

Minutes ENCJ Steering Committee meeting February 6th 2007

Venue: Rome, Conference Hall at the Italian Council building (Consiglio Superiore della Magistratura, Piazza Indipendenza 6, 00185)

1. Opening and news

2. New National Developments

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

The Netherlands:

The ECHR rendered a decision (*application no. 1948/04*) that regarding the Ashraf community in Somalia the Council of State does not provide an effective national remedy. Without appealing the decision of the district court at the Council of State the complaint was taken on. The Dutch government will try to have the case referred to the Grand Chamber.

Belgium:

The training institute for auxiliary staff has been opened on February 2 2007.

Directives are given by the Council for the Judiciary.

The 2nd Commission for the Modernisation of the Judiciary will be composed of one former member of the Council for the Judiciary and representatives of the Ministry of Justice. The commission is expected to submit proposals on the modernisation of the courts and the public prosecution offices to the MoJ. There might be parallel competencies with the Council for the Judiciary.

Ireland

14 new judges have been appointed. A new court building for all criminal courts will be built on the outskirts of Dublin. The project will take several years and is expected to cost €400 million Euro.

Italy

As a consequence of the new government new legislation is expected. In some areas this means that the situation will be restored to the approach that was chosen before the previous government. The number of members in the CSM might go back up to 30 (instead of the current 24). There are also new initiatives for example regarding the training and selection of judges.

France

The French judiciary has become one of the subjects in the presidential election campaign.

As a consequence of the Outreau case a bill on liability of judges has been proposed. The bill proposes a liability of the judge for the judicial decision that normally is subject to appeal. The Council for the Judiciary has lobbied in parliament and is willing to take the bill to the constitutional court. The Council also released a press statement on this subject.

Spain

Parliament was not able to agree on the new members for the Consiglio. As a result the present members are still in office exceeding their formal term.

England&Wales

The security services and the police will not be centralised in one institution. A Ministry of Justice might be established. One foreseeable risk is that funds available for the courts and legal aid could be diverted to the Prison Service.

The, still to be elected, new Prime Ministers' (Mr Brown) views on the Judiciary are unknown.

Poland

The Council for the Judiciary, established 17 years ago, has gained independence on January 1st 2007. It now has its own budget and staff. The new situation will improve the work that can be done for the Judiciary and in the ENCJ.

There have been some accusations of corruption within the courts by the public prosecution. The Minister of Justice is the Attorney General and heads all prosecutors. A new institute for the permanent training of magistrates has been established in 2006. Unfortunately the Minister of Justice is competent within this institute and as a consequence it is not an independent institution.

President Berlinguer concludes that the problem of independence is becoming harder and harder. Main task of the ENCJ is to discuss independence and make our concerns heard.

3. General Assembly Brussels 2007

Draft programme

Presentation of the venue and the draft programme by Edith van den Broeck.

The following issues were touched upon.

- There was a feeling of exclusion by the non Steering Committee members in Wroclaw. There should be ample time for all members to take the floor.
- Participation by the members should be promoted. The working groups should present their work and results.
- Separation of powers is an interesting subject. It is conceivable that the working groups discuss this issue as part of their work.
- In Wroclaw the subgroup approach worked very well. The problem in Wroclaw was that they did not feel part of the decision making process.
- The method is of the utmost importance: have written documents for discussion in small groups and afterwards in plenary session talk on their work or talk about the working group for the following year.

Decision

To promote the participation of all members the plenary session will be in the form of a show with strict requirements on the wg co-ordinators. They should deliver their reports and short statements/sound bites on the theme of the conference in advance. In addition the working groups or the leads will be requested to come up with other members who can comment on the soundbites. This session can take about 1.5 hrs. Afterwards there will be sub groups and there the conclusions of the working groups and possible new working groups can be discussed. The ideas will be presented to the steering committee.

Proposal

Report of the Secretary General in the morning session

Finish morning session at 12.30

14.00 Plenary show

15.30 Coffee break

16.00 subgroups

The draft programme will be amended according to the above mentioned.

Budget

The steering committee gives a mandate to Belgium and the secretariat to take all necessary steps for the acquisition of a financial subsidy from the European Commission.

4. Working group Internal organisation

Conclusions of the internal organisation wg meeting of 5 Feb 2007

“The members of the working group on Internal Organisation, during its meeting in Rome have reached the following conclusions:

- 1. To increase the efficiency of the Network a step forward is necessary*
- 2. To clarify the legal status of the ENCJ in order to respond the expectations of the EU Institutions in term of co –financing,*
- 3. To give the Network the legal personality according the most efficient and flexible law*
- 4. To clarify the legal responsibility of the Network’s members and to guaranty, in any case the independence of the Network and of its members*
- 5. The present structure should be clarified in order to reinforce it and make it more effective for the future development of the Network*
- 6. To evaluate in a positive way the work realised by the Network and improve it*
- 7. To reaffirm that the Network is formed by Members, Observers and may invite Guests.*
- 8. To agree on a professional permanent office Secretariat of the Network not attached to any Member*
- 9. To agree on a new figure: a Vice President*
- 10. An annual Programme of activities may be used to encourage participation*
- 11. Prior to a meeting of the General Assembly any member State could present an initiative or make a declaration of common interest*
- 12. Any member State which is not part of the Steering Committee in the event that it has made a proposal could be invited to take part in it just in order to explain it”*

The work of the working group is thereby completed in the opinion of Spain.

Proposal by co-ordinator:

1. It would be interesting if the Belgians could provide Spain with a study in the Belgian law on legal personalities/associations.
2. Establish a small drafting committee formed of members of the steering committee.

This proposal is accepted by the Steering Committee. The Drafting committee will be composed of Belgium, Spain, Netherlands, England & Wales.

The drafting committee will meet very soon after this meeting. Statutes, law under which it will be established, finances (commission will only pay 200.000 euro), calculations on the number of meetings, sc's costs of travel will have to be worked out.

The drafting committee should also focus on the function of vice or incoming president. They should focus on the schedule for election, the term of office and the criteria for succeeding the president.

An extra Steering Committee meeting will be held after the CCJE Rome conference to discuss the results.

Proposal for an ENCJ office

The idea of a permanent office is widely supported. The administrative set-up needs to be elaborated upon now. While the Steering Committee is excellent for involvement and commitment, it is too large to control a permanent ENCJ office.

In a new set up with a permanent office the SC could become an advisory council. In addition an executive board of approximately 3 persons from the advisory council could be either elected or appointed.

This Executive Board should meet on very regular basis and should be formed from official members of the Councils and on a personal title. They should be able to guide the work of the secretariat. The advisory council is involved by dividing the subjects in dossiers. Members of the advisory council could form a commission with the member of the executive board. They report back to the General Assembly.

The drafting committee should work out this proposal and combine it with the issue concerning a legal personality.

Opinions per member

Belgium : Agrees with the general outlines a proposal should be drawn up

Eng&W: Agrees, a good idea

Ireland: Agrees, details have to be filled in

France Agrees

Poland Agrees on the principles, details have to be decided on

Italy Agrees

Spain Agrees, under the reservation on the study that the Belgian colleagues should provide Spain on the Belgian Law

NL Agrees

Timetable for the President:

Luigi Berlinguer will finish his term as president on 30 April 2007, 1 May Edith van den Broeck will succeed him until September 2008, with a possible prolongation until 31st December 2008.

The Steering Committee agrees in principle on the proposition to elect the next president at the General Assembly in May, to become effective per January 1st of the following year. This enables a system with an incoming president.

5. Working groups

1. France: Liability of individual judges and independence

Gracieuse Lacoste has taken over from Mr Granche, who has taken up a different task. Topic is very complicated and should take 2 years, and it is suggested to continue after the General Assembly. Analysing the liability –independence and the liability in the field of trust in institutions. Maybe a wg meeting in Rome after the CCJE conference.

2. Italy: Performance management of judges by judges

Questionnaires are sent out and filled in. End of march a working group meeting will be organised, some results will be clear at the General Assembly.

3. Belgium: Mission and Vision (III)

Performance of the organisation as a whole.

4. Poland: Courts funding and accountability in relation to independence

First working group meeting is planned for the end of February, a questionnaire will be prepared. Many observers are present in this working group. They are very interested in the position of the MoJ in the funding of the judiciary.

5. Ireland: Strengthening mutual confidence in the EU

Suggestions on a draft document were discussed and a report will be ready end of the month, it will be finalised and presented in Brussels.

6. Overview of European and International Judicial Networks (*overview attached*)

Lists of all institutions and all associations including the ones from the MoJ.

The steering committee supports the wider view to include all networks and associations. The secretariat will work on the document as will the mutual confidence working group.

7. Web-site standing committee

Spain: Evaluation of the web-site

A meeting will be held in Barcelona on the web site questionnaire conclusions.

8. External relations

EU

- The pro-active ENCJ agenda for Brussels.

The EULEX site is promoted.

Proposals on criminal law in the EU. A proposal will be made by E&W to look into the possibility to see what needs to be done in the judiciaries across Europe in the field of criminal justice. Together with the secretariat an idea on how to go forward will be produced.

CEPEJ

- Observer status CEPEJ

For now passive approach seeing all the work that lies ahead.

CCJE

- CCJE Conference 2007

The council of Europe is the one that decides on rapporteurs. The CCJE has asked for speakers, reporters etc. They also asked the ENCJ to make a report, the task force has declined.

- draft agenda/ call for reporters and chairs for various sessions

The CCJE is looking for chairs and reporters for the conference. The following are proposed:

Session 2 rapp Rene Verschuur (NL)

Session 3 Chair Bert van Delden (NL)

Rapp someone from Eng&W –1- (E&W)

Rapp Augustine Pare –2- (Sp)

Session 4 Rapp Spain, Juan Pablo Gonzales (Sp)

General rapp Edith van den Broeck (Be)

- Observer status CCJE

Opening words of Mr Berlinguer on the CCJE brief.

EJTN

Provisional guide, has been disseminated. 20th of March there will be a discussion between EJTN and EC. There will be a Call for applications shortly after.

The following will be discussed with the EJTN (The secretariat and Belgium will stay in contact on this issue). For 2007 20 persons are proposed. Only members of the Councils no staff. There will be no obligation to file a report.

Subjects for the exchanges might include discipline, the nominations, and the council.

Latin America Judicial Summit (letter of Spanish Council attached)

Spain introduces the proposal.

1. Is ENCJ going to participate in the joint commission
2. Who are interested on behalf of the ENCJ, France is already collaborating.
3. A meeting will have to be organised for the Summit

Bilateral contacts with Latin America could be interesting. Co-operation could be valuable. There will most certainly be an interference with the political policy of our respective countries. This is a huge subject, and is this one of the ENCJ priorities.

The secretary general will write a letter on behalf of the network accepting the invitation to take part in the Joint Work Commission with the latinamerican Judiciary Summit and the European Network of Supreme Courts Presidents, for this doing, the Network will be represented by France, Italy and Spain"

9. Other matters arising

None mentioned

10. Next meeting Steering Committee

On the internal organisation in Rome, March 27 after the CCJE conference

11. Minutes Steering Committee meeting 9 October 2006

One amendment by Belgium regarding national developments.

List of participants Steering Committee meeting 6 February 2007 in Rome

Belgium

Edith van den Broeck

Marc Bertrand

England & Wales

John Thomas

Michael Walker

France

Gracieuse Lacoste

Jean-Pierre Dreno

Ireland

Susan Denham

Brendan Ryan

Italy

Luigi Berlinguer

Milena Falaschi

Mauro Volpi

Roberto Carelli Palombi di Montrone

Netherlands

Bert van Delden

Marlies Bouman

Monique van der Goes

Poland

Teresa Flemming-Kulesza

Roman Keska

Spain

Pilar Ruiz Carnicero