Explanatory meeting

Presentation of European Standards
Chapter 23 - Judiciary
Brussels, 27 September 2018

European Commission
Justice

These slides accompany the explanation of the acquis to Albania and North Macedonia and can only be used for that purpose. Their content is subject to further development of the acquis and interpretation by the Court of Justice of the European Union

Sources – Acquis/Hard Law

- **Art. 49 TEU – Requirement for new members: Respect and promotion of EU values**

- **Art. 2 TEU/Art. 19 TEU/Art. 67 TFEU – Different legal systems but common Rule of Law Standards for:**

  - **Assuring effective legal protection (effective remedy/fair trial)**
    - **- Art. 47 Charter of Fundamental Rights**
    - **- Art. 6 + 13 European Convention on Human rights**

Sources – Acquis/Hard Law

- **Assuring judicial cooperation based on mutual trust and mutual recognition**
  - **Example: European Arrest warrant (ECJ, C-216/18)**

Art. 7 TEU – Serious and persistent breach of RoL

- **Rule of Law Framework**
- **Reasoned proposal of EU- Commission (20.12.2017)**

Art. 258 TFEU – Infringement procedure

Sources – European Standards/Soft law

- **Council of Europe (CoE):**

- **Recommendation CM/Rec(2010) 12 of the Committee of Ministers to member States on judges: independence, efficiency and responsibilities**
- **European Guidelines on Ethics and conduct for public prosecutors (the Budapest guidelines adopted on 31 May 2005)**
- **Recommendation Rec(2000) 19 on the Role of Public Prosecution in the Criminal System**
- **European Charter on the statute of judges (1998)**

- **Venice Commission (VC), Rule of Law Checklist (2016)**
- **VC, Report on the independence of the judicial system (2010) – Part I: the independence of judges, Part II: the prosecution service**
- **Compilation of VC opinions and reports concerning courts and judges and concerning prosecutors**

Sources – European Standards/Soft Law

- **CoE - Consultative bodies:**
  - **Consultative Council of European Judges (CCEJ) Opinion No 1 (2001) on standards concerning the independence of the judiciary and the irremovability of judges**
  - **CCEJ Opinion No 3 (2002) on ethics and liability of judges**
  - **CCEJ Opinion No 11 (2008) on quality of judicial decisions**
  - **CCPE Opinion No 9 (2014) on European Norms/Principles for prosecutors**

- **Others:**
  - **European Network of Councils for the Judiciary (ENCJ), Development of minimum judicial standards I – V (appointment, evaluation, independence, disciplinary proceedings etc.)**
  - **United Nations (UN), Bangalore Principles of Judicial Conduct (adopted 23 April 2003)**

Principle of Independence of judges

European Court of Justice (C-216/18) – two main aspects:

1) No undue external influence/pressure

- **Avoidance of criticism that undermines independence/public confidence**
- **Possibility of recourse to an independent authority and sanctions in case of undue influence**
- **Court decisions need to be respected/enforced**

2) Impartial decision-making in concrete cases

- **Equal distance from parties in proceedings/ no bias**
- **No private interest/strict application of the law**

Principle of autonomy of prosecutors

Difference between autonomy of prosecutors and judicial independence:

- **No need for approval or confirmation of actions but**
- **due to <u>hierarchical organisation</u> bound by guidelines/instructions.**

Safeguards against undue interference:

- **General guidelines must be in writing and made public**
- **Individual instructions must be in writing, reasoned and become part of the court file**
- **Instructions not to prosecute should be ruled out or subject to an appropriate specific control**
- **Right to request evaluation by an independent body if an instruction is deemed illegal**
- **Right to replacement if an instruction is illegal/ against consciousness.**

European Standards: Appointment/Promotion/Evaluation

- **Decisions concerning the appointment/promotion and evaluation of judges and prosecutors should be based on objective criteria pre-established by law. Main criteria for recruitment should be merit/ability, integrity and experience**
- **No discrimination on any ground (sex, race, color, political opinion etc.)**
- **The authority taking these decisions should be independent of executive and legislative powers**
- **An unsuccessful candidate should be entitled to know why he failed and should have the right to challenge the decision**
- **Judges/prosecutors should be appointed permanently until retirement age**
- **Decent remuneration in order to shield from undue influences**

European Standards: Accountability

- **Discipline offenses should be defined with sufficient clarity**
- **Decision of judges and prosecutors conducted in good faith should not give rise to disciplinary liability except in cases of malice and gross negligence**
- **Disciplinary proceedings should be conducted by an independent authority/court. Magistrates should have all the guarantees of a fair trial and the right to challenge the decision and sanction**
- **Disciplinary sanctions should be proportionate (no dismissal unless serious breach, recommendable to have a reasonable range of possible sanctions)**
- **No transfer to another court without consent should be possible except in cases of disciplinary sanctions or reform of the organisation of the judicial system**

Management bodies: HJC/HPC

- **Main function: safeguard the independence of the judicial system meanwhile avoiding negative effects of corporatism**
- **Recommended competences: appointment, promotion, evaluation, discipline + ethics, management**
- **Composition: A significant number (for HJP at least half) of its members should be judges/prosecutors chosen by their peers. If lay members are elected by parliament a qualified majority coupled with anti/deadlock mechanism should be ensured. The chair should be an impartial person.**
- **Exclusion of possible conflict of interest needs to be ensured.**
- **Councils should demonstrate the highest degree of transparency: Pre-established procedures, reasoned decisions and reports**

European Standards: Quality

- **Sufficient number of qualified support staff and adequate resources, facilities and equipment should be allocated to courts and prosecution services**
- **Judgements should be well reasoned**
- **Online access to jurisprudence (case law database including effective research tool)**
- **Consistency of case law (through decisions of higher courts and not through general directives or instructions)**

European Standards: Efficiency

- **Proceedings shall start and judicial decisions shall be made in a reasonable time (Art. 47 CFR/Art. 6 ECHR)**
- **There shall be a remedy against undue lengths of proceedings**
- **A functioning alternative dispute resolution system should be in place**
- **A functioning case management system should be in place (random allocation of cases, main statistical data)**

European Standards: Judicial Training

- **Judicial training is a guarantee of the independence and impartiality of judges**
- **Encourage participation in EJTN activities**
  - EJTN is **an essential actor of judicial training** and the only network at Union level gathering the judicial training bodies of the Member States.
  - **Nine principles of judicial training** https://prezi.com/view/0a0X19JIylxt2h1wwqNE/
  - the promotion of good training practices and a hub for expertise for WB
- **WB judicial training bodies- EJTN observers**
- **2017 EJTN grant from DG NEAR** – to cover participation of observers in EJTN (March- July 2018: Albania- 17 Participants, North Macedonia- 15)
- **Encourage participation in Justice Programme /take advantage of this** (Albania, Montenegro)- it allows participation in EJTN activities funded by this, but also applications for Calls for proposals launched under the Justice Programme
- **Encourage applications for TAIEX assistance** –Judicial Academies qualify as Local Coordinators

Final recommendations

- Use **tools of measurement** of real results like
  - CEPEJ indicators
  - Justice surveys
  - Track records

  for proactive monitoring, **guidance of reform process** and to help to convince public and Member States that there is real progress on the ground

- Enlargement negotiations is a **merit based process** (with focus on RoL) therefore best changes to make progress when real results can be shown and actions go beyond "minimum standards"

Thank you for your attention!

DG JUSTICE

International Unit 02/Training B1

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