



European Network of Councils  
for the Judiciary (ENCJ)

Reseau européen des Conseils  
de la Justice (RECJ)

## **ENCJ Steering Committee meeting in London 7 July 2008**

### **Minutes**

#### **1. Opening and news**

The President, John Thomas, welcomes all members and explains the order of the day.

The President reiterates that the appointment of the Executive Board is one of the most important issues on the Agenda. The President states that he hopes that there will be a discussion among the members that will lead to an agreement and consensus and hopefully an Executive Board representative of the diverse systems and geography of the EU.

#### **2. Relevant national developments**

##### **Belgium**

On the 15<sup>th</sup> of July the government will state whether the current government has a future, but it could very well be that new elections will have to be held.

The High Council of Justice has held elections. On September 5 the 4 permanent members of the Bureau will be elected by the members.

##### **Spain**

The Council will be renewed end of September or beginning of October. A procedure at the Supreme Court is holding up the appointment of the new members.

##### **Hungary**

The President of the Supreme Court is ex officio also President of the Council. A new President has to be elected by the President of the Republic and Parliament. Because of political issues, there is no agreement on the appointment of a new President of the Supreme Court.

After 10 years of Judicial Reform there are discussions and scientific review of the reforms taking place. In general the feeling is that the judiciary should function better. The media is very eager to fuel the debate. As a result of the review new legislation is to be expected in the field of the judicial organization.

### **Poland**

Judicial salaries have been frozen for some time now. A rise was promised by the former government but the new government considers itself not bound by the earlier decision. Young judges are not appointed for life but for a 3 year period. This leads to a shortage of judges. Furthermore the President has to appoint the judges on recommendation of the Council; at the moment he refuses to appoint new judges.

### **Denmark**

The Danish Court Administration is still focussing on the court reform.

The Land registration has been digitalized.

There is a discussion about whether Muslim judges can wear scarves in court. For lay judges under the present legislation there is no objection to the wearing of head scarves, crosses on chains etc. Under the current legislation professional judges can also wear such items indicating religious belief. However, it has been announced that in the next parliamentary session beginning in October 2008 the government will submit a proposal for legislation preventing professional judges from wearing religious symbols in court.

### **France**

In France the Minister of Justice is very active.

Psychological tests will be part of the selection procedure of magistrates.

Supported by the ENCJ declaration on the composition of the Council the reform of the composition of the Council in France is not supported by the necessary majority in parliament for an amendment to the Constitution.

The French Council has had a bilateral exchange with the Belgian Council. They see the bilateral exchange as an excellent instrument to build mutual confidence and exchanging experiences and knowledge. Within the ENCJ we should promote this.

### **Italy**

A lot of measures are being taken against all illegal immigrants; it is a reaction to the issues arising out of –Romanian illegal immigration.

There are proposals that criminal cases with a maximum sentence of less than 10 years should not be continued when the crime was committed –until 30<sup>th</sup> June 2002.

There are also ideas to reform the composition of the Superior Council for Magistrates which would lead to magistrates elected in the minority.

The 50<sup>th</sup> anniversary of the CSM will be celebrated on 17/18 November 2008. The Steering Committee will be invited for the celebrations.

### **Netherlands**

The Minister of Justice wants to consider reducing the number of district Courts (currently 19). The Presidents of the Courts do not agree. The Council feels that especially in administrative law a number of 11 courts would be sufficient.

## **England & Wales**

A Constitutional reform of the Judiciary has taken place between 2003 and 2008. The organisation of judicial appointments has changed as well as the manner in which the Court Administration is controlled. Control of the court administration is now shared by the executive and the judiciary (as opposed to the executive as it was before). The judiciary was helped by the experience and arguments on the organisation in other European countries.

Press judges are now in place in England & Wales; the experience of a visit to the Netherlands by one of the members of the Judges' Council was very helpful in achieving this change.

The ENCJ has therefore shown its added value to England & Wales.

The President summarizes that the relevant developments once again show that we do share the same problems. That is why we should help each other across Europe.

### **3. Minutes Steering Committee Meetings Budapest on 21/23 May 2008**

The minutes of both meetings are adopted. In the future the minutes will be adopted according to Rule 3 paragraph 6 of the Rules of Procedure. Small changes that do not involve the content of the minutes will not be regarded as objections.

### **4. Statement of the President**

No comments to the letter.

### **5. Executive Board : appointment of the members**

The President underlined that the Executive Board is not the governing body of the Association. It is the organ that works in between the meetings of Steering Committee and ensures the proper functioning of the Permanent office.

Four members were interested in a position in the Executive Board. After a debate on the composition and the desirability of a Board representative of the diverse systems and geography of Europe the Steering Committee could not reach a consensus on which persons should be appointed. Therefore in accordance with the Rules of Procedure (Rule 10 paragraph 3 and 9 paragraph 4 ) elections by secret and exhaustive ballot took place.

As a result of the election the Executive Board shall be composed of

**John Thomas**, President of the Association

**Gracieuse Lacoste**, Conseil Superieur de la Magistrature, France

**Javier Laorden**, Consejo General del Poder Judicial, Spain

**Teresa Flemming-Kulesza**, Krajowa Rada Sądownictwa, Poland

### **6. Steering Committee**

The suggestion is to fix dates for the next year.

Proposals:

November 2008

Brussels

January 2009

Valencia

March 2009                      Warsaw  
May 2009                        Bucharest      May 27

The Executive Board should preferably meet before the Steering Committee to save time and travel costs. In between the Steering Committee meetings, in September, December and February, the Executive Board will meet in Brussels. In April the Executive Board will meet in Bucharest to prepare for the General Assembly meeting.

All members are requested to inform the secretariat on their availability on the above mentioned dates by 25 July. A schedule will be fixed as soon as possible.

## **7. Permanent Office**

### **State of affairs: staff and location**

#### **Office space**

A contract has been prepared between the Association and the Belgian High Council for Justice. It is not a rent or lease contract but a service contract, including use of office space, telephones, computers etc. It is an unlimited contract with a 3 months notice. The contract is distributed. The Steering Committee authorised the Executive Board to sign the contract. It was hoped to open the office on 1 December 2008.

#### **Position of director**

The President states that current interim arrangements work very well. There is good cooperation between Marc Bertrand and the Secretariat. The Executive Board will have the task to find the right person for the position of Director and propose that person to the Steering Committee at the next meeting in October/November. The President reiterates that continuity is of the utmost importance. An arrangement where someone will work for a while (around 5 years) for the permanent office and is then able to return to their Council is preferable.

The Statutes state that the Steering Committee should decide on the person that will become the director. As for the Belgian law, the ENCJ is a private association which means that there are no binding rules on the selection of personnel to be contracted.

The Steering Committee feels that it is important that the members of the Association should be allowed to identify candidates for the position of director and all members will be invited to submit nominations.

The Executive Board should very carefully take this into account.

## **8. Finances of the Association**

### **8.1 State of affairs**

All membership fees are received except for Portugal where there is a technical problem.

### **8.2 Subvention of the European Union**

The subvention will probably be paid before the summer recess in Brussels.

€ 250.000 is the amount that is fixed for the next years. The President of the High Courts and the Councils of State network receive the same amount, but they do not have an office as is foreseen in the ENCJ.

### **8.3 Bank Account**

The bank account needs new signatories. Until the first meeting of the Executive Board and the appointment of a Director the Steering Committee mandates the President and Marc Bertrand to be the signatories to the Current Account. (Regulation 5- Financial Regulations).

### **8.4 Reimbursement of travel costs**

From now on the costs of travel for one person per member for attendance at the Steering Committee meetings and Executive Board meetings will be reimbursed. Reimbursement will be on the bases of the EU per diem rates. If at the end of the year the budget allows the costs for the Steering Committee meetings in Budapest in May and London in February will be reimbursed as well. A form will be drafted for the reimbursement that has to be signed and returned to the office by regular mail with the relevant documents.

## **9. Commissions, working groups and plan of activities 2008/2009**

### **9.1 Working method**

The General Assembly in Budapest has established 3 permanent commissions. The Steering Committee decides that the chairs of the permanent commissions will be:

- |                                |                   |
|--------------------------------|-------------------|
| 1. Communications commission   | Javier Laorden    |
| 2. EU policies commission      | Gracieuse Lacoste |
| 3. Internal affairs commission | Teresa Flemming   |

With regard to the commissions and the direction that the Association should follow the next year the President informed the Steering Committee on his ideas and ambitions. It is essential that the ENCJ show the European Commission concrete results demonstrating the added value of the ENCJ.

The President would like to focus the activities on a few topics that are exclusively within the competences of the ENCJ and its members. A very important report on mutual confidence chaired by the former President, Edith van den Broeck, was the foundation for taking the work forward. The topics should be:

#### **A. Experts**

The ENCJ should focus on establishing expert groups. The members should be asked to identify different experts that could act as experts for the EU. If and when the European Commission needs or wants ENCJ expertise the ENCJ can respond swiftly and accurately.

#### **B. Contact Points**

Separate contact points would also be helpful for judges across Europe who face problems when using EU instruments; these should be judicial contact points in addition to EJM contact points so that judges would have a judicial point of contact outside the Ministry. This might help mutual recognition. A contact point would also facilitate liaison and exchanges.

### **C. Training policies**

The ENCJ should establish a good cooperation with the EJTN. The EJTN focuses on training. The ENCJ could focus on training policies and financial and budgetary issues of judicial training.

*For example:*

The French EU presidency will focus on judicial training and will try to set a rule of a minimum training of 16 hrs per year on European Law per judge.

What is the opinion on this proposal of the ENCJ, do we support this idea. More importantly it is unclear who and how the budget for time spent is going to be arranged. Should we prepare an ENCJ reaction to the proposal?

If so the reaction could be that, yes we support the idea, but it should be balanced with other training. The question of who is going to pay for the hours of the judges whilst being trained should be solved.

### **D. Quality Management**

The Quality Management working group has done good work and it should be taken forward. The European Commission and CEPEJ should be invited to the next meeting of the working group. The future work can then be fixed in with the work of CEPEJ which is working on Quality Management as well. The European Commission has announced that they wish to have CEPEJ look into quality and efficiency of the judicial system. This seems an excellent opportunity to cooperate with both of them. It will also be necessary to co-ordinate the work on quality management with the work on quality of judgments being carried out by CCJE.

### **E. Liability, responsibility and judicial ethics**

The current liability working group is going to propose some general principles of judicial conduct. It would also be a good idea to invite the CCJE and or the EC to the next meeting of the working group.

### **F. E-Justice**

E-Justice was to be seen as a work on a platform and a tool for implementing other work. For example as part of the training policies the ENCJ should draw the attention to information access and E-learning (as an addition to traditional training methods, but not replacing them). It was also important to ensure that there was no duplication as very many databases were being developed by others. A lot of work would need to be done to ensure that everyone was agreed on the work that was to be done under the heading of E-Justice.

### **G. Criminal Justice and Mutual Recognition**

There is an important working party chaired jointly by England & Wales and Italy. It has two separate but inter-related topics. The first relates to the independence of the investigative process. The second relates to the work of the EU Commission and a sub-group of the Justice Forum. It is clear that the focus of the work of the EU Commission will be on mutual recognition for criminal justice. A meeting is being held in London in September and it is important that as many members as possible attend because this is an area where practical and concrete results can be achieved in the important topic of mutual recognition which is at the heart of the work being done by the ENCJ.

This would be the Agenda for the ENCJ for the next year with the objective of showing concrete results.

The permanent commissions should focus their work on these themes and stay in close contact with the working groups. The working groups should report back to the commissions on the progress of their work and provide the commissions with input on what work could be done by the different commissions.

### **Decision**

The Steering Committee agreed that the abovementioned topics will form the agenda of the ENCJ for 2008-2009. The permanent commissions and the working groups will give special attention to these topics and consider how they can incorporate these into their work. All commissions and working groups should also look into possibilities of connecting their work with existing work done by other European organisations (CCJE, CEPEJ, EU, networks etc.). The working groups can build their own relation with the European Commission and report back to the Executive Board as well.

There will be a focus on results that are concrete and connected with the developments in Europe and within the EU.

## **9.2 Working groups**

Most of the topics are covered above.

### **a. Mutual Confidence**

The former President chaired this working group. There is a strong feeling that the President should be involved and the proposal is to have Belgium and the President co-chair this working group. The Steering Committee agrees.

### **b. Public Confidence, coordinator Poland**

The working group has made an inventory of all research done by the members on this topic. They would like to move on and have a professional organisation assist on how Public Confidence could be surveyed on a European level. It would be interesting to look into the possibility of having it financed by the European Commission. A proposal will be prepared by the working group for the next Steering Committee meeting.

## **9.3 Composition commissions and working groups**

An email will be sent out to the ENCJ members requesting them to state their preference for each of the commissions. On the basis of the answers the commissions will be composed. (Italy indicates their willingness to participate in all permanent commissions).

As regards the working groups all members and observers will be reminded of the current working groups and invited to participate.

## **10. Communication**

### **10.1 Website**

A platform is developed by the Spanish Council. A lot of work has been done on the website getting it up to date. The website will be one of the responsibilities of the Commission Communication that is chaired by Javier Laorden. An important task for that commission is to chase all members to keep the website up to date.

### **10.2 Newsletter**

To improve the involvement of the members and the observers in the activities of the ENCJ a ENCJ Newsletter will be developed. There will be 3 or 4 volumes a year. The format as developed by the President is approved. The Newsletter will be sent to all members and observers of the ENCJ. It will be filled by the members and sent by email. All contributions by the members should be in English and French (if possible).

## **11. EU Justice Forum**

The President attended the first meeting of the Justice Forum. Meanwhile the first meeting of a sub-group Criminal Justice is planned for July 10<sup>th</sup>. Apparently the discussion will not focus on the substantives of Criminal Law but on Mutual Recognition. The EC is looking into ways of strengthening mutual recognition. This topic is also on our Agenda.

## **12. General Assembly meeting Budapest**

### **12.1 Evaluation of the set up of the programme**

The Steering Committee should be involved at an earlier stage. Furthermore there should be sessions in separate working groups. The draft resolution should be drafted before hand and communicated to all members. A sub group at the General Assembly could then work on the last amendments to the resolution. The other sub groups can work on future themes for the working groups.

The Steering Committee will finalise the resolution at its next meeting and circulate it to all members.

### **12.2 Conference report**

The Steering Committee decides that it is not necessary to print a Conference Report. All available materials will be put on the website.

## **13. Planning General Assembly for Bucharest**

The General Assembly will take place on May 27-29 in Bucharest and the theme will be “Transparency and Access to Justice”. The topic of public confidence and the work done by the working group on that theme can be incorporated in the programme.

## **14. Topics for action by ENCJ**

### **14.1 European Union**

#### **E-Justice**

The ENCJ is given the opportunity to send observers to the E-Justice and E-Law working group of the European Council. The first meeting will take place on September 1<sup>st</sup>. Spain will represent the ENCJ in the E-law working group. Hungary and Denmark will represent the ENCJ in the E-Justice working group

#### **European Parliament**

Diana Wallis of the Legal Affairs commission of the European Parliament has drafted a report on the EU law knowledge of judges. The report can be found via the following link :

<http://www.dianawallismep.org.uk/pages/Nationaljudge.html>

It is an important report and of interest to all members.

In the European Parliament there are two commissions which relate to the work of the judiciary; the legal affairs commission and the justice and home affairs commission. It is not clear how the work is divided between them and what their competences are. The President would arrange to discuss the work with the Commissions

Another problem is how judges are selected to give evidence in parliament. (This will be discussed at the next SC meeting).

Lastly it would be important, with a view to continuity, to invest in the relation with the civil servants of the parliament.

### **14.2 Relations with other organisations**

( EJTN, Network of the Presidents of Supreme Courts, Association of Councils of State)

We need to have better relations with EJTN, and also with the other organisations representing parts of the European judiciary.

### **14.3 Council of Europe**

- Recommendation no. 94 in light of CCJE Opinion No. 10. Recommendation no 94, originally drafted in 1993, is currently being amended. It appears that none of the members of the Steering Committee have been involved or invited to contribute by their governments.
- CCJE. An opinion on the quality of judgements is being prepared. When an e-mail is sent to the ENCJ, it will be circulated for comment. The President will attend the meeting.
- CCPE The president will attend the meeting.
- CEPEJ. A meeting between the President and CEPEJ is planned. (See also Quality Management)

#### **14.4. Latin America Ibero American Summit**

A digital library is being developed.

The President closes the meeting

## **List of participants Steering Committee meeting London**

### **Belgium**

Marc Bertrand  
Jacques Hamaide

### **Denmark**

Niels Grubbe

### **England & Wales**

John Thomas  
Keith Cutler  
Barbara Flaxman  
Philip Cash

### **France**

Gracieuse Lacoste

### **Hungary**

Sandor Fazekas  
Peter Sarkozy

### **Italy**

Fabio Roia  
Roberto Carelli Palombi  
Milena Falaschi

### **Netherlands**

Erik van den Emster  
Marja van Kuijk

### **Poland**

Ryszard Pek  
Teresa Flemming-Kulesza

### **Spain**

Javier Laorden  
Pilar Ruiz Carnicero  
Javier Martinez Lázaro  
Celso Rodriguez

### **Secretariat**

Monique van der Goes