

ENCJ General Assembly pre-conference Survey

This pre-conference survey is sent to all registered participants to the General Assembly to provide input on how the participants see judicial solidarity. The replies will be used for the session on 2 June and for the Athens Declaration on Judicial Solidarity in times of crisis.

In your view what does judicial solidarity mean?

Defining judicial solidarity calls for defining firstly the word “solidarity”. Solidarity is a word that is susceptible to a plenty of meanings. For example, it is defined as “unity (as of a group or class) that produces or is based on community of interests, objectives, and standards.

For ambiguous meaning of the word „solidarity“ it is also very difficult to define „judicial solidarity“. Generally speaking, judicial solidarity is a sensitive matter primarily for the reason that its boundaries are quite often blurred and complicated.

It was recently confirmed by the treatise: *Judicial solidarity?* (Farbman, Daniel, *Judicial Solidarity?* (May 6, 2022). *Yale Journal of Law and the Humanities*, Vol. 33, No. 1, 2022, Boston College Law School Legal Studies Research Paper No. 583).

Studying this essay we are convinced that it would be better to understand judicial solidarity exclusively on the basis of individual cases (case interpretation methodology).

Beautiful example how that case interpretation approach could work is the decision of the French Constitutional Council¹ in which this prominent court noted that the freedom to help others with a humanitarian goal, without taking into consideration the legality of their stay in France, can be inferred from the constitutional “principle of fraternity”. It is up to the legislator to ensure that there is a fair balance between the principle of fraternity and the safeguarding of public order.

¹ Décision n° 2018-717/718 QPC du 6 juillet 2018M. Cédric H. et autre [Délit d'aide à l'entrée, à la circulation ou au séjour irréguliers d'un étranger]. Hedric Herrou challenged his conviction for smuggling migrants across the border from Italy to France. In 2017 he was fined 3000 euros for providing assistance to migrants in the Roya Valley that straddles the frontier between the two countries.

Next very useful examples could offer empirical analysis of the Court of Justice of EU's case law framing the notion of solidarity² which provides a unique database of cases elaborating on the concept. As it has been published there are three categorial types of solidarity (solidarity as charity, as mutual obligation and as risk mitigation) and three functional types of solidarity (embedding individual rights, embedding the Internal Market, rejecting limiting effects of national solidarity).

Which actors do you believe are relevant in this regard? (Associations/ individual judges etc)

Applying the principle of judicial solidarity depends, entirely, on individual judges. Nobody else is empowered to adopt a judicial decision in which is possible to give preference to solidarity issues instead of rigorous insistence on the text of legal norms.

How do you see the role of the Council for the Judiciary in providing support?

The Judicial Council should contribute to enforce the principle of judicial solidarity by protecting judge's legitimacy if a judge has adopted a decision prioritising solidarity before pure legal solution supposing that the judgment remained within general limits of rule of law.

Which actions/what kind of support could be organised on the national level?

Judicial solidarity cases should be widely publicised, explained and used in courses for judges and other judicial administrative staff.

Which role could the ENCJ play?

On the European level it would be effective if the ENCJ follows all judgments and other decisions in which European courts enforce principle of solidarity and successively those verdicts would be analysed in relation to acquiring general knowledge on how judicial solidarity works or applies in particular cases.

Which actions/ what kind of support could be organised on the European/ international level?

See the previous answer.

Any other thoughts or comments on the topic of judicial solidarity?

² The EU treaties constitute solidarity as one of the EU's fundamental values (Articles 2, 3 (2) TEU).

