and to find solutions to the judiciary problems in Turkey. Also some EU funded projects have been started.*

f) Have you conducted such research more than once? If so, which elements changed in the course of time?

*In most of the respondent countries such researches do not run systematically, with exception of Netherlands, Spain and Belgium.*

2. What is the role of the Councils for Judiciary in shaping public opinion and what does the Council do to shape the public opinion?

*A great diversity of answers have been given on this question, the most common answer had although stressed the importance of the Internet in shaping the public opinion.*

a) Are the members of the Council frequently present in different mass media?

*In all respondent countries the members of the Council are present in mass media, nearly in all respondent countries frequently.*

b) Is the opinion of the Council on any matters GENERALLY connected with judiciary, and especially with confidence noticeable in mass media?

*In nearly all respondent countries the opinion of the Council is connected with the judiciary, only in Belgium this opinion is based on the scientific research and in Netherlands the opinion of the Council is not only connected with the judiciary.*

c) What is the future role of Council in this field?

d) How can the ENCJ help to shape the public opinion?

*There were a great diversity of answers but as the Netherland stressed, the Councils are only the small factor among a plenty of other factors, and as Belgium and England and Wales stressed the Councils can only try to influence public opinion but cannot shape it.*

e) Others.

3. Has your research been conducted in connection with a special event, or was it more general?

a) has it been conducted in connection with a special event, please give more details:

b) what is the Council's position and its conclusions regarding the results of the research?

*Nearly all respondent countries have answered, that this question do not really apply to them, only Belgium is active in this matter.*

## **II. Communication of the judiciary/public prosecutor's office with society**

1. What are legal regulations of openness to the public and clarity of court/prosecutor's procedures (all the levels and sectors of judiciary/public prosecutor's office, all the kinds and instances of court proceedings).

*In all respondent countries exist regulations which guarantee the accessibility and transparency of the courts sessions to the public, in some countries it is possible to exclude the openness in particular situations.*

a) Is there in public opinion the openness to the public guaranteed by the fact that the public is allowed to be present at every level of the proceeding?

*Yes/no*

*Most of the respondent countries answered yes, but for example Netherlands or Spain pointed out, that the guarantee of openness do not necessarily mean that in the public opinion such guarantee is perceptible. The Spain stressed that according to the statistics, the public has no interest to take part in the courts sessions, there is a kind of "crisis of the public nature of the proceedings". Public refuses to directly take part in proceeding, but want to participate via media.*

2.The information on the court activity.

a) who prepares the information on the court activity?

b) how is it distributed?

*The answers of the respondent countries suggest, that usually such information is prepared by the Presidents of the Courts. The Spain has made a distinction of information: the information of the court (for example on day to day functioning of the court, statistics, human resources) and comprehensive information (for example Spain-wide bulletin, Parliament submission).*

3 . Explanation of the verdict

a) what is the role of a judge in explanation of the verdict?

*All respondent countries stressed the role of the judge in oral and written explanation of the verdict. The justification of the judicial decision is communicated and explained to the parties.*

- do reporting judges appear in mass media, are they interviewed on the verdicts they passed?

*In nearly all respondent countries such practice do not exist, but there exist explanation of law, usually made by the spokesman.*

b) what is the role of a public prosecutor in explanation of the verdict?

*In nearly all respondent countries the public prosecutor do not explain the verdict (with the exception sometimes of the General Prosecutor).*

4. What is the role of court commentators in your country, please describe the cooperation of judiciary with journalists.

a) is there a special legal specialization at university studies in journalism? Are there any rules of cooperation of the courts/public prosecutor's office within the scope of journalist studies or the work of court journalists?

*There is a great range of different instruments, nearly all respondent countries answered that there is no special journalist specialized in court journalism.*

b) are there any special press spokesmen in courts/public prosecutor's Office ?

*Yes/no*

If so,

- what is their position in organizational structure of courts/public prosecutor's office?

c) Are there any special units in courts/public prosecutor's offices responsible for making available to the public the information on their activity?

If so,

- what units are they, what is their position in organizational structure of courts/public prosecutor's office? What is their role?

*Nearly in all respondent countries there are the press offices in Courts (exception Cyprus). Nearly all courts spokesmen are functional judges or lawyers with exception of Spain, where the spokesman is a journalist and not a judge and Sweden, where the spokesmen belongs to the Network for Judges (media group) and can answer the general questions but cannot say anything about the verdicts.*

d) Do courts use PR agencies services?

*Yes/no*

- If so, to what extent?

*All respondent countries answers were negative with exception of Hungary (which did it only once).*

5. Have any activities been taken to popularize legal knowledge and legal culture?

Yes/no

If so:

- When were they started? What kind of activities have been taken? What media are used for this purpose? To what extent is the content of courts'/public prosecutor's offices' is distributed (the content of verdicts, instructions etc.)?

*All respondent countries answers, with exception of Cyprus and Czech Republic Prosecutors, have been positive. The Turkey stressed, that since 2002 Turkey, as part of its harmonization process with the EU Acquis, undertook under the heading of access to justice and legal aid, to prepare regulations on awareness campaigns, publication of guidebooks, establishing an information system and a justice network on legal issues, a study on the minimum standards of legal aid, determine common procedural norms for certain cases and others. For the time being, all decisions of the Judicial Council are published on the website of MoJ. The decisions of the Supreme courts are submitted to the public via Internet, journals are published regularly.*

- Is Internet used for this purpose (if so – in what way)?

*Not every adjudication have been published in Internet, the general rule is that the Supreme Court adjudications are published. Because of personal data protection, the published cases are anonymous.*

6. Have court verdicts been published so far? If so to what extent? What were the results of such activities?

*Not every adjudication have been published (the general rule is that the Supreme Court adjudications are published), if so then nearly in all respondent countries online. In Estonia all court verdicts which have entered into force (with certain restrictions concerning private or sensitive personal data or if publication of the judgment together with personal data may materially breach the inviolability of private life of the person) are made public in the computer network at a place prescribed for such purpose, with the names and other personal data of other persons replaced with initials or characters.*

Have for this purpose been used:

- brochures Yes/no
- legal handbooks, Yes/no
- TV programs , Yes/no
- object lesson. Yes/no
- other media (please specify).

*According to the respondent countries, a great number of these instruments have been used. A great diversity of answers means also, that there is a great variety of other instruments. The interpretation of the answers shows, that there is a need of popularization of such promotional activities.*

7. Is there any cooperation with Non Government Organizations as well as members of other legal professions in order to improve the communication with society?

Yes/no

If so, what kind of cooperation is it?

*In some of the respondent countries the answer was positive, in some negative.*

### **III. The factors which affect confidence in judges and judiciary**

1. Which factors influence confidence in judges? :

- a) Code of ethics, Yes/no
- b) Lack of Competence, Yes/no
- c) Corruption accusations which appear in mass media, Yes/no
- d) Delayed cases Yes/no
- e) other

2. Which factors influence confidence in judiciary?

- a) delays in the activities of court and public prosecutor's office Yes/no
- b) openness to the public Yes/no
- c) organization of work Yes/no
- d) office space and equipment Yes/no
- e) other

3. Other reasons from the indicated in Point 1 and 2.

Please indicate the priority of the factors from Part III Point 1,2,3 for developing the public confidence in your country.

*Most of the respondent countries agreed, that all these factors influence the confidence to judges and judiciary. As the most important factor that influence the confidence to judges and judiciary has been indicated the code of ethics. Only Belgium pointed out, that code of ethics do not influence the confidence to judges directly, it could influence the confidence indirectly (by influencing the behavior of judges). Most of respondent countries have not given other reasons from indicated in questions with exception of Austria, Belgium, Finland (behavior of the judge towards parties and witness), Czech Republic (ineffective disciplinary proceedings), Poland (independence from executive and legislative, high of remuneration) and Romania (practice).*

4. Which specific events in the recent years resulted in increase or decrease of confidence to the judiciary/ public prosecutor's office

*The great diversity of the answers makes it difficult to generalize, some of the examples of possible events are: particular interesting for public opinion high-profile cases, acquit of previous arrested person or corruption presented in mass media.*

5. Factors affecting confidence to the judiciary/ public prosecutor's office? Please identify this factors, give sources of the identification and reasons for this factors.

a) which are positive factors affecting confidence (please give some details)?

b) which are negative factors affecting confidence (please give some details)?

6. If you know any other reasons/factor that can affect the public confidence to the judiciary, please describe them.

*The respondent countries have given a wide range of answers, but most of them you can see above under points 1-4.*

7. Judiciary and the public opinion.

a) Does (and how) the content of law affect in any way confidence to the judiciary/ public prosecutor's office (the way law is established, its clarity, cohesion and quality)?

*Nearly all respondent countries have affirmed, that the content of law affect confidence to the judiciary.*

b) If there is any influence please give some examples when great lack of cohesion, bad lack of quality affected negatively the level of confidence to judiciary.

*Responses to this question have been already indicated above.*

### **3) Conclusions regarding the survey**

The survey of the working group makes clear that:

- the interest in public confidence is high among the member status of the ENCJ: many members participated in the survey of the working group
- many member states already perform different kinds of research regarding public confidence in the judiciary
- the findings of this survey are, however, difficult to compare, something which is already shown by the answers to the present questionnaire.

### **4) Conclusions of the working group**

In terms of State of Law, law constitutes the fundamental issue for society's self-determination as such. Without obedience to Law, neither social order nor peace are possible.

Application of law becomes the core duty of state institutions. But according to the theory of separation of powers, the final legal decision, that guarantees the exercising of human rights and effective implementing of social/legal regulations, pertains to the Judiciary.

The essence of the Judiciary is an undisputable fact, of continually rising importance in modern society. There can be no true Judiciary without its autonomy, responsibility and integrality.

Finally, there can be no true Judiciary without the confidence of society to which its activities are addressed.

To satisfy society, the Judiciary whose final objective is to guarantee obedience to law, must enjoy confidence of society.

### **SOCIAL CONFIDENCE : COMPLEX TOPIC**

During the works of the Working Group, a difficulty was certified in determining the precise definition of « public confidence » for all places and circumstances. In every country, in every system it is easy to find various elements contributing to other diverse details of the definition, that will be conditioned by many factors.

Anyway, various evaluations of the Judiciary in each country, enable to determine the approximate definition.

The general perspective leads to the original association between social confidence and the levels of social satisfaction with results of activities of the Judiciary. However, the matter is more complex. The proportion of social confidence to the results of activities of the Judiciary may constitute only one side of the problem, that holds in itself many other determining elements. Another aspect of the issue relates to the differentiation between confidence in judges, and confidence in the judiciary in terms of the legal system of the State. Citizens' confidence in the judiciary in general terms is high, when the judiciary system succeeds in implementing a « fast and just legal/judicial process ».

Due to the above, the Working Group has decided to submit to the General Assembly a certain number of factors that may affect the evaluation of the Judiciary by society, that may be influenced by councils and judicial systems, and that compose all the factors that determine the social sense of confidence in the Judiciary.

We may catalogue them in the following order:

- A) Factors exerting positive influence on the level of Social Confidence:
  - Autonomy of Judiciary officials
  - Productivity and efficiency of the judicature
  - Political autonomy of the judicature
  - System transparency
  - Professional skills of Magistrate officials
  - Presence of Codes of Professional Ethics
  
- B) Factors exerting negative influence on the level of Social Confidence:
  - Corruption
  - Delays
  - Political pressure
  - Operational disorder
  - Insufficient procedures of appeal

### **FUNCTIONS OF COUNCILS FOR THE JUDICIARY**

The main reason of existence of the Councils is to ensure the autonomy of judiciary. To eliminate political pressures on Courts, the institutional structure of the Councils consists of essential competences that guarantee impartial performance of the judicial function.

However, the Working Group for Social Confidence in Judiciary is of the opinion that the role of the Councils should provide something more, it should generate rising social confidence in Judiciary in a permanent way. It is generally shared by the members

of the working group that public confidence is and will remain a very important topic for the member states of the ENCJ and that the ENCJ could play an important role regarding the strengthening of the confidence of the public in the judiciary in the different member states.

**Therefore, the Working Group considers that the European Network of the Councils for the Judiciary should promote joint activities, in order to realize the foregoing objective:**

**1. First conclusion : the starting point may only consist in scientific identification of the issue. To this purpose, it is essential to dispose of professional studies, developed by firms specializing in sociological research. All other activities will be only approximate studies.**

**Several countries dispose of that type of studies, the contents of which are very interesting. The Working Group proposes to develop a global comparative study of the subject on European Union's level. The objective of such study can be determined using documentation, prepared for the needs of the Working Group.**

**2. Second conclusion : the working group should be asked to make a research to develop a number of questions based on scientific models regarding confidence in the judiciary. The member states then have the possibility to use these uniform questions together with questions reflecting topics of national or local interest when they conduct national inquiries.**

**3. Third conclusion : strengthening public confidence in the judiciary also necessitates new knowledge regarding the causes and consequences of the level of confidence. To get this knowledge, the ENCJ should instigate and coordinate a new European wide research regarding the public confidence in the judiciary. This research should build upon the research that has so far been done, improving this where possible, in order to realize a European wide monitor for the public confidence in the judiciary.**

**4. Fourth conclusion : developing a formal recommendation to increase social confidence in the Judiciary ; catalogue of rules for European magistrates, including previously stated issues in relation with the positive and negative**

**factors affecting public confidence, as well as all other important findings with regard to public confidence in the judiciary.**

***Final conclusion:***

***Summarizing and reflecting the complexity of subject matter  
We would like to stress that this document is not the end of efforts to improve the confidence to judiciary, which was the target of the working group. All members of the working group "Public Confidence" agreed, that there is a need for the continuation of activity of this working group in which we could integrate the four conclusions and efforts of this working group.***