

Relations between the Judiciary and the other two Powers of the State from the European Perspective

From the judge's point of view, but not in their behalf but on the behalf of the citizens everything starts and ends with an issue of independence of judges and judiciary as organization or as third equal state power.

In that, sense and we can agree on that that judiciary and judges are weakest power of all three, relation and interaction between judiciary and other powers of the state who hold the sword and the purse is of crucial importance for judges and relations have impact on fulfilment of judges mission in the society and full exercise of citizen's rights.

In Europe, with exclusion of only few sad examples everything starts and ends with famous Article 6. of European convention of Human rights.

Article 6 of the European Convention on Human Rights (ECHR) guarantees the right to a fair trial in both criminal and civil proceedings. Key aspects of this right include a fair and public hearing within a reasonable time by an independent and impartial tribunal, the presumption of innocence for those charged with a criminal offense, and specific minimum rights for defendants, such as the right to legal counsel and to be informed of the charges.

Key Components of Article 6. Are:

- **Fair Hearing:** Everyone is entitled to a fair hearing in the determination of their civil rights and obligations or of any criminal charge.
- **Public Hearing:** Judgments must be pronounced publicly, although the press and public may be excluded in specific circumstances, such as for the protection of private life or national security.
- **Reasonable Time:** Hearings must be conducted within a reasonable time.
- **Independent and Impartial Tribunal:** The tribunal or decision-maker must be established by law, independent, and impartial.
- **Presumption of Innocence (Criminal Cases):** Anyone charged with a criminal offense is presumed innocent until proven guilty according to law.

- Minimum Rights for Defendants: Individuals charged with a criminal offense have several minimum rights, including:
- The right to be informed promptly and in detail, in a language they understand, of the nature and cause of the charge.
- The right to have the necessary time and facilities to prepare their defense.
- The right to defend themselves in person or through legal counsel of their choice.
- The right to free assistance from an interpreter if they do not understand the language of the court.

Scope of Article 6

Civil and Criminal Proceedings: Article 6 applies to both civil matters,(contract or employment law) and criminal matters.

Access to Courts: It ensures that everyone has access to the courts to have their civil rights determined.

As it has been stated in *Perez v France* (2004) – **"the right to a fair trial holds so prominent a place in a democratic society that there can be no justification for interpreting Article 6 § 1 of the Convention restrictively"**

Almost the same comes out is for 27 EU Countries where in **Article 47 of EU Charter of Fundamental Rights it is postulated :**

“Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice”

In the scope of Council of Europe and that means in whole Europe one of important source of so called soft law is **Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and**

responsibilities (Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies)

In the Recommendation one whole Chapter is devoted to external independence of judges and among other things is stated:

- The external independence of judges is not a prerogative or privilege granted in judges' own interest but in the interest of the rule of law and of persons seeking and expecting impartial justice. The independence of judges should be regarded as a guarantee of freedom, respect for human rights and impartial application of the law. Judges' impartiality and independence are essential to guarantee the equality of parties before the courts.
- Without prejudice to their independence, judges and the judiciary should maintain constructive working relations with institutions and public authorities involved in the management and administration of the courts, as well as professionals whose tasks are related to the work of judges in order to facilitate an effective and efficient administration of justice.
- All necessary measures should be taken to respect, protect and promote the independence and impartiality of judges.
- The law should provide for sanctions against persons seeking to influence judges in an improper manner.
- Decisions of judges should not be subject to any revision other than appellate or re-opening proceedings, as provided for by law.
- With the exception of decisions on amnesty, pardon or similar measures, the executive and legislative powers should not take decisions which invalidate judicial decisions.
- If commenting on judges' decisions, the executive and legislative powers should avoid criticism that would undermine the independence of or public confidence in the judiciary. They should also avoid actions which may call into question their willingness to abide by judges' decisions, other than stating their intention to appeal.

Consultative Council of European Judges, unique body not in Europe but in the World, because it is only composed of judges who do not represent their States or their Judiciaries, but themselves as individuals in 2015. Delivered an Opinion No.18." **"The**

position of the judiciary and its relation with the other powers of state in a modern democracy”

In this Opinion which leans on other CCJE Opinions, ECHR and judgments of ECtHR, Council of Ministers Recommendations and other international documents where judges examined different aspects of judges’ position, relation with other powers of the state but also other factors in the society which have certain role in creating public opinion like media, ombudsman, parliamentary committees etc.

Concluding CCJE recommends these principles to be followed and respected:

- 1. The judiciary is one of the three powers of state in a democracy. They are complementary, with no one power being “supreme” or dominating the others (paragraph 9).**
- 2. In a democratic state, the three powers of the state function as a system of checks and balances that holds each accountable in the interest of society as a whole (paragraph 9).**
- 3. The principle of the separation of powers is itself a guarantee of judicial independence. The judiciary must be independent to fulfil its constitutional role in relation to the other powers of the state, society in general, and the parties to any particular dispute (paragraph 10).**
- 4. The legitimacy of the judiciary and individual judges is given, first and foremost, by the constitution of each of the member states, all of which are democracies governed by the rule of law.** The constitution creates the judiciary and thereby confers legitimacy on the judiciary as a whole and the individual judges who exercise their authority as part of the judiciary: “constitutional legitimacy”. The constitutional legitimacy of individual judges who have security of tenure must not be undermined by legislative or executive measures brought about as a result of changes in political power (paragraphs 13 - 15 and 44).

5. This constitutional legitimacy of the judiciary is reaffirmed by public confidence in and respect for the judiciary. These must be constantly earned and retained by the judiciary through excellent work of the highest standards: this is what the CCJE calls “functional legitimacy” (paragraphs 16 – 19).

6. The judiciary (like the other two powers of state) provides a public service. Therefore, **the judiciary, like the other powers, has the responsibility of demonstrating to the other powers of the state and to society at large the use to which its power, authority and independence have been put.** This can be called “accountability” (paragraphs 20 - 22). **This “accountability” takes several forms.**

7. First, there is the **appeal system**. The appeal system is, in principle, the only way by which a judicial decision can be reversed or modified after it has been handed down and the only way by which judges acting in good faith can be held accountable for their decisions. The CCJE has called this “**judicial accountability**” (paragraphs 23, 26).

8. Secondly, judges are made accountable by **working in a transparent fashion, by having open hearings and by giving reasoned judgments**, engaging with the public and the other powers of state. The CCJE has called this form of accountability “**explanatory accountability**” (paragraphs 27-32).

9. Thirdly, if a judge has engaged in improper actions of a sufficiently serious nature, he or she **must be held accountable in a robust way, e.g. through the application of disciplinary procedures and, if appropriate, the criminal law.** The CCJE has called this “**punitive accountability**”. Care must be taken, in all cases, to preserve judicial independence (paragraphs 33 and 37).

10. With regard to the relations between the three powers of the state: first, judges, like all other citizens, **are entitled to take part in public debate, provided that it is consistent with maintaining their independence and impartiality** (paragraph 42).

11. **The other powers of the state should recognise the legitimate constitutional function that is carried out by the judiciary** and ensure it is given sufficient resources to fulfil those functions. Analyses and criticisms by one power of state of either of the other powers should be undertaken in a climate of mutual respect (paragraph 42).

12. The judiciary must be aware that there are limits to judicial and legal intervention in relation to political decisions that have to be made by the legislative and executive powers. Therefore, all courts within the judicial power must take care not to step outside the legitimate area for the exercise of judicial power (paragraph 40).

13. **Decisions of the legislative or executive powers which remove basic safeguards of judicial independence are unacceptable even when disguised** (paragraph 44).

14. Ministries of Justice must not exert influence on the administration of courts through directors of courts and judicial inspections in any way that might endanger judicial independence. The presence of officials of the executive within the organising bodies of courts and tribunals should be avoided. Such a presence can lead to interference in the judicial function, thus endangering judicial independence (paragraphs 48-49).

15. In order **to preserve a proper separation of powers, committees of inquiry or investigation (whether parliamentary or otherwise), should never interfere with** investigations or trials that have been or are about to be initiated by judicial

authorities. Such non-judicial investigations are never a substitute for a judicial process (paragraph 46).

16. The CCJE recommends that legislation of member States clarifies the relationships between the powers of the “Ombudsman” (or similar agencies’) and the powers of the courts (paragraph 47).

17. Chronic underfunding of the judiciary should be regarded by society as a whole as an unacceptable interference with the judiciary’s constitutional role, because it undermines the foundations of a democratic society governed by the rule of law (paragraph 51).

18. **Analyses and criticisms by one power of state of the other powers should be undertaken in a climate of mutual respect.** Unbalanced critical commentary by politicians is irresponsible and can cause a serious problem. It can undermine public trust and confidence in the judiciary and could, in an extreme case, amount to an attack on the constitutional balance of a democratic state (paragraph 52). Individual courts and the judiciary as a whole need to discuss ways in which to deal with such criticism (paragraph 53).

19. The executive and legislative powers are under a duty to provide all necessary and adequate protection where the functions of the courts are endangered by physical attacks or intimidations directed at members of the judiciary (paragraph 52).

20. **Politicians must never encourage disobedience to judicial decisions let alone, as it has happened in certain states, violence against judges (paragraph 52).**

At the very end, there is no better way to conclude but by present part of **Declaration of Riga adopted at ENCJ Assembly in June 2025**. which reflects most severe problems judges and judiciaries are facing in this very moment:

The threats to the Rule of Law vary in nature, magnitude and effect. Some of them are clear, while others are more obscure and emerge through a combination of measures put in place over a period of time. The effects of such measures can range from a chilling effect within the judiciary to the erosion of society's trust in judicial institutions.

Several challenges relate to the separation of powers and the system of checks and balances — the very core of democracy. In this framework, the judiciary must retain the power to review the legality of the actions of the executive and, where appropriate, the legislature. When this balance is disturbed, the judicial system cannot function properly.

The right to a fair trial by an independent tribunal is undermined.

In some countries, relations with the other state powers have become increasingly problematic. The situation has deteriorated in various ENCJ Members and Observers. The undermining of the judiciary can include the failure to implement decisions, which go against the government, a lack of proper consultation with the judiciary on relevant draft legislation, and the implementation of reforms without the consent of the judiciary.

Judges should accept legitimate criticism. However, it has occurred that state powers and individual politicians have attacked publicly both individual judges and the judiciary as a body. Inevitably, such attacks will diminish or destroy society's confidence in the administration of justice in its entirety. Attacking judges for performing their judicial functions is a clear breach of the separation of powers.

I hope that our message would always be:

We will never surrender, we will never give up, and IAJ is there to help and in some cases take a leading role.

Thank you for your attention.