



EUROPEAN ASSOCIATION OF JUDGES
ASSOCIATION EUROPEENNE DES MAGISTRATS

RESPONSE
to the
CONSULTATION QUESTIONNAIRE
by the
EU COMMISSION
for the preparation of the
REPORT on the RULE OF LAW 2022

(I) HORIZONTAL DEVELOPMENTS

The EAJ is honoured to respond to this stakeholder- consultation.

In order better to inform its response the EAJ requested its member associations in the Member States of the European Union to respond to the questionnaire and has prepared the summary of the responses set out below. The EAJ, which has 44 member associations, including associations in all 27 EU member states, regularly receives reports from its member associations on the state of the rule of law in their respective European countries. EAJ may also be asked by member associations for support in their endeavours to resist infringements of the independence of the judiciary and the rule of law in their country.

The period since the delivering of our contribution to last year's Rule of Law Report has again been overshadowed by the Covid 19 pandemic. The continuing pandemic has presented the judiciary with new challenges to master over and above their already existing tasks and has resulted in additional workload and new types of cases.

Due to health protection reasons physical contact has been restricted, which has consequently slowed down non-urgent cases, prolonged procedural deadlines and produced some backlogs. In several states however the association reported that the judiciary had coped quite well with the new situation and the workload and additions to the backlogs had

been avoided. (Bulgaria, Croatia, Romania, Slovenia, Sweden). Substantial financial resources have been invested in hard- and software. Judges and staff meanwhile have become used to the new techniques. Some countries however discovered temptations to keep in place measures which reduce access to justice beyond the period for which the measures were necessary. So, care must be taken in coming times in that regard.

In many countries, when cases were brought before it, the Constitutional Court duly fulfilled its role of checking whether the legislative measures and the government respected the Constitution and fundamental rights.

The deterioration in the rule of law and the situation of the judiciaries in Poland and Hungary has not only not abated but is even worse now than a year ago, despite the judgments delivered by the Court of Justice of the EU and the European Court of Human Rights. It is not necessary to go into detail here, because the situation is well known throughout Europe. In both of those Member states, under pressure from their respective governments, the highest national courts have expressly held that decisions of the Court of Justice are not valid and that observing the primacy of European Union law would be in conflict with their respective constitutions. It is sad to have to observe that the very hesitant way in which European authorities handled the developing situation provided an opportunity for these member states always to go further, one step after another.

But there are also other member states which call for attention. We see a growing trend for governments to try to obtain or increase their influence on the judiciary by acquiring means of exercising some control over the Council for the Judiciary. This is not only the case in Poland; but also manifestly in Spain, which has resulted in problems due to the blockade of appointing of judges; in Bulgaria; and in the last composition of the Slovenian Council. Changes were adopted in Slovakia, amendments were drafted in Romania and projects are debated in Croatia, all of which would weaken the independence of the Council. A positive factual change in the composition of the Council was reported from Portugal.

Another negative phenomenon, which unfortunately could be observed in several countries (Poland, Bulgaria, Romania, and Slovenia) is the misuse of disciplinary procedures against judges by bringing disciplinary proceedings either on grounds of the content of the judicial decision or, for political reasons, under the pretext of alleged failures in the judge's performance. Serious concerns also provide the involvement of secret service in investigations against judges, like in Romania and foreseen in Croatia. All such activities endanger the independence of the judiciary and damage the principle of division of powers.

In several member states (e.g., Bulgaria, Croatia, Germany, Finland, Lithuania, Romania, Slovenia) judges claim that their remuneration is inadequate.

In some countries unwarranted criticism and attacks against judges, prosecutors, and the judiciary in general, have reached new heights (Austria, Croatia, Romania, Slovenia, Spain.)

A lack of resources was reported in, among others, Bulgaria, Croatia, Ireland, Lithuania, and Slovenia.

Finally, EAJ is pleased to notice what it hopes is a positive development - namely that there are indications of a growing public awareness of the rule of law and its importance for society.

That increased awareness has been stimulated by the effective role which constitutional courts have played in protecting fundamental rights during the pandemic and, perhaps even more so, by the widespread public discussion at both national and European levels of infringements of the independence of judges and the judiciary at large, including increased publicity about the relevant judgments of the European courts. It is to be hoped that in the coming year this increasing public awareness will help to foster and encourage the restoration of the rule of law and the independence of the judiciary in countries where that has suffered badly in recent times.

(II) SUMMARY of ANSWERS to the QUESTIONNAIRE

This summary contains observations of EAJ and its member association regarding the parts I (Justice system) and IV (Other institutional issues related to checks and balances) of the stakeholder consultation form.

I. JUSTICE SYSTEM

A. Independence

1. Appointment and selection of judges and prosecutors and court presidents (including judicial review)

Positive developments since 1.2.2021:

The procedure of selection of applicants who are admitted to training to become judge or prosecutor (Richteramtsanwärter) will be amended by a law, which is envisaged for spring 2022. The Personalsenat, which is the body composed of the president, one vice-president and five judges elected by their peers, will be involved, whilst till now the proposal to the Minister of Justice, whom to admit is fully in the jurisdiction of the presidents of the higher regional courts. But there will still be no involvement of the Personalsenat in the appointment procedure for the President of the Supreme Court, the Vice-presidents of this Court and the Presidents of the administrative courts, which was identified as point of concern in the last Rule of Law Report. (Austria)

In their coalition contract of December 2021, the new governing parties agreed on reforming the elections for judges at the Federal Supreme Courts. In the past, the German Judges Association had criticised the election system of Federal Judges both generally and specifically regarding the decision of the Federal Minister of Justice to set aside established principles for the nomination of court presidents. **(Germany)**

In late December 2020 the new coalition government of Ireland committed to proceeding with introducing a revised Judicial Appointments (Commission) Bill, following the lapsing of the previous Bill with the dissolution of the Oireachtas (Irish Parliament) consequent upon the general election in February 2020. The government has since published the General Scheme of the proposed revised Judicial Appointments (Commission) Bill, but to date no such Bill has been formally introduced for consideration by the legislature. According to the General Scheme of the proposed Judicial Appointments Commission Bill it will provide for the establishment of a Judicial Appointments Commission of 9 members to replace the current Judicial Appointments Advisory Board (JAAB). It is proposed that the membership of the Commission will be; Chief Justice, as Chair of the Commission; Two nominees of the Judicial Council, one having been a practising solicitor and one having been a practising barrister; One court president being the president of the court in respect of which the Commission is to recommend persons for appointment; Four lay members, three of which are to be selected by open competition by the Public Appointments Service (PAS), and one of which will be nominated by the Irish Human Rights and Equality Commission. The Attorney General, in an ex-officio non-voting capacity; Under the proposed Bill, the Minister will receive 5 unranked recommendations for each vacancy; 8 recommendations in instances where there are two vacancies; and 11 recommendations where there are three vacancies. Serving judges wishing to be considered for promotion to a higher judicial position will be required to apply to the Commission under the proposed Bill. The Commission will develop upgraded procedures and requirements for judicial office selection working through a Procedures Committee; it will prepare and publish statements setting out selection procedures and (judicial) skills and attributes having regard to several criteria (including such matters as diversity etc.). It is proposed that the Procedures Committee will be chaired by the Chief Justice, or a Judicial Council nominee. The current status of the legislative proposal is that following the publication of the General Scheme of the revised Judicial Appointments Commission Bill the Minister for Justice referred it to the Oireachtas Joint Committee on Justice (the Joint Committee) for pre-legislative scrutiny. On the 14th of October 2021 the Joint Committee published its Report putting forward a series of recommendations to the Minister for amendments/adjustments to the proposed Bill based on stakeholder engagement. Yet, no Bill has been formally introduced before the Oireachtas for its consideration. **(Ireland)**

The Constitutional Court's decision quashing some paragraphs of the Law governing competition for admission into National Institute of Magistracy in June 2020 caused problems with vacancies in the courts. After the parliament finally adopted the new legal regulations in

July 2021 within one week the Superior Council of Magistracy (SCM) adopted the necessary regulations of the competition and announced the organization of the competition. **(Romania)**

In 2021 two contests for promoting judges to leading positions took place. **(Romania)**

Negative developments since 1.2.2021:

The Supreme Judicial Council continues to delay competitions for appointment and promotion, which leads to many difficulties in organizing the work of the courts. This delay is due to both the deficiencies in the legislation adopted in the period 2017-2018 and the deliberately poor implementation of the law by the majority of the Supreme Judicial Council. In practice, it favours individual political lobbies close to the former ruling parties. Only one competition for external appointments in the administrative courts has been completed, with great doubts about its fairness. The winners of the competition were mostly court assistants in the Supreme Administrative Court close to the court's management or to the former ruling party. **(Bulgaria)**

Under the argument that the process of appointment, promotion and discipline issues of judges should have "democratic legitimacy" the President of Republic, some political parties and their representatives in the Parliament, the newly appointed President of Supreme Court in his interviews before appointment, some professors of law and some highly profiled lawyers are advocating higher and crucial influence of the Parliament in this issues questioning the role and competences of the Judicial Council , now a constitutional body with majority of judges elected by their peers. **(Croatia)**

The number of non-permanent judges in Finland is significant (e.g., Helsinki District Court 30%), which is a threat to independence. The Chief Justice has the right to appoint and select non-permanent judges with a duration of the position of less than six months. **(Finland)**

Lay judges, who act in criminal cases, are elected, and selected through political nominations. **(Finland)**

The President of the National Judicial Office (NJO), who is competent for the appointment procedure, has not always called for applications for posts of judges that have become vacant in courts and tribunals due to retirement and resignation. Often there is no reason given for such omission and the prolongation of vacancy. In contrast, the number of applications and the number of judgeships at the Curia (Supreme Court) has increased significantly. The number of posts for judges increased mainly in the administrative section. **(Hungary)**

As a result of the modification of the application points system, in several cases candidates with little judicial experience or coming from a political career (e.g., Secretary of State) without judicial experience have been appointed although candidates with long judicial experience and high-quality performance have also been appointed as judges of the Curia. A problem which has arisen in the case of applications for judicial leaders is that several terms used in the law on the Organisation of Courts are not clear in their meaning. For example, the method of calculating invalid votes and, consequently, the awarding of a majority of votes is unclear. The

National Judicial Council has pointed out the problem to the Ministry of Justice and requested that these definitions should be regulated in a uniform way. **(Hungary)**

Leadership applications ending in 2020 were evaluated in 2021 by the review bodies, but due to the pandemic the review meetings couldn't be called and held. The application was blocked by a government decision on the pandemic. However, there was no acceptable justification for extending the mandate of old leaders. **(Hungary)**

Appointments to high judicial positions remain subject to delays. The appointment of the President of the Lithuanian Supreme Court is still pending since September 2019. There is a constant delay in appointments of judges of the Court of Appeal of Lithuania, Lithuanian Supreme Court, and other courts. **(Lithuania)**

The new presidents of the first instance courts were appointed recently by the Judicial Superior Council, following a selection procedure that gave rise to much controversy and individual legal actions. The Portuguese Judges Association considers that the law should stipulate that presiding judges are elected by their peers in the respective courts (as it happens in the appellate and supreme courts) and not appointed by the Superior Judicial Council. **(Portugal)**

The Government of the Republic of Slovenia did not nominate two European delegated prosecutors, thus preventing the EPPO from starting work until mid-December 2021 **(Slovenia)**.

The Government of the Republic of Slovenia is delaying the nomination of several state prosecutors, thus complicating the work of the State Prosecutor's Office. **(Slovenia)**

Parliament (National Assembly) did not elect - promote two Supreme Court Justices (due to their decisions in specific cases), one later in the second attempt. **(Slovenia)**

The proposal to deprive the General Council of the Judiciary from making appointments for discretionary positions, which was already reported in the previous report, in the meantime has been approved and at present the Council has not been able to renew discretionary positions whose terms have expired, resulting, especially in the case of retirements, in a lack of judges to attend to the elementary jurisdictional tasks of certain bodies. Specifically, the shortage of staff, as their appointment cannot be undertaken by the General Council of the Judiciary, has particularly affected the Supreme Court where the lack of magistrates has begun to cause operational stress in its chambers, especially in the Social and in the Administrative Litigation. This impairment in the functioning of the Supreme Court is causing delays and serious damage to the rule of law, as the Board of Governance of the Supreme Court has announced to the public powers through a recent report approved unanimously by all its members. **(Spain)**

Some observations regarding the impact of Covid-19 on these issues:

Some of the competitions held were delayed because of restrictions for social distancing. **(Bulgaria)**

2. Irremovability of judges, including transfers (including as part of judicial map reform), dismissal and retirement regime of judges, court presidents and prosecutors (incl. judicial review)

Positive developments since 1.2.2021:

With regard to transfers, the Constitutional Court ruled in June 2020 that the provision on the transfers is not constitutional because the law does not indicate the conditions for transferring judges, generating a state of unpredictability. Consequently, in December 2021 there was published the law amending the respective law. **(Romania)**

Negative developments since 1.2.2021:

The delay of competitions for promotion by the Supreme Judicial Council continues. This resulted in enormous increase of secondments of judges and prosecutors to higher courts and prosecutors' offices. In most cases, the secondment is chaotic and lengthy and not based on objective criteria, which permanently jeopardizes judicial independence and its specific manifestation in the powers of the ordinary judge. **(Bulgaria)**

The possibility that judges may temporarily be transferred to another court might harm the independency of a judge as: (i) it provides for a possibility to move judge to a *lower* instance court without his/her consent; (ii) there is an absence of legal criteria under which *particular judge* from the court is to be selected for transfer. **(Lithuania)**

There was a high number of retirements of judges – not because of a legal provision, which lowered the retirement age, but which never had come into force and was finally repealed – but because of the increased workload. This was caused by the stoppage of contests to enter the magistracy and because of the announcement of the MoJ that a retirement reform is envisaged, which will negatively change the conditions of retirement for judges. **(Romania)**

The Judicial Council of the Republic of Slovenia (JC) did not reappoint or even dismissed several court presidents without clear criteria, especially against the principle of proportionality. The Supreme Court of the Republic of Slovenia confirms the unlimited discretion of the Judicial Council. Due to the indefiniteness of the procedure for dismissal of court presidents, a request has been filed to assess the constitutionality of Article 64 of the Courts Act. **(Slovenia)**

Decree-Law 15/2020, of April 20, that established the transfer of judges from the passive class regime to the general regime (changes in the social security regime for public officials including judges), was declared unconstitutional by the Constitutional Court, having been issued for

reasons of urgent necessity, the Constitutional Court not having appreciated that an emergency situation concurred. **(Spain)**

3. Promotion of judges and prosecutors (incl. judicial review)

Positive developments since 1.2.2021:

A debate regarding a reform of the evaluation of judges was started. **(Austria)**

There are ongoing discussions on the improvement of the system of a promotion of judges. **(Lithuania)**

Several contests for promoting judges were approved including one regrading 12 justices of the High Court of Cassation. **(Romania)**

Negative developments since 1.2.2021:

Subjective criteria for the promotion of judges are not proportionate to other criteria, the opinion of the president of court on performance plays a large role; the President of the Republic is not bound by the ranking of the Selection Commission; and there is no legal provision that he/she has to give reasons for the appointment. **(Lithuania)**

There are delays in promotions by the Supreme Judicial Council. **(Bulgaria)**

The Judicial Council, after proposing to the Ministry of Justice the abolition of one of the possibilities for the promotion of judges, arbitrarily, without a legal basis (amendments to the Judicial Service Act) no longer decided on that possibility. **(Slovenia)**

4. Allocation of cases in courts

Positive developments since 1.2.2021:

There were some improvements in the computer system for random allocation of cases introduced. **(Bulgaria)**

Ongoing discussions on the possible way-out how to solve inequality of workload in courts of the same instance; efforts to find a better solution. **(Lithuania)**

A law was passed by the parliament under which the allocation of cases in the courts will be carried out in a public session, presided over by a judge, with the participation of a representative of the Public Prosecution and of the Bar Association. This is positive, as it introduces more transparency into the procedures. The law is not yet in force because it needs to be regulated by the government. **(Portugal)**

Negative developments since 1.2.2021:

The appointment of the judges to the cases (composition of Judges in cases consisting of more than one judge) can be determined by the Chief Justice or the Head of Department. Chief Justice also can decide in criminal cases the composition and number of Judges needed to handle the case. This is a threat to the independence of the Judge and endangers the due process of the party. The Chief Justice also determines the order of the handling of the cases and the schedule to handle the cases. The cases with public interest are handled promptly. The cases with public interest or other case which are handled promptly without a proper reason are causing the delays of other cases. In civil cases the parties determine if the case is handled by a single judge or by a panel of three. To determine the composition and number of judges should be a question for the judicial power and should be solely made by the judge handling the case. **(Finland)**

On the negative side, there is no consistent measurement of workload in district courts and tribunals, which hinders the assessment of the workload of different courts. It is in the interest of the citizen that cases are decided in the same amount of time in different courts and that there is no measurable difference in this over many years. **(Hungary)**

The Superior Judicial Council approved a regulation that allows for the reallocation of cases to other judges for management reasons. While recognizing that the regulation increases objectivity and transparency in management decision-making, the Portuguese Judges Association did not agree with some rules of the regulation, considering that, if misused, they could lead to manipulation of case distribution. The regulation was challenged by the Judges Association in the Supreme Court of Justice but the action was unsuccessful. **(Portugal)**

Some observations regarding the impact of Covid-19 on these issues:

Law 3/2020, of September 18, on procedural and organizational measures to deal with COVID-19 in the field of the Administration of Justice established procedural measures to establish the preferential processing of certain procedures in the social and civil order and contentious-administrative directly arising from the health crisis caused by COVID-19, as well as those who have been affected by the consequences of the same and measures in the bankruptcy and corporate sphere, mainly in relation to the temporary employment regulation file. **(Spain)**

5. Independence (including composition and nomination and dismissal of its members), and powers of the body tasked with safeguarding the independence of the judiciary (e.g., Council for the Judiciary)

Positive developments since 1.2.2021:

A positive development is that the President of the National Judicial Office and the President of the National Judicial Council signed an agreement on 1 December, under which the NJO will pay for the cost of the NJC's website. **(Hungary)**

In principle, the work of Council of Judges is positive and effective. It has tackled long-standing problems (e.g., Council of Judges has initiated discussion about systems of evaluation and promotion of judges and about issues concerning salaries of judges). **(Lithuania)**

A judge of the Supreme Court was appointed by the President of the Republic as member of the Judicial Superior Council (the President may appoint two members, not necessarily judges). Consequently, currently there is a majority of judges sitting on that Council. **(Portugal)**

After the elections, in July 2021, the composition of half of the members of the Judicial Council changed. There is the hope that the negative practice of the past composition of the Council will change to the better. **(Slovenia)**

The question of whether Sweden should create a Council for the Judiciary is still under review by a parliamentary committee, as already stated in the previous report. **(Sweden)**

Negative developments since 1.2.2021:

The majority of the members of the Judicial Council continue to exercise their powers with no accountability or responsibility. During 2021 on several occasions this majority failed to react on attacks of media and/or political figures against judges. The same majority composed by the members of the Council elected by the Parliament and from the SJC Prosecutors' Chamber refused to initiate proceedings for dismissal of the Prosecutor General on several proposals of the Minister of Justice, of the Bulgarian Judges Association and of other legal practitioners' and non-governmental organizations. These proposals had been based on the actions and omissions of the Prosecutor General which undermined the reputation of the Prosecutors' office and the Judiciary as a whole and lack of political neutrality. The Bulgarian Judges Association has called on the members of the current composition of the Supreme Judicial Council to resign due to systematic non-fulfillment of their constitutional obligations to administer the judiciary in the interest of the citizens of the Republic of Bulgaria and to protect judicial independence and judicial self-government. This appeal was not successful. **(Bulgaria)**

There are proposals to increase the influence of the parliament on decisions regarding the career of judges, which are in the jurisdiction of the Council (appointment, promotion, disciplinary issues) **(Croatia)**

A central point of critics since long time is the distribution of competences between the National Judicial Council and the National Judicial Office, where an extension and strengthening of the competences of the Judicial Council is proposed. The competences of the National Judicial

Council have still not been extended to ensure effective control of the central administration. Until November 2021, the President of the National Judicial Office attended only part of the meetings and sent his deputy to the meeting even when he had no other important official activity. Until November 2021, the President of the National Judicial Office did not react to the decisions and requests of the NJC for months and did not reply to letters. There has been an improvement in this aspect since November. **(Hungary)**

The selection procedure for members of the National Council for the Judiciary, which contradicts European standards has not been changed. The members elected by the parliament are still in office including the members, regarding whom doubts were raised as far as their correct nomination is concerned. **(Poland)**

The draft bill on the Superior Council of Magistracy (SCM) proposes important amendments, which will seriously affect the representativeness and the efficiency of this body that is essential to the independence of justice. According to the law, the SCM Section for Judges consists of 2 judges from the High Court of Cassation and Justice, 3 judges from the courts of appeal, 2 judges from the county courts (tribunals) and 2 judges from the district courts. The proposed bill intends that the SCM members will no longer be elected depending on the jurisdiction degrees; instead, they will be voted by all the judges. As such the judges at district courts level, which are the most but the one with less experience, will always have a decisive role in choosing all the SCM members, including the High Court of Cassation and Justice ones, because the judges from the first hierarchical level have a number of votes that far exceeds the number of votes of the county courts, the courts of appeal and the supreme courts, they will be the ones actually deciding the entire composition of the Judge Department within the Superior Council of Magistracy. On the occasion of meeting the new Minister of Justice, on December 16, 2021, the Romanian Magistrates' Association (AMR) approached also this important issue and the Minister answered that draft law is not final. **(Romania)**

An amendment to the Constitution introduced that “the Chairman, Vice-chairman and members of the Judicial Council of the Slovak Republic may be removed at any time before the expiry of the term of office”. This clearly infringes the independence of this body and is in apparent conflict with European standards. **(Slovakia)**

The Parliament still was not able to elect new members. Several of the functions of the General Council of the Judiciary were limited by law and there are public pronouncements by part of members of the Government who affirm that the system for appointing members of judicial origin will not be modified, so that it is produced by the judges themselves, as has been reiterated by those responsible for the EU. **(Spain)**

Some observations regarding the impact of Covid-19 on these issues:

Meetings of the Board of the Judicial Council and of its various committees (including the Judicial Conduct Committee (JCC)) have had to be conducted virtually (using video link technology) rather than physically due to on-going Covid 19 social distancing requirements. However, the work of the Board and of the JCC has continued notwithstanding this limitation. **(Ireland)**

6. Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal/civil (where applicable) liability of judges (incl. judicial review).

Positive developments since 1.2.2021:

After delivery of the ECHR judgement on Miroslava Todorova vs Bulgaria case (appl. № 40072/13) the Judicial Chamber of the Supreme Judicial Council (SJC) decided to analyse it and to address deficiencies, which the ECHR had identified in the proceeding of judge Todorova. **(Bulgaria)**

In 2021 the Association of Judges in Finland established an ethical advisory board to assist judges with ethical rules. **(Finland)**

In 2021, the National Judicial Council started the discussion on the amendment of the Code of Ethics, which is currently ongoing. The National Judicial Office does not want to be actively involved in this work. The Committee of the Ministry of Justice has started its work on the amendment of the rules of disciplinary procedure. The Association of Hungarian Judges (MABIE) has announced its willingness to collaborate. On 30 November 2021, the Committee already has held a meeting with participation of delegates from MABIE. **(Hungary)**

The Judicial Conduct Committee of the newly established Judicial Council has completed its work drafting guidelines concerning judicial conduct and ethics and has submitted them for review by the Board of the Judicial Council pursuant to Section 43 (3) (d) of the Judicial Council Act 2019. The draft guidelines include guidance for judges as to the matters to be considered when deciding on recusal from presiding over legal proceedings. The Board will in due course review, and may modify, those draft guidelines before the Judicial Council considers them for adoption. Under the provisions of the Judicial Council Act 2019 the latest date that this can be done is 28th June 2022. **(Ireland)**

The Judicial Council initiated a discussion on “improving the framework” for disciplinary proceedings regarding judges (EU Report), **(Slovenia)**

Negative developments since 1.2.2021:

During 2021 the Supreme Administrative Court had to quash several decisions of the Supreme Judicial Council imposing disciplinary sanctions to judges or prosecutors due to lack of motivation, or procedural violations, or inconsistent and unpredictable disciplinary practice of the Council. **(Bulgaria)**

There is new provision proposed that judges must undergo security checks performed by State Security Agencies every five years. This is a control of judges by the executive branch and against an independent judiciary. **(Croatia)**

There are still numerous disciplinary procedures on unfounded reasons pending. **(Poland)**

The Disciplinary chamber of the Supreme Court, which does not meet the requirements of an independent judicial body went on with its activities ignoring the judgment of the Court of Justice of the EU. **(Poland)**

The provisions of the disciplinary procedure, which conflict with European standards and had been identified by the Court of Justice of the EU, have not been remedied. **(Poland)**

At this moment, there is a judge under disciplinary investigation for a decision she rendered regarding the classification of the complexity of a very high-profile case, which influenced its allocation, without, however, affecting its randomness. As this decision was taken in the case, through a judicial ruling, and was appealed by the Prosecution, the Portuguese Judges Association ASJP considers that the disciplinary action of the Superior Judicial Council is an illegal interference in the judge's disciplinary immunity and is providing for her support. **(Portugal)**

The Romanian Magistrates' Association (AMR), the National Union of Romanian Judges (UNJR), the Association of Judges for The Defence of Human Rights (AJADO) and the Romanian Prosecutors' Association (APR) claim that judges of another group not only take other positions in substantial issues, which is their right of freedom of expression but that they publicly especially by using social media insulted and body-shamed other judges, and present the disciplinary procedure on these grounds in messages to national and international authorities as infringement of their fundamental rights. **(Romania)**

There is a disciplinary case in which a judge, who is founder and vice-president of an organization, which was founded to give political statements, claims that he himself never participated in a political action of this organisation and that he always absented himself from voting in case of press releases with political content. **(Romania)**

Article 148 (4) of the Slovak Constitution provides for immunity for „the legal opinion expressed on the decision, unless a criminal offence has been committed“ [emphasis added]. This implies that the act of giving a judicial decision may constitute a crime and it is of equal or greater concern that with effect from 1 January 2021 the Criminal Code was amended to create, in sec. 326(a), an offence for any judge to issue „an arbitrary decision causing damage to or bestowing a favour on another person “ Taken together, these provisions readily render judges in Slovakia open to criminal prosecution, or the threat or fear of prosecution, in respect of their judgments and thus pose serious dangers to the independence of the Slovakian judicial office holders. The concept of By-Act No. 312/2020 on forfeiture of assets and management of seized property and amendments to certain acts. an “arbitrary decision” is very wide and ill-defined. The loose and widely cast provisions brought into force in Slovakia on 1 January 2021 manifestly fail to restrict criminal liability for the professional activity of the judge to the narrow, closely defined limits required to meet the basic standards required by European and other international instruments dealing with this topic. **(Slovakia)**

It is necessary that judges are protected against undue prosecution since the existence of a potential liability to prosecution may exercise heavy pressure on a judge and influence the judge's work. Therefore, the prosecution of judges needs special safeguards. Previously the Slovak Constitution provided that pre-trial detention of judges required the assent of the Constitutional Court. This has now been abolished (new Article 136 (3) of the Constitution). In the member states of the Council of Europe different models exist to prevent an undue impact on the judiciary as a result of detention or similar investigative measures connected with a prosecution. The consent of the Constitutional Court, another Court or in most cases of the Judicial Council is necessary to safeguard the independence of the judiciary. The absence of any such safeguard thus weakens the protection of the independence of the judiciary. **(Slovakia)**

The Minister of Justice asked the president of one of the district courts to file an initiative to initiate disciplinary proceedings against the judge, who posted critical words against the Prime Minister on a closed Facebook profile. One of the "friends" passed these words to a prominent representative of the ruling political party, who forwarded it to the media. The president of the court dismissed the judge from the position of head of the department and filed an initiative to initiate disciplinary proceedings with the Judicial Council. The Disciplinary Prosecutor at the Judicial Council filed an indictment with the Disciplinary Court at the Judicial Council. There were numerous protests by eminent law professors and media experts. The Disciplinary Court at the Judicial Council found no disciplinary violation, as it was a record on a closed Facebook profile, and, like the Ethics and Integrity Commission, noted the judges' reluctance to comment on current political events. No proceedings have been instituted against the president of the court, who succumbed to pressure/demand from the Minister of Justice. **(Slovenia)**

7. Remuneration/bonuses/rewards for judges and prosecutors including changes (significant increase or decrease over the past year), transparency on the system and access to the information:

Positive developments since 1.2.2021:

Judges' salaries increased by an average of 12% in January 2021, but judges are still among the last in the EU. It should be mentioned that non salary benefits have been unchanged despite the increase in judges' salaries. A positive effect of the salary increase is the rise of pensions for judges who are now retiring. **(Hungary)**

No significant changes since the last report. However, there have been the following modest changes. Members of the judiciary have benefited in the last 12 months from a 2% salary increase under the The Public Service Pay and Pensions Act 2017 ("the PSPP Act"). Further, s. 19 of the PSPP Act required the Minister for Public Expenditure and Reform to provide, by order, for the completion of pay restoration for public servants with annualised basic salaries of up to €150,000 by 1 July 2021. This included certain members of the Judiciary, specifically all District Court Judges and Judges on the first point of the pay scale of the Circuit Court, and

who were appointed post 1 January 2012. All other members of the Judiciary will be due final restoration by 1 July **2022. (Ireland)**

The issue concerning salaries of judges is recognized to some extent at the political level, e.g., the President of the Republic recently noticed that the salaries of judges are too low and do not correspond to the status of the judges. The question of judges' salaries is mentioned as an obstacle to the effectiveness of justice system in the Programme of Justice system for 2021-2030 (the existing funding model does not correspond the legal status and needs of courts as independent public authorities). However, the programme does not indicate particular measures for the solution of such issue. **(Lithuania)**

Negative developments since 1.2.2021:

They identified systematic deficits of the system for remuneration/bonuses for magistrates, such as: the big and unjust differences between salaries of judges and prosecutors from separate levels, inconsistent practice of the Supreme Judicial Council for determination of the size and grounds for awarding magistrates with annual bonuses, the favorable treatment in this regard of judges and prosecutors from specialized courts and prosecutors' offices remained unchanged. A new model for fair scale of remunerations proposed by the Bulgarian Judges Association was rejected by SJC. **(Bulgaria)**

Despite inflation and rises in the costs of living, judges' salaries have not been raised for several years. This has negative effect especially on judges of first instance courts. Fewer and less qualified candidates are applying or show any interest in entering judges' profession. **(Croatia)**

The Association of Judges of Finland claims that a reform of the system of salaries of judges is urgently necessary. **(Finland)**

In spite of the two decisions of the Federal Constitutional Court of 2020, so far, the problem of insufficient remuneration of judges and prosecutors in Germany has not been adequately resolved. The overall remuneration of judges and prosecutors in the German Länder did not rise significantly in 2021. The remuneration rises granted in the Länder adopted in general wage agreements settled with Unions for public service employees. Overall, inflation in 2021 was higher than any remuneration rises in Germany. That development is expected to continue and even deteriorate in 2022. Very generally, the Länder tend to adjust the remuneration schemes for judges just marginally above the threshold of unconstitutionality. Two examples: On 30 November 2021 the Higher Administrative Court of Hessen declared the remuneration of public service officers of Hessen unconstitutional since it was too low between 2013 and 2020. The Higher Administrative Court of Schleswig-Holstein issued a similar judgement on 23 March 2021 for 2007. Both findings are likewise true for the remuneration of judges and prosecutors. The German Judges Association has been claiming appropriate remuneration for judges and prosecutors for many years. Its claims were updated in 2021. **(Germany)**

There is still no transparency or consistency in the criteria that presidents of courts follow when determining bonuses. The principles of bonus systems have been developed in most courts with the involvement of the judiciary's representative bodies. The issue was addressed by the National Judicial Council at one of its meetings. At that meeting, the President of MABIE

informed the Council that the President of the NJO has no control over local criteria for the distribution of bonuses. The NJC's opinion was, on its contrary, that the President of the NJO could and should control the observance of the principles of the distribution of the bonuses. **(Hungary)**

Economic factors have resulted in a significant increase in inflation, which has mitigated the positive effects of the salary increase. **(Hungary)**

There are no common political agreements on the issue of low salaries of judges and ways how it should be solved. The lack of systemic approach to the judiciary as a third power and indication its right place in the system of state governance, has determined inter alia the situation of inadequacy of judges' salaries. The salaries of most of the judges is 3,2% decline in comparison with 2008 whilst the average increase of salaries of other high ranking public officials is 13% compared with 2008. It is also problematic that the schema of salaries of prosecutors is better than the one for judges. **(Lithuania)**.

Whilst the Supreme Court, the Supreme Council of Magistrates, the Judicial Inspection, and the Prosecutors Office negotiate their own budget are all the other courts dependent on the Minister of Justice. Therefore, this part of the judiciary is not invited to the negotiations of a working group which deals with the remuneration of judges at the Ministry of Labour, which aims to "correcting the law on non-unitary remuneration in public system". **(Romania)**.

Because of many years of complete ignorance and inconsistency of judges' salaries - which are about 30% lower than the salaries of officials of the other two branches of government - the Slovenian Association of Judges and seven individual judges filed a request to review the constitutionality of several laws determining judges' salaries. The Judicial Council, which has the original competence to file a request for a review of constitutionality, filed such a request several months later, only supporting the request of the Association. **(Slovenia)**

The fact that judges have individual salaries that are set by their court president/chief judge is still a problem. **(Sweden)**

Some observations regarding the impact of Covid-19 on these issues:

Budget legislators decline claims for a more appropriate remuneration of judges by referring to the deterioration of the budgetary situation due to Covid-19. **(Germany)**

8. Independence/autonomy of the prosecution service

Positive developments since 1.2.2021:

In the last report the subordination of the prosecution under the Minister of Justice was addressed. Now the regulation on reporting to the MoJ was amended and the obligation to report to the MoJ was reduced. **(Austria)**

The MoJ started a reform process on the prosecution service, which aims at establishing a prosecutor general, who should replace the MoJ regarding the power to issue orders or directives to the prosecution service in single cases or in general. The debates are still ongoing. **(Austria)**

The new-formed coalitional government appointed in December 2021 declared as one of its top priorities implementations of legislative reform aimed at strengthening of the independence and accountability of the prosecution service including the Prosecutor General in accordance with recommendations repeatedly expressed by the Venice Commission, COE Council of Ministers and the European Commission. **(Bulgaria)**

In their coalition contract of December 2021, the new governing parties of Germany announced its intention to “adapt the right to give external ministerial directives in accordance with the requirements set up by the European Court of Justice”. No concrete steps have been undertaken yet. **(Germany)**

The legal provisions provide a strong independence for prosecutors. However, it is not enough for independence to be provided by law. Prosecutors must demonstrate their independence. **(Romania)**

Negative developments since 1.2.2021:

Starting in February 2021 undue political attacks on the prosecution service in charge of corruption cases (Wirtschafts- und Korruptionsstaatsanwaltschaft) were widely made by high-ranking politicians, mainly related to investigations which included Ministers and the Federal Chancellor. This calmed down after the resignation of Chancellor Sebastian Kurz by the end of 2021. **(Austria)**

In 2021, the public debate on the independence/autonomy of the prosecution service and especially on the independence/autonomy of the Prosecutor General continued. The Prosecutor General (Ivan Geshev) has been publicly accused of being linked by a series of media publications to economic interests, protecting organized crime groups and providing an "umbrella" (obstructing an investigation) against the former Prime Minister Boyko Borissov. During the mass protests corruption in 2020, citizens have repeatedly demanded the resignation of the Prosecutor General. The caretaker Minister of Justice submitted a proposal to the SJC for Ivan Geshev's dismissal, but the Council refused to consider the proposal, arguing that the minister did not have such powers, although according to the Constitution the Minister is entitled to propose removal of judges and prosecutors from their respective office. Proceedings are currently pending before the Constitutional Court on this issue. **(Bulgaria)**

A draft law prepared by the Federal Minister of Justice, which followed the decision of The Court of Justice of the EU and aimed to grant the prosecuting authorities a higher level of independence, was rejected by Ministers of Justice of eight Länder. No further steps have been taken so far. **(Germany)**

By not nominating new state prosecutors, the government is preventing the normal work of state prosecutors. **(Slovenia)**

The Draft Law on Criminal Procedure continues to be processed at the proposal of the Ministry of Justice, which contemplates abolishing the current figure of the Investigating Judge and his replacement by the Prosecutor responsible for the investigation. The appointment of the current State Attorney General who passed, without interruption, from being Minister of Justice to that position, was appealed by two political parties, but the Supreme Court ruled in a recent decision that the political parties lacked standing to appeal the appointment. **(Spain)**

9. Independence of the Bar (chamber/association of lawyers) and of lawyers

Positive developments since 1.2.2021:

In 2021 a new national leadership of the Bar was elected by the General Assembly of lawyers. It continues the policy of its predecessors to react proactively against attacks coming mainly from the Prosecutor General's office concerning individual lawyers. **(Bulgaria)**

The Legal Services Regulatory Authority (LSRA) is the independent statutory body responsible for the regulation of legal services provision. The year 2020 was the first full year that the LSRA has operated the legal framework for the authorisation of partnerships of solicitors to operate as Limited Liability Partnerships. It was also the LSRA's first full year of operations as the independent complaints handling body for complaints about solicitors and barristers. **(Ireland)**

Negative developments since 1.2.2021:

Several cases had been reported in media or had been revealed during trial proceedings where lawyers have been obstructed in attempts to provide effective legal aid to detained suspects or accused persons especially during the early stages of police investigations. **(Bulgaria)**

The Bar as institution is too silent and shows unprecedented restraint regarding major topics on independence, impartiality and autonomy of judges and the justice system. **(Croatia)**

A lawyer was convicted on grounds, which induced the National Association of the Romanian Bars (UNBR) to state: "the decision to fight for defending the principle according to which the lawyer cannot be subject to criminal repressions for the claims and the consultation based on the interpretation of the law and of the factual situation, regardless of the correct or incorrect nature of the sentences developed. When such a guarantee is missing, the defence right is intimidated, and it lacks any substance by subjecting the lawyer to threats such as his/her criminal accountability by associating him/her with the deeds imputed to the one he/she represents". This decision caused large national and international awareness and protests, but in November 2021 the High Court of Cassation acquitted the lawyer, who had been arrested for 11 months. **(Romania)**

Some observations regarding the impact of Covid-19 on these issues:

The Legal Services Regulatory Authority (LSRA) insisted that for the duration of the pandemic as far as possible all correspondence should be via e-mail. **(Ireland)**

10. Significant developments capable of affecting the perception that the general public has of the independence of the judiciary

Positive developments since 1.2.2021:

The undue attacks on the prosecution service and the consequent debate raised the awareness of the importance of an independent judiciary and the tasks of judges and prosecutors in general. **(Austria)**

The perception of the public regarding the independence of general (non-specialized criminal) courts is rather positive. This is not the case as far as specialized criminal courts are concerned. The main reason for the establishment of these courts /and prosecution offices/ in 2010 was the dissatisfaction of the then minister of interior with the fact that the judges complied with the law and refused to obey his will and issue acts in accordance with his expectations. As the public does not perceive those specialized courts as independent ones, the legislative program of the parliament (which started to work in early December 2021) provides for their abolishment. In general, the need for an independent court is becoming an increasingly important topic in public debates - not only in the professional community, but also in media and among politicians. **(Bulgaria)**

The opinion of the general public is very confident in the independence of the judiciary. **(Finland)**

There is the ongoing work of the Judicial Conduct Committee of the Judicial Council towards adoption and implementation of draft guidelines on judicial ethics and conduct. **(Ireland)**

Negative developments since 1.2.2021:

The undue attacks on the prosecution service on the one hand on a first glance endangered the trust in the justice system but turned in the end positive when it turned out that the investigations are based on certain evidence. **(Austria)**

Since the summer of 2020, the activity of the Prosecutor's Office and the Prosecutor General has been the subject of discussion by the wide public and the politicians. **(Bulgaria)**

The negative perception on the role and performance of judges and the system as a whole are increasing. The reasons for this negative development seem to be a) unreasonable, mostly non final, court decisions which are getting enormous media attention and negative context, b) false and unfair reporting on work of courts and judges, c) slow and inefficient criminal justice system especial in high profile cases, (reasons are different, - procedural rules, lack of judges on those cases, badly prepared cases until they are registered before the court, complicity of such cases, and lack of presumption of innocence as a principle within general public and media), d) in most courts the need to cooperate with public and media and to give relevant and accurate information about cases which could be of interest to general population is neglected, e) public

speech of politicians which use every opportunity to blame and attack judges and courts in general and last but not least f) an enormous number of incoming cases every year which unable judges and courts to deliver justice in more efficient and effective way. **(Croatia)**

The Curia's decision on a preliminary ruling by a Hungarian judge has had a strong resonance and a chilling effect on the judiciary. **(Hungary)**

it may be useful to mention that at the very end of 2021 a big scandal broke out: the State secretary and deputy justice minister, Pal Völner's immunity was lifted by the parliament because according to the charges he was involved in bribery with the president of the branch of bailiffs and several other bailiffs. Mr Völner resigned from the position of State secretary and deputy justice minister but he is still working as MP. The impact of this on the enforcement of judgments is unknown yet. **(Hungary)**

There is an inability of the Judicial Conduct Committee of the Judicial Council to receive and engage with a complaint concerning a Judge of the Supreme Court who attended a golf dinner allegedly held other than in compliance with Covid 19 public health guidance, since draft guidelines on judicial ethics and conduct have not yet been finalised and adopted. **(Ireland)**

There was the so called "Judges and advocates corruption scandal". This case is still pending since in the pre-trial case inflicting huge damage on reputation of whole judiciary, especially considering the way how the investigation was initiated and commented in mass media. **(Lithuania)**

The Romanian Intelligence Service acquired powers of criminal investigation, which means disconnecting Romania from European values and returning to the communist past. In spite of a memorandum, which was launched by the Romanian Magistrates Associations (AMR) and the National Union of Judges from Romania (UNJR) and voted by more than 80% of Courts, in general assemblies and the protests of several professional association in November 2021 a Governments Emergency Ordinance of 2016, which was pending in the parliament since then was adopted, which guarantees the Romanian Intelligence Service the statute as special body for criminal investigation, which means an active role in the criminal trial where by the right of a fair trial is infringed among other by classifying an act as state secret. The Romanian Magistrates Association (AMR), together with the National Union of Judges from Romania (UNJR), with the Association of Judges for Human Rights Protection (AJADO) and with the Romanian Prosecutors' Association (APR) have asked the Office of the Ombudsman and the High Court of Cassation and Justice to challenge the law to the Constitutional Court. **(Romania)**

The constant slandering of judges in the government-friendly media and by members of the government via Twitter has a negative impact on respect for the judiciary and, consequently, on the perception of the independence of the judiciary by the public. **(Slovenia)**

Diametrically opposed decisions in identical cases of the Supreme Court of the Republic of Slovenia (because of different political affiliations of judges or their sympathy with the government – e.g., case of insulting journalists by the Prime Minister via Twitter - "retired –

serve out prostitutes") damages the judiciary's reputation and public confidence in judicial independence. **(Slovenia)**

11. Other developments since 1.2.2021, which may have an impact on the independence

Positive developments since 1.2.2021:

In the case C -564/19 (request for a preliminary ruling by judge Csaba Vasvári the Court of Justice of the EU declared that preliminary rulings cannot be blocked by national courts and that disciplinary procedure against judges on the ground, that they refer preliminary rulings to the Court of Justice infringes EU law due to the primacy of European law. **(Hungary)**

On 10.11.2021 the Irish Attorney General gave a commitment in a letter to the Chief Justice that he would establish a scheme to be administered by the Chief State Solicitor which would provide legal representation to judges who are the subject of allegations of misconduct before the Judicial Conduct Committee of the Judicial Council, and will where appropriate, engage barristers to assist in that regard. **(Ireland)**

Negative developments since 1.2.2021:

Lack of adequate legislative solutions due to lack of sustainable parliament. **(Bulgaria)**

The election and appointment of the President of the Supreme Court was overshadowed by the way in which the President of the Republic pressed for his favourite candidate to be placed in this position. He announced that no judge from SC is acceptable candidate for him. He didn't wait for procedure to be fulfilled and followed where those who meet the formal requirements have to put forward their written application. He announced that his candidate is lady- professor of criminal procedure law on Zagreb Law School and ignored all of those whose applications were put forward in procedurally correct manner. As proper procedure had not been followed, Parliament refused to take a vote on this proposal. In a second round among others the same professor of law, favourite of the President, correctly applied but she was not elected by the Parliament using the argument that a candidate, who previously sought to be a candidate ignoring the procedure prescribed in Law on Courts did not give enough guarantees that she will properly perform the duties of a head of the court. In a third round, the President of the Republic - again before term for applications had expired announced his favoured candidate, - a judge of first instance commercial court. In the end and on the proposal of the President, this judge was elected with big majority in the parliament, even though General Assembly of Supreme Court gave written negative opinion on this proposal and supported another candidate a judge of Supreme Court. **(Croatia)**

"Mass trials" ("Massenverfahren") have had an increasingly detrimental impact on the independence of judges in Germany, since they have been brought, for several years now, in such high numbers and in so many courts that more and more judges and panels of judges in

Germany cannot handle their caseloads in adequate timeframes anymore. The main reason for “mass trials” in recent years was the so-called “exhaust scandal” involving diesel engines of German car manufacturers. Masses of cases have been hitting courts of cities where car manufacturers are based. More and more judges feel that they are no longer able to fulfil their duties in the way they believe they should within the principle of judicial independence. In December 2021, for example, several Senior Judges in Bavaria pointed out the dangers of that development for the Rule of Law, and for the health of the judges who try to cope with that caseload. **(Germany)**

Following the judgment of the Court of Justice of the EU in the case C-564/19, the Prosecutor General's Office reacted to the case. The Prosecutor General now argued that his appeal was not against the preliminary ruling procedure, but against the unlawful suspension of the Hungarian criminal proceedings. The Curia commented on the decision of the Court of Justice that until the Curia makes a different decision, the order of the Curia Bt.III.838/2019/11 is final, and its interpretation is binding. The Curia therefore upholds its opinion as expressed in its previous communications. **(Hungary)**

The Curia's decision on a preliminary ruling by a Hungarian judge has had a strong resonance and a chilling effect on the judiciary. **(Hungary)**

The dismissal by reason of judge`s health. According to Article 90 (2) of the Lithuanian Law on Courts, the judge may be dismissed by reason of his health only where the judge is ill for a certain number of days in a certain period of time. It could be questionable, whether the dismissal of the judge simply on the ground that he/she is ill more than certain number of days does not violate the independence of the judge. There is no clear legal regulation whether and in which conditions a person who is physically disabled could still sit as a judge or the possibility to sit as a part – time judge. **(Lithuania)**

The legitimacy of the judiciary continues to be questioned by some political parties of populist or nationalist ideology (even by some members of the Government of Spain), spreading news through certain public media or social networks, in which judges are accused of belonging to an economic elite (something that denies the polls published by the CGPJ in 2020) and be ideologically aligned with the conservative parties. In April 2021, three of the four main judicial associations requested in Brussels, before Commissioner Didier Reynders, that the EU authorities urge the Spanish government to adapt the system of appointment of the members of the General Council of Power Judicial systems approved and considered adequate in accordance with the democratic standards that govern the EU, without any modification in this regard to date. **(Spain)**

B. Quality of Justice

1. Accessibility of courts (e.g., court fees, legal aid, language)

Positive developments since 1.2.2021:

Some EU legislative acts such as for the right of translation and interpretation in criminal proceedings and for the procedural rights of the accused foreign citizens had been successfully implemented in the national legislation. **(Bulgaria)**

The Courts Service of Ireland has positively responded to the Covid 19 pandemic by retrofitting court rooms with Perspex screens and with improved video link technology. **(Ireland)**

Amendments to the Court Fees Act have reduced court fees in family matters, thus facilitating access to court for parties in these sensitive cases. **(Slovenia)**

Accessibility of courts is better because it is easier to attend hearings remotely. **(Sweden)**

Through LO 8/2021, Directive 2011/93 / EU, relative to the fight against sexual abuse and sexual exploitation of minors and child pornography, has been transposed into Spanish law, granting privileged status to children. minors in the processual sphere. **(Spain)**

Negative developments since 1.2.2021:

The issue with disproportionately very high court fees which hinder access to civil and administrative judicial proceedings remained not resolved. **(Bulgaria)**

As of 1.1.2022 the court fees were changed by an increase of up to 100%, in average 40%. **(Estonia)**

The costs of the legal proceedings have increased. This aggravates non legal aid court- users' actual access to the courts. **(Finland)**

Physical access to the courts has been significantly curtailed since the onset of the pandemic, with numbers who may attend being very much limited. **(Ireland)**

Some observations regarding the impact of Covid-19 on these issues:

Some amendments of the procedural laws, which were caused by the pandemic, are still in force (video conference etc). **(Austria)**

The number of oral hearings executed via videoconference in court sessions has risen. The problem with these measures has been that in some district courts the hardware for videoconferences and internet-connections is not up to date. Increased need for connections also loaded the system and there were regularly interruptions during the court sessions. **(Finland)**

Many jury trials and trials involving live witness evidence were adjourned/postponed due to difficulties in meeting social distancing rules. **(Ireland)**

The limitation of the capacity of judicial buildings has been maintained, with restriction of public attendance, establishing prior appointment systems and promoting telephone and telematic communications, alternating it with situations broader personal access, depending on the evolution of the pandemic. **(Spain)**

2. Resources of the judiciary (human/financial/material)

Positive developments since 1.2.2021:

The National Courts Administration has distributed extra resources to the courts for year 2021 and 2022. **(Finland)**

The so-called „Pact for the Rule of Law“, which was an agreement to provide a certain number of additional posts for judges and prosecutors, has been fulfilled. Between 2017 and 2021 approximately 2.500 posts for judges and prosecutors were created all over Germany. **(Germany)**

The Government has approved an increase in the number of High Court Judges from 37 to 42. **(Ireland)**

Although several initiatives starting already in 2016 failed, with regard to the management of the budget of the courts, there now was submitted to Parliament a draft law on September 21, 2021. It provides for the transfer of the budget from Ministry of Justice to the High Court of Cassation and Justice. **(Romania)**

Negative developments since 1.2.2021:

There is maladministration of all types of resources of the Judiciary. The court staff consists of numerous employees insufficiently trained and unequally allocated. Despite long lasting efforts, the Program budgeting is still not implemented and large amount of funds have been spent for not typical activities (e. g. holiday houses, office cars, etc.). **(Bulgaria)**

The failure to find a solution of the judicial map reform shows the poor spending of EU funds by the Judicial Council. Under the same project, the implementation of the Unified Information System of the Courts had failed. There is no applicable legal mechanism for accountability of council members for such failure. The budget of the judiciary is excessively high as Bulgarian citizens spend most on per capita consequences within the EU. **(Bulgaria)**

Budgetary restrictions caused by COVID-19 pandemic crisis effect budgetary restrictions. This also effects the justice sector. **(Croatia)**

Given that numerous court houses in Zagreb and the area around Zagreb were damaged in the earthquake and haven't yet been repaired, the state of resources in courts is more than serious. **(Croatia)**

In spite of the fact that the National Courts Administration has distributed extra resources to the courts for year 2021 and 2022, the extra resources for the year 2021 and 2022 are not sufficient to change the overall situation. The problem is that the caseload of the courts was remarkable even before pandemic. The other problem is to find suitable employees for the courts, since the timetable for recruiting is challenging. The processes for recruiting new judges are not adequate. The number of non-permanent judges in Finland is significant which is not satisfying. The judges should not be dependent on chief judges, who decide the appointments of temporary

judges. If the chief judge is not able to maintain proper procedures for recruiting new judges, there is a risk that budgetary resources are used in arbitrary appointments. **(Finland)**

The posts for judges and prosecutors, which were promised in the “Pact for the Rule of Law” have been created. However, since the pact was made in 2019, legislative changes, increased numbers of “mass trials” (“Massenklagen”) and enhanced possibilities to investigate cybercrime have led to increased tasks for both judges and prosecutors. All over Germany, at least 1.500 full time posts for judges and prosecutors are still lacking. **(Germany)**

Despite the increase in the number of High Court judges, the President of the High Court has been robustly critical of the level of increase as being insufficient. **(Ireland)**

The salaries of the assistant of judges and secretaries are very low; therefore, the courts are not attractive as an employer. That means that it is very difficult to attract high-level lawyers into the courts. Consequently, it is a lack of high – level staff in the court system. That clearly does not add any value to the quality of justice. Moreover, such situation has impact to the authority of judiciary and the risk that it would be undermined exist. **(Lithuania)**

The government changed the already agreed budget for 2022 "overnight" and reduced funding for courts by 3% and for the Judicial Council by as much as 16%. This will result in a reduction in the employment of court staff and the inability to complete or implementation of some projects. **(Slovenia)**

No changes to the year-by-year decision on the funding of the judiciary - which makes planning difficult. **(Sweden)**

Some observations regarding the impact of Covid-19 on these issues:

Covid-19 had a positive impact insofar as resources were made available to modernize court equipment such as video conferencing tools. The German Judges Association, however, claims to modernize the judiciary even further. The new governing parties foresees in its coalition contract to continue the “Pact for the Rule of Law” and to expand it by adding a “Digital Pact”, which had been a central claim of the German Judges Association and the Bar Association. The new government has adopted such a pact in its coalition agreement. **(Germany)**

3. Training of Justice professionals (including judges, prosecutors, lawyers, court staff)

Positive developments since 1.2.2021:

The Judicial Studies Committee of the Judicial Council has been very active, led by a newly appointed Director of Judicial Studies. Every newly appointed judge since July of 2020 has been provided with dedicated induction training, emphasising judicial conduct and ethics, delivered by the Director. This was done in online workshops, both individually and with groups of other judges. The delivery of training in judicial conduct and ethics has been

extended to many serving judges throughout 2021 and the principles of independence, impartiality, integrity, propriety, equality, and competence are also embedded in judicial mentoring training. Mentoring training is provided by a qualified consultant who was appointed following a formal procurement process. Judges from every first instance jurisdiction have taken part in this process whereby all new judges are assigned a trained mentor. The formal training encompasses the most effective methods of mentoring and facilitates the delivery of 'judge led' training to newly appointed judges. The programme also reinforces the contents of the judicial conduct and ethics workshops. **(Ireland)**

Despite the limitations of the Covid-19 pandemic, the training of all judicial professionals was organised online in various forms. **(Slovenia)**

Negative developments since 1.2.2021:

The National Institute of Justice (NIJ) continued to provide initial and ongoing training for judges and prosecutors in insufficient manner. The activity of NIJ is bureaucratic to a great extent which affects its research and qualification functions. The process of selection of tutors is not transparent and good professionals among judges and prosecutors are not stimulated to take part in it. **(Bulgaria)**

New director of Judicial Academy has not been elected and the post is vacant for several months now. **(Croatia)**

A draft law in Greece intends to reform the judicial training for judges. This law in general is welcomed by the judges with the exception of the proposal that after each training judges have to undertake an exam. Such examination is seen as a potential infringement of their independence. The work of judges could be assessed, which on a regular basis is already the case in Greece, but such additional exams, which also may have an impact on the career of judges have to be eliminated from the draft. A major problem would also be when certain ways of interpretation or implementation of law would be the content of such examination. **(Greece)**

The lack of face-to-face training and consultations has reduced the quality of education. Often, training took place without any real participation, with no feedback, and with only signing in. **(Hungary)**

For specific reasons of lacking staff in courts, in 2021 the theoretical part of the training programme of both judges and prosecutors was reduced by three months and the practical part of the training programme concerning prosecutors was also reduced. The Portuguese Judges Association ASJP opposes to that reduction, as it may jeopardize the quality of the training of judges and prosecutors. **(Portugal)**

Some observations regarding the impact of Covid-19 on these issues:

Many training sessions are done via Zoom. **(Austria)**

Work and most of training courses are conducted in virtual manner which lowers the quality of training courses. **(Croatia)**

Judicial training was still impaired by the pandemic in 2021. Online training possibilities have been introduced more widely. However, while online training does have advantages, there are

types of training that require personal interaction and / or a duration of several days in a row. This kind of training was largely missed due to Covid-19. **(Germany)**

Some training has had to be conducted on-line rather than in person due to ongoing social distancing restrictions. **(Ireland)**

A significant part of the training was carried out online **(Portugal)**

For one month, during October – November 2021, some activities of professional training, have been postponed, rescheduled, or cancelled, both at the level of the National Institute of Magistracy as well as at the level of the courts of appeal and prosecutor's offices due to the very large number of cases of COVID-19 infections. **(Romania)**

4. Digitalisation (e.g., use of digital technology, particularly electronic communication tools within the justice system and with court users, including resilience of justice systems in Covid-19 pandemic)

Positive developments since 1.2.2021:

Almost all judges and prosecutors are equipped with laptops now, which makes working from home easier. **(Austria)**

The roll out of digital case file use at regional courts is almost complete, at district courts it is ongoing and in other branches (criminal cases etc) a pilot phase was started. **(Austria)**

COVID-19 realities force courts and judges to adopt new technologies in communication between courts and parties, and online hearings wherever it is applicable (commercial courts, administrative courts). New legislation is planned to formalize and in more precise manner regulate online hearings. **(Croatia)**

Since September electronic Communication between parties and courts are possible. **(Cyprus)**

If the court considers it suitable, the case can be handled in absence of the parties, **(Cyprus)**

Courts have been widely using technical tools and devices during the pandemic since February 2020. National laws concerning process allows courts to use technical devices for a video conference especially to put in order preparative sessions. Courts are equipped mostly with technical devices for a video conference. **(Finland)**

Covid-19 had a positive impact insofar as resources were made available to modernize court equipment such as video conferencing tools. The German Judges Association, however, claims to modernize the judiciary even further. The new governing parties foresees in its coalition contract to continue the “Pact for the Rule of Law” and to expand it by adding a “Digital Pact”, which had been a central claim of the German Judges Association and the Bar Association. The new government has adopted such a pact in its coalition agreement. **(Germany)**

During the long epidemic, clients, lawyers, and judges have become experienced in the use of digital technology, which has allowed cases to be completed more quickly despite the epidemic. **(Hungary)**

The Courts Service has published a Courts Service ICT Strategy 2021-2024 and a new Courts Service Data Strategy. Work continues modernisation of digital services in the justice area. **(Ireland)**

The Superior Council of Magistracy carries out a project regarding professional training and consolidating the capacity at the level of the judiciary, financed within the Norwegian Financial Mechanism 2014-2021, intended for consolidating the administrative capacity and the efficiency of the judiciary by developing the technical and IT infrastructure. Within this project, the courts benefited from 100 videoconference integrated systems in 2021 **(Romania)**

A significant development is that more and more courts have implemented and use the electronic file. This software allows the parties and lawyers to access the file using the password granted by the court for this purpose. Therefore, the parties and lawyers no longer have to go to court to study the files. The software also offers the possibility of quickly communicating the notifications and others documents by the court, via e-mail, with receipt acknowledgement. However, there is a problem with the fact that the prosecutor's offices do not send electronic files to the courts, but on paper. As the volume of criminal prosecution documents is usually large, the courts do not have the staff to scan these documents on a daily basis so that they can be uploaded to the electronic file. Therefore, the documents in the criminal investigation files must be studied in the court archives. **(Romania)**

Judges were given laptops, and a coded connection was developed to conduct videoconferencing. However, court registers will need to be updated and electronic files established. **(Slovenia)**

Ongoing work to make courts more digital. The court management systems are improving, and the knowledge of how to use the systems more efficient is increasing. The Swedish National Courts Administration has a big part in this. **(Sweden)**

Negative developments since 1.2.2021:

The Supreme Judicial Council (SJC) has introduced a new Unified Court Information System, despite the opposition of many courts, including the Supreme Court of Cassation. The system is made with European funding and suffers from several deficits, such as complication of many of the working processes instead of simplification, impossibility to perform a large number of specific procedure activities, inaccessibility for parties at trials. This is an example of the lack of coordination of the Judicial Council with ordinary judges and inefficient spending of European funds. **(Bulgaria)**

There still are hearing rooms without any technical equipment for a video conference. Even if there are technological means for a video conference, the use of the equipment has been uncertain and vulnerable. Generally, the connections have been functioning properly when connections have been between two public servers (for example between courts). On the

contrary, it has been much more difficult to create and maintain a proper connection between the court and private party, for example a lawyer's office. Mostly, it is the duty of the court secretaries to take care of technological means and connections. Secretaries nor judges have not got any systematic training on new procedures. Even technical support has been insufficient. **(Finland)**

Although the Association of Romanian 'Magistrates (AMR) pressed for nation-wide unified electronic file software, the MoJ has not started to take steps in this regard. So far there exist two systems, which had been created and developed by courts. **(Romania)**

The lawyers do not consent to the main hearings being held via videoconference (the law requires the consent of the parties to conduct the main hearings in civil cases via video or teleconferences), thus preventing the courts from working during the lockdown. **(Slovenia)**

Some observations regarding the impact of Covid-19 on these issues:

More hardware (laptops, video conference equipment) is available now. **(Austria)**

To avoid overcrowding in courts had an impact on IT-developments. **(Cyprus)**

All efforts were done in order to organise distance hearings in Covid-19. However, the reality revealed that technical support of the courts was not always sufficient for organisations of distance hearings. There is also a risk that technical approach to justice system will prevail; distance hearings may harm the quality of justice. **(Lithuania)**

Among the effects of working from home there is also the acceleration of the measures regarding the providing of the courts with IT equipment (laptops, computers, printers, videoconference systems etc.). This IT equipment was required for carrying out the specific activities of the courts adapted to the new social reality. For example, the access of judges to the electronic file for preparing the hearings and for writing the reasoning of the decisions, the possibility of organizing the court hearings using videoconference systems or the possibility organizing professional training activities using videoconference system or online system etc. **(Romania)**

The pandemic has accelerated the digitalisation of the Swedish courts, making it easier to work from home and to attend court hearings remotely. **(Sweden)**

5. Use of assessment tools and standards (e.g., ICT systems for case management, court statistics and their transparency, monitoring, evaluation, surveys among court users or legal professionals)

Positive developments since 1.2.2021:

Croatia has rather advance ICT system for court management and transparency of courts as well. **(Croatia)**

The implementation of the new Unified Information System in all courts has started. **(Bulgaria)**

The use of assessment tools and standards is at a high level. **(Slovenia)**

A court user survey for parties and witnesses has been launched for courts to use in their work to improve standards. **(Sweden)**

Negative developments since 1.2.2021:

The new Unified Information System is very complex, cumbersome, and time-consuming for both judges and court staff. Furthermore, it does not make it easier for citizens and lawyers to receive and submit information online. **(Bulgaria)**

Minister of Justice, who has this authority under the provisions of Law on Courts, wants to significantly rise quantitative criteria for judges' performance without giving any motivation for such increase and opposing the opinion of the Association of Judges, the presidents of courts and the General Assembly of Supreme Court. **(Croatia)**

Amendments to the Law on Courts are introduced to the Parliament. There is a new provision that judges will have to be subject on regular basis, every 5 years to security checks performed by State Security Agencies. Assembly of all judges of Supreme Court rejected this proposal because it is clear infringement of independence of judges who will be controlled by the executive branch of power, there are no remedies against negative report, and it was not clear how this reports and surveys will affect future career of a judge. **(Croatia)**

Since the commissioning of the new data processing tool *Aipa* mainly in civil cases, there are no tools to estimate the number and scope of the cases brought to the court. *Aipa* has significant deficiencies and reliability issues. *Aipa* has not brought any effectiveness to the working methods of the courts; on the contrary it has increased the amount of work for both Judges and secretarial staff. There has not been given any safeguards that the insecurities of the *Aipa* will be abolished. The new data processing tool for administrative courts *Haipa* is so deficient that the legal assistants have stopped using it. Its main failure is the lack of proper client portal. *Aipa* does not have any client portal. **(Finland)**

More attention is paid to assessment than to providing basic working conditions - that is, the necessary updating of registers, the production of standardized forms for simple procedural decisions, etc. **(Slovenia)**

6. Geographical distribution and number of courts jurisdictions (“judicial map”) and their specialization, in particular specific courts or chambers within courts to deal with fraud and corruption cases

Positive developments since 1.2.2021:

On 16 June 2021, the Bundesrat introduced a bill on the strengthening of the courts in economic disputes. The bill includes the possibility to establish so-called “Commercial Courts” which

would be able to hear a case in English. However, the Bundestag so far has not yet passed the bill. **(Germany)**

An independent review group, chaired by a retired Court of Appeal Judge, was established in February 2021 and is examining all aspects of the operation of the Special Criminal Courts. Its work is ongoing. **(Ireland)**

Due to a legislative amendment that will come into force at the beginning of February 2022, the Central Court of Criminal Investigation, with jurisdiction over the entire territory, which has a panel of 2 judges to authorize or deny acts that may affect rights, freedoms and guarantees during the investigative stage in the highest profile economic and financial crime, will absorb the territorial criminal investigation court of Lisbon, with 7 new judges. The main objective was to avoid the excessive attention that was being given to the two judges of the first court, rather than to their decisions, which was damaging severely the public perception on the quality of justice. The Portuguese Judges Association ASJP, who presented this proposal to the government and to the parties in the parliament, considers the legal change to be very positive, as the cases will be randomly allocated among 9 judges and not only 2. **(Portugal)**

In 2021 specialized judge panels solving corruption cases were introduced for first instance s judging the crimes of corruption. These panels carry out their activity at the criminal sections of the courts and are established by the decision of the president of the court, at the proposal of the management board. **(Romania)**

In June 2021, the Superior Council of Magistracy adopted a decision for establishing the localities included in the districts of the courts of first instance from each county. The changes have taken into consideration the requests formulated by the courts of appeal and had as purpose the observance of the balance between the workload of the courts within the competence area of a court of appeal. The changes had also as purpose to improve the access to justice by getting the justice closer to citizen. Afterwards, in October 2021, the Superior Council of Magistracy adopted another decision for changing the territorial competence area for 5 courts of first instance. There have been taken into consideration the requests formulated by the local public authorities from two counties of the country, motivated by the necessity of providing the easy access of citizens to the court. There have been also taken into consideration the points of view expressed by courts and prosecutor's offices. It is too early to evaluate the effect of these decisions, as not enough time has elapsed from the date of their passing. However, these changes, did not cause, for now, transfers of judges. **(Romania)**

The court map is not the most appropriate, but a quick and not thoughtful intervention and a change would again lead to court backlogs. The Ministry of Justice is announcing major judicial reform. so far, it has submitted only the first draft of the new Judicial Service Act, but not the Courts Act and the new organization of courts. **(Slovenia)**

In the last year, the difference in the workload of individual courts has increased. In the east of the country, the courts have enough judges and few cases per judge, while in the west of the country, there are too few judges and judges also have several times higher number of cases pending. **(Slovenia)**

The organization of specialized courts for cases of fraud and corruption (only 4 specialized divisions in district courts at the seats of higher courts) is not successful, causes a large difference in the workload of judges between courts (see reply to item 4) which does not allow these cases to be dealt with quickly and efficiently. **(Slovenia)**

Within the criminal jurisdiction there are no specialized judicial bodies to prosecute organized crime, fraud, and corruption. These crimes are prosecuted in accordance with the general rules for the distribution of criminal matters, by the court to whom it corresponds, like other crimes. However, based in Madrid, the Central Investigating Courts and the Criminal Chamber of the National High Court, deal with matters of special relevance due to their organization (in several areas of Spain) or their effects (to a generality of people). There is a specialization in the Prosecutor's Office against Corruption and Organized Crime that intervenes in criminal proceedings, if they are cases of special importance, appreciated by the State Attorney General, in relation to the following crimes: prevarication, embezzlement of public funds, bribery, money laundering and the investigation of all kinds of legal business related to criminal organizations. **(Spain)**

Negative developments since 1.2.2021:

In 2021, the Supreme Judicial Council (SJC) proposed 4 options for reorganization of the judicial map to overcome the uneven workload of courts in different parts of the country. These options had been discussed with the participation of judges. In the end, the SJC adopted the least-approved option. This decision was widely criticized not only by judges but also by the public, which led to the resignation of two members of the SJC who had drafted that court map. The reform of the judicial map has not been worked on since then. This failure of the judicial map reform shows the poor spending of EU funds by the Judicial Council. **(Bulgaria)**

The geographical territories of district courts are relatively small. Judges sitting in big cities` courts (Vilnius, Kaunas) face much bigger workload in comparison with the others while receiving the same remuneration. **(Lithuania)**

7. Other developments, which may have an impact on the quality of justice

Positive developments since 1.2.2021:

Amendments to the law provide a better salary for court interpreters. **(Austria)**

Society is becoming increasingly aware of the role of the independent judiciary. **(Bulgaria)**

Negative developments since 1.2.2021:

The large increase of workload due to “mass trials” (“Massenklagen”) and the lack of resources (1500 posts of judges and prosecutors still lacking) may have an impact on the quality of justice. **(Germany)**

C. Efficiency of the justice system

1. Length of proceedings

Positive developments since 1.2.2021:

According to the EU Justice Scoreboard and 2021 EU Rule of Law report, when it comes to the length of proceedings at its courts, Bulgaria continues to perform well in comparison to other EU Member States. **(Bulgaria)**

General approximate length of procedure is shorter than the year before, but still we cannot be satisfied. **(Croatia)**

Additional judges were appointed at almost all district courts to deal with old cases (backlog). **(Cyprus)**

In 2021 the courts carried out normally their activity, the courts have used many times the videoconference systems for court hearings. In penal cases, this possibility is provided by law. In civil cases it is also possible with the approval of the parties or of their representatives. There have been also used fast means of communication, through the electronic file. All these steps had an effect, in the sense that there were no significant negative changes regarding the length of proceedings. **(Romania)**

Length of court proceedings - settlement times are shortened. The suspension of the courts due to the declared Covid-19 pandemic slowed down the favourable trend somewhat. **(Slovenia)**

The necessity to postpone several cases due to the pandemic provided free time for judges to decide cases that don't require hearings, so the total number of cases decided in 2021 are about the same – or even more – as the year before. **(Sweden)**

Negative developments since 1.2.2021:

The non-attendance of judges and judicial staff caused by Covid-19 illness affected in negative way the length of the proceedings and their effectiveness. **(Bulgaria)**

The COVID pandemic has hampered the work of the lawyers and extended the length of proceedings - given the illness of parties, witnesses, judges, etc. In 2021 the Constitutional Court quashed the legal amendments permitting judicial sessions on detention matters with participation of the apprehended accused via videoconferencing. **(Bulgaria)**

Negative score on performance of courts is direct consequence of COVID19 pandemic because many hearings could not be conducted. **(Croatia)**

It must be admitted that in certain cases process is lengthy without justifiable reasons. **(Croatia)**

The length of the proceedings has increased even more because of the Covid-19 pandemic. This is due to fact that the case load of the courts was remarkable even before pandemic. This is also due to the acute and chronic lack of financial resources and that the number of Justice professionals is insufficient. According to the statistics of the National Courts Administration the duration and the extent of the average criminal case has increased, and the cases have become more difficult. **(Finland)**

Numerous judges and panels of judges who have to deal with “mass trials” (“Massenklagen”), especially those regarding the “exhaust scandal”, cannot handle their caseloads within adequate time anymore, which leads to significantly greater lengths of proceedings. **(Germany)**

Covid 19, and associated public health restrictions, have resulted in many cases, particularly those involving jury trials and trials involving live witness evidence, to be adjourned/postponed due to difficulties in meeting social distancing rules. **(Ireland)**

Due to the pandemic many court hearings have been postponed, leading to these cases piling up. **(Sweden)**

Some observations regarding the impact of Covid-19 on these issues:

Some proceedings took longer due to Covid-19, but there are no reliable statistics for all over Germany yet that would allow an estimation for 2021. **(Germany)**

2. Other developments, which may have an impact on the efficiency of the justice system (like enforcement of judgements etc.)

Positive developments since 1.2.2021:

13 additional district court judges have been appointed. **(Cyprus)**

Compliance with and enforcement of judgments is improving, but not yet at a satisfactory level, also due to the attitude of the state / government towards court decisions. **(Slovenia)**

Negative developments since 1.2.2021:

Several cases have been reported where authorities from the Executive branch have refused to comply with respective judicial decisions. **(Bulgaria)**

A law expanding the situations in which a judge will not be able to further adjudicate in the case will enter in force in March 2022. This law will have a very negative impact on the system organisation, without any reasonable justification on the guaranties of impartiality. Hundreds of criminal judges, all over the territory, will be prevented to taking part in the trial stage, just because they rendered insignificant rulings in the investigative stage, with no relevance to their impartiality. They will have to be replaced by other judges who, in many cases, will not be

specialized with criminal law. The Portuguese Judges Association ASJP will present a proposal for the modification of this law as soon as the new parliament is inaugurated. **(Portugal)**

As a result of the covid-19 pandemic, many people lost their jobs, and many companies went bankrupt. This is already the case and will, after the end of the pandemic, lead to even more insolvency and thus the impossibility of enforcement of judgements **(Slovenia)**

IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES

A. The process for preparing and enacting laws

1. Framework, policy and use of impact assessments, stakeholders'/public consultations (particularly consultation of judiciary on judicial reforms), and transparency of the legislative process,

Positive developments since 1.2.2021:

The parliament recently unanimously approved an amendment on the law concerning the criminalization of intentional concealment of income or assets acquired in the exercise of public functions, following a proposal by the Portuguese Judges Association ASJP. **(Portugal)**

All Presidents of the Courts of Appeal and several associations of judges and of prosecutors were consulted by the Ministry of Justice on the draft of the laws concerning the judiciary. The Romanian Magistrates' Association AMR was also invited to the Parliament when these bills were debated in the Committee. **(Romania)**

Negative developments since 1.2.2021:

According to Law on Courts the General Assembly of Supreme Court has the right to comment on draft laws, which can have impact on the work of courts. In majority of cases comments and advice of Supreme Court are not taken into account at all, and proposals are delivered too late to give comprehensive opinion. **(Croatia)**

The legislative process significantly lacks financial resources. The quality of legislation is diminished due to the lack of financial resources and tight time schedules. This is also the result of the Covid-19 pandemic. The level of impact assessment (financial impact and other impacts) in legislation is unsatisfactory and tendentious. **(Finland)**

The main problem is still the accelerated legislation with no social consultation. For example, an absolutely non-covid related legislative change to several parts of the Code of the Criminal Procedure was adopted one day and entered into force on the following day. Another example is the proposed amendment to the law initiated by the Minister of Justice, which has brought about substantial changes in the practice of child custody. As there was insufficient consultation with the NGOs concerned, family rights NGOs sent written comments to the Ministry expressing their concerns about several elements of the new legislation. It happens quite often that the parliament uses a simplified process of legislation when the proposal is formally initiated by an individual MP. This happened for example in the case of the new law aiming tougher action against paedophile offenders and amending certain laws to protect children. The individual motion allowed the Parliament to decide on the amendment without a public debate and consultation. To the original proposal to tighten penalties for paedophile offences, the Legislative Committee tabled an amendment containing provisions on the promotion of homosexuality, the display of deviation from the identity of the sex of birth and sex education. During the adoption of the law, there was no public debate and human rights NGOs strongly criticised the law. The government is proposing a national referendum on essentially the same issue in spring 2022. **(Hungary)**

The proposals to improve the judicial system sometimes goes without clear background and is not evidence – based (or still not enough), suggesting solving the issues only accidentally but not using a systemic approach. One example might be provided concerning the Supreme Court – in 2019 the number of judges in the Supreme Court was reduced from 35 to 32, however, in 2021 the same discussion about the reduction of judges of the Supreme Court has started. There is a lack of systemic approach to the judicial system and systemic understanding what number of judges it is enough for such country as Lithuania. **(Lithuania)**

Insufficiently thought-out proposals, frameworks, insufficient time to comment on legislative changes, etc. The Judicial Association is often overlooked in drafting new laws. **(Slovenia)**

There is no specific provision for hearing the views of judicial associations on legislative initiatives that affect the status of judges, contrary to the recommendations of all international organizations **(Spain)**

2. Rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions).

Positive developments since 1.2.2021:

The coalition government, which was formed after the last parliamentary elections on November 14, 2021, intends to carry out a large-scale judicial reform within the framework of judicial legislation. On this occasion, the Bulgarian Judges Association is currently conducting an online survey among judges on the main issues: structure and powers of the Supreme Judicial Council; attestations of judges; the need for specialized criminal courts; status of the Prosecutor

General, etc. The forthcoming legislative reforms are expected to be discussed with judges and prosecutors. **(Bulgaria)**

The measures adopted were based on instructions by National Courts Administration and permanent procedural legislation. In Finland, the emergency legislation did not concern the court activities. **(Finland)**

In 2021, the Government adopted 145 emergency ordinances. Their number significantly decreased compared to year 2020, when 227 emergency ordinances have been adopted. **(Romania)**

Negative developments since 1.2.2021:

The new government does not have the necessary constitutional majority to revise key issues to depoliticize the judiciary. **(Bulgaria)**

The percentage of laws adopted under an expedited or urgent procedure in Slovenia was already 65% before the pandemic and increased due to the pandemic. In addition, the government preferred to "rule by decrees" rather than proposing amendments to parliament. **(Slovenia)**

3. Regime for constitutional review of laws.

No observations

4. Covid-19 provide update on significant developments with regard to emergency regimes in the context of the Covid-19 pandemic

- **Judicial review (including constitutional review) of emergency regimes and measures in the context of Covid 19 pandemic**
- **Oversight by Parliament of emergency regimes and measures in the context of Covid 19 pandemic**

So far only the Constitutional Court has been dealing with those issues and there are no final judgments of regular courts in cases connected with COVID-19 pandemic. **(Croatia)**

No specific procedure of judicial review than the ordinary one. One application against an interlocutory order procedure was dismissed. **(Cyprus)**

Both individuals and legal entities have the opportunity to challenge decisions taken by the government which are connected to the Covid-19 pandemic. Individuals challenge mostly decisions related to the vaccination certificate and the right to use certain services. Legal entities challenged mostly decisions which are related to financial support measures. **(Estonia)**

Emergency Powers Act has been imposed. The act restrains persons fundamental rights. **(Finland)**

On 30 November 2021, the Federal Constitutional Court rejected constitutional complaints against a wide-ranging Federal Law of 21 April 2021 that had introduced limitations on personal contacts and a partial curfew to stop the pandemic from spreading. Many laws on the Länder level and acts of the executive have been examined in numerous lawsuits in administrative courts all over Germany, and several legislative and executive acts were overturned by courts in 2021. The general view of the public seems to be that the courts are working properly and fulfilling their constitutional duty to review acts of the other state powers. **(Germany)**

Judicial review is possible and there have been several cases in which challenges have been brought to various pandemic measures. However, to date none have succeeded. Government public health measures have the force of statute law, being the subject of either primary legislation or statutory instruments. The relevant rules and regulations are subject to parliamentary debate and scrutiny in the normal way. **(Ireland)**

The Constitutional Court declared as unconstitutional two provisions regarding measures for preventing effects of COVID-19 pandemic on the grounds that the access to justice was not efficiently guaranteed. **(Romania)**

As far as the judiciary is concerned a separate Law was adopted in April 2021 regarding measures in the field of justice in the context of COVID-19 **(Romania)**

The Constitutional Court has declared unconstitutional the restriction of rights imposed on citizens during confinement, because it appreciates that the instrument chosen by the Government: the declaration of a state of alarm, provided insufficient legal coverage to carry out a limitation of rights as broad as that of agreed. It has also decreed the unconstitutionality of the extension of the state of alarm and the delegation of powers to the territorial authorities, for limiting the powers of parliamentary control to restrictions. **(Spain)**

B. Independent authorities

1. Independence, resources, capacity and powers of national human rights institutions (NHRIs), ombudsman institutions, if different from NHRIs, of equality bodies, if different from NHRIs and of supreme audit institutions.

Negative developments since 1.2.2021:

Ombudsman institutions (control of legality) are independent. The lack of resources is complicating the effectiveness and independence of the control of legality institutions. The

National Audit Office of Finland (NAOF) audits central government finances, monitors fiscal policy, and oversees political party and election campaign funding. The role and duties of the NAOF are laid down in the Constitution of Finland. During 2021 there has been suspicion of malpractice and corruption of the head of department. The criminal procedure is still pending. **(Finland)**

NHRIs have pointed to an increase in problems e.g., migrants due to the pandemic. The government has cut NGOs funding for their activities. **(Slovenia)**

2. Statistics/reports concerning the follow-up of recommendations by National Human Rights Institutions, ombudsman institutions, equality bodies and supreme audit institutions in the past two years.

No observations

C. Accessibility and judicial review of administrative decisions

1. Transparency of administrative decisions and sanctions (including their publication and rules on collection of related data) and judicial review (incl. scope. suspension effect)

Positive developments since 1.2.2021:

A new law on freedom of information and transparency (Informationsfreiheitsgesetz) is in a drafting phase after public consultations **(Austria)**

The Ministry of Justice has a plan with help of foreign grants to develop a system where all court judgments will be available on the internet. **(Croatia)**

2. Judicial review of administrative decisions:

No observations

3. Follow-up by the public administration and State institutions to final (national/supranational) court decisions, as well as available remedies in case of non-implementation.

Positive developments since 1.2.2021:

The suspension of payment of court-awarded compensation due to placement conditions that violated the fundamental rights of detainees came to an end with a completely revised new regulation. Due to the expansion of the capacity of prison-system the number of cases decreased. **(Hungary)**

There is always appropriate follow up, and there has been no change in approach in the last twelve months. **(Ireland)**

Negative developments since 1.2.2021:

There is no effective mechanism for monitoring the enforcement of court decisions. It is common practice for administrative authorities not to comply with court decisions or to delay their enforcement much. In cases of non-enforcement of a court decision, fines are provided for administrative authorities, but in practice they are rarely or are not collected. There are no quick and effective protection measures for citizens and legal entities in cases of non-enforcement of a court decision by administrative authorities. **(Bulgaria)**

Several cases have been reported where authorities from the Executive branch have refused to comply with respective judicial decisions. **(Bulgaria)**

Ignorance of the authorities of the decision of the Court of Justice (C-564/19): The General Prosecutor's Office reacted to the decision and changed his reasoning, the Supreme Court released a public statement about it and stated that its earlier decision in question of this case is final and its interpretation of the law is mandatory for all Hungarian courts, therefore the Supreme Court maintains its position as set out previously. **(Hungary)**

The Polish Government announced its intention to ignore the decisions of the Court of Justice. The Polish Constitutional Court explicitly ruled that Polish Constitutional Law has primacy over European Law. **(Poland)**

D. The enabling framework for civil society

1. Measures regarding the framework for civil society organisations (e.g., access to funding, legal framework incl. registration rules, measures related to dialogue between authorities and civil society, participation of civil society in policy development, measures capable of affecting the public perception of civil society organisations etc.)

There are supportive measures for civil society organizations from the state. There is increasing hostility from nationalist political parties and individuals. **(Bulgaria)**

The potential for civil society to influence change, legislative framework or policies has been reduced, and also government funding has been reduced. **(Slovenia)**

The Ministry of Territorial Policy and Public Function opened, at the end of April, a prior public consultation on the Draft Law on Transparency and Integrity in the Activities of Stakeholders

in which, in general, the need arises to regulate the relations of these groups with the so-called public offices, for the purposes of transparency and control of decisions that affect the public sphere. **(Spain)**

2. Rules and practices guaranteeing the effective operation of civil society organisations and rights defenders

No observations

E. Initiatives to foster a rule of law culture

1. Measures to foster a rule of law culture (e.g. debates in national parliaments on the rule of law, public information campaigns on rule of law issues etc.

Positive developments since 1.2.2021:

Since the summer of 2020, a public debate on the rule of law has been held in Bulgaria, which is partly professional, but largely the result of conflicting political and economic interests. However, there is a growing interest among citizens in the matters of justice. **(Bulgaria)**

A seminar on the observance of the Rule of Law culture and situation in Finland was organized by the Ministry of Justice on 11.11.2021. Chronical lack of financial resources and the insufficient number of Judges is considered a threat to the development of the Rule of Law culture. Also, the exhaustion of the Judges by their workload was considered a threat to a due process. **(Finland)**

The parliament approved new legislation in the field of preventing and combating corruption, which will reinforce specific training in schools on issues of citizenship and the rule of law. **(Portugal)**

The situation in Poland and Hungary has led to an increased awareness that we need to protect the rule of law in Sweden as well. This has been subject to debates and media interest during 2021. **(Sweden)**

Negative developments since 1.2.2021:

The amount of uninformed and biased public comments from different actors on the work of courts has achieved a worrying magnitude. **(Croatia)**

Organized debates on the rule of law culture were held in the National Council and with the President of the State. There is still no will among politicians for a positive shift towards the rule of law. **(Slovenia)**