

ENCJ VISIT ECJ

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The Network

- The ENCJ represents and encloses bodies and authorities responsible to guarantee independence and autonomy of the judiciary. This is the key element, because is common to all the European judiciaries, and is the element that give life and *raison d'être* to the Network.
- In this light, our aim does not consist in the exercise of the jurisdiction, rather than in the promotion of common actions through all the Councils (or related authorities). The target, to this aim is represented by the need of collaboration, motivated by common standards, basic principles and shared targets.
- As foreseen in the Preamble of the ENCJ Charta "*The effectiveness of the European Area of freedom, security and justice requires a good understanding by members of the Judiciary of legal and judicial systems in other Member States, as well as national, European and international instruments requiring co-operation; Co-operation is essential for upholding judicial independence and reinforcing the rule of law*". Furthermore, according to art. 1 of the Charta, "*the objectives of the ENCJ are co-operation between members on (...) analysis of and information on the structures and competencies of members; exchange of experience in relation to how the judiciary is organised and how it functions; issues pertaining to the independence of the Judiciary (...); provision of expertise, experience and proposals to European Union institutions and other national and international organisations*".
- The mentioned aims can be read also in the light of the fast running evolution of the EU and the EC under several aspects: institutional, decision-making process, competencies, emerging necessities (enlargement, terrorism), new supplies (creation of new labour figures, more adequate guarantees for 4 liberties), stronger dialogue among institutions and national authorities, the "stand by" on the European Constitution, 25 different realities acting together for common targets). All that gives sufficient reason to understand how also judiciaries are deeply involved in this developing setting. Judicial actors and related authorities have to talk to themselves, to know each other, to find out common principles, and to work on them, is clear now that the figure of the nation judge has shift towards the one of the European judge.

- So what immediately comes out from this is also a demand of wider and stronger training for judges and public prosecutors on European and international law and related jurisprudence. The support/promotion of an European judicial culture has to be taken into account as one of the priorities in the area of “EU freedom, security and justice”, as already focused and recognised in the “Hague programme” and, by consequent, in several *ad hoc* projects promoted by the DG JHA of the European Commission.
- This current need has been foreseen and recognized as prior already in 1999, in the context of the Tampere European Council, that for the first time identified the mutual recognition and the mutual trust among judicial authorities as the cornerstone for the evolution of judicial cooperation in civil and criminal matters. Our Network, that goes through those fundamental principles, acts also in the light to realise this common path, through a strongest dialogue among judicial bodies and a new confrontation based on a deeper knowledge of “the other”.
- This process could be precious to build up a “humus”, e.c. a “rich soil” where common principles, common practices, common experiences, can be read and used under a new perspective, a more constructive one, because acting on an acquired knowledge. In this light, the Court of Justice, beside its exercise of the jurisdiction, currently plays a remarkable role also in acting efficiently to contribute to the creation of this growing feeling, that deeply etches in the European judicial culture, (by judges and law operators).
- Those mentioned are some of the main reasons that could rend extremely precious the synergy between ENCJ and ECJ.
- The ENCJ is now two years old; its representative bodies (presidency, secretariat, steering committee) act, as mentioned, to open a new path in the European judiciary framework. To this aim, contacts and direct collaboration with EU institutions (European Commission, - for the proposal of the European Payment order form, and European Parliament) have been extremely precious and constructive. Furthermore, the ENCJ lives with different “faces” represented by its working groups, each one in charge of specific mandate to deal with topics as “mission and vision of the councils”, “judicial conduct”, “justice and the media”, “case management”, and so on. They are composed by national experts, so their principal aim is to go in-depth through specific judicial issues, work out different (national) frames, signing up the common sides and put forward inputs to a new dialogue, based on a stronger and wider information/knowledge.

- This meeting, today, represents a precious and constructive occasion of dialogue and of wider understating between two bodies that could mark significantly on the creation of a European judicial culture.
- The target of a European Union overlooks towards the necessarily of a new perspective: a more dynamic functioning of the institutions, a stronger and deeper knowledge of the different (new) realities (enlargement countries, new legal orders, new exigencies to satisfy), the new challenges (terrorism, third countries relations, protection of EU borders... everything connected with the necessity to protect and guarantee fundamental human rights and personal data/privacy), the necessity to look ahead to an “on going” reality that is still far from being steady. The reasons for this are several: one for all.. the non entering into force of the EU Constitution, a strong sign both under institutional and political point of view. We strongly believe that this is a “stand by” moment, not necessarily to be read as negative, also because Europe cannot be regardless of the significant shifts needed actually; the signals are evident, also here, at the Court of Justice, with reference to a perceptible new orientation, with specific reference to the jurisprudence under the JHA point of view. I remember the memorable case “Husein Gozutok” case (11 February 2003, case C-385/01 – caso in cui il PM di uno Stato membro chiude, senza l’intervento di un giudice, un procedimento penale promosso in questo Stato membro dopo che l’imputato ha soddisfatto certi obblighi e, in particolare, ha versato una determinate soma di denaro, stabilita dal PM) relating the “*ne bis in idem*” principle in the field of Schengen cooperation; afterwards, the “Pupino” case (C-105/03), that considered the evidence given by little children that suffered mistreatments, jointly to the necessity to provide their guarantee, in the deposition, and, last but not least, the 13 September case, the one relating the “environment protection” (C-176/03), and the consequent annulment of a framework decision, by the Court, relating the environment protection through criminal sanctions.
- Europe is growing up, its institutions and bodies as well... we could do something really significant to contribute actively to this process that is under the eyes of all of us..