

Statement of the European Association of Judges on the Communication of the European Commission on “Further strengthening the Rule of Law within the Union” - 03.04.2019 (COM (2019)163).

The European Association of Judges (EAJ) welcomes the Communication of the European Commission and strive of the Commission to strengthen the Rule of Law. The EAJ shares with the Commission the certitude that the Rule of Law is one of the basis values of the European Union. It wants to stress that the Rule of Law is based on the well-functioning of independent and impartial Courts, applying democratic enacted law. Due to the legal system of the Union, the application of Union law is mostly undertaken by the National Courts, which are acting as European Courts when applying Union law. Without independent and impartial national Courts, well-appointed with judges, support staff and technical equipment to be able to take on these tasks, the Rule of Law within the Union is at risk.

The EAJ welcomes the initiative of the European Commission to focus on the necessity of the functioning of the Rule of Law for the Union in all member states at any time. Although the right to an “independent tribunal” (ECJ, case C-216/18 PPU, LM-case, extradition from Ireland to Poland, 59) should be regarded as common ground between member states, it is at risk. Well recognised international standards on judicial independence, as put down in the recommendation CM/Rec (2010)12 of the Council of Europe, in the Venice Commission “Rule of Law Checklist” CDL-AD(2016)007 and as expressed in the International Charter of the Judge, (adopted by the Central Council of the International Association of Judges in Taiwan on November 17th, 1999 and updated in Santiago de Chile on November 14th, 2017) and other instruments give a sound legal basis on what judicial independence requires.

Therefore, for the EAJ, the disregard of the rights of citizens to an independent tribunal is not due to a lack of legal standards or misinformation by executives and lawmakers within the Union, but to wishful acts against Union law.

Infringements of the right of citizens to an independent tribunal can only be cut back by constant information of the citizens on this right, by continuous political debates on the Rule of Law mechanism within all political bodies of the Union and by increasing the case law of the ECJ on this issue.

Two main steps:

- Finding facts:

For the EAJ, having a sound basis of facts about the judiciary of each Member State is essential. The importance of such a database is shown in the above cited case C-216/18 PPU. In this case, the Court answered the question, if the surrender to another Member State after a European arrest warrant has been issued can be jeopardized by a risk of unfair trial on account of systemic or generalised deficiencies concerning the judiciary of the issuing Member State. “The executing judicial authority must” the Court stated, “as a first step, assess, on the basis of material that is objective, reliable, specific and properly updated concerning the operation of the system of justice in the issuing Member State” (C- 216/18 PPU, 61). To establish the risk for a citizen of being denied his right to a fair trial, the national courts do need information they cannot assess without support of the Union bodies. The facts to rule on have to be provided by the Union and not only by the issuing Member State.

The EAJ is prepared to join the debate on how this assessment of facts could be done within the Union and how the Courts could use these findings in their procedures.

- Building a common culture of the Rule of Law:

Besides building an increasing body of case law on judicial independence and the Rule of Law, judicial independence must be promoted by political discussion. It is an issue of greatest political importance within the Union when a Member State fails to safeguard judicial independence. The Art 7 mechanism is part of a system of execution after a Member State has failed at a time when it might be too late. For the EAJ, the discussion to create public awareness on risks for the Rule of Law must occur before it is time for sanctions. A Rule of Law panel, hosted by Union bodies with the participation of the major stakeholders on the Rule of Law- members of the national judiciaries and judges associations, bars, representatives of citizens – to discuss in public raising problems of judicial independence in Member State might give such a culture of the Rule of Law a framework to work within.

The EAJ is willing to participate in such a debate.

EAJ welcomes the effort of the European Commission to start the debate on the strengthening of the Rule of Law within the Union. It is a very necessary debate indeed: if the Rule of Law fails within some Member States, the Union as a whole is under threat. The EAJ will join the Commission in this effort.