



European Network of Councils
for the Judiciary (ENCJ)

Reseau européen des Conseils
de la Justice (RECJ)

Independence, Accountability and Quality of the Judiciary

ENCJ Report

2023-2024



Co-funded by the Justice Programme of the European Union

This publication has been produced with the financial support of the Justice Programme of the European Union. The contents of this publication are the sole responsibility of the ENCJ and can in no way be taken as the views of the European Commission.

Table of Contents

EXECUTIVE SUMMARY AND RECOMMENDATIONS	4
INDEPENDENCE AND ACCOUNTABILITY	6
1. INTRODUCTION	6
2. ISSUES IN IAQ: OUTCOME OF DIALOGUE MEETINGS	8
2.1 Introduction	8
2.2 Interaction between the judiciary and the other powers of the state	10
2.3 Interaction of the judiciary with the media and society	12
2.4 Shortage of judges and staff and its consequences	13
2.5 Effective internal mechanisms for proper functioning of the judiciary	14
2.6 Quality of the Judiciary	15
2.7 Role of Councils with regard to quality	16
3. STANDARDS ON INDEPENDENCE AND ACCOUNTABILITY: POLITICAL AFFILIATION OF JUDGES	17
3.1 Introduction	17
3.2 Current principles related to political activity of judges	17
3.3 Definition of political affiliation	18
3.4 Political affiliation in practice	19
3.5 Minimum standards on political affiliation	21
4. INDICATORS ON INDEPENDENCE AND ACCOUNTABILITY	23
4.1 Introduction	23
4.2 Survey among judges	23
5. QUALITY FOR THE JUDICIARY: JUSTICE FOR VULNERABLE COURT USERS	25
5.1. Introduction	25
5.2. Work carried out this year	25
5.3. Best practices related to particular groups of vulnerable people	27
6. COURT USER SURVEYS	34
7. NEXT STEPS	36
Annex 1. Strategies for the Judiciary of Finland and Sweden	38
Annex 2. Survey among the judges of Europe, 2025	39
Annex 3. The consolidated court user questionnaire	49

EXECUTIVE SUMMARY AND RECOMMENDATIONS

In 2023-2024 the work of the ENCJ consisted of several activities in the area of Independence and Accountability and of Quality of the Judiciary. The activities followed the cycle of improvement that the ENCJ has adopted in 2019.

- (1) Six dialogue groups convened to discuss the outcomes of the indicators on independence and accountability and on quality as measured in 2022-2023, in the first three months of 2024. The format consisted of an in-depth in-person meeting and a concluding online meeting. Common aspects discussed were the often (but not always) fraught relations with the other state powers that hamper the functioning and development of the judiciary, the often fragmented governance and management of the judiciary, the relations with the media and the trust in the judiciary that varies among the judiciaries. Where trust is low, (re)gaining trust is essential and this generally requires an orientation on the users of the courts and society at large. A major topic was the shortage of judges and (legal) staff in many judiciaries that threatens the performance of the judiciary in many respects. In the dialogue groups frequent attention was also given to internal mechanisms for the proper functioning of the judiciary, in particular, regarding evaluation and discipline of judges. These mechanisms were seen as essential for the external accountability and for the quality of the judiciary, but it was also recognized that the mechanisms currently in place generally cost a lot of resources and do not seem to lead to much in most judiciaries. The issues mentioned are relevant from the perspective of independence and accountability as well as quality. In addition, a wide range of specific quality issues were discussed and also the widely differing mandates of Councils for the Judiciary regarding quality.
- (2) Minimum standards have been prepared on political affiliation. Given the large differences among countries in democratic culture, the minimum standards are relatively concise and, especially if the trust of the judiciary in society is low, it is recommended to consider further steps.
- (3) The next survey among judges is planned for the first quarter of 2025. In preparation, the survey questions have been reviewed. A question was added on intimidation and threats of judges.
- (4) The ENCJ promotes court user surveys in all judiciaries, as the experience of court users is particularly important to assess the independence of the judiciary, but also because these surveys connect the courts with their users. The current focus on judicial independence was extended to include questions on quality of the judiciary.
- (5) When reviewing the results of the indicators on the quality of the judiciary, indicators concerning access to justice for disabled and vulnerable people stood out. While the results of the questionnaire provided an overview of the situation of access to justice for these groups at large, it was concluded that it is important to examine more in-depth the concrete arrangements available for vulnerable litigants. Therefore, the work focused on sharing ideas and best practises currently available at the judiciaries of the ENCJ members and observers and finding the best possible ways forward.

Next steps

Surveys on independence and accountability

- The next survey among judges on the independence of the judiciary will be held in the first quarter of 2025. Preparation will start in September 2024. This will include the following: (a) To ensure that in each judiciary all judges are invited to participate and in the same way, each council or, in the absence of a

council, alternative governing body draws up an implementation plan for the survey and shares it with the coordinators of the project team of the ENCJ. (b) Using the test links provided by the ENCJ Office, each Council/governing body will test whether judges can access the ENCJ website and fill in the survey from their work place, taking into account that conditions may differ from court to court, and, if there are problems, take measures to resolve these problems. (c) Councils/governing bodies will secure the active support of the court presidents and other key figures within the judiciary for the survey. (d) The general motivation to participate can be improved by having authoritative members of the judiciary promote participation, whether in leadership positions, judges' associations or other.

- The cooperation of the CCBE will be sought to organize, if possible simultaneously, a survey among lawyers about the independence of the judiciary, as this would be a valuable addition to the survey among judges.
- Each member and observer of the ENCJ is invited to conduct a court user survey, if it has not done so in recent years and share the results. The ENCJ will continue to work closely with the European Commission to further explore the possibility to conduct an EU-wide court user survey.

Connecting with society

- A dialogue will be initiated between the ENCJ and civil society organizations/human rights organizations at EU level on societal issues and perceptions regarding judicial independence and accountability in the form of meetings with a project team.
- The work will be started on developing the format for an external review of the Councils for the Judiciary, learning from national experience so far. This is a first step towards the external review of the judiciary as a whole. External review would serve two purposes: (1) providing a council with suggestions for improvement and (2) increasing the shared knowledge of the ENCJ about judicial governance.
- Diversity of the judiciary and the selection of judges: the current Independence and Accountability indicator is based on the ENCJ guidelines that judges are selected only on merit. This limits diversity policies to only candidates of equal capability. The question will be considered whether or not this approach is too restrictive.

Conceptual issues concerning independence and accountability

- An open discussion will be held about the position of Constitutional Courts in the framework of the independence and accountability of the judiciary. Given the impact of Constitutional Courts on independence, an exploratory discussion is needed to determine the position of the ENCJ on these courts, in particular in relation to judicial independence.

Quality

- Further work on the mandate of Councils for the Judiciary, including but not limited to individual Councils for the Judiciary will be carried out;
- A review of particular indicators of the Questionnaire on Quality of the Judiciary will be undertaken.

INDEPENDENCE AND ACCOUNTABILITY

1. INTRODUCTION¹

Central to the mission of the European Network of Councils for the Judiciary (ENCJ) is the reinforcement of independent, yet accountable judiciaries in the European Union and candidate members to guarantee access to fair, independent and impartial courts. One of the ways in which the ENCJ strives to protect and promote these rights is by providing support for the independence and accountability of judiciaries in Europe and by promoting understanding and respect for judicial independence.

This year a variety of topics has been addressed. As a network of Councils for the Judiciary, the ENCJ has developed, over the years, standards and guidelines for the areas of responsibility of Councils for the Judiciary that are important to the independence and accountability of the judiciary. These standards and guidelines concern the governance of the judiciary and the conduct of essential functions such as the appointment, promotion and dismissal of judges, all to guarantee the independence of the judge within an independent judiciary. Setting standards is relevant for judiciaries to be able to benchmark and improve their arrangements and practices. Many of the standards are also applicable to other judicial governance structures than Councils for the Judiciary. This year, minimum standards on political affiliation of judges are added. See Chapter 3.

In the view of the ENCJ, it is not sufficient to set standards and guidelines: the actual implementation by the members and observers is essential. To assess the extent to which standards and guidelines are realised a set of indicators on independence and accountability has been developed and implemented. Keeping track of judicial independence is particularly important in a time when all European Institutions are challenged to better protect and promote the Rule of Law. In this instance, regular measurement of performance against the indicators over a period of time and the possibility to compare the outcomes become ever more essential.

The indicators are regularly measured to take changes in national judicial systems into account. The last time this happened, was in 2022/2023.² The indicators concern, on the one hand, the formal safeguards and mechanisms that protect judicial independence and provide for accountability and, on the other hand, the perceptions of judicial independence in society. These perceptions show how the judiciary is seen in society. In the European Union, the perceptions of citizens and companies about judicial independence are annually surveyed by the Eurobarometer, commissioned by the European Commission. The data from this survey and related surveys such as those for the Rule of Law Index are included in the indicators on perceived independence and accountability. The perceptions of judges on independence are not part of these Eurobarometer surveys, and the ENCJ has taken

¹ This report was composed with the input of the Project team, Mr. Frans van Dijk, Ms. Milda Treigė and Ms. Aleksandra Switalska, who processed the information provided by the Project team members and drafted the text of the report. The members of the Project team are listed in Annex 1 of this report. Meetings of the Project team took place on 5-6 October 2023, 7-8 December 2023, 4-5 April 2024 and 13 May. Dialogue group meetings took place in January and February 2024. Each dialogue group had one in-person meeting and all groups, except for one, had a follow up online meeting.

² See ENCJ (2023). Indicators on Independence, Accountability and Quality of the Judiciary. Reenforcing judicial protection, ENCJ Report 2022-2023, www.encj.eu, with addendum for Bosnia and Herzegovina and Ukraine.

upon itself to conduct a survey among judges on a regular basis. In the first quarter of 2022, this survey was conducted for the fourth time. The next edition of the survey will take place in the first quarter of 2025. In preparation, the survey questions have been reviewed as well as suggestions for new questions from the ENCJ members and observers as well as academia. This review resulted in a slight revision of the set of survey questions.

A gap in the measurement of the perception indicators concerns the court users. Their direct observation of the functioning of the courts is highly informative for the assessment of independence at country level, but also for the individual courts. Measurement requires court user surveys and these surveys require much work. So far, only a small number of judiciaries have implemented this type of survey. The surveys that were conducted have shown that the experience of court users often differs from the perceptions of citizens in general. Often, the perceptions of the court users are more positive than those of the population at large, in particular when the latter perceptions of judicial independence are negative. The ENCJ is stimulating its members and observers to conduct court user surveys, not only for the purpose of measuring judicial independence, but also to promote the courts to engage with their users. In previous years, a format for such surveys was developed. This format focused exclusively on judicial independence which was felt now to be too narrow. In the revised version also several quality aspects are addressed.

Complementary to the indicators on independence and accountability, a set of indicators on quality of justice has been developed in several iterations. The ultimate goal of the judiciary is to dispense quality justice within a timeframe consistent with the demands of society by judges who are, and who are seen to be, independent and impartial. In its current iteration, the indicators are in the view of the ENCJ informative on the quality of the judiciary and can help councils to assess their performance. When discussing the outcomes of the indicators, measured in 2022/2023, indicators concerning the access to justice for disabled and vulnerable people stood out. While the results of the questionnaire provided an overview of the situation of access to justice for these groups at large, it was concluded that it is important to examine more in-depth the concrete arrangements available for vulnerable litigants. There was a demand for sharing ideas and experiences and developing best practices. These best practices in taking care of vulnerable people are presented in this report.

The outcomes of indicators on independence and accountability and on quality provide Councils and other governing bodies with insights that they can use to improve their judicial systems and to enable judges to fulfil their essential function in society better, and, where necessary, engage with the other state powers on matters of independence. This requires action from each Council individually, but each can benefit from discussing its challenges with other Councils. This has led to the endorsement of an improvement cycle, consisting of measurement, analysis and discussion of outcomes and solutions, action planning and implementation of plans. See Figure 1. This year dialogue groups were held to discuss and analyse in small groups of judiciaries the issues with respect to independence and accountability and, for the first time, quality. While the dialogues were aimed at providing inputs for improvement plans of individual judiciaries, general conclusions can be drawn as to the issues that judiciaries are faced with.

Before turning to the more detailed subjects, Chapter 2 presents the main outcomes of the dialogue meetings. Chapter 3 deals with standards for political affiliation and Chapter 4 with two aspects of the indicators on Independence and accountability, the coming survey among the judges of Europe and court user surveys. Chapter 5 concerns quality and presents best practices in taking care of vulnerable court users. Chapter 6 describes the work carried out on court user surveys, Chapter 7 discusses next steps.

Figure 1. Improvement cycle



2. ISSUES IN IAQ: OUTCOME OF DIALOGUE MEETINGS

2.1 Introduction

Dialogue meetings are part of the improvement cycle that the ENCJ has initiated. Up till now, the cycle had a single focus on independence and accountability. Since indicators were developed for the quality of the judiciary, the focus was broadened to quality. In the dialogue meetings this proved useful, as there are many connections between independence, in particular – internal independence, accountability and quality. The dialogue meetings are meant to inspire the participating judiciaries by informing and being informed about the issues and solutions in other judiciaries, getting feedback on their own initiatives and by brainstorming about the challenges. The starting point were the indicators on independence and accountability and on quality, as presented for each judiciary in the ENCJ report 2022/2023.³ To get an overview of the indicators and outcome, Figure 2 gives the indicators on independence and accountability for Europe as a whole (unweighted average of country outcomes per indicator) and Figure 3 the indicators for quality. The dialogues were not confined to issues stemming from the indicators. Other reports and data, concerning independence, accountability or quality of the judiciary, could be included, as well as current events in the countries concerned.

³ ENCJ (2023), as above.

Figure 2. Indicators Independence and Accountability

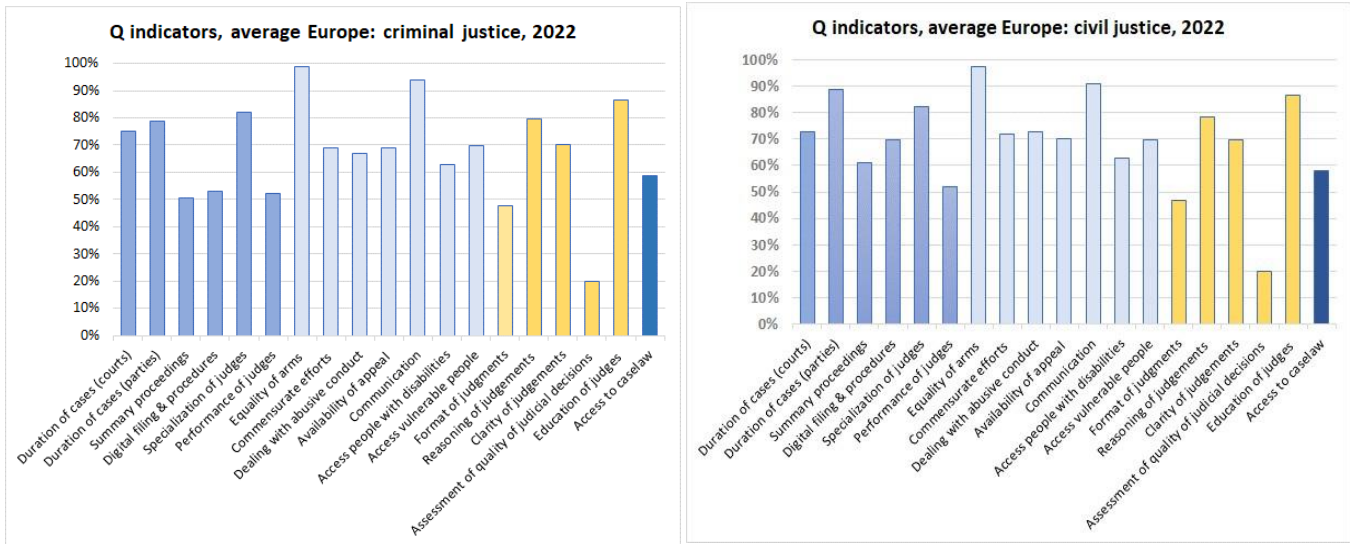


Figure 3. Indicators Quality of the judiciary (a) criminal justice and (b) civil justice



Six dialogues took place, each consisting of an in-person meeting and a follow-up online meeting (with one exception, where the online meeting could not take place within the allotted time). In principle, four members and observers that have a Council for the Judiciary participated in each dialogue. One dialogue, in which two countries that do not have a Council for the Judiciary took part, was entirely devoted to a common subject, the evaluation of judges. The outcome of the dialogues are country specific and for use by each individual participant. Still, general trends can be observed, as to the issues that are on the mind of the participants. In the next sections, the main issues that were discussed are summarized.

The dialogue groups had the following participants:

- Finland, Latvia, Romania, Sweden
- Austria, Belgium, Germany, Netherlands
- Northern Ireland, Portugal, Scotland, Spain
- England and Wales, Greece, Ireland, Lithuania
- France, Italy, Ukraine
- Bosnia and Herzegovina, Norway, Slovakia, Slovenia

2.2 Interaction between the judiciary and the other powers of the state

In the dialogue groups, the interaction of the judiciary with the other branches of government was a recurring theme. In a large number of countries the judiciary is under pressure of diverse nature from the other state powers. By law, these other state powers have to fulfil duties to make the functioning of the judiciary possible (appointments, budgeting etc), but frequently, the execution of these tasks is slow, unwilling and/or not prioritized. In several countries, however, the interaction is positive, and, while, for instance, funding is limited, this is the case for the public sector in general and the judiciary is not singled out.

Cooperative interaction:

- In several countries, new laws on the organization of the judiciary have been adopted to enhance the independence of the judiciary or are being prepared/discussed.
- In these and some other countries as well, no fundamental disagreements exist between the judiciary and the executive and legislature about the role and independence of the judiciary. The funding is adequate, and the salaries of judges keep pace with inflation and the salaries of relevant groups.

Uncooperative interaction:

- Legislature and/or executive do not fulfil the tasks regarding the judiciary that are stipulated by current law. In one country, since 2018 no new members of the Council have been appointed, due to stalemate in parliament.⁴ As a result, no new appointments could be made to senior positions in the judiciary since then.

⁴ See Statement ENCJ and EAJ on the renewal of CGPJ Spain, 2 April 2024. www.encj.eu.

In an observer, no new members of the Council have been appointed for some time, as a result of which the quorum in the Council is in jeopardy. In other countries, the appointment of judges by, for instance, the president of the country takes unnecessarily long time.

- A broad issue is the provision of sufficient funds for the judiciary and adequate remuneration of judges and (legal) staff. Financial security is an important element of judicial independence. In several countries, salaries of judges and staff have not been raised for a long period of time, as a result of which salaries in the judiciary have not kept pace with the cost of living and have also fallen behind government salaries or salaries in the legal professions. While this issue has been resolved recently in several country, it is major issue in at least several other countries. Lack of funding has major effects (see below).
- Government and/or legislature are not willing to draft and pass laws to modernize the judiciary and the governance of the judiciary. As a result, the independence of the judiciary is not strengthened, and its governance and management remains fragmented in many countries. In one country, proposals of the Council to end or, at least, mitigate the revolving door between judiciary and executive, are not acted upon by the government for several years. In some Nordic countries, lay judges are appointed by the political parties. Only in one country, there is a willingness to end this practice. Where new laws are drafted, some are aimed at reducing the independence of the Council of the Judiciary.
- In several countries, judicial discretion has been curtailed, by taking regulatory tasks away from the judiciary and, in individual cases, by sidestepping the judiciary through adoption of case-specific laws. In another country, proposals to introduce a constitutional court seem to be aimed at a reduction of the influence of the common courts.
- In more general terms, some Councils experience a lack of respect for the judiciary from the other state powers.

Solutions:

- In general, it would make sense to reduce the dependence of the judiciary on the executive and legislative powers, at least, for operational decisions (see next point). The formal appointment of judges falls into this category.
- Several councils undertake efforts to get standing to propose draft legislation directly to parliament. Currently, councils do not have the right to put forward a formal proposal to change laws. In this context, Councils should work to enhance the collaboration with the legislative.
- In the long run, it is important to raise awareness in society of the role of the judiciary in the society, the relationship with the other state powers and the reasons for independence, in order to get bottom-up support for the judiciary.

Responsibility for governance and management of the judiciary

It is more and more felt by many Councils as a problem that the judiciary is not in control of its own management, quality policy, budget, IT, courthouses and so forth. Historically, the management of the courts was in the hands of the executive and this is often still the case. This implied a situation, where although judges were independent individually, the judiciary as whole was not. This limited conception of judicial independence is not acceptable anymore. It hinders the development of the judiciary and obstructs its functioning. Areas that were mentioned,

concerned the wide variety of topics, already mentioned above, but also topics such as data availability for the analysis of causes of long duration of cases and for sentencing guidelines and judicial training. Several councils are responsible for judicial training or have judicial training school under their authority, but many others are not. It was also noted that even disciplinary procedures against judges are in some countries the task of the other state powers.

A diverse range of Councils expressed, in particular, a need for more budget responsibility to increase the independence of the judiciary. This concerns the decision making about the budget, but also the allocation and control of the budget once the budget has been determined.

2.3 Interaction of the judiciary with the media and society

Pressure of media

Pressure from the media was seen as a major challenge. In particular where media is related to political parties, the criticism on judges can be out of proportion, personal and intimidating. The survey among the judges shows that judges feel that this affects judicial decision making.⁵

Solutions:

- There was an agreement that it is necessary for the Councils to develop a media strategy.
- It is necessary to increase the resilience of judges against pressure from the media. As pressure from the media is likely to remain to a certain degree, irrespective of media strategy, judges should not give in to this pressure. Councils need to assist judges in concrete situations.

Low level of trust in the judiciary by the general population

Low trust in the judiciary by the population is a recurring issue in the substantial number of countries where this is the case. While trust in the judiciary is generally higher than in the other state powers⁶, it is low in a considerable number of countries in Europe and this weakens the position of the judiciary in many respects. High trust by the court users facilitates the work of the judge and the implementation of judgments. Also, trust leads to support for the judiciary in society and this support safeguards the judiciary against attacks on its independence. However, the judiciary often maintains only a weak link with the society and a considerable number of judges may not be aware of the views of the court users about the way they are treated. To fill the gap, an increasing number of councils undertake to carry out court user surveys. It is often found that the trust of court users is relatively high and much higher than that of the population in general. A lot of effort is, therefore, put into increasing the trust of the general population but often with little success. Councils are frustrated and are searching for ways forward. A related issue is lack of knowledge about the rule of law and the role of the judiciary. For instance, a recent study in a Nordic country has shown that young people have little understanding of the independence of the judiciary and believe that government can intervene at will in judgments.

⁵ ENCJ (2022). ENCJ Survey on the Independence of Judges. www.encj.eu.

⁶ ENCJ (2023), as above.

Solutions:

- A culture shift in the judiciary is needed, leading to a strategic re-orientation of the judiciary, focused on the users of the courts. Finland and Sweden provide examples of such strategies (see Annex 1). These strategies were developed by means of an interactive process, involving the judges and other employees of the courts and the court users. Another approach has recently been experimented with in France, where court user surveys were carried out in certain courts, followed up by in-depth discussions with court users.
- Strengthening judicial ethics to forestall incidents, which have a negative effect on the trust in the judiciary.
- Increasing the transparency of disciplinary procedures. Making information available on the disciplinary proceedings when they are undertaken or after they are closed contributes significantly to this end. Further measures maybe welcome in certain jurisdictions.
- Re-enforcing mechanisms such as asset declaration to strengthen the integrity of the judiciary.
- Organizing outreach programs to the society in general, but also to target groups such as youth in particular, about the rule of law and the role of the judge in a democratic society.
- Improving relations with the media (see, however, the previous item).
- Simplification of judicial language should be a long-term effort, as complex language leads to lack of understanding and results in wrong reporting in the media.

2.4 Shortage of judges and staff and its consequences

A common topic of discussion was shortage of judges and staff which weakens the overall performance of the judiciary. In some judiciaries the shortages are dramatic. In one country there are a 1,000 vacancies on 4,000 judge positions and in another more than 2,000 vacancies on 7,000 judge positions. These huge shortages have country-specific backgrounds. In other judiciaries, the problems are of a smaller scale. The shortages are caused by a combination of high retirement rates and quantitative and qualitative problems in recruiting. In addition, it is often particularly difficult to find good candidates for understaffed and unattractive courts. In several countries, higher rewards are offered for these courts. These issues are not confined to judges but extend to legal staff.

As a consequence, the workload is difficult to handle for the judges and staff, the duration of cases increases and there is lack of time for training. In some countries, it leads to measures such as more cases being adjudicated by a single judge instead of a panel and, in criminal cases, more cases being decided by the prosecution. The workload problems are aggravated by the increasing complexity of cases. These developments lead to stress, frustration and dissatisfaction among judges and even burnout.

The difficulties in attracting sufficient (high quality) candidates are often related to insufficient funding in general, but also to the remuneration for judges and salaries for staff that are not competitive in increasingly tight labour markets for lawyers.

Solutions:

- Budgets should be adapted to workload and remuneration should be competitive. At the bare minimum, salaries should keep pace with inflation and public sector wages.
- Outreach activities are needed to improve the understanding of the judiciary and attract more candidates.
- A focus on attracting judicial candidates with underrepresented backgrounds is required for reasons of principle, but also because these groups are quantitatively important. This also requires awareness among the sitting judges of the difficulties judges with diverse background experience.
- It might be possible to reduce workload by applying AI-tools, for instance, to summarize case law for judgments, as judiciaries are experimenting with.
- Monitoring of judges' mental health is seen as important in some countries, as judges do not tend to seek health care.

2.5. Effective internal mechanisms for proper functioning of the judiciary

Frequently, attention was given in the dialogue meetings to the evaluation of judges and to disciplinary procedures. The discussions showed some ambivalence. On the one hand, these mechanisms, including also complaint procedures, were seen as essential for the external accountability and for the quality of the judiciary. On the other hand, the mechanisms currently in place cost a lot of resources and do not seem to produce desired results. Again, there are large differences among countries, and generalization should be handled with care.

Evaluation of judges

Most judiciaries have a form of evaluation of judges. In the previous year, an indicator on evaluation was added to the indicators on independence and accountability from the perspective that an organization of professionals needs to reflect on and evaluate its performance. Consequently, evaluation also plays a role in the indicators on the quality of the judiciary. Evaluation is complicated from the perspective of independence and it should never take the content of judicial decisions into consideration, but it is important for the quality of the judiciary, as it addresses the professionalism of judges and also provides a basis for appointment and promotion decisions. In the discussion, it was noted that evaluation mechanisms differ very much. The differences start with the objectives. The objectives fall into two main categories: (1) to foster the quality of the work of the judges and judiciary at large and (2) to assess suitability, ability and professional performance of judges, as instrument of personnel planning. In the latter approach, evaluation should objectify appointment decisions and provide for periodic quality control of the judges.

It was concluded that the current systems in the second approach are often not very satisfactory. These systems, even when they are very detailed, are still quite subjective. In the judiciaries concerned, nearly all judges get the highest mark, and, thus, the systems do not result in an objective ranking of judges. Some judiciaries in Eastern Europe have elaborate systems with performance evaluation by committees of elected judges. The experience is that these systems take a lot of resources and have little direct effect. Very few judges are evaluated negatively, but the systems may incentivize judges to put more effort in their work. According to the participants, the systems

seem to be accepted by the judges. Evaluation focused on quality is used by a few judiciaries, and there it appears to work well.

In one dialogue group, benchmarking of the courts was discussed. This was felt to be useful, but it was noted that benchmarking of individual judges is certainly not desirable.

Disciplinary procedures

On the one hand, disciplinary procedures were seen as important for the integrity of the judiciary and for the trust in the judiciary by society. From this perspective, it is important to be transparent about these procedures. On the other hand, the same countries in Eastern Europe mentioned above on evaluation have elaborate disciplinary systems with committees of elected judges. In both judiciaries, there are few cases: the very few cases in one judiciary are serious and deal with instances of not fulfilling one's duty as a judge. In the other judiciary the cases concern foremost the transgression of reasonable time standards. Both systems cost a lot of resources, where the most serious cases would have been addressed anyway by means of a criminal procedure.

An open question is whether disciplinary procedures should be encouraged or discouraged. In one observer, the volume of disciplinary complaints, in particular by dissatisfied litigants, is huge, resulting in large backlogs in the absence of a filtering mechanism. Also, prosecutors can initiate disciplinary procedures against judges. It is questionable whether such a system promotes trust in the judiciary. Under different conditions, the presence of disciplinary procedures might have a more positive effect on trust. In one country, disciplinary sanctions are increasingly imposed for professional insufficiency.

Complaint procedures

Complaint procedures are a related phenomenon. The transparency of these procedures, in particular who decides eventually, is not always sufficient.

2.6 Quality of the Judiciary

Most of the issues raised above have wide ranging implications for the quality of the judiciary. In particular, lack of resources and low remuneration of judges and salaries of (legal) staff lead to shortages in both. In combination with increasing case complexity, the result is high, if not excessive, workload. In some countries in Eastern Europe populations are declining. Such declines eventually lead to a reduction of court cases, but also to a greater scarcity of lawyers who could become judges and legal staff. As a result, workload problems are likely to remain an issue in these countries as well. Further specialization was raised as a possibility to improve efficiency and quality at the same time. In Scandinavian judiciaries this would be a break with tradition.

In addition to the general issues discussed above, most judiciaries raised specific issues, such as lack of uniformity of judgments in similar cases, lagging application of information technology, lack of access to court documents,

leading to wrong interpretations of judgments, and a poor state of maintenance of court buildings and inaccessible buildings for people with disabilities.

2.7 Role of Councils with regard to quality

The role of Councils was discussed in several dialogue groups. The discussion showed that, while some Councils have limited responsibilities, generally focused on appointment, promotion and evaluation, others have more influence on quality. These extra responsibilities differ. In some Councils, inspection and disciplinary functions provide information and give influence at the individual level of the judge but also on the courts. Important influence can also be derived from a responsibility for judicial training. Other Councils have explicit responsibility for (the promotion of) the quality of justice as a whole and have developed integrated quality frameworks and strategies for the whole judiciary, often in an interactive process with the courts and society. Such frameworks are common in public and private organizations. In these councils the emphasis is on promotion and guidance rather than on inspection and oversight. The Figures 4 and 5 that were already presented provide examples of an integrated strategy, consisting of mission, vision and objectives. This approach was developed in last year's project. Only a few Councils are able to link quality with finance by means of realistic quality standards.

3. STANDARDS ON INDEPENDENCE AND ACCOUNTABILITY: POLITICAL AFFILIATION OF JUDGES

3.1 Introduction

The political affiliation of judges is an issue for the rule of law from the perspective of the separation of the powers of the state and of judicial independence. Separation of the state powers plays out at the organizational level (e.g. arrangements for the selection of judges and court presidents, budgeting and management of the courts) and at the individual level where a person might be involved in or even active in more than one of the state powers, at the same time or consecutively. Judges might be politically active and politicians and civil servants could be active as (parttime/lay) judges or hold oversight functions of the judiciary, thereby exerting influence across the boundaries of the state powers. Political activity of judges, including lay judges, may also be detrimental from the perspective of (perceptions of) judicial independence.

A tension exists between the requirements for the separation of the state powers and the independence of the judiciary on the one hand and the freedom of opinion and expression of judges as citizens on the other hand. These freedoms extend to the political sphere. From the former perspective it would be preferable that judges have no political affiliations at all, while from the latter it would be preferable if judges could, as any citizen, fully participate in the political life of a democratic society. This tension is difficult to reconcile, and this has been recognized in particular from the perspective of judicial independence. Political activity of judges has received attention from the ENCJ previously (see below), but it has not been the subject of standards or the indicators on independence and accountability. In the next sections, the possibilities to develop ENCJ standards for this area are examined. Section 3.2 briefly presents the principles that are relevant here. Section 3.3 defines political affiliation and section 3.4 describes what is known about political affiliation in practice in European countries. Section 3.5 presents minimum standards that all judiciaries should at least aspire to achieve. Dependant on the circumstances, it may be advisable to take additional measures.

3.2 Current principles related to political activity of judges

According to the Bangalore principles of judicial conduct (2001)⁷,

“A judge, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but, in exercising such rights, a judge shall always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.” (4.6).

The latter requirements are restrictive: “A judge shall not only be free from inappropriate connections with, and

⁷ https://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf

influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom” (1.3), where (in)appropriate is interpreted in a restrictive manner, based on perceived impartiality and political neutrality (see 4.11).

The ENCJ has expressed a similar opinion in its report on judicial ethics (ENCJ, 2009-2010).⁸ “[The judge] is entitled to complete freedom of opinion but must be measured in expressing his opinions, even in countries in which a judge is allowed to be a member of a political organization.” And: “In politics, a judge, like any citizen, has the right to have a political opinion. His task, by showing this reserve, is to ensure that individuals can have every confidence in justice, without worrying about the opinions of the judge.”

In its recent Opinion 25 on freedom of expression⁹, the CCJE also emphasizes the right to freedom of expression of judges as an individual right (CCJE 2022, p.7), but in the context of political mandates it notes the following (CCJE 2022, p.12): “Direct involvement in partisan party politics can raise doubts as to the separation of powers and the independence or impartiality of a judge, which is why many States restrict the political activities of judges.” Despite these doubts, the CCJE does not explicitly disapprove of judges holding political mandate. It only states: “In countries where judges may hold a (part-time) political mandate in addition to their judicial office, they should show restraint so as not to compromise their independence or impartiality. It is imperative that they avoid taking strictly partisan and firm views on any issues that raise reasonable doubts as to their overall capacity to rule on such matters in an objective manner.” The commentary on the Bangalore Principles (2007, p. 95)¹⁰ is explicit on this point: “A judge’s duties are incompatible with certain political activities, such as membership of the national parliament or local council.” It is also outspoken on restraint in that judges should not be involved in public controversies.

The above principles have in common that they recognize the rights of judges but immediately restrict these rights, seemingly to a very large extent. It should be noted, however, that restraint is not in order when it concerns the rule of law in general and the (independence of the) judiciary in particular. When these are threatened, judges even have a duty to speak out (CCJE 2022, p14). In some countries, notably Hungary, the Council for the Judiciary, but also individual judges have been accused of transgressing the separation of state powers by criticising proposals of laws that infringe the rule of law. Such criticism was seen as political activity of the judiciary. This is unacceptable: when the rule of law is at stake, judges, individually or by the organisations that represent them, need to engage in the discussion. This may lead to (non-)alignment of the expressed opinions of judges with the views expressed by political parties.

3.3 Definition of political affiliation

As noted in the introduction, political affiliation has not yet found a place in the ENCJ standards or in its indicators on independence and accountability. Since there is a variety of political activities, ranging from voting in elections to standing candidate in such elections and accepting a political mandate, for instance, as minister of Justice, it is

⁸ [judicialethicsdeontologiefinal.pdf \(encj.eu\)](https://www.ency.eu/judicialethicsdeontologiefinal.pdf)

⁹ <https://rm.coe.int/opinion-no-25-2022-final/1680a973ef%0A%0A>

¹⁰ https://www.unodc.org/conig/uploads/documents/publications/Otherpublications/Commentry_on_the_Bangalore_principles_of_Judicial_Conduct.pdf

necessary to differentiate.

Political affiliation of judges is defined here as the connections of judges with the political system, consisting of political parties, parliament and other representative bodies at local, regional, national and supra-national level and the elected members of government and its civil servants, in the present or before becoming a judge. These connections include the following:

- Being connected with a political party by membership, participation in activities of a political party, campaigning for a political party and/or holding a political mandate for a party. Voting in elections as such is not an issue, unless a judge reveals his/her voting behaviour in public.
- Being associated with a political party: publicly expressing the views of a political party or the government in which the political party is participating or publicly supporting a candidate of a political party.
- Working as a civil servant for government under political direction at any level (local, regional, national and supra-national).

Not included are the participation in hearings in parliament and the participation in non-partisan committees in his/her capacity as a judge.¹¹

Most sensitive are these activities while being an active judge. Undertaking these activities before becoming a judge or during temporary leave is less sensitive, but still needs consideration.

3.4. Political affiliation in practice

The CCJE has conducted a questionnaire among its members as empirical basis for its Opinion 25.¹² A similar ENCJ questionnaire was not deemed necessary. In the ENCJ project team, the situation in all countries was discussed in detail. In the CCJE questionnaire, two questions concern political affiliation: holding a political mandate and membership of a political party. These issues received special attention at the ENCJ project team meeting as well. The main conclusions on these two issues are the following.

¹¹ See Bangalore Principles: “Subject to the proper performance of judicial duties, a judge may: (a) Write, lecture, teach and participate in activities concerning the law, the legal system, the administration of justice or related matters; (b) Appear at a public hearing before an official body concerned with matters relating to the law, the legal system, the administration of justice or related matters; (c) Serve as a member of an official body, or other government commission, committee or advisory body, if such membership is not inconsistent with the perceived impartiality and political neutrality of a judge” (4.11).

¹² <https://rm.coe.int/compilation-of-all-responses/1680a58557>

Nearly all judiciaries do not allow active judges to hold a political mandate simultaneously. There are a few exceptions. In Sweden, no restrictions are seen to be desirable. In the Netherlands, the topic is currently debated in Parliament. Full agreement exists on a ban of simultaneous political mandates at the national and at the supranational level. Whether the ban should extend to the regional and local level will be decided shortly in Parliament, where the discussion is phrased in terms of the fundamental right to stand for election versus the independence of the judiciary. In France, exercising a national and supranational mandate at the same time is incompatible with the function of the judge¹³, but local mandates can be exercised outside the jurisdiction within which the judges is in office, as this might call into question the judge's impartiality. The same restrictions apply to lay judges¹⁴.

In many judiciaries the possibility exists for judges to take a leave to fulfil a political mandate and to return to the judiciary at its expiry or after a cooling-off period (quick or slow “revolving door”).

According to the CCJE questionnaire and limiting the results to the ENCJ members and observers, membership of a political party is allowed in approximately 12 of 27 countries. Generally speaking, in the judiciaries, that do not allow membership of a political party, any political activity (except voting) is prohibited. In the other countries more political activities are allowed.

A related question in the CCJE questionnaire concerns participation in demonstrations. Interpretation here is more complicated due to nuances between (party) political and non(party)political demonstrations. The division seems close to fifty-fifty and follows roughly the same pattern as political party membership.

A prohibition of political affiliation of any kind (except for voting in elections) is found in most countries of Eastern Europe and the Balkans (only Slovenia seems to be an exception) but also in the UK and Ireland. In Southern Europe, the situation is more nuanced, but primarily restrictive. A liberal approach is found in the Nordic countries from a common understanding that when becoming a judge one does not relinquish her/his political rights. In the Netherlands, Belgium and France the situation is similar, while in Germany and Austria the weaker separation of the powers of the state may also be a factor to take into consideration.

The reverse situation where politicians act as judges also occurs. Lay judges in Sweden, Finland and Ukraine can be local politicians. In Sweden lay judges are selected and appointed by the political parties.

As to the interaction with government bureaucracy, large differences exist among the countries. In the countries, where judges can be seconded to a ministry, generally the ministry of justice, judges cannot at the same time work as a judge and as a civil servant.¹⁵ Austria, for pragmatic reasons, is an exception.

¹³ The Supreme Court is an exception in France.

¹⁴ In accordance to the CSM France, French legal system provides systematic safeguards in all these cases.

¹⁵ It should be noted that, in accordance with the law, judges of the administrative courts of Italy occasionally fulfil assignments for government and other public entities. In these assignments, the administrative judge is not a civil servant, as there is no service relationship with the administration, nor does the administration have any power of command. There is no hierarchical relationship.

3.5 Minimum standards on political affiliation

In view of the large differences among countries, the common ground on what is unacceptable with regard to the political affiliation of judges consists only of the most essential aspects. This common ground defines the minimum standards that all judiciaries should at least aspire to reach. Depending on national circumstances, it may be necessary to implement a stricter separation of the powers of the state than foreseen in the minimum standards (see below). Such circumstances may be related to a political culture of interference with the judiciary. Also, the perceptions of the population as to judicial independence and trust in the judiciary are relevant. These factors require a national appreciation.

Minimum standards

1. Professional judges cannot hold an elected office or other political mandate at the local, regional, national or supranational level while being active as a judge at the same time.^{16 17}
2. Professional judges cannot work as civil servants while acting as judges.¹⁸
3. Lay judges cannot hold a political mandate at the same time.¹⁹ Lay judges must be selected by an a-political procedure.²⁰
4. In expressing political opinions all judges must be measured to ensure that individuals can have confidence in justice and the independence of a judge and the judiciary as a whole.
5. Procedural rules for recusal are applicable in instances, when a judge has expressed (strong) opinions about political/policy issues relevant for a case before him (her), or was otherwise engaged in or dealt with such issues previously. A possibility should exist in such instances for the judge to recuse himself/herself, as well as for the parties to request such a recusal. Where possible, the case allocation system should take incompatibilities into account to avoid the frequent need for recusal.

Recusal

Recusal In individual cases is the principal tool to safeguard the (perception of) judicial independence and impartiality, and applies in situations in which political affiliation plays a role. It is noted that the need for recusal should be minimized, as frequent use could by itself detract from perceptions of independence among the population. This is consistent with the Bangalore principles, “a judge shall, as far as is reasonable, so conduct

¹⁶ An exception applies to France (local political mandates outside the jurisdiction) and the Netherlands (local and regional mandates). See section 3.4.

¹⁷ According to the Council for the Judiciary of the Netherlands, even though the Dutch legal system does not meet ENCJ minimum standards 1-4, it provides other systemic safeguards that have a similar effect in practice. According to Article 44(4) et seq. of the Judicial Officers (Legal Status) Act, judges may not hold positions that are detrimental to the proper performance of their duties or to maintaining their impartiality and independence or to the confidence placed in them. The Guideline on impartiality and ancillary positions also applies to all judges [\[Leidraad onpartijdigheid en nevenfuncties\]](#). Judges' ancillary positions are furthermore published in a public register (Article 44a(2) of the Judicial Officers (Legal Status) Act). Disciplinary action may also be imposed on a judge.

¹⁸ See footnote 14 on the administrative courts of Italy.

¹⁹ An exception applies to France (local political mandates outside the jurisdiction of the lay judge).

²⁰ Italian law provides for certain cases where lay administrative judges are appointed by the central or territorial government, with the prior opinion of the Council for the Judiciary which also verifies compliance with the suitability requirements. A requirement is that the appointments concern individuals with high levels of preparation and competence and who sever any ties with their previous careers or professions.

himself or herself as to minimize the occasions on which it will be necessary for the judge to be disqualified from hearing or deciding cases.” (2.3)

For instance, if the legal system allows a minister of justice to become a judge or return to the judiciary immediately after the cessation of the mandate, cases that deal with legislation or policies that came about when the person was minister cannot be adjudicated by this person. This could imply that such a judge is assigned to an area of law that (s)he was not involved with as a minister if such area exists. If this area does not exist, the person has to recuse him/herself frequently, and a cooling-off period might be a better option.

Recommendations for additional measures

As noted above, judiciaries may be confronted with circumstances that could require a stricter separation of the judiciary from the other state powers. Apart from the already mentioned circumstances (interference with the judiciary and low trust in the judiciary among the population), a strong polarization among political parties is likely to be detrimental for the position of judges who are known to be affiliated with a political party, for instance, by party membership. This may well be the reason that many countries do not allow membership of a political party (see section 3.4). There can be little doubt that political polarization has increased in many countries.

Additional measures that countries may want to consider:

1. Membership of a political party, or any other activity for a political party, is not allowed.
2. At the acceptance of a political mandate, the judge resigns from the judiciary. Return to the judiciary, if at all, is possible after a cooling-off period, determined by law, and following the standard selection and appointment procedure.

Applicability of the minimum standards on political affiliation

To be effective, the minimum standards need to apply to all courts. While judges in the lower courts have high visibility in local communities due to local media exposure, the higher courts may have a particular large impact on the perceptions of the population about the judiciary. The latter is due to media exposure as well and also to their impact on the decisions of lower courts and the finality of their decisions. It is also common that more of their members come from outside the judiciary than in the common courts. For these reasons, Supreme Courts, in particular, may need to consider whether stricter standards should apply. Is it, for instance, conceivable that a minister of justice becomes (shortly after) member or even president of the Supreme Court? If so, one may only wonder about the effect on the perceptions of the independence of these judges (but also the court and the judiciary in general) among the members of society.

4. INDICATORS ON INDEPENDENCE AND ACCOUNTABILITY

4.1 Introduction

As noted in Chapter 1, the indicators on Independence and Accountability include a range of perception measures, the following section deals with perception indicators in the next edition of the survey among judges.

4.2 Survey among judges

The previous survey among judges was held in the first quarter of 2022. Given the interval of three years, this means that the next survey will be in the first quarter of 2025. The survey method will be kept the same in view of the required continuity. The same holds for the survey questions, although there is some room to add or delete a few questions. Several suggestions have been put forward from within the ENCJ and from academics. The suggestion was made to expand the questions on personal characteristics to include socio-academic and migration background. In the discussion, it was concluded that these questions were not related to independence, but were of importance in their own right. As the survey concerns only independence (and a few questions on accountability), this extension was not seen as appropriate. From academia it was suggested to add questions on the political preferences of judges. This was also seen as not appropriate. Secondary, in all likelihood, such questions would result in a lower response rate. Also, it was suggested from Academia to add questions on the potential pressure on members of judicial councils to take certain decisions and questions on potential acceptance of bribes by members of judicial councils. In similar vein, it was suggested to add to the question in the current survey whether Councils for the Judiciary have the appropriate mechanisms and procedures in order to defend the independence of the judiciary, detailed questions on which mechanisms or procedures are inadequate. While these questions are relevant and interesting, it cannot be expected that judges have the knowledge of and experience with the Councils to answer these questions in reliable manner. Instead, it could be considered to develop a separate survey for members of Councils for the Judiciary, where questions have to be phrased carefully to elicit reliable replies.

Finally, it was agreed to add a question on intimidation and threats against judges from outside the judiciary. This question will be phrased as follows.

Xa. In the last three years, in my function as a judge, I have been subjected to intimidation and/or threats by court users or others from outside the court.

- No
- Very rarely
- Occasionally
- Regularly

Xb. In the last three years, in my function as a judge, I have been physically attacked by court users or others from outside the court.

- No
- Very rarely
- Occasionally
- Regularly

The full survey is given in Annex 2.

5. QUALITY FOR THE JUDICIARY: JUSTICE FOR VULNERABLE COURT USERS

5.1. Introduction

The objective of an independent and accountable judiciary is to produce quality justice for society. Article 6 of the Convention of Human Rights and Fundamental Freedoms as well as Article 47 of the Charter of Fundamental Rights of the European Union provide that everyone has a right to an effective remedy and a fair trial. Councils for the Judiciary need to take into account the perspective of the person seeking justice in all their tasks and from that perspective they need to focus on quality of justice, including access to justice and its timeliness. This task has to be taken up universally, despite widely varying mandates of Councils for the Judiciary with respect to quality.

In the report 2022/2023 an extensive overview of the work undertaken by the ENCJ in respect of independent and accountable judiciary and quality of the judiciary, aimed at producing quality justice is presented²¹. After the development of indicators and a mechanism to measure independence and accountability of the judiciary, the logical follow up was to develop similar instruments to assess the quality of the judiciary. Continuous efforts in the previous decade led to creation and refinement of quality indicators. The measurement in 2022/2023 produced accurate results for the first time.

The indicators provide a broad overview of the quality of the judiciary in the ENCJ members and observers, while also indicate the areas, where deeper analysis seems to be needed. Results from the indicators concerning access to justice for vulnerable and disabled people – regarding both physical and procedural aspects (indicators B12 and B13), as well as digital filing and procedures (indicator A4) provide an overview of the situation at large (showing a wide variation of the arrangements among the judiciaries). The importance of more in-depth discussion regarding the concrete arrangements available for disabled and vulnerable litigants, was recognized, including the need to exchange existing best practises on the subject for mutual learning.

5.2. Work carried out this year

In the light of the above, the project group has adopted ‘Access to justice’ as central, overarching concept for its work on quality in the year 2023/2024. Access to justice is one of the elements of the fundamental right to a fair trial (Art. 6 ECHR, Art. 47 of the Charter of Fundamental Rights of the EU and Art. 13 of the UN Convention on Fundamental Rights of Disabled People (hereinafter – the CRPD)). Without it any further meaningful implementation of the right to a fair trial cannot be envisaged. Accessibility is a major concern, as citizens cannot avail of even an excellent court if access to that court is not assured. This element is multifaceted and encompasses procedural guarantees as well as practical (physical) arrangements, including possibilities to access courts digitally, where appropriate.

Two subtopics were used as departing points of the discussion for access to justice, in relation to the results of the quality questionnaire indicators:

- access to justice for disabled and vulnerable people;

²¹ See ENCJ report on Independence, Accountability and Quality of the Judiciary 2022/2023, p. 38-87.

- and access to justice through digitalization.

The project group agreed to carry out interactive exchange sessions on the procedural and physical arrangements for access of justice to vulnerable litigants, taking into account the digital tools and their possible effect on these groups, where appropriate.

In the first in-person meeting in October, the starting point of the discussion was the definition of *vulnerable people*. Definitions set out in international and regional documents were examined. While members of the project group agreed that the CRPD, the aim of which is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity (Art 1(1)), provides an encompassing definition of disabled people (Art 1(2))²², the definition was too limited for the purposes of the discussion of the group. Therefore, a broader definition, deriving from Article 12(3) of the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul convention), that vulnerable litigants, should be regarded as ‘persons made vulnerable by particular circumstances’, was deemed to be more fitting.

An initial exchange on the mechanisms available for vulnerable people in the ENCJ members and observers followed, taking into consideration, whether and – if so – how the digital tools can aid vulnerable people in accessing the courts. While it was agreed that digital tools may be of benefit, concerns were also raised. It was noted that people from vulnerable groups might not have access to proper technology, or not have a good enough internet band, or skills to actually use the possibilities the digital tools provide²³.

Taking into consideration the broad concept of vulnerable people, several groups of vulnerable people were distinguished for a more targeted exchange. The following groups were agreed upon by the group: people with physical disabilities, people with mental disabilities, the elderly, children, victims²⁴ and migrants. It was also proposed to keep a catch all ‘other’ category.

Targeted exchange in small groups took place on the best-practices and arrangements for these groups during the meetings of October and April. The discussions have proved that while more and diverse arrangements were available for certain groups of vulnerable litigants, best practices towards the other groups were limited. Some of the best practices stemming from these discussions are reflected in section 5.3 of this report.

²² Article 1(2) of the CRPD provides that persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

²³ One member informed of the Recommendations on Remote Hearings adopted by the Council for the Judiciary, which provide that when the judge is assessing the ability of participants in the proceedings to participate in the remote hearing the situation of vulnerable groups of participants (minors, persons with disabilities, etc.), which may hinder a person's ability to participate independently and/or fully in the proceedings should be taken into account (Lithuania).

²⁴ As defined in Article 2(1)(a) of the Directive 2012/29/EU of the European Parliament and of the Council, establishing minimum standards on the rights and protection of victims of crime, victim means: (i) a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence; (ii) family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death.

On a general note, it should be stressed that the importance of access to justice for vulnerable groups and a more focused approach was endorsed by the project group members. Consulting and sharing information and best practices in this area will be of continued value to all members of the ENCJ network.

5.3. Best practices related to particular groups of vulnerable people

This section presents the practices shared by the ENCJ members and observers in relation to particular groups of vulnerable people.

It is worth mentioning at the outset that in some of the ENCJ members and observers, action plans, with regard to vulnerable litigants exist, setting out the overall strategy and action of the judiciary in regard of these litigants²⁵. Certain best practices of a general character have also been shared. For example, it is a common practice in **Scotland** that prior to the court proceedings involving vulnerable people, the judge instructs the lawyers on how the proceedings will be conducted and what to refrain from. In **Northern Ireland** judges are expected to take note of the vulnerability of persons involved in the proceedings and adapt the proceedings, to the extent possible, to their needs. Judges are required to undergo training in this field, including training on how non-obvious disabilities can be noticed and taken into account. In countries, where training falls within the competence of the Council for the Judiciary, training in the field is available as a part of the judicial training curriculum upon the choice of a judge (Lithuania). In some jurisdictions training in the field is undertaken by other actors, e. g. non-governmental organizations (Finland).

Best practices related to people with physical and mental disabilities

In England and Wales, an [Equal Treatment Bench Book](#) (revised in 2023), aims to increase awareness and understanding of the different circumstances of people appearing in courts and tribunals. It is available online and provides a comprehensive overview of advice regarding diverse groups of vulnerable people (due to age, communication or language difficulties, physical disability or impairment, health condition, mental health condition or significant impairment of any aspect). In addition, a Guide to the Cross-Examination of Vulnerable People and Children, provides general guidelines of questioning vulnerable people, but also concrete advice on principles for preparation and conduct of questioning. The principles, for example, include the need for the judge to signpost the new topic, tell a vulnerable person that the judge is going to ask them questions, think about the order of the questions posed, avoid repetition and other concrete advice²⁶.

In **Northern Ireland** the witness in criminal proceedings is eligible for assistance if the court considers that the quality of evidence given by the witness, in terms of completeness, coherence and accuracy is likely to be diminished, due to mental disorder, significant impairment of intelligence and social functioning or if the witness has a physical disability or is suffering from a physical disorder. Examination of a witness through an intermediary is an option in cases of witnesses with a mental disability. A Registered Intermediary scheme exists, where

²⁵ [Vulnerability Action Plan](#) in England and Wales is one of such examples.

²⁶ Please follow this link to see [The 20 principles of questioning](#).

Registered Intermediaries are communication specialists, who assist vulnerable victims, witnesses, suspects and defendants with significant communication deficits to communicate their answers more effectively during police interview and when giving evidence at trial. In a civil procedure an official solicitor may be appointed to vulnerable litigants.

In **Spain** a Disability Forum was set up in 2003 upon the initiative of the Spanish Council for the Judiciary (CGPJ), to prevent obstacles that affect access to the courts and to achieve a more effective legal protection of the rights of persons with functional diversity. Besides the CGPJ, public institutions dealing with various aspects of justice system as well as institutions, representing people with disabilities, are members of the forum. This forum undertakes courses, publishes books and organizes training activities in the area.

CGPJ Spain has also added to its public access case law database rulings in an easy-to-read format for people with intellectual disabilities. This format allows persons with intellectual disabilities to fully understand decisions affecting them in proceedings to which they are a party by adapting the decisions into language they can understand by using simple words, short sentences and even pictograms. The conversion is carried out by the cognitive accessibility teams of a partner organization, then undergoes a double validation procedure, including validation by the judge. To grow the database of easy-to-read decisions, CGPJ actively seeks the collaboration of the judges.

In **Belgium** a Support Center for Conservatorship (a non-governmental initiative) was established. This center establishes a collaboration between judges, lawyers, social care and familial conservators, via multi-disciplinary approach providing information in a prompt and understandable manner as well as taking note of problems that arise in conservatorship and seek for possible solutions. It proves to be a convenient and simple way of interaction between the conservators and legal professionals²⁷.

In **Italy**, some positive effects with reference to access to justice for persons with communication difficulties may result from the progressive digitalization of the civil and criminal proceedings. Digitalization of all documents of the proceedings, together with the possibility of access to them by the defendants and the parties, guarantees better and easier access to justice for persons with disabilities. Moreover, computerized documents are drafted in a way that ensures their direct interaction with video-reading or reading programs that also allow visually impaired persons to know their content.

Best practices related to the elderly

Few best practices in relation to this group were shared. However, during discussions it transpired that in certain (mostly common law jurisdictions), when dealing with a court user with diminished or diminishing capabilities, who does not have a legal representation, the judge can be proactive. The judge may take steps to ensure that the person is comfortable in the room, that the content of the proceedings is conveyed in an understandable manner, that questions are properly formulated, to engage in repetition, when necessary.

One jurisdiction reported that procedural rules allow elderly people in criminal proceedings to have a representative during all stages of the proceedings. Such a representative is not a lawyer but acts on behalf of an elderly person. This possibility is available for a participant in criminal proceedings, who is unable to properly

²⁷ Website of Support Center for Conservatorship: www.steunpuntbewindvoering.be.

exercise the rights conferred by law due to old age, disability, illness, or other important reasons. Usually, a legal representative is a family member or a close relative, who has submitted a written or oral request to the court. The law confers to the representative the same rights as to the person he represents. Representation by a lawyer is possible in addition to this (Lithuania).

Since 2004, a system for protecting persons whose capabilities are slightly diminished, but not to the extent of requiring a guardian or supervisor exists in **Italy**. The system is called “amministrazione di sostegno” and is often applied in favor of elderly people who need to be assisted in several acts including all forms of access to justice. A legal action for establishing the regime of “amministrazione di sostegno” may be lodged by the beneficiary, by a spouse of a person, relatives within the fourth degree, in-laws within the second degree, cohabiting partner, guardian or administrator/trustee, by the Public Prosecutor or the people in charge of the social and health services involved in the care and assistance of the person in need²⁸.

Best practices related to children

The majority of the ENCJ members and observers have in their legal systems, distinct procedural and physical arrangements for children in court proceedings. A common practice is to interview (either when providing testimony, during interrogation or cross-examination) a child in a separate room. The aim is that a child has to undergo the procedure only one time. Therefore, the testimony is recorded for later use (Italy, Spain, Sweden)²⁹.

In a number of ENCJ members and observers the procedure of giving testimony may be conducted by a specially trained professional, or a specially trained professional and a judge together. In countries, where examination (cross-examination) of children during the court proceedings is allowed, this is done in a protective manner, for example, the child and the judge may be in one room and the lawyers can only formulate the questions to the judge in writing via the use of technological means. In these instances, it is up to the judge to decide, whether to ask the question and how to formulate it (Austria, Germany, Scotland).

The national consultative body of judges (all courts and areas of law represented) in **the Netherlands** has developed a professional standard by regarding child interviews for each jurisdiction. The court enables minors to express their views on matters to be adjudicated. They are invited to an interview or can apply to the judge themselves with a letter (the informal court entrance). The child interview is preferably held in a child-friendly room, or on location if the child is in a juvenile institution. In cases concerning supervision and out-of-home placements children aged 12 and above are usually heard prior to the hearing. In all other cases, minors are preferably invited to speak with the judge on a different day than the parents. In principle, the judge who speaks to the child also does the hearing. Judges should ensure that they are adequately trained to conduct child interviews and ensure that the child understands what has been discussed. Also, another professional standard in criminal cases involving children has been established which stipulates, for example, that a juvenile judge has had specific training and has at least two years' experience as a criminal judge when taking office.

²⁸ Please consult: Articles 102-754 of the Civil Code of the Republic of Italy; Law No. 6/2004.

²⁹ Certain doubts related to this practice were also shared, pertinent to the fact that children may feel uncomfortable in front of the camera, which may negatively affect the quality of their evidence or other intervention.

In some jurisdictions a possibility of a waiver of the interrogation of minors in civil proceedings exists, if the questioning would endanger the welfare of the minor. Minors who have not reached the age of seven, may only be questioned by an appropriate expert (Austria) and the questioning must involve a person of their confidence in the questioning (Germany).

It is a common best practice that children have to be represented by a lawyer. If the family is not in a position to hire one, it is provided by the state (France, Germany, Italy). A child advocate (Kinderbeistand) can be appointed for children in court proceedings in Austria. The child advocate is a psycho-socially trained person with experience in working with children. As an independent and qualified confidant, he stands by the children for the duration of the court proceedings and together with the child, he is to give weight and voice to the child's wishes and interests before the court.

The possibility of external expertise in cases involving children also exists in the majority of the ENCJ members and observers.

France stood out with a novel practice, where a sympathetic dog may be provided to give emotional support to children in the procedural steps leading to the court proceedings and in the court proceedings. The **HJPC of Bosnia and Herzegovina** has created an illustrated publication 'My guide to criminal process' for children participating in criminal proceedings, detailing the course of the criminal procedure, the participants in the procedure and their role, the role of the child, and their rights and obligations during the process, as well as additional notes for parents (guardians). Besides the standard format, the guide is also available in Braille and hyperlegible font³⁰.

Several ENCJ members and observers brought it to the attention of the project group that comprehensive and far-reaching reforms were ongoing or recently undertaken with regard to the rights of children, including arrangements of their participation in the administration of justice. Spain has undergone such a reform in 2021³¹.

Best practices related to victims

The Victims' rights directive³² establishes minimum standards on the rights, support and protection of victims of crime and ensures that persons who have fallen victim to crime are recognized and treated with respect. They must also receive proper protection, support, and access to justice.

Through the implementation of this directive and the national instruments, which go beyond the implementation, ENCJ members and observers shared the following practices.

In **Finland** it is possible for the court to appoint a trusted person to assist the victim during the court proceedings. The judge is expected to ensure that the victim understands the questions posed. In **Austria** in civil proceedings, a possibility of 'gentle interrogation' of crime victims exists. In criminal proceedings, adversarial questioning

³⁰ The English version of the guide may be accessed here: <https://portalfo2.pravosudje.ba/vstvfo-api/vijest/download/64593>.

³¹ LO 8/2021, of 4 June, on the comprehensive protection of children and adolescents against violence, <https://www.boe.es/buscar/act.php?id=BOE-A-2021-9347>.

³² Directive 2012/29/EU of the European Parliament and of the Council, establishing minimum standards on the rights and protection of victims of crime.

(kontradiktorische Vernehmung) is allowed, in which the witness or victim is interviewed without facing the suspect. The judge interviews the victim in one room, while the public prosecutor, the suspect and the defense lawyer participate by video link from another room. The right to pose questions is exercised via technical means.

In **Germany**, to ensure that a victim can participate in safe conditions and environment there is the possibility of an online hearing and the free use of a lawyer. Furthermore, there is a possibility of a psychosocial support during the process and the hearings. A victim-offender mediation procedure also exists.

In **Scotland**, the Victims Witnesses and Justice Reform Bill, which envisages to create a victims and witnesses commissioner for Scotland is currently in the legislation procedure. Cross examination by an accused in person of a victim (complainer) in certain sexual offences and domestic abuse cases is prohibited. The High Court of Justiciary is moving to pre-recorded evidence, being the default in all cases of sexual offending. Specialist suites have been constructed to support the pre-recording of evidence from children and vulnerable witnesses.

In **the Netherlands** in addition to having facilities for victims, a professional standard for judges is available outlining how to engage with victims in criminal cases. Developed by the national consultative body of judges (all courts and jurisdictions are represented), this professional standard emphasizes the importance of how judges interact with victims.

In **Italy**, specific legislation (the so-called “codice rosso” statute, L. 19 July 2019 n. 69) has been approved in 2019 and then reviewed in 2023, for handling the crimes of domestic and gender-based violence. The law establishes procedures aimed at ensuring the speed of proceedings (especially in the investigation phase) and the protection of victims. Prior to this legislation, a resolution of the High Council for the Judiciary (CSM) on the organization and good practices for dealing with gender and domestic violence crimes was adopted. The resolution provided a systematic overview of good practices in the area. Existing legislation and best practices enable prosecutors and police to recognize the symptomatic signs of gender-based violence and to ensure effective protection of the victim. Among the most relevant indications provided to the offices are (i) to create specialized groups within the Public Prosecutor's Offices, (ii) to equip themselves with adequate facilities for hearing out the victims in a protected mode and (iii) to provide for the assignment of domestic and gender-based violence proceedings to specialised judges.

Free legal aid is available to victims of sexual offences and family abuse, regardless of income limits. In addition, when victims, who are in a vulnerable condition are to be heard, the judge may order the hearing in a place, time and manner that is suitable to ensure the protection of the person (e.g., use of a looking glass and intercom system). Almost all Italian public prosecutors' offices are equipped with rooms for listening to the vulnerable offended person or the minor and expert psychologists or child neuropsychiatrists are involved in the procedure.

With respect to the most appropriate precautionary measure to be taken to protect the victim, some prosecutors refer to the so-called 'Sara' protocol, a guiding tool for risk assessment through individual-related and dynamic statistical type parameters³³. The “Sara” protocol is used in addition to the ordinary criteria that are part of any evaluation of precautionary measures.

³³ See, for example, https://www.procura.bologna.giustizia.it/allegatinews/A_26334.pdf

Best practices related to migrants

Limited best practices were shared with regard to migrants. The practices focused mainly on asylum seekers, where state aid is available for the preparation of legal documents, legal representation in court, as well as provision of an interpreter during the court proceedings in the ENCJ members and observers. **Germany** underlined that these proceedings take place before an administrative authority, where the staff is specially trained, interpreters are available and counseling sessions are also held, aid organizations and charities are involved in the processes regarding these cases.

Attention was also drawn to the fact that on an international level, not only the EU has adopted specific legislative instruments regarding asylum seekers³⁴, but also the Council of Europe Committee on Legal Co-operation has put substantial efforts in codifying the existing international standards relating to the rules on the conditions of detention of migrants (Administrative detention of migrants)³⁵.

With regard to best practices related to migrants in general, **England and Wales** stands out, where the revised [Equal Treatment Bench Book](#) (2023), provides advice to judges of care and family courts in dealing with multi faith, multi-cultural and multi-ethnic communities. While recognizing the difficulty of balancing respect for different approaches to parenting within potentially diverse cultural norms and, at the same time, aiming to protect all children from parental maltreatment, it provides concrete advice to judges. For example, to explain the procedure and its purpose, to make the parents feel welcomed in court and listened to, to fully engage with different cultural perspectives when these are put forward and to seek feedback on the key points in order to check understanding of each point. In addition, guidelines on communication with speakers of English as a second or third language are provided³⁶.

Other best practices related to vulnerable litigants

The best practices of Spain and Scotland regarding vulnerable litigants in cases of domestic violence are of interest.

In Spain, an Observatory on Domestic and Gender Violence exists³⁷. The main purpose of this institution is to support the administration of justice regarding this form of violence, through the provision of guidelines and protocols for the actors in the justice system, who deal with this kind of violence and to ensure integral treatment

³⁴ See, (Asylum Procedures Directive) Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), (Reception Conditions Directive) Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast); (Qualification Directive) Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.

³⁵ See, <https://www.coe.int/en/web/cdcj/activities/administrative-detention-migrants>

³⁶ Equal Treatment Bench Book, p. 250

³⁷ <https://www.poderjudicial.es/cgpj/es/Temas/Violencia-domestica-y-de-genero/El-Observatorio-contra-la-violencia-domestica-y-de-genero/>

of this form of violence by different public administrations and services involved, to improve prevention, protection and evidentiary activity in the processes that follow³⁸.

Special courts for domestic violence against women exist, where both the judges and the personnel are trained in the field.

In Scotland a virtual domestic abuse court model is being piloted. The Scottish Courts and Tribunals Service is to develop a virtual domestic abuse court model including trauma informed practices and procedures. Procedures will aim to an early fixing of trial dates and enable a focused use of community justice resources for the benefits of both complainers and accused persons.

Training, guidelines and handouts

In addition to sharing best practices relating to the above-mentioned groups of vulnerable litigants, the importance of an ongoing continuous training in this field was stressed by the members of the project group. While in the majority of jurisdictions one-time courses, guidelines and handouts for judges, dealing with vulnerable litigants exist, and trainings are actively ongoing in some jurisdictions (Scotland), further efforts should be made to make them a part of a regular judicial training curriculum. In this regard Austria also noted that a possibility for judges to discuss stressful situations in small groups with a moderator exist.

In other jurisdictions efforts in this regard are also aimed at (potential) vulnerable litigants themselves, where leaflets are provided directly to vulnerable court users by various support services and available in court houses (Northern Ireland).

³⁸ The Guidelines and protocols for action are available here (in Spanish): <https://www.poderjudicial.es/cgpj/en/Subjects/Domestic-and-gender-violence/Guides-and-Protocols/>

6. COURT USER SURVEYS

As mentioned in Chapter 2 of this report, a gap in the measurement of the perception indicators concerns the court users. The ENCJ promotes court user surveys in all judiciaries, as the experience of court users is particularly important to assess the independence of the judiciary, but also because these surveys connect the courts with their users. Their direct observation of the functioning of the courts is highly informative for the assessment of independence at country level, but also for the individual courts.

Measurement requires conducting court user surveys, which require a lot of effort. So far, only a small number of judiciaries have implemented this type of survey. The surveys that were conducted have shown that the experience of court users often differs from the perceptions of citizens in general. Often, the perceptions of the court users are more positive than those of the population at large, in particular when the latter perceptions of judicial independence are negative. The ENCJ is stimulating its members and observers to conduct court user surveys, not only for the purpose of measuring judicial independence, but also to promote the courts to engage with their users³⁹. In previous years, a format for such surveys was developed. This format focused exclusively on judicial independence, which was felt now to be too narrow.

In the light of the above, in 2022/2023 an agreement to set up mentorship pairs among the judiciaries, which have carried out such a survey and the judiciaries willing to do so. Another recommendation concerned exploring the possibility to extend the model court user survey to include key aspects of the quality of justice.

During this project year, work was carried out in two main directions:

- judiciaries, where a court user survey was recently carried out, presented their outcomes and experiences;
- a discussion was held in the project group on including questions on aspects of quality in the model court user survey.

With regard to the first direction members of the project group had an opportunity to familiarize themselves with the methodology and results of the court user surveys carried out in France and in Bosnia and Herzegovina. In France the court user survey was carried out in the first half of 2023 at the Court of Lyon in collaboration with the Law Faculty of the University Jean Moulin – Lyon 3. In Bosnia and Herzegovina, a country-wide court user survey was carried out by a market research agency hired by the High Judicial and Prosecutorial Council of Bosnia and Herzegovina.

With regard to the second direction, members of the project group looked into the court user surveys developed by CEPEJ as well as reflected on the experiences of such surveys recently undertaken by the ENCJ members and observers. In the December meeting of the project group an initial proposal for additional quality related questions for the model court user survey was made, which was further discussed in the April meeting.

The members of the project group have agreed that it would be useful to include the following questions in the model court user survey:

³⁹ To see the full background on the work the ENCJ has carried out previously in the realm of the court user surveys, please see ENCJ Independence, Accountability and Quality report 2022/2023, p. 89-90.

1. additional questions regarding the court user. In particular, if the court user was a litigant, whether he or she was represented by a lawyer. If a court user was a victim, whether or not he (she) was assisted by a victim support organization and if so, what was their evaluation of the support⁴⁰;
2. questions related to the use of digital tools for commencing proceedings. The results of the ENCJ questionnaire on quality (2022/2023) revealed substantial differences with regard to digital filing and the use of digital procedures among the jurisdictions. While the questions were first tailored after the respective quality indicator, the project group has decided that a broader approach was required;
3. questions concerning the reception conditions at court in general and the courtesy of court staff;
4. a question on the satisfaction of the court user with the time-lapse between the commencement of the proceedings and the hearing;
5. a question whether the court user had an opportunity to explain himself/herself;
6. as an optional question, knowledge of the existence of Council for the Judiciary and its functions may be added.

In addition, the project group has agreed that providing a possibility for open comments after each set of questions would allow for more information and for more accuracy.

Please see the revised questionnaire in **Annex 3**.

While maintaining the focus on the independence of the judiciary, the inclusion of these quality related questions, allows for a broader and informative assessment of the judiciary as a whole or of a specific court. Also, the limited number of additional questions keeps the questionnaire short enough not to deter court users from responding.

In the next phases it is suggested for the ENCJ to:

- (1) Continue to promote carrying out court user surveys in the ENCJ members and observers.
- (2) Continue to work closely together with the European Commission to further explore the possibility to conduct an EU-wide court user survey.

⁴⁰ This information was regarded as instrumental to learn additional information related about the implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

7. NEXT STEPS

Surveys on independence and accountability

- The next survey among judges on the independence of the judiciary will be held in the first quarter of 2025. Preparation will start in September 2024. This will include the following: (a) To ensure that in each judiciary all judges are invited to participate and in the same way, each council or, in the absence of a council, alternative governing body draws up an implementation plan for the survey and shares it with the coordinators of the project team of the ENCJ. (b) Using the test links provided by the ENCJ Office, each Council/governing body will test whether judges can access the ENCJ website and fill in the survey from their work place, taking into account that conditions may differ from court to court, and, if there are problems, take measures to resolve these problems. (c) Councils/governing bodies will secure the active support of the court presidents and other key figures within the judiciary for the survey. (d) The general motivation to participate can be improved by having authoritative members of the judiciary promote participation, whether in leadership positions, judges' associations or other.
- The cooperation of the CCBE will be sought to organize, if possible simultaneously, a survey among lawyers about the independence of the judiciary, as this would be a valuable addition to the survey among judges.
- Each member and observer of the ENCJ is invited to conduct a court user survey, if it has not done so in recent years and share the results. The ENCJ will continue to work closely with the European Commission to further explore the possibility to conduct an EU-wide court user survey.

Connecting with society

- A dialogue will be initiated between the ENCJ and civil society organizations/human rights organizations at EU level on societal issues and perceptions regarding judicial independence and accountability in the form of meetings with a project team.
- The work will be started on developing the format for an external review of the Councils for the Judiciary, learning from national experience so far. This is a first step towards the external review of the judiciary as a whole. External review would serve two purposes: (1) providing a council with suggestions for improvement and (2) increasing the shared knowledge of the ENCJ about judicial governance.
- Diversity of the judiciary and the selection of judges: the current Independence and Accountability indicator is based on the ENCJ guidelines that judges are selected only on merit. This limits diversity policies to only candidates of equal capability. The question will be considered whether or not this approach is too restrictive.

Conceptual issues concerning independence and accountability

- An open discussion will be held about the position of Constitutional Courts in the framework of the independence and accountability of the judiciary. Given the impact of Constitutional Courts on independence, an exploratory discussion is needed to determine the position of the ENCJ on these courts, in particular in relation to judicial independence.

Quality

- Further work on the mandate of Councils for the Judiciary, including but not limited to individual Councils for the Judiciary will be carried out;
- A review of particular indicators of the Questionnaire on Quality of the Judiciary will be undertaken.

Annex 1. Strategies for the Judiciary of Finland and Sweden

Finland: The strategy includes the basic role, vision and key objectives of the judiciary.

THE STRATEGY OF THE JUDICIARY 2023–2033

Basic task	The independent and impartial courts provide legal protection by ruling on civil, criminal and administrative cases brought before the courts.		
Vision	At the core of the rule of law – Courts provide a high standard of legal protection quickly and using modern methods		
Goals	The activities and services of the judiciary respond to the needs of society and people	The staff of the judiciary are competent, committed and prosperous	The basic conditions for the functioning of the judiciary are ensured
	<ul style="list-style-type: none"> Cases are decided quickly, at a high standard and at a reasonable cost. Legal protection is equally ensured throughout the country. The courts produce a high quality and uniform experience of case management and customer service. E-services are comprehensive and well-functioning. The importance and activities of the judiciary are well known, and people have trust in the judiciary. 	<ul style="list-style-type: none"> Working methods are effective and correspond to best practices. Job descriptions are clear and allow staff to develop in the course of their work. Leadership promotes success and well-being at work. Information systems streamline and facilitate work. The development of skills is continuous and effective. The judiciary is a good and desirable workplace. 	<ul style="list-style-type: none"> The judiciary shall, with justified views, ensure that: <ul style="list-style-type: none"> Independence is strong. Basic funding is secured. Pay is competitive. The court structure and the provisions on composition and procedures are appropriate. The facilities are separate, secure and functional. The digital working environment is functional and suitable for court proceedings. The judiciary ensures continuity of operations in different circumstances.

Sweden: the strategy includes the basic role, vision and priorities of the judiciary

The judiciary in the society

The role of the judiciary in the society is known and the courts have a strong independence. The public and the media understand why the courts decide cases the way they do. The courts decide cases quickly and with high quality.

Priorities 2023-2025

- Work for the independence of the courts
- Communicate the role of courts in the society
- Work to minimise the risk of undue influence

<h3 style="margin: 0;">A developed case management</h3> <p style="font-size: small; margin: 0;">We have a uniform case management. We are innovative in our organisation development and our employees are active in developing the way we work. The digital support systems are stable and simplify the work of the courts. Parties and professional actors can easily follow and interact in their cases. Availability is high.</p> <p>Priorities 2023-2025</p> <ul style="list-style-type: none"> Develop case management with the support of digitisation where we use structured and reusable information. Automate simple and routine tasks Make rule changes in order to support the development work Continuously improve our working methods Develop a method to calculate the effects of the digitalization of the courts 	<h3 style="margin: 0;">Enhanced confidence and security</h3> <p style="font-size: small; margin: 0;">Those who come into contact with the court receive a treatment that strengthens their confidence in the legal process. Everyone feels safe in the court's premises. Our communication is uniform and easily accessible.</p> <p>Priorities 2023-2025</p> <ul style="list-style-type: none"> Work for a high level of security in all courts Develop and simplify ways to come in contact with the courts Use clear language and increase uniformity in judgments and decisions as well as in our external communication 	<h3 style="margin: 0;">An attractive place to work</h3> <p style="font-size: small; margin: 0;">We attract, develop and retain the best talents. Employees and managers are committed and good role models for the organisation. The work environment is adapted to the organisation and the modern working life.</p> <p>Priorities 2023-2025</p> <ul style="list-style-type: none"> Develop leadership and the conditions for this Develop the spirit of the workforce Develop the working environment Have a long-term and stable competence of staff 	<h3 style="margin: 0;">A sustainable organisation</h3> <p style="font-size: small; margin: 0;">We have a long-term secured economy and a functional organisation. We have a well-developed collaboration with joint planning, management and follow-up. The shared resources are distributed and used optimally based on a holistic perspective. We contribute to a sustainable society.</p> <p>Priorities 2023-2025</p> <ul style="list-style-type: none"> Work for a long-term sustainable economy Implement the strategic focus through active collaboration in governance, planning and follow-up Develop support and forms for effective cooperation and create regulations that better support such cooperation Work for more sustainable courts
---	---	--	---

Annex 2. Survey among the judges of Europe, 2025



European Network of Councils
for the Judiciary (ENCJ)

Réseau européen des Conseils
de la Justice (RECJ)

FINAL DRAFT Survey among professional judges about their independence 2025

PLEASE READ THE FOLLOWING INSTRUCTIONS CAREFULLY

- I. The reference period for answering all questions is the last three years (i.e. since January 2019), unless indicated otherwise.
- II. Unless stated otherwise, questions are to be answered:
Strongly disagree
Disagree
Not sure Agree
Strongly agree
- III. Please be assured that your identity and personal data will not be collected, you will stay anonymous.
- IV. Please let us know the name of the country in which you sit as a judge. The survey data will be published on a country-by-country basis.
- V. Please note that the questionnaire is addressed to and is about the full-time and part-time professional judges in your country. All questions should therefore be answered only with the professional judges in mind.

PLEASE ANSWER ALL OF THE FOLLOWING QUESTIONS:

The country in which I sit as a judge is

- My gender is** **Male** **Female** **I identify otherwise** **I do not wish to answer the question**

My judicial experience (years of service as a judge) is:

- 0-5 years
- 6-10 year
- 11-15 years
- 16-20 years
- 21-25 years
- Over 25 years

I work primarily at (one reply only):

- Court of first instance
- Appeal court
- Supreme Court/ Court of Cassation

I adjudicate primarily (one reply only):

- criminal cases
- administrative cases
- civil (including family) cases
- civil and criminal cases in equal measure
- civil, administrative and criminal cases in equal measure

I am member of a judges association:

- Yes
- No

1a. During the last three years I have been under inappropriate pressure to take a decision in a case or part of a case in a specific way.

1. Strongly disagree
2. Disagree
3. Not sure
4. Agree
5. Strongly agree

1b. If you have been subject to inappropriate pressure, which was the frequency of such pressure? (1b only when 1a agree/strongly agree)

- Very rarely
- Occasionally
- Regularly

1c By whom? (Multiple answers are possible)

- Constitutional Court
- Council for the Judiciary
- Court Management
- Government
- Media
- Other judges (including an association of judges)
- Parliament
- Parties and their lawyers
- Prosecution
- Social Media
- Supreme Court

2a. In my country I believe that during the last three years individual judges have accepted bribes (receiving money) or have engaged in other forms of corruption (accepted non-monetary gifts or favours) as an inducement to decide case(s) in a specific way.

1. Strongly disagree
2. Disagree
3. Not sure
4. Agree
5. Strongly agree

2b. If you agree or strongly agree with **2a**, did this occur:

- Very rarely
- Occasionally
- Regularly

3a. During the last three years I have been affected by a threat of, or actual, disciplinary or other official action because of how I have decided a case.

1. Strongly disagree
2. Disagree
3. Not sure
4. Agree

5. Strongly agree

3b. If you have been subject to such threat or action, by whom? (Multiple answers are possible)

- Council for the Judiciary
- Court Management
- Government
- Other judges (including an association of judges)
- Parliament
- Parties and their lawyers
- Prosecution
- Supreme Court

4. During the last three years my decisions or actions have been directly affected by a claim, or a threat of a claim, for personal liability.

1. Strongly disagree
2. Disagree
3. Not sure
4. Agree
5. Strongly agree

5. I believe during the last three years cases have been allocated to judges other than in accordance with established rules or procedures in order to influence the outcome of the particular case.

1. Strongly disagree
2. Disagree
3. Not sure
4. Agree
5. Strongly agree

6a. I believe judges in my country have entered the judiciary on first appointment other than solely on the basis of ability and experience during the last three years.

1. Strongly disagree
2. Disagree
3. Not sure
4. Agree
5. Strongly agree

6b. I believe judges in my country have been appointed to the Supreme Court/Cassation other than solely on the basis of ability and experience during the last three years.

1. Strongly disagree
2. Disagree
3. Not sure
4. Agree
5. Strongly agree

6c. I believe judges in my country in first instance and appeal courts have been promoted /appointed to another position other than on the basis of ability and experience during the last three years. (Note experience may include seniority)

1. Strongly disagree
2. Disagree
3. Not sure
4. Agree
5. Strongly agree

7a. I believe that in my country decisions or actions of individual judges have, during the last three years, been inappropriately influenced by the actual, or anticipated, actions of the media (i. e. press, television or radio).

1. Strongly disagree
2. Disagree
3. Not sure
4. Agree
5. Strongly agree

7b. I believe that in my country decisions or actions of individual judges have, during the last three years, been inappropriately influenced by actual, or anticipated, social media postings (for example, Facebook, Twitter or LinkedIn).

1. Strongly disagree
2. Disagree
3. Not sure
4. Agree
5. Strongly agree

8a. In the last three years, in my function as a judge, I have been subjected to intimidation and/or threats by court users or others from outside the court.

- No
- Very rarely
- Occasionally
- Regularly

8b. In the last three years, in my function as a judge, I have been physical attacked by court users or others from outside the court.

- No
 Very rarely
 Occasionally
 Regularly

9. During the last three years I believe that my independence as a judge has been respected by :

	1. Strongly Disagree	2. Disagree	3. Not sure	4. Agree	5. Strongly Agree	6. Does not exist
Association of Judges						
Constitutional Court						
Council for the Judiciary						
Court Management incl Court President						
Government						
Lawyers						
Media (i.e. press, television or radio)						
Parliament						
Parties						
Prosecution						
Social Media (for example Facebook, Twitter or LinkedIn)						
Supreme Court						

10. During the last three years changes occurred in my working conditions that negatively influenced my independence. Please indicate per category:

	1.Strongly Disagree	2.Disagree	3.Not sure	4.Agree	5.Strongly Agree	6.Not applicable
Pay, pension, retirement age						
Working hours						
Caseload						
Court Resources						
Digitalization						
Conduct at work¹						

¹ Including sexual harassment and discrimination.

11. During the last three years I have had to take decisions in accordance with guidelines developed by judges contrary to my professional opinion (optional - guidelines do not include the obligation to follow precedent).

1. Strongly disagree
2. Disagree
3. Not sure
4. Agree
5. Strongly agree

12a During the last three years the management of my court has exerted pressure on me to decide individual cases in a particular way.

1. Strongly disagree
2. Disagree
3. Not sure
4. Agree
5. Strongly agree

12b During the last three years the management of my court has exerted inappropriate pressure on me to decide individual cases within a particular time.

1. Strongly disagree
2. Disagree
3. Not sure
4. Agree
5. Strongly agree

12c. During the last three years the management of my court has exerted inappropriate pressure on me to reach production targets (number of adjudicated cases).

1. Strongly disagree

2. Disagree
3. Not sure
4. Agree
5. Strongly agree

13. In the last three years, I believe judgements that went against the interests of the government were usually implemented/enforced in my country

1. Strongly disagree
2. Disagree
3. Not sure
4. Agree
5. Strongly agree

14. I believe that the independence of the judiciary in my country is strengthened by being part of the European Union, the prospect of becoming part of the European Union or being part of the EEA⁴¹.

1. Strongly disagree
2. Disagree
3. Not sure
4. Agree
5. Strongly agree

15. On a scale of 0 - 10 (where 0 means "not independent at all" and 10 means "the highest possible degree of independence").

The professional judges in my country are:

0 1 2 3 4 5 6 7 8 9 10

not independent at all

completely independent

⁴¹ Only for Norway.

16. On a scale of 0 - 10 (where 0 means "not independent at all" and 10 means "the highest possible degree of independence).

As a judge I

0 1 2 3 4 5 6 7 8 9 10

do not feel independent at all

feel completely independent

17. Only answer if there exists a Council for the judiciary in your country: On a scale of 0 - 10 (where 0 means "not independent at all" and 10 means "the highest possible degree of independence).

The Council for the judiciary in my country is

0 1 2 3 4 5 6 7 8 9 10

not independent at all

completely independent

18. Only answer if there exists a Council for the Judiciary in your country: I believe that in my country the Council for the Judiciary has the appropriate mechanisms and procedures in order to defend judicial independence effectively.

1. Strongly disagree
2. Disagree
3. Not sure
4. Agree
5. Strongly agree
6. Not applicable (no Council)

19. Since I started to serve as a judge my independence has:

- Improved much
- Improved a little
- Stayed the same
- Deteriorated a little
- Deteriorated much

20. In my country, I believe that judges adhere to high ethical standards.

1. Strongly disagree
2. Disagree
3. Not sure
4. Agree
5. Strongly agree

21. In my country, I believe that judicial misconduct is effectively addressed by the judicial authorities.

1. Strongly disagree
2. Disagree
3. Not sure
4. Agree
5. Strongly agree

22. In my country judicial corruption is effectively addressed by the judicial authorities.

1. Strongly disagree
2. Disagree
3. Not sure
4. Agree
5. Strongly agree

Annex 3. The consolidated court user questionnaire

The Consolidated Questionnaire



European Network of Councils
for the Judiciary (ENCJ)

Réseau européen des Conseils
de la Justice (RECJ)

Dear Sir/Madam

This questionnaire is a part of an assessment of the quality of the justice system focusing on the quality, independence and impartiality of the judiciary. The questionnaire is part of a European effort to secure and enhance the independence and quality of judiciaries.

Your opinion and suggestions are important to us and we would be grateful if you would take a little time to reply to the questions below. The questionnaire is anonymous, and we guarantee that your replies will be dealt with in the strictest confidence.

Question 2 is only to be answered by a party, a witness and a victim in a criminal case.

About you. Please tick the relevant box(es):

A. In what capacity are you at the court today?

- As a party
- Witness
- Victim in a criminal case
- Lawyer/ representative for a party
- Other

B. Gender?

- Male
- Female
- I identify otherwise
- Prefer not to answer

C. Age?

- Under 18
- 18 – 30
- 31 – 50
- 51 – 65
- 65 and over
- Prefer not to answer

D. If you were at the court today as a litigant, were you legally represented?

- Yes
 No

E. If you were a victim in this case, were you assisted by a victim support association ?

- Yes
 No

and if yes, please rate the quality of the assistance (support)

- Excellent
 Satisfactory
 Medium
 Unsatisfactory
 No opinion

1. About the commencement of proceedings. Please tick relevant boxes:

A. If a possibility to commence a case using digital tool exists, did you use it?

- Yes
 No

B1. If you have used it, did you find it convenient?

- Yes
 No

B2. If you did not use it, please briefly explain why here:

2. About your experience in court today? Please tick the relevant box(es):

A. If you are a party to a case - what was the outcome of your case?

- Successful
 Partly successful
 Unsuccessful
 Adjourned
 Not yet known

A.1. How would you rate the general reception conditions at the court?

- Excellent
 Satisfactory
 Medium
 Unsatisfactory
 No opinion

A.2. How would you rate the courtesy of staff?

- Excellent
- Satisfactory
- Medium
- Unsatisfactory
- No opinion

A.3. How did you find the orientation information?

- Excellent
- Satisfactory
- Medium
- Unsatisfactory
- No opinion

A.4 How did you find the waiting conditions?

- Excellent
- Satisfactory
- Medium
- Unsatisfactory
- No opinion

B. The hearing started on time

- Yes
- No
- Not applicable

C. The hearing was postponed until another day:

- Yes
- No
- Not applicable

D. All relevant documents were available in due time before the hearing:

- Yes
- No
- Not applicable

E. The hearing was postponed until another day:

- Yes
- No
- Not applicable

F. All relevant documents were available in due time before the hearing:

- Yes
- No
- Not applicable

G. Assess your satisfaction with the time-lapse between the commencement of the proceedings and the hearing:

- Excellent
- Satisfactory
- Medium
- Unsatisfactory
- No opinion

If you have any additional comments regarding your experience in the court today, please share them here:

3. I understood clearly:

(Question 3 is only to be answered by a party, witness or, in a criminal case, a victim)

A. The issues in the case

- Yes
- No
- Not applicable

B. The procedure

- Yes
- No
- Not applicable

C. My duty to the Court

- Yes
- No
- Not applicable

D. My rights during the hearing

- Yes
- No
- Not applicable

4. The judge listened carefully to my side of the case:

- Yes
- No
- Not applicable

5. The judge treated all parties and their representatives respectfully:

- Yes
 No
 Not applicable

6. The judge treated all parties and their representatives fairly:

- Yes
 No
 Not applicable

7. I am confident that the case has been (or will be) resolved fairly:

- Yes
 No
 Not applicable

8. If you are not confident that the case will be (or has been) resolved fairly, why not? (more than one box may be ticked):

- I do not feel that the judge was adequately prepared for the hearing
 I do not feel that the judge acted in a competent and professional manner
 I find the judge to lack communication skills
 I did not have an opportunity to explain myself
 I do not feel that the proceedings were open and transparent
 I do not find that the judge explained the reasoning properly
 I find that a party/ representative may have had an inappropriate impact on the decision
 Other (please say why here):
- -----

9. Do you feel that the judge(s) was independent in the conduct of the case. (On a scale of 0 - 10 where 0 means "not independent at all" and 10 means "the highest possible degree of independence) Please tick the relevant box.

- | | | | |
|----------------------------|----------------------------|----------------------------|-----------------------------|
| <input type="checkbox"/> 0 | <input type="checkbox"/> 3 | <input type="checkbox"/> 6 | <input type="checkbox"/> 9 |
| <input type="checkbox"/> 1 | <input type="checkbox"/> 4 | <input type="checkbox"/> 7 | <input type="checkbox"/> 10 |
| <input type="checkbox"/> 2 | <input type="checkbox"/> 5 | <input type="checkbox"/> 8 | |

Note:

An independent judiciary is essential in a democratic society. An independent judge is free from political or other inappropriate pressure. An independent judge is impartial and treats all parties fairly.

10. Overall, I am satisfied with the conduct of the hearing by the judge(s) (On a scale of 0 - 10 (where 0 means "not satisfied at all" and 10 means "the highest possible degree of satisfaction) Please tick the relevant box:

- | | | | |
|----------------------------|----------------------------|----------------------------|-----------------------------|
| <input type="checkbox"/> 0 | <input type="checkbox"/> 3 | <input type="checkbox"/> 6 | <input type="checkbox"/> 9 |
| <input type="checkbox"/> 1 | <input type="checkbox"/> 4 | <input type="checkbox"/> 7 | <input type="checkbox"/> 10 |
| <input type="checkbox"/> 2 | <input type="checkbox"/> 5 | <input type="checkbox"/> 8 | |

11. **Before coming to Court today, did you expect to be treated fairly ?** (On a scale of 0 - 10 (where 0 means "I did not at all expected to be treated fairly" and 10 means "I absolutely expected to be treated fairly ") Please tick the relevant box:

- | | | | |
|----------------------------|----------------------------|----------------------------|-----------------------------|
| <input type="checkbox"/> 0 | <input type="checkbox"/> 3 | <input type="checkbox"/> 6 | <input type="checkbox"/> 9 |
| <input type="checkbox"/> 1 | <input type="checkbox"/> 4 | <input type="checkbox"/> 7 | <input type="checkbox"/> 10 |
| <input type="checkbox"/> 2 | <input type="checkbox"/> 5 | <input type="checkbox"/> 8 | |

12. **Before coming to Court today, did you trust the judicial system?** (On a scale of 0 - 10 (where 0 means "no trust at all" and 10 means "the highest possible degree of trust) Please tick the relevant box:

- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10

13. **Since coming to court today, has your trust in the judicial system increased or decreased?**

- Increased (your experience was better than expected)
- Decreased (you were disappointed)
- Remained unchanged

(Optional question)

14. **Are you aware of the national Judicial Council/other governing body of the judiciary?**

- Yes
- No

14. 1. If yes, are familiar with its tasks?

- Yes
- No

14. 2. If yes, are you aware of its role with regard to judicial independence?

- Yes
- No

If you have any comments or suggestions please share them here?

Thank you!