



Association Européenne des Magistrats

Groupe régional de l'Union Internationale des magistrats

European Association of Judges

Regional Group of the International Association of Judges

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STATEMENT FROM THE EUROPEAN ASSOCIATION OF JUDGES (EAJ)

THE ASSISES DE LA JUSTICE- WHAT HAS COME OUT OF IT

1. Two years ago, the European Commission organized the “*Assises de la Justice*”, aimed at “*Shaping Justice policies in Europe for the years to come*”. It received an important number of contributions by eminent lawyers and organizations from the European legal world. The European Association of Judges (EAJ) participated with a written contribution on the independence and effectiveness of the judiciary, asking the Commission to identify more clearly circumstances in which the Rule of Law might be endangered. The President of the EAJ took the floor at the debate to support these submissions.

2. At the end of the day, the then Vice-President and Commissioner for Justice Vivian Reding summed up with what we do in the coming years in this policy area and how we do it needs to be discussed in the open, in a healthy debate involving people, institutions and groups that can be held accountable... I see a future Justice Commissioner – an EU Minister for Justice – taking the helm at central level, giving EU justice policy a face and, of course, held accountable to the European Parliament”.

• **General remarks on the Future of the Judiciary**

3. Two years later, the EAJ turns back to the European Commission to ask what it has done to fulfil these promises.

4. Looking at the formal position of an EU Minister of Justice, the portfolio of the acting Commissioner Věra Jourová has been enlarged with the competences for consumers and gender equality. These might be important subjects, but it shows that

the promised focus by the Commission on Justice has gone.

5. The public debate about the future of the European legal system has not been started yet. The question, how much harmonisation of civil, criminal and procedural law is being needed to guarantee the effectiveness of the European legal system as a whole, how to improve mutual recognition without infringing the rights of the citizens and endanger the qualities of the national legal systems are still being handled on a very small scale in the day to day law making process. The promised debate about what will be necessary to give the European legal system a future and ensure the functioning of the judiciary as the safeguard of the Rule of Law and the protection the rights for all citizens has to take place yet. The EAJ asks the Commission to start this debate as promised in November 2013.

6. This debate has to take into account the position of the European Union within the world. In her speech, Vice-President Reding promised to “*address the external dimension of the European area of justice*”. At the moment, the independence of the judiciary in Turkey and the personal independence of many Turkish judges, a state closely linked to the European Union by its candidate status and an association treaty, is under very serious threat. The EAJ notes that serious activity by the European Commission to guaranty the Rule of Law in Turkey has not taken place. Confidence in the Commissioner to take appropriate action to promote the Rule of Law within the Union is diminished if she closes her eyes towards serious infringements of these Rule just outside our borders.

- **Justice Scoreboard.**

7. The most noticeable outcome of the “*Assises de la Justice*” was the final establishment of the Judicial Scoreboard. At the “*Assises de la Justice*”, Joshua Rozenberg, a British legal journalist, stated that “*If I had to sum up what I hope the EU justice scoreboard will achieve, it would be to measure and improve respect for the rule of law.*”

8. Looking at the figures in the Justice Scoreboards 2013 to 2015, not much has changed in the member states. The time needed to resolve civil and commercial cases (Figure 5; Scoreboard 2015) has gone down noticeably in some member states, but gone up in others. The clearance rate, which indicates the ability of legal systems to reduce the backload of cases, shows that the courts in most member states have to struggle to cope with the volume of incoming cases (Figure 8). However, the number of pending cases is still dramatically different between the member states and shows, that the resources of the courts in most member states are still insufficient (Figure 11).

9. This is underlined by the statistics on government expenditure on law courts, which is in nearly all member states below 0, 5% of the national GDP (Figure 41). Although

the 2013 Scoreboard has shown for a majority of member states deficits in the ability of the court system to handle the volume of cases, none of the member states has risen its expenditure on law courts. In many states funding for legal representation has been reduced.

10. This is a dramatic statement of the 2015 Scoreboard, which has gone mostly unrecognized in member states.

11. The 2015 Scoreboard has come with a new set of data, aimed at the statistical measure of the quality of judgement and the independence of justice.

12. Although the EAJ welcomes very much the effort of the European Commission to implement a programme that improves the quality of the judicial system, it seems doubtful that this will be possible if the criteria for evaluation do not realistic assess the quality of judicial work. Here, the EAJ asks the European Commission to take advice from practising lawyers, judges and advocates, and to take their observations into account how to improve these datas.

13. On the independence of the judiciary, the most striking fact is that in most member states the financial resources allocated to the judiciary are still being defined by the executive, mostly based on historic costs (Figure 50). Some member states still don't have a Council for the Judiciary, for those who do have the powers vary wildly (Figures 48, 49).

14. These figures show that in reality the safeguard of Rule of Law, guaranteed by an independent and sufficient supplied judiciary, is substantially controlled by the executive in allocating resources to legal representation and the court budget that influences the work that judges are able to do. This is not a very encouraging state of affairs ing and should be questioned on a European level.

15. The EAJ still sees the Judicial Scoreboard as providing valuable datas on the situation of the civil, commercial and administrative courts within the Union. It has some doubts if the number of pending cases and time needed to resolve these cases are really the best way to show the effectiveness of a judicial system. However, these datas highlight that the court systems in nearly all member states are short of resources and therefore not as effective as they should be.

16. It is up to the member states to change this situation. Effectiveness of a judicial system however cannot be improved by cutting down procedural rights and safeguards of the litigants, introducing electronic access to courts in all circumstances, reducing gathering of necessary evidence or promoting ADR as a way to avoid state court procedure. Effectiveness can only be promoted by a sufficient number of judges and support staff, judicial training and, if necessary, procedural reform.

17. The EAJ recognizes the missing competence of the European Union in this area. However, if the Justice Scoreboard is going to be of value for the citizens to improve

their access to justice and the quality of the decisions they can get, the European Commission has to ask member states more vigorously than previously what they are doing to improve the effectiveness of their national judicial system. Without this strong request by the European Commission to member states, EU justice policy will stay a patchwork of legal instruments.

18. For the EAJ, it is time for a follow – up of the “*Assises de la Justice*” to start a European debate about the role of the judiciary within the Union and the way to guarantee its position as the safeguard of rights for the citizens.