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JUDICIAL EFFICIENCY AND JUDICIAL INDEPENDENCE: STRUCTURAL TENSIONS, NORMATIVE INTERACTIONS, AND SYSTEMIC SAFEGUARDS IN CONTEMPORARY EUROPEAN JUDICIAL GOVERNANCE

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1. *Introduction. Judicial Independence vs Judicial Efficiency? Conceptual Foundations of a Possible Antinomy*

This article examines the complex relationship between judicial efficiency and judicial independence within contemporary European judicial systems. While efficiency is increasingly prioritised through managerial reforms, digitalisation, and performance indicators, independence remains the constitutional cornerstone of adjudication. Drawing on ENCJ empirical data, CCJE opinions, CEPEJ methodology, Venice Commission standards, and comparative scholarship, the article argues that efficiency and independence are neither inherently antagonistic nor automatically complementary. Their interaction depends on institutional design, resource allocation, managerial culture, and the normative framework governing judicial governance. The article proposes a model for reconciling efficiency with independence through judicially controlled performance metrics, transparent resource management, and robust safeguards for internal independence.

It is well established that judicial independence constitutes one of the pillars of the rule of law.[1] It comprises two analytically distinct yet interrelated dimensions: external independence, which protects judges from influence by the executive, legislature, or private interests; and internal independence, which protects judges from hierarchical or managerial pressure within the judiciary itself. External independence is grounded in constitutional guarantees, appointment procedures, tenure security, and protection from disciplinary misuse. Internal independence concerns case assignment, workload distribution, managerial oversight, and the autonomy of judicial reasoning.[2]

Judicial efficiency is defined as the ability of courts to deliver quality decisions within a reasonable time,[3] in line with Article 6 ECHR. The European Commission for the Efficiency of

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[1] The scholarship on judicial independence is vast. For a number of representative contributions, see STEVENS, *A Loss of Innocence?: Judicial Independence and the Separation of Powers*, in *Oxford Journal of Legal Studies*, 1999, Volume 19, Issue 3, pp. 365 ff., https://doi.org/10.1093/ojls/19.3.365; *L'indipendenza della giustizia, oggi. Judicial Independence, Today*, *Liber amicorum* in onore di Giovanni E. Longo, Milano, 1999; OBERTO, *Judicial Independence in Countries of Central and Eastern Europe: an "Italian" Standpoint*, 2000, https://www.giacomooberto.com/prague/sommario.htm; OBERTO, *Judicial Independence and Judicial Impartiality: International Basic Principles and the Case-Law of the European Court of Human Rights*, in *Riv. dir. priv.*, 2006, pp. 485 ff.; BELL, *Judicial Cultures and Judicial Independence*, in *Cambridge Yearbook of European Legal Studies*, 4, 2001, pp. 47 ff., http://dx.doi.org/10.5235/152888712802761798; OBERTO and ASSOUMA (eds), *L'indépendance de la magistrature – The Independence of the Judiciary – La independencia judicial*, Belo Horizonte, 2011; OBERTO, *Performance Appraisal of the Judiciary and Judicial Independence – Italy*, in STADELMANN, GASS and MCCOMBE, *Richterliche Unabhängigkeit und Leistungsbeurteilung / Performance Appraisal of the Judiciary and Judicial Independence*, Zürich/St. Gallen, 2015, pp. 219 ff.; OBERTO, *Fundamentals of Judicial Independence; Implications for AMBA's Proposals for Reform*, in BACHER, BRÄNDLE, CARR, GIRARDET, OBERTO and REISSNER, *2016 AMBA Panel Discussion on Judicial Independence*, Munich, 2016, also available on the following web page: https://www.giacomooberto.com/Proceedings-amba-panel-2016.pdf; OBERTO, *Judicial Independence and the Implementation of the Universal Charter of the Judge: The Issue of Internal Independence*, 2018, https://www.iaj-uim.org/iuw/wp-content/uploads/2018/10/Oberto_Internal_Independence_and_the_Universal_Charter.pdf (a Russian version is available on the following web page: https://www.iaj-uim.org/iuw/wp-content/uploads/2020/07/Zanger-6_2020-Giacomo-Oberto-1.pdf); OBERTO, *Mandatory Norms on Judicial Independence in European and International Law*, in STADELMANN (ed.), *Democracy Falling Apart. Role and Function of Judicial Independence, Separation of Powers and the Rule of Law in a Constitutional Democracy – The Turkish Judiciary in 2018*, Bern, 2018, pp. 13 ff., also available on the following web page: https://www.giacomooberto.com/OBERTO_Mandatory_Norms_on_Judicial_Independence_in_European_and_International_Law.htm; BUSTOS GISBERT, *Judicial Independence in European Constitutional Law*, in *European Constitutional Law Review*, 2022, Volume 18 , Issue 4 , pp. 591 ff., https://doi.org/10.1017/S1574019622000347; FILIPEK, *Only a Court Established by Law Can Be an Independent Court. The ECJ's Independence Test as an Incomplete Tool to Assess the Lawfulness of Domestic Courts*, in *Verfassungsblog.de*, 2020; OBERTO, *Judges' Associations. Their Role in the Worldwide Defense of Judicial Independence*, 2022, https://www.giacomooberto.com/Oberto_Judges_Associations.pdf; MANKO, *Judicial independence in the case law of the European Court of Human Rights*, 2024, https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/762305/EPRS_BRI(2024)762305_EN.pdf.

[2] SILLEN, *The Concept of 'Internal Judicial Independence' in the Case Law of the European Court of Human Rights*, in *European Constitutional Law Review*, 2019,15, pp. 104 ff., https://doi.org/10.1017/S1574019619000014.

[3] According to the Recommendation 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), CM/Rec(2010)12, paragraph 31, "Efficiency is the delivery of quality decisions within a

Justice (CEPE), in its *European Judicial Systems – Cepej Evaluation Report 2024*, stresses that "efficiency is just one of the approaches through which to assess the functioning of a justice system, which can have problems in terms of judicial independence, fairness of proceedings or the quality of the justice service."[4] Efficiency is therefore not reducible to speed or output; it includes quality, predictability, and user-centred justice.

The relationship between judicial efficiency and judicial independence has become one of the most contested issues in contemporary judicial governance. Across Europe, courts face increasing pressure to deliver justice swiftly, transparently, and cost-effectively. At the same time, judicial independence—both external and internal—remains a fundamental guarantee of the rule of law, enshrined in constitutional texts, international instruments, and judicial ethics.

The tension arises because efficiency reforms often rely on managerial tools—performance indicators, case-flow targets, digital platforms, and resource optimisation—that may inadvertently affect judicial autonomy. Indeed, the quest for efficiency may become a Trojan horse through which external forces penetrate the judicial sphere. In its *2022 ENCJ Survey on Judicial Independence*, the European Network of Councils for the Judiciary (ENCJ) reveals that judges generally rate their personal independence highly (between 7.5 and 9.9 on a ten-point scale), yet concerns persist regarding appointments, promotions, and media pressure. Moreover, the report notes that "Court management including the court presidents generally do not try to influence the content of judicial decisions. Some judges experience, however, improper pressure by court management to meet timeliness standards, and more judges experience improper pressure from production targets. Caseload and court resources are a related concern in many countries."[5]

This article explores these tensions through a comparative and empirical lens, drawing extensively on ENCJ's 2022–2023 findings, CEPEJ's evaluation cycles, CCJE opinions, Venice Commission reports, and leading academic scholarship.

2. *The Awakening of Awareness on Efficient Case Management in Europe. The European Commission for the Efficiency of Justice (CEPEJ)*

The establishment, at the end of 2002, of the European Commission for the Efficiency of Justice (*Commission Européenne pour l'efficacité de la justice* – CEPEJ),[6] by the Council of Europe marked the beginning of a new era for European judiciaries—an era characterised by a growing awareness of the need for efficient case management and for a determined fight against backlogs across the court systems of the continent. The CEPEJ was formally created on 18 September 2002 through Resolution Res(2002)12 of the Committee of Ministers, with the mandate to develop concrete measures and tools for policy-makers and judicial practitioners in order to:

- analyse the functioning of judicial systems and orientate public policies of justice;

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reasonable time following fair consideration of the issues. Individual judges are obliged to ensure the efficient management of cases for which they are responsible, including the enforcement of decisions the execution of which falls within their jurisdiction."

[4] CEPEJ, *European Judicial Systems – CEPEJ Evaluation Report 2024*, Part 1: General Overview, Strasbourg, 2024, https://rm.coe.int/cepej-evaluation-report-part-1-en-/1680b272ac, p. 166.

[5] ENCJ, *Survey on the Independence of Judges 2022*, https://pgwrk-websitemedia.s3.eu-west-1.amazonaws.com/production/pwk-web-encj2017-p/GA%2022/Report%20ENCJ%20Survey%202022.pdf, p. 3.

[6] See https://www.coe.int/en/web/cepej/home/. On the CEPEJ see JOHNSEN, *The European Commission for the Efficiency of Justice (CEPEJ) Reforming European Justice Systems – "Mission Impossible?"*, in *International Journal for Court Administration*, Vol. 4, No. 3, 2012; OBERTO, *Strumenti e documenti CEPEJ per la gestione dell'efficienza e dei tempi dei processi*, 2023, https://www.giacomooberto.com/Giacomo_Oberto_Strumenti_e_documenti_CEPEJ.pdf; GRISONICH, *Efficacia e qualità della giustizia in Europa: pubblicato il rapporto 2024 CEPEJ sui sistemi giudiziari europei*, in *Sistema penale*, 2024, https://www.sistemapenale.it. For a detailed presentation about the organs and working system of the CEPEJ see OBERTO, *Strategies to Deal with Backlogs and Delays in the Court System. European Experiences*, in *Europejski Przegląd Prawa i Stosunków Międzynarodowych* [*European Review of Law and International Relations*], 1/2026/77, pp. 116 ff.; also available on the following web pages: https://www.giacomooberto.com/Oberto_Toronto_Presentation2.pdf; https://ojs.academicon.pl/eppism/article/view/10709/10838.

- improve knowledge of judicial timeframes and optimize judicial time management;
- promote the quality of the public service of justice;
- facilitate the implementation of European standards in the field of justice;
- support member States in their reforms of court organisation.

The CEPEJ also contributes specialised expertise to debates on the functioning of justice systems, providing a forum for discussion and proposals and fostering closer engagement between users and their justice systems.

The Commission is composed of representatives of the Ministries of Justice of the forty-six member States of the Council of Europe. In order to fulfil its mandate, it operates through four Working Groups. All major CEPEJ initiatives and documents are prepared within these Groups and subsequently submitted to the Plenary Assembly for final approval.

These initiatives contribute significantly to relieving the case-load of the European Court of Human Rights by equipping States with effective tools to prevent violations of the right to a fair trial within a reasonable time under Article 6 ECHR. It must be recalled that the entire institutional mission of the Council of Europe is grounded in the European Convention on Human Rights. Its interest in the field of justice derives directly from the three concepts enshrined in Article 6(1): an *independent tribunal, a fair trial, and a hearing within a reasonable time.*[7]

Although CEPEJ documents and tools are not legally binding upon member States, practical experience shows that "soft law" instruments—such as Council of Europe recommendations, CEPEJ guidelines, CCJE opinions, or declarations and resolutions of the International Association of Judges—may play a persuasive role in discouraging political authorities from adopting measures that could undermine judicial independence. Moreover, the European Court of Human Rights has frequently relied on soft-law materials to interpret expressions such as "reasonable time" or "independent and impartial tribunal."[8]

The case law of the Strasbourg Court has also prompted even the most resistant jurisdictions—Italy being a notable example—to introduce measures aimed at reducing backlogs and improving case-flow management, as evidenced by several reforms and practices.[9]

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[7] "6.1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law (…)."

[8] See e.g. LAFFRANQUE, *Judicial Independence in Europe: Principles and Reality*, in ENGSTAD, LÆRDAL FRØSETH and TØNDER (eds), *The Independence of Judges*, The Hague, 2014, pp. 144 ff.; OBERTO, *Sistemi giudiziari europei a confronto: le criticità italiane*, 2016, https://www.giacomooberto.com/Oberto_sistemi_giudiziari_a_confronto.htm, paragraph 2; OBERTO, *Un nuovo statuto per un nuovo giudice*, in *Contratto e impresa / Europa*, 2019, p. 66, also available on the following web page: https://www.giacomooberto.com/Oberto_Un_nuovo_statuto_per_un_nuovo_giudice_2017.htm, paragraph 5.

[9] For a general overview and in particular for the description of the so-called "Strasbourg Programme" of the Turin Court, see OBERTO, *Strategies to Deal with Backlogs and Delays in the Court System. European Experiences*, *Europejski Przegląd Prawa i Stosunków Międzynarodowych* [*European Review of Law and International Relations*], 1/2026/77, pp. 132 ff., available also on the following web pages: https://www.giacomooberto.com/Oberto_Toronto_Presentation2.pdf; https://ojs.academicon.pl/eppism/article/view/10709/10838; see, as well, OBERTO, *Study on Measures Adopted in Turin's Court ("Strasbourg Programme") along the Lines of "Saturn Guidelines for Judicial Time Management"*, 2011, https://www.giacomooberto.com/study_on_Strasbourg_Programme.htm; OBERTO, *Il «Programma Strasburgo» del Tribunale di Torino e le direttive del* Groupe de pilotage *SATURN della CEPEJ: Breve raffronto*, in *Richterzeitung*, 2012, 3; http://giacomooberto.com/studio_sul_Programma_Strasburgo.htm; STEELMAN and FABRI, *Can an Italian Court Use the American Approach to Delay Reduction?*, 2013, available on the following web page: https://www.tandfonline.com/doi/abs/10.1080/0098261X.2008.10767868; ESPOSITO, LANAU and POMPE, *Judicial System Reform in Italy—A Key to Growth*, 2014, https://www.imf.org/external/pubs/ft/wp/2014/wp1432.pdf; RRUGIA and BITI, *Guaranteeing the Judgment of Civil Cases Within a Reasonable Time as a Requirement of the Right to a Fair Trial in Albania*, in *Academic Journal of Interdisciplinary Studies*, MCSER Publishing, Rome-Italy, Vol. 3, No. 3, June 2014, pp. 509 ff.; IMF, *Italy, Selected Figures*, Washington, 2014, pp. 15 ff., https://www.imf.org/external/pubs/ft/scr/2014/cr14284.pdf; OBERTO, *Il Consiglio d'Europa e i temi della giustizia*, 2015, https://www.giacomooberto.com/oberto_consiglio_europa_temi_giustizia.htm; CONTINI (ed.), *Handle with Care: Assessing and Designing Methods for Evaluation and Development of the Quality of Justice*, IRSIG-CNR, Bologna, 2017, https://publications.cnr.it/api/v1/documents/download/168390; SILVESTRI, *Notes on Case Management in Italy*, 2017, https://ssrn.com/abstract=3158105 or http://dx.doi.org/10.2139/ssrn.3158105; VERZELLONI, *Reduction of Backlog: The Experience of the Strasbourg Programme and the Census of Italian Civil System*, https://www.encj.eu; OBERTO, *Managing Quality and Efficiency of Justice: Italian Strategies in Case Management*, in *Richterzeitung*, 2019, 4,

At the same time, however, insufficient consideration has perhaps yet been given to the possible implications that this new (and indeed necessary) focus on efficiency may have for the independence of the judiciary. The issue must be examined separately with regard to the various dimensions in which judicial efficiency may be articulated. For this reason, the following sections will examine in detail three areas, namely: the organisation of courts and the role of court presidents; the implications of IT and AI for judicial efficiency and independence; and the technical instruments associated with efficiency and their impact on judicial independence, before drawing general conclusions.

3. Court Organisation and the Role of Court Presidents

One of the most sensitive points at which judicial efficiency may interfere with judicial independence concerns the organisation of courts. In many European jurisdictions, organisational powers are entrusted to professional court managers who do not belong to the judiciary, whereas in many others the decisive role is exercised by court presidents (and, in larger courts, also by presidents of court divisions), under the supervision of bodies such as local judicial councils and/or a High Council for the Judiciary.

Recent comparative scholarship has shown that the coexistence of court presidents and professional court managers raises structural questions of judicial governance that European systems resolve in markedly different ways. As some scholars observe, "court presidents are key actors in judicial governance, yet their role has been largely overlooked in the literature."[10] Their analysis demonstrates that, in jurisdictions where managerial functions are shared with non-judge administrators, "the distribution of administrative, financial, and managerial powers between court presidents and court managers varies considerably."[11] In systems influenced by New Public Management reforms—such as the Netherlands, Denmark, and Finland—operational responsibilities are entrusted to professional managers, while presidents retain strategic authority. As the authors note, "the rise of court managers has altered the traditional position of court presidents, who increasingly act as institutional leaders rather than operational administrators."[12] This comparative evidence confirms that coexistence is typically resolved through a functional division: presidents exercise high-level governance and external representation, whereas court managers oversee day-to-day organisational performance.

Yet it must not be forgotten that, in the majority of European legal systems, the principal role is still played by presidents of courts (and, in larger courts, also by presidents of court divisions), who continue to supervise—either exclusively or predominantly—matters pertaining to the organisation of judicial work within their jurisdictions.[13] The consequence is that discussing court organisation

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https://richterzeitung.weblaw.ch/fr/rzissues/2019/4/managing-quality-and_544bc61390.html__ONCE&login=false; https://www.giacomooberto.com/Oberto_Managing_quality_of_justice.htm; TEAM MANAGEMENT UNIUPO, *Nuovi schemi collaborativi tra Università e uffici giudiziari per il miglioramento dell'efficienza e delle prestazioni della giustizia nell'Italia Nord Ovest*, 2023, https://www.giustizia.it/cmsresources/cms/documents/1nextgen_unipior_modorg_civ_report.pdf. For an illustration of an advanced version of the programme, as adopted by the Italian Ministry of Justice, see https://www.giustizia.it/giustizia/it/mg_2_9_10_2.page#. On the "Decalogue" of the "Strasbourg Programme" see below, paragraph 9, in the footnote. For a collection of good practices in the field of backlog reduction across Europe, see the *Backlog Reduction Resource Centre*, inaugurated under my presidency of the CEPEJ-GT-SATURN working group within the CEPEJ of the Council of Europe in 2025, available on the following web page: https://public.tableau.com/app/profile/cepej/viz/BacklogReductionResourceCentre/ResourceCentre.

[10] BLISA and KOSAŘ, *Court Presidents: The Missing Piece in the Puzzle of Judicial Governance*, *German Law Journal*, Volume 19, *Issue 7: Special issue — Judicial Self-Government in Europe*, 2018, https://doi.org/10.1017/S2071832200023324, pp. 2031 ff.

[11] BLISA and KOSAŘ, *Court Presidents: The Missing Piece in the Puzzle of Judicial Governance*, *German Law Journal*, Volume 19, *Issue 7: Special issue — Judicial Self-Government in Europe*, 2018, p. 2033.

[12] BLISA and KOSAŘ, *Court Presidents: The Missing Piece in the Puzzle of Judicial Governance*, *German Law Journal*, Volume 19, *Issue 7: Special issue — Judicial Self-Government in Europe*, 2018, p. 2045.

[13] In general, on the role of court presidents, see FABRI, *Exploratory study on the position of: Court President, Court Manager, Judicial Assistant, and Media Spokespersons in Selected Council of Europe Member States* (Report No. JP

often means, in practice, discussing the role of court presidents, who are at once guardians of judicial independence, responsible for the proper functioning of the institution,[14] and public figures capable of articulating a strong voice in support of democratic values.

Court presidents play a crucial role in upholding the rule of law: they oversee the administration of justice, manage and allocate human and material resources, and ensure the effective application of the law. In doing so, they safeguard judicial independence, protect fundamental rights, and guarantee equality before the law, while also bearing significant managerial and administrative responsibilities. They ensure the fair allocation of workloads, the adequacy of infrastructure, and the availability of human and technological resources.

A well-organised court is one capable of delivering justice that is both efficient and accessible—essential elements of the rule of law. Court presidents also act as key interlocutors in institutional dialogue, frequently engaging with the executive and legislative branches. In an era of legal globalisation, they play an active role in European and international judicial networks, exchanging good practices, strategies for safeguarding independence, and common responses to transnational threats. This cooperative dimension strengthens the resilience of judicial systems and helps consolidate a shared culture of the rule of law.

4. The Role of Court Presidents: The Position of the Council of Europe

The importance of the role of court presidents in ensuring the rule of law and judicial independence has been repeatedly reaffirmed by international instruments concerning the judiciary. Beginning with Recommendation No. 12 (2010) of the Council of Europe on *Judges: Independence, Efficiency and Responsibilities*,[15] we may observe that this instrument places particular emphasis on the duty of court presidents to preserve one of the cornerstones of the rule of law—namely, the principle of judicial independence—especially from the perspective of so-called *internal independence*.

Article 22 of the Recommendation, contained in Chapter III devoted to Internal Independence, states that "in their decision making, judges should be independent and impartial and able to act without any restriction, improper influence, pressure, threat or interference, direct or indirect, from any authority, including authorities internal to the judiciary." For this reason, the Article continues, "hierarchical judicial organisation should not undermine individual independence."

Further on this subject, Article 30 of the Explanatory Memorandum adds that "Judicial independence is not just freedom from improper external influence, but also improper influence from within the judicial System, either by other judges or judicial authorities. Each individual judge is subject only to the law. Therefore, judicial hierarchical interference in the exercise of judicial functions cannot be permitted. Instructions from presidents of courts should never interfere in judges' decision making in individual cases (paragraph 22 of the recommendation)."

COMASYT), 2013, Joint Project on "Strengthening the Court Management System in Turkey, https://rm.coe.int/joint-projecton-strengthening-the-court-management-system-in-turkey-j/16807895a0; BLISA and KOSAŘ, *Court Presidents: The Missing Piece in the Puzzle of Judicial Governance*, *German Law Journal*, Volume 19, Issue 7: Special issue — Judicial Self-Government in Europe, 2018, pp. 2031 ff.; VIGOUR, *Les chefs de juridiction : responsabilités accrues et diversité des appropriations gestionnaires*, *Revue française d'administration publique*, 2022/4, N° 184, pp. 1043 ff.; LLAGAMI, *Leadership in the Judiciary: Management and Administration Roles in the Justice System*, *Global Journal of Politics and Law Research*, 2024, https://eajournals.org/gjplr/vol12-issue-2-2024/leadership-in-the-judiciary-management-and-administration-roles-in-the-justice-system/; KOSAŘ and ŠIPULOVÁ, *Court Presidents: Power Through Informality*, in TURENNE and MOUSSA (eds), *Research Handbook on Judging and the Judiciary*, Cheltenham, 2025, pp. 336 ff.

[14] For instance, Article R 213-29 of the French *code de l'organisation judiciaire* (Judicial Organisation Code) provides for that court presidents must ensure "la bonne administration des services judiciaires de leur ressort et de l'expédition normale des affaires" (the proper administration of the judicial services within their jurisdiction and the orderly handling of cases).

[15] The text of Recommendation No. 12 (2010) of the Council of Europe is available on the following web page: https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=CM/Rec(2010)12&Language=lanEnglish&Ver=original&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383.

Article 31 of the Recommendation defines judicial efficiency as "the delivery of quality decisions within a reasonable time following fair consideration of the issues." Elaborating on this definition, Article 62 of the Memorandum explains that "the efficient management of cases not only involves individual judges, but also presidents of courts or other competent authorities that have a key role in that area, with full respect for the independence of every individual judge."

It further stresses that compliance with the "reasonable time" requirement of Article 6 of the Convention and the desirable uniformity in the interpretation and application of the law are of particular importance. To this end, "the president of a court may, for instance, organise meetings to enable judges to exchange opinions on a particular legal subject. Presidents should encourage the sharing and dissemination of good practices among judges of their jurisdiction and set priorities and objectives to be achieved in the management of cases, having regard to the necessity to contain, reduce and eliminate backlogs."[16]

5. The Role of Court Presidents: The Position of the International Association of Judges

As we noted in the previous section, the role of court presidents is closely connected to the issue of internal independence. On this subject, several relevant principles are set out in the *Universal Charter of the Judge*, approved in its current version by the Central Council of the International Association of Judges (IAJ) in 2017 in Santiago de Chile.[17]

Article 3 of the Charter is entirely devoted to the internal independence of the judge. Its first point states that "in the performance of judicial duties the judge is subject only to the law and must consider only the law" (Article 3-1). Furthermore, "a hierarchical organisation of the judiciary in the sense of a subordination of judges to court presidents or to higher instances in their judicial decision-making activity, save for the review of opinions as described below (see Article 3-2), would be a violation of the principle of judicial independence." This rule—which is considerably stronger than its equivalent in Recommendation No. R(2010)12 of the Council of Europe ("Hierarchical judicial organisation should not undermine individual independence")—takes a clear stand against the establishment of any form of hierarchical structure within the judiciary. It is inspired by a report of the Venice Commission.[18]

Other provisions within Article 3 of the Universal Charter concern the day-to-day activity of judges, seeking to preserve their personal independence, and may also apply to their relations with court presidents. It is therefore stated that "no influence, pressure, threat or intervention, either direct or indirect, from any authority, is acceptable" (Article 3-2, para. 1). A related issue concerns judicial

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[16] As one of the members of the Group of Specialists on the Judiciary (CJ-S-JUD) appointed by the Secretary-General of the Council of Europe on 23 October 2008 for the drafting of the Recommendation, I am particularly proud of having been at the origin of the content of this Article, in which I sought to translate into an operational principle the experience of the First Instance Court of Turin where, starting in the year 2000, the then President of the Court, Mr Mario Barbuto, devised and successfully implemented a plan aimed at reducing the backlog — the so-called "Programma Strasburgo." A description of this plan has been already provided above, in note: see paragraph 2, footnote 9.

[17] See https://www.iaj-uim.org/iuw/universal-charter-of-the-judge-2017/.

[18] See VENICE COMMISSION, *Report on the Independence of the Judicial System*, *Part I: The Independence of Judges*, CDL-AD(2010)004, Study No. 494 / 2008, https://www.coe.int/documents/268333607/300678634/CDL-AD%282010%29004-e.pdf/8dd8ce5f-0ce3-f4c2-82f3-19b8fc582a7e?t=1779972265488, paragraph 68, p. 13: "68. The issue of internal independence within the judiciary has received less attention in international texts than the issue of external independence. It seems, however, no less important. In several constitutions it is stated that 'judges are subject only to the law.' This principie protects judges first of all against undue external influence. It is, however, also applicable within the judiciary. A hierarchical organisation of the judiciary in the sense of a subordination of the judges to the court presidents or to higher instances in their judicial decision-making activity would be a clear violation of this principle." See further Article 10 of the *Magna Carta of European Judges*, issued by the Consultative Council of European Judges (CCJE) (https://rm.coe.int/2010-ccje-magna-carta-anglais/168063e431): "In the exercise of their function to administer justice, judges shall not be subject to any order or instruction, or to any hierarchical pressure, and shall be bound only by law." On the issue of internal independence in the works of the Venice Commission see HELGESEN, *The Independence of Judges - and the Judiciary - as seen from Venice,* in ENGSTAD, LÆRDAL FRØSETH and TØNDER, *The Independence of Judges,* The Hague, 2014, pp. 122 ff.

administrators who do not belong to the judiciary, as their activities may affect the role of court presidents. On this point, the Universal Charter provides that, in any case, "representatives of the judiciary must be consulted before any decision affecting the performing of judicial duties. As court administration can affect judicial independence, it must be entrusted primarily to judges" (Article 3-3, paras. 1 and 2).

Article 3-4 of the same Charter deals with a matter directly concerning the role of court presidents: the allocation of cases. According to this rule, "allocation of cases must be based on objective rules, which are set forth and communicated previously to judges. Any decision on allocation must be taken in a transparent and verifiable way." The second paragraph adds that "a case should not be withdrawn from a particular judge without valid reasons. The evaluation of such reasons must be done on the basis of objective criteria, pre-established by law and following a transparent procedure by an authority within the judiciary."[19]

6. *The Role of Court Presidents: The Position of the Consultative Council of European Judges (CCJE)*

An important instrument on the role of court presidents was issued in 2016 by the Consultative Council of European Judges—*Conseil Consultatif de Juges Européens* (CCJE): *Opinion No. 19 on the Role of Court Presidents*.[20]

This opinion sheds particular light on the duty of court presidents to preserve, among other things, the principles of judicial independence and judicial impartiality which, as already noted, constitute a cornerstone of the rule of law. To cite only a few of the many relevant passages, paragraph 2 highlights the "overriding need to ensure a more effective functioning of an independent judiciary and an enhanced quality of justice." Paragraph 25 likewise states that "the presidents should never engage in any actions or activities which may undermine judicial independence and impartiality."

Furthermore, paragraph 6 of the opinion, which enumerates the specific functions of heads of courts, states that "in performing their tasks, court presidents protect the independence and impartiality of the court and of the individual judges." Paragraph 7 reinforces this point, noting that "the main duty of court presidents must remain to act at all times as guardians of the independence and impartiality of judges and of the court as a whole."

The duty of court presidents to protect judicial independence is examined from the dual perspectives of external and internal independence. Thus, paragraph 11 recommends that, where "the executive power exerts, through Ministries of Justice, considerable influence on the administration of courts through directors of courts and judicial inspections," court presidents "have an important role to prevent possible interferences into the court activities by the executive."

With regard to internal independence, paragraph 13—within the chapter devoted to "Relations within the court: independence of judges"—underlines that "internal judicial independence requires that individual judges be free from directives or pressure from the president of the court when adjudicating cases." Consequently, "court presidents, acting as guardians of the court's independence, impartiality and efficiency, should themselves respect the internal independence of judges within their courts."

Beyond these fundamental rules, the opinion devotes particular attention to the delicate role of heads of courts in the assessment of judges. Paragraph 22 therefore recommends that, where

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[19] See OBERTO, *The Universal Charter of the Judge Approved in 2017 by the International Association of Judges*, 2017, available on the following web page: http://www.iaj-uim.org/iuw/wp-content/uploads/2018/01/Oberto_The_Universal_Charter_of_the_Judge_2017.pdf, pp. 6 f.; see as well OBERTO, *Un nuovo statuto per un nuovo giudice*, 2017, https://www.giacomooberto.com/Oberto_Un_nuovo_statuto_per_un_nuovo_giudice_2017.htm; http://www.iaj-uim.org/iuw/wp-content/uploads/2017/12/Oberto_Un_nuovo_statuto_per_un_nuovo_giudice_2017.pdf; also in *Contratto e impresa / Europa*, 2019, pp. 49 ff.; OBERTO, *Lo Statuto Universale del Giudice approvato a Santiago del Cile dall'Unione Internazionale Magistrati*, *La Magistratura*, 2018, 1, Gennaio – Marzo 2018, pp. 18 ff.; https://www.giacomooberto.com/Oberto_Lo_statuto_universale_del_giudice.pdf.

[20] See https://rm.coe.int/4880152a97.

presidents evaluate the performance of individual judges, "there must be appropriate legal and transparent safeguards in place to ensure impartiality and objectivity of that review." This means that assessments should be conducted in an adversarial manner with the judges concerned, and that the presidents' evaluations should be subject to challenge before a higher instance.

Another highly sensitive situation in which the role of the court president may prove crucial concerns the handling of complaints submitted by parties or their lawyers.

Paragraph 23 of the CCJE opinion states: "Where court presidents have a role in receiving and responding to parties' complaints concerning cases pending in the court, they should have due regard to the principle of independence of judges, as well as to the legitimate expectations of the parties to the case and society as a whole."

In my own country, complaints are increasingly submitted by parties—and even more frequently by their lawyers—even though presidents have no specific legal role in this regard. The aim is often to exert pressure on the judge. This occurs particularly when a case is still pending and the judge's conduct does not meet the expectations of certain lawyers (for example: the judge has refused to hear witnesses proposed by a party; has rejected a request to appoint a technical expert; or has appointed an expert whom a lawyer or party "does not like"). What then happens is that the lawyer pays a "visit" to the head of the court concerned (or to the president of the division in which the judge sits) in an attempt to persuade him or her to exert some degree of pressure on the judge in view of the forthcoming decision.[21]

In my personal experience, this constitutes the most serious threat to judicial independence. I may add, on a personal note, that this was one of the reasons that led me to retire almost three years before the statutory age of seventy, as I observed that in a number of situations the attitude of presidents—of divisions, first-instance courts and courts of appeal—was not sufficiently firm in dealing with such delicate matters. My own advice is that presidents, instead of summoning the judge concerned and relaying the "complaint," should firmly and unequivocally reject such attempts to undermine judicial independence and impartiality: either by refusing to receive lawyers who behave in this manner, or by requiring them first to submit their complaint to the other party or parties in the case, in accordance with the *audiatur et altera pars* principle, which is undoubtedly one of the cornerstones of the rule of law.[22]

The need to safeguard judicial independence and impartiality at all costs as an essential duty of court presidents is reiterated several times in the "Conclusions and Recommendations" (Part V) of the CCJE above mentioned opinion. According to Conclusion No. 1, "in performing their tasks, court presidents protect independence and impartiality of the court and individual judges and they have to act at all times as guardians of these values and principles (paragraphs 6 and 7)." Likewise, Conclusion No. 5 states that "the court presidents should never engage in any actions or activities which may undermine judicial independence and impartiality (paragraphs 24 and 25)."

7. Judicial Efficiency, IT, AI and Judicial Independence

The quest for judicial efficiency is driving an increasingly rapid adoption of IT and AI tools. Whether this acceleration may have a negative impact on judicial independence has been examined

[21] This "system" is described in more details in OBERTO, *Strategies to Deal with Backlogs and Delays in the Court System. European Experiences*, *Europejski Przegląd Prawa i Stosunków Międzynarodowych* [*European Review of Law and International Relations*], 1/2026/77, https://www.giacomooberto.com/Oberto_Toronto_Presentation2.pdf; https://ojs.academicon.pl/eppism/article/view/10709/10838, pp. 147 ff.

[22] The reason for the leniency with which some Italian court presidents, in my modest opinion, bow in such—at times truly shameful—a manner lies in the growing influence that Italian lawyers have acquired in the "behind-the-scenes" decision-making processes affecting judicial careers. In practical terms, any president of section who aspires to become president of a court, and any president of a tribunal who wishes to become president of a court of appeal, knows (at least in Italy) that he or she must pay increasing attention to the attitude of the legal profession towards them. Lawyers in Italy may indirectly—but often effectively—steer appointments to specific positions, as they now sit on local judicial councils and are therefore able to influence assessments and decisions affecting judicial careers. It is therefore essential that presidents of courts be able to keep their spines upright in all circumstances.

in depth by the Consultative Council of European Judges (CCJE) in its *Opinion No. 26 (2023)* on *Moving Forward: The Use of Assistive Technology in the Judiciary*.[23] A substantial part of this document is devoted to "The judicial independence challenge" (see paragraphs 56 ff.).

The starting point of the CCJE's analysis is the recognition that, in several member States, the implementation of technological reforms falls within the responsibility of the executive. Already in *Opinion No. 14 (2011)*, paragraphs 32 and 36, the CCJE had emphasised that judiciaries ought properly to have a role and responsibility in this area in order to secure judicial independence.[24]

The potential for technological design to shape access to justice—whether consciously or unconsciously—cannot be underestimated. Data tools used in the development of key performance indicators may undermine judicial case management by imposing efficiency-based targets that are inimical to autonomy in judicial decision-making. They may also be used to criticise judges who fail to meet such targets, thereby undermining both individual and institutional independence. Furthermore, the development of technology-based system defaults, prompts or AI may reduce judicial autonomy in decision-making; in extreme cases, they may do so in ways that are contrary to the rule of law.

Effective data security and protection measures require effective, independent oversight of technology used by the judiciary, as they do in society more broadly.[25] Such oversight could pose a significant risk to judicial independence if carried out by the executive or by a regulatory body—such as a national Data Protection Supervisor—rather than by a body within the judiciary itself.

The same opinion underlines that AI poses several challenges to judicial independence. Algorithmic design may undermine judicial independence where the judiciary does not have informed and effective input and oversight. This risk is particularly acute where design and implementation are outsourced to private companies, especially given that control over AI technologies tends to be concentrated in the hands of a small number of actors. This constitutes a discrete and acute instance of *design risk*. Moreover, where case-management systems use AI to schedule hearings, bias may be embedded into listing practices, thereby undermining judicial control over this function—for example, by allocating cases not randomly but according to the characteristics of the parties.

The use of AI to assist case management or judicial decision-making may also lack transparency as to what information is used and how. Reduced transparency may inhibit explanatory and appellate accountability,[26] calling into question judicial independence and the legitimacy of the judiciary, both individually and institutionally.

The CCJE's document of 2023 further highlights the risk that judges may become dependent upon technological assistance. Were their skills and experience in evidence-taking, identification, and similar areas to be eroded by reliance on technology such as predictive coding, individual independence and judicial autonomy could be diminished. What is intended to be supportive may thus become the *de facto* decision. This is particularly problematic where such assistance provides judges with assessments of decisional norms based on general trends among the judiciary—a phenomenon that may become self-reinforcing as more judges follow the trend identified by data tools. More broadly, this poses a threat to institutional independence, as it would effectively place the decision-making process in the hands of those who design the data tools.

The use of data tools—especially where they involve supportive AI—may also adversely affect the judiciary's ability to secure a fair trial. Data tools such as chatbots may produce false results, including fictitious case law, potentially leading to judicial error. AI may also undermine judicial control over the allocation of cases.

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[23] https://rm.coe.int/ccje-opinion-no-26-2023-final/1680adade7.

[24] https://rm.coe.int/488022c800.

[25] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation), https://eur-lex.europa.eu/eli/reg/2016/679/oj/eng.

[26] See also CCJE Opinion No. 18 (2015), https://rm.coe.int/4880152a92, paras 27-29, pp. 9 f.

For these reasons, instruments such as the CEPEJ European Ethical Charter on the Use of Artificial Intelligence (AI) in Judicial Systems and Their Environment[27] highlight, among other things, the principle of "under user control," precluding a prescriptive approach and ensuring that users remain informed actors in control of their choices.

According to this principle of the Ethical Charter,

- "User autonomy must be increased and not restricted through the use of artificial intelligence tools and services.
- Professionals in the justice system should, at any moment, be able to review judicial decisions and the data used to produce a result and continue not to be necessarily bound by it in the light of the specific features of that particular case.
- The user must be informed in clear and understandable language whether or not the solutions offered by the artificial intelligence tools are binding, of the different options available, and that s/he has the right to legal advice and the right to access a court. S/he must also be clearly informed of any prior processing of a case by artificial intelligence before or during a judicial process and have the right to object, so that his/her case can be heard directly by acourt within the meaning of Article 6 of the ECHR.
- Generally speaking, when any artificial intelligence-based information system is implemented there should be computer literacy programmes for users and debates involving professionals from the justice system."

8. Technical Tools and Good Practices Related to Judicial Efficiency: Their Impact on Judicial Independence

In recent years a wide range of technical tools and good practices have been developed to help legal systems improve judicial efficiency. These instruments have been elaborated primarily by the CEPEJ and are available on its website.[28]

Among them, backlog-reduction tools—often supported by court dashboards—deserve particular mention. Vigilance regarding caseloads has long been a constant concern of court presidents. Today, backlog-reduction tools and dashboards offer valuable solutions. These are instruments on which the CEPEJ—and in particular the CEPEJ-GT-SATURN, at that time under my presidency—has produced several tools and documents, referenced in the footnotes below.[29]

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[27] The European Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe adopted in December 2018 the first European text setting out ethical principles relating to the use of artificial intelligence (AI) in judicial systems (see https://www.coe.int/en/web/cepej/cepej-european-ethical-charter-on-the-use-of-artificial-intelligence-ai-in-judicial-systems-and-their-environment). The Charter provides a framework of principles that can guide policy makers, legislators and justice professionals when they grapple with the rapid development of AI in national judicial processes. The CEPEJ's view as set out in the Charter is that the application of AI in the field of justice can contribute to improve the efficiency and quality and must be implemented in a responsible manner which complies with the fundamental rights guaranteed in particular in the European Convention on Human Rights (ECHR) and the Council of Europe Convention on the Protection of Personal Data. For the CEPEJ, it is essential to ensure that AI remains a tool in the service of the general interest and that its use respects individual rights.

[28] https://www.coe.int/en/web/cepej.

[29] On the subject of backlog reduction tools, see the document adopted by the CEPEJ at its 40th plenary meeting (Strasbourg, on 15 and 16 June 2023), available on the following web page: https://rm.coe.int/cepej-2023-9final-backlog-reduction-tool-en-adopted/1680acf8ee; details on it are available in OBERTO, *Strategies to Deal with Backlogs and Delays in the Court System. European Experiences*, *Europejski Przegląd Prawa i Stosunków Międzynarodowych* [*European Review of Law and International Relations*], 1/2026/77, https://www.giacomooberto.com/Oberto_Toronto_Presentation2.pdf; https://ojs.academicon.pl/eppism/article/view/10709/10838, pp. 120 ff. As for the dashboards, see the *Handbook on Court Dashboards*, designed to assist stakeholders in the courts systems—primarily court managers—with the task of designing management dashboards to track, analyse and display data on the performance level of the courts. The document, adopted by the CEPEJ at its 36th plenary meeting (Strasbourg, 16-17 June 2021), is available on the following web page: https://rm.coe.int/cepej-2021-8-handbook-on-court-dashboards-en/1680a2c2f6. Based on performance indicators, the tool helps courts, their managers, and justice professionals to measure performance and efficiency of judicial work, thus facilitating the distribution of tasks within the courts. This manual provides practical, step-by-step guidance on how to

Another area in which court presidents may play a significant role is the development of case-weighting systems. Here too, the CEPEJ—and again the CEPEJ-GT-SATURN under my presidency—has produced studies and tools, also referenced below.[30]

Case-weighting aims to assess the complexity of cases in order to measure court workloads, recognising that different case types may require different amounts of judicial time. Case-weighting methodologies are designed to support a range of tasks, including:

- determining the required number of judges, court staff, prosecutors and/or public defenders;
- supporting funding and budgetary requests; allocating justice system personnel within the different work units;
- assigning cases within the courts to ensure balanced allocation among judges within the same court department;
- setting quotas and evaluation standards;
- planning the merger or reduction of work units.

Needless to say, the participation not only of judges and staff, but also of court presidents is crucial for the successful introduction of case-weighting. A communication strategy or plan can play a key role in effectively conveying the purpose and benefits of the system, while also addressing concerns raised by judges, court presidents and staff. This awareness-raising plan should target both internal stakeholders within the judiciary and external audiences (such as court users), providing clear information about the rationale, objectives, methodology and timeline of the case-weighting process. As part of this awareness-raising effort, judicial authorities may organise round tables on case-weighting and invite legal professionals, or produce short promotional videos, leaflets or small social-media or radio announcements.[31]

We cannot, however, conceal the fact that the improper use of all these instruments may contribute to creating an impression of pressure upon judges, ultimately resulting in an undue curtailment of their autonomy and independence. ENCJ's 2022 survey reports that judges in several jurisdictions experience improper pressure from court management to meet timeliness standards, and even more report pressure arising from production targets.[32]

Performance indicators, when imposed without judicial control, may:

- incentivise speed over deliberation;
- create indirect influence on judicial reasoning;
- generate managerial interference in case prioritisation;
- undermine internal independence.

As Italian scholars note, "Managerial reforms tend to redefine the role of judges, introducing organisational constraints that may affect judicial autonomy."[33]

European instruments consistently affirm that efficiency must never compromise independence.

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develop comprehensive court and judge-level dashboards. It covers the dashboard design process, its content, data visualisation, technical requirements, and contains practical examples of dashboards. The concepts it highlights are presented as food for thought, and court systems are encouraged to take ownership of the general framework and adapt it to their own needs. Details on this handbook are available in OBERTO, *Strategies to Deal with Backlogs and Delays in the Court System. European Experiences*, *Europejski Przegląd Prawa i Stosunków Międzynarodowych* [*European Review of Law and International Relations*], 1/2026/77, https://www.giacomooberto.com/Oberto_Toronto_Presentation2.pdf; https://ojs.academicon.pl/eppism/article/view/10709/10838, pp. 128 ff.

[30] See, in particular, the *Case-weighting Tool for Courts*, adopted at the 45th plenary meeting of the CEPEJ (Strasbourg, on 4 and 5 December 2025), available on the following web page: https://rm.coe.int/cepej-2025-13-en-draft-case-weighting-tool/48802aa87d.

[31] For more details on this tool see OBERTO, *Strategies to Deal with Backlogs and Delays in the Court System. European Experiences*, *Europejski Przegląd Prawa i Stosunków Międzynarodowych* [*European Review of Law and International Relations*], 1/2026/77, https://www.giacomooberto.com/Oberto_Toronto_Presentation2.pdf; https://ojs.academicon.pl/eppism/article/view/10709/10838, pp. 135 ff. See as well the following study: CEPEJ, *Case weighting in judicial systems – CEPEJ Studies No. 28*, https://rm.coe.int/study28-case-weighting-report-en/16809ede97.

[32] ENCJ, *Survey on the Independence of Judges 2022*, https://pgwrk-websitemedia.s3.eu-west-1.amazonaws.com/production/pwk-web-encj2017-p/GA%2022/Report%20ENCJ%20Survey%202022.pdf, pp. 12 ss.

[33] GUARNIERI and PEDERZOLI, *The Power of Judges*, Oxford, 2002, p. 89.

- CCJE *Opinion No. 11*: The role of the judiciary is above all to apply and give effect to the law and cannot properly be analysed in terms of economic efficiency;[34]
- Venice Commission *Rule of Law Checklist*: Guarantees against outside pressure—including in budgetary matters—is one of the fundamental elements of judicial independence;[35]
- CEPEJ *Guidelines on Quality*: Justice cannot be boiled down to the mere delivery of services: as a specific and unique public service, justice produces social links.[36]
- CEPEJ *Guidelines on the Evaluation of the Quality of Work of Judges*: Striking a balance between qualitative and quantitative criteria is paramount, as placing excessive emphasis on quantitative criteria may subject evaluated judges to undue pressure.[37]

This is why ENCJ highlights the role of Councils for the Judiciary in promoting independence while ensuring accountability and quality.[38] Efficiency policies developed by independent judicial bodies strengthen autonomy and reduce executive influence.

9. Conclusion

Judicial efficiency and judicial independence are not inherently incompatible. It is undeniable, however, that efficiency-driven reforms may generate pressures—quantitative targets, resource dependency, managerial influence—that risk undermining both internal and external independence. As this essay has shown, these tensions are real and observable across European judiciaries.

A further difficulty arises from scarcity of resources, which unquestionably affects independence, while the implementation of judicial decisions contrary to governmental interests is often inadequate.[39] Resource dependency creates structural vulnerabilities: governments may condition funding on compliance with policy priorities; budgetary constraints may justify intrusive reforms; and shortages of staff or technology may increase backlogs, exposing courts to political criticism. Internal independence requires—as we have seen[40]— that court presidents and judicial managers refrain from influencing judicial decision making. The ENCJ confirms that court management generally does not attempt to influence the content of decisions, yet improper pressure related to timeliness persists.[41]

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[34] CCJE, *Opinion No 11 (2008)*, https://rm.coe.int/4880152a98, paragraph 60: "60. The evaluation of the quality of judicial decisions must be done above all on the basis of the fundamental principles of the ECHR. It cannot be done only in the light of considerations of an economic or managerial nature. The use of economic methods must be considered carefully. The role of the judiciary is above all to apply and give effect to the law and cannot properly be analysed in terms of economic efficiency."

[35] VENICE COMMISSION, *Rule of Law Checklist*, 2016, paragraph 83, https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)007-e, p. 21: "83. Sufficient resources are essential to ensuring judicial independence from State institutions, and private parties, so that the judiciary can perform its duties with integrity and efficiency, thereby fostering public confidence in justice and the Rule of Law. Executive power to reduce the judiciary's budget is one example of how the resources of the judiciary may be placed under undue pressure."

[36] CEPEJ, *Checklist for Promoting the Quality of Justice and the Courts*, Strasbourg, 2008, https://rm.coe.int/european-commission-for-efficiencyof-justice-cepej-checklist-for-promo/16807475cf, p. 2.

[37] CEPEJ, *Guidelines on the Evaluation of the Quality of Work of Judges*, Strasbourg, 2025, https://rm.coe.int/quality-work-judges-mise-en-page-version-en/1680b3fe75, p. 11.

[38] ENCJ, *Indicators Independence, Accountability and Quality of the Judiciary. Reenforcing Judicial Protection. ENCJ Report 2022-2023*, Brussels, 2023, https://pgwrk-websitemedia.s3.eu-west-1.amazonaws.com/production/pwk-web-encj2017-p/GA%20Ljubljana/ENCJ%20Report%20Indicators%20IAQ%202022-2023%2025%20May%202023%20with%20links.pdf, pp. 7 ff.

[39] ENCJ, *Survey on the Independence of Judges 2022*, https://pgwrk-websitemedia.s3.eu-west-1.amazonaws.com/production/pwk-web-encj2017-p/GA%2022/Report%20ENCJ%20Survey%202022.pdf, pp. 23 ff.

[40] See above, paragraph 3.

[41] ENCJ, *Survey on the Independence of Judges 2022*, https://pgwrk-websitemedia.s3.eu-west-1.amazonaws.com/production/pwk-web-encj2017-p/GA%2022/Report%20ENCJ%20Survey%202022.pdf, p. 3.

On the other hand, efficiency can reinforce independence by enhancing public trust and institutional legitimacy.[42] Efficient courts strenghthen trust by reducing delays, improving accessibility, enhancing transparency, and demonstrating institutional competence. Public trust, in turn, strengthens independence by reducing susceptibility to political attacks. Moreover, reducing backlogs diminishes the vulnerability of judicial systems: backlogs expose courts to criticism and may justify intrusive reforms. Efficient case management reduces vulnerability and enhances institutional autonomy.

This conclusion is also supported by law-and-economics perspectives, which argue that independence correlates with economic performance, but that efficiency is necessary to realise the benefits of independence.[43]

A balanced approach is thefore possible, as demonstrated by experiences across Europe. During the mid-nineties, a cooperative model of case management was adopted in England through the extensive reform project of the civil procedure that followed the report on access to justice commissioned by the Lord Chancellor to Lord Harry K. Woolf.[44] Now, scholars agree that reform managed to balance independence and effectiveness.[45]

The already mentioned Italian experience of the so-called "Strasbourg Programme" in the Turin court offers an example of such balance between judicial independence and judicial efficiency. Launched in 2001 by the then President of the First Instance Court of Turin, the programme succeeded in consistently reducing the backlog of that jurisdiction. It was the first experiment in case management in Italy, aiming at a significant reduction of judicial backlogs and the acceleration of civil proceedings.[46] By April 2009, the court had reduced the percentage of pending cases older than three years to under 5%, with 85% of cases not more than two years old.[47]

Within this framework, a major role was played by the so-called "Decalogue", which constituted a substantial component of the aforementioned "Strasbourg Programme". It consisted of a set of good

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[42] ENCJ, *Indicators Independence, Accountability and Quality of the Judiciary. Reenforcing Judicial Protection. ENCJ Report 2022-2023*, Brussels, 2023, https://pgwrk-websitemedia.s3.eu-west-1.amazonaws.com/production/pwk-web-encj2017-p/GA%20Ljubljana/ENCJ%20Report%20Indicators%20IAQ%202022-2023%2025%20May%202023%20with%20links.pdf, pp. 4 ff.

[43] FELD and VOIGT, *Economic Growth and Judicial Independence: Cross Country Evidence Using a New Set of Indicators*, in *CESifo Working Paper*, No. 906, 2003, https://www.econstor.eu/bitstream/10419/76285/1/cesifo_wp906.pdf, pp. 6 ff.

[44] WOOLF, *Access to Justice: Final Report*, 1996, https://urldefense.proofpoint.com/v2/url?u=http-3A__webarchive.nationalarchives.gov.uk_20060213205513_http-3A__www.dca.gov.uk_civil_final_contents.htm&d=DwMFaQ&c=4ZIZThykDLcoWk-GVjSLmy8-1Cr1I4FWIvbLFebwKgY&r=7lH2nbGzbo8stNvTnc46OW0GrqR9SRCy6uW7bNzz-Gc&m=PH5X-tE1NF18MckQj_2WWdH9hqC8j7eozmLvMFejTGo&s=ppkPlFXmcD96SQbG65Jt9z9wJptLDZqawihQ7zOMzk8, I.8.: "If my recommendations are implemented the landscape of civil litigation will be fundamentally different from what it is now. It will be underpinned by Rule I of the new procedural code, which imposes an obligation on the courts and the parties to further the overriding objective of the rules so as to deal with cases justly. The rule provides a definition of 'dealing with a case justly,' embodying the principles of equality, economy, proportionality and expedition which are fundamental to an effective contemporary system of justice. These requirements of procedural justice, operating in the traditional adversarial context, will give effect to a system which is substantively just in the results it delivers as well as in the way in which it does so."

[45] SORABJI, *English Civil Justice after the Woolf and Jackson Reforms. A Critical Analysis*, Cambridge, 2014, https://doi.org/10.1017/CBO9781072801132014. See as well ANDREWS, *English Civil Procedure: A Synopsis*, 2006, https://www.ritsumei.ac.jp/acd/cg/law/lex/rlr25/neil%20andrews.pdf, pp. 31 ff.

[46] For an outline of the programme and the relevant doctrinal studies, see above, paragraph 2, footnote 9.

[47] As an important Italian scholar notes, "It is worth mentioning that the remarkable success of this delay reduction programme is not the fruit of a major law or structural reform, but of a systematic and tenacious local initiative, which has followed most of the key factors already pointed out by the international literature to fight court delays:" FABRI, *The Italian Maze towards Trials within Reasonable Time*, in COUNCIL OF EUROPE (ed.), *The right to trial within a reasonable time and short-term reform of the European Court of Human Rights*, Round Table organised by the Slovenian Chairmanship of the Committee of Ministers of the Council of Europe Bled, Slovenia, 21-22 September 2009, Directorate General of Human Rights and Legal Affairs Council of Europe Ministry of Justice Ministry of Foreign Affairs Republic of Slovenia, Strasbourg, 2009, p. 21; see also BARTOLINI, COLCELLI and ZAMMIT, *Individual Legal Status: a tool for developing European law?*, Proceedings of the Conference on European Dimensions of Individual Status (Malta: 3rd July 2017), Technical Editor Faisal Sadegh, p. 107.

practices which, while fully compliant with the cumbersome Italian procedural rules, nonetheless succeeded in accelerating the handling of cases.[48]

Beyond the good practice from my former court, there exists a wide range of suggestions that, in my view, could help legal systems achieve a higher degree of judicial efficiency while fully preserving judicial independence. For reasons of time and space, I provide here only a list of suggestions and refer to another essay in which these points are developed in detail:

- No need to set statutory time limits for court proceedings.
- Exchange of best practices between Courts; training and allocation of resources.
- E-filing, virtual hearings and an intelligent use of AI.
- Reducing the size of submissions (and the size of judgments' reasonings).
- Improving the management of court-appointed experts.
- Statutory measures affecting the organisation of the judiciary and of courts; relieving judges of certain non-judicial tasks.
- Rationalisation of court network, ADR, transferring the competence to hear certain categories of cases from panels of judges to a single judge.
- Temporary reorganization of courts.[49]

Of course, efficiency policies must be designed within a framework of strong institutional safeguards, ensuring that independence remains the paramount value guiding judicial governance. For this reason, the ENCJ highlights the need to pay particular attention to the appointment and promotion procedures, particularly at supreme courts.[50] If efficiency metrics are incorporated into career evaluation, judges may prioritise quantitative output, align with managerial expectations, avoid

[48] The "Decalogue" invited first of all the clerk offices of the court to "map" the seniority of cases (at that time, of course, e-filing systems were not yet in use). Cases pending for more than 3 years had to be marked with a red stamp on the cover of their files, so that judges and clerks could immediately single them out. A special monitoring programme on processes older than 3 years was created and a president of a section of the Turin Court was tasked to monitor each and any of them. A program for disposal of those cases was drafted; according to this plan, precise deadlines for disposal of those files were set and in case of not compliance with those deadlines, the concerned judges had to provide written explanations. As a general rule, the Strasbourg Programme set the so called rule of "first in – first out", meaning that older proceedings had to be considered as priority cases, to be dealt with and disposed of before "ordinary" cases pending for less than three years. In fact, this rule created a new category of "urgent" cases, beside the ones that can be argued on the basis of the study of the ECtHR case law. Moreover, the "Decalogue" consisted in a number of recommendations about good practices to introduce in the management of cases by any judge of the court. "Good practices" means here actions and behaviours that, although not contemplated by the law, may lead to a more efficient case management by encouraging a more responsible use of judicial discretion in handling the processes. So, for instance, one of the most qualifying points of this "Decalogue", was the already mentioned rule concerning the introduction of a sort of "priority principle" in tackling older cases. Judges were as well encouraged to make proposals to parties, in order to settle cases, so "pushing" litigants to reach a friendly agreement. They were also warmly invited to make use of all the procedural instruments to punish parties trying to procrastinate the length of the procedures, as well as to put under pressure court experts who delayed without reasons their reports and expertises. Judges were also invited to chose, among court experts, those who, in previous cases, had given evidence of being able to help parties to reach friendly agreements, and so on.

A part of the "Strasbourg Programme" was also dedicated to the need to convince the other main actors of the process, which is to say the lawyers, to co-operate with the Turin Court in fighting against backlogs. For this reason the programme was presented to the local bar and discussed with the lawyers. This was particularly important, in the attainment of the aim to inform them that the "new" priority category, represented by the older cases (to be dealt and disposed with, as already explained, before the others), was not intended to "harm" the position of certain parties in the processes, but was aimed just at the attainment of the overreaching objective to fight the backlog of the court. We must also add that a part of the Strasbourg Programme consisted in the elaboration of detailed statistics (at a time, we must underline, where such exercises were absolutely unknown by judges and clerks) on the productivity of single Sections of the Court and of the judges. Spreading such data among judges played, in practice, a very important role in making judges aware of the need to get their involvement and active contribution to the successful implementation of the initiative. Needless to say that the drafting of such "Decalogue" and the spreading of it among courts, heads of courts and judges, should be the responsibility of the leading institution of the project.

[49] For a detailed discussion of all the suggestions mentioned in the text, see the pages cited below: OBERTO, *Strategies to Deal with Backlogs and Delays in the Court System. European Experiences*, in *Europejski Przegląd Prawa i Stosunków Międzynarodowych* [*European Review of Law and International Relations*], 1/2026/77, respectively, pp. 134 ff., 137 ff., 139 ff., 141 ff., 145 f., 146 f., 148 f., 149 ff.

[50] ENCJ, *Survey on the Independence of Judges 2022*, https://pgwrk-websitemedia.s3.eu-west-1.amazonaws.com/production/pwk-web-encj2017-p/GA%2022/Report%20ENCJ%20Survey%202022.pdf, pp. 34 ff.

complex or politically sensitive cases, or conform to mainstream trends—thereby relinquishing their role as guardians and protectors of the law.

On closer examination, it is no coincidence that CCJE *Opinion No. 1* stresses that career advancement must never depend on quantitative criteria.[51] After all, we should never forget Hannah Arendt's powerful warning, according to which "the ideals of *homo faber*, the fabricator of the world, which are permanence, stability, and durability, have been sacrificed to abundance, the ideal of the *animal laborans*."[52]

Our principal concern must therefore be to prevent judges from degenerating into mere *animalia laborantia*—creatures reduced to labour.

[51] CCJE, *Opinion No 1 (2001) of the Consultative Council of European Judges (CCJE)*, for the attention of the Committee of Ministers of the Council of Europe on *Standards concerning the independence of the judiciary and the irremovability of judges (Recommendation No. R (94) 12 on the Independence, efficiency and role of judges and the relevance of its standards and any other international standards to current problems in these fields*, https://rm.coe.int/488022c411, paragraph 27: "Statistical data have an important social role in understanding and improving the workings and efficiency of courts. But they are not the same as objective standards for evaluation, whether in respect of appointment to a new post or promotion or otherwise. Great caution is required in any use of statistics as an aid in this context." Having served, in 2001, as the expert appointed by the Working Party of the Consultative Council of European Judges (and by the Director General of Legal Affairs of the Council of Europe, by letter of 26 February 2001 – Contract No. DGI 7/2001) to draft the "Preliminary Draft Opinion on Standards Concerning the Independence of the Judiciary and the Irremovability of Judges Contained in Recommendation No. R (94) 12 on the Independence, Efficiency and Role of Judges," which subsequently gave rise to the final Opinion now under consideration, I feel particularly proud to have succeeded in introducing, and securing approval for, this point in the definitive version, as it is in my view of considerable importance.

[52] See ARENDT, *The Human Condition*, 2nd ed., Chicago and London, 1998, p. 126.