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Council of Bars and Law Societies of Europe
The voice of European Lawyers

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CCBE Contribution for the 2023 Rule of Law Report

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EXECUTIVE SUMMARY

The Council of Bars and Law Societies of Europe (CCBE) represents the bars and law societies of 46 countries and, through them, more than 1 million European lawyers.

The CCBE welcomes the explicit recognition in the 2022 Rule of Law Report of lawyers as key actors for judicial systems based on the rule of law.

In its contribution for the 2023 Rule of Law Report, the CCBE lists its actions, activities and policy documents relevant to different rule of law related aspects. This submission is accompanied by input received from the national Bars and Law Societies of 26 EU Member States on different rule of law developments in EU Member States, with a particular focus on those posing a risk and undermining the independence of lawyers and Bars, access to justice, quality of justice, fundamental rights and freedoms.

According to the responses from national Bars, all national Bars are independent from the executive or other state authorities in the EU Member States. However, many national Bars have provided information on developments and indicated some trends which pose a risk to the independence of the legal profession and functioning of the justice system in particular Member States. They have also provided some positive examples and best practices relevant to this assessment.

Specific cases, concrete examples, and trends are listed and explained in detail in the national Bar reports in the Annex to this contribution. In the conclusion part of the document, only some examples and developments in the justice systems of concrete EU Member States are briefly mentioned. For example, members of the CCBE reported about the concerns and trends posing a risk to the independence of the legal profession and functioning of the justice system in the following areas:

- digitalisation of justice;
- confidentiality and the professional secrecy/legal professional privilege of lawyers;
- identification of lawyers with their clients;
- access and efficiency of justice;
- legal aid systems;
- delays in court proceedings and insufficient resources of the judiciary;
- national developments in various other areas.

For more complete and detailed information, the Annex part of the CCBE contribution for the 2023 Rule of Law Report should be consulted.

Introduction

The Council of Bars and Law Societies of Europe (CCBE) represents the bars and law societies of 46 countries, and through them more than 1 million European lawyers.

The regulation of the profession, the defence of the rule of law, human rights and democratic values are the most important missions of the CCBE. Several areas of special concern to the CCBE include access to justice, the development of the rule of law, the respect for the right to a defence and the effectiveness of the justice system, which are core values of the profession.

With this input, the CCBE submits its contribution for the 2023 Rule of Law Report by the European Commission.

1. 2022 Rule of Law Report

The presentation of the 2022 Rule of Law (RoL) Report by the European Commission took place at the CCBE Standing Committee meeting in October 2022, where CCBE members had a possibility to ask questions and express their remarks as regards the RoL Report and recommendations to the Members States.

The CCBE welcomes the explicit recognition in the Report of lawyers as key actors for judicial systems based on the rule of law. Moreover, it is stressed that "Lawyers and their professional associations play a fundamental role in strengthening the rule of law and ensuring the protection of fundamental rights, including the right of a fair trial"[1].

[1] Under Chapter 2.1. on Justice systems (page 7) of the 2022 RoL Report, the following is mentioned, recognising the important role of lawyers and bars:

"Lawyers and their professional associations play a fundamental role in strengthening the rule of law and ensuring the protection of fundamental rights, including the right of a fair trial. Some Member States took steps towards facilitating access to a lawyer. In Latvia, the Supreme Court affirmed that lawyers' participation in court proceedings is essential for ensuring the right to a fair trial and ruled in favour of lawyers' right to access information to exercise their functions. In Luxembourg, legislation to make legal aid more accessible was developed jointly by the Ministry of Justice and the Bar Association. In Lithuania, a reform of the legal aid system is being prepared. In Ireland, high litigation costs and shortcomings within the legal aid system continue to raise concerns, while work is ongoing to address those challenges.

One essential element of the freedom of exercise of legal professions is respect of the confidentiality of the relationship with clients. Council of Europe recommendations make clear that any exceptions to the principle of secrecy must be compatible with rule of law principles. In Lithuania, questions regarding the respect for professional secrecy of lawyers are pending before the European Court of Human Rights."

2. Relevant CCBE actions

In 2022, the CCBE undertook a number of actions addressing various issues related to the rule of law.

Migration and access to justice

The CCBE has adopted recommendations on a framework on legal aid in the field of migration and international protection. Based on a survey carried out among its experts, the CCBE assesses the state of play regarding such a legal aid framework in different Member States. Building on this exercise, the CCBE lists several recommendations and identifies best practices for a legal aid framework that guarantees access to justice and protection of fundamental rights for migrants and people seeking international protection.

The CCBE has also adopted a Statement following the deaths of migrants attempting to cross from Morocco to Melilla. The CCBE expressed its concern and opposition to the wide-spreading tendency to use violence against people seeking asylum at EU borders and condemns the instrumentalisation of migrants. Although it is aware of the highly politicised situation at the borders between Spain and Morocco, the CCBE stressed the importance of respecting and applying fundamental rights, such as the right to life, and other principles applicable in the field of migration and asylum, at EU borders.

The CCBE has also taken several actions in order to support European initiatives for people fleeing war in Ukraine. First, the CCBE published a statement on the application of the Temporary Protection Directive to certain persons displaced by the Russian invasion of Ukraine. The CCBE stressed that access to adequate legal information and assistance is essential to ensure the procedural and substantive benefits of the Directive are actually made available to those persons in need. Second, in light of the difficult situation in which Ukrainian lawyers found themselves after the Russian invasion of Ukraine, the CCBE adopted a recommendation on qualifications of Ukrainian lawyers, taking into consideration the Recommendation of the European Commission on the recognition of qualifications for people fleeing Russia's invasion of Ukraine.

In 2022, the CCBE also worked on the topic of unaccompanied children in transnational procedures and published a paper[2] arguing that ensuring better information, support and assistance for children, in particular through guardianship and access to free, quality legal assistance, is a vital ingredient to make progress with transnational procedures involving children.

Sanctions

On 6 October 2022, the Council introduced measures which prohibit the provision of legal advisory services. It is now prohibited to provide, directly or indirectly, legal advisory services to the Government of Russia; or legal persons, entities or bodies established in Russia.

'Legal advisory services' covers: the provision of legal advice to customers in non-contentious matters, including commercial transactions, involving the application or interpretation of law; participation with or on behalf of clients in commercial transactions, negotiations and other dealings with third parties; and preparation, execution and verification of legal documents.

[2] CCBE statement in favour of strengthening key procedural safeguards for unaccompanied children in transnational procedures - Statement in support of a report by Kids in Need of Defence (KIND) and Child Circle

'Legal advisory services' does not include any representation, advice, preparation of documents or verification of documents in the context of legal representation services, namely in matters or proceedings before administrative agencies, courts or other duly constituted official tribunals, or in arbitral or mediation proceedings.

The prohibition does not apply to the provision of services that are strictly necessary for the exercise of the right of defence in judicial proceedings and the right to an effective legal remedy, or to the provision of services which are strictly necessary to ensure access to judicial, administrative or arbitral proceedings in a Member State, or for the recognition or enforcement of a judgment or an arbitration award rendered in a Member State. The CCBE is in contact with the Commission regarding certain aspects of the new measures. The CCBE has also created a pool of experts to deal with sanctions related issues. In addition, as the impact of the sanctions is constantly evolving, the CCBE is continuously monitoring the practical and legal implications of the new measures and is consulting the CCBE delegations in this regard.

Pegasus Scandal

On 1 February 2022, the CCBE adopted a statement on the Pegasus scandal, expressing its deepest concerns about the surveillance of lawyers and human rights defenders through a spyware used by public authorities. The CCBE therefore called upon national and European authorities, through EU institutions and the Council of Europe, to take steps to protect and enhance the confidentiality of lawyer-client communications when modern technology is used. It needs to be ensured that material protected by professional secrecy and legal professional privilege is out of the scope of surveillance operations through instruments of international law, such as a European Convention on the legal profession. The CCBE also invited national and European authorities to take consideration of its recommendations on the protection of fundamental rights in the context of 'national security' as well as its recommendations on the protection of client confidentiality within the context of surveillance activities. Following the adoption of its statement, the CCBE co-organised in October 2022 with the European Lawyers Foundation a webinar on surveillance and the impact of modern spyware tools on fundamental rights with the participation of representatives from the European Parliament PEGA Committee.

Anti-money laundering (AML)

The CCBE has been monitoring the progress on the AML package. In 2021, the CCBE reiterated its concerns from its 2021 position paper regarding risks of undue influence from the Anti-money laundering authority (AMLA) and national supervisors over self-regulatory bodies. In addition, the CCBE has been especially concerned by the European Parliament proposals regarding the AML Regulation that would limit the application of legal professional privilege. These proposals go far beyond the proposals of the European Commission. The CCBE has contacted the legislators on this topic several times during the last year, as it is clear that legal professional privilege is not well understood by the legislators.

Tax

The CCBE responded to the public consultation on tackling the role of enablers. Although the CCBE considers that EU Member States must tackle tax fraud and firmly condemns any lawyer engaging in illegal activities, the CCBE also opposes the use of the term enablers towards lawyers in general. The CCBE is worried about the increasingly frequent use of this term and considers that the consultation is one of the recent developments demonstrating that lawyers are unjustly identified with their clients. Moreover, in the field of taxation, the CCBE has been closely monitoring the implementation of DAC6 in various Member States and has welcomed the ruling of the Court of Justice of the EU of 8 December (Case C-694/20) whereby the Court declared that the obligation for a lawyer to inform other intermediaries involved is not necessary and infringes the right to respect for communications with his or her client.

CCBE support to individual lawyers

The CCBE supports lawyers who face hindrances in fulfilling their legitimate activities by sending letters to the authorities concerned.

On 4 October 2022, the CCBE sent a letter expressing its concern regarding the attack on lawyer Manolis Papadomanolakis from Greece. According to information received, on 23 September 2022, Manolis Papadomanolakis, a member of the board of the Chania Bar Association, was stabbed in the neck by a masked man while waiting outside the courthouse in the City of Chania. The aggressor fled after the attack and the lawyer was transferred to the city hospital where he was treated for a superficial neck injury. This attack was also condemned by the President of the Chania Bar Association.

Although no action by the CCBE was required to safeguard the lawyer's rights, in August 2022, the CCBE received information about a lawyer in Italy (Nadia Fiorani) who had been the target of numerous offensive comments and serious threats in relation to her legitimate work as a lawyer representing a client accused of rape. This clear identification with her client created a state of fear for her safety, preventing her from carrying out her duties freely.

Although no action by the CCBE was required to safeguard the lawyer's rights, in August 2022, the CCBE received information about a French lawyer (Lucie Simon) who had filed a complaint for threats and cyber harassment in relation to her legitimate work as a lawyer defending Imam Hassan Iquioussen, whose expulsion, as demanded by the Interior Minister, had been suspended. According to the information we received, the threats started by insults and amounted to death and rape threats as soon as the lawyer obtained the suspension of the Iman's expulsion in court.

Convention on the protection of the profession of lawyer

In 2022, the CCBE, as an observer, actively contributed to the work of the Committee of Experts on the Protection of Lawyers (CJ-AV) which is tasked to prepare the future legal instrument to strengthen the protection of the profession of lawyer and the right to practise the profession without prejudice or restraint. The work is done under the supervision of the Committee of Ministers and of the European Committee on Legal Co-operation (CDCJ). The CCBE strongly supports the adoption of a binding instrument which it considers to be essential in order to respond to the growing attacks and challenges

faced by the legal profession which directly hinder the respect for the rule of law and access to justice for lawyers' clients.

In 2022, the CCBE was also granted the status of observer to the European Committee on Legal Co-operation (CDCJ), which will enable the European legal profession to contribute to the CDCJ work in the field of public and private law, which also contributes to upholding the rule of law in Europe.

Report on the "Protection of lawyers against undue interference in the free and independent exercise of the legal profession"

Another important development of 2022 for the consolidation of the rule of law is the publication of the report on the "Protection of lawyers against undue interference in the free and independent exercise of the legal profession", to which the CCBE actively contributed. Additionally, on 21 June 2022, the CCBE participated in the 50th UN Human Rights Council in Geneva in order to assist to the presentation of the report by the UN Special Rapporteur on the Independence of judges and lawyers.

The Special Rapporteur, while stressing that lawyers and the free practice of the legal profession are indispensable to the rule of law, recommended that States should take all necessary measures to ensure the free exercise of the legal profession, in all circumstances, so that lawyers may exercise their legitimate professional rights and duties without fear of reprisals and free from all restrictions, including judicial harassment. In particular, States should design and carry out measures to prevent the identification of lawyers with their clients or the causes they defend. Moreover, the Special Rapporteur stressed the importance for Bars and Law Societies to remain independent and self-governing professional associations in order to promote and protect the independence and the integrity of lawyers as well as to safeguard their professional interests. Most importantly, as regards the ongoing work of the Council of Europe on the drafting of a draft international legal instrument aimed at strengthening the protection of the legal profession and the right to practise law freely without prejudice or hindrance, the Special Rapporteur supports the adoption of a binding instrument open to accession by non-member States of the Council of Europe.

Amendment of Rule 9 for the Supervision of the Execution of Judgments and Settlements operated by the Committee of Ministers

In its 2022 RoL Report, the European Commission took into account the overall non-implementation of European Court of Human Rights ("ECtHR") judgments in its rule of law assessments, stating that "The track record of implementing leading judgments of the European Court of Human Rights (ECtHR) is also an important indicator for the functioning of the rule of law in a country."

In this context, the CCBE closely follows and regularly provides its input in the ongoing process to improve the efficiency of the ECtHR, including several proposals to address the increasing backlog. The CCBE considers in this regard that lawyers and Bars and Law Societies need a clearer opportunity to be heard and to contribute to addressing the backlog of pending cases, both at the level of the Court and at the level of the execution of the Court's judgments.

To this end, with the adoption of its position on further reform of the ECHR machinery, the CCBE proposed to amend Rules for the Supervision of the Execution of Judgments and Settlements operated by the Committee of Ministers and notably Rule 9 to expressly permit lawyers instructed in the case,

Bars and Law Societies and their international associations, such as the CCBE, to make proposals for all aspects of the execution of Court judgments.

This was achieved when on 6 July 2022, the Committee of Ministers of the Council of Europe decided to partly amend Rule 9 of the Rules for the Supervision of the Execution of Judgments and Settlements operated by the Committee of Ministers, confirming that submissions from Bars, Law Societies and Lawyers' associations on cases pending supervision fall within the scope of the Rule. This possible involvement by Bars and Law Societies and their international associations will ensure a better implementation of the Court's judgments, reinforcing therefore the functioning of the rule of law.

European Lawyers' Day

European Lawyers' Day (ELD) is celebrated each year on 25 October to highlight the common values of lawyers and their intrinsic role in the defence and promotion of the rule of law, as well as their contribution to the justice system. ELD is organised in the framework of the European Day of Justice, a day created to bring justice closer to citizens and to promote the work of the Council of Europe and the European Commission in the field of justice. ELD focuses on a different theme each year.

The theme selected for 2022 was "Making the law prevail in times of war: the role of lawyers". Following the invasion of Ukraine by Russia at the beginning of the year and its considerable impact on the populations concerned, but also more widely on Europe and the rest of the world, it was decided to highlight the important role lawyers and Bars and Law Societies can play in such a context of war. Various initiatives are taken by Bars and Law Societies, as well as lawyers and law firms, in reaction to humanitarian crises resulting from conflicts. It is important to recognise how lawyers safeguard individual human rights and how they represent victims of war in war crimes and crimes against humanity.

Lawyers play an important role in the context of war by assisting people fleeing conflict and in search of a safe haven. By being present at the borders or opening up contact points providing legal assistance to refugees, lawyers contribute to defending the right to asylum guaranteed by instruments such as the EU Charter of Fundamental Rights (Article 18) or the Geneva Convention of 1951. It is necessary to also highlight the importance of family law during war situations where families are torn apart, and vulnerable adults and minors being at a heightened risk of harm, abuse, and trafficking. Moreover, lawyers play an important role in relation to sanctions imposed by governments in the context of war, both in terms of evaluating the impact of sanctions on legal services, and in relation to lawyers' role in advising clients regarding how to comply with measures and sanctions.

Several events were organised by Bars and Law Societies for ELD 2022. More information on ELD and the CCBE, as well as Bars and Law Societies' initiatives, can be consulted on the CCBE dedicated webpage.

3. Main conclusions from the responses received from CCBE member Bars

According to the responses from national Bars, all national Bars are independent from the executive or other state authorities in the EU Member States. However, as indicated below, in certain countries

there are some trends which pose a risk to the independence of the legal profession and functioning of the justice system.

Reference is made to the Annex of this paper which includes the contributions received from the national Bars of 26 EU Member States on the relevant rule of law developments in EU Member States, with a particular focus on developments that undermine the independence of lawyers and Bars, access to justice, quality of justice, fundamental freedoms, democracy and the rule of law. Several national Bars have also provided information and examples referencing broader elements.

Independence of the Bar and independence of lawyers

National Bars of countries such as Croatia, Ireland, Romania, Slovenia and Sweden have reported that in 2022 there were no significant developments undermining the independence of the Bar and the independence of lawyers. In addition, most of these Bars have not identified any major developments in the justice system which negatively influence the functioning and independence of the Bar and lawyers.

However, **many national Bars have provided information on developments and indicated some trends which pose a risk to the independence of the legal profession and functioning of the justice system in particular Member States.** They have also provided some positive examples and best practices relevant to this subject.

These specific cases, concrete examples, and trends are listed and explained in detail in the national Bar reports in the Annex to this contribution. In the conclusions below, only some examples and developments in the justice systems of concrete EU Member States are briefly mentioned. For more complete and detailed information, the Annex part of these contributions should be consulted.

Regrettably, **several members have reported on developments which negatively influence the independence and autonomy of their national Bar.** The Polish Bar Council and the National Bar of Attorneys at Law of Poland brought to the attention the case pending before the national Constitutional Court against statutory obligation of affiliation of advocates and attorneys at law to Bars on the basis of the criterion of their professional residence. The Polish Bars considers this to be an attempt to deprive the independence and ability of the Bar to effectively execute its functions.

The members of the CCBE have also referred to several initiatives at EU level which might leave a negative influence on the independence of the Bar. In this regard, the most worrying could be a creation of an EU anti-money laundering authority.

The Italian Bar reported that the autonomy of the Bar Associations has been experiencing a particularly difficult phase in Italy for some time. In particular, some independent administrative authorities and some State administrations have tended to disregard the special nature of Bars among public law bodies. As a result, Bars are the recipients of several obligations disproportionate to their nature. As an example, the obligations reinstated by the National Anti-Corruption Authority and the Ministry of Economy of Italy were provided.

Digitalisation of justice

The digitalisation of the justice system is ongoing in many EU Member States and even though there are a number of positive developments and progress made, and for some activities the legal profession is involved and consulted, some initiatives are still rather slow, challenging, not implemented correctly and missing detailed consultations and involvement of the Bar of the relevant country.

A number of issues regarding the digitalisation of justice systems were reported by many national Bars. For example, the Belgian Bar referred to the questionable use of videoconferencing in certain hearings. The Luxembourg Bar referred to the significant delays and the limited use of some electronic tools for the digital transition of justice, as well as a lack of full online information, including judgments. The issue of unequal facilities for lawyers in court rooms in Finland was also raised while restrictive deadlines of administrative authorities for electronic communication and service of documents were also raised in regard to Austria. The lack of legislative rules regulating several aspects of digital communication, including for convening meetings of general assemblies of Bars was raised by the Czech Republic while the Spanish Bar has stressed a need for priority access to the electronic judicial file for lawyers.

The CCBE members have also reported about some positive developments at national level in this area. For example, a launch of an electronic divorce procedure by mutual consent in France, a specific system for secure electronic communication between lawyers and their clients as developed by the Austrian Bar.

Professional secrecy/legal professional privilege

At the same time, it needs to be underlined that a number of national Bars have stressed that the preservation of professional secrecy/legal professional privilege is more and more endangered in a digital environment.

In addition, the Luxembourg Bar Association reported their concerns about the recent trend to question the scope of professional secrecy/legal professional privilege and the attempts by public authorities to differentiate between the different activities of lawyers, considering that the advisory activities of lawyers (as opposed to the judicial activity of representation before courts) despite the legal provisions are not covered by professional secrecy. Legislative changes were introduced in France to reinforce lawyers' professional secrecy and define new rules regulating searches, the framework for requesting connection data concerning a lawyer and the rules relating to telephone interceptions of lawyers. However, these rules, according to the French Bar, do not fully implement the guarantees provided by existing law and disregard the principle of indivisibility of professional secrecy/legal professional privilege as guaranteed by the case law of the Court of Justice of the European Union and the European Court of Human Rights. More detailed information, including as regards the outcome of the contested provision of this law, is included in the Annex.

The Estonian Bar reported the problem of a lack of regulation regarding the search of law offices and the inconsistency of the practice of courts and prosecutors in their country in this regard. It means that a law office is searched - although there may be other resources available to receive the information needed. However, there is hope that this difficulty will be solved by the new bill in the context of client

confidentiality protection which is under discussion with the Ministry of Justice. Moreover, there are recent best practices based on relevant court orders. On the confidentiality issue, the Belgian Bar provides the example of visits of fiscal control authorities who sometimes consider that confidentiality of a lawyer's correspondence is not applicable to them due to their own professional secrecy rules. In some cases, this has even been followed by courts. This obviously threatens the confidentiality between lawyers and their clients. The Slovak Bar also mentioned repeated flagrant breaches of the procedure that governs searches of law offices and conflicts with their duty to ensure confidentiality.

The Dutch Bar also considers that in the Netherlands the confidentiality of the contact between a lawyer and their client has been under pressure for several years and in many ways. A legislative proposal has been made that intends to enable visual supervision during the visit of a lawyer to high-security prisons. The Netherlands Bar opposes this and points out the importance of free and confidential lawyer-client communication. The Czech Bar reported about the case of wiretapping of ten interrogation cells in the Brno-Bohunice detention prison where defence lawyers hold meetings with their clients. However, it is hoped that amendments to the law under discussion at the moment in the Czech Republic will enshrine the protection of legal professional privilege.

Similar aspects were reported by the Lithuanian Bar when referring to meetings of detained persons with the lawyer in the police detention facilities which were subject to video surveillance. The police assured that no voice recordings were carried out, however, this raises great concern for the national Bar.

In addition to surveillance of lawyers using Pegasus spyware, information was also received on very worrying developments in Poland as regards a new type of surveillance technology called *Cellebrite*. More detailed information is provided in the Annex part of this input.

The Finnish and Swedish Bars mentioned a general lack of understanding and knowledge in Finland regarding the legal practice and regulation related not only to the profession of lawyer but also an independent Bar Association as well as regular need for the Bar to provide explanations and clarifications in this regard.

Identification of lawyers with their clients

The Belgian Bar provided examples of cases when lawyers were identified with their clients. On a couple of occasions, lawyers have also been criticised by the Flemish Minister of Justice for the way in which they defended their clients. The Hungarian Bar stressed the influence of the media contributing to misinterpretation of the role of defence lawyers, sometimes even leading to hate speech.

On this particular and extremely important issue of protecting lawyers from threats and harassment, some Bars reported on their activities and initiatives to ensure a safe environment and resilience for lawyers (Denmark, the Netherlands).

Quality of legal services

The CCBE was also informed about the worrying intention of the Parliament of Slovakia to introduce a legislative provision creating a new group of legal services providers - legal advisers - which could lead

to weakened quality of legal services and even legalise legal services without established ethical principles in Slovakia.

Equality of arms

The members of the CCBE underlined their concerns regarding the equality of arms between the prosecution and accused persons in particular in a digital environment, for example, by stressing a need to ensure an access to all seized data at reasonable time for accused persons.

Access and efficiency of justice

The information received from Denmark shows a tendency as a consequence of urbanisation, which is the decrease of the number of law practices in provinces. The Austrian Bar has stressed that the system of high court fees may be problematic for access to the court. The Italian Bar submitted a very detailed analysis of the possible consequences of the Civil Justice Reform in Italy, which among other issues could create an additional burden for the efficiency of the court. Their submission also stressed a risk of restricted possibility of appeal as a consequence of new legislative changes concerning preliminary referral to the Supreme Court. In the submission from Poland, the danger of proposed legislative amendments in the area of criminal law was stressed referring to a possible interference with the judicial discretion and constitutional civil rights and freedom. The Slovak Bar reported that the government drafted a revised Criminal Procedure Code that seriously weakened the access to defence rights and access to lawyer in the pre-trial stage.

Legal aid

The availability of legal aid is one of the most critical aspects to be ensured to guarantee access to justice. In this regard, a number of CCBE members highlighted the challenges based on a limited budget for legal aid and remuneration of lawyers in this regard, especially referring to the low level of lawyer fees.

Delays

Excessive durations, lengths and backlogs of some proceedings at national level, as well as increasing delays in judgments and difficulties with the implementation of judgments were reported by a number of national Bars (for example, Belgium, Cyprus, Denmark, France, Hungary, Ireland, Spain). The Czech Bar referred to some minor positive tendencies as regards the length of administrative proceedings in regional courts and civil proceedings in district courts.

Resources of the judiciary

Several aspects of appointment and terms in office of judges were stressed by national Bars in the Czech Republic, Ireland, Poland and Spain. Several members of the CCBE also referred to insufficient resources of the judiciary creating difficulties in ensuring the well-functioning of justice systems (for example, in Austria, the Czech Republic, France, Germany and Ireland).

Vienna Declaration

Among other issues, a submission from the French Bar stressed the importance of the Vienna Declaration signed in 2022 by the Bars of 25 countries of the Council of Europe. This declaration aimed to remind the European authorities and the Member States about their responsibility to protect and strengthen the rule of law. The declaration was also co-signed by the CCBE.

Implementation of the Commission recommendations

In addition, several members of the CCBE provided information on the implementation of the recommendations which were addressed by the Commission to all EU Member States.

Annex
to the CCBE Contribution for the 2023 Rule of law Report

AUSTRIA

Independence of the Bar and of lawyers

Professional secrecy is more and more endangered in a digitalized environment. In case of seizures, accused persons and lawyers' external services providers should have a right to object when material which is protected by professional secrecy is seized. Devices with such data should be sealed immediately and transferred to a judge. This judge, not law enforcement or prosecution services, should then consider whether professional secrecy applies after the data was examined by the defence. More generally, professional secrecy should apply regardless of where protected material is found. This seems especially appropriate in a digital world, where lots of information is accumulated and exchanged outside the traditional physical law office.

Information on horizontal developments

The Austrian Bar has developed a specific system for secure electronic communications between lawyers and their clients ("context"). This system ensures a level of data protection which is in accordance with both professional secrecy rules and the GDPR. This system is meant as a technological answer to growing concerns regarding confidentiality in the digital environment. Professional secrecy needs specific protection in this regard as it forms an indispensable part of the rule of law and is a fundamental right of citizens.

Independence/autonomy of the prosecution service

The Austrian Bar is concerned regarding the equality of arms between prosecution/attorney generals and accused persons, in particular in the digital environment. In case of seizure of electronic data, accused persons often do not know which data was seized or information is transmitted far too late for their own analysis and verification. This is problematic as it impairs the right to defence. In order to be able to mount a proper defence, accused persons should, at a reasonable point in time, have at least access to all seized data, including restored date and temporary files. Also, in particular in politically sensitive cases the Bar notes a tendency that leaks to media seem to occur more often and before the accused parties are informed.

Accessibility of courts

Despite criticism by the European Commission in several Rule of Law Reports, the system of Austrian court fees – which leads to the highest fees in Europe – remains problematic. While those fees are midrange regarding low-value litigation, Austrian court fees are excessively high

concerning mid- and high-value litigation. Unlike in other member states, no cap/maximum fee is foreseen. Also, the general level of court fees seems higher in comparison to other European countries. Finally, the inflation adjustment of the fees as foreseen by law (§ 31a GGG) aggravates the existing problems.

The current structure of court fees can pose a serious obstacle for the fundamental right of access to justice, both for companies and for citizens with mid- and high-value claims.

Resources of the judiciary

The Austrian Bar notes that some departments of courts suffer shortcomings regarding human, and maybe also technological resources. In some cases, it is very difficult to reach judges or court staff which leads to problems, especially concerning the enforcement of decisions. These difficulties do not persist with regard to all courts, but they are perceived as more common and in some instances as more severe.

Digitalisation

In some areas, digitalization in the field of justice has led to incoherent outcomes for parties which are unjustifiable.

First, whereas for postal communication the date of delivery is sufficient to meet deadlines of administrative authorities, e-mails must arrive within the office hours. In practice, this opens the door to arbitrariness and means that e-mails need to be *de facto* delivered the day before the end of a deadline to ensure its timely delivery in the sense of the law.

Second, electronic service of documents becomes effective one day earlier or later depending on the service which is used: a licensed service provider according to § 30 ZustG or the *Elektronischer Rechtsverkehr*, the electronic communication system with the courts. As through the latter, lawyers can also receive (forwarded) documents which were (first) serviced by a licensed provider. It is difficult for the recipient to identify the way in which documents were sent and which regulations should be applied.

Length of proceedings

In the event of acquittals or termination of proceedings in criminal procedures reimbursements of legal representation, costs are foreseen within the limits of specific, capped lump sums. The exact amounts are to be determined by a judge. These lump sums are not only generally too low, payment of a lump sum in full will only be adjudicated in rare instances. Reimbursement of legal representation costs in case of pre-trial termination of proceedings is not foreseen at all. This system leads to a situation where the state passes on the financial burden of flaws in law enforcement and prosecution to citizens. The right to representation and defence by a lawyers as stated in article 47 of the Charta of Fundamental Rights, is *de facto* impaired.

Regarding civil procedures, the loser-pays-principle has been seriously undermined. A losing party has to bear the legal representation costs. However, these reimbursements are limited according to the *Rechtsanwaltstarifgesetz* (RATG). The value of fees foreseen therein has depreciated by 25% in the last

years due to inflation. According to § 25 RATG, an adjustment of the level of reimbursements is foreseen by law when the economic situation changes. Such change of the economic situation occurred at the latest in the beginning of 2021; despite requests from the Austrian Bar no adjustment was made since then. As a consequence, the current situation hampers access to justice. Claimants can face substantial financial risks, even when they win in a civil court procedure.

BELGIUM

In last year's Rule of Law Report, it was mentioned that confidential conversations between suspects and their lawyers had been recorded in a Flemish police station. Since then, the *Collège des procureurs-généraux* has drafted new guidelines on the confidential consultation between client and lawyer, in which it clarifies that such practices are criminal offences. At the moment of this writing, the criminal proceedings against the chief of police are still pending.

Earlier this year, the public prosecution suspected one of Flanders' most famous criminal lawyers for his alleged participation in a criminal drug-related organisation. The lawyer in question was quickly exempt from prosecution by lack of evidence. Nevertheless, cases like these are obviously damaging to both lawyers and the rule of law. Unfortunately, it is not a one-off event. Belgian lawyers are increasingly identified with their clients and scrutinized, criticised and threatened because of their alleged involvement with their clients' practices. They are cleared from suspicion but are sometimes still mentioned in the final requisition by the prosecution. On such occasions, magistrates *de facto* interfere with the manner in which lawyers defend their clients.

The legislative and executive branches of the government do not refrain from such practices either. For example, the Flemish Minister of Justice criticised a lawyer defending a person suspected of rape for just doing her job. In another case, the Minister has even threatened to block subsidies for the University of Leuven following the conviction of a professor for inappropriate behaviour, all while the case is still pending before the court of appeal.

The Dutch language section of the Brussels Bar (NOAB) mentions visitations by fiscal control instances. These instances sometimes deem the confidentiality of a lawyer's correspondence not to be applicable to them because they are bound by their own professional secrecy. In some cases, this has even been followed by courts. This obviously threatens the confidentiality between lawyer and client. Also in the field of tax law, from a legislative perspective, while the Income Tax Code does provide that when a lawyer invokes his professional secrecy, the tax authorities must seek the intervention of the President of the Bar to determine whether the information or document is indeed covered by this secrecy, no such provision exists in the other tax codes.

Finally, several well-known European initiatives (might) encroach upon the independence of the bars, a.o.:

- the possible creation of an external (governmental?) AML authority and the tendency to limit the disciplinary competences of the bar;
- the DAC 6 and its transposition into national and regional law which a.o. obliges lawyers to disclose their intervention for a specific client (being currently challenged before national and European courts which, in the few judgments already out, ruled in favour of lawyers) ;
- the Regulation 2022/1904 adopted on 06/10/2022 which sets out a prohibition on the provision of "legal advisory services" to the Russian government or to legal persons, entities or bodies established in Russia.

On a more general note, we once again need to stress the overpopulation and the inadequate living conditions in Belgian prisons, for which the Belgian state has been convicted numerous times. The state of court buildings in general is quite dramatic. In similar fashion, the government has been convicted more than 7,000 times by the labour court and hundreds of times by the European Court of

Human Rights for failing to provide shelter to asylum seekers. The Belgian state does not execute these decisions and does not pay the fines.

The lengthy delays and significant backlogs across courts, especially in the Brussels appeal court (as already mentioned in the previous Rule of Law Report), are also still problematic.

The use of videoconferencing in certain hearings is also questionable as regards the rights of the defence, particularly the right of being heard, as a conversation at a distance is not comparable to a face-to-face personal appearance.

Cases or examples of undermining and non-compliance with the confidentiality of communication between lawyer and client

According to the information provided, the principle of maintaining the confidentiality of the communication between lawyer and client is most often violated by the authorities of the Prosecutor's Office and pre-trial proceedings. These violations of confidentiality appear during procedural — investigative actions carried out within the relevant criminal proceedings in the implementation of the rights of defence of the person brought to criminal responsibility, when the participation of a lawyer is necessary.

Often the state authorities do not provide the opportunity for the suspect to communicate with his/her lawyer in private and in a separate room, in the absence of third parties, for the purpose of consultations, discussion of the line of defence, etc. Usually witnesses in criminal proceedings do not have the opportunity to consult a lawyer, despite the requirements of European and Bulgarian legislation.

Cases or examples of safety threats related to the professional role/status of the lawyer

The function of the lawyer and his/her role as a party, participant, or subject in the process (depending on his procedural quality in the specific proceedings), guaranteeing due process and the right of defence, are often subject to underestimation, especially by the authorities of the Ministry of Interior and the Prosecutor's Office.

For example, for several years now, the lawyers from the Bar Association — Yambol do not have access to the registry offices and the Regional and District Prosecutor's Offices in Yambol. This is a serious obstacle to making inquiries, filing complaints and signals, receiving papers, etc. These authorities do not have an electronic database, accessible to the lawyers, and do not send documents electronically, despite the lawyers' explicit requests to do so and the indication of specific e-mail addresses. Such access is necessary for the members of the Bar Association — Yambol to fully perform their functions as defenders and trustees in the specific proceedings. The absence of the possibility of access to the registries of those authorities and the lack of an electronic one in any form put at risk the realisation of the rights of protection of citizens and lead to a decrease in trust in these institutions. In recent cases, we have seen a trend where lawyers, when appointed or authorised as defenders or trustees in criminal proceedings, are not notified by the authorities of the Ministry of Interior and the Prosecutor's Office of acts of these authorities that have the effect of suspending or terminating criminal proceedings.

This example reflects many cases from the last year, in which the Regional Prosecutor's Office in Yambol has not notified lawyers appointed as public defenders or trustees in pre-trial proceedings about the suspension or termination of the proceedings, and has not sent them copies of its acts for this. This raises the question about the effective realisation of the rights of the defence. The defence counsel is a party to the criminal process, which has its own independent procedural rights, including the right to appeal the decrees of the Prosecutor's Office.

Trends and significant developments

In recent years, there has been a trend to limiting the independence of the lawyers and placing them in a dependent position vis-a-vis the judicial and executive authorities, which contradicts the constitutional functions of the legal profession as independent and self-governing. Examples of this

are legislative changes into basic laws that make the activity of lawyers and the fair payment of their work dependent on the judgment of state officials, which is unacceptable. Such is the provision of Article 47, paragraph 6 of the Civil Procedure Code, which gives the court the opportunity to set remuneration for the special representative in the amount below the minimum provided for the respective type of work under Article 36, paragraph 2 of the Bar Act. The introduction of this option limits the rights of lawyers to receive fair remuneration for the work done and renders the Decree on Minimum Lawyers' Fees meaningless, and in recent years there has been an increasingly frequent application of this provision, while there are no clear criteria for determining the factual and legal complexity of the cases, which determines the amount of remuneration under this procedure. There is also a trend where the legal profession is harmed by persons who practically carry out legal activity without having the necessary educational qualifications and without being lawyers. It concerns brokers, accountants, etc., who carry out unfair competitive activity, and no measures are taken to limit this at the legislative level. In this regard, we believe that, in order for the bar to function independently, legislative changes should be made and mechanisms for the protection of lawyers' activities should be established.

Positive developments and best practices

The opportunities provided for access to the electronic cases of the courts have greatly facilitated the work of lawyers. Despite some of its imperfections, which we hope will be corrected, the Single Portal for Access to Electronic Court Cases has significantly supported the consultation of lawyers through remote access to specific cases. A recommendation could be to keep up to date the system in order to be used with all its functionalities, including electronic service.

Positive trends are some legislative changes that consider the specific characteristics and role of the legal profession. An example of this is the provision of Article 142, paragraph 2 of the Civil Procedure Code, which allows for postponement of the case if the lawyer of the party cannot appear at court hearing for reasons that cannot be removed from the party. This is definitely a step towards synchronising the Bulgarian legislation with the European legislation and is a guarantee for compliance with the principles of civil procedure.

A positive step towards bringing our legislation in line with the European legislation are the changes in the relevant regulations governing mediation in legal disputes. However, we believe that it should not be introduced as mandatory, because it will not give the expected results. In this sense, we consider as a positive result the removal of some controversial texts from the bills on the type of legal disputes on which mediation should be mandatory.

CROATIA

In 2022, there were no cases reported which would undermine the independence of the Bar and independence of lawyers, and there were no major developments in justice system of Croatia influencing the functioning and independence of the Bar and lawyers.

Independence of the Bar and lawyers

The Czech Bar Association is the largest self-governing professional legal organisation in the Czech Republic, established based on Section 40 of Act No. 85/1996 Coll., on the legal profession, as amended. The Bar provides both for the public administration of the legal profession and for its self-government. In the latter area, the Bar is not subordinated to the State and is in no way financed by it. The performance of self-governing activities relates to the mandatory membership of all lawyers in the Czech Bar Association, disciplinary liability, supervision over compliance with ethical rules, issuing professional regulations, etc. The Bar's self-governing power is limited by the competence of the Minister of Justice, as defined in Sections 50 to 52c of the Legal Profession Act. According to these provisions, the Minister of Justice appoints members of the examination committee, issues decrees comprising the lawyers' disciplinary rules and lawyers' examination rules, and is authorised to bring disciplinary lawsuits. The Minister of Justice also strives to ensure compliance with the professional regulations with the law and issues decrees regulating the lawyers' fees. Individual lawyers are also independent in the provision of their legal services, as laid down by Section 3 of the Legal Profession Act, which further states that in the provision of legal services, a lawyer is bound by the laws and regulations and, within their limits, by the client's instructions. This means independence of the State power, various bodies and anyone who might want to try and specify how the lawyer should provide their services.

Lawyers' entry to court buildings

On 1 January 2022, an amendment to the Act on Courts and Judges entered into force, regulating, among other things, the issue of lawyers entering court buildings. The previous ongoing controls of lawyers therefore ceased. According to the current legal situation, the president of the court may have a lawyer searched only in individual justified cases. We are now discussing the possibility to apply for this exemption also to trainee lawyers (which is not the case at the moment).

Stricter penalties for unlawful provision of legal services by non-lawyers

Practical experience has shown certain shortcomings in the existing legislation on offences involving the unlawful provision of legal services by non-lawyers. As a result of these, many cases could not be punished because it was not possible to prove that legal services had been provided without a licence in exchange for payment. An amendment has therefore been passed so that it is now an administrative offence for non-lawyers to even offer legal services.

Efforts to enshrine lawyer-client privilege in law

In 2022 the Czech Bar Association instigated an amendment to the Act on the Legal Profession aimed at enshrining the protection of the lawyer-client privilege (additionally to the confidentiality obligation) in law. The amendment rests on three pillars: that any information exchanged with a lawyer during the provision of legal services is confidential; that only the client may decide if the privilege could be waived; and that no one can be forced to provide confidential information without the client's consent. Discussions regarding the amendment of the Legal Profession Act will continue in 2023.

The digitalisation of the Czech Bar Association

The COVID-19 pandemic has shown that the personal attendance requirement for convening the General Assembly (the Czech Bar Association's supreme body) can constitute an obstacle that was not foreseen in the law. The CBA has therefore proposed to amend the law and its professional rules so that the Assembly can be held online. By 2025 lawyers should thus be able to attend the Assembly remotely and elect the CBA's bodies via online elections.

Amendment of the professional rules on the practice of escrow

The revocation of Sberbank's Czech banking licence as part of the sanctions against Russia in 2022 led to several problems in the use of escrow accounts held with the bank. It became clear that a more detailed regulation was required in relation to the practice of escrow by lawyers, to ensure that clients are kept informed to the fullest possible extent and that their rights to payment of escrow funds are adequately protected. The Czech Bar Association, therefore, amended its professional rules governing escrow, and also drew up a proposal for amendment of the Banking Act, which provides for the disbursement of compensation from the Deposit Insurance Fund.

Honorary awards of the Czech Bar Association

In 2022 the Czech Bar Association adopted new professional rules establishing honorary awards that the CBA will present to lawyers for their services in the advancement of the practice of law. These will be a worthy form of recognition given to lawyers for their contribution to the legal profession, and one which has been lacking until now. Along with the annual social event "Lawyer of the Year", these awards will thus support the cultivation of the legal profession as a self-governing occupation.

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

There are two cases which require attention:

- The situation of the High Public Prosecutor's Office in Olomouc

In 2022, the Ministry of Justice analysed in detail the overall state and activities of the High Public Prosecutor's Office in Olomouc. The result of the analysis is according to Minister unsatisfactory, sometimes even disturbing. The Ministry of Justice points out high damages for unlawful criminal prosecutions in comparison with the High Public Prosecutor´s Office in Prague. Secondly, the overly senior management structure – almost a third of prosecutors are in a management position with a management premium remuneration. Thirdly, Ministry found that the Department of Serious Economic and Financial Crime (OZHFK), which consists of 15 public prosecutors, filed 4 indictments against natural persons and 4 against legal persons in 2021. Again, in comparison with VSZ Prague, where 17 public prosecutors work in the same department, 33 indictments were filed against natural persons and 11 against legal persons in 2021.

- The Czech Bar Association was active in the case of wiretapping of ten interrogation cells in the Brno-Bohunice detention Prison (where defence lawyers were to hold meetings with their clients) in 2022.

The Czech Bar Association asked the Minister of Justice and the Chamber of Deputies' Commission for Wiretapping Control to investigate the wiretapping of interrogation rooms in the Brno-Bohunice detention prison. The Bar Association argued that a conversation between a defence counsel and a client without any presence of a third person is an elementary pillar not only of the defence, but also of the entire criminal proceedings. If there is no guarantee that the accused can speak to his lawyer without anyone else monitoring the content of their conversation without his/her consent, not only his constitutional right to a defence is violated, but also his constitutional right to a fair trial. In the given case, both the public prosecutor and the judge, knowing how the conversations between defence lawyers and the accused in custody take place, must certainly have been aware that hundreds of conversations between the accused and defence counsel that have nothing to do with the case would be monitored by such monitoring, and yet such a procedure was proposed by the public prosecutor and allowed by the judge. President of the Bar Robert Němec, LL.M., also addressed a letter to Prosecutor General Igor Stříž on 17 February 2022 and asked him to check the media information in the case within his competencies and, if necessary, to take measures within his powers that will be an appropriate remedy for the situation. The Prosecutor General's Office (NSZ) published in April a statement that reviewed the procedure of the public prosecutor of the High Public Prosecutor's Office in Olomouc, branch in Brno, in a criminal case in which persons and objects in the Brno-Bohunice Prison were monitored. The NSZ concluded that there was no "massive" wiretapping of the people present in the prison, as some reports in the media incorrectly suggested. In reality, the wiretapping was very strictly limited, so the technical means of monitoring and recording the interviews were always located exclusively in a single interrogation room, and only if two specific persons were to be present simultaneously in that predetermined interrogation room. In this way, the technical means of monitoring and recording the interviews were placed in the interview room in question for only 9 days (91 hours in total). In the criminal proceedings, however, there was a procedural error made by the police authority GIBS and the public prosecutor of the High Prosecution´s Office in Olomouc, branch in Brno. During the monitoring, communication between the lawyer and the client, who had the procedural status of defence counsel and the accused in other criminal proceedings, was recorded. One recording of their mutual communication was destroyed in the proper procedural manner, but the other two audio recordings were not destroyed in the prescribed manner and were mistakenly placed in the file. That error was discovered only after the investigation had been completed, and the public prosecutor decided to rectify this error by obtaining the accused's additional consent to keep the audio recording in the file. However, according to the NSZ's conclusion, this procedure was incorrect and both records should have been destroyed in accordance with the law, after the police authority learned that the lawyer's communication with the client had been recorded, regardless of the additional opinion of the accused. As part of the review, the NSZ also found that in one case, "non-evidence" communication was also recorded during surveillance (i.e. communications of persons other than those against whom surveillance was permitted by the court and which did not contain facts relevant to criminal proceedings; in this case, it was not a communication between a lawyer and a client). The record of this communication should have been destroyed in accordance with the law, but this did not happen and this record was mistakenly included in the file. Based on its findings, the NSZ took the necessary remedial measures and imposed specific instructions on the High Public Prosecutor's Office in Olomouc to destroy both records in relation to the responsibility of the public prosecutor. Furthermore, the NSZ instructed the management of the High Public Prosecutor's Office in Olomouc to take the necessary measures to ensure in the future that court-approved surveillance of persons and objects would not cause disproportionate interference with the rights of other persons and that surveillance records would always be handled in accordance with the Code of Criminal Procedure.

Accessibility of courts

Despite the efforts of the previous Minister of Justice Benešová in 2021, the raise of court fees was not approved by the Parliament and remained the same in 2022. The EU Justice Scoreboard evaluated the court fees to be of average high across EU Member States.

We described the legal aid system in our previous contributions. In February 2022, the Czech Bar Association launched an initiative HELP UKRAINE and coordinated *pro bono* legal services for Ukrainian refugees. The Bar has published the list of lawyers who agreed to provide *pro bono* legal services (available here https://www.cak.cz/scripts/detail.php?id=25507) and also cooperated with NGOs to eliminate the attempts of intermediaries to provide legal advice in asylum matters to Ukrainian refugees for a fee.

In 2022, the representatives of the Bar met several times with the Ministry of Justice regarding the amendment to the lawyer's tariff. CBA representatives emphasized that the lawyer's tariff has not been indexed since 2006. As a result of the accumulated annual inflation over a period of 16 years, the tariff has long failed to reflect economic reality or average wage growth in many respects, not to mention the indexation of salaries in the judiciary. The lawyer's tariff serves mainly as a basis for determining the non-contractual remuneration of a lawyer and at the same time, it is the basis for determining the reimbursement of the costs of legal representation, which is awarded to procedurally successful parties in court and administrative proceedings. The lawyer's tariff also determines the remuneration of defence lawyers appointed in criminal proceedings *ex officio*. CBA representatives consider the valorisation of the lawyer's tariff to be necessary, especially in those cases where the amount of compensation awarded in court proceedings is in fundamental contradiction with the client's actual costs of legal services and also where the remuneration for the provision of legal services is significantly underestimated. If the *status quo* is maintained for the coming years, there is a risk that access to legal services and access to justice will be severely restricted, especially for citizens, consumers and small and medium-sized enterprises.
Representatives of the Ministry of Justice expressed understanding of the need to valorise the lawyer's tariff, but at the same time emphasized that the limiting factor is the existing budgetary possibilities of the state or the Ministry of Justice. Both parties agreed that the negotiations will continue with the fact that they will determine priorities in the area of the necessary amendment of the lawyer's tariff as of July 2023.

Resources of the judiciary

In October, the Supreme Court published a statement of an outcome of the meeting with Presidents of the Courts (all levels) pointing out that as a result of the long-term desperate remuneration of court employees (others than judges), there is an increase in the outflow of experienced and high-quality workers, who cannot be replaced, and that under the current conditions, they cannot guarantee the proper functioning of courts. There is a growing shortage of high-quality staff at all levels of the judicial system and the situation continues to deteriorate. According to the Vice-President of the Supreme Court, in the current situation where it is not possible to provide high-quality IT experts, it can hardly be imagined that the judiciary will be digitalized in the foreseeable future.

Training of justice professionals

There is no mandatory training for lawyers in the Czech Republic (unlike for trainee lawyers). Nevertheless, the Czech Bar Association has prepared an optional three-year educational programme

for lawyers (Continuing lawyers' education), which started in 2019. A lawyer who earns at least 36 credits in the field of law, legal or related fields, lawyering skills or other areas over the course of three years is eligible for a Czech Bar Association certificate of completion of continuing lawyers' education. A lawyer who has completed this programme and has been certified by the Bar has the right to inform the clients and the public of this fact and may use the advantages, discounts and other benefits provided or arranged by the Czech Bar Association in the following three-year cycle of continuing education programme.

The Bar newly offers most of the educational activities to trainee lawyers or qualified lawyers, both online and offline. The Czech Bar Association has been also continuously involved in EU projects, mainly in cooperation with the CCBE and European Lawyers Foundation.

The Bar has also launched a new project in cooperation with the Faculty of Law, Charles University, Prague, called "Legal practice", in 2022. The purpose of this project is to introduce the legal profession to law students, who can spend 80 hours per term of their studies in the Master programme "Law and Jurisprudence" officially (evaluated as a course by the University) in a law firm that signs up to cooperate as an intern.

Digitalisation

The Ministry of Justice is implementing a total of 5 projects focused on the digitization of justice within the National Recovery Plan. All these projects are included in Pillar 1 – Digital Transformation and are divided between components 1.1. and 1.2., both owned by the Ministry of the Interior.

The total cost of these projects is CZK 416.5 million. CZK and these are the following projects:

- Component 1.1 Digital services for citizens and companies include the following projects:

  1) Justice Portal
  2) Courtroom audio recordings and transcription to text and are brought together in Reform No 5 entitled "Digital services in the justice sector"

- Component 1.2 Digital Public Administration Systems includes the following projects:

  1) Strengthening the infrastructure for the digital workplace
  2) Digital transformation
  3) Videoconferencing

  and are brought together in Reform No 6 entitled "Paving the way for digital justice".

Regarding the scope of the National Recovery Plan in the area of digitalisation of justice, the Czech Bar expressed in the letter to the former Minister of Justice that the stated ambition was not adequate. The Covid-19 pandemic showed the need to speed up the process of digitalisation of justice. The Ministry of Justice is currently working on the introduction of court electronic file, which is the most pressing issue for the legal profession, and technical and legislative measures to improve the use of videoconferencing court hearings and audio recordings of the court hearings.

Length of proceedings

According to the annual report of the Ministry of Justice, the average length of civil proceedings in district courts fell from 281 to 271 days last year. But criminal proceedings took longer – an average of 205 days instead of 201. The courts managed the individual agendas in full despite the continuation of

the Covid pandemic. However, the Ministry mentioned that overloading the Supreme Administrative Court remains a significant problem for the judiciary which should lead to an increase in the number of judges and their assistants. The second positive trend, according to the Ministry, is the development of administrative justice (lower instances). In regional courts, the average length of such proceedings decreased from 525 days to 511 days last year.

General transparency of public decision-making, including rules on lobbying and their enforcement, asset disclosure rules and enforcement, gifts policy, transparency of political party financing

On 30 November 2022, The Ministry of Justice submitted a proposal for lobbying regulation to the inter-ministerial comment procedure. The adoption of lobbying regulation is a condition for the Czech Republic to draw funds from the European Union through the National Recovery Plan. According to Ministry, the aim is to make the legislative process more transparent, to enable the public to have access to information on contacts between politicians and senior officials and lobbyists and to legitimise lobbying as a standard element of the functioning of democracy, provided that it is carried out transparently. The basic parameters of the draft proposal are: the definition of lobbying, lobbyist and list of lobbyists; to establish a register of lobbyists and lobbyists; failure to comply with obligations laid down by law, such as failure to notify a lobbyist's intention to lobby, could be sanctioned; legislators will be required to indicate the lobbying trail of the legislation, i.e. to inform the public about which draft legislation they have successfully lobbied for.

The Czech Bar is waiting for the publication of the proposal and will analyse it in detail, due to previous failed attempts to regulate lobbying which did not distinguish the lobbyists according to whether they follow private interests or whether it is a public body objectively commenting on the proposals or actions on behalf of the whole profession, as it is in the case of the Czech Bar Association.

Rules and measures to prevent conflict of interests in the public sector

On 1 July 2022, an amendment to the Act on Conflict of Interest entered into force, which after more than a year and a half again opens up the possibility for the public to view the asset declarations of politicians in the Central Register of Notifications. Notifications shall only be accessible upon prior individual request. Information obtained from the notification may then be used and further processed only to identify a possible breach of the duties of a public official. The amendment also responds to the requirements of municipal practice in particular and exempts selected groups of unreleased elected public officials from the scope of the Act on Conflict of Interest. Deputy mayors of municipalities exercising delegated powers to the basic extent (so-called "number one municipalities") and members of councils of these municipalities and municipalities with an authorized municipal office (so-called "two-way municipalities") are newly excluded from the group of public officials, in both cases if these persons have not been released for the performance of their duties on a long-term basis. This is connected with the obligation of the Ministry of Justice to delete from the Central Register of notifications of public officials, within 60 days of the effective date of the amendment, the notifications of those persons to whom the Act on Conflict of Interest no longer applies.

The government has been criticized that problems with provisions of Sections 4a – 4c of the Act on Conflict of Interest remain unsolved. The main shift and solution would be to establish bans on media ownership and assigning of public contracts, subsidies and investment incentives on beneficial ownership data. Until such amendment is adopted, it must be assessed on a case-by-case basis whether a member of the government is the controlling person above the recipient of public resources.

This can be a legally challenging issue, which is why the correct application of these rules for the prevention of conflicts of interest has not yet been achieved.

Measures in place to ensure whistleblower protection and encourage reporting of corruption

On 12 January 2023, the Chamber of Deputies approved in the first reading a draft of a new Act on the protection of whistleblowers, which should enable employees to report infringements confidentially and anonymously. According to experts, companies must take measures to ensure that employees trust the system and use it instead of anonymously submitting it to the authorities, the police or the media. Otherwise, this process will not be effective at all, as shown by the experience to date with the use of the notification system by the Czech state administration, for which these obligations have been in force for a year.

Employers with 50 or more employees and other obliged entities will be obliged to introduce an internal notification system under the bill. Entities with 250 or more employees will have to have their internal notification system (maintained internally or by a third party), and smaller employers will be able to share it, for example, in a group. The internal notification system is intended to be a confidential channel enabling whistleblowers to report orally and in writing, including anonymous reports. It will be available not only to employees but also to other persons performing work or other similar activities for the employer. In addition to internal channels, whistleblowers can also use an external channel (established by the Ministry of Justice) or, in some specific cases, switch to the publication of reports. The employer must protect whistleblowers from retaliation. Should retaliation nevertheless be taken and the whistleblower thereby suffered non-pecuniary damage, the proposal establishes the right to adequate satisfaction. The same protection should be provided to persons in a certain relationship with the notifier - e.g. close persons or persons who assisted the notifier in submitting the report. If the obliged entity fails to comply with the obligations under the bill, it commits a transgression for which a fine of up to CZK 1,000,000 or 5% of the last net turnover of the obliged entity could be imposed. Following the text of the Directive, the deadline for assessing the notification and notifying the whistleblower in writing of its results will be 3 months instead of the previous 30 days. In addition, there has been a slight change in the regulation of oral notifications. Those would primarily be recorded, the purpose of which will be to faithfully capture the essence of the oral announcement. According to the text, the previously preferred audio recording of the notification will only be possible with the consent of the whistleblower.

Appointment and selection of judges, prosecutors and court presidents

Act No. 6/2002 Coll. on Courts and Judges was substantially amended (as described in our previous contributions) by Act No. 218/2021 which entered into force as of January 2022. So far there is no analysis of the effectiveness of the novelisation. The new legislation is primarily based on the recommendations of the Group of States Against Corruption (GRECO). The aim is to establish a uniform and transparent system for the selection of judges and a more detailed regulation of the secondary activities of judges.

In the field of selection of judges, the amended legislation unifies the preparation of candidates for judicial office within the institute of a judicial candidate, which follows the successful passing of the professional judicial examination. Persons who have other legal experience with a professional examination will also be able to complete the practice of a judicial candidate under specific conditions.

This approach was perceived by the Bar as potentially very beneficial and enriching for the judiciary in the Czech Republic, but the outcomes of the implementation in practice are still to be evaluated.

The provision on ancillary activities for judges was extended to include the obligation to report ancillary activities to the President of the competent court, while at the same time providing for an explicit ban on judges operating in political parties and political movements. The new legislation sets in § 105b – 105e criteria, preconditions and the selection procedure of the judges and the appointment of Presidents and Vice-Presidents of the Courts. The selection procedure will be unified for the District Courts, Regional Courts and High Courts. These amendments could be considered a major development to reduce arbitrariness and increase the transparency of the whole procedure.

The new legislation also sets the conditions for the selection of the judges of the Supreme Court and Supreme Administrative Court in §117a. These rules shall set out the procedure for selecting candidates and how candidates are to be assessed. The rules may be laid down following the conditions for the establishment of a judge, for the application of a selection procedure for the position of judge, for assignment or transfer to the competent court and for carrying out a psychological examination. The new legislation also amended the conditions for Presidents and Vice-Presidents of Courts. Presidents and Vice-Presidents may not be reappointed to the position of President and Vice-President of the same court for two consecutive terms. The position of Vice-President shall also expire 3 months after the date of appointment of the new President of the Court.

A Database of decisions of District, Regional and High Courts was introduced in §118a. Since 2020, the pilot phase of the functioning of the database was launched and contained mainly the decisions of High Courts. Ministry of Justice published on 8 December 2022 an order on the publication of court decisions which entered into force in January 2023 specifying which decisions of the District, Regional and High Courts are to be published, the database, therefore, should be fully functional at the moment and is available here: https://justice.cz/web/msp/rozhodnuti-soudu-judikatura-

Irremovability of judges, including transfers, dismissal and retirement regime, promotion of judges and prosecutors

In addition to what is mentioned above, the general rule is that Judges of the General Courts (i.e. Supreme Court, Supreme Administrative Court, High Courts, Regional Courts and District Courts) are appointed for an indefinite period by the President of the Czech Republic and also their irrevocability remains unchanged. Lay judges are elected by respective representations of local authorities and regional authorities depending on the type of court to which they are installed into office.

In the amendment to the Act on the Public Prosecutor's Office, which was sent to the inter-ministerial comment procedure on 25 October 2022, the Ministry of Justice proposes a seven-year term of office of the Prosecutor General. However, the proposal does not contain any clarification of the conditions for the removal of the chief prosecutor from office – contrary to the government's policy statement. Minister of Justice said that the coalition did not agree on the issue of appointment and dismissal and that it is expected the proposal to be further debated in the government and Parliament.

The proposal also explicitly provides that only a prosecutor with at least ten years of legal experience as a prosecutor, judge or lawyer "who, by virtue of his professional knowledge, professional experience, experience in the exercise of management functions and moral qualities, guarantees of the proper performance of that office" may be appointed Prosecutor General. The amendment adds that no one can be appointed as the Prosecutor General more than once and that a public prosecutor cannot become the chief prosecutor if a disciplinary measure has been imposed by a final decision – unless it has been erased.

The chief prosecutor's functions on all levels should be limited according to the proposal for a seven-year term of office, during which only decisions of the Disciplinary Chamber could be removed from office. The exception to the rule that chief prosecutors cannot repeat their mandate at the same prosecutor's office twice in a row does not apply to senior district prosecutors. A prerequisite for a high prosecutor to be able to perform a managerial function is 8 years of experience, 6 years of experience for regional prosecutors and 4 years for district prosecutors.

The draft proposal will probably undergo further changes. The current draft proposal is available here: https://justice.cz/web/msp/pravni-predpisy-v-legislativnim-procesu

Allocation of cases in courts

Allocation of cases in courts is stated in section 6 Internal organization of courts and work schedule (§40 and following) of the Act No. 6/2002 Coll. on Courts and Judges.

The president of the court may transfer a judge to another agenda even without his/her consent.

On 26 May 2022, the Supreme Administrative Court confirmed the correctness of the conclusions of the judgment of the Regional Court in Prague in the case of a judge who defended herself against being transferred to another section of her court. Supreme Administrative Court confirmed that it was for the administrative courts to check whether the president of the court was impermissibly interfering with the judge's rights and independence. However, the intervention by the administrative courts should be rather exceptional.
https://advokatnidenik.cz/2022/05/30/predseda-soudu-muze-prelozit-soudce-na-jinou-agendu-i-bez-jeho-souhlasu/

Accountability of judges and prosecutors, including disciplinary regime

The disciplinary liability of judges and prosecutors is enacted in the Act on Courts and Judges and the Act on Public prosecutor´s office which we described in detail in our previous contributions. The draft amendment to the Act on Public Prosecutor´s Office mentioned above newly explicitly mentions disciplinary regimes in concrete cases for chief prosecutors at all levels and their deputies and contains sanctions in case of liability. The draft also proposes to prolong the statute of limitations period for a disciplinary offence of a public prosecutor from 2 to 3 years after it was committed.

Regarding interesting cases, at the beginning of December 2020, detectives from the National Centre against Organized Crime accused ex-judge Zdeněk Sovák of allegedly influencing the verdicts of the High Court in Prague. On 23 November 2022, the Public Prosecutor of the High Public Prosecutor's Office in Prague filed an indictment with the Municipal Court in Prague in a criminal case concerning influencing court decisions at the High Court in Prague against the former judge and four other people.
https://www.irozhlas.cz/zpravy-domov/zdenek-sovak-soud-korupce-korupcni-kauza_2211241605_sto

On 30 December 2022, Minister of Justice Pavel Blažek filed a disciplinary action with the Supreme Administrative Court against the judge of the Municipal Court in Brno, Aleš Dufek. The reason is that at the beginning of November, Mr Dufek provided journalists with court orders for searches of the homes of three people involved in the privatization of Brno's municipal apartments. According to judge Dufek, people involved in the case were acquainted with the reasons for the criminal proceedings and there was no risk of jeopardizing the course of the investigation. The judge also justified the provision of information on the grounds of the public interest in its disclosure, as these are public figures to whom the usual principles of privacy protection cannot be applied.

https://www.idnes.cz/zpravy/domaci/ministr-blazek-zaluje-soudce-dufka-brno-byty-hladik.A221230_171843_domaci_tty

In its judgment of 23 June 2022 in the case of Grosam v. the Czech Republic, the European Court of Human Rights found that the proceedings against the complainant, a bailiff, were not fair, as the special chamber of the Supreme Administrative Court, which decides on disciplinary offences committed by bailiffs, did not meet the requirements of independence and impartiality. In September 2022, the government requested for the case to be referred to the Grand Chamber and the request was accepted. In particular, the government criticised the judgment for the fact that the European Court had failed to respect its role, the scope of its powers and the rules governing its functioning. The applicant did not challenge the composition of the Disciplinary Chamber as such before the national authorities or in his complaint. The Court dealt with this issue on its own initiative. Moreover, it focused on the abstract examination of the rules on disciplinary proceedings, which is not for it to do, and not on the specific circumstances of the case of the complainant Grosam. The objections in the judgment to the legal framework essentially exclude the involvement of lay judges (in this case two bailiffs, a lawyer and one representative of another legal profession) in the decision-making activities of disciplinary bodies, even though the Strasbourg Court has so far taken the opposite approach.

Remuneration/bonuses/rewards for judges and prosecutors

In December 2022, the Parliament voted in favour of an increase in the remuneration of judges and prosecutors by about 12.7% in 2023.

Independence/autonomy of the prosecution service

The independence of the Prosecutor General is debated for years and also the mentioned draft amendment to the Act on Public Prosecution´s Office does not deal with the issue that the General Prosecutor could be removed from office by the government based on the proposal of the Minister of Justice.

Framework for journalists' protection, transparency and access to documents

Access to information and public documents

Amendment to the Information Act No. 241/2022 Coll. was approved by the Senate in August 2022 and entered into force on 1 September 2022. The scope of obliged entities has been extended to include public enterprises, which are states or self-controlled enterprises operating in sectors such as energy or transport. In addition, there is an obligation to publish so-called dynamic data, such as data from traffic or weather sensors, in the form of open data. The Act also contains changes that respond to the most pressing problems of the current application practice. In particular, it concerns greater protection of information relating to critical infrastructure and protection of information of companies with 100% state ownership operating in a competitive environment. The amendment also responds to the fact that some applicants abuse the right to information to unreasonably burden or even bully obliged entities. Protection is introduced in such cases in the form of the possibility to refuse such a request for information. Furthermore, changes caused by application practice, which are essential for obliged entities, were included in the amendment. Most of the changes come into effect from 01.01.2023 and include, for example, the possibility to refuse a request for information on the grounds

of abuse of the right to information consisting of the use of an information request as a means of exerting pressure on the natural person to whom the information relates or causing a disproportionate burden on the obliged entity; the possibility of refusing a request because the information requested is not required. It will be possible to refuse the request if the obliged entity does not have the requested information and is not obliged by law to have it; inclusion of the protection of information the disclosure of which could jeopardise the equality of parties to judicial, arbitration or other proceedings (even before the commencement of such proceedings) – these include, for example, legal analyses, searches, opinions, etc.; explicit provisions for the protection of information the disclosure of which could directly or significantly impair the protection of critical infrastructure; explicit rules on the provision of information on salaries and remuneration paid out of public funds; procedural rules in the area of simplified processing of requests for information; the introduction of the Central Register of Annual Reports, which the Ministry of the Interior will operate from 01.01.2024, with obliged entities being able to voluntarily publish their annual reports.

In 2022, 14 Czech websites were banned under the pretext of the "fight against disinformation" thus limiting the plurality of media in the Czech Republic. In January 2023, The Supreme Administrative Court (SAC) rejected a cassation complaint by a man from Prague who had unsuccessfully challenged the temporary blocking of some Czech websites after last year's invasion of Ukraine by Russia. The reason for the block, which lasted for three months, was the fear of spreading disinformation. The man filed a lawsuit for protection against unlawful interference against the government, the Ministry of Defence, the Office for Foreign Relations and Information and the Security Information Service. The Municipal Court in Prague rejected the lawsuit last June, but now the decision is final. In its decision, the Municipal Court argued, for example, that the state did not block the disputed websites itself, but only called on Internet service providers and operators to do so, which cannot be considered an illegal intervention by a state authority. However, according to the man's appeal, even an opinion, request or instruction of the Government, as a central public authority, may constitute unlawful interference.

The Supreme Administrative Court found no reason to change the decision. *"Even while respecting the constitutionally guaranteed right to information as a reflection of freedom of expression, it is generally not possible to infer a public, subjective public right of an individual to receive information from a specific website,"* the Court agreed.

On 25 February 2022, the day after the start of the Russian invasion of Ukraine, the government approved a resolution concerning hybrid action against the interests of the Czech Republic. "The Government calls on all relevant entities to take the necessary measures to prevent the spread of false and misleading information in cyberspace, which serves to manipulate the population of the Czech Republic towards justifying and approving the current Russian military aggression against Ukraine," the resolution said.

Lawsuits (incl. SLAPPs - strategic lawsuits against public participation) and convictions against journalists (incl. defamation cases) and measures taken to safeguard against manifestly unfounded and abusive lawsuits

The concept of SLAPPs has so far received little attention in the Czech Republic– we do not know about cases which could be explicitly called SLAPP and also the expert opinions were so far published as a

reaction to the debate on the EU level, rather than that there would an urgent need to regulate this issue on the national level.

Regime for constitutional review of laws

The Constitutional Court received in August 2022 a proposal to abolish parts of the Act on Juvenile Justice. According to the District Court Prague-East, which filed the petition, the legislation discriminates against children under the age of 15 compared to juveniles or adult offenders in some situations. Children under the age of 15 are not criminally liable in the Czech Republic. However, for acts that would be considered criminal for older offenders, measures ranging from various educational restrictions to warnings and supervision by a probation officer as a protective education or treatment can be imposed on them. Precisely because children are not criminally liable, they are not subject to criminal law. The courts proceed in accordance with the Special Act on Juvenile Justice. Unless something is expressly provided for by law, the rules for civil proceedings, i.e. civil litigation, apply. The procedure is thus different from criminal justice, for example, it does not allow diversions. The judge must order a hearing even in a situation where he or she does not agree with the Public Prosecutor's Office's proposal to impose measures, or if he or she considers that the pre-trial stage of the proceedings has fulfilled its purpose in the given situation and the trial is superfluous. The child thus finds himself before the court with the participation of the Public Prosecutor's Office, the authority for the social and legal protection of children, the guardian and the parents. The whole process may be perceived as a form of sanction.

Independence, resources, capacity and powers of national human rights institutions

The governmental working group has announced in November 2022 to prepare a draft legislation on establishing the institution of a children's ombudsman. The main aspects of the new legislation were agreed by all members, including representatives of the Ministry of Justice, Ministry of Labour and Social Affairs, Deputy Public Defender of Rights, Human Rights Commissioner, deputies and senators across political parties.

In August 2022, the Deputy Ombudsman Šimůnková resigned from the office due to “disagreement with the opinions and professional and human approach of the Ombudsman, Stanislav Křeček.”

At its meeting on 23 January 2023, the United Nations Human Rights Council (UNHRC) dealt with the human rights situation in the Czech Republic, in particular the so-called Istanbul Convention against Domestic and Sexual Violence and the situation of the Roma minority. The final report on human rights and recommendations for the Czech Republic will be issued by the member states on 10 February. Most countries, including France, Liechtenstein and the Maldives, have called on the Czech Republic to broaden the definition of rape and to ratify the Council of Europe Convention on preventing and combating violence against women and domestic violence. The Government Commissioner for Human Rights said that the Government will deal with the issue this year. Another major topic at the UNHRC meeting was discrimination against the Roma minority in the Czech Republic, in schools, in finding housing and through hate speech. On the contrary, many states appreciated the progress made by the Czech Republic by adopting government strategies for the protection of children's rights (Ghana), gender equality (Greece) and Roma integration (Ireland). The representative of Israel appreciated, for example, the reception of Ukrainian refugees in the Czech Republic.

Implementation of Recommendations:

Draft amendment to the Act on the Prosecution Service has been published in October 2022 and currently the received comments are being debated (some aspects of the draft amendment to the Act are mentioned previously).

General comments

We would only like to point out separately what has been mentioned several times during our meetings with the Commission, Parliament and Council and also publicly during the event organized by the Czech Bar under the auspices of the Czech Presidency in the Council on 8 November 2022 in Brussels, i.e. that we believe that it is crucial to be involved in the legislative process officially before all three institutions and that it should be clarified when to contribute (especially on the level of the Council) and to structure the dialogue with the stakeholders not only during the preparation of the ROL report. There are many proposals debated in different stages/with different outcomes at the same time and some of them could have a potentially very harmful impact on the legal profession and administration of justice (either they do not reflect the specificities of the sector, the main principles of the profession or they try to undermine those principles for the sake of efficiency).

During this event, a number of important points concerning both the rule of law and the protection of professional secrecy/legal professional privilege, were raised and we believe that those require further attention.

More information:

https://advokatnidenik.cz/2022/11/01/prijedte-diskutovat-do-bruselu-o-zavaznych-advokatnich-tematech-3/

https://advokatnidenik.cz/2022/11/10/bruselsky-kulaty-stul-o-pravnim-statu-ktery-spoluporadala-cak-naplnil-svoji-ideu/

Independence of the Cyprus Bar Association

The Cyprus Bar Association is an independent and non-political body. Steps have been taken to enhance disciplinary mechanisms, AML and KYC mechanisms with the addition of new personnel enhancing the relevant department(s). Investigations have become more efficient as a result of the amendment of Advocates Law Cap. 2 recently, Section 16. The AML unit of the Bar Council is under constant training and enrichment with forensic fraud experts. Fines are on the increase and disciplinary proceedings strengthened.

Appointment and Selection of Judges and Court Presidents

Judges are appointed from Advocates-first appointment with 6 years practice, section 6(1) Law 14/60. The six-year period or practice may have to be increased in the near future as per the suggestions of our members.

For senior appointments to the position of Senior District Judge, President or Judges of the Supreme Court, steps have been taken to improve the system to enable senior advocates to fill such vacancies, by the amendment of Law 33/1964. The amending Law (145(I)/2022) was published to the Cyprus Government Gazette on 05/08/2022. These steps include the establishment of a new Supreme Judicature Council as of 01/01/2023, that will include the President of the Supreme Court as President, the judges of the Supreme Court as members. Additionally the Attorney-General, the President of the Cyprus Bar Association and two lawyers who have the credentials to be appointed as a judge of the Supreme Court will also be members of the Council without the right to vote. Incentives must be provided to advocates to apply such as securing their pension and contributions to the Advocates Pension Fund.

In addition and pursuant to the new amendments to Law 33/1964, an Advisory Judicature Council for appointments of Judges to the Supreme Court and to the Supreme Constitutional Court, which will advise the President, will be established as of 01/01/2023. It will include the President of the Supreme Court or the Supreme Constitutional Court (as the case may be) as President and the judges of the respective aforementioned Court as members. Additionally, the Attorney-General, the President of the Cyprus Bar Association and two lawyers who have the credentials to be appointed as a judge of the Supreme Court will also be members of the Council without the right to vote. In the new legislation, reference is made to the need to enrich the judiciary with experienced advocates at all levels. It is crucial for the Judiciary to open senior judicial appointments to experienced advocates. The decision for the participation of non judges without the right to vote in the aforementioned councils, was taken in order to further comply with the latest opinion of the Venice Commission they also agreed with their participation in the Advisory Council without the right to vote.

Promotion of Judges

Important steps have been taken to open in practice the Judiciary to qualified senior advocates.

Independence of Judicature Councils

In accordance with the GRECO Report and in order to avoid cronyism, Judges members of the Council should be chosen from all ranks. The changes in the composition of the Council of Judges of the Supreme Court and the Advisory Judicature Council have now been enacted and will officially enter into force as of 01/01/2023. In the future, members of the Council should include Judges or their representatives from all ranks.

Disciplinary regime

For lower Court judges the Disciplinary Council consists of the Judges of the Supreme Court who decide on the investigation of complaints, charges and hearing of the matter. After the case of the ECHR Kamenos v. Cyprus, amendments have taken place and specifically amendments in Law 33/1964. Nevertheless, the rules need further improvement.

Under the new amendments, a new Court structure is established including a Supreme Constitutional Court and a separate Supreme Court for civil and criminal cases. Members of each Court will check each other for disciplinary matters. This constitutes a substantial improvement. For lower Courts (First Instance Courts and Court of Appeals) discipline will be enforced by the new Disciplinary Council consisting of judges of the Supreme Court. It is noted that for disciplinary matters, the Attorney General, the President of the Cyprus Bar Association and the two lawyers (as mentioned in A1, above, do not take part in the Council).

It is also very important to note that the decisions of the Supreme Judicature Council (including the Disciplinary Council) are subject to appeal to the Supreme Constitutional Court as an appellate Judiciary Council, with its decisions having an annulment effect over the decisions of the Disciplinary Council.

Independence/autonomy of the prosecution service

The Office of the Attorney-General is considered expressly under Article 112 of the Constitution to be independent. Furthermore, pursuant to Article 113 of the Constitution, the Attorney-General is both the legal advisor and lawyer of the Government representing the latter in Courts. The President appoints the Attorney General who holds office util the age of 68 unless removed by the Supreme Court Council for Disciplinary matters. There is no independent Director of the Public Prosecution Service. This may be considered as desirable in the future.

Perception of the Independence of the Judiciary

The Supreme Court amended its rules as to conflict of interest and adopted the Bangalore principles for judges. This is an improvement towards the right direction.

Resources of the Judiciary

The Government needs to increase its budget on matters affecting the Court system in general. Technologically wise the system still needs to be improved. The District Court of Nicosia Buildings are deplorable. Plans for a New Court, 3-5 years from today are in place. Meanwhile steps have and

currently are being taken to improve the situation as a result of efforts of the Cyprus and Nicosia Bar Associations.

Training

Training needs to be increased. A Judges School is now in operation but is run by Judges for Judges. It is not enriched by experienced advocates, academics and others. It does not cover areas prior to judicial appointment. It does not offer an examination procedure for appointment or promotions either. There is room for improvement and rethinking of the matter.

Digitalisation

An interim e-justice is in the process. Many difficulties encountered especially in relation to the inability of the Courts and Registries to run in parallel the system with physical filings as interim stage. The initial demand was for e-justice to be applied forthwith without in any way parallel operation of the Registries. This led to Parliamentary Opposition. The Parliament enacted a law to give 12 months for the working of the two systems in parallel. The Attorney-General and the Judiciary are of the view that the law is unconstitutional as this is a matter within the exclusive domain of the judiciary. The Parliament argues that it relates to access to justice for all and therefore it can regulate it. The Bar Council agrees. The President of the Republic has referred the matter to the Supreme Court. Efforts are being made to find a compromise between the Cyprus Bar Council and the Supreme Court. The former now proposed for the parallel working of the two systems for a reasonable period. A compromise seems to have now been found. The Supreme Court has decided that the matter of electronic justice and its regulation falls within the exclusive domain of the Supreme Court as a procedural matter. The Bar Council strongly urged the Supreme Court to introduce distant hearings for all hearings at all levels where evidence needs not be heard. This can commence forthwith. As from February this year e-justice will be mandatory for all new cases but not for old ones. Additionally, the Administrative Court of International Protection is exempt from the electronic justice system at present. A new regulation in place allows electronic communication with the court. This is a substantial improvement. Action needs to be taken in relation to the filing of documents electronically relating to the pending cases.

Introduction of digital recording of proceedings pending

E-justice which will include teleconference with judges is expected to be introduced in 2023.

During the pandemic, registries and Courts were open for urgent matters in March-April 2020 and January 2021. The lack of e-justice was devastating for all players, in particular advocates during this period. All throughout March 2021, Courts were operating in a very restraint manner due to the general restrictions imposed by the Ministry of Health and the Supreme Court as a result. Courts and Registries were declared as essential services as well as advocates and their offices. Restrictions were imposed despite the protests of the Cyprus Bar Association. An obligatory rapid test was imposed on lawyers and their staff. Currently, there are no measures in effect in relation to the legal profession.

Length of Proceedings

Two-tier system: On average 4-6 years first tier and six years for the appeal, for a total of 10-12 years. The amendments proposed by the Report of the Institute of Public Administration of Ireland, the Commission and the Council of Europe (March 2018) are in the process of being introduced. Three bills for the restructuring of the Supreme Court, the creation of the Appeals Court, and a new Judicature Council were enacted in July and August 2022 and will enter into full effect on and until January 2023 or now by way of amendment by July 2023. The Courts Services Institution had planned for September 2022. The District Court for trial of Civil cases and its backlog of some 40,000 cases are still not dealt with sufficiently despite the increase of the number of Judges. There is a need for the creation of specialised divisions of the District Court and specialisation at all levels, which will increase speed and quality. No reform of the District Courts is planned yet.

New Civil Procedures rules will be difficult to implement in view of the backlog, but their introduction will improve the situation. The new Civil Procedure Rules will enter into force in 2023. The Bar Association made recommendations for the improvement of the administration of justice at the lower level and for the effective handling of the backlog. The Bar Association is continuing its training sessions to all advocates.

Accessibility and Judicial review of administrative decisions

Administrative final Court decisions are not always complied with. After annulment, the Administration will find ways and means to come back with the same decision. The Administrative Justice system is ultimately judged by the confidence of the Public in the Administration. There is room for improvement.

DENMARK

Issues related to Independence of lawyers and the Bar

Pactum de quota litis

The Danish Competition Council has had several proposals to improve the competition in the legal profession in Denmark, including the possibility for *pactum de quota litis*. The proposal has - as one of the few - been implemented to a degree, and the former general ban for *pactum de quota litis* has now been revised in the Code of Conduct for the Danish Bar and Law Society. It is maintained that the fee may not be set in way that can affect the lawyer's independence. It is expected that the possibility

may improve consumers access to justice from a financial perspective, but it may also raise concerns regarding lawyers' independence to the client and the case.

Litigation funding

Litigation funding is becoming more and more popular in business cases, also in Denmark. On one hand, it improves access to justice by providing necessary capital to litigate. However, on the other hand, it may also affect lawyers' independence and loyalty to the client, as it is not the client but the funder who pays the lawyer's bill. The area is not regulated in Denmark, and it is not mandatory to inform the court about litigation funding, but the raising use of such funding in Danish courts and arbitration calls for an increased focus on the area.

Supervisory Authority

During 2022, the Danish Bar and Law Society has kept a continued focus on the EU Commission's proposal for an AML package which, among other initiatives, also includes a proposal for the establishment of a European supervisory authority. Lawyers and the right to independent legal advice are fundamental parts of a modern state based on the rule of law. In recent years, supervision of different businesses' compliance with the anti-money laundering rules has been intensified. Lawyers are also subject to this. However, it is crucial that supervision of lawyers can be conducted without weakening the rule of law for citizens and the confidence in lawyers.

In Denmark, the Danish Bar and Law Society is responsible for supervising the lawyers, and hence supervision is independent from the state. The proposal from the EU for the establishment of a European supervisory authority (AMLA) which will be able to interfere in the Danish Bar and Law Society's supervision of lawyers will affect the independence of lawyers. Consequently, the Danish Bar and Law Society has been working for an amendment of the EU proposal with the aim to get lawyers excepted from the AMLA.

Justice Delayed – increasing waiting times at Danish courts

A main concern regarding the rule of law in Demark presently is the increasing waiting times at the Danish courts. They have never been higher than they are right now. An average civil case takes 21 months to be processed, and a criminal case takes 7-8 months. There are many explanations for the long case processing times. While large grants have been given to the police and prosecutor's office in recent years, only financial patchwork solutions have been provided to the courts.

The waiting times mean that lawyers often experience that witnesses in court have difficulties remembering details of what happened when an incident took place years ago. It is extremely problematic when we have to ensure a fair trial for the accused and justice in general for the victims and everyone else who is affected. Because of the long waiting times, many have experienced to some extent that justice delayed is the same as justice denied. The Danish Bar and Law Society has conducted an analysis of the funding needs in order to reduce waiting times at the courts to a reasonable level. A gloomy picture emerges here. If the financial framework of the courts is not improved, it can be expected that the average processing time for ordinary civil cases will increase from around 21 months in 2021 to over four years in 2030. This is unsustainable in terms of legal certainty – and a bad starting point for conducting a case.

Issues related to the prioritising of cases are also important to address. Today, the courts have the possibility to prioritise within certain constraints. Politically, it has been decided that so-called VVV-cases (violence, weapons and rape) must have priority in the legal system and be dealt with within 30 days. It is obvious that many serious cases of violence and weapons cases must be dealt with quickly. The perspectives for the victims and for the sense of justice can be significant. But there can also be more banal cases, that then take precedence over more severe civil cases. If, instead, the prioritisation is left to those who are close to the cases, the legal certainty for citizens and businesses in general could be improved, both for those involved in civil cases and the important VVV-cases. A successful solution to this problem can lead to shorter waiting times, higher trust in the courts and better legal certainty for citizens and businesses, regardless of their case.

Access to lawyers outside main cities

As a consequence of urbanisation, we see a fall in practices in the provinces of Denmark. This means that it becomes more troublesome and difficult for citizens to find a lawyer in these regions, and that cases which ought to have been conducted, are not.

At the same time, the number of offices where citizens can get free legal advice (advokatvagter) is falling. Today, approximately 75 of such offices exists. In 2004, the number was 100. This means that there are regions where particularly vulnerable citizens who use offices where it (as a main rule) is possible to get free legal advice have difficulties in finding someone to look at their case and in getting legal guidance. From a rule of law perspective, this is a worrying development.

Representative actions for the protection of the collective interests of consumers

Directive (EU) 2020/1828 on representative actions for the protection of the collective interests of consumers must be implemented in the member states by the end of 2022. According to the current proposal from the Danish Government, the Opt-Out model is only going to be available to the Danish Consumer Ombudsman. Accordingly, consumer associations, etc. are limited to use only the Opt-In model. As the Opt-Out model has been available for the Consumer Ombudsman since 2008 and yet has not been used, it is doubtful whether the implementation of the directive will have an impact on access to justice for small consumer claims in Denmark.

Threats and Harassments against Lawyers

The Danish Bar and Law Society has continued to focus on threats and harassment against lawyers and in 2022 has continuously received inquiries from lawyers who have been exposed to threats or harassing behaviour.

In June 2022, the Bar Association together with The Association of Danish Law Firms, the National Association of Defence Lawyers and the Danish Family Lawyers participated in a meeting with the Ministry of Justice on the possibilities of legislatively protecting lawyers better against threats and harassment. The Danish Bar and Law Society is awaiting feedback on the meeting from the Ministry of Justice.

Cases/examples undermining the independence of the Bar and independence of lawyers

The Estonian Bar Association is a self-governing professional association, formed as legal person in public law. According to the law, the Bar is independent from the executive or other branches of the state. The Ministry of Justice exercises supervision over the organisation of the state legal aid system. Decisions concerning the authorisation to practise as an attorney are only taken by an independent authority, the Board of the Bar, on the basis of pre-defined criteria.

Attorneys' disciplinary offences are defined in Code of Conduct. The body/authority initiating disciplinary proceedings against an attorney and taking decisions on disciplinary measures (Ethics Tribunal) is independent from the executive and legislative power. Only the bar can suspend the licence of an attorney pending the outcome of the proceedings. The access to disciplinary procedure process is not hindered in any way. The decisions of the Ethics Tribunal can be contested in administrative court.

The court control is relatively limited, but this year we received a circuit court decision which revoked the decision of the Ethics Tribunal and stated that attorneys' actions, which the Ethics Tribunal found to be a violation of professional ethics and worthy of disciplinary punishment, were in the opinion of circuit court not worthy of disciplinary punishment, although an attorney did not behave correctly. The court did not identify any violation of formal or procedural requirements or a significant violation of the Ethics Tribunal's right of exercising discretion, but assessed the circumstances differently. This kind of decision was a surprise for us as we have not seen such practise in courts before. It is worrying and we carefully monitor the future case law. The Supreme Court did not take the Bar's appeal into proceedings (according to the law, they do not have to justify it).

About access to the profession, we would like to mention that the state plans to establish a uniform law exam in order to access various legal professions and during this process, we carefully monitor if it would set any barriers to become an attorney (if the exam is too complicated or vice versa too easy, i.e., the Bar could no longer fully define the conditions for entering the Bar). At the moment the draft bill is in its very initial stage and no conclusions can be drawn yet.

Cases/examples undermining and not respecting the confidentiality of lawyer-client communications

The Bar continually draws attention to the fact that the client confidentiality could be endangered when a law office is being searched. The practice shows that cases can be very different. The Bar is continuously keeping an eye on the situations, when it comes to the search of a law office. The representative of the Bar is present during the search and stands for the protection of client confidentiality.

At the moment, there is still the problem of lack of regulation regarding the search of law offices and the inconsistency of the practice of courts and prosecutors. It must be taken into account that the search of a law office could not be the last option, it means that the search is conducted although there may be other resources for needed information.

Cases/examples on threats to the safety related to professional role/status of the lawyer

The Bar is not aware of such cases. Where lawyers are subjected to a threat to their physical safety related to their role, they are granted the same protections as any other person (i.e., there is no special clause in the law regulating the physical safety of an attorney).

Trends and significant developments taking place in the justice system

In addition, related the low fees for state legal aid, the Bar views that eventually it can put at risk the protection of the rights of individuals and affect attorneys' independence. Of course, not to mention that running a modern law firm with low fees is very difficult.

It can also be pointed out that in crisis situations the state tends to hastily intervene in the independence of the Bar and the attorney's legal profession. As an example, there was a draft bill initiated in 2022, which stipulated that the Bar has the right to disbar an attorney who does not provide state legal aid in an emergency situation caused by mass immigration. Fortunately, due to opposition, this bill did not pass, but it illustrates that independence must be protected continuously.

Positive developments and best practices

For the past few years, we have reported that the Bar is working to ensure and to regulate the law regarding the search of law offices in the context of client confidentiality protection. Today we are in an active phase of drafting the bill with the Estonian Ministry of Justice and other counterparts.

Fortunately, there has been best practices regarding the search of law offices. There have been some very well-reasoned court orders, according to which the protection of client confidentiality is ensured quite well. The concern is though that it is not a completely uniform practice and there are setbacks.

The equality of arms and consideration of general objectivity in practical planning of the Judicial system

The Bar Association underlines that more attention should be paid towards the independence of all actors within the Judicial system and a more general perspective of the general public should always be taken into account in regards of the practical planning of courthouses and e-services and digital justice systems. In order to maintain the trust of general public, the independence of prosecutors, judges and attorneys should always be considered both separately and from a reciprocal perspective with each other as independent and separate actors.

E.g., prosecutors and judges both are typically located within the same courthouse as a result of renovations, sharing the same canteen and the door leading to the courtroom but also to the general premises. The same also largely applies to the digital tools and e-services available. E.g. with regards court rooms, the typical scenario is that there are two distinct displays for judges and prosecutors while attorneys do not have their own screens at all. The main Finnish court case management system (AIPA) is developed together with judges and prosecutors without contribution from attorneys. From a citizen's point of view, this is potentially problematic especially if it will be seen that attorneys-at-law are not in equal position in terms of making decisions regarding these facilities and systems, while they are operating and defending clients' rights within the judicial system.

The lack of general understanding and knowledge with governmental authorities regarding the legal practice, regulation and function of an independent profession and Bar Association

In many cases of the legislative procedures and discussions with other authorities, the Bar Association has had the need to clarify and ensure the basic principles, the rule of law-relation and functionality, and the proper interpretation and consideration of the legal professional privilege as such. The Finnish Bar considers it as a worrying development that, without its active participation, the legal professional privilege may not have been properly considered or interpreted while preparing such legislative proposals. The Bar Association is concerned about the general lack of understanding and knowledge regarding the legal practice and regulation related not only to the profession of lawyer but also to an independent Bar Association within the democratic society.

E.g., the Bar Association has had the need to clarify and provide detailed explanations related to its function and role regarding the realization of the principle of rule of law and the relevant international conventions, legislation and recommendations and legal practices in recent conversations with some of the highest authorities and supervisors in Finland. In this context, there has also been discussions to know whether the Bar Association should be the authority supervising attorneys-at-law or should the task be assigned to a governmental agency. In connection it has been indicated that in such case the Finnish Bar Association would be considered a private association. In addition, the Bar Association has presented clarifications and explanations towards other governmental authorities that have misinterpreted or neglected to consider the before said principles and/or the Finnish Advocates Act as a whole.

The lack of constitutional safeguards for attorneys-at-law and Bar Association

The sufficiency of the national constitution in regards to safeguarding the rule of law has been topical in Finland during 2022. In this regards, the Bar Association would like to highlight that one essential part of ensuring the said objective would be implementing constitutional safeguards also to protect and ensure the independence of the Bar Association and attorneys-at-law as they play an essential role in rule of law and democratic societies.

Positive developments

The Bar Association would like to point out that the new National Courts Administration has been successfully operational and has provided much required support for courts administration, development and planning. In addition, the government has published its first ever report on "the state of judiciary". This is a welcomed initiative to give a bigger picture and provide detailed information regarding the possible development points and to provide solutions for them. Especially the remarks on the requirement for further resourcing of judiciary and the inadequate level of legal aid fees are welcomed by the Bar Association. Also the abovementioned need for constitutional safeguards is noted in the 2022 state of judiciary.

Attacks on the independence of the bar

The limitation of the lawyer's professional secrecy

The law on Confidence in the Judiciary, published on December 22, 2021, reinforces the lawyer's professional secrecy by affirming that the respect of this secrecy, in all matters, is guaranteed during the criminal proceedings. However, the professional secrecy of counsel is not opposable to the measures of investigation in matters of tax fraud, corruption, and influence peddling in France and abroad, as well as the laundering of the offenses.

This law was completed by a circular dated February 28, 2022, which details the new rules relating to searches, the framework for requesting connection data concerning a lawyer and the rules relating to telephone interceptions of the lawyer. However, this circular partially reverses the guarantees provided by the law. It ignores the principle of indivisibility of professional secrecy guaranteed by the case law of the Court of Justice of the European Union and the European Court of Human Rights. By indicating that any advice given prior to the commission of an offence cannot be protected by secrecy, the circular adds a condition that was not provided for by the law and partially deprives this new protection provided by the legislator. The Paris Bar referred this circular to the Council of State for censure, and the National Council of Bars (CNB) submitted a voluntary intervention in support of it. In the context of this litigation, a QPC on the constitutionality of the law on Confidence in the judiciary has been transmitted to the Constitutional Court. The hearing before the Constitutional Council was held on January 10 and a decision was rendered on January 19. It declared that the contested provisions of article 56-1 of the Code of Criminal Procedure achieve a balanced reconciliation between, on the one hand, the constitutional objective of tracking down the perpetrators of offenses and, on the other hand, the right to privacy and the secrecy of correspondence. Furthermore, it considered that the complaint based on the disregard of the rights of the defence and those based on the disregard of the right to privacy and secrecy of correspondence must be dismissed.

Reform of the disciplinary procedure

The Law on Confidence in the judiciary brings important modifications to the disciplinary procedure of lawyers applicable from July 1st, 2022. In particular, the possibility for an active or honorary magistrate to chair the disciplinary board. The presidency by a magistrate will be open in two hypotheses: either following a complaint lodged by a third party, or when the accused lawyer requests it. A new right has been granted to the claimant, who may now refer the matter directly to the disciplinary body when his or her complaint has not led to conciliation or referral to the disciplinary body. The disciplinary court of appeal will also be composed of three magistrates and two members of the Bar Council of the jurisdiction of the court of appeal.

The French Bar's concerns about the efficiency of the judicial system

Increasing delays in judgments

The report of the committee to evaluate justice in France called “le comité des Etats généraux de la justice”[3] notes: “We have confirmed the advanced state of deterioration in which the judicial institution finds itself today. Justice is no longer able to carry out its missions in satisfactory conditions. After decades of degradation, a breaking point seems to have been reached during the Covid-19 crisis”. Judgment delays have continued to increase over the last twenty years. In civil matters, these delays were 13.9 months in first instance and 15.8 months in appeal, while the labour courts rule in more than 16 months.

Prison overcrowding

The situation of the penitentiary system is particularly alarming, with a record number of people detained on November 1, 2022. The prison density has reached 120% of the total prison population. On January 5, 2023, the Ministry of Justice reiterated its intention to increase the number of prison places by 15,000. However, this program will not meet the requirement of dignified conditions of detention and European and international obligations. The French Bar Association is calling for the implementation of a binding prison regulation mechanism to resolve this situation.

Progress on the recommendations addressed to France

In the chapter devoted to France in the 2022 report, the Commission presented two recommendations in justice, namely the continuation of its efforts to ensure that the justice system has sufficient human resources and the completion of ongoing projects aimed at the complete digitization of civil and criminal procedures.

An increase in resources for justice still insufficient

The French Bar welcomes the budgetary efforts allocated to Justice and more generally the efforts made over the last three years. The 2023 Finance Act provides for a new increase of 8% in justice credits for the third consecutive year, which also provides for the creation of 1,200 positions, including 200 magistrates. The Minister of Justice confirmed, on January 5, the objective of hiring 1500 additional magistrates and 1500 clerks. Nevertheless, the French Bar agrees with the conclusions of the report of the “*Etats généraux de la justice*”, which reminds us that there is a crying lack of human, material, and budgetary means in the jurisdictions. Thus, the effort must be persistent and long-lasting to get French justice out of the structural crisis to which it has been subjected for many years.

[3] On October 18, 2021, the President of the Republic launched a consultation to assess the situation of Justice in France and to formulate proposals. Meetings and consultations with users of the justice system were held throughout France by a special committee called "les Etats généraux de la justice". The report, entitled "Bringing Justice to the People", submitted on July 8, 2022, notes excessive delays in the delivery of judgments, insufficient or obsolete IT tools and infrastructures, late execution of court decisions, a decline in collegiality and undignified conditions of detention. In response, on January 5, 2023, Eric Dupond-Moretti, the French Minister of Justice, presented his action plan, which includes human and financial resources, measures in civil matters and an overhaul of criminal procedure.

Continuation of projects to digitalize civil and criminal proceedings

The digitization of justice has continued in France through several projects in which the profession has sometimes been involved. Thus, the Constitutional Council has initiated work on the development of a website dedicated to the priority question of constitutionality (QPC) for which the profession has been consulted. This year is also marked by the launch of electronic divorce by mutual consent, which will enable lawyers to offer their clients the electronic signature of their divorce agreement. In addition, the National Council of Bars is developing digital partnerships, with the judicial commissioners and the clerks of the commercial courts, to dematerialize procedures.

Examples of good practices

The Vienna Declaration initiative for the rule of law during the French Presidency of the Council of the European Union

On the initiative of the French Bar Association, lawyers from 25 member countries of the Council of Europe, i.e. 38 organizations, adopted in Vienna, on January 11, 2022, the Declaration on the support of the rule of law in the European Union. This Declaration aims to remind the European authorities and the Member States of their historical responsibility to preserve and strengthen the rule of law as a founding European principle and a common intangible value. It is structured in 5 axes, namely the political questioning of the rule of law and the means to fight effectively against the erosion of fundamental European values, the digital stakes, the protection of the profession which will be reinforced by the future binding international instrument on the legal profession, the defence of the rights of the most vulnerable and the environmental law as a corollary of the human rights.

Places of deprivation of liberty: the creation of a right of visit by the President of the Bar

Since December 24, 2021, the presidents of the Bar in their jurisdiction or their specially designated delegate within the Bar Council may visit police custody facilities and customs detention facilities at any time. This device, long desired by the profession, was introduced in article 18 of the law n°2021-1729 of December 22, 2021, for the confidence in the judicial institution, thus modifying article 719 of the Code of penal procedure. In this respect, the National Council of Bars has published a practical guide to the right of visit of the President of the Bar and his delegates in places of deprivation of liberty, including a framework and practical advice to make the visits useful. In addition, it centralises and makes available to lawyers all visit reports. These reports can therefore be used in litigation concerning, for example, the indignity of the conditions of detention or the ineffectiveness of the fundamental rights of the detainees.

Confidentiality of lawyer-client communications

There are currently two (joined) cases pending before the European Court of Human Rights in Strasbourg (Reporters without Borders, German Section, Application no. 81993/17 and by a German lawyer, Niko Härting, Application No. 81996/17) with regard to the strategic monitoring of international telecommunications by the German Federal Intelligence Service in order to avert serious dangers by the Federal Republic of Germany under section 5 of the Act on restrictions on the secrecy of mail, post and telecommunications (Gesetz zur Beschränkung des Brief-, Post- und Fernmeldegeheimnisses). A similar complaint by Reporters without Borders, German Section was declared inadmissible by the German Federal Administrative Court on 26 January 2023.

Trends and significant developments taking place in the justice system

In our view, judicial selection committees have not fulfilled the hopes placed in them. Instead, independent panels of experts should be appointed - at least for higher judicial positions - to make a generally binding appointment proposal. The diversity of the legal professions should be adequately represented in order to preserve the independence of the panel and the neutrality of the decisions to be made by it. Furthermore, a legal definition of the relevant suitability criteria is advisable so that selection decisions can be made more rationally and transparently. Such a selection committee exists on the European level for the judges and the advocates general of the ECJ and the CFI. Before the appointment, a committee of seven persons gives an opinion on the suitability of the nominees (Art. 255 TFEU). Although this opinion is not formally binding, a negative evaluation of a candidate effectively normally leads to exclusion from the selection procedure. Apparently, current practice is guided by an unofficial understanding among the councils for judicial appointments of the highest Federal Courts that candidates for positions in these courts who are deemed as unqualified will not be considered further during the selection procedure, giving the current judges of a given Federal Court a veto right. Moreover, it would be desirable if - similar to the Anglo-American system - permeability, i.e. easy switching, between the professions of lawyers and those of members of the judiciary was possible. Particularly in the case of the bar and professional courts, the interaction of professional judges and bar judges has proven to be very positive.

Implementation of Recommendations

Regarding German court proceedings, there is a general sentiment that special types of cases take too long to be decided. Efforts are in progress to diminish this challenge by increasing the number of judges.

Dealing with Lawsuits that qualify as SLAPPs raises a certain amount of unclarity within the legal system in Germany.

The digitalisation of the German justice system must be driven forward continuously to strengthen the functionally and effectiveness of the judiciary. Therefore greater financial support for the courts is necessary.

Among other things, efforts are being made to improve access to justice for citizens by expanding the legal possibilities for video hearings, and digital litigation. To meet these efforts, a consistent

implementation of electronic legal transactions and e-files must be done on a nationwide basis. Audio-visual documentation for a wider range of proceedings as planned by the German Federal Government will lead towards a modern, technically up-to-date justice system. We also welcome the legislative proposal which will expand the legal possibilities for video hearings and create digital application centres that will enable citizens to file applications virtually even at distant courts.

The fundamental rights of citizens must be upheld and must not be restricted by the use of AI. Consequently, a human judge cannot be replaced by an algorithm under any circumstances. Only highly standardised proceedings remain suitable to be supported by the use of AI.
Regular training for justice professionals remains essential.

Positive developments and best practices

Frequently, an occurring insufficient time limit for associations to take part in public consultations on statutory projects has been stated for the last two years. At this time, it is found that this matter improved partially. It must be observed that firstly, legislative acts must follow parliamentary procedures with all its deadlines and hearing in an orderly manner. Secondly, feedback periods have to comprise of an appropriate time limit.

GREECE

Independence

Concerns relating to the procedure of appointments in the most senior positions of judges and prosecutors persist, notably that these positions are subject to a potentially strong influence from the executive. The concerns refer to the system of appointments for the most senior positions in the judiciary, such as the President and Vice-President of the Council of State or the Supreme Court. The Constitution stipulates that these appointments be effected by presidential decree, following a proposal by the Council of Ministers.

In fact, there is a list of candidates established by the Minister of Justice, which is later discussed by the conference of the Presidents (speakers) of the Parliament (current and former Presidents who are still members of Parliament, the Vice-Presidents of the Parliament, the Presidents of Parliamentary Committees, the Presidents of the political groups and one independent Member of the Parliament). The Minister is not obliged to follow the opinion of the Parliament.

Non-successful candidates do not have the possibility to contest before an independent court the decision not to propose them for appointment.

According to the information available, the Greek authorities do not have any plans to revise the appointment procedure in the foreseeable future.

Quality/Efficiency

The justice system continues to face challenges as regards its overall efficiency.

An efficient and independent evaluation system regarding the fairness and quality of the judicial decisions is not yet to be put in place, while the continuous training of judges, judicial staff, etc, remains a serious matter.

Long delays are often recorded in the administration of criminal, civil, commercial and administrative justice. Judicial statistics show that in particular the court system overall continues to face efficiency and productivity challenges, such as the time needed to resolve the litigious disputes and criminal cases.

Postponements cause significant delays and backlogs, some cases having been scheduled for trial on remote future dates, in 2026 or even later.

Challenges as regards digitalisation of justice remain.

The full implementation of electronic filing is hampered by delays and its availability remains partial, inconsistent, and mainly restricted to certain courts. Even in those courts, the actual use of e-filing remains minimal, partly due to a lack of familiarisation of stakeholders with the new tools. However, significant progress in some areas has been recorded. A new electronic recording system for criminal proceedings is being progressively introduced, starting with a pilot at the Court of First Instance of Athens, which has been applied to 21 courts. Other relevant measures concern the electronic issuing of certain categories of judicial certificates, including a polyvalent certificate on judicial solvency clearance recently made available. The electronic insolvency registry is operational and linked to other

EU registries. The e-platform for the conduct of electronic auctions has been upgraded. Extracts from criminal records are provided to applicants and criminal complaints are processed electronically.

The system for the collection of judicial statistics is still progressing, without any clear outcome. Please note that the office for the collection and processing of judicial statistics was established within the Ministry of Justice at the end of 2020, with the objective of systematic collection of qualitative and quantitative statistical data.

Impermissible tightening of criminal sentences

The Parliament often proceeds to legislative initiatives to impermissibly tighten the criminal penalties for certain categories of offences which relate to cases that gain strong media attention (e.g. revenge porn, conditional release of detainees, sexual offences, etc).

The change leads to a more severe punishment, quite often turning minor offences into felonies (carrying up to 15 years of imprisonment).

There are reasonable fears that the legislative initiatives are undertaken impetuously without proper consultancy and preparation, and without the necessary impact studies about their legality and expediency. They are often deemed compatible with the spirit of the sentences of the Criminal Code, taken only under media pressure and concerns about the overall system's inefficiency to prevent and protect.

(Social) Media Trials

It is sadly confirmed that the galloping evolution of social media has brought about an unprecedented change in the perception of the criminal trial and the respect for the presumption of innocence.

In many cases (social) media trials give an unrealistic portrayal of the accused and destroy the careers of many people, merely because they were accused, even though they have not yet been proven guilty in a court of law.

Such reporting has brought about an undue amount of pressure in the course of fair investigation and trial.

The media in this manner is conducting a parallel investigation and trial, and by doing so has already expressed its decision, creating a pressure on the investigation agencies, the prosecutors and the judges. In that context, the domestic and international principles for the protection of the presumption of innocence, the impartiality of the judiciary, and fair trial have become empty words.

The media trial creates prejudice to such an extent that an already acquitted person has to go to much further lengths than before to prove their innocence, because the 'reasonable doubt' established by the media channels is so high.

Pre-trial detention

Concerns about lengthy pre-trial detention in Greece persist. Reports have criticised the over-use of pre-trial detention. A large portion of those incarcerated are pre-trial detainees, which has contributed to problems with prison overcrowding. There are also shortcomings in the procedure for challenging

the lawfulness of detention, and the application of the right to notify a third party about a detention has been criticised.

Prison Conditions

In their recent report, the European Committee for the Prevention of Torture highlighted systemic failures in Greece's prisons. Prisoners around the country claim that they were not provided with personal protective equipment against COVID-19.

Police Brutality

Incidents of ill-treatment and excessive and otherwise unlawful use of force by law enforcement officials continue to be reported.

Land Registry

Delays and setbacks have been reported before the respective Land Registry Offices regarding the land properties registrations, causing disputes over the ownership and insecurity in the market.

Negotiations between the European Commission and the Hungarian government have just been concluded, and an agreement has been reached on Hungarian EU funding with conditional approval of the Hungarian recovery plan for €5.8 billion (nearly HUF 2,400 billion) in non-repayable funding; and additionally, with the suspension of Hungarian EU funds proposed in the rule of law procedure.

The last RoL report addressed concerns about the lack of checks and balances in judicial administration and requested a judicial reform in Hungary to strengthen the independence of the judiciary. For obtaining the funding, the Hungarian government promised to complete its commitments by 2023. Therefore, in autumn 2022, the government took some legislative measures to comply with the European Commission's recommendations. The concerns in this regard are as follows:

The chilling effect at courts is still there

Political and media attacks on the Hungarian judiciary continued in 2022, which negatively affected judicial independence. The relation between the National Judiciary Office (NJO) and the National Judiciary Council, (NJC - the self-governing body of the judges) has evolved over the past year but is still far from the desired and balanced atmosphere.

The country recommendation of EC requested the commitments relating to control of power of the President of Hungary's supreme court (Kúria-Curia) and outlined that Hungary should strengthen the role of the National Judicial Council to be able to effectively counterbalance the powers of the President of the National Judicial Office.

According to the President of the NJC, they have ongoing jurisdictional disputes with the chairman of the NJO, which essentially always end up with the supervised person being the one whose legal position decides what the supervising body can do or know.[4]

The NJC can only supervise the administrative work of the President of the NJO if it is given the appropriate powers which is not yet the case. These broader powers should be granted to the NJC by law.

The government has also committed itself to changing the functioning of the Curia, namely the government's commitments include that in the future the Curia will not be able to filter when and why judges can appeal to the European Court of Justice, and that judges' rights cannot be restricted.

Overall, the government promises to deliver on its commitments by the first quarter of 2023.

The government extended the state emergency

The government lifted the state of emergency on 1 November, and then re-declared it at the same time, citing the war in Ukraine. This was necessary because the constitutional rules on the special legal regime, including the state of emergency, changed on 1 November.

[4] https://helsinkifigyelo.444.hu/2022/11/24/sulyos-valsagtunetek-a-birosagok-igazgatasaban

According to experts, the amendment to the Constitution and related laws served one purpose: to give the government exclusive and effectively unlimited power in any special situation.[5]

According to the Wolters Kluwer summary in 2022, 267 government decrees were adopted on the grounds of emergency. This represents 18.5 percent of all legislation, but if we look only at the 637 government decrees adopted, the figure is 41.9 percent.

As noted by the Helsinki Committee, this has been used by the government for political gain on several occasions: emergency decrees have been used to restrict the right of assembly for unduly long periods, to prevent teachers from striking, to increase the deadline for responding to public interest requests to 45+45 days.[6]

Lack of effective and genuinely coercive enforcement

In the last RoL report, the European Commission specifically pointed out that there are cases of Hungarian state bodies failing to enforce decisions of domestic courts, and many of these judgments relate to access to data of public interest. This fact is also acknowledged by many lawyers.

According to a study by the Hungarian Helsinki Committee and a submission submitted by the Hungarian Helsinki Committee and the Society for Civil Liberties (TASZ) to the Council of Europe's Committee of Ministers in summer of 2022, there are systemic reasons why these judgments are often not enforced by state bodies and institutions. These include the lack of effective and genuinely coercive enforcement against public authorities in the case of public prosecutions. Fines are not a deterrent, and it is pointless to make misuse of data of public interest in a criminal offence if the resulting prosecutions very rarely lead to charges. Moreover, the procedures for enforcing court decisions are generally flawed, costly and lengthy, which reduces their effectiveness and accessibility.[7]

The political pressure on the judiciary and court functioning

The President of the Curia, Andras Zs. Varga, appointed several judges to the Curia in 2021 in an illegal manner. The unlawfulness was highlighted by the National Judiciary Council, which investigated the appointment practice, in July 2022.

In recent years, the practice of secondment in the Curia has gone beyond the legal framework. The research of the Hungarian Helsinki Committee shows to what extent arbitrary secondment practices endanger the independence of the judiciary and increase the compliance pressure of judges.[8]

Two judges have been transferred for a year to the Cabinet Office of the Prime Minister lead by Antal Rogán, according to a decision of the National Judiciary Office. In 2021, experts from eight domestic NGOs, including Amnesty International, wrote a report for the European Commission on the state of the rule of law in Hungary. In their report they also raised concerns about the assignment of judges to a state body outside the court system. According to this report, “transferred judges receive significantly higher remuneration and, after the transfer, can be appointed as presiding judges without competition, even in a court which is higher than their previous position. In addition, transferred

[5] https://helsinkifigyelo.444.hu/2022/11/14/kulonleges-jogrend-a-kormany-ezentul-azt-csinal-amit-akar
[6] https://444.hu/2023/01/04/a-varmegyek-miatt-1172-jogszabalyt-kellett-modositani
[7] https://helsinkifigyelo.444.hu/2022/12/09/hiaba-a-jogeros-itelet-ha-az-allamot-nem-erdekli
[8] https://helsinkifigyelo.444.hu/2022/09/16/szabalytalan-biroi-kirendelesek-a-kurian

judges can also handle cases that they themselves or their colleagues have previously judged. This procedure blurs the boundaries between the judiciary and public administration and may violate the right to a fair trial."[9]

Last but not least, it has to be reported that there is an influence of the media which sometimes contributes to the misinterpretation of the purpose of defence lawyers and a wrong impression of the role of lawyers and judges, and even in some cases a lawyer, a judge can be a possible target of hate speech. In November 2022 the Hungarian pro-government media organs demanded the resignation of two judges for meeting with US Ambassador David Pressman. According to pro-government press organs, Csaba Vasvári and Tamas Matusik should resign because the meeting violated "judicial independence".

[9] https://telex.hu/english/2022/11/21/two-judges-temporarily-assigned-to-work-in-the-cabinet-office-of-the-pm-led-by-antal-rogan

The Law Society and The Bar of Ireland are not aware of any cases undermining the independence of the Bar and independence of lawyers in 2022.

Independence of judiciary

The Supreme Court has agreed to hear an appeal in respect of the constitutionality of Personal Injuries Guidelines, developed and approved by the Judicial Council in 2020. A panel comprising three judges of the Supreme Court agreed that issues of general importance have been raised that necessitate the Supreme Court hearing the appeal. The appeal, the panel found, raises questions of significant relevance to the interpretation and construction of delegated legislation regarding the implications of the constitutional mandate of judicial independence and the separation of powers between judges and the Oireachtas (Houses of Parliament). A date for hearing is yet to be fixed.

Source: Irish Times, *Test challenge to personal injuries award guidelines to be heard by Supreme Court*, 1 December 2022

Resources of the judiciary

A Judicial Planning Working Group was convened in 2021 to consider the number and type of judges required to ensure the efficient administration of justice over the next five years. The Council of The Bar of Ireland made a submission to the Group in which it highlighted, among other things, the need for additional recruitment of judges in line with the European average to support the efficient administration of justice. The European Commission for the Efficiency of Justice (CEPEJ) reported in its 2022 Evaluation Report that Ireland had 3.3 judges per 100,000 inhabitants in 2020, well below the European average of 22. Publication of the report of the Judicial Planning Working Group is awaited. The report is furthermore expected to include recommendations regarding the appointment of additional judges to sit in the soon-to-be established Planning and Environment division of the High Court.

As regards the implementation of the Recommendations:

Ensure that the reform of the appointment and promotion of judges, as regards the composition of the Judicial Appointment Commission, is taking into account European standards on judicial appointments.

The Judicial Appointments Commission Bill 2022 is currently before the Houses of the Oireachtas. The revised Bill takes into account:

1. the recommendation of the Council of Europe's Group of States against Corruption (GRECO) that the system of selection, recommendation and promotion of judges target the appointments to the most qualified and suitable candidates in a transparent way; and

2. Recommendation CM/Rec(2010)12 of the Committee of Ministers to Member States on judges: independence, efficiency and responsibilities adopted by the Committee of Ministers on 17 November 2010, under the terms of Article 15.b of the Statute of the Council of Europe.

The 2022 Rule of Law Report raised concerns that the proposed Judicial Appointments Commission does not consist of a clear majority of judges chosen by their peers. As per Section 9 of the Judicial Appointments Commission Bill 2022, the Commission shall consist of an equal number of judges and lay members.

The Minister for Justice indicated during the course of a Seanad (Senate) debate on 18th October 2022 that it is not intended to amend the proposed composition of the Commission to facilitate a majority of judges. The Minister reiterated the intention for "an equal number of legal persons as well as lay persons on the commission, working with the Attorney General but with the Chief Justice as chair".
The Council of The Bar of Ireland maintains its position as set out in its 2021 submission to the Department of Justice that it is of concern that neither the Chair of the Council of The Bar of Ireland nor the President of the Law Society are included as members of the Commission, resulting in no member of the Commission representing either of the professions from which candidates may be selected. Given the recent comments made by the Minister for Justice however, any extension in numbers of the proposed composition of the Commission is unlikely.

Continue actions aimed at reducing litigation costs to ensure effective access to justice, taking into account European standards on disproportionate costs of litigation and their impact on access to courts.

The Implementation Plan arising from the Review of the Administration of Civil Justice sets out to consider and advance measures to reduce the costs of litigation, including costs to the State. In January 2022, the Department of Justice commissioned Indecon Economic Consultants to carry out economic research in this area. When completed, this research, together with appropriate legal advice on its findings and implications, will inform policy proposals that the Minister for Justice intends to bring to Government next year.

The Bar of Ireland, in conjunction with the Law Society of Ireland, made a submission to Indecon in February 2022 highlighting the lack of an evidential basis for claims that Ireland is a high legal cost jurisdiction. A review of reports into legal costs over the last 20 years has demonstrated that there are considerable questions to be raised on the evidential basis of the assertion that Ireland is a high legal cost jurisdiction. On the contrary, there is evidence that legal costs have reduced over the last 10 years. Our submission also highlighted four areas that would assist in positively impacting on litigation costs:

- Increased investment in the justice system, in particular the number of judges and support staff, better case management and adoption of technology.

- Investment in effective civil legal aid to ensure access to justice for all regardless of means.

- The introduction of non-binding guidelines in respect of legal costs.

- A reduction in State-imposed revenue on a Bill of Costs.

Continue the reform of the Defamation Act to improve the professional environment for journalists taking into account European standards on the protection of journalists.

The Department of Justice published the Report of the Review of the Defamation Act 2009 ("the Report") in March 2022 which considers issues raised by submissions made to the department during the consultation process, examines relevant reforms in other common law countries and at EU level, and sets out a range of recommendations for change. The Review also contains proposals to provide clearer protection for responsible public interest journalism, and recommends a number of mechanisms that support more consistent, proportionate and predictable redress in defamation cases. The major proposals arising from the Review include:

- an end to juries in defamation cases
- easier access to justice for individuals whose reputation is unfairly attacked
- clearer protection for responsible public interest journalism
- reducing legal costs and delays
- measures to encourage prompt correction and apology, where mistakes are made; and new measures to combat abuse
- make it easier to grant orders directing online service providers to disclose the identity of an anonymous poster of defamatory material

As noted above, one of the Report's main recommendations is to end the use of juries in defamation cases, which has often led to very high awards and legal costs in defamation cases, unpredictable outcomes and long delays. The Review proposes the provision of quicker, lower-cost, more accessible and more effective redress mechanisms - including in cases of online defamation. It makes proposals to support increased use of ADR and prompt correction and apology, where mistakes are made.

The Report contains a specific recommendation for the introduction of an anti-SLAPP (strategic litigation against public participation) mechanism in Irish law which would allow a person to apply to the court for summary dismissal of defamation proceedings that they believe are a SLAPP. According to the Minister of Justice, this recommendation goes beyond the scope of the Commission's proposed Directive, which is limited to civil cases with cross-border implications.

The Department of Justice has confirmed its intention to publish the Defamation (Amendment) Bill to update aspects of defamation law based on the Report in the near future.

In January 2022, the Government published the Online Safety and Media Regulation Bill which proposes to reform the regulatory structures for online media, including replacing the Broadcasting Authority of Ireland with a new Media Commission and Online Safety Commissioner (while retaining the 'Right of Reply' scheme).

Take measures to address legal obstacles related to access to funding for civil society organisations.

In June 2022, the Minister for Justice established a Group to review the Civil Legal Aid Scheme for the first time in its more than 40-year history. The Group is expected to report within 12 months. A

stakeholder consultation process is underway and the Council of The Bar of Ireland and the Law Society of Ireland are currently preparing submissions. Among the issues under review are the types of civil law cases and jurisdictions covered by the scheme and a review of the eligibility thresholds and current obligations on litigants to make a financial contribution. The Council is of the view that the Civil Legal Aid Scheme must have broad applicability if is to protect and vindicate the rights of those most vulnerable in society, and spread the veil of protection over the greatest number of rights.

Positive developments and best practices

The remaining provisions of the Judicial Council Act 2019 have been brought into effect, which allow for a complaints procedure to deal with alleged misconduct by judges. The issue has been summarised as follows:

"The new procedure will allow a complaint to be made about a judge within three months of the alleged misconduct. A complaint can be made by any person who is directly affected or who witnessed the alleged misconduct. If [the complaint is deemed] admissible, it will be referred to the judicial conduct committee, made up of judges and lay people. If the complaint cannot be resolved by informal means, it will be investigated by a panel of inquiry who will report back to the committee. The committee can recommend action including the issuing of a reprimand to a judge in the form of issuing advice, recommending the judge takes certain action or admonishing the judge. In the case of the most serious instances of misconduct, it can make a referral to the Minister for Justice under article 35.4 of the [Irish] Constitution which allows for the removal of a judge on the grounds of "stated misbehaviour or incapacity" following resolutions passed by the Houses of the Oireachtas."

Source: Irish Times, *Law allowing for complaints about judges comes into effect*, 3 October 2022

Length of proceedings

The Courts Service Annual Report for 2021 provides updated data on the average length of proceedings across the various courts. In the High Court the average length of civil proceedings, from issue to disposal, increased from 660 days in 2020 to 797 days in 2021. Personal Injury cases accounted for the lengthiest of proceedings at 1,188 days. Once again, the greatest delays are recorded in the Supreme Court at an average of 3946 days (c. 10 years) across all cases, from issue to disposal. At the time of going to print (July 2022) the information for the average length of civil proceedings from the Circuit and District Courts were not available.

According to the latest data (2020) by the European Commission for the Efficiency of Justice (CEPEJ), Ireland has the lowest clearance rate in Europe at 60% (European average is 96%) which is a measure of how well a system processes the volume of cases it works with. The recommendations set out in the Review of the Administration of Civil Justice Implementation Plan, specifically the proposed reforms to civil practice and procedure and discovery, limitations on adjournments, and a recommendation that provision be made by rule of court for automatic discontinuance of stagnant proceedings, should help to address delays. Changes to Rules of Court have already been implemented to encourage compliance with time limits, and two recent judgments of the High Court (see: [2021] IEHC 408 and [2021] IEHC 187), dismissing proceedings for inordinate and inexcusable delay, are indicative of the courts' continuing approach to the failure to observe time limits in litigation.

Developments in relation to the justice system

The Department of Justice published the second in its series of annual Justice Plans to drive reforms across the Justice Sector. Key developments include the launch of the Family Justice Strategy 2022-2025 on 16th November 2022. The objective of the strategy is to modernise the family justice system and to make it more user friendly. A Family Court Bill 2022 has also been published to provide for the establishment of a Family High Court, Family Circuit Court and Family District Court. The Council of The Bar of Ireland has expressed concerns as to the proposed jurisdictional changes, particularly the proposed expansion of jurisdiction of the District Court. At present, the District Court does not have adequate resources to cope with its current workload. The Council is therefore very concerned that any expansion in jurisdiction as is proposed under the Family Courts Bill 2022 will overwhelm the District Courts, with consequent lengthy delays for clients in being able to access justice.

An Implementation Plan arising from the Review of the Administration of Civil Justice was published in May 2022, setting out the approach and timescales to advance many of the recommendations arising from the Review – also known as the Kelly Report. The Implementation Plan identifies seven work streams aligned to the main themes from the Kelly Report and sets out the timelines for implementation over the next three years. The work streams relate to reform in the area of Civil procedure in the courts; Discovery; Judicial review; Multi-party litigation; Litigation costs; Facilitating court users; and Technology and e-litigation.

The *Cartabia*[10] Civil Justice Reform - Legislative Decree No. 149 of 10 October 2022

Legislative Decree No. 149 of 10 October 2022 (titled "Implementing Law 26 November 2021, no. 206 delegating to the Government for the efficiency of the civil process and for the revision of the discipline of the instruments of alternative dispute resolution instruments and urgent measures for the rationalisation of proceedings in matters of personal and family rights as well as in enforcement") consists of 55 articles that amend the Civil Code and Code of Civil Procedure (and their implementing provisions), the Criminal Code and Code of Criminal Procedure, as well as numerous special laws, including those on mediation and assisted negotiation.

In accordance with the enabling act, the regulatory changes affect all four books of the procedural code. It cannot be denied that the intervention – given the supposed objective of the enabling act - does not seem to go in the direction of an effective recovery of efficiency and reduction of trial times. On the contrary, in some cases it appears to create additional burden for the Courts.

The following remarks should be considered amongst them:

a) the new institution of the preliminary referral to the Supreme Court of *Cassazione*, which - by involving the latter in questions of interpretation falling within the jurisdiction of the court of merit - entails the suspension of the trial *a quo*, the de-empowerment of the court of merit in the decisional commitment, the substantial elimination of the power to appeal the decision - given the consequent constraint on the principle of law formulated by the Court of *Cassazione*.

b) the amendment to the judgment pursuant to Article 281-sexies rendered following the oral discussion of the case. The legislative decree provides for the possibility for the judge to reserve the submission of the judgement, concretely depriving of utility a decisional model that, up to now, had made it possible to avoid the long hiatus between the parties' discussion and the filing of the judgment.

c) more generally, the changes made to both the introductory phase and the decisional phase appear cumbersome and as a mere façade compared to a recovery of efficiency and quality of judicial cognition. The orality is completely supplanted by the filing of written documents (and consequent deadlines) that have increased with respect to the current discipline. We reiterate how, according to the so-called Luiso Commission Proposal[11], a simple remodelling of the time limits for written submissions and a more streamlined regulation of the decisional phase would undoubtedly have better served the stated need for rationalisation and simplification.

Finally, one cannot overlook the missed opportunity in terms of deflation of the burden of civil justice resulting from the timorous exercise of delegation power in matters of voluntary jurisdiction. The demand for voluntary jurisdiction in the five-year period 2014/2019 registered an increase of 48%. In

[10] Thusly referred to given the name of the former Minister of Justice, Mrs. Marta Cartabia.

[11] The Luiso Commission, established by Ministerial Decree 12.3.2021, had the task of pointing out a way to fulfil Italy's commitment in the PNRR to reduce civil trial times and to indicate possible amendments to the bill AS 1662 being examined by the Senate Justice Commission.

2019 - excluding the load of the tutelary judge, voluntary jurisdiction constituted 18% of the area of SICID[12] civil litigation, therefore a full implementation of the guiding criterion provided for in Article 1 paragraph 13, letter b)[13] of Law 2 °6/21 would instead have had a consistent effect on the civil justice. On the contrary, the decree legislation is limited to very few hypotheses.

In particular:

- Article 21 of the Legislative Decree "*Attribution to notaries of the competence for authorisations relating to affairs of voluntary jurisdiction*", which provides that authorisations for the conclusion of public deeds and authenticated private agreements involving a minor, an interdict, an incapacitated person or a person benefiting from a support administration measure, or relating to hereditary assets, may be issued, upon the written request of the parties, in person or through an attorney, in the presence of a notary;

- Article 22 of the Legislative Decree (Amendments to Law No 89 of 16 February 1913), by which notaries, in addition to the President of the Court, are devolved jurisdiction in the appointment of the interpreter of the deaf.

- Art. 23 of the Legislative Decree (Amendments to Law No 108 of 7 March 1996), which gives the notary concurrent competence in matters of rehabilitation of the protested debtor (Art. 24).

As regards to the inter temporal rules (Art. 35-40), the entry into force of the new rules is generally fixed at 30 June 2023 for proceedings instituted after that date, «*with the clarification - to dispel possible interpretative doubts - that for the proceedings pending at that date the provisions previously in force continue to apply*»[14]. A number of other detailed provisions, however, anticipate or postpone the entry into force of individual provisions (telematisation, Supreme Court Judgements – *Corte di Cassazione*, etc.) giving the interpreter a fragmented and complex framework that conflicts with the principles of rationalization and efficiency that constituted the leitmotif of the enabling act.

In the following paragraphs we will concentrate on the topic of the Preliminary Referral to the Supreme Court of *Cassazione* and the matter of the Autonomy of the Lawyers and Bar Associations, which are particularly relevant in light of their implications to the rule of law.

Preliminary referral to the Supreme Court – Corte di Cassazione

Article 363-bis is introduced, pursuant to which the Court of first instance (Judge of merit) may order, after hearing the parties, the referral for a preliminary ruling to the Supreme Court for the resolution of a question regarding exclusively matter of law. Such referral is permitted if its solution is necessary for the resolution, even partial, of the case and **a)** there are no previous Court's legitimacy jurisprudence, **b)** it presents serious difficulties of interpretation, **c)** is likely to arise in numerous cases.

[12] The SICID is the District Civil Litigation Information System. The SICID is identified as "Civil Litigation and Labour Law" and is divided into the Registers: Civil Litigation, Labour Law, and Voluntary Jurisdiction.
[13] "*Providing for interventions aimed at transferring to the administrations concerned, to notaries and other professionals with specific skills some of the administrative functions, in voluntary jurisdiction, currently assigned to the civil judge and the juvenile judge, also identifying the specific scope and limits of this transfer of functions".*
[14] As stated in the Explanatory Report.

The Court - if the matter passes the examination of the admissibility of the First President, formulates the corresponding principle of law.

The submission of the matter to the Court shall suspend the proceedings on the merits.

"*The principle of law laid down by the Court is binding in the proceedings in which the question has been referred and, if this is extinguished, also in the new process in which the same question is proposed between the same parties*".

This provision severely restricts the possibility of appeal against the judgment, which is certainly excluded as far as the question before the Court is concerned.

Autonomy of the Lawyers and Autonomy of the Bar Associations

Premise: autonomy of lawyers and autonomy of the Bar Associations

For the efficient performance of judicial functions, the autonomy and independence of lawyers are no less important than the autonomy and independence of magistrates. It is no coincidence that the legal system configures self-governing bodies for each of these two categories of jurists: just as the independence of the Superior Council of the Magistracy is a guarantee of the autonomy of the individual magistrate, the full independence of the Bar is a guarantee of the professional freedom of lawyers, which is protected at the highest level of the sources of EU law (Art. 15 of the European Charter of Fundamental Rights).

Although uncontested in terms of principles, the autonomy of the Bar Associations has been experiencing a particularly difficult phase in Italy for some time. In particular, some independent administrative authorities and some State administrations have tended to disregard the special nature of the Bars among public law bodies, assimilating them to State administrations *tout court*, with all the obligations and burdens arising therefrom. As a result of this statist drift, the Bar Associations are the recipients of a series of obligations disproportionate to their nature. Structures with few or very few employees, and with reduced financial resources find themselves essentially having to fulfil obligations similar to those of ministries and public bodies of a very different size, with the consequence of the risk of an operational impasse, which fundamentally undermines the autonomy of the Bars themselves. Yet the Bar Associations do not burden in any way on the state budget, and are entirely financed by members' contributions.

The threats to the autonomy of the Bar Associations

The following examples apply in this respect.

The National Anti-Corruption Authority (Anac – *Associazione Nazionale Anticorruzione*) has reinstated among the obligations for the Bars Associations in Article 14 of Legislative Decree 33/2013 "*Obligations of publication obligations concerning the holders of political, administrative, managerial or management or government offices and holders of executive offices*" as amended by Article 13 of Legislative Decree 97/2016. The aforementioned provision - which, it is worth recalling, entails the obligation to publish very personal data, such as income and assets - is in contrast with Article 13(b) of Legislative Decree 97/2016, which, in amending Article 14 of Legislative Decree 33/2013, has restricted the obligation to publish asset data to the members of the political bodies of State regions and local

authorities. Although the obligation to publication of patrimonial data for members of local Bars and the National Bar ceased to be, ANAC still requires this fulfilment, which is, moreover, completely disproportionate given that, as said, the professional bodies do not burden the State budget.

Furthermore, the Ministry of the Economy (MEF – *Ministero dell'Economia e delle Finanze*) considers and claims that the Bar Associations are subject to the rules on the control and disclosure of public shareholdings, provided for in Article 20 of Legislative Decree No. 175 of 19 August 2016 - Consolidated Law on Public Shareholding Companies (known as *TUSP – Testo Unico in materia di società e partecipazione pubblica*) - and considers that they are required to disclose information on shareholdings and representatives in governing bodies of companies and entities, pursuant to Article 17 of Decree-Law No. 90/2014. On the other hand, it must be considered that, while referring generically to all public entities, the rules under review apply only to entities that draw their resources directly from chapters of the state budget, those that are internal to the system of extended public finance.

If, in fact, the legislation on the rationalisation of public shareholdings set out in Legislative Decree No. 175 of 2016 aims to "...*efficient management of public shareholdings*..." and to "...*rationalisation and reduction of public expenditure*", it can only fulfil that purpose only to the extent that it applies to public entities and administrations that draw their resources from the State budget. For the same reasons, it is abnormal to apply to Bar Associations the rules on the recognition of personnel costs, as the MEF also claims in its Circular No. 13 of 15 April 2016, precisely because they are bodies that do not burden the State budget. In the same state perspective, moreover, the ANAC considers Bars to be subject to the rules on public procurement. In this case too, the professional body thus remains a prisoner of a series of constraints and obligations that are completely disproportionate to its organisational and financial endowment.

In the last year, Article 6 of Decree-Law No. 80/2021, the so-called *"Recruitment Decree"*, introduced the Integrated Activity and Organisation Plan (PIAO – *Piano Integrato di Attività e Organizzazione*), a single planning and governance document that replaces a series of Plans that administrations were previously required to prepare. These include the performance, agile work (POLA) and anti-corruption plans. The Public Function Department's Decree No. 132 of 30 June 2022 defined the contents and standard outline of the PIAO, as well as the simplified procedures for entities with fewer than 50 employees. The measure came into force on 22 September. The PIAO is operational as of 1 July 2022. Also in this case, the regulation identifies the range of entities subject to the adoption of the PIAO with a reference to Article 1, paragraph 2, of the Consolidated Public Employment Act, thus giving rise to the application doubts that frequently occur with regard to the inclusion or non-inclusion of Bar Associations among the entities referred to in the aforementioned regulation.

In this regard, it is worth mentioning that a note has been published on the website of the Local Bar Association of Novara, definitively clarifying that Bar Associations are not required to draw up the PIAO "*where there is no regulatory qualification that allows them to be included in the list referred to in Article 1, paragraph 2, legislative decree no. 165/2001*". In similar terms, the ANAC itself had recently expressed itself in the national anti-corruption plan 2022/2024, approved but not yet published, which reads on p. 24 that Bars are not required to draw up a PIAO "*in the absence of a legislative qualification allowing them to be included in the list under Article 1(2) of Legislative Decree No 165/2001*". In the same direction goes the recent judgment of the Lazio Regional Administrative Court of 2 November 2022, no. 14283, in which the Administrative Judge annulled the circular with which, in 2019, the State General Accounting Office started to require Bars to report personnel costs. The ruling presents very significant passages, reaffirming the non-relevance of Bar Associations to the public finance system,

and the need for it to be the law and not the Administration, with acts that - says the Regional Administrative Court - violate the principle of legality, to impose any obligations on Bars.

Statist perspectives and European law

What is striking is that this statist orientation contrasts precisely with European law. With regards to the case of procurement, the Court of Justice, in its judgment of 12 September 2013, ruled that Bar Associations do not constitute a public body within the meaning of Directive 2004/18/EC on public procurement. According to the Court of Justice, "*a body such as a professional body governed by public law satisfies neither the criterion relating to majority financing by the public authority nor the criterion relating to management control by the public authority*" (Court of Justice, Sect. V, 12 September 2013 in Case C-526/11). Since it is not a body governed by public law and does not fall within the subjective field of application of the European Procurement Directive, the European Court of Justice does not consider contracts concluded by the Bars to be public.

The technical-legal basis on which the statist perspective described rests on the frequent reference - made by the regulations intended for the public sector - to Article 1, paragraph 2, of Legislative Decree No. 165 of 30 March 2001. The aforementioned provision, as is well known, identifies the entities that are to be regarded as public administrations for the purposes of the application of the provisions governing, precisely, relations in public employment. It is, therefore, a functional definition: the legal system does not contain a general rule providing a definition useful in every case for identifying the notion of public administration, but, more limitedly, in the context of the discipline of public employment, it indicates which subjective figures are to be understood as public administrations for the purposes of the application of that particular regulatory complex. Contemplating also public bodies, Art. 1, paragraph 2, cited above, is used to support the application to Bar Associations of onerous regulations such as those described above.

On closer examination, the thesis is fundamentally fallacious, because it was the legislature itself, with Art. 2, paragraph 2-bis Decree Law No 101/2013, that provided for a special provision precisely for professional representative associations, stating that, for them, the regulation on public employment applies only in the principles and as a result of autonomous adjustment regulations. If, therefore, the public administrations referred to in Article 1, paragraph 2 of Legislative Decree No. 165 of 2001 also included the professional associations, there would be no need to provide for an obligation on their part to adapt to the principles of the relevant regulations. On the contrary, the 2013 legislature recognised that, because of their peculiar nature as associative bodies, endowed with financial and patrimonial autonomy, the rules on public employment are likely to apply to Bars only in a mediate manner, through the Bars' own regulations, which are bound exclusively to adapt to the principles of the legislative degree.

Conclusions

The *Consiglio Nazionale Forense* (Italian National Bar Council) cannot but stigmatise the approaches that therefore claim to ignore the special nature of the Bar Associations, and calls for greater balance as well as a more careful awareness on the part of the Italian state institutions that unduly assimilate the Bar Associations to the public administrations *tout court*: more precisely, an awareness of the constitutional tone of the issue, since the Bar Associations, as exponential bodies of the lawyer community, are social formations within the meaning of Article 2 of the Italian Constitution, and their autonomy is the safeguard and condition of the autonomy of the Italian lawyers.

Cases/examples undermining the independence of the Bar and independence of lawyers

Advocates continue struggling with rejections to issue information by the Latvian state authorities:

On 22 March 2022, the Administrative district court as a first-instance court in case No. A420208821 confirmed the right of the Advocate to receive information from the State Revenue Service regarding a specific taxpayer to ensure the defence of a client in criminal proceedings and cancelled the decision of the State Revenue Service. The decision is final.

Details of the case: The State Revenue Service refused to issue information to the Advocate contrary to Article 48(1)(2) of the Advocacy Law of the Republic of Latvia and Article 86 (1)(1) of the Criminal Procedure Law that provides rights to Advocates to request information for the purpose of gathering the evidence necessary to ensure defence of a client in criminal proceedings.

The court, referring to the Supreme Court's practice of the previous years (Decision in case No. A42030814 of 26 March 2015), indicated that even if authority may not ascertain from the limited information provided by the Advocate (in this case due to the established restrictions in the criminal proceedings) whether and precisely in what way the information requested by the Advocate could be used in the criminal proceedings, this circumstance itself does not limit the Advocate's right to request information. Even if, at that current moment, it is not possible to be sure that the information will really be used in the criminal proceedings, this circumstance cannot be the basis for refusing to provide the requested information. By denying the Advocate the access to the information he requested because of this circumstance, the defender's right to implement the chosen defence position is denied. Link to the decision in Latvian language

On 2 December 2022, the Administrative district court as a first-instance court in case No. A420285121 satisfied the application of the Advocate and determined the obligation of the Latvian Prison Administration to issue criminal case materials. The decision is final.

Details of the case: The Advocate has requested the Latvian Prison Administration to issue copies of the materials of the terminated criminal process. The Latvian Prison Administration denied the request because the Advocate has no legal status in that criminal process.

Refusal of the information is grounded on the second part of Article 375 of the Criminal Procedure Law, stating: "after the completion of the criminal process and the entry into force of the final ruling in the criminal case employees of the courts, prosecutor's office, investigation and criminal punishment enforcement institutions, persons whose rights were violated may consult the materials in the specific criminal process, as well as persons who carry out scientific activities."

The court, in its ruling, refers to the practice of the Supreme Court (decision in case No. SKA-705/2008 (A42555306) of 6 November 2008), according to which the specific norm the Criminal Procedure Law is aimed at achieving the goal of the criminal procedure. However, refusal to provide materials in criminal proceedings cannot be the aim in itself; therefore, if, in the opinion of the person in charge of the proceedings, it does not affect the successful progress of the proceedings, then there is no reason for not issuing the materials. Even if the case of completed criminal proceedings, the refusal to get acquainted with criminal case materials cannot be the aim itself but must be aimed at protecting specific interests. Therefore, the right to get acquainted with criminal case materials cannot be viewed unreasonably narrowly, formally focusing only on the person's criminal procedural status and not

assessing for the sake of protection of which interests it is justifiable to prohibit a person from familiarizing himself with the materials of the criminal case.

Given the information provided by the Advocate regarding the aim of use of the requested case materials and that the Advocate used to provide legal services to the defendant (who is now deceased) in the criminal case which materials the Advocate requested, the court decided that the Advocate is entitled to receive the case materials. Link to the decision in Latvian language

Trends and significant developments taking place in the justice system of Latvia

Challenges for the Latvian justice system arise from the fact that the remuneration for Advocates in their role as state's ensured legal aid providers in criminal proceedings is far too low in proportion to the effort required.

Implementation of Recommendations

The new electronic communication e-Case portal has become operational and is developing. However, paper format and hybrid cases are still common practices. Upon the Riga District Court's initiative, it was agreed between the Riga District Court, the General Prosecutor's Office, the Council of Sworn Advocates of Latvia and the Court Administration to use as much as possible the e-criminal case form at the trial stage in specific categories of criminal cases as of 2023.

Even though Latvian courts' statistics show that the courts are working with high efficiency, the term of the court proceedings is still relatively long. As a part of improvements to the efficiency of the Latvian justice system, several courts of the city of Riga, namely the Pardaugava court of the city of Riga, the court of the Latgale suburb of the city of Riga and the Vidzeme suburb of the city of Riga, were combined forming one Riga City Court as of 1 August 2022. The reform aimed to increase the efficiency of the courts by using the resources at the disposal of the courts as rationally as possible, as well as to equalise the number of received and examined cases per judge.

The establishment of a unified justice training centre is crucial for the effective operation of courts and law enforcement institutions, including quality of the decisions.

The statements of certain politicians regarding the Supreme Court judge candidate before the vote on the appointment of Supreme Court judge on 17 February 2022 indeed give grounds for concerns about the independence of the courts and the judges, especially considering the fact that after these statements the vote has rejected to approve the candidate for the position of the Supreme Court judge.

The new Prevention and Combating Action plan 2021-2024 is still pending adoption. The latest developments in anti-corruption politics are related to the adoption of amendments initiated by the Corruption Prevention and Combating Bureau (KNAB) to the law "On prevention of conflict of interest in the activities of public officials". The amendments, which were adopted on 20 October 2022 and will come into force as of 1 April 2023, provide for additional restrictions on income for state officials (members of municipal councils), namely, prohibition, with certain exceptions, to receive remuneration in an association, foundation, religious organisation or commercial company from financial resources that the organization has received from the relevant municipality.

The Law on Disclosure of Interest Representation or "lobbying law" was adopted on 13 October 2022 and came into force as of 1 January 2023. However, the lobbying law, in its essence, is just a framework for the future development of the regulation for the matter. Lots of work is left for the Cabinet of Ministers to develop rules that will provide for how the representation of interests will actually work

and will be ensured. According to the lobbying law, the register of interest representation and the declaration system will start work only from 1 September 2025. Such a long term for implementing the lobbying law is debatable. The efficiency of the solution provided by the lobbying law that the duty to declare is imposed on the representative of the public authority and not on persons who represent interests is also worth a discussion.

From 24 November to 12 December 2022, the State Chancellery has held a citizens' survey "Participation in Latvia", within the framework of which citizens were invited to express their thoughts on the possibilities of participation and motivation to participate. The purpose of the survey was to gain a better understanding of how to promote citizens' involvement in decision-making and increase citizens' trust in the state administration. The survey may be found here (in Latvian language).

Positive developments

Court hearings in civil cases are more often held in video mode, which makes the proceedings faster and more efficient.

LITHUANIA

Independence of the Bar and of lawyers

According to the Law on the Bar, disciplinary action against advocates can be instituted by the Bar Council.

But the Law on the Bar establishes that the Minister of Justice also has such a right. In 2019, the Minister of Justice used such a right and, at the request of public prosecutors, instituted disciplinary action against an advocate regarding its position in court proceedings.

In 2022 the Minister of Justice instituted disciplinary actions against two advocates, one of them being the former President of the Bar. To be noted: both actions were instituted not because of the professional activity as a lawyer but for the expression of their personal opinion on social media (Facebook).

Secondly, only during the last months, it was realised that all the meetings of detained persons with the lawyer in the police detention facilities were subject to video surveillance. The Police assured that no voice recordings were carried out, however, this raises a huge concern for the Bar.

The process for preparing and enacting laws

The Lithuanian Bar has submitted a complaint regarding the transposition of the Law Enforcement Directive (2016/680). The complaint (CHAP(2019)020116) remains unaddressed. At the same time in Parliament, the discussions on the Draft Law on Criminal Intelligence were carried out. The major concerns of the Bar remained largely unaddressed and therefore the person as a data subject will always remain uninformed about the secret surveillance carried out against him/her, unless the law enforcement authority decided that there was a violation of his/her rights. However, secret surveillance per se will never be regarded as a violation of fundamental rights if it was sanctioned by the court. Accordingly, no criminal proceeding will be initiated against a person after a certain period of secret surveillance, but he/she will have no access to the personal data collected during such surveillance. Therefore, there will be no possibility to defend the rights of the data subject, or any other infringement of the fundamental rights unless the law enforcement authority will admit the violation.

Implementation of Recommendations

In the RoL-2022 report, the very first recommendation for Lithuania was on legal aid: “Continue the reform of the legal aid system, including by ensuring adequate conditions for the participation of legal aid providers, taking into account European standards on legal aid”.

It should be noted that nothing has been done in this field. There were no reforms initiated and therefore the system remains as faulty as it was before. However, due to the enormous inflation, the fees for legal aid (remuneration for the lawyers) *de facto* became even lower than the previous year.

LUXEMBOURG

Since the contribution of the Luxembourg Bar Association to the consultation of the Commission on the Rule of Law of 21 January 2022, some significant developments have been noted.

With regard to the freedom to practise and the independence of lawyers, the Luxembourg Bar Association remains concerned about the consequences of the effects of the 6th AML Directive (Article 38) and the AMLA Regulation (Articles 31 and 32) in its provisions as currently drafted. The Luxembourg Bar Association remains of the opinion that the supervision of all self-regulatory bodies by a public authority undermines the independence of the Bar and violates the fundamental principles of the rule of law.

Furthermore, although lawyers' professional secrecy is recognised by Luxembourg law and case law as a rule of public order, the Bar is concerned about a recent trend to question the scope of such professional secrecy. Actually, the public authorities tend to differentiate between the different activities of lawyers, considering that the advisory activities of lawyers (as opposed to the judicial activity of representation before courts) are not covered by professional secrecy, although the legal provisions do not make any such distinction.

It seems paramount to the Luxembourg Bar Association to insist on the importance of professional secrecy for citizens, which has been recognised as playing a fundamental role in a democratic society by the CJEU (See in particular the recent judgment of the CJEU of 8 December 2022 (Case C-694/20)), and the Bar has invited the Luxembourg authorities to consider, if necessary, a legislative clarification on this matter.

With regard to the reform aimed at making legal assistance more accessible, draft law no. 7959 on the organisation of legal assistance and repealing Article 37-1 of the amended Law of 10 August 1991 on the profession of lawyer was submitted to the Chamber of Deputies by the Ministry of Justice on 27 January 2022. The draft text is still under discussion within the Chamber of Deputies.

With regard to the independence of the judiciary, the Chamber of Deputies voted on 21 December 2022 on the draft Law on the organisation of the National Council of Justice and the amendment of the Law of 25 March 2015 establishing the salary system and the terms and conditions of state officials. A lawyer shall also serve on the National Council of Justice.

Draft law no. 8056 amending the amended Law of 10 August 1991 on the profession of lawyer was also submitted to the Chamber of Deputies on 28 July 2022. This bill aims, among other things, to clarify the powers of the President of the Bar, to reorganise the Bar disciplinary bodies and improve their efficiency, to ensure better protection of lawyers' rights by introducing a register of disciplinary punishments and a right to be forgotten.

Apart from the Paperless Justice project launched in 2014 and the progress made in the pilot project for administrative courts, there are still significant delays in the digital transition of justice as a whole. The first conceptual phase of the JANGA sub-project was only finalised in February 2022. This is the most advanced part of the Paperless Justice project, which comprises 13 sub-projects. JANGA, the first sub-project, concerns the digitisation of all exchanges and archives of administrative courts. In addition, temporary legislative amendments have been made to adapt procedures in criminal, civil and commercial cases during the COVID-19 pandemic period. Some of these amendments to allow the use of electronic tools have remained in place even after the pandemic. In fact, these amendments are intended to be consolidated in new legislation or even integrated into the Paperless Justice project. However, the amendments allow only limited use of the electronic tools in question. There have also

been further delays in the area of digital tools for initiating and monitoring proceedings. Currently, in criminal, civil and commercial proceedings, it is only possible for courts to communicate documents electronically to citizens and businesses and to send electronic acknowledgements of receipt proving the transmission of documents. However, it is still not possible to receive full information or pay court fees online; only some judgments are communicated electronically to lawyers. There is a lack of sufficient dematerialisation of the judicial system. Despite the progress made, the range of online tools and digital solutions available is still very limited. As regards the Paperless Justice project, it will only allow authenticated lawyers to access a platform (mailbox) without any other functionalities for the time being. The first filings by a panel of voluntary lawyers will only be made in the first half of 2023.

General remarks

According to the Rule of Law Index of the World Justice Project, the Netherlands has been in the top five countries with a well-functioning rule of law for years[15]. There are no major bottlenecks in the rule of law in the Netherlands.

Resilience/protection of lawyers

In the context of the proper administration of justice, lawyers must be able to do their work in a safe environment. In recent years, there have been several situations in which the safety of lawyers has been seriously compromised. Together with the Ministry of Justice and Security and the National Coordinator for Counterterrorism and Security (NCTV), the Netherlands Bar is enhancing the security and resilience of the legal profession. The Netherlands Bar has developed an approach that focuses on increasing resilience and awareness of potential risks. The Netherlands Bar founded the 'protection against criminal subversion task force' at the end of 2021. With this task force, the Netherlands Bar aims to strengthen the rule of law. Also, the Netherlands Bar wants to increase the awareness of the possible vulnerability of lawyers, just as their resilience and safety.

The following initiatives are part of the task force:

- the emergency telephone of the Netherlands Bar,
- a free safety scan through which lawyers can have their own law firm or private house checked for vulnerabilities: a specialised and certified company investigates physical vulnerabilities such as locks, windows, access control and cameras in the building. If needed, the lawyer will be advised about the security measures to take.
- trainings to increase resilience: in 2022 the Netherlands Bar offered 500 spots free of charge. Besides, a special training on resilience was organised for lawyers who work with detainees. At the beginning of 2023, the Netherlands Bar will start to offer the training to increase resilience to starting lawyers and trainee lawyers so that they could learn how to deal with threats and which preventive measures could be taken.
- digital resilience to increase the awareness of the risks of internet communication: the Netherlands Bar listed tips for confidential internet communication.
- team LawCare: lawyers who wish to talk to an experienced peer could call the LawCare telephone helpline.
- blocking the home address in the trade register: from 1 January 2023, the Chamber of Commerce in the Netherlands blocks the home address in the trade register of owners from sole proprietors[16], partners of general partnerships[17], limited partnerships[18] and professional partnerships[19]. The blocked home addresses are only visible for government organisations like

[15] WJP Rule of Law Index | Global Insights (worldjusticeproject.org)
[16] '*Eenmanszaak*' in Dutch
[17] '*Vennoten van VOF's*' in Dutch
[18] '*Vennoten van CV's*' in Dutch
[19] '*Maten van maatschappen*' in Dutch

the Tax and Customs Administration or for authorised professional groups such as lawyers and bailiffs. As of 15 December 2022, blocking is also possible without demonstrable threat towards the lawyer. The Netherlands Bar and the Chamber of Commerce in the Netherlands have concluded a covenant that provides for blocking based on the mere demonstrability of being a lawyer.

- findability of information in public registers: the Netherlands Bar intends to make a tool available in spring 2023 to lawyers to check in which public registers their (private) address details appear and to request the relevant register(s) to protect the lawyer's data.

The Netherlands Bar also intends to create a confidant for lawyers. This person, who is probably a lawyer as well, could be consulted in absolute confidentiality and separate from the supervisor. With this confidant, lawyers could exchange views on threats and matters that deal with (attempts to) criminal subversion. Besides, the Netherlands Bar is developing towards a Resilience knowledge and training centre together with other professional organisations. Furthermore, the University of Leiden conducts two researches commissioned by the Netherlands Bar. Both researches are approached from the perspective of the possible risk for the lawyer and his/her environment. The first research concerns the use of PGP telephones and other identity obscuring communication tools (f.i. Telegram), the second concerns the risks that are accompanied by the expansion of the regulation on collaborators of justice[20]. The Erasmus University Rotterdam will soon start a research with regard to the payments to lawyers including cash payments and the use of cryptocurrency.

Legal aid

Thanks to a passed motion in the House of Representatives of the Netherlands in 2021, it was decided that remunerations for the funded legal aid system will be increased in 2022. This change is in line with an independent research conducted in 2017 titled *'Evaluatie puntentoekenning in het stelsel van gesubsidieerde rechtsbijstand'*[21]. Furthermore, a new government and a new Minister for Legal Protection took office in 2022. In the coalition agreement it is indicated that the government wants to strengthen the funded legal aid system by implementing the recommendations from aforementioned research. This did not only imply higher remunerations, but also that the remunerations need to be up-to-date. The criticised reform of the system has been repealed.

Instead, improvements of the current system will be worked on through strengthening cooperation between the different legal advisers and preventing unnecessary litigation by the government, a vision that is advocated by the Netherlands Bar since 2018. The Netherlands Bar will contribute to these improvements in the coming period.

Although the remunerations have been adapted since July 2022, legal aid lawyers, like many other people, face high inflation since then. Higher office expenses, training costs and personnel costs ensure that the increase in the remunerations is largely negated. At the moment of writing, the Minister for Legal Protection is not planning to increase the fees in line with the inflation until 2024. However, the travel allowance will be increased. Therefore, the Netherlands Bar will continue to argue for a higher indexation of the remunerations.

[20] '*Kroongetuigenregeling*' in Dutch
[21] Eindrapport Evaluatie puntentoekenning in het stelsel van gesubsidieerde rechtsbijstand | Andere Tijden (eerstekamer.nl)

At the same time a labour market research titled '*De arbeidsmarkt voor de sociale advocatuur*'[22] shows that there are serious concerns about the future supply of legal aid lawyers. The biggest problems consist of the low fees and the relative unfamiliarity with the legal profession among students. With the recommendations from that research, the Netherlands Bar will improve this supply to be able to safeguard access to justice in cooperation with the Ministry of Justice and Security.

Confidentiality

The confidentiality of the contact between the lawyer and the client has been under pressure for several years and in many ways. In the framework of tackling subversive (organised) crime, the Dutch government announced measures in 2022 of which some seriously hinder legal aid in this type of cases. A legislative proposal has been proposed that intends to enable visual supervision during the visit of a lawyer to high-security prisons. The Netherlands Bar opposes this and points out the importance of free and confidential lawyer-client communication.

With regard to respect for legal professional privilege, a judgment in interlocutory proceedings found that in a situation in which large amounts of emails are ordered from service providers, a real danger exists that the right of non-disclosure could be breached by the State in criminal investigations. The Netherlands Bar will be involved in the development of a new manual on how to deal with the disclosure of sensitive information.

Digitisation of justice

After the failure of the 'program quality and innovation'[23] of the Judiciary (2014-2018), the Council for the Judiciary has gradually been working on the modernisation of and digital access to legal procedures from 2018. The Council for the Judiciary is now focusing on digital access instead of the automation of legal procedures.

To minimise the risks, the next step will be taken when the technology has proven itself in practice. The aim for litigants and defending counsels is to enable, as far as possible, paperless litigation in administrative and civil proceedings. The Netherlands Bar is being closely involved. Although other chain partners (f.i. the Netherlands Public Prosecution Service) are involved in the digitisation of criminal law, the Netherlands Bar is also closely involved here. Lawyers do already receive digital files in almost all criminal cases in first instance, but also more frequently in appeal cases. Lawyers regularly test new parts of the digital service and share their thoughts in working groups on certain issues. The introduction of digital case flows for civil and administrative law always starts first at one or a few courts. Digital litigation will be enabled in all courts when all involved parties think that the systems work adequately. Lawyers could now litigate digitally via a web portal in different case flows. The role of the Netherlands Bar is mainly supervisory and to make sure that lawyers get involved in the development of the digital service.

For the legal profession it is important that the system, that is used to exchange documents digitally with the Council for the Judiciary, is uniform and user-friendly. Other judicial bodies like the Council of State and the Supreme Court in the Netherlands develop their own digital systems for lawyers to exchange documents digitally via a web portal. This is also done gradually and the Netherlands Bar is closely involved.

[22] Arbeidsmarktonderzoek sociale advocatuur: tekort sociaal advocaten problematisch | Nederlandse orde van advocaten (advocatenorde.nl)

[23] KEI, '*programma kwaliteit en innovatie van de Rechtspraak*' in Dutch

Development of digitisation in civil law:

• Lawyers could voluntarily submit a petition for seizure digitally to all courts via the web portal '*Mijn Rechtspraak*'.

• In all courts it is possible for lawyers to see the digital file on the case via '*Mijn Rechtspraak*' and to communicate digitally.

• Since 1 February 2022 it is no longer possible to use the fax to communicate with the Council for the Judiciary. Now safe mailing is used. In this way information could be safely shared via e-mail and encrypted when confidential.

• Since 11 April 2022 lawyers could petition the courts in *Midden-Nederland* (location Utrecht) and *Overijssel* (location Almelo) for divorce digitally and jointly.

Administrative law:

• Lawyers are bound to litigate digitally in asylum and custody cases since 2017.

• Lawyers could opt between digital litigation and litigation on paper in regular immigration.

• Since 28 March 2022 digital litigation is possible at the Arnhem-Leeuwarden court in appeal cases where the Tax and Customs Administration is the other party. Citizens as well as professionals and organisations could carry out appeal procedures fully digital.

Independence of the Bar and independence of lawyers

Constitutional action against obligatory affiliation of advocates and attorneys at law to bars (case K 6/22 before the Constitutional Court)

The Polish Bar Council and the National Bar of Attorneys at Law would like to bring again to the attention the case K 6/22 pending before the Constitutional Court[24]. The case was initiated in 2022 by the motion of the group of deputies forming the current parliamentary majority. The deputies urge the Constitutional Court to declare as unconstitutional statutory obligation of affiliation of advocates and attorneys at law to bars on the basis of the criteria of their professional residence or legal address. The case is of vital importance for the effective functioning of the bars and advocates' and attorneys'-at-law ability to protect rights of the clients. Therefore, the potential Constitutional Court's judgment may adversely affect not only the bars but also effective protection of the rights of individuals.

In practice the bars might be deprived of their independence, and therefore their ability to effectively execute their functions. Bars, as a result of the constitutional judgment, may cease to exist and there will be no structures to enforce ethical principles nor conduct disciplinary proceedings, due to a possible state of lack of legal certainty as regards implementation of such a constitutional decisions.

In 2022 the Commissioner for Human Rights joined the constitutional proceedings, underlining no legal grounds for deciding case K 6/22. However, on 23 December 2022, the Prosecutor General – Minister of Justice presented its opinion before the Constitutional Court. The Prosecutor General supported the deputies' motion to declare the laws regulating advocates' and attorneys'-at-law professions unconstitutional.

On March 10, 2022, the Constitutional Tribunal[25] issued a judgment in the case K 7/21 ruling in essence that article 6, section 1, sentence 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms is non-compliant with the Polish Constitution – inter alia in the scope in which it enables the European Court of Human Rights or country courts to assess and challenge the status of judges appointed at the request of the National Council of the Judiciary. The Constitutional Court (CC) assessed in practice individual ECHR judgments issued in cases against Poland, which goes beyond the constitutional competence of the CC.

[24] https://trybunal.gov.pl/sprawy-w-trybunale/art/przynaleznosc-do-izby-adwokackiej-lub-izby-radcow-prawnych-na-podstawie-kryterium-miejsca-polozenia-siedziby-zawodowej-lub-miejsca-zamieszkania

[25] The composition of which is legally questioned because the procedure for the appointment of judges to the Constitutional Tribunal was breached and the judges are politically dependent on the ruling party.

Secret surveillance

In May 2022 it was underlined that the Polish Bar Council and the National Bar of Attorneys at Law are worried and are specifically monitoring any information and cases related to the abuse of state surveillance systems and software against advocates or attorneys.

Since then the legislation nor the application of that law did not change. Therefore the Human Rights Commission of the National Bar of Attorneys at Law organised, with the cooperation of the Human Rights Commission the Polish Bar Council and Panoptykon Foundation, a national conference on the human rights standards applicable to secret surveillance. Many attorneys-at-law and advocates took part in that hybrid conference, which was also attended by legal experts from academia and a deputy Commissioner for Human Rights. As a result of that conference, the Commissioner for Human Rights addressed in January 2023 the Ministry of Administration and Home Affairs with recommendations regarding necessary changes to be introduced into the Polish legal system in order to guarantee its compatibility with European and constitutional standards, including legal provision which by far undermine and do not guarantee respect of the confidentiality of lawyer-client communications[26].

One shall also notice that apart from the illegal IT system Pegasus, (which purchase was formally challenged by the Polish Supreme Chamber of Control as illegal[27], due to the fact that the software had been purchased with funds of the Justice Fund managed by the Minister of Justice[28]. The fund was established to support crime victims, not to support secret services with the purchase of surveillance software to spy on political opponents. Once the information was revealed, the Pegasus supplier in Israel refused to support Polish authorities with necessary actualisations)which was mentioned earlier and analysed lately (January 2023) by the PEGA Committee in the report commissioned by the European Parliament[29], used by the Central Anti-corruption Bureau (CBA) in Poland new electronic software was bought by Polish public institution. Thus, just in the beginning of January 2023, the media revealed that the police have bought a new type of surveillance technology called Cellebrite[30], which application must be analysed in terms of legal founding. Although the need of police organs to apply effective tools to prevent and combat crime is necessary, at the same time all doubts regarding the illegal interference with the right to privacy and confidentiality of professional lawyer-client communications must be secured.

Test of independence and impartiality of a judge – defective procedure of appointment of judges

On 15 July 2022, the Act of 9 June 2022 amending the Act on the Supreme Court and certain other acts entered into force (the Act of 9 June 2022). In the Polish Government's opinion, the purpose of this law was to liquidate the Disciplinary Chamber of the Supreme Court and to implement the decision of the vice-president Court of Justice of the European Union of 14 July 2021 (case no. C-204/21).

Apart from the regulations concerning liquidation of the Disciplinary Chamber of the Supreme Court, the Act of 9 June 2022 introduced the so-called test of independence and impartiality of a judge (the

[26] https://bip.brpo.gov.pl/pl/content/rpo-premier-pegasus-zasady-inwigilacji-standardy-dostosowanie
[27] https://www.nik.gov.pl/aktualnosci/realizacja-zadan-funduszu-sprawiedliwosci.html
[28] https://tvn24.pl/polska/pegasus-inwigilacja-nik-ujawnia-faktury-pieniadze-dla-cba-z-funduszu-sprawiedliwosci-na-zakup-srodkow-techniki-specjalnej-5559012
[29] https://www.europarl.europa.eu/RegData/etudes/STUD/2022/740514/IPOL_STU(2022)740514_EN.pdf
[30] https://tvn24.pl/polska/policja-znowu-kupuje-cellebrite-czym-jest-ta-izraelska-technologia-szpiegowska-6624777 or https://www.wprost.pl/polityka/11043793/mozliwy-pegasus-20-po-wejdzie-z-kontrola-poselska-do-komendy-glownej-policji.html

Test). According to the explanatory memorandum to the presidential bill, which was the basis for the adopted solution, it was indicated that this is a "*new procedural institution enabling the examination of a judge's fulfilment of the requirements of independence and impartiality, taking into account circumstances surrounding his/her appointment and the judge's conduct after his/her appointment, if doubts are raised in the circumstances of a particular case as to the breach of the standard of independence or impartiality affecting the outcome of the case*", and its purpose was to "*provide participants in court or administrative court proceedings with procedural guarantees that there are no doubts as to the impartiality and independence of the judge adjudicating in the case*".

The real goal behind this new solution was to solve problems resulting from the defective procedure of appointment of judges on the basis of resolutions of the new National Council of Judiciary (NCJ), which – in its current composition – is not an independent body of the legislative and the executive authorities (judgement of 22 July 2021 of the European Court of Human Rights, application no. 43447/19). For the above reason, the judges selected by the new NCJ (and presented for appointment to the President of the Republic of Poland) cannot be considered as meeting the standards of independence and impartiality, as required by Article 6 of the European Convention on Human Rights.

In fact, the Test does not meet any of the above-mentioned objectives. Along with its introduction, it was stipulated that the circumstances surrounding the appointment of a judge may not constitute the sole basis for challenging a judgment issued with the participation of a given judge. As a result, the party of a proceedings requesting for the Test must provide evidence of the circumstances surrounding the appointment of a judge and his/her conduct after the appointment, and furthermore, prove not only that these circumstances may lead to a breach of the standard of independence and impartiality, but also that breach of this standard would affect the outcome of the case, which in turn should be determined "taking into account the circumstances concerning the entitled person and the nature of the case".

Moreover, the new solution is subject to a number of additional procedural requirements, which significantly limit the party's right to verify whether his/her case is to be examined in accordance with the standard of the right to a fair trial. Firstly, the time-limit for applying for the Test is 7 days from the date of notification of the composition of a court examining the case. Secondly, the party must indicate the circumstances justifying the application for the Test together with evidence to support them. Taking into account the fact that required circumstances refer to the nomination procedure to which the party does not have the access, this requirement is almost impossible to fulfil. Thirdly, the party may apply for the Test only in cases indicated in relevant regulations concerning judges of the Supreme Court and judges of common and administrative courts. There are also many exceptions from this possibility. As a result, it is doubtful whether the party may apply for the Test of the judge of Supreme Court examining the application for the Test. Fourthly, if the above requirements are not fulfilled, and the request for the Test was submitted by a professional lawyer representing a party (e.g. the term, the indication of required circumstances and provision of evidences of it), the court recognising the request must inform about such situation the relevant lawyer's self-government body (the Advocacy, the Attorneys-at-law) to which the professional lawyer belongs. This provision can create a chilling effect, because – as mentioned above – the procedural and material requirements of the Test are almost impossible to fulfil.

Finally, it should be noted that, while introducing the Test, the legislator did not repeal the provisions of article 42a(1) and (2) and of Article 55(4) of the Law relating to the organisation of the common courts, and of Article 26(3) and Article 29(2) and (3) of the Law on the Supreme Court, as they prohibit national courts from verifying compliance with the requirements of the European Union relating to an independent and impartial tribunal previously established by law, as well as points 2 and 3 of Article

107(1) of the Law relating to the organisation of the common courts, and of points 1 to 3 of Article 72(1) of the Law on the Supreme Court, which allow the disciplinary liability of judges to be incurred for having examined compliance with the requirements of independence and impartiality of a tribunal previously established by law. Maintaining these provisions in force means that judges, when examining application for the Test, expose themselves to charges of their violation and their disciplinary liability.

It is also worth mentioning that the current practice also shows that applications for the Test are not examined on their merits and are rejected due to non-compliance with the procedural and material requirements, or in the case of the Supreme Court, cannot be examined due to the exclusion of subsequent judges from examining them.

Summarizing, it must be clearly stated that the test of independence and impartiality as introduced by the Act of 9 June 2022, does not solve any problems occurring in the Polish justice system resulting from the defective procedure of appointment of judges on the basis of resolutions of the new NCJ.

Sources of information:

- The announcement of the Supreme Court concerning the test of independence and impartiality:
- http://www.sn.pl/aktualnosci/SitePages/Wydarzenia.aspx?ItemSID=848-0dc69815-3ade-42fa-bbb8-549c3c6969c5&ListName=Wydarzenia
- The explanatory memorandum to the presidential bill: https://www.sejm.gov.pl/sejm9.nsf/druk.xsp?nr=2011
- Judgement of 22 June 2021 in the case Reczkowicz v. Poland: https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-211127%22]}
- Article: Phd Konrad Lipiński: Statutory test of independence and impartiality of a judge in criminal cases https://palestra.pl/pl/czasopismo/wydanie/10-2022/artykul/ustawowy-test-niezawislosci-i-bezstronnosci-sedziego-w-sprawach-karnych
- Judge Michał Laskowski during the debate: Defective formation of the courts – reform or cancellation of judicial appointments https://www.youtube.com/watch?v=zWRxwZJGODE&t=11097s

Dispute concerning the length of the term of office of the President of the Constitutional Tribunal

In December 2022 a new dispute arose regarding the length of the term of office of Julia Przyłębska, the current President of the Constitutional Tribunal. The Act on the Organization and Proceedings before the Constitutional Tribunal, adopted at the end of November 2016, provides - unlike previous regulations in force - that the term of office of the President of the Constitutional Tribunal lasts six

years. Previously applicable laws did not specify the length of the term of office of the President of the Constitutional Court. In practice, the person appointed as the President of the Constitutional Tribunal exercised this function until the end of that person's term of office as the judge of the Constitutional Tribunal.

The Act on the Organisation and Proceedings before the Constitutional Tribunal entered into force on 20 December 2016. Julia Przyłębska was appointed as the President of the Constitutional Tribunal on 21 December 2016. However, new regulations concerning the length of the term of office of the President of the Constitutional Tribunal entered into force on 3 January 2017, i.e. after Julia Przyłębska was elected as President of the Constitutional Tribunal.

Fundacja Batorego[31] ("Batory Foundation") – a Polish NGO – issued an analysis finding that the applicability of the previous regulations, which already had been repealed, cannot be presumed after the entry into force of new regulations. Thus, according to the Batory Foundation's lawyers, since the entry into force of the provisions specifying the length of the term of office of the President of the Constitutional Tribunal, these provisions also applied to Judge Przyłębska, who was appointed as the President of the Tribunal two weeks earlier. This findings were shared also by other lawyers, including the former Vice-President of the Constitutional Tribunal, prof. Stanisław Biernat.

The Office of the Constitutional Tribunal issued a statement indicating that regulations in force at the time when the current President of the Constitutional Tribunal was elected, did not specify the term of office of this office, and therefore - as in the case of all previous presidents - the term of office of the current President of the Constitutional Tribunal would end when the mandate of the judge of the Constitutional Tribunal expired.

At the end of December 2022 media reported that six judges of the Constitutional Court, including its Vice-President Mariusz Muszyński (noteworthy elected and nominated as judge of the Constitutional Tribunal at the judicial post that had already been filled by another judge – cf. judgement of the European Court of Human Rights *in Xero Flor sp. z o.o. against Poland*, application no. 4907/18), issued a statement pointing that, in their opinion, the term of office of Julia Przyłębska as the President of the Constitutional Tribunal had ended on 20 December 2022. They demanded that Julia Przyłębska convened the General Assembly of the Judges of the Constitutional Tribunal in order to select candidates from among whom President Andrzej Duda would nominate the new President of the Constitutional Tribunal.

This dispute is important from the perspective of rule of law as the President of the Constitutional Court directs the work of the Constitutional Tribunal, including appointment of judges into the adjudicating panels and undertakes organisational actions at the initial stage of disciplinary proceedings against actual and former judges of the Constitutional Court.

Sources:

- https://serwisy.gazetaprawna.pl/orzeczenia/artykuly/8614470,przylebska-koniec-kadencji-2022-2024.html
- https://www.prawo.pl/prawnicy-sady/kadencja-prezes-przylebskiej-wygasa-20-grudnia,518691.html

[31] https://www.batory.org.pl/en/

- https://www.batory.org.pl/oswiadczenie/stanowisko-zespolu-ekspertow-prawnych-fundacji-im-stefana-batorego-w-zwiazku-z-uplywem-w-dniu-20-grudnia-2022-r-kadencji-prezesa-trybunalu-konstytucyjnego/

- https://oko.press/julia-przylebska-nie-ustepuje

- https://oko.press/przylebska-trybunal-konstytucyjny-kadencja

Erosion of the principles of the democratic state of law through legislative amendments to the Polish Criminal Code (current issues)

On 7 July 2022 Polish parliament passed a significant set of amendments to the Criminal Code, which, after being signed by the President of the Republic of Poland (which took place in December 2022), will enter into force, in their majority, in 2023. It should be noted that although amendments to important laws concerning human rights and freedoms (and criminal codes are examples of such laws) are something natural in democratic states (governed by the rule of law), the nature of the latest amendments in Polish Criminal Code in fact 'moves back' Polish criminal law in its certain spheres to the times before the democratic changes in the state started, making it an instrument - due to its highly repressive nature and restriction of judicial discretion - rather reminiscent of laws characteristic for authoritarian states. From the perspective of the principle of the rule of law, those amendments that deeply interfere with the judicial discretion and constitutional civil rights and freedoms (personal freedom and property), are worrying.

Examples of worrying amendments of provisions include those under which:

- certain civil freedoms may be restrained in various situations (e.g. protest, demonstration with related forms of civic expression) - the new provision - Art. 256a § 1 PCC defines the offence of public promotion of, inter alia, an ideology exhorting somebody to the use of violence in order to influence upon political or social life. Such violence is not defined in any way, so it seems that it may be understood in a purely instrumental manner (e.g. as inciting to paint a certain slogan on a monument or, for example, to bring down a billboard with a poster warning against gender style of life);

- judges decide obligatory (so, they have no power to make a proper decision themselves, using judicial discretion), certain consequences having the nature of a nuisance for the offender - this in fact makes some provisions an 'offender's manual', because judges must apply them (for instance, this is the case of the offender's recidivism in the specific situation which demands from judges the application of certain criminal measures – see: new Art. 64a PCC);

- life imprisonment may become absolute when the court will decide it (i.e. life imprisonment would be a sentence without the possibility of early conditional release for the perpetrator). In addition, the catalogue of crimes punishable by such a penalty has been expanded (see: new Art. 77 § 3 and § 4 PCC);

- there is forfeiture of a motor vehicle (or its equivalent) when the perpetrator of the offence drove the vehicle while intoxicated, having 1.5 permille or more of alcohol in the blood or 0.75 milligrammes of alcohol per cubic decimetre in the exhaled air. The exception to such forfeiture is very narrowly defined. Such an offender will be deprived by forfeiture of his/her

motor vehicle (or its equivalent) even if he/she did not cause any accident with victims (see: new Art. 178a § 5 in conjunction with new Art. 44b PCC).

The case of amendments to the Code of Criminal Procedure, relevant to the pending private criminal case of the family of the Minister of Justice and Prosecutor General, Zbigniew Ziobro

Jerzy Ziobro, Zbigniew's father, died in 2006 at the Jagiellonian University Hospital in Krakow, where he was treated for cardiological reasons. A month after his death, the minister's brother, Witold Ziobro, filed a report with the prosecutor's office, pointing to possible irregularities in the method of treatment. In 2008 and 2011, the prosecutor's office discontinued the proceedings. Zbigniew Ziobro's mother, Krystyna Kornicka- Ziobro, filed a private indictment against the doctors with the prosecutor's office.

During the trial in 2015, the political power in Poland shifted and Zbigniew Ziobro became the Minister of Justice, and a year later the Prosecutor General.Soon after the merger of these functions, changes prepared by the Ministry of Justice appeared in the codes. The provision of Article 55 of the Code of Criminal Procedure has been changed in such a way that a prosecutor may join a case initiated by a private indictment at any time and act as a public prosecutor. In result, the prosecutor joined the case on the side of the Ziobro family.

Few days before the verdict was passed in 2017, Zbigniew Ziobro's mother filed a notification of suspicion of a crime committed by Judge Pilarczyk, and three days later the Regional Prosecutor's Office in Katowice launched an investigation into the commission of expert opinions. The justification for the notification of the suspicion of committing a crime were the circumstances related to the ordering of a supplementary forensic medical opinion in this process. The document prepared by several professors cost PLN 372,000.00. Prosecutor Paweł Baca filed a motion to exclude Judge Pilarczyk from the ongoing proceedings. However, the court did not exclude Judge Pilarczyk, and a few days later, on February 10, 2017, she issued a verdict and acquitted the doctors.

The Ziobro family appealed. The trial in the second instance has been pending since April 2018.

In January 2023, Judge Agnieszka Pilarczyk spoke publicly on this subject and indicated that in her opinion the Code of Criminal Procedure was amended to help the private case of the Ziobro family.

On October 20, 2022, the European Court of Human Rights in Strasbourg announced its judgment in the case of Kornicka-Ziobro against Poland. The Strasbourg Court ruled that there had been no violation of Art. 2 of the Convention (right to life), because the prosecutor's office, experts and courts explained the case very thoroughly at every stage of the proceedings. “The mere fact that medical negligence proceedings ended unfavourably to the person concerned does not mean that the respondent State failed to fulfil its positive obligation under Article 2 of the Convention,” the Court stated.

Sources:

https://wiadomosci.wp.pl/prywatny-proces-ziobry-sedzia-ujawnia-wstrzasajace-kulisy6853748687899200a

Upon request all relevant information on changes in the context or Article 55 of the Code of Criminal Procedures, the Act of 11 March 2016 amending the Act – Code of Criminal procedure and some other relevant information could be submitted.

Cases undermining the independence of the Bar and independence of lawyers

Alteration to the Law of Professional Public Associations, latest developments and Debate

In mid-September was made public throughout the media that the President of the Republic will present a constitutionality preventive review before the Constitutional Court regarding the regulated professions and bar association's legislation, recently approved in parliament.

Links for further details from the President Luis Menezes Leitão's statements (in Portuguese):

https://portal.oa.pt/comunicacao/imprensa/2022/9/14/marcelo-prepara-se-para-apertar-maioria-absoluta-com-constitucional/

https://portal.oa.pt/comunicacao/imprensa/2022/9/13/bastonario-pede-a-mobilizacao-dos-advogados-contra-o-novo-diploma-das-ordens-profissionais/

https://portal.oa.pt/comunicacao/imprensa/2022/9/14/lei-das-ordens/

https://eco.sapo.pt/2022/09/14/lei-das-ordens-profissionais-arrisca-ir-para-o-tc-bastonario-da-oa-pede-aos-advogados-que-se-mobilizem-contra-lei/

https://sicnoticias.pt/pais/2022-09-10-Bastonario-dos-Advogados-pede-a-mobilizacao-contra-novo-diploma-das-ordens-profissionais-dd824f5f

Cases/examples on threats to the safety related to professional role/status of the lawyer

The Bar had multiple situations reported by lawyers:

- Involving court decisions such as limitations on use of language commonly used in conflicted positions between lawyers, other court decisions such as rejection of due postponing on account of post-partum (less than 7 days), on account of illness, dismissal of legal aid replacements, rejection to use a personal laptop during hearing (for on line access to pending suit documents), working conditions on court location of Mogadouro.

- Involving consulate services such as Brazil Consulate, that refused priority reception;

- Involving public registers such as Registers and Notary Institute (IRN), namely Almada and Seixal for refusals to book appointments, to accept legalised copies;

- Involving public registers such as Tax Authority (AT) for refusals to give out information on estate, even with professional ID proof (even with prior AT authorisation memos to services allowing that information) and demand legalised power of attorney from non-residents, enabling easy access to illegal representation;

- Involving public registers such as Boarders and Foreign Services (SEF) for refusals to book appointments, to accept legalised copies.

The Bar has a team of in house counsels only defending prerogatives' cases and threats to professionals, pending in court, around five dozens of cases, namely: legal aid court fees' inaccuracies, identity theft, illegal representation, forgery, insults, slander, severe assault, an alleged violation of lockdown during the pandemic and even a lawyer who was "appointed" by state request (no legal aid involved) for a specific case four years ago and is still waiting for just reimbursement of fees.

Trends and significant developments taking place in the justice system

The Bar follows the urgent call to reform the Administrative and Tax Courts and has presented a Proposal coordinated by five imminent scholars and experienced counsellors within this area, has demanded the revocation of the emergency Law 1A/2020 from March 19, last May but parliament only revoked the act in December. Regarding the recommendation of transparency in allocation of cases, OA has offered support to the Government, with no effect so far.

Besides the above mentioned amendment to professional public associations regime, the Bar is following up close a coming amendment to the Portuguese Constitution but also faces positive attitude and best practices in gender violence cases, children safety, concerns with human rights amongst migrants in agro-industry, east Timorese and Ukrainian refugees – all recently lined up interventions by the Bars' Human Rights Committee available here.

ROMANIA

In 2022, there were no cases reported which would undermine the independence of the Bar and independence of lawyers, and there were no major developments in the justice system of Romania influencing the functioning and independence of the Bar and lawyers.

SLOVAKIA

From the perspective of the Bar Association as a professional organisation representing interests of the legal profession and citizen's right to access to a lawyer, the previous year was marked by several developments that raised rule of law concerns:

- First, repeated flagrant breaches of the procedure that governs searches of law offices and conflicts with the duty of confidentiality as stipulated by law and interpreted by Constitutional Court rulings.

- Secondly, the proposal to revise the Criminal Procedure Code with respect to the pre-trial proceedings which significantly limits the defence rights of suspects and the accused.

- Thirdly, the legislative proposal introduced without standard legislative procedure that aimed at legalisation of illicit trading in legal services.

Independence of the legal profession

Practicing the legal profession freely and independently is the most valuable asset legal profession has and it represents an irreplaceable value for the functioning of the rule of law as well as the independence of the judiciary. We are obliged to continue to protect the independence of the legal profession so that we can live in a country where people's rights are effectively protected and where there is respect for the rule of law.

At the conference on the effectiveness and legality of criminal proceedings, jointly organised in June 2022 by the Comenius University Law Faculty and the Slovak Bar Association, the representatives of the Supreme Court, General Prosecutor's Office, Slovak Bar Association and the law faculties published the following call: "*The State - represented primarily by the legislative and executive powers - is obliged to create such a legal framework for activities of law enforcement bodies, courts and defence lawyers that it is possible to conduct criminal proceedings effectively, but never at the expense of reducing the fundamental rights and freedoms guaranteed by the Constitution of the Slovak Republic and international conventions. At the same time, effective protection of rights must also include consistent respect for not only the autonomous status of law enforcement bodies, the independence of courts and judges, but also the independent exercise of the legal profession and the independence of the legal profession.*" [32]

Duty of confidentiality

Confidentiality of communication between lawyer and client is a basic prerequisite for the proper provision of legal services. While there are statutory guarantees for protection of confidentiality during searches of offices, in practice this is often breached by police and prosecutors, and there are also cases of search without a written warrant. In 2022 we have observed this practice to increase in quantity as well as intensity.

SBA was particularly sensitive to increasing misuse of operational technology for uncovering information which is subject to professional confidentiality of lawyers. We also witnessed the illegal

[32] More information available at: https://www.sak.sk/web/sk/cms/news/form/list/form/row/1493306/_event

dissemination of alleged e-mails with communication between a client and a lawyer in one of the criminal cases closely followed by the media. These are worrying trends that indicate a threat to the fundamental right of people to communicate confidentially with lawyers.

There were cases when during a police search of the law office premises, the police seized electronic devices and electronic carriers with the data of a number of clients which have no connection with the investigated criminal matter. This happened despite repeated warnings of the Bar's representative, present at the actions in accordance with the law, that it is a procedure in direct contradiction to the Criminal Code and the jurisprudence of the Constitutional Court of the Slovak Republic. In one of the cases, even the IT expert present confirmed in the minutes that the data sought in the given criminal case could be selected directly on the spot in the presence of Bar's representative. The minutes contain his clear opinion on the technical feasibility of such a safe and legally correct procedure. It was nevertheless rejected by the investigator. In another case, the expert was not even present contrary to the court order.

The possible scope of the violation of the law in these cases is alarming. The Slovak Bar Association fully respects the power of authorities to investigate criminal activity among lawyers. However, in a democratic country, it cannot be accepted if gross illegal practices are used in the detection of criminal activity, which are in direct contradiction to the jurisprudence of the Constitutional Court of the Slovak Republic.

Relevant press releases:

- https://www.sak.sk/web/sk/cms/news/form/list/form/row/1398989/_event
- https://www.sak.sk/web/sk/cms/news/form/list/form/row/1435998/_event
- https://www.sak.sk/web/sk/cms/news/form/list/form/row/1456381/_event

LEGISLATIVE PROCESS

Transparency

Shortcomings: As regards the preparation of legal drafts, various stakeholders agreed that there was a tendency to avoid discussion with stakeholders if there was a significant change proposed by the Ministry of Justice that would most likely lead to opposing arguments. The Slovak Bar Association expressed its concerns about the level of stakeholders' involvement in the legislative process in the 2021 public consultation. This was to some extend relevant for 2022 too.

The Slovak Bar Association was invited to join the working group on the revision of the Criminal Code, however, subsequently no invitation to a meeting arrived to any member and we only learned about its content from the official legislative draft.[33] Representatives of highest judicial institutions and prosecution office agreed with the Slovak Bar that there was a lack of expert discussions in this respect.

Similarly, the process of preparation of Judicial Court map remained to be opposed by professional stakeholders[34] as the third draft of the court map was presented to the National Assembly of the Slovak

[33] More information available at: https://www.sak.sk/web/sk/cms/news/form/list/form/row/1087476/_event
[34] More information available at: https://www.sak.sk/web/sk/cms/news/form/list/form/row/1192986/_event and https://www.sak.sk/web/sk/cms/news/form/list/form/row/1244518/_event

Republic without a proper legislative process and the opportunity to express, and even without any discussion about it. We appreciated that the Prime Minister responded to our call (joint with the Supreme Court, Supreme Administrative Court and General Prosecutor's Office) and created an opportunity for a joint discussion on the draft court map. However, we believe that such discussions should have occurred continuously in the process of creating the judicial map, not at the stage when the judicial map was submitted to the National Council and possible comments is only possible through parliamentary proposals.

Positive feedback: We wish to add that there was a number of standard legislative processes with transparent discussion, such as the reform of the companies' law or land-use planning and construction.

The Bar welcomed that the Ministry decided to postpone the date of effect of the so-called "new court map". We believe that the postponement will prevent the courts from becoming dysfunctional as a result of delays in preparations, and simultaneously, more time will be provided to clarify the method of filling new judicial positions. The transfer of judges between courts must be carried out transparently and in such a way that there can be no arbitrary interference with judicial independence, and thus also with the right of the participants to a lawful judge. The SBA also called for the renewal of the necessary professional dialogue, within which the possibilities of further material corrections of the reform (for example, the establishment of municipal courts) would be explored.

Good practice: the Slovak Bar Association initiated a creation of Criminal Law Expert Platform where representatives of Supreme Court, General Prosecutor's and Special Prosecutor's Office participated to discuss the proposed amendments to better understand the position of each of the justice system components.[35] There were six meetings in the course of 2022. The last meeting took place at the premises of the Ministry of Justice upon invitation of the newly appointed Minister.[36]

Restrictions on defence rights

Proposed reform of the Criminal Procedure Code and its redefinition of pre-trial procedure was worrying from the perspective of procedural guarantees and defence rights. The Bar supports the aim of improving the functioning of the preliminary proceedings, but we are very concerned by the efforts to strengthen the position of the state's power structures at the expense of citizens' rights, defence and access to lawyer, as guaranteed by the Constitution of the Slovak Republic, as well as international/EU obligations to which the Slovak Republic is bound. Considering the fact that our country already has a lot of experience with the abuse of criminal law, it is necessary to approach the weakening of the rights of citizens at the expense of the state all the more strictly. One of the ideas behind the legislative changes was to make the proceedings "faster" by excluding the presence of lawyer and some defence rights.

[35] More information available at: https://www.sak.sk/web/sk/cms/news/form/list/form/row/1291957/_event
[36] More information available at: https://www.sak.sk/web/sk/cms/news/form/list/form/row/1493306/_event

The level of legal aid fees

The level of remuneration of legal aid services has not been raised in 10 years which is in contrast to the growth of monthly salary of an employee of the economy of the Slovak Republic that was doubled in the meantime. Therefore we conclude that the fees are not proportionate to the expenses associated with legal aid service provided. There are cases when fees are not paid in several years due to the fact that the decision must be final in order to claim the fees.

Rule of law culture (awareness raising)

The Slovak Bar Association considers expert dialogue to be crucially important. We perceive the lack of mutual dialogue of justice sector stakeholders and representatives. On September 23, 2022, the Slovak Bar Association invited the highest representatives of judicial institutions in Slovakia to a round table for the first time. Several other meetings followed in 2023[37] as well as creation of criminal law sub-platform.

It is important to raise awareness on the rule of law principles and concepts in the Slovak society also to avoid undue vilifying of lawyers. Any gap in communication between the media and the profession can contribute to the erosion of the perception of lawyers' role in society, through portrayals of lawyers in ways that could undermine the credibility and the overall image of the profession. This is also a case of other professions in justice sector. The Bar Association invested a significant amount of efforts in answering questions in media regarding the disciplinary procedure, criminal investigation of lawyers, difference between the role of the law enforcement agents and Bar Association bodies.

We also supported the international Rule of Law Declaration together with other representatives of the legal profession of the Member States of the European Union and of the Council of Europe at the meeting in Vienna on 11 June 2022 on the occasion of the French Presidency of the Council of the European Union.[38]

Quality of legal services

A proposal was submitted to the parliament, the subject of which was introduction of a new free trade licence that would allow anyone with one degree in law to provide legal services. In order to provide professional legal advice, according to the proposal, it should be sufficient to have one level of university degree in the field of law and no further education and practice or guarantees of responsibility for their actions was required. Various persons who provide legal services illicitly harm clients with their unprofessional activities and a few years back the illicit trading in legal services has been categorised as a criminal offence. Unlike lawyers, freelancers do not bear any responsibility for their advice. By adoption of the proposal, the parliament would not only weaken the quality of legal services and protection of citizens as consumers of legal services but it would legalise the provision of legal services without established ethical principles that protect recipients/consumers of legal services, without disciplinary responsibility and without material liability - without guarantee of liability insurance for damage caused in the course of performing the profession.

[37] More information available at: https://www.sak.sk/web/sk/cms/news/form/list/form/row/1183509/_event
[38] More information available at: https://www.sak.sk/web/sk/cms/news/form/list/form/row/1362444/_event

Training of lawyers

The Slovak Bar Association provides training to its members on voluntary (qualified lawyers) and mandatory basis (trainee lawyers) – online, hybrid as well as in-person format. In 2022 the Bar organised more than 115 training events for circa 5,300 participants. Lawyers undertake further training provided by private companies depending on their area of expertise.

The Bar stresses the importance of deontology-oriented lectures, especially for young (trainee) lawyers: 299 trainee lawyers were trained in the application of ethical principles and HELP course Ethics for lawyers, judges and prosecutors was translated and made available to all members of the Bar Association.

The Slovak Bar promotes training events with European/EU dimension with cross-border elements organised by its partners. The Slovak Bar Association has been involved in several training projects with European dimension:

- Cooperation with the Council of Europe – HELP / HELP in the EU / HELP in the EU II / HELP in the EU III (Human Rights Education for Legal Practitioners) Programme: on top of the already implemented courses (Domestic Violence and Violence against Women, Ethics for judges, prosecutors and lawyers, Procedural safeguards for suspects and accused and victims' rights, Data protection and privacy rights, Combatting trafficking in human beings). Three new courses were introduced: Human rights in sport, Asylum and Migration, Access to Justice for Women.

- Cooperation with the Academy of European Law (ERA) in organising as well in promoting YOUNG LAWYERS CONTEST and YOUNG LAWYERS ACADEMY – EU law and networking oriented contest and intensive training in EU law coordinated by ERA and focusing on for trainee lawyers. The Bar hosted one of the YLC semi-finals in Bratislava.

- Cooperation with the European Lawyers Foundation (ELF) in implementing project on exchange of young lawyers within the EU (LAWYEREX).

- Cooperation with the CCBE on disseminating information on webinars on Whistleblowing, Sanctions against Russia, Surveillance and the impact of modern spyware tools on fundamental rights and on Ukraine and ICC: the role of European lawyers.

Implementation of Recommendations

In respect of the Rule of Law Report 2022 recommendations adopted by the European Commission, the Slovak Bar Association expressed its reservations as follows:

The 2022 Rule of Law Report drew attention to the power of the General Prosecutor to annul any decisions of a subordinated prosecutors in individual cases (Sec. 363 of the Criminal Code). The European Commission recommends "*improving the coordination among the different law enforcement entities and ensuring the objectivity of prosecutorial decisions, including by continuing to advance the legislative amendments to restrict the power of the Prosecutor-General to annul prosecutorial decisions with a view to promoting a robust track record of high-level corruption cases*". In compliance with its long-term position, the SBA points out that in a rule of law state, the basic characteristic of which is an effective system of checks and balances, the abolition of any instrument that has this purpose should be preceded by a scrupulous professional evaluation. We are concerned that the Sec. 363 of the Criminal Code is approached more on the basis of media attention caused by some cases, while the

decision to adopt a legislative change with the aim of its abolition is not accompanied by the necessary professional discussion[39].

Press-releases in relation to breaches of confidentiality

Law enforcement authorities have seriously threatened the right to confidential communication between clients and lawyers[40].

Source: www.sak.sk, dated August 17, 2022

The Slovak Bar Association in principle objects to today's and yesterday's police search of the premises of the law office in Bratislava, during which there could have been an extremely serious threat to the confidentiality of communication between clients and lawyers. According to information provided by the representative of the Bar, who was present at the search as a non-participant, the computer equipment of the law office was illegally confiscated. The electronic data was taken without adequately protecting the communication of a potentially large number of clients with lawyers. This issue in its scope could be an extremely serious violation of the law, which has no place in the rule of law.

"The information we have about the publicized inspection is extremely disturbing. According to our information, the investigators took equipment with the data of clients who had nothing to do with the criminal proceedings for which the search was authorized. This happened despite the repeated warnings of our representative present at the inspection that such a procedure is in direct contradiction to the Criminal Code and the jurisprudence of the Constitutional Court of the Slovak Republic. The possible scope of the violation of the law in this case is, from our point of view, alarming", said the Bar President Viliam Karas.

A serious violation of the law is also indicated by the statement of the IT expert present, who confirmed in the minutes that the searched data could be selected directly on the spot in presence of a Bar representative. The minutes contain his clear opinion on the technical feasibility of such a safe and correct procedure. It was nevertheless rejected by the investigator. The Slovak Bar Association is not interested in entering a specific criminal case, which is always the task of elected or appointed defence lawyers. "In this case, however, the illegal procedure may have an impact on many clients who believed that protection of communication between the lawyer and the client is part of their right to defence. The Bar will therefore consider all available steps either on domestic or international level that could lead to the protection of the fundamental rights of citizens to legal aid," added the Bar President.

Bar's opinion on another case of suspected interference with the confidentiality of communication between a lawyer and a client[41]

Source: www.sak.sk, dated September 30, 2022

The Slovak Bar Association is informed about the case of the leakage of e-mails, the content of which could allegedly be confidential communication between a lawyer and a client in one of the monitored criminal cases. We published our opinion on this matter on September 28, 2022, which was also communicated to the media: "Confidentiality of communication between lawyer and client is a basic prerequisite for the proper practice of legal profession. The Slovak Bar Association therefore strongly

[39] More information available at: https://www.sak.sk/web/sk/cms/news/form/list/form/row/1444381/_event
[40] More information available at: https://www.sak.sk/web/sk/cms/news/form/list/form/row/1398989/_event
[41] More information available at: https://www.sak.sk/web/sk/cms/news/form/list/form/row/1435998/_event

condemns any interference with confidential communication between a lawyer and a client, and its dissemination, which has no basis in law."

Law enforcement authorities once again threatened the right to confidential communication between clients and lawyers[42]

Source: www.sak.sk, from October 14, 2022

The Slovak Bar Association recorded another case of suspicion of a serious threat to clients' rights to confidential communication with a lawyer. It happened during a police search of the premises of a law office in Bratislava II district. According to our information, during the search, the police seized electronics and other media containing the data of a number of clients who have nothing to do with the investigated criminal matter. A similar threat to rights only occurred recently during a search of another office in Bratislava. At the same time, we witnessed the illegal dissemination of alleged e-mails with communication between a client and a lawyer in another criminal matter. "These are worrying trends that indicate a threat to the fundamental right of people to communicate in confidence with lawyers. Such a practice needs to be stopped", Bar President Martin Puchalla responded.

"The Slovak Bar Association fully respects the powers of authorities to investigate criminal activity including investigation among lawyers. It is in our interest that the necessary catharsis takes place. However, in a democratic country, it cannot be accepted if gross illegal practices are used in the detection of criminal activity, which are in direct contradiction to the jurisprudence of the Constitutional Court of the Slovak Republic", added M. Puchalla.

A Bar representative was invited as a non-participant to the search of the law office in question. However, it follows from the information he provided to the Bar that the further steps of the National Criminal Agency (NCA) were in direct contradiction with the constitutional requirements. According to his testimony, despite his explicit warnings, NCA seized media and electronics without any selection on the spot; this means that, most likely, data from ordinary clients who have nothing to do with the investigated matter were also seized. In addition, contrary to the search warrant there was not even an IT expert present who could supervise the proper performance of the search. In connection with repeated threats to the right to confidentiality of communication with lawyers and police procedures, we are convinced that this is a field that needs to be clearly resolved by legal regulation. The jurisprudence of the Constitutional Court of the Slovak Republic is clearly not respected by the law enforcement authorities.

[42] More information available at: https://www.sak.sk/web/sk/cms/news/form/list/form/row/1456381/_event

SLOVENIA

In 2022, there were no cases reported which would undermine the independence of the Bar and independence of lawyers, and there were no major developments in the justice system of Slovenia influencing the functioning and independence of the Bar and lawyers.

After several years of efforts, the Slovenian Bar Association succeeded in changing the Attorneys Act so that lawyers who provide free legal aid are paid 100% of the attorneys' tariff by the state. Before the change, they were entitled to only up to 50% of the attorneys' tariff.

In 2022, better cooperation in the field of education of legal professions was achieved. The Slovenian Bar Association and Centre for education of the Ministry of justice started better cooperation in 2022. The goal is to develop joint education projects for all legal professions.

Independence of the Bar and of lawyers

With respect to the preliminary draft of the Organic Law on the Right of Defence mentioned in our previous report, it has been reduced in scope and extension with respect to the text that the Commission submitted to the Ministry of Justice. The following are the most important issues raised by the *Consejo General de la Abogacía Española* (hereafter the CGAE):

- The regulation of "collegial protection" by the Bar could be more detailed and it is therefore proposed that it will be developed further to make the matter more specific.

- With regard to the "independence of the *abogados*", the guarantees of this independence must be strengthened throughout its scope.

- With regard to "professional intrusion", the CGAE states that it is necessary to establish effective mechanisms to combat it effectively, given that it empties the fundamental right of defence of its content, affecting all citizens.

- In relation to "professional secrecy", the CGAE points out that, although the regulatory text regulates professional secrecy in detail, two issues of notable importance could be pointed out that are not included in its articles:
    1. In-house *abogados*: it is proposed to make explicit reference to lawyers who are "employed or self-employed [...] including in cases of an employment relationship with the client".
    2. Searches in professional offices: it is considered appropriate that, in addition to the competent official, a representative of the professional body should be included in all searches undertaken.

Additionally, it is important to highlight the legislative procedures of the bills on procedural efficiency, organisational efficiency and digital efficiency of the Public Justice Service. The CGAE has developed an important work of study and legal contributions to these regulations.

Judicial institutions and administration

The CGAE has been observing political events related to Justice with concern due to the fact that, although they affect elements that do not pertain to the Administration of Justice as such and affect non-jurisdictional bodies, they are producing a series of negative impacts on the Spanish judicial system.

In this respect, it is worth emphasizing -once again- the absence of a political agreement, more than four years after the expiry of the mandate, to renew the Council of the Judiciary (hereafter the CGPJ), which -it should be recalled- has key functions in the appointment, procedure and discipline of Judges.

Last October, this situation led to the resignation of its President "in order not to be complicit" in the CGPJ's situation and in the absence of an agreement between the main government and opposition parties.

This lack of renewal leads to difficulties in their internal functioning, which are indirectly transferred to the functioning of some courts as well. However, the position of the Bar is in the majority when it comes to pointing out that these difficulties are not connected to the issue of judicial independence. This does not preclude that the situation has also undoubtedly led to an increase in the public's negative perception of the politicisation of Justice.

In relation to these tensions between political parties and state powers, the institutional legal profession has made various private representations and public statements, including talks with the CGPJ and the political parties mainly concerned by the necessary parliamentary majority. The main assessment continues to be, as in previous years, that what is required is the fulfilment of the obligation to renew all constitutional bodies in accordance with the constitutional mandate.

On the positive side, the recent renewal of several judges of the Constitutional Court, and the election of its new president, should be noted.

On the other hand, at the request of the Ministry of Justice and within the framework of the JHA Council of March 2022, the CGAE provided a preparatory memorandum for the debate on the proposal of the French six-month presidency on the role played by the advocates and the Bar in guaranteeing the rule of law. In this respect, the draft bill on the organic law on the right of defence, pending submission to the Congress of Deputies, is noteworthy in Spain, and would close the circle of constitutional guarantees with a specific instrument regulating this profession, which is fundamental to the rule of law. It should be recalled at this point that the right to defence contemplated in the Constitution does not yet have an organic law to develop its content.

Appointment and selection of judges, prosecutors and presiding judges

The recent appointment of two High Judges (*magistrados*, in Spanish) to the Constitutional Court has been the subject of harsh criticism from the opposition for their closeness to previous governments of the same (progressive) political sign. In this regard, and without assessing each nomination either concretely or individually, it is worth recalling that in the joined cases A.K. and others, the Court of Justice of the EU indicated - before declaring that the Disciplinary Chamber of the Supreme Court is not a court established by law - that "the mere fact that [judges] are appointed by the President of the Republic is not liable to create a situation of dependence between them and the President of the Republic or to give rise to doubts as to their impartiality if, once appointed, they are not subject to any pressure and do not receive any instructions in the exercise of their functions".

In the current situation, therefore, the question of the independence of these appointments does not seem to be, legally at least, a defining issue for a change of categorisation in European Union law. Additionally, this occurs in the non-jurisdictional field. Finally, it cannot be considered that citizens' rights, and more specifically those granted to minorities, could be affected or be less protected as a result of these appointments, as has been the case in other Member States.

Accessibility of courts

The latest report of the *Observatorio de Justicia Gratuita* makes the following recommendations that the CGAE considers fundamental:

- To unify criteria in relation to the recognition of the right to Free Legal Aid by the Provincial and Island Legal Aid Commissions, and to do so within the legally established timeframe in order to guarantee the legal security of the interested parties and of the professionals who, where applicable, have been appointed to defend them.

- Collaboration between judicial bodies to comply with the provisions of Law 1/1996 regarding the processing of legal aid applications.

- The judicial bodies must provide citizens with the necessary forms to apply for the right or, at least, provide information on how to do so, and in any case, they must inform the Bar Association of all the data of the interested party when requested by the said party.

- The Draft Bill on Procedural Efficiency Measures envisages a pre-litigation procedure in the form of conciliation, arbitration, mediation or composition. These procedures must be covered in all cases by the public legal aid service, as they are a requirement for procedural efficiency.

- In the same way that an on-call service is provided to victims of gender violence, to detained persons or to minors undergoing reform, the compensatory scales should also include the existence of on-call services for the care of foreigners rights in administrative expulsion, asylum or refugee proceedings and for prisoners.

- It is recommended that the Asylum Law should be amended to make legal assistance mandatory in all international protection procedures regardless of whether applications are made on the territory or at border posts.

- Specialised legal assistance should be mandatory in all administrative procedures for expulsion, refoulement and refusal of entry as soon as they are initiated.

- In cases of recognition of free legal aid, it is requested that the procedural representation in contentious-administrative appeals in matters relating to foreigners be accredited by means of the corresponding collegiate designations.

- There is a need for a specialized legal aid office for disability issues, properly trained to defend this societal group.

Likewise, the legal profession, through the CGAE, has succeeded in including by law the mandatory legal aid in all insolvency proceedings, which had been excluded from the original text.

On the other hand, the delays in the payment of compensation for the legal aid service (see more here) as well as the demands for improvements in the conditions of the legal aid service (see more here) are particularly noteworthy.

Training of legal practitioners

At the end of 2022, studies were initiated by the CGAE to regulate the specialization of the profession, in compliance with the provisions of the General Statute of the Legal Profession.

Digitalisation

A major milestone in this area was the approval of the draft Law on Digital Efficiency of the Public Justice Service which, if it comes into force, will establish a new legal architecture for digital access to justice and the interoperability of existing procedural management systems. Among other issues, the aim is to promote "digital immediacy", in order to be able to hold trials and online hearings with guarantees, ensuring access to documents with the proper secure identification. On this point, the Bar demands priority access to the electronic judicial file.

Use of evaluation tools and standards

At this point, the new open data platform “Justicia en datos: datos.justicia.es” stands out. This portal presents in an orderly, open and accessible manner all the official data related to the Administration of Justice and the Judiciary in Spain. It is, therefore, a statistics platform managed jointly by the Ministry of Justice and the Autonomous Communities with transferred powers in matters of justice, in which statistics from other institutions that are considered relevant for an adequate quantitative monitoring of the functioning of the justice system, as well as the social issues that are resolved therein, are also being uploaded.

Duration of the procedures

Protecting and promoting legal certainty requires ensuring a reasonable average pendency in the judicial application of norms. The Spanish Constitution of 1978 uses the term "without undue delay" and the European Convention on Human Rights "within a reasonable time" to define, respectively, the temporal scope of effective judicial protection. It is necessary to eliminate bottlenecks by speeding up the processing of judicial proceedings so that the delay and cost of these proceedings do not jeopardise legal certainty.

In this regard, the Spanish Bar Association has already proposed to take as a reference the innovative *SATURN* project of the European Commission for the Efficiency of Justice (CEPEJ), which focuses on the development of standards for judicial pendency and, if possible, to carry out its first pilot with Spain. This proposal has not been heeded.

The EU Rule of Law Report should provide more detailed statistical information on pendency. In this respect, the EU Justice Scoreboard measures the efficiency of judicial systems partly in two jurisdictions on the basis of the length of proceedings. The fact that it does not cover the number of pending proceedings and that it is limited to the civil, commercial and administrative fields indicates the need to improve the information: on the one hand, by incorporating into this Report the total number of pending cases and broken down by jurisdiction and, on the other hand, by incorporating into the Scoreboard the duration of proceedings in the fields of criminal law and in the social and labour rights area and, where and if appropriate, constitutional appeals for the violation of

fundamental rights. The rule of law and, by extension, the very functioning of the rule of law depend on the application of the law by courts and public administrations within a reasonable time.

Framework, policy and use of impact assessments and evidence-based policy making

At this point it should be noted that there is currently a Transparency Portal that contains the Access Point to facilitate public participation in the procedure for drafting regulations. This channel is constituted as the point of access to the procedures of prior public consultation and public hearing and information in the process of drafting preliminary drafts of laws, draft legislative royal decrees and draft regulatory standards that are promoted by the Ministry of Justice and its dependent or related public bodies, as regulated in art. 133 of Law 39/2015, of 1 October, on the Common Administrative Procedure of Public Administrations, and in art. 26 of Law 50/1997, of 27 November, on the Government.

This has enabled public participation in the policy-making process through the web portals of the different ministerial departments, including all matters related to judicial reforms.

On this point, both the General Council of the Judiciary and the Council of State participate in the different phases of drafting by preparing the corresponding reports or opinions, which are not binding, but 99% of which are supported by the consulting bodies. In addition, there is an exhaustive list of legally established mandatory consultation requirements.

Standards and use of fast-track and emergency procedures

During the year 2022, approximately 74 legislative initiatives were passed in Congress: 39 ordinary laws, 15 organic laws, 20 royal decree-laws.

It is worth noting that 20 of these legislative initiatives have been dealt with on an urgent basis, which means that 27% of the total of 74 regulations approved during this period were passed as a result of urgency. It would be desirable to reduce the use of this procedure, even if the legal requirements for it are met.

Accessibility and judicial review of administrative decisions: Transparency of administrative decisions and sanctions (including their publication and related data collection rules)

The Spanish Constitutional Court has recognised that the decision to publicise sanctions in the legally established cases, generally in the case of serious and very serious sanctions, normally in the BOE, would respect the essential content of the right to the protection of personal data (art. 18.4 EC), responding to the purposes directly related to the legitimate functions of the corresponding investigating and sanctioning bodies, this publication being legally foreseen as suitable, necessary and proportionate.

Currently, and from a different point of view, the electronic headquarters of the Ministry of the Presidency has a specific portal where any natural or legal person can consult the status of their sanction.

Constitutional review of laws

In this area, and by virtue of the data published in the BOE, during this year 35 appeals of unconstitutionality and 19 questions of unconstitutionality have been admitted for processing. The Constitutional Court issued 151 rulings, 13 of which related to appeals of unconstitutionality, 178 orders, and a further 92 decisions, 5 of which related to appeals of unconstitutionality. According to the data on the Constitutional Court's website, between January and November 2022, 32 appeals of unconstitutionality were filed, as well as 25 questions of unconstitutionality. This means that such control is sufficiently ensured through the instrument of the TC.

COVID-19: an update on significant developments regarding emergency regimens/measures in the context of the COVID-19 pandemic

The CGAE has requested the Ministry of Justice to ensure that this is the last year in which it unilaterally decides to hold online exams for the access to the legal profession. This was an exceptional measure, of a temporary nature, for the toughest stages of the pandemic. The entrance examination to the *abogacía* must be in person, as well as rigorous.

Transparency of administrative decisions and sanctions (including their publication and related data collection rules)

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Currently, and from a different point of view, the electronic headquarters of the Ministry of the Presidency has a specific portal where any natural or legal person can consult the status of their sanction.

Judicial review of administrative decisions

The legal regime in this area is expressly regulated in Law 29/1998, of 13 July, regulating the Contentious-Administrative Jurisdiction. This Law subjects the activity of any type of public administration subject to administrative law to the control of the Jurisdiction, articulating the appropriate procedural actions for this purpose. The Law is based on the principle of full submission of the public authorities to the legal system, a true governing clause of the rule of law.

This court will hear questions arising in matters of jurisdictional protection of fundamental rights, patrimonial liability, administrative contracts and the acts of preparation and award of other contracts, the acts and provisions of Public Law Corporations and the administrative acts of control and supervision of the granting Administration, as well as any others expressly assigned by law.

The Law indicates a series of aspects on which judicial control will always be possible, however broad the discretion of the governmental decision may be: fundamental rights, the regulated elements of the act and the determination of the appropriate compensation.

A relationship of competence is established for the knowledge of matters in accordance with the distribution of powers and the structure of the Spanish State, between the General State Administration, the Administration of the Autonomous Communities and the Local Administration, as well as the corporate and independent administration, between the different bodies:

a) Contentious-Administrative Courts.

b) Central Contentious-Administrative Courts.

c) Contentious-Administrative Chambers of the High Courts of Justice.

d) Contentious-Administrative Chamber of the *Audiencia Nacional*.

e) Chamber for Contentious-Administrative Proceedings of the Supreme Court

This law has a specific chapter in Title VI for the regulation of precautionary measures. It is based on the assumption that precautionary justice is part of the right to effective protection (it is not an exception but an option). The criterion for its adoption is that the execution of the act or the application of the provision may cause the purpose of the appeal to be lost, but always on the basis of a reasoned weighing up of the interests in conflict.

The rule is based on the assumption that, given the scope and breadth of the contentious-administrative appeal, the suspension of the contested provision or act can no longer constitute the only possible precautionary measure. The Law therefore introduces the possibility of adopting any precautionary measure, even those of a positive nature, with no special restrictions, given the common basis of all precautionary measures.

Measures *inaudita parte debitoris* are regulated - with a subsequent appearance on the lifting, maintenance or modification of the measure adopted - as well as measures prior to the lodging of the appeal in cases of inactivity or *de facto* actions.

Monitoring by public administration and state institutions of final judicial decisions (national/supranational), as well as of available remedies in case of non-implementation

The aforementioned Law 29/1998 of 13 July 1998, regulating the Contentious-Administrative Jurisdiction, regulates how to enforce judgments that order the Administration to pay a sum of money. It compensates the interested party financially for any unjustified delay. It prevents apparent enforcement, declaring the full nullity of acts contrary to the pronouncements and establishing a quick way to annul them, and specifies the possible ways of enforcing sentences that condemn the Administration to carry out an activity or issue an act and grants the judicial bodies sanctioning powers to achieve the effectiveness of what has been ordered, apart from the consequences that may be deduced in the criminal sphere.

The CGPJ reports in its latest bulletin on the situation of Spain in the European courts that the average number of appeals to the CJEU for non-compliance by Spain in the years 2016 to 2020 was 3.8; the ratio per million inhabitants was 0.08 (EU average = 0.07).

Regarding compliance with final supranational judicial decisions:

CJEU preliminary rulings: 35 references for preliminary rulings were initiated (6.3% of the EU total). This includes preliminary rulings as well as references for preliminary rulings and urgent proceedings.

Appeals for non-compliance with the CJEU: the average number of judgments upholding appeals against Spain over the five years was 2.2, and the ratio per million inhabitants was 0.05 (EU average = 0.05). Spain ranks 13th in this indicator.

Regarding the ECtHR, the latest bulletin of the CGPJ on the situation of Spain in European courts reports that in 2020 the ECtHR handed down 10 judgments in complaints against Spain, of which 9 found at least one violation. The number of judgments with at least one violation, per million inhabitants, was 0.19 in 2020 for Spain, which places Spain in 14th place out of 47 countries with the lowest values.

Restricting the analysis to judgments that have found violations of Article 6 ECHR, relating to rights related to the administration of justice and the right to a fair and equitable judicial process, the ECtHR statistics break down four concepts included in the judgments (a judgment can include more than one). During the five years cited, an annual average of 3.2 judgments have been handed down against Spain for the right to a fair trial, 0.6 for the length of the procedure, and 0.2 for non-execution. The average number of judgments with some infringement in the justice section has been 4, and expressed as a ratio per million inhabitants has been 0.08.

Measures to promote a rule of law culture

In June, the first edition of the Conference on Defence and protection of the defence of the legal profession was held, where issues such as interference, intrusion, freedom of expression, delays in hearings or technological and gender gaps were addressed. See more here.

SWEDEN

In 2022, there were no cases reported which would undermine the independence of the Swedish Bar Association. Furthermore, there were no major legal developments impacting the functioning and independence of the Bar and lawyers.

However, during the autumn of 2022 Sweden held a general election, and after a few weeks of negotiations, a new minority government is now in place. The three government parties have reached an agreement with another party (the Swedish Democratic Party) concerning a series of issues, many with rule of law implications. In turn this party has guaranteed its parliamentary support in these agreed upon areas. Unfortunately, this cooperation party – formally outside the Swedish Government, but with a lot of politically influence – has previously proposed more state influence over lawyers' profession, and the Swedish Bar Association will continue to observe any possible impacts on the core values of the legal profession due to the new political landscape.

Overall, from the perspective of the Swedish Bar Association, some of the main challenges for the Swedish justice system and the rule of law are:

Securing access to justice for all. The previously mentioned shortcomings regarding state funding of legal counsels remains, as do the far too low remuneration levels for lawyers in their roles as legal aid counsels. Furthermore, regulations limiting the right to legal counsel in court proceedings, such as no right to counsel for an aggrieved party in courts of appeal unless special circumstances are at hand, remain in place.

To uphold the right to fair trial in every sense in every legal procedure, including speedy trials ("justice delayed is justice denied") and to secure the rule of law and protection of personal integrity and procedural rights for all parties in legal proceedings/trials, especially those proceedings involving secret coercive measures.

Meeting the increased levels of organised crime has been, and remains, a central challenge for the Swedish justice system. The Bar Association continues to raise awareness around the importance of meeting this challenge without sacrificing the rule of law, procedural guarantees for the accused and personal integrity. Furthermore, it is crucial to uphold conditions in terms of necessity, effectiveness and proportionality when introducing legislation which extends the possibility for crime investigation authorities to use secret coercive measures.

In the societal climate outlined above, it is key to uphold the independence of the legal profession (advocates). The core values of the legal profession, namely independence, confidentiality/legal privilege and client loyalty, must be respected. Unfortunately, the last couple of years a number of legislations threatening these core values have been introduced, which is of course a cause of great concern.

Many of the abovementioned challenges share a common denominator, which is unfortunately, a lack of understanding for the role of lawyers. The Swedish Bar Association remains an active actor in the public debate, attempting to remedy this lack of understanding.

To uphold proper quality of legislation. We have seen a trend away from thorough investigating commissions with specialized legal experts to legal proposals directly by the Government Offices/the Ministries. Furthermore, we have seen a tendency towards shorter and shorter timeframes for consulting bodies to give their views on legal proposals.

To secure proper state funding to all parts of the legal chain – investigating authorities (police and prosecutors), the courts, as well as legal counsels (necessary level of remuneration to lawyers).