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Contribution du CCBE au rapport 2022 sur l'état de droit

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Résumé

Le Conseil des barreaux européens (CCBE) représente les barreaux de 45 pays, soit plus d'un million d'avocats européens.

Dans sa contribution, le CCBE met en évidence les évolutions les plus importantes en matière d'état de droit et des préoccupations concernant la profession d'avocat, ainsi que les menaces identifiées par ses membres pour l'indépendance des avocats et des barreaux au sein des États membres de l'UE.
En outre, le CCBE se réfère à sa déclaration sur le rapport 2021 sur l'état de droit adoptée le 16 novembre 2021, dans laquelle le CCBE appelle à une approche égale dans le prochain rapport sur l'état de droit avec une analyse plus approfondie de l'indépendance des avocats et des barreaux en tant que composante indispensable de l'indépendance du système judiciaire et de l'état de droit.

En outre, le CCBE a exprimé son soutien à l'intention de la Commission européenne d'inclure des recommandations spécifiques à chaque pays dans le prochain rapport sur l'état de droit et a suggéré que celles-ci fassent référence, le cas échéant, à la nécessité de garantir l'indépendance et la sécurité de tous les acteurs de la justice, y compris les avocats et les barreaux, ainsi qu'à l'obligation pour les États membres de garantir l'accès à la justice, à l'aide juridique et au financement nécessaire pour préserver cet accès.

En outre, le CCBE a fait état d'un certain nombre d'actions entreprises et de documents stratégiques adoptés par le CCBE traitant de diverses questions liées à l'état de droit et à l'indépendance des avocats et des barreaux.

La contribution du CCBE comporte une annexe contenant les contributions reçues de ses membres de 26 États membres de l'UE. Dans la conclusion de cette contribution figure un résumé faisant référence aux différentes intrusions dans l'indépendance de la profession. Par exemple, les problèmes suivants ont été constatés dans différents pays :

- la surveillance des avocats et les violations de la confidentialité des communications entre les avocats et leurs clients, en particulier lors de l'emploi des technologies ;
- l'assimilation des avocats aux actions de leurs clients ;
- des violations de la confidentialité et du secret professionnel des avocats ;
- un risque substantiel pour l'indépendance de la profession d'avocat causé par la transposition du droit de l'UE dans la législation nationale ;
- l'influence éventuelle des médias dans certains pays contribuant parfois à une mauvaise interprétation du rôle des avocats ;
- diverses autres évolutions nationales qui indiquent certaines tendances pouvant constituer un risque pour l'indépendance de la profession d'avocat et le fonctionnement de la justice.

Introduction

Le Conseil des barreaux européens (CCBE) représente les barreaux de 45 pays, soit plus d'un million d'avocats européens.

La régulation de la profession, la défense de l'état de droit, les droits humains et le maintien des valeurs démocratiques sont les missions essentielles du CCBE. Les domaines de préoccupations principaux comprennent le droit d'accès à la justice, le développement de l'état de droit, le respect des droits de la défense et l'efficacité du système judiciaire, qui sont des valeurs fondamentales de la profession d'avocat.

Le CCBE soumet ici sa contribution au rapport 2022 de la Commission européenne sur l'état de droit.

1. Déclaration du CCBE sur le rapport 2021 sur l'état de droit

À la suite de la présentation du rapport 2021 sur l'état de droit par la Commission européenne lors de la réunion du comité permanent du CCBE en octobre 2021, le CCBE a publié une déclaration sur l'état de droit le 16 novembre 2021.

Le CCBE souhaite réitérer ici certains éléments clés de cette déclaration. Tout d'abord, le CCBE salue la reconnaissance explicite de l'importance de l'indépendance des avocats et du rôle des barreaux pour garantir l'indépendance et l'intégrité professionnelle des avocats dans le chapitre sur les systèmes de justice du rapport 2021 sur l'état de droit[1]. Le CCBE rappelle qu'il s'agit d'un pas en avant très positif dans la reconnaissance du rôle des avocats et des barreaux dans le système judiciaire et dans le renforcement de l'état de droit.

D'autre part, le CCBE estime que le rapport 2021 sur l'état de droit aurait dû comporter une analyse approfondie de l'indépendance des avocats et des barreaux comme cela a été fait pour la magistrature dans le même rapport. Les avocats jouent un rôle déterminant dans la protection des droits fondamentaux et le respect de l'état de droit. Par conséquent, dans le cadre du suivi de l'état de droit, il est proposé de mettre l'accent sur les avocats et de reconnaître que les avocats et les barreaux sont les mieux placés pour observer les ingérences dans l'indépendance de la profession. **Le CCBE appelle donc à une approche égale dans le prochain rapport sur l'état de droit avec une analyse plus détaillée de l'indépendance des avocats et des barreaux en tant que composante indispensable de l'indépendance du système judiciaire et de l'état de droit**.

En outre, **le CCBE soutient l'intention de la Commission d'inclure des recommandations spécifiques à chaque pays dans le prochain rapport sur l'état de droit et propose que celles-ci fassent référence, dans les cas appropriés, à la nécessité de garantir l'indépendance et la sécurité de tous les acteurs de la justice, y compris les avocats et les barreaux, ainsi qu'à l'obligation des États membres de garantir l'accès à la justice, l'aide juridique et le financement nécessaire pour préserver cet accès.**

2. Actions pertinentes du CCBE

En 2021, le CCBE a entrepris un certain nombre d'actions portant sur diverses questions liées à l'état de droit.

Évolution de la situation en Pologne

Le CCBE a adopté une déclaration exprimant sa profonde inquiétude quant à la décision du Tribunal constitutionnel polonais (affaire n° K13/21 du 7 octobre 2021) déclarant que la primauté du droit européen sur le droit polonais est incompatible avec la constitution polonaise. Dans sa déclaration, le CCBE a rappelé

[1] Le chapitre 3.1. (page 7) du Rapport 2021 sur l'état de droit fait référence aux systèmes judiciaires. Ce chapitre indique ce qui suit, reconnaissant le rôle important des avocats et des barreaux : « Les professions juridiques jouent un rôle fondamental dans la protection des droits fondamentaux et le renforcement de l'État de droit. Un système judiciaire efficace exige que les avocats soient libres d'exercer leurs activités de conseil et de représentation de leurs clients et que les barreaux contribuent dans une mesure importante à garantir l'indépendance et l'intégrité professionnelle des avocats. »

que tous les États membres de l'UE doivent respecter les traités signés et les arrêts de la Cour de justice de l'Union européenne et a réaffirmé que les valeurs et principes de l'UE doivent être appliqués de manière égale.

Lutte contre le blanchiment de capitaux

En décembre 2021, le CCBE a adopté sa position sur le paquet anti-blanchiment. Le CCBE a souligné que le nouveau cadre de surveillance et la surveillance par les autorités nationales des organismes d'autorégulation tels que proposés dans le paquet anti-blanchiment de juillet 2021 met en danger l'indépendance des barreaux et des avocats.

L'un des points les plus problématiques est que le pouvoir de la nouvelle Autorité de lutte contre le blanchiment de capitaux d'émettre des avis formels à l'intention des autorités nationales de surveillance et des décisions individuelles à l'intention des organismes d'autorégulation, ainsi que les pouvoirs dont disposent les autorités nationales de surveillance pour s'ingérer dans la surveillance exercée par les organismes d'autorégulation, pourraient ouvrir la porte à une influence indue des autorités publiques sur la profession d'avocat. En outre, la formulation des propositions concerne même l'influence sur des cas individuels. Il ne peut être exclu que des gouvernements de plus en plus populistes, qui considèrent l'état de droit comme une entrave à leurs priorités politiques, puissent abuser des règles proposées étant donné que celles-ci leur fournissent des outils pour saper l'indépendance des barreaux et pourraient avoir une incidence directe sur le travail des avocats. **Les propositions portent donc gravement atteinte à l'indépendance des avocats, une indépendance qui constitue une protection essentielle du rôle des avocats dans le maintien de l'état de droit pour tous les citoyens.**

Dans le même temps, le **CCBE s'est félicité du fait que la proposition de règlement anti-blanchiment préserve la protection du principe bien développé et reconnu du secret professionnel** tel que prévu par la ou les directives anti-blanchiment existantes et le droit national. Le CCBE reste toutefois profondément préoccupé par le fait que, dans la formulation actuelle du texte, les deux catégories de « procédure judiciaire » et « d'évaluation de la situation juridique » entraîneront des lacunes évidentes. Par conséquent, le CCBE a demandé que certaines définitions importantes soient ajoutées aux propositions législatives. Par exemple, la définition, la portée et l'application de la notion « évaluation de la situation juridique » devraient être clarifiées en tenant compte de la jurisprudence applicable de la Cour européenne des droits de l'homme et de la CJUE et en prévoyant les normes les plus élevées en matière de préservation

de l'état de droit.

Interventions devant la Cour européenne des droits de l'homme dans des affaires concernant la surveillance des avocats et des questions de surveillance de masse

En 2021, le CCBE a obtenu le droit d'intervenir devant la Cour européenne des droits de l'homme dans des affaires concernant la surveillance des avocats et des questions de surveillance de masse :

Requête n° 81993/17, *Reporters sans frontières contre Allemagne* et requête n° 81996/17 *Niko HÄRTING contre Allemagne* déposées le 30 novembre 2017 : Cette affaire concerne la surveillance stratégique (par opposition à individuelle) des télécommunications internationales par le Service fédéral de renseignement afin de prévenir les dangers graves auxquels l'Allemagne est confrontée en vertu de l'article 5 de la loi sur les restrictions au secret de la correspondance, de la poste et des télécommunications (*Gesetz zur Beschränkung des Brief-, Post- und Fernmeldegeheimnisses*). Le premier requérant est une association de défense de la liberté de la presse, le second requérant est un avocat. Les deux requérants se plaignent au titre de l'article 8 de la Convention, et le premier requérant en outre au titre de l'article 10 de la Convention, d'une interception excessive de courriels par le Service fédéral de renseignement en 2013 et 2012 respectivement, arguant qu'il était probable qu'au vu de leurs activités, des courriels qu'ils avaient envoyés aient été interceptés et lus. Les deux requérants affirment par ailleurs qu'ils ne disposaient pas d'un recours effectif aux fins de l'article 13 de

la Convention pour se plaindre d'une violation de leur(s) droit(s) de la Convention par les mesures de surveillance contestées. Le CCBE a soumis son intervention en juin 2021. Cette affaire pose des questions d'une importance publique considérable qui touchent aux libertés des citoyens. Par conséquent, dans ses commentaires, le CCBE a abordé les principes généraux applicables à l'interaction entre les régimes de surveillance de masse et la protection des droits fondamentaux. Il a exprimé des préoccupations spécifiques liées au secret professionnel en tant que composante fondamentale de l'état de droit et demandé à la Cour de saisir l'occasion d'examiner si une protection renforcée des communications relevant du secret professionnel est présente dans tout régime réglementé de surveillance de masse.

Kock et Jones Day contre Allemagne, 1022/19 et 1125/19 : Les requêtes dans cette affaire concernent trois avocats du cabinet d'avocats Jones Day et le cabinet d'avocats lui-même. La question concerne la compatibilité avec l'article 8 de la Convention d'une perquisition du cabinet d'avocats et de la saisie de documents et de données électroniques. La Cour a accordé en août 2021 le droit d'intervenir au CCBE, qui a soumis son intervention en octobre 2021. L'affaire pose des questions d'une importance publique considérable qui touchent aux droits fondamentaux de toutes les personnes physiques et morales qui ont besoin des conseils juridiques, ainsi qu'aux informations contenues dans de tels conseils qui relèvent du secret professionnel. Dans ses observations, le CCBE a par conséquent abordé la nécessité de garantir et de respecter le principe du secret professionnel lors des perquisitions et des saisies effectuées par les acteurs étatiques.

Déclaration sur le scandale Pegasus

Le CCBE a adopté le 1er février 2022 une déclaration sur le scandale Pegasus, dans laquelle il exprime ses plus vives inquiétudes quant à la surveillance des avocats et des défenseurs des droits humains par le truchement d'un logiciel espion utilisé par les autorités publiques. Le CCBE a donc appelé les autorités nationales et européennes, par l'intermédiaire des institutions de l'UE et du Conseil de l'Europe, à prendre des mesures pour protéger et renforcer la confidentialité des communications avocat-client lorsque les technologies modernes sont utilisées. Il convient en particulier de s'assurer que les documents relevant du secret professionnel sont hors de portée des opérations de surveillance grâce à des instruments de droit international tels qu'une convention européenne sur la profession d'avocat. Le CCBE a également invité les autorités nationales et européennes à prendre en considération ses recommandations sur la protection des droits fondamentaux dans le contexte de la « sécurité nationale » ainsi que ses recommandations sur la protection du secret professionnel dans le contexte des activités de surveillance.

Soutien du CCBE aux avocats

Le CCBE soutient les avocats qui rencontrent des obstacles dans l'exercice de leurs activités légitimes en envoyant des lettres aux autorités concernées. Par exemple, le CCBE a envoyé en août 2021 une lettre de soutien à l'avocat Michał Romanowski pour exhorter les autorités polonaises à faire tout ce qui est en leur pouvoir pour mettre fin à toute forme de harcèlement à l'encontre de Michał Romanowski puisque ces actes de harcèlement étaient fondés sur ses activités légitimes en tant qu'avocat.

Journée européenne des avocats

Cette journée est célébrée chaque année le 25 octobre afin de rappeler les valeurs communes des avocats et leur rôle intrinsèque dans la défense et la promotion de l'état de droit, ainsi que leur contribution au système de justice. La Journée européenne des avocats est organisée dans le cadre de la Journée européenne de la justice, une journée créée pour rapprocher la justice des citoyens et promouvoir le travail du Conseil de l'Europe et de la Commission européenne dans le domaine de la justice. Chaque année, un thème différent est mis en avant.

Le thème de la Journée européenne des avocats de 2021 était « Pas de justice sans avocats indépendants » afin de souligner l'indépendance des avocats et des barreaux en tant qu'élément essentiel pour que la profession d'avocat puisse remplir correctement sa mission de défense des justiciables, y compris dans leurs actions contre l'État, établir la confiance entre les avocats et leurs clients, préserver l'état de droit et remplir le rôle important et irremplaçable de prévenir les abus de pouvoir. La Journée européenne des avocats de 2021 a également été l'occasion de rappeler la nécessité d'une convention européenne contraignante sur la profession d'avocat afin de préserver l'indépendance de la profession, l'intégrité de l'administration de la justice et l'état de droit. À cette occasion, divers barreaux ont organisé des événements qui peuvent être consultés sur la page web du CCBE.

Le CCBE a organisé un événement spécifique : une table ronde en ligne intitulée « Un instrument juridique international pour la profession d'avocat : une nécessité pour la bonne administration de la justice et le respect de l'état de droit ». L'objectif de cette table ronde était de réunir des représentants du Conseil de l'Europe, des avocats et des représentants d'organisations d'avocats pour discuter de la nécessité d'une convention européenne sur la profession d'avocat. Les discussions reposaient sur les résultats de l'étude de faisabilité sur « Un nouvel instrument juridique européen, contraignant ou non, sur la profession d'avocat : valeur ajoutée et efficacité potentielles » préparée par Jeremy MacBride sous la supervision du Comité européen de coopération juridique (CDCJ).

3. Principales conclusions des réponses reçues des barreaux membres du CCBE

Selon les réponses reçues des barreaux nationaux au questionnaire du Tableau de bord de la justice dans l'UE en janvier 2022 (question 12.a), tous les barreaux nationaux sont indépendants du pouvoir exécutif ou d'autres autorités publiques dans les États membres de l'UE. Toutefois, tel qu'indiqué ci-dessous, on observe dans certains pays des tendances qui constituent un risque pour l'indépendance de la profession d'avocat et le fonctionnement du système de justice.

L'annexe du présent document comprend les contributions reçues des barreaux nationaux sur les évolutions concernées de l'état de droit dans les États membres de l'UE, avec un accent particulier sur les évolutions qui portent atteinte à l'indépendance des avocats et des barreaux, l'accès à la justice, la qualité de la justice, les libertés fondamentales, la démocratie et l'état de droit sont décrits. Plusieurs barreaux nationaux ont également fourni des informations et des exemples se référant à des éléments plus généraux.

Des pays tels que la Slovénie, la Roumanie, la Croatie et la Suède ont indiqué qu'en 2021 il n'y avait pas eu d'évolution importante portant atteinte à l'indépendance du barreau et à l'indépendance des avocats, ni d'évolution majeure du système de justice influençant le fonctionnement et l'indépendance du barreau et des avocats.

Toutefois, la majorité des barreaux nationaux ont fourni des informations sur les évolutions et indiqué certaines tendances qui constituent un risque pour l'indépendance de la profession d'avocat et le fonctionnement du système judiciaire dans certains États membres.

Par exemple, le barreau tchèque a fait état de certains changements législatifs entraînant une ingérence fondamentale dans la législation régissant la profession d'avocat. Le barreau danois a fait part de propositions visant à améliorer la concurrence au sein de la profession d'avocat et des objections exprimées par le barreau à cet égard en raison de l'ingérence de ces propositions dans l'indépendance des avocats. L'utilisation obligatoire des transactions juridiques électroniques à partir de janvier 2022 a été instaurée en Allemagne. Le barreau français a informé de la Loi pour la confiance dans l'institution judiciaire qui apportera des modifications importantes à la procédure disciplinaire des avocats, ainsi qu'aux dispositions relatives à la protection du secret professionnel en instaurant de nouvelles règles régissant les perquisitions dans les cabinets d'avocats. Les membres du CCBE ont également évoqué la non-implication du barreau national dans les procédures législatives et, dans certains cas, les périodes de consultation très courtes comme l'un des défis actuels, ainsi que des difficultés à assurer des réformes pertinentes dans le domaine de la justice, en particulier lorsqu'il s'agit de décisions prises pendant la pandémie de Covid-19 (République tchèque). La *Naczelna Rada*

Adwokacka a indiqué que les changements apportés à la loi polonaise en réponse à la pandémie de Covid-19 ont été réalisés d'une manière qui entrave l'accès à la justice, le droit des parties à participer activement aux procédures judiciaires et le droit à un procès équitable, tant dans les procédures civiles devant les tribunaux ordinaires que dans les procédures devant les tribunaux administratifs. Il convient d'ajouter que la *Naczelna Rada Adwokacka* n'a pas été formellement consultée sur ces réformes. En outre, il a été signalé qu'en Slovaquie, il existe une tendance à éviter la discussion avec les parties prenantes lorsque des changements législatifs importants sont proposés et qu'ils peuvent donner lieu à des arguments opposés. L'annexe de cette contribution offre des exemples pertinents à cet égard.

Le barreau portugais a fait part de certaines préoccupations concernant un projet de loi au Portugal sur les modifications à l'accès à la profession et à la formation respective, ainsi que la possibilité que des non-professionnels supervisent la juridiction disciplinaire et régulent la pratique juridique. Le barreau portugais a également signalé un grand nombre de cas de représentation illégale par de prétendus professionnels qui ne sont pas inscrits au barreau.

Le CCBE et les barreaux nationaux des États membres de l'UE continuent d'appeler au respect de l'indépendance de la profession d'avocat et à la non-assimilation des avocats à leurs clients. Néanmoins, plusieurs cas de ce type ont été signalés, par exemple en Belgique, en Slovaquie et en Bulgarie. Il a également été signalé qu'en Slovaquie, un organisme d'État a recommandé à une avocate membre du Conseil de justice de démissionner de ce poste en raison de la personnalité de ses clients.

En ce qui concerne la confidentialité et le secret professionnel, différentes violations ont été enregistrées dans au moins un tiers des États membres (Allemagne, Belgique, Espagne, France, Hongrie, Italie, Lettonie, Lituanie et Tchéquie).

Plusieurs barreaux nationaux ont également fait état de préoccupations concernant le maintien du secret professionnel et de la confidentialité des communications avocat-client, y compris, par exemple, par des moyens électroniques, dans les salles d'interrogatoire de certaines prisons ou dans le cadre d'opérations de surveillance sous couverture (Belgique, Lettonie, Lituanie et Tchéquie).

Malheureusement, il a été signalé que des avocats ont fait l'objet de surveillance, d'écoutes téléphoniques, d'interrogatoires en tant que suspects et de perquisitions dans leur cabinet ou à leur domicile. Actuellement, deux requêtes concernant les mesures de perquisition et de saisie menées en 2017 dans les bureaux du cabinet d'avocats Jones Day à Munich en Allemagne sont en cours devant la CEDH (tel qu'indiqué précédemment). En Pologne et en Slovaquie, des cabinets et des domiciles d'avocats ont été perquisitionnés sans la présence de représentants du barreau concerné ou sans commission rogatoire, mettant ainsi en danger le secret professionnel des avocats.

En Italie, il a été observé que certains cas isolés forment de plus en plus une tendance inquiétante en ce qui concerne la violation de la confidentialité des communications entre avocats et clients.

En Hongrie et en Pologne, plusieurs avocats ont été ciblés par le logiciel espion Pegasus.

Le barreau lituanien a fait état d'une nouvelle pratique négative se développant en Lituanie, selon laquelle le tribunal peut ordonner la saisie de vagues listes d'objets en relation avec l'enquête en cours, ce qui donne la possibilité de saisir presque n'importe quel document.

La *Naczelna Rada Adwokacka* a informé des résultats du suivi interne des cas dans lesquels les avocats ont été déliés du secret professionnel. Selon des sources internes, il existe une augmentation du nombre de ces cas par rapport à 2017-2018.

Le barreau slovaque a également mené une enquête interne concernant la légalité des procédures des autorités actives dans les procédures pénales. Cette enquête a montré une tendance négative où la coercition illégale est souvent une pratique courante des services répressifs. Davantage de détails sur cette enquête sont disponibles dans l'annexe de cette contribution.

En outre, le barreau portugais a signalé la question des salles peu sûres en termes de mesures de sécurité physiques ou liées à la pandémie de Covid-19 dans certains tribunaux nationaux.

Le barreau italien a évoqué le fait que l'autonomie patrimoniale et financière de l'indépendance des avocats était menacée, en donnant divers exemples et en expliquant plusieurs cas et approches adoptées par l'Autorité nationale anticorruption et le Ministère de l'Économie et des Finances.

En outre, le barreau italien a donné des informations et des exemples concrets sur l'abus évident du pouvoir discrétionnaire de certains juges limitant les droits de la défense.

La délégation belge a évoqué un autre obstacle à l'exercice de la défense des clients que constitue l'impossibilité de contacter les clients détenus dans certaines prisons.

La numérisation du système judiciaire est en cours dans de nombreux États membres de l'UE, bien que l'évolution soit plutôt lente dans certains États membres (Allemagne, Chypre et Grèce).

Les barreaux ont signalé un certain nombre de défis concernant la numérisation des systèmes judiciaires tels que la difficulté d'accéder aux registres des tribunaux par voie électronique en Belgique.

L'amélioration de la résilience et de la prise de conscience de la vulnérabilité éventuelle des avocats reste un sujet important et d'actualité pour la profession d'avocat aux Pays-Bas. La protection des avocats contre la subversion criminelle est un autre point d'attention du barreau néerlandais en 2022.

Il a été signalé qu'en 2021, le gouvernement polonais a continué à harceler les avocats qui remettaient en cause la légalité de la désignation des juges aux cours de discipline pour les juges (ou les juges à la chambre disciplinaire illégale de la Cour suprême). Plusieurs exemples et affaires se trouvent en annexe.

Un certain nombre de barreaux ont signalé la durée excessive de certaines procédures à l'échelle nationale (Allemagne, Autriche, Grèce, Irlande et Tchéquie), y compris les arriérés (Belgique, Chypre, Grèce, Tchéquie) également dus à la pandémie de Covid-19, ainsi que la lenteur de l'exécution des jugements (Chypre).

Les membres du CCBE ont également identifié les informations sur les honoraires non contractuels en République tchèque, les frais de justice excessifs en Autriche et les faibles taux d'honoraires des avocats qui ne sont pas indexés depuis 2016 en Pologne comme autant de défis importants pour le fonctionnement efficace des systèmes de justice.

Le barreau grec a fait part de ses préoccupations concernant la désignation de juges et de procureurs de haut rang en Grèce, ainsi que l'introduction de sanctions pénales sévères.

Ont également été signalées au CCBE la surpopulation carcérale (Grèce) et la détention préventive prolongée (Grèce et Slovaquie).

Le barreau letton a fait référence à la réticence de certaines autorités étatiques à fournir les informations demandées aux avocats.

Le barreau espagnol a signalé une nouvelle tendance concernant la limitation de la durée des interventions écrites et orales des avocats.

En outre, d'après les contributions reçues, au moins un tiers des barreaux nationaux affirment que la transposition de certains textes législatifs de l'UE dans la législation nationale peut constituer un risque important envers l'indépendance de la profession d'avocat et par conséquent envers l'état de droit. À cet égard, plusieurs actes juridiques ont été évoqués, notamment la directive DAC 6 obligeant les avocats à agir comme informateurs des autorités publiques au détriment de leurs clients, la directive proportionnalité, la directive anti-blanchiment et l'instauration d'une nouvelle autorité de surveillance européenne et la surveillance des organismes d'autorégulation par les autorités nationales, la directive sur la restructuration et l'insolvabilité et la directive sur la protection des données.

Les barreaux hongrois et slovaque ont fait état de pressions politiques sur le pouvoir judiciaire et le fonctionnement des tribunaux, tout en appelant à l'impossibilité pour toute branche du pouvoir d'exercer une influence sur les représentants de la profession d'avocat.

Malheureusement, des membres ont également fait état de l'influence des médias qui contribuent parfois à une mauvaise interprétation de l'objectif de la défense dans des pays tels que la Grèce, la Hongrie et la

Slovaquie, qui ont évoqué l'influence des médias sur l'administration de la justice, un concept erroné de la défense et une mauvaise image du rôle des avocats voire, dans certains cas, le fait que des avocats deviennent la cible possible de discours haineux.

Les barreaux nationaux ont également évoqué certaines évolutions positives : par exemple, en République tchèque, il n'y a plus eu de fouilles d'avocats à l'entrée des tribunaux depuis le début de l'année 2022.

Le barreau estonien a fait état d'une coopération positive et a initié des changements dans la loi sur le barreau afin d'adapter les réunions de l'assemblée générale aux restrictions liées à la pandémie de Covid-19, ainsi qu'un projet de loi sur la réglementation des perquisitions dans les cabinets d'avocats afin de garantir la protection du secret professionnel.

Selon les informations fournies par le barreau letton, la Cour suprême a garanti le droit des avocats à prendre connaissance des informations sensibles et des dossiers contenant un secret d'État, et a fourni des explications sur les limites et les exceptions à ce droit.

Le code de procédure civile modifié au Luxembourg a été simplifié et renforce l'efficacité de la justice civile et commerciale rendant la justice plus accessible et moins onéreuse pour le justiciable. Un projet de loi est par ailleurs en préparation au Luxembourg pour améliorer la formation des avocats.

Les cas spécifiques, les exemples concrets et les tendances relevés ci-dessus figurent dans les rapports des barreaux nationaux en annexe.

Draft Annex to the CCBE Contribution for the 2022 Rule of law Report

Austria

Despite criticism by the European Commission in previous Rule of Law Reports, the regime of **Austrian court fees**, which leads to the highest fees in Europe, was not changed. While they are midrange with regard to low-value litigation, Austrian court fees are *excessively* high concerning high-value litigation as unlike in other member states no cap/maximum fee is foreseen. This can pose a serious obstacle with regard to access to justice, both for companies and for citizens with high-value claims. Some minimal changes are foreseen, however, according to estimations of the Austrian Bar, the retarded valorisation of the fees will overall even lead to an increase in fees.

The Austrian Bar would like to criticize the **excessive duration of some proceedings**. For example, in the so-called BUWOG proceeding it took more than a year until the orally issued judgement was rendered in writing so that **as a consequence**, in such cases the already **convicted defendants cannot appeal.**

Consultation periods for legislative proposals were sometimes far too short. (Examples: *Novellierung des Umweltförderungsgesetz* [proposal Environmental Aid Act]: 23.12.2021- 10.01.2021 (holiday period), *Impfpflichtgesetz* [proposal on mandatory vaccination law] 9.12.2022 - 10.1.2022 (holiday season), *Sterbeverfügungsgesetz* [proposal on euthanasia law]: 23.10.2021 - 12.11.2021 (holiday period), *Bundesgesetz mit dem das Verwaltungsvollstreckungsgesetz 1991 geändert und das Verwaltungsgerichtsbarkeits-Übergangsgesetz aufgehoben wird* [proposal on coercive detention]: 19.10.2021 - 8.11.2021). Also, sometimes the entering into force of necessary legislation was delayed to the detriment of persons/companies. For example, Covid tests in businesses were subsidized, however, companies had to provide the tests at their own financial risk as the legislative basis for reimbursements only entered into force several months later.

The Austrian Bar also criticizes **retroactive legislation in the area of tax law**. For example, crypto assets shall be taxed if acquired after 28/02/2021 according to the tax law reform which enters into force only in March 2022.

In its contribution to the Rule of Law Report 2021 the Austrian Bar mentioned, that it was concerning that the **tone of discussions between politicians and all branches of the judiciary** became more heated. This view was supported by Elisabeth Lovrek, President of the Austrian Supreme Court (see interview in Der Standard, retrievable here). Such developments are detrimental to objective discussions and impairs the rule of law and the trust of citizens in the latter.

The Austrian Bar would like to again raise the issue, that also **EU law** can pose problems with regard to the rule of law. In the past this was, for example, the case regarding reporting obligations which infringe professional secrecy (see previous input on the transposition of the DAC6 directive). Currently the criticism of the Commission as to transposition of the so-called **Proportionality Directive** and the resulting demands for change are challenging with regard to the **need to safeguard the independence of the bars**.

Belgium

In terms of **intimidation**, local bar associations in Belgium have heard of cases where lawyers have been charged and not simply heard as witnesses by magistrates. The lawyers heard as witnesses can invoke their professional secrecy and therefore the investigator does not have access to all information held by lawyers. Circumventing this, lawyers are being directly charged. This situation puts the lawyer in a dilemma: either to keep quiet and risk being sent back to court, possibly with a conviction later, or to speak in his own defence. There are several examples of this where, without any real evidence of involvement in a criminal enterprise, the lawyer is charged with the aim of making him talk. There are no steps that the state authorities have taken to investigate and prosecute those responsible.

After a letter sent by three deans to discipline a magistrate identified as a habitual perpetrator of this act, the competent authorities stated that they did not wish to follow up on this denunciation. The deans are currently considering bringing the matter before the High Council of Justice.

Moreover, the law only releases lawyers from their professional secrecy when they are questioned by a judge. However, it has been observed that in some cases it is currently police officers who question the lawyers.

On several occasions, lawyers from the Antwerp Bar Association assisting clients in cases of alleged membership of a criminal organisation have been indicted and interrogated as suspects themselves as a form of intimidation or an attempt to gain information covered by the professional secrecy.

In 2021 there were several cases in which electronic communication and data shared between lawyer and client has been collected during an investigation/visitation by tax authorities, thereby breaching the professional legal privilege/secrecy and confidentiality of the lawyer-client relationship. The President of the bar should always have be able to act as an intermediary, a “filter” to assess whether the information gathered ought to remain confidential (e.g. Court of Appeal Antwerp 7 September 2021, 21/RK/6; Court of First Instance Brussels 15 January 2021, 2020/1841/A)

With regard to the **obstacles to the exercise of the defence**, the lawyers of the bar are faced with two clearly identified obstacles:

- The de facto impossibility of contacting detained clients. The problem concerns the prison of Saint-Gilles in the Brussels area. Detainees entering pre-trial detention (whose appearance before a judge who will confirm or not their pre-trial detention is very rapid after the deprivation of liberty) are locked up in a wing of the prison where there is no real possibility for the lawyers to talk to their client before the latter appears before the judge (who will be called upon to confirm or not the pre-trial detention). This situation is linked on the one hand to prison overcrowding and on the other hand to the circumstances of the current health crisis, which is accompanied by a ten-day quarantine for detainees who are locked up in a wing of the prison with no visiting room for the lawyer-client interview. However, this situation is now being rectified.
- The court registries are difficult to access and electronic communication of files is only rarely used so that the lawyer can consult his/her client's file. While magistrates have permanent remote access to the digitised file, this is not the case for lawyers, who must consult it at the registry during opening hours, provided that a computer is available there.

Complaints about these problems are regularly addressed to the authorities (prison director or chief of staff). They hide behind the lack of resources at their disposal. Letters to the Minister of Justice asking for more resources for the judiciary remain unanswered.

With regard to interference in the exercise of the rights of the defence, it is also necessary to point out the breaches of professional secrecy committed by certain magistrates. For example, some judges intend to determine the scope of professional secrecy themselves and, depending on how they interpret it in a given

case, include certain elements in the case file. Moreover, some judges consider that they can "sovereignly" assess whether or not information is covered by professional secrecy.

Regarding the **judicial backlog**:

At present, before the French-speaking section of the Brussels Court of Appeal, the waiting time to plead a case is measured in years. There are currently about 15,000 cases pending before the Brussels Court of Appeal.

The framework of judges and registry staff, which is defined by law and therefore constitutes a legal obligation for the Minister of Justice, is chronically not filled. For example, the vacancy of a magistrate who is retiring (a highly predictable event) is not published until after he or she has retired. However, it is from this publication on that candidates can apply and that a selection process lasting several months begins.

Several **measures** are proposed by the Bar Associations:

- Enshrine the independence of lawyers in a constitutional norm, which would limit any interference by the state in the supervision of the bar. Indeed, the legal profession must continue to be a self-regulating profession.
- The Bars are currently considering the creation of a special chamber within the Court of Appeal to deal with issues relating to professional secrecy, in particular for lawyers. A representative of the bars would sit on this panel and this panel would have to decide whether or not a document that one of the parties considers to be covered by professional secrecy can be included in the case file, particularly in criminal cases. As the law currently stands, it is the trial judge who, with a few exceptions, decides on questions of this nature and, where appropriate, sets aside the document covered by confidentiality that has been submitted to him.
- Filling the ranks of magistrates and court registry staff to ensure that justice is delivered in a timely manner.
- The legislator should facilitate access to the judiciary for lawyers. The locks that prevent lawyers from gaining access to the judiciary must be lifted. At present, the law states that only 12% of appointed magistrates can come from the bar and therefore have access to the judiciary without an examination. However, the Minister of Justice plans to raise this limit to 25%.
- In Belgium, the courts and tribunals have professional magistrates and also substitute magistrates who come from the bar. There are deputy judges at first instance and deputy councillors at appeal level. This function is relatively unpopular with the bar, particularly because it is not paid. The function of substitute judge or substitute adviser should therefore be upgraded, particularly in financial terms, in the hope that the bar will be able to supplement the cadre of professional magistrates when it proves insufficient.

Bulgaria

As it was reported by the Supreme Bar Council of Bulgaria, Slavcho Markov has been a long-standing lawyer of Vasil Bozhkov who was charged on various accounts in January 2020; on his part, he raised facts alleging corruption at the highest level of governance in the State.

Slavcho Markov was detained on 3 July 2020 and charged with involvement in an organised criminal group without any clear facts about his actions. Immediately after his detention, a search was carried out of the place where he lived, including the office with client files of Slavcho Markov and his son's Philip Markov, who is also a lawyer. Lawyer files, a computer and a telephone used by Slavcho Markov were seized. In September, he underwent three life-saving operations; the doctors' opinion was that his stay at the detention facilities was life-threatening. Still, he was returned to the detention facilities; his remand measure was amended to house arrest on 20 October 2020 and remained until the expiry of the maximum term provided for by law on 3 March 2021.

At present, the case is in its pre-trial stage and no procedural actions have been taken for at least a year. There are reasonable concerns that the involvement of Slavcho Markov as a person charged is aimed to remove him from Vasil Bozhkov's case as a lawyer.

The Prosecutor's Office took analogous action in the same period against lawyer Lazar Karadliev, the defence counsel for Tsvetan Vasilev, a person charged in a case related to the fall of one of the banks in Bulgaria. In those proceedings, there also has been no development in the case other than the prolonged deprivation of liberty of the lawyer.

Croatia

In 2021, 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.

Czech Republic

<u>Independence of the Bar and lawyers</u>

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 subordinate 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 of the professional regulations with the law and issues decrees regulating the lawyers' fees.

Naturally, the 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.

The issue of independence is also related to the lawyers' confidentiality duty, which forms the basic pillar of modern independent legal profession. **Repeated attempts are being made to modify, modulate, or partially remove the confidentiality duty, based on various reasons.** These are cases where the government sees lawyers as a welcome source of information on their clients, which could be utilised to exercise the public authority (e.g. for the purposes of criminal, tax or administrative proceedings etc.). The Czech Bar Association has repeatedly pointed out these cases in the legislative process, not to protect individual lawyers, but their clients, as they are the ones whose fundamental human rights are threatened by such attempts.

In May 2021, the Czech Government approved a draft regulation that amended a previous Government Regulation defining the substance of individual trades (entrepreneurial activities) with effect from 1 July 2021. The amendment modified the contents of "unqualified trade" by introducing a new individual kind of trade: "provision of services for legal persons and trusts". The mentioned amendment to the relevant Government regulation represents a **fundamental interference with the legislation governing the legal profession** and also the whole structure of legal services as such. The Legal Profession Act sets the conditions under which legal services may be provided in the Czech Republic, and this authority is conferred only on lawyers (European lawyers). By way of exception, this does not apply to notaries, civilian enforcement officers, patent attorneys and tax advisers, as well as other persons authorised by a special law to provide legal services, and employees of a legal or natural person, member of a co-operative or member of armed corps authorised to provide legal services to the entity by whom they are employed or with whom they are in a service relationship, if the provision of legal services forms a part of their duties following from this labour-law or employment relationship or service relationship. Therefore, these persons are not the ones authorised to provide legal services based on the Trade Act. The proposed amendment was substantiated by an alleged need following from legislation on measures against money laundering and terrorist financing, on the register of beneficial owners and on games of chance. However, the amendment completely lacks any internal link to the legal regulations listed above. The Public Defender of Rights, as a person having standing to sue in this regard, filed an application for annulment of the relevant provision.

Another example of current challenges was that the **Brno Municipal Court committed a completely unacceptable encroachment on the constitutional right to defence and to a fair trial in late 2021**. It allowed the General Inspectorate of Security Forces, under the supervision of the Superior Public Prosecutor's Office in Olomouc, to monitor, i.e., wiretap, all ten interrogation rooms at the Brno-Bohunice remand prison. The

Czech Bar Association immediately called on the new Minister of Justice and the Chamber of Deputies' Standing Commission on Telecommunication Interception to investigate into this tapping of interrogation rooms at the Brno remand prison, as it clearly violated rights guaranteed by international treaties and the Charter of Fundamental Rights and Freedoms and was a result of an institutional procedure by entities who were, in fact, required to defend the legal order. The Czech Bar Association strongly urged for securing the confidentiality of communication between clients and lawyers; in view of this unjustified excess, it is crucial to constantly emphasise and reinforce the significance of this institution of law.

Key legislative developments related to Judiciary and the Legal Profession

An amendment to the Enforcement Rules was a major topic in 2020 and 2021. In the past, the Czech Bar Association repeatedly commented on legislative proposals that substantially interfered with the concept of enforcement of decisions as such and brought changes that often lacked specific reasoning and completely failed to deal with the actual impacts on enforcement proceedings and their subjects. The Bar thus commented in substantive terms, e.g., on proposed territorial limits for the operation of civilian enforcement officers ("territoriality"), the introduction of the legal concept of protected account, and some other proposals. Although some of the proposals could be considered beneficial in terms of the rights and legitimate interests of the obliged and entitled parties, **the Czech Bar Association continues to advocate rejection of the whole latest Government proposal, as it considers its further discussion extremely problematic for many reasons** (an enormous number of confusing motions for amendment; fundamental interference with the creditors' constitutional rights to the protection of their property and enforceability of court decisions; financial impact on the national economy; significant denial of the principles of private law, especially the ownership rights and the right to a fair trial, etc.).

Another such topic worth mentioning is the proposed amendment to the Insolvency Act. The Czech Bar Association does not consider it appropriate to transpose Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 (the Restructuring and Insolvency Directive) only partially, at variance with its main objective, i.e., support for business. Furthermore, the Bar does not consider it suitable to generally reduce consumer debt relief from 5 to 3 years without a corresponding social and professional debate, without balancing the legitimate interests of entrepreneurs as creditors, and without a standard legislative process, proper consulting procedure and discussion of the bill in the Government's Legislative Council. The Bar also perceives a critical risk in jeopardised financing of debt relief administration ensuing from the proposed modification of insolvency proceedings, which could lead to a collapse of the whole, currently functioning, debt relief system.

Act No. 258/2017 Coll., amending, among others, the Legal Profession Act, which entered into effect in 2018, introduced a new, extended scheme of free legal advice provided by lawyers based on appointment by the Czech Bar Association. This scheme extended the legal advice paid by the State to cover persons who cannot afford to choose and pay their own lawyer because of their insufficient income. The Czech Bar Association continued to implement this scheme in 2021.

Good news is that as of 1st January 2022, lawyers will no longer have to undergo unsubstantiated searches when entering a court building. This follows from an amendment to the Courts and Judges Act; according to the revised wording of the relevant provision, the court president may have a lawyer searched only in individual justified cases.

Also, the 20% deduction affecting the rates of non-contractual fees under Section 7 of the Attorney's Tariff was abolished with effect from 1 January 2022. The reduction of non-contractual fees charged by lawyers appointed by the court to provide legal services in cases listed in Section 12a was introduced to the Lawyer's Tariff as "lawyers' solidarity tax" as part of the austerity measures adopted after the 1997 floods (see Decree No. 235/1997 Coll., supplementing Decree of the Ministry of Justice No. 177/1996 Coll., on the fees of lawyers and reimbursement of expenses incurred by lawyers in the provision of legal services (the Lawyer's Tariff)). The reduction was originally set in 1997 at 10% of the lawyers' fees; as from 1 January 2011, it was increased

to 30% and then, from 1 January 2013, it was modified to the currently applicable 20% reduction. Instead of a temporary provision, justified by increased expenditures from the State budget in connection with the catastrophic consequences of the floods, this became a permanent reduction of the fee payable to lawyers appointed *ex officio.*

Some broader amendments to the Courts and Judges Act were approved in January 2021. The relevant amendment is effective from 1 January 2022. According to the Ministry of Justice, the amendment to the Courts and Judges Act aims primarily to introduce a uniform and transparent system for the selection of judges and court officials. The amendment will also affect the system of preparation and selection of judges. This system is currently not uniform at regional courts – for example, judicial trainees do not operate at all at certain courts, as they have been replaced by assistant judges. The amendment therefore abolishes the current concept of judicial trainees. The courts will thus be staffed mainly by assistants who will help individual judges handle the regular agenda. Assistants who have passed the judicial examination, as well as candidates from other legal fields with an equivalent professional examination, will be able to apply for the newly created position of judicial candidate. Within annual preparation, these selected candidates should acquire skills necessary to work as a judge. Subsequent, they will be able to take part in selection procedures for the posts of specific judges. A database of district, regional and superior court decisions will also be created.

COVID-19 pandemic

The beginning of 2021 was marked by a pandemic of the COVID 19 virus and the declaration of a state of emergency, which was repeatedly extended until March 2021.

In February 2021, the Chamber of Deputies of the Parliament of the Czech Republic did not grant a further extension of the state of emergency, which was declared from 5th October 2020. Despite this fact, the government of the Czech Republic subsequently declared a new state of emergency for next 14 days, for the same reason (health threat in connection with the occurrence of coronavirus referred to as SARS CoV-2 in the Czech Republic), although the material conditions existing at the time of Parliament´s denial remained unchanged.

The declaration of the state of emergency was again extended until 28th March 2021.

The government declared the state of emergency again at its meeting on 25th November 2021 for a period of one month (until 25th December 2021) due to the health threat caused by the coronavirus (SARS CoV-2) in the Czech Republic.

On 18 February 2021, the Chamber of Deputies of the Parliament of the Czech Republic approved the new Pandemic Law, which should enter into force as from 1 March 2021. The Law was drafted and approved again under the current state of emergency in accelerated procedure, and it is a reaction of the Government to the decision of the Chamber of Deputies of the Parliament of the Czech Republic (mainly the opposition parties) not to grant a further extension of the state of emergency. There was, therefore, no time to comment on the draft law and it would be only now analysed by the experts and the Bar.

In 2021, the Municipal Court in Prague, which has jurisdiction over administrative litigation against measures taken by the government and ministries based in Prague, received dozens of lawsuits seeking the annulment of certain measures issued in connection with the declared state of emergency. Most of the lawsuits were primarily against measures taken by the Ministry of Health, while others were directly against the Czech Government.

During the state of emergency, the Czech Bar Association regularly issued public comments on extraordinary measures (crisis measures) issued by the Government of the Czech Republic and the Ministry of Health and always urged that the state of emergency and reasonable restrictions of rights should not be maintained for longer than necessary to ensure the protection of life and health. It stressed that the state of legislative emergency should not be misused to adopt laws that were not directly related to the general state of

emergency, and that the debate on ordinary legal regulations should be postponed until the situation was normalised (e.g., amendment to the Insolvency Act or the Enforcement Rules). During the state of emergency, the Government attempted to amend the existing crisis legislation by several bills, while referring to the need for a legislative response to the current pandemic and the related public and private law implications. In quick succession, it therefore submitted several bills that **the Czech Bar Association identified as problematic as they went far beyond the boundaries of the rule of law**. The Bar also always published its statements for the public. The same was true at a time when, instead of a state of emergency, a state of pandemic alert was declared based on Act No. 94/2021 Coll., on extraordinary measures during the COVID-19 epidemic and on amendment to certain related laws, as amended.

During the year, the Czech Bar Association noted a significant increase in the number of complaints filed by lawyers against the procedure of some courts, as some judges made the presence of a litigant and their representative at a court hearing conditional on presenting a negative SARS-CoV-2 test. **In some cases, the litigants were even pressured to revoke their lawyer's power of attorney if the lawyer had failed to present a negative test**, under the threat of ordering the litigant to pay the costs associated with adjournment of the hearing. Furthermore, the Czech Bar Association was informed that the courts would not grant motions to adjourn a hearing on the grounds of a positive test for the SARS-Cov-2 virus and subsequent quarantine (isolation), or some other reason linked to the pandemic and the relevant extraordinary measures, while referring to the duty to ensure substitution for the given court proceedings. The Czech Bar Association drew up a public opinion on these situations and asked both parties for mutual understanding, as judicial staff and lawyers were doing their best to ensure protection of the constitutional rights of the parties in these difficult times.

Justice System

Length of proceedings

The official statistics on length of proceedings are available at webpages of the Czech Ministry of Justice here. Currently, only statistics for the year 2020 are available however, it is expected that those for the year 2021 will be available soon.

The average length of civil proceedings in district courts in 2020 increased from 263 to 281 days. Criminal proceedings also lasted longer, instead of 195 days on average 201. This follows from the annual report on the state of Czech justice for the past year, which was published by the Ministry of Justice. The length of the proceedings was slightly affected by the covid-19 pandemic. However, no extraordinary backlog of cases in courts was officially reported by the Ministry of Justice.

From the point of view of the Czech Bar Association and especially lawyers representing their clients before courts, the length of proceedings, delays and pending cases have always been problematic and in relation to the current pandemic situation, it is expected that the backlog of cases is to be increased.

Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal liability of judges.

Throughout the past year, we have noticed several criminal and disciplinary proceedings initiated against (mainly) judges. However, in general we cannot declare any suspicion on targeted approach in prosecuting them. That is given an exception in disciplinary proceedings held against the former Prosecutor general. In this case the (then) Minister of Justice publicly commented against the Prosecutor general and lead his prosecution. Timewise, this has been connected to the resignation of the Prosecutor general from his office. Lately, the prosecutor general has been dismissed of the disciplinary charges against him.

Remuneration/bonuses for judges and prosecutors

Just recently, the government proposed to reduce wages of members of some of the public functions (e.g. MPs), but also of judges and prosecutors. The judges argue that such reduction of their wages would be contradictory to the previous standpoint of the Constitutional court.

Independence/autonomy of the prosecution service

We are not aware of any relevant issues connected to the Independence/autonomy of the prosecution service. That is except for the proposed reduction of the wages of the prosecutors and with the exception noted under point 6, which may by some be perceived as an influence of the executive power against the prosecution service's independence and autonomy.

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

Throughout the past year, we have seen an extended level of activity of the Ministry of Justice towards the digitalization of the administration of justice, and namely in the field of videoconferencing of the court hearings. The videoconferencing of lawyer-client meetings from prisons have already been present since 2020 and became a standardly available mean of communication. Electronic filing and communication between courts and lawyers has been a standard since the year 2009.

Cyprus

Appointment and Selection of Judges and Court Presidents

As far as it concerns the advocates - in order to become judge, a prerequisite for first appointment is with 6 years practice, according to section 6(1) Law 14/60. The six-year period or practice may be increased in the future.

For senior appointments to the position of Senior District Judge, President or Judges of the Supreme Court, steps are being taken to improve the system to enable senior advocates to fill vacancies. These include the establishment of a new Judicature Council that will include judges from all Lower Courts, the Attorney General and the President of the Cyprus Bar. Incentives must be provided to advocates to apply such as securing their pension and contributions to the Advocates Pension Fund. In addition, an Advisory Council for appointments to the Supreme Court which will advise the President is in the making. It includes the Attorney-General and the President of the Cyprus Bar. 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.

As a measure to facilitate the enactment of the three bills before the Parliament for the reform of the judiciary and in order to remove objections as to the participation of non-judges in the New Judicature Council, the Attorney-General and the Bar Council agreed with their participation as above with no right to vote. 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

It is important to open in practice the judiciary to qualified advocates.

Independence of the Judicature Council

In accordance with the Greco Report, in order to avoid cronyism, Judges members of the Council should be chosen from all ranks. The composition of the Council of Judges of the Supreme Court will now change as above and will include the Attorney General and the President of the Cyprus Bar Association without the right to vote (see above) and judges of all ranks.

Disciplinary Regime

For lower Court judges, the Disciplinary Council consists of the 13 judges of the Supreme Court who decide on the investigation of complaints, charges and hearing of the matter. We understand that after the case of the ECHR, Kamenos v. Cyprus, amendments shall take place.

Under the new proposed amendments, a new Court structure is envisaged, namely a separate Constitutional Court and a 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, discipline will be enforced by the new Disciplinary Council consisting of judges of the Supreme Court.

Independence/autonomy of the prosecution service

The Office of the Attorney General is considered expressly under the constitution to be independent. The President appoints the Attorney General who under the constitution holds office until the age of 68 unless removed by the Supreme Court Council for disciplinary matters. Under the Constitution, the Attorney

General is the legal advisor and lawyer of the Government. There is no independent, Director of the Public Prosecution Service. This may be considered as desirable in the future.

Independence of the Bar

Independent and non-political. Steps have been taken to enhance disciplinary mechanisms, AML and KYC mechanisms. 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.

Perception of the independence of the Judiciary

The Supreme Court amended its rules regarding 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 are being taken to improve the situation as a result of efforts of the Cyprus and Nicosia Bar.

Training

Training needs to be increased. A Judges School is now in operation, but it 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 i-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 at interim stage. The initial demand was for i-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 a reasonable period for the parallel working of the two systems. 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 in all hearings at all levels where evidence need not be heard. This can commence forthwith. As of February this year, i-justice will be mandatory for all new cases but not for older cases. 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 pending cases.

Introduction of digital recording for pending proceedings

E-justice which will include teleconference with judges will not be introduced for another two years.

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 20-21 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 now. Restrictions were imposed despite protests from the Cyprus Bar Council. An obligatory rapid test was imposed on lawyers and staff.

Length of Proceedings

Two tier system: On average 4-6 years first tier and six years for the appeal, which means a total of 10-12 years. The amendments proposed by the recent March 2018 Report of the Institute of Public Administration of Ireland, the Commission and the Council of Europe, are in the process of being introduced. Three bills for restructuring of the Supreme Court, the creation of the Appeals Court, a new Judicature Council were expected to be enacted in April 2021 with full effect from 1.9.2021. Courts Services Institution are planned for September 2022. District Court for trial of Civil cases has a backlog of some 40,000 cases still not dealt with sufficiently despite the increase in the number of Judges. There is a need for the creation of specialised divisions of District Court and specialisation at all levels, which will increase speed and quality. No reform of the District Courts has been planned yet.

New Civil Procedures rules will be difficult to implement in view of the backlog, but their introduction will improve the situation. Partial introduction is expected in 2022. **The Bar Council made recommendations (https://www.cyprusbarassociation.org/files/rec_backlog.pdf) for the improvement of the administration of justice at the lower level and for the effective handling of the backlog.**

In addition, the Bar Council continues 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

The rule of law of the business community during the next pandemic

The Danish judicial think tank Justitia and the Danish Bar and Law Society have together carried out an analysis of the public compensation schemes which were introduced in Denmark in order to reduce the consequences of the Covid-19 restrictions imposed on the business community.

The analysis uncovers some of the most important rule of law challenges which the Covid-19 pandemic and the handling of it have had for large parts of the Danish business community. Large parts of the Danish business community have been afflicted by restrictions and have, as a result, made use of the public compensation schemes. The analysis is forward-looking and aims to contribute constructive recommendations for the development of future compensation schemes which, as far as possible, take the rule of law of companies into account during future pandemics.

Link to report (in Danish): https://www.advokatsamfundet.dk/media/5aijmtyx/analyse_erhvervslivets-retssikkerhed-under-naeste-pandemi.pdf

Report from the Danish Competition Council (DCC) on competition in the legal profession in Denmark

In the report from the DCC, the DCC has made a number of proposals which it finds necessary in order to improve competition in the legal profession in Denmark. The proposals concern i.a. ownership and the management of companies, introduction of the possibility for multidisciplinary partnerships, allowance for attorneys in other companies than law firms to use their professional titles in connection with counselling, relaxation of the rules on conflict of interest of attorneys practicing in the same firm, possibility for pactum de quota litis and expansion of the duty of disclosure of attorneys.

The Danish Bar and Law Society and the Association of Danish Law Firms (*Danske Advokater*) have objected against the majority of the proposals, especially the proposals regarding expansion of ownership and management as they do not take the independence of attorneys and the rule of law of society into account. The Danish Minister of Justice has approved these objections.

It is expected that the report will result in some changes of the regulation in regard to consumers.

Link to report (in English): https://www.en.kfst.dk/media/oqwddzud/competition-in-the-legal-profession_advokatanalysen-final-a.pdf

Best practice on counsel investigations conducted by attorneys (CI's)

The council of the Danish Bar and Law Society has set up a working group for the purpose of drafting a guide for attorneys encompassing best practice in conducting CI's.

Over a period of time, the use of CI's has given rise to criticism and debate. Especially the use of CI's in cases regarding alleged sexual harassment (#metoo) has been criticized as the media and people in general often mention the conclusions of these CI's as if they were court rulings.

In the light of the fact that CI's may have considerable and far-reaching consequences for the persons whose activities etc. are being investigated – and as a consequence of the fact that the involved persons are often uncertain about their rights - the council of the Danish Bar and Law Society has decided to set up a working group with the purpose of drafting a guide on CI's.

The guide will, i.a., include the following:

- A definition of CI's and a description of the characteristics of CI's.
- A description of the existing ethical framework for the conduct of CI's, including the framework for the persons who, in one way or another, are involved in CI's.
- Recommendations which – without necessarily being included in the professional code of conduct for attorneys – constitute a best practice in conducting CI's, and which can clarify the expectations of the involved persons. The recommendations may include recommendations which contribute to greater transparency in the process and in the rights and duties of the involved persons.

The working group will, as part of its work, organise a public consultation on CI's and include relevant view points from this consultation in its future work. The working group is expected to conclude its work in the spring of 2022.

Estonia

Estonian Bar Association is a self-governing professional association, formed as legal person in public law. According to the law, the Estonian 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. These decisions can be contested in administrative court.

Attorneys’ disciplinary offences are defined in a statute or code of ethics and professional conduct. The body/authority initiating disciplinary proceedings against an attorney and taking decisions on disciplinary measures is independent from the executive and the legislative power. Such decisions can be reviewed by an administrative court. Only the bar can suspend the licence of an attorney pending the outcome of the proceedings.

The Bar continually draws the attention 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 becomes 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.

The Bar is not aware of cases/examples undermining the independence of the Bar and attorneys neither of 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).

Last year the Bar was working to ensure and to regulate the law regarding the search of the law offices in the context of client confidentiality protection. Today we can report that the Bar has compiled a draft bill and presented it to the Estonian Ministry of Justice. The feedback from the Ministry is encouraging, co-operation will continue and there are discussions planned between the parties involved (representatives of the Bar, the Ministry, courts and Prosecutor`s Office).

The Bar initiated changes in the Bar Association Act, which entered into force 01.01.2021 and are involved with exercising attorneys’ rights and obligations in the Bar. Namely, a meeting of the Bar`s General Assembly may be held as a fully physical meeting, as a partly physical and partly electronic meeting or as a fully electronic meeting. Participation in a meeting of the General Assembly via electronic means takes place in accordance with the procedure set out in the General Part of the Civil Code Act and on each occasion, the Board establishes a more detailed procedure for participation in a meeting of the General Assembly via electronic means. Also, when convening a meeting of the General Assembly, the Board has the right to allow voting attorneys to vote on draft resolutions drawn up on the agenda items of the meeting of the General Assembly, sending their vote to the Bar in a form that is at least reproducible in writing before the meeting of the General Assembly.

This regulation is particularly necessary at a time when there is a real risk of quarantine and gathering restrictions. It is also necessary for people who are ill or in compulsory isolation. Bar Association Act in English: https://www.riigiteataja.ee/en/eli/ee/515122021002/consolide/current

Thanks to the necessary changes in law, which took place already in 2020 and to the courts willingness to be flexible, many court proceedings and hearings are possible to carry out via videoconference. In the context of an ongoing pandemic, it is very important to ensure smooth administration of justice to all counterparts: courts, attorneys, clients.

Finland

The Finnish Bar would like to point out that in some cases during the national implementation phase of EU-legislation (E.g., regarding DAC6 and other AML-legislation) and in relation to country inspections carried out by international organizations the Bar Association has had the need to clarify and ensure the proper interpretation and consideration of the legal professional privilege as such. The Finnish bar considers it 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.

France

According to the law, the Bar in France is independent from the executive or other branches of the state. The executive or other branches of the state do not exercise any supervisory role over the Bar.

Decisions concerning the authorisation to practise as a lawyer or to accede to the legal profession are taken by an independent authority, which makes such decisions on the basis of pre-defined criteria where decisions are subject to review by an independent and impartial judicial authority.

Lawyers' disciplinary offences are defined in a statute or code of ethics and professional conduct. The body/authority initiating disciplinary proceedings against a lawyer and taking decisions on disciplinary measures is independent from the executive and the legislature. Only the bar or a court can suspend the licence of a lawyer pending the outcome of criminal proceedings. In practice, the law is not always upheld as is noted below.

There are guarantees in place to respect the confidentiality of the lawyer-client relationship in aspects of their professional dealings including data, communications, and surveillance. 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.

Among the current challenges facing Bars and lawyers in 2021, including concrete cases undermining the rule of law, the following cases can be highlighted in France:

Professional secrecy - Reduction of the scope of protection to exchanges related to the exercise of the rights of defence only

The Law on Confidence in the Judiciary[2], published on December 22, 2021, amends the provisions relating to the protection of professional secrecy.

Article 3 of the law completes the preliminary article of the Code of Criminal Procedure, reaffirming the secrecy of the defense and the secrecy of counsel. Nevertheless, it provides for exceptions.

Without prejudice to the prerogatives of the (Batonnier) President of the Bar or his delegate, the professional secrecy of counsel would not be 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 these offenses (articles 1741 and 1743 of the General Tax Code and articles 42122, 4331, 4332 and 4351 to 43510 of the Penal Code) **and when the consultations, correspondence or documents, held or transmitted by the lawyer or his client, establish proof of their use for the purpose of committing or facilitating the commission of these infractions.**

The new provision requires that searches of a lawyer's office or home, ordered by the "*Juge de la liberté et de la détention" (JLD*), be based on the existence of plausible reasons to suspect the lawyer of having committed or attempted to commit the offence that is the subject of the proceedings.

The magistrate who conducts the search ensures that the investigations conducted do not infringe on the free exercise of the profession of lawyer and that no document relating to the exercise of the rights of the defense and covered by the professional secrecy of the defense and counsel, is seized, and placed under seal[3].

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[2] Loi n°2021-1729 du 22 décembre 2021 pour la confiance dans l'institution judiciaire https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000044545992

[3] The document must then be placed under a closed seal and be the subject of a separate report. This report and the sealed document are sent without delay to the judge (JLD), together with the original or a copy of the file of the procedure. The court shall rule within 5 days of the referral. When, during a search in a place other than those mentioned above, the person at whose

The provision conditions the requisition of connection data corresponding to a lawyer's telephone line by requiring a reasoned decision by the JLD, both in the investigation and in the pre-trial phase, indicating the plausible reasons for suspecting the lawyer, which must be communicated to the President of the Bar for information.

Nevertheless, the mobilization of the profession has permitted to avoid the non-opposability of professional secrecy when the lawyer has been subjected to "maneuvers or actions to allow, in an unintentional way, the commission, the pursuit or the dissimulation of an offence ".

Professional secrecy - The implementation of DAC 6

Order No. 2019-1068 of 21 October 2019, which transposes Directive 2011/16/EU on the automatic and compulsory exchange of information in the field of taxation in relation to cross-border schemes subject to declaration (DAC 6), obliges lawyers to act as informers for the public authorities to the detriment of their clients, thereby undermining their role as defenders of the rule of law and impairing their ability to subsequently organize their clients' defence in the context of a fair trial that respects the equality of arms.

In 2021, the *Conseil d'Etat* referred its question for preliminary ruling concerning the accounting of the French transposition of Directive 2018/822 considering article 47 of the Charter of Fundamental Rights of the European Union.

This question echoes the one referred by the Belgian Constitutional Court to the CJEU. **These examples remind us that professional secrecy is constantly under threat in many Member States, including through the transposition of European legislative acts.**

In this respect, and considering the fragility of professional secrecy, it now seems essential to include secrecy safeguard clauses in all future legislative proposals of the European Commission.

Independence from the judiciary - 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.

place these operations are carried out considers that a document protected by the professional secrecy is discovered, he can oppose the seizure of this document.

The judge's decision may be appealed with suspensive effect within 24 hours by the public prosecutor, the lawyer or the President of the Bar or his delegate, the administration, or the competent administrative authority, before the President of the investigating chamber.

Germany

Two applications with regard to the 2017 search and seizure measures conducted at the offices of the law firm Jones Day in Munich in Germany are currently pending before the ECHR with the BRAK and the CCBE intervening as amicus curiae.

The concerns expressed during last year's contribution of the German delegation with regard to the issue of data protection are still valid.

With regard to the supervision of the bars by the justice ministries – which is considered an obstacle to their independence in the context of the rule of law report – we would like to point out that in the field of anti-money-laundering the European Commission complains about a lack of state supervision of the bars and other self-regulatory bodies. The introduction of a new supervisory framework with competences and control options for a new European authority and public authorities with regard to self-regulatory bodies, including the respective bars, which the European Commission is planning in the anti-money laundering legislative package of 20 July 2021, constitutes a substantive danger for the independence of lawyers and therefore to the rule of law.

The use of electronic legal transactions will be mandatory as of 1 January 2022 for all professional participants in court proceedings. The courts will have to switch to electronic file management by 2026 at the latest. In addition, digitalization projects for court files are underway in different German Länder. Currently, 2026 is the deadline for the implementation of an electronic organization of court files. Furthermore, the legal foundations for additional electronic legal transactions with courts, public authorities, lawyers and notaries, as well as other "professional" participants in proceedings, are constantly further developed in the framework of legislative procedure.

One significant development was the introduction of a federal regime of emergency measures through the so called "Bundesnotbremse" (emergency brake) in April 2021. This new framework posed a significant shift in authority towards the federal level and away from the Länder as it was the first time the federal level implemented measures directly and without the need for further execution by the Länder. The Bundesnotbremse was a temporary measure and expired on 30 June 2021.

After the federal election in September 2021 the epidemiological situation of national scope was allowed to expire by the new German government. The epidemic situation of national scope is a prerequisite for the applicability of the provisions of Section 28a (1) Infection Protection Act. After expiry, the Länder now can only make use of Section 28a (7) and (8) Infection Protection Act. They thus have a reduced number of options to intervene than before. The legislatory package surrounding the expiration of the epidemiological situation of national scope passed in both the Bundestag and Bundesrat within one week, a very short amount of time for legislation with such far-reaching impacts. Such fast-tracking of legislation is admissible both constitutionally and under the Bundestag's rules of procedure. However, this led to a drastic shortening of the committee stage of the legislative process and put significant pressure on outside experts invited to consult on the planned legislation as both preparation time and the actual consultation period were shortened.

At the beginning of 2019 the Federal government of Germany and the German state governments rolled out a so-called rule of law package (Pakt für den Rechtsstaat). One of its goals was to raise the number of staff employed in the judiciary to strengthen the level of the rule of law in Germany which included the aim to create 2000 new judge and prosecutor positions. This pact expired at the end of the Year 2021. However, the agreements have not been fully implemented until today. Courts and tribunals in Germany therefore continue to be understaffed and to lack the required modern technical equipment. Consequently judicial proceedings oftentimes have a long duration.

In the CJEU Judgment in the joined cases C-508/18 and C-82/19 PPU it was held that German public prosecutors may not be considered an "issuing judicial authority" within the meaning of Art. 6(1) of Council

Framework Decision 2002/584/JHA due to their being subject to potential instructions from the executive. The German Federal Ministry of Justice and Consumer Protection has since proposed an amendment to Section 147 of the Courts Constitution Act ("Gerichtsverfassungsgesetz", GVG) according to which instructions may not be issued in the context of European arrest warrants. On the one hand, the German Delegation welcomes that, in principle, the right to issue instructions is maintained in the proposal. This ensures that – other than judges – public prosecutors cannot invoke an institutional guarantee of independence. However, the German Delegation rejects the proposed exception for European arrest warrants as the freedom of German public prosecutors to issue European arrest warrants should be subject to judicial control. The exception entails the risk that public prosecutors could argue that there is no need for judicial control where the independence of the decision is already guaranteed by the institutional independence of the public prosecutor's office.

Plaintiffs and defendants from abroad, which did not receive a vaccine recognized by the EU are not allowed to enter Germany and thus prevented from access to justice in Germany.

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 overall the court system 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.

Hungary

In Hungary, there are no general, system-wide problems, nor extraordinary actions against lawyers. Notwithstanding the above and save for issues explained in more details below, in daily practice one can find issues to criticize, such issues, however, do not qualify as rule of law issues pertaining to the practice of lawyers in Hungary.

State emergency and government decrees

The government extended the epidemic emergency until 30 June 2022 in order to continue the effective control of the epidemic and enable rapid action, as the government argued in its statement.

As one of the opposition's online news site (444.hu) summed up on the basis of the data of the collection of legislation, in 2021 more than half of the published legal acts were government decrees, 832 in number, and only 128 of them were related to the epidemic. In 2021, the coronavirus rewrote the usual legislative processes as in 2020. Even compared to the record year last year, the number of government decrees has increased significantly.

In 2021, the ratio of government decrees to total legislation was 54.85 percent, for a total of 832 pieces, more than double that of 2019 and 100 pieces more than in 2020.

Pegasus scandal

Regarding the Pegasus scandal, which affected the entire international community, the Hungarian government was also involved in the use of illegal means of the secret surveillance of Hungarian political opponents, journalists, lawyers and activists. The actual surveillance is yet to be proven.

In response, the **Budapest Bar Association (BÜK) issued a position paper about the secret surveillance of lawyers**, namely the President of the Hungarian Bar Association and several other lawyers were targeted with Israeli spyware Pegasus.

According to the BÜK's communication:

"Knowledge of the precise facts of the case is essential for any statement. The background and the events of the secret surveillance case that started Monday of 19 July are far from the facts established beyond doubt. A premature opinion should therefore not be drawn up. For this reason, the Budapest Bar Association still has to speak: Three Budapest lawyers, known as 'Budapest lawyers', were allegedly observed according to the relevant articles. One of these is **Dr János Bánáti, President of the Hungarian Bar Association,** who, in this capacity, is unable to express himself unbiasedly. Thus, without knowing the precise and proven details, the Bar shall only emphasise in principle that it will condemn any proven conduct where anyone, and in particular lawyers, are observed by means and/or procedures unlawfully applied in connection with the exercise of their profession."

Later, the Hungarian Data Protection Authority launched an ex officio investigation into the Pegasus case on 5 August, who has the power to investigate matters related to the secret surveillance and processing of classified information. The Hungarian Data Protection Authority will release further information once the investigation is concluded. Until now there is not any result of the investigation, but the deadline has been extended in order to give the controllers more time to answer information requests.

Meantime, on 7th of December 2021, the chief prosecutor's office had requested the waiver of the immunity of member of parliament Pál Völner, secretary of state in the minister of justice, who incidentally is a key player in the Pegasus surveillance scandal, as he was responsible for authorizing secret surveillance.

The chilling effect at courts

Political and media attacks on the Hungarian judiciary continued in 2021, which negatively affected judicial independence. The leaders of the Hungarian judiciary remained silent during these attacks, and thus have contributed to the chilling effect of such attacks on the judiciary: ordinary judges have been afraid of freely expressing their opinion and stating their positions in matters related to the judiciary because of fear of retaliation at their workplace or in public.

The chilling effect at courts continues despite a few positive developments. Previously, the President of the NJO has not supported judges to express their opinion on any issues publicly. The relation between the National Judiciary Office (NJO) and the National Judiciary Council, (NJC - the self-governing body of the judges) is evolved over the past year but is far from the desired and balanced atmosphere.

Pál Völner, State Secretary of Ministry of Justice resigned over suspicion of bribery

After the request of the waiver of the immunity of member of parliament Pál Völner December 7, 2021, he resigned from his position with an immediate effect.

Völner was also the ministerial commissioner responsible for the Hungarian Court Bailiffs Chamber since August 2019.

As background information: György Schadl, the head of the Hungarian Court Bailiffs Chamber was arrested in November with his wife, who also worked as a bailiff.

According to the prosecution, Pál Völner illegally received regular bribes of 2 to 5 million forints from the president of the branch of bailiffs over a sustained period of time. He can reasonably be suspected of having undertaken to deal with specific cases in compensation for an unjustified advantage - by abusing his supervisory, official and administrative powers - in accordance with the request of Schadl.

Ireland

In 2021 there are no cases affecting the independence of the Bar and of lawyers in Ireland.

Independence of judiciary

There is currently a case set for hearing which challenges the constitutionality of the Judicial Council. The issue involves whether the judge who took part in voting on personal injuries guidelines should have recused themselves from the case. The challenges include a claim that the requirement in the 2019 Judicial Council Act that members of the judiciary vote on the new personal injury guidelines is inconsistent with the independence of the judiciary and amounts to an impermissible delegation of the administration of justice to the Judicial Council. A date is pending for determination of the case.

Resources of the judiciary

Recent legislation has increased the number of judges that may be appointed to the High Court to 42 (section 8 of the Civil Law (Miscellaneous Provisions) Act 2021). During 2021 a number of new appointments were made to the High Court, but the President of the High Court has stated on the record that more judges are needed to deal with the back log of cases caused by the pandemic but it does not appear that the government has agreed to the additional 17 Judges sought. (See https://www.irishtimes.com/news/politics/minister-defends-number-of-new-judicial-posts-following-criticism-1.4618538)

Length of proceedings

The length of proceedings is published annually by the Courts Service in its annual report. The 2020 Annual Report shows an overall decrease in the High Court from 785 days in 2019 to 660 in 2020. Both the District and Circuit Court saw minor increases, most likely due to difficulties with remote hearings during the pandemic.

Issues related to access to justice

The proposed reforms in the General Scheme of the Housing and Planning and Development Bill 2019 will create restrictive requirements which risk breaching the Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters ('the Aarhus Convention') and its implementing Directives. Proposed reforms may also breach rights under the EU Charter of Fundamental Rights and the European Convention on Human Rights (ECHR) and further, could be found to breach the EU principles of effectiveness and equivalence, through the creation of a more onerous procedure for the judicial review of planning decisions relating to EU environmental law. The Law Society of Ireland's Submission on the General Scheme of the Housing and Planning and Development Bill 2019 is available here.

Italy

The Rule of Law (RoL) is the foundation of a fair society in which citizens, entities and Institutions are subject to the Law. In the implementation of this principle, the separation of powers is a pillar of a democratic system. For the correct functioning of the Judicial System, it is necessary that all the actors have full autonomy throughout the exercise of their activity, being this principle one of the cornerstones of democracy. Therefore, the autonomy and independence of the Lawyer are no less important than the autonomy and independence of the Judges. In fact, the role of Lawyers is decisive, being the key for the defence of rights and freedoms, as long as the entire asset is capable to guarantee their independence.

In view of implementing this principle, the Italian Judicial System sets up self-governing bodies for each of these two categories: the *Consiglio Superiore della Magistratura* is the Independent Body established to guarantee, *inter alia*, the independence and the autonomy of the Judges; the Bar Association has some delegated powers to guarantee, *inter alia*, the autonomy and the full independence of Lawyers. In particular, the *Consiglio Nazionale Forense* (hereafter also referred as "CNF") has been established by the Law as the apical institution of the system that regulates the Advocacy in Italy. It covers the role of special Court for Lawyers' breach of ethics and should intervene at the Court to support Lawyers and Local Bar.

The role of the Advocacy is protected at the highest level of the International and European sources (e.g., the United Nation Basic principles on the role of the Lawyer; Article 6 of the European Convention of Human Rights; Article 47 of European Charter of Fundamental Rights).

As stated in 2021 contribution of the CNF to the EU Report in RoL, the duty (and right) of independence of lawyers in Italy is a prerogative of the right of defence, guaranteed by Article 24 of the Constitution, but also of the Principles of Equality (Article 3 of the Constitution) and Fair Trial (Art. 111 of the Constitution). These rules, in compliance to Article 6 of ECHR, provide not only an independent Judiciary but also an independent Bar Association and as a result, independent Lawyers.

In order to defend and implement these principles, the autonomy and the independence of Lawyers and the Bar Associations need to be constantly monitored. In this regard, the CNF believes that some issues need to be carefully considered. Beside some further difficulties linked to the emergency due to the COVID-19 Pandemic (which are not considered in this contribution), the CNF wishes to underline the following major problems observed in 2021, that show how the function of the Lawyers has recently been mined:

- Patrimonial and financial autonomy as preconditions of Lawyers' independence;
- Secrecy and confidentiality of the conversations among Lawyers and Clients;
- Interference of the Judiciary: the interruption of the defence function.

The pitfalls to the independence / autonomy of the Bar Associations and of the Lawyers

Patrimonial and financial autonomy

As already reported in 2021 CNF's contribution to the EU RoL Report, one of the main problem for the independence of the Bar Associations is the threat to the principle of the patrimonial and financial autonomy. In Italy, this principle is established by the Law[4] with the purpose of preserving their independence from other State powers. Indeed, the CNF (National Bar) and the Local Bars are constituted[5]

[4] Article 24(3), second sentence, of the Law 247/2012 provides that: "(*CNF and the Local Bars) They are endowed with patrimonial and financial autonomy, are financed exclusively by the contributions of the members, determine their own organisation by appropriate regulations, in compliance with the provisions of the law, and are subject exclusively to the supervision of the Minister of Justice*" (Informal translation).

[5] Article 24(3), first sentence, of the Professional Law said: "*The CNF and the Local Bars are non-economic public bodies of an associative nature established to ensure compliance with the principles laid down in this law and with the rules of the Code of*

as non-economic public bodies with the aim of protecting the public interests involved in the advocacy's function. For this reason, they are subject to the supervision of the Minister of Justice with limits provided by the Law itself.

The defence of this principle is thus, a common interest for the fairness and the efficiency of the Judicial System, and the CNF is directly committed to defend the limits of the actions of the various Public Authorities, such as the Ministry of Finance/Internal Revenue Service, the Court of Auditors and the Antitrust Authority, which have recently shown their tendency to identify the Bar Association as any other Public Body financed by the State, although the Bar Associations (and the Lawyers' Pension Fund) are financed by the Lawyers themselves. This problem, indeed, is harmful for the correct performance of the delicate role of the Bar Associations with consequences affecting not only their management, but also the activity of Lawyers, risking to be in some cases even in contrast to the European rules. The following examples are consistent in this regard.

- The National Anti-Corruption Authority (Anac) has confirmed that the Bar Associations are obliged to publish financial personal data (such as income and assets) concerning Lawyers holding politic, administrative, managerial or governmental functions and government positions (pursuant to Article 14 of Legislative Decree 33/2013), although this provision has been modified by art. 13 lett. b) of Legislative Decree 97/2016, which restricted this obligation to Central Institutions and Bodies of the State, and to the Regional and Local Public Authorities.
- Therefore, even if the obligation to publish the financial data for the members of the local and national Bar Associations has ceased, ANAC still demands this fulfilment, which is completely disproportionate since the Bar Associations are not financed by the public budget.
- This trend also concerns disproportionate burdens imposed to individual lawyers. In a recent opinion adopted on 22 October 2021, the CNF defended the peculiarity of Lawyers' services by reaffirming the so-called "*Intuitu personae*" principle, which is an essential element of the lawyer's mandate, even in the case of a mandate given by Public Administrations/Entities. The opinion relates to a practice recently consolidated by Public Administrations/Entities which assimilate Lawyers' obligations to those typically foreseen for private companies, in the assignment of legal services by public procurements. According to the ANAC's resolution No. 303 of 1 April 2020, in order to obtain the professional assignment or the payment in the context of a public procurement obligation, the Lawyers have to produce a certificate attesting the regularity of social security contributions (so-called DURC), which is typically required by the Law (Public Procurement Code) to verify the contribution reliability of the private companies. Indeed, this tendency to extend the obligations envisaged for private companies to services provided by Lawyers, was expressed by ANAC in the context of the guidelines no. 12 of 24 October 2018, following to what the CNF reiterated that legal services are expressly indicated as sectors excluded by the European directives on procurement and by the Italian Public Procurement Code (article 17, paragraph 1. Lett. D), point n. 1, od Legislative Decree No 50/2016). The case is still pending before the Regional Administrative Court (TAR Lazio case role n. 15385/2018), to which the CNF decided to submit the case to solve this relevant different interpretation of the rules.
- Also in this case, the professional body thus remains a prisoner of a series of constraints and obligations that are completely disproportionate to its organisational and financial resources. And unnecessary information are requested by the Public authorities. What is striking is that this State-centred orientation is clearly in contrast with European Union Law. For instance, in the sector of Public Procurements, the Court of Justice established that the Bar Associations do not constitute Public Bodies within the meaning of the Directive 2004/18/EC. According to the Court of Justice, "*a body such a Professional Association governed by Public Law, satisfies neither the criterion relating to financing for the most part by the public authorities, when that body is financed for the most part by*

Conduct, as well as for the purpose of protecting users and the public interests connected with the exercise of the profession and the proper performance of the judicial function" (Informal translation).

contributions paid by its members, in respect of which it is autorised by law to fix and collect the amount if that law does not determine the scope of, and procedures for, the actions undertaken by that body in the performance of its statutory tasks which does contributions are intended to finance, nor the criterion relating to management supervision by by the public authority…” (Court of Justice, Judgement 12 September 2013, in case C-526/11). Thus, since it does not constitute a body governed by public law and does not fall within the scope of application of the European directive on procurement, according to the European Court, the procurement contracts stipulated by the Orders cannot be defined as public and there is no need to impose the transmission of the above mentioned personal data.

- A similar approach has been observed by the CNF by the Ministry of the Economy and Finance (MEF), who pretends that the Bar Associations are subject to the rules on the control and communication of public shareholdings in application of the Consolidated Law Text on Public Companies (article 20 of the legislative decree 19 August 2016, n.175 (co-called TUSP) and the obligation to disclose information on shareholdings and on representatives in governance bodies of companies and entities, pursuant to art. 17 of the Legislative Decree n. 90/2014.

  However, even if the discipline in question refers generically to all Public Entities, it must be considered that it applies only to Entities that draw their resources directly from the State budget (Legislative Decree no. 175 of 2016), which is not the case for Bar Associations.

- For the same reasons, the CNF believes it is out of the scope to apply the rules relating to the obligation of reporting of personnel costs to Bar Associations, as the MEF also claims, precisely because the financial resources used to pay the salaries do not come from Public Funds.

According to the above mentioned Italian Authorities, the described approach is based on Article 1 of Legislative Decree no. 165 of 30 March 2001 (Consolidated Law on Public Employment), which identifies the Entities that must be considered as Public Administrations for the purposes of applying the provisions governing public employment relationships. It is, therefore, a mere functional definition. It is true that the Italian legal system does not contain a general rule that provides a unique definition for the identification of the notion of a Public Administration: more limitedly, it is regulated in some specific sectors (such as the rules on public employment, which indicates which entities are to be understood as Public Administrations for the purposes of the application of that particular regulatory complex). However, this approach which identifies the Bar Association as having the same obligations of the Public Administration is clearly incongruent with the Law principles, as for instance defined in Article 2, paragraph 2-bis, of Legislative Decree n. 101/2013, which provides for special provisions for Bar Associations, establishing that, for them, the Consolidated Law on Public Employment applies only in terms of the principles and as a result of autonomous adjustment regulations. On the contrary, the 2013 legislature acknowledged that, due to their peculiar nature of associative bodies, endowed with financial and patrimonial autonomy, the rules on public employment can only be applied to Bar Association in a limited way.

The CNF wishes to stigmatize this interpretation, and to claim a more balanced approach by the Italian Authorities that wrongly assimilate the Bar Association to the Public Administration *tout court*. The CNF calls for a greater awareness of the constitutional implications of the issue, since the Bar Associations, as exponential bodies of the Lawyers' community, are social entities pursuant to Article 2 of the Constitution, and their autonomy is a safeguard and a condition of the independency of the Lawyers.

Secrecy and confidentiality of the conversations among Lawyers and among Lawyers and their Clients

As described in the last year contribution, the CNF carries out a continuous monitoring of cases concerning individual lawyers at the centre of media attention for various episodes (mistreatment, insults ...) connected to their activity. While the CNF has monitored these cases, expressing solidarity and proximity to the involved lawyers, recently, it has been observed that some isolated cases become more and more a worrying trend in

relation to the violation of the secrecy and the confidentiality of conversations between lawyers and between lawyers and their clients.

These risks, which jeopardize the structure of the process and the very democratic values on which it is based, have prompted the CNF to react through a clear statement on this topic: "*The CNF stigmatizes the repeated violation of the secrecy and confidentiality of the conversations of the defender who have as object moments of the defensive strategy and notes the need for a broader protection of the confidentiality of the conversations of the defenders that is not limited to the simple unusability process of the interceptions illegitimately acquired, since the same listening, when it has as object moments relevant to the defensive strategy, significantly affects the same relationship of trust with the assisted party, which must be guaranteed by the full freedom of the interviews.*" This is the informal translation of the CNF resolution no. 385 of the 16 of April 2021, which was brought to the attention of Minister of Justice, Marta Cartabia who opened an investigation into the matter. The case relates to the indictment in March 2021 by the Public Prosecutor's Office of three NGOs suspected of having committed crimes of the facilitation of illegal immigration through rescues in the Mediterranean Sea of migrants departing from Libya. From the documents filed it emerged that for several months the investigators intercepted the conversation of the lawyers with the suspects they assisted in violation of articles 103 paragraphs 5 and 7 of the criminal procedure code. The case had a particular resonance because the conversations have been transcribed in the final information filed with the notice of conclusion of the investigation. Face to the protests from the lawyers, the Public Prosecutor has only stated that he would not use the transcribed illegal interceptions in the trial. However, the non-use of illegal wiretapping does not respond to the problem, as it was clear that the guarantee the confidentiality of the conversations among the suspects and the lawyer had been violated by the Public Prosecutor, and consequently the right of defense seriously mined. The values at risk therefore are not only those relating to the freedom of activity of the lawyer but also those relating to the right of the suspect to be able to prepare his own defense strategy and to be able to freely confide all the implications of the affair to his own defender, counting on secrecy and confidentiality of the conversation guaranteed by law. Otherwise, the conditions of procedural equality would cease and the Public Prosecution on the basis of mere knowledge of these talks would gain an undue advantage over the defense.

Moreover, the judicial investigation of the Prosecutor's Office of Trapani, involved numerous conversations between lawyers and journalists on aspects related to the defense strategy. In this regard, the CNF also addressed an invitation to journalists in the event of publication of the results of capture to collaborate in defense of the democratic values guaranteed by the law. "*The CNF* - reads the resolution - *hopes the strengthening of sanctions to protect the principle of confidentiality and professional secrecy and invites the press to share the need for caution in the case of publication of interceptions of conversations of defenders, in order not to encourage a dysfunctional practice that, in the case of the investigation of Trapani on NGOs, has also affected several journalists*" (informal translation).

A similar case of wiretapping recently involved a criminal lawyer from the Court of Rome who appears to have been subjected to wiretapping for over two years on the basis of an investigation into the alleged criminal association of the lawyer with his clients. In this case too, it seems to emerge a system of investigations that does not respect the prerogatives of the defense and the presumption of innocence.

A further case on the interception of conversations between lawyer and client happened to the Lawyer Nicola Canestrini, of the Rovereto Bar, who submitted an appeal before the European Court of Human Rights claiming the infringement of the right to defence because, like several other colleagues, he found in the files attached to the information contained in the investigation files some interceptions of the conversations he had with his client. Here more details on the case https://www.ildubbio.news/2021/01/08/io-avvocato-intercettato-mentre-parlavo-con-lassistito/

The CNF will continue to monitor such cases and to report and stigmatize in particular events that represent a serious risk for the proper conduct of the Justice system.

Obstacles to the accomplishment of defence duties and prerogatives posed by Judges

Following the meeting with the European Commisson on May 2021, where it was requested to the Consiglio Nazionale Forense (CNF) to provide press articles or however other media information, the CNF has provided to collecting cases involving individual lawyers and affecting their activity.

As stressed also in the past CNF contribution, although some cases do not represent serious systemic aspects, but rather isolated incidents that are deplorable, which often find a solution in the same remedies provided by the Law, other cases show a possible negative approach which need to be monitored, such as the conduct of some judges which create obstacles to the defence duty of the lawyer. The principle of contradictory and right to defence is recognised both at national and supranational level. The technical defence is an indispensable element of the Criminal Law Trial relationship, proclaimed inviolable at every stage and level of the trial by Article 24 of the Italian Constitution. The defence made by lawyers is a function balancing the power of the Public Accusation (Procura della Repubblica) to represent the defence's arguments of the accused persons before a third and impartial Judge and is affirmed and implemented by the dialectical method. If this accusation model loses its balance, it risks to become the fertile ground for breach of the Rule of Law.

Some recent judicial record has revealed an inquisitorial drift in the central phase of the hearing with an obvious "discretionary abuse" of the judge's power to limit the rights of the defence during the examination and cross-examination phase by preventing the defence from asking questions or excluding their relevance. For instance, the newspapers have reported that during a hearing, the judge targeted two lawyers the (Borzone and Capra), abruptly interrupting the defence not allowing them to do their work. This situation is similar to other cases, showing a tendency of some judges and how this approach is unfortunately diffused. For instance, a lawyer form Lecce (Pedone) has protested because, during a procedure the judge denied the correct exercise of the lawyer's duties. In Crotone, where the magistrate asks questions to the parties instead of the defence lawyer, by giving as justification the need to speed up the examination, because the judge has other cases to deal with, violating article 506 of the criminal procedural code. Another young lawyer, Miss Polimeno, says she was not even allowed to take notes and was always interrupted. Lawyers Alberta and Intrieri were denied to ask questions "because I can".

Latvia

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

Regulatory enactments managing the spread of the COVID-19 provide for legal norms that may not ensure confidentiality of advocate-client communications

Article 10.[2] of the Law on the Management of the Spread of COVID-19 Infection provides that in order to achieve the epidemiological safety objectives, participation of a person who is in a prison in the investigative actions of pre-trial criminal proceedings shall be primarily ensured by video conferencing, except for the cases which include an official secret object. In practice, this means and, there have been such instances, that in case the client wishes to have a confidential conversation with an Advocate before or after the pre-trial proceedings, the confidentiality may not be ensured – it is unclear whether the electronic means and means of communication used by the person in prison provides confidentiality.

Limitation of the rights of lawyers that negatively influence the independence of the Bar and independence of lawyers

The right of an Advocate to receive information from the State Revenue Service regarding a specific taxpayer to ensure the defence of a client in criminal proceedings

On 21 October 2021, the Supreme Court of Latvia adopted a decision regarding the right of an Advocate to receive information from the State Revenue Service regarding a specific taxpayer to ensure the defence of a client in criminal proceedings. The case concerned Article 22(1) of the Law on Taxes and Fees that provides that: "*Unless otherwise [..], a civil servant (employee) of the tax administration is prohibited from disclosing any information regarding the taxpayer which the abovementioned civil servant (employee) becomes aware of while fulfilling their official service (work) duties without the taxpayer's consent, except for information regarding the taxpayer's tax debts [..]"* and Article 22(2) that provides that "*The civil servant (employee) of the tax administration may provide information regarding the taxpayer without the consent of the latter to [..] to the Ministry of Finance; [..] other tax administration institution,[..] competent authorities of the Member States of the European Union and, in accordance with the provisions of international agreements, [..] foreign competent authorities, [..] pre-trial investigation authorities, as well as [..] sworn bailiffs, courts, prosecutors and other law enforcement authorities, [..] and to the Credit Information Office*"

On the basis of the above-mentioned Articles, the State Revenue Service refused to issue information to Sworn Advocate contrary to Article 48(1)(2) of the Advocacy Law of the Republic of Latvia and Article 455(1.1.) of the Criminal Procedure Law that provides rights to Advocates to request information for the purpose of gathering evidence necessary to ensure defence of a client in criminal proceedings.

Fortunately, the Supreme Court reject the cassation appeal submitted by the State Revenue Service (the Appellate Court required the State Revenue Service to issue the requested information to the Sworn Advocate). However, this case highlights the ongoing issue with the state authorities and their reluctancy to issue information requested by Sworn Advocates in cases the request for information is justified. Usually (and as it was also indicated by the State Revenue Service) the state authorities reject requests by stating that the information necessary for ensuring the defence could also be requested by the court hearing the relevant criminal case at the request of the defence counsel (Sworn Advocate), meaning, the current practice is that state authorities do not respect the rights of Sworn Advocates laid down in laws and only issue requested information if the Sworn Advocate requests the information via court.

The link to the judgment in Latvian is available here

The right of an Advocate to get acquainted with the case materials containing a state secret, as well as the restrictions of this right

On 16 July 2021 the Supreme Court of Latvia adopted a judgement regarding the right of an Advocate to get acquainted with the case materials containing a state secret, as well as the restrictions of this right.

The Supreme Court established that Advocates are persons belonging to the court system, whose participation in court proceedings is essential for ensuring the right to a fair trial enshrined in the Constitution of Republic of Latvia. The legal norms of the Latvian Immigration Law grants Advocate (who has been issued a special permit to access a state secret) a right to participate in the examination of evidence containing a state secret, as access to a state secret may be objectively necessary for the performance of the duties of an Advocate. However, there are exceptions when it would be reasonable to restrict access to information to an Advocate who has obtained permission to work with a state secret.

One of these potential special cases, were considered during this case - the protection of state secrets and national security interests. The Supreme Court ruled that if the evidence in the case contains sensitive information about the intelligence and counter-intelligence procedure and methods, and its disclosure to the applicant or its representative could endanger the Republic of Latvia's national security interests, secrecy-related materials may also be restricted to an Advocate who has obtained permission to work with a state secret.

The link to the judgement in Latvian is available here

Lithuania

Covert actions of the law enforcement agencies against lawyers

The covert actions of law enforcement authorities continuously remain to be the major challenge to client's privilege.

The Law on Criminal Intelligence allows law enforcement authorities to perform covert actions of information collection (e.g., wiretapping of telephone conversations, control over electronic or other correspondence, etc.) without making allegations or charges, only according to data collected by officers that one is getting ready for commitment of a crime or that a crime is being committed or is committed. Thus, advocates' communications can be controlled even in the absence of sufficient data that a criminal act was committed at all, even in the absence of a sufficient basis to start a pre-trial investigation (criminal procedure). Practices of law enforcement authorities show that control of persons, in respect of whom criminal intelligence actions are performed, is carried out according to the 24/7 principle, in this way controlling communication with all other clients of the advocate.

Moreover, the appearance of aggressive spying tools as "Pegasus" considering the developments in Hungary and Poland raises serious concerns regarding the possibility such tool could also be used against lawyers under different pretext. National legislation is completely unprepared for the usage of such tools from the perspective of the protection of the fundamental rights protection.

Information collected under the Law on Criminal Intelligence is a state secret and, according to the Law on State Secrets and Official Secrets, it is impossible to learn about it unless it is used. This makes it possible for officers covertly collect information which is attorney-client privilege and not to notify about it if the collected data did not confirm the fact of the crime. After the end of the investigation of the copied data, in practice, copies of all electronic data can be kept by officers and not destroyed, though officers no longer have a legitimate purpose to keep them.

Considering all the circumstances in the criminal intelligence regulation and alleged criminal intelligence activities against the Lithuanian Bar itself:

1) The Bar has submitted a petition to the ECHR (Application no. 64301/19). The case was communicated to the Government on 9 December 2020. The observations and comments submitted by the parties.

2) The Bar also has submitted a complaint to the European Commission regarding the infringement of EU law by incorrect transposition of Data protection directive (CHAP(2019)02116). The Bar received only the confirmation on the acceptance of the complaint and the notion about it being processed. The Bar has submitted the additional information, further clarifying the wrong transposition of the Directive in the domain of criminal intelligence. However, no signs of examinations of the complaint are present. Therefore, the Bar wrote an official letter to the Commissioner for Justice, Mr Didier Reynders, however the answer was more that disappointing. The Commissioner underlined that horizontal review of the implementation of the Directive is a priority and will be performed "by May 2022". The Bar then wrote a letter to the LIBE Chair Mr Juan Fernando López Aguilar, however no response (even the confirmation of the letter) was received.

3) The Bar also initiated legal proceedings in the national courts, *inter alia* seeking to submit the reference for the preliminary ruling to the European Court of Justice regarding the interpretation of Data protection directive. The request for the preliminary ruling was not even considered in the court of the first instance. The Bar submitted the appeal to the Supreme Administrative Court, which falls in the scope of TFEU Art.267(3). The appeal was accepted but case was closed based on the facts that the petition to the ECHR was communicated to the Government. Accordingly, the reference to the ECJ has not been made. Therefore, the Bar submitted plea to reopen the case arguing the decision of the Court resulted in a breach of substantial legal norms, such breach was evident and affected the decision of court. This plea is under the examination of the Court.

Law enforcement authorities follow the approach that possibly (alleged) criminal activities of an advocate are not subject to attorney-client privilege, even if formal guarantees exist. Therefore, in order to be able to apply criminal intelligence methods, preliminary information is enough in order to ascertain whether or not an advocate performs criminal activities. Thus, for example, when all conversations are wiretapped 24/7, there are no guarantees that records of such conversations (information learned during them) will not be used against clients of the advocate. According to information presented to the Lithuanian Bar Association by an advocate who directly experienced the intervention in the form of covert surveillance actions performed under the Law on Criminal Intelligence, law enforcement authorities, suspecting an advocate, are free to choose the scope of information collected by covert methods – they can use communication measures to survey activities of one specific advocate, but can also do that in respect of all advocates of that law firm, by carrying out covert surveillance according to the 24/7 principle, even in the absence of any legal basis to perform covert actions of obtaining information in respect of other advocates.

Challenges to the client's privilege

Lately, a new practice evolved, where the courts sanction the seizure of certain items related to the ongoing investigation. The sanctions of the courts are extremely vague, for example after listing certain items to be seized, the last phrase is added "and other items or documents related to the ongoing investigation". Such wording allows law enforcement authorities to seize any document upon their discretion.

Moreover, according to the paragraph 3 of Article 46 of the Law on the Bar, it is prohibited to examine, inspect, or take the advocate's practice documents or files containing information related to his/her professional activities, examine postal items, wiretap telephone conversations, control any other information transmitted over telecommunications networks and other communications or actions, *except for the cases when the advocate is suspected or accused of a criminal act*. However, the Bar recently witnessed the seizure of certain items in the course of search without presenting any official document of indictment. Therefore, the representative of Bar Council was completely unable to estimate and establish any threat to the client information. The general objection was raised ant the Bar Council decided to address this issue to the Judicial Council requiring the courts to sanction searches properly

The items on implementation of DAC-6 Directive, abuse of GDRP (data protection) against a right to obtain information and renounce a right to lawyer remain without any positive development from previous year report.

Luxembourg

In Luxembourg, the **freedom to practise as well as the independence of lawyers** are principles which are adopted both in the Constitution, in the Law on the legal profession, in the Internal Rules of the Luxembourg Bar Association adopted by the Bar Council, which is the body empowered to make regulations concerning the legal profession, as well as in the Charter of core principles of the European legal profession issued by the Council of Bars and Law Societies of Europe (the CCBE, of which the Luxembourg Bar Association is a member), in which the core principles include the " *the independence of the lawyer, and the freedom of the lawyer to pursue the client's case*" (Principle (a) of the Charter).

The amended Law of 10 August 1991 on the legal profession states in Article 1 that: "*The legal profession is a liberal and independent profession*."

This same principle is included in the Internal Rules of the Luxembourg Bar Association in its article 1.2. devoted to the core principles of the profession: "*The legal profession is a liberal and independent profession*".

In order to guarantee its independence, the legal profession is a self-regulating profession in the sense that the Bar Council has been given by law the task of regulating the profession.

The Bar Council therefore organises the entry, exercise and exit of the profession. It is also responsible for the management of the funds necessary for the administration of the Bar Association, and ensures that the laws and regulations applicable to the profession are properly observed.

At a national level, the measures adopted in Luxembourg in 2021 have not had a negative impact on the independence of the legal profession. It can be considered that the independence of lawyers and the freedom of exercise are principles which are widely respected by the members of the profession, the courts and the public authorities and that they do not present any risk of interference. For example, there have been no cases of intimidation or obstacles to the exercise of the defence.

However, at a European level, the current drafting of the 6th AML Directive (Article 38) and the AMLA Regulation (Articles 31 and 32) foresees the supervision of all self-regulatory bodies by a public authority, which undermines the independence of the Bar and violates the fundamental principles of the rule of law as the Bar may be subject to the instructions of a public authority. Measures will need to be taken to avoid such interference in the exercise of the legal profession, which must remain an independent, and therefore self-regulating, profession.

The **efficiency of justice** has been improved thanks to the new provisions of the Law of 15 July 2021 amending the New Code of Civil Procedure and making it possible to simplify procedures in civil and commercial matters and thereby strengthen the efficiency of civil and commercial justice.

Among the changes applicable since the law came into force on 16 September 2021, in civil and commercial matters, the jurisdiction of the justice of the peace court has been increased from 10,000 to 15,000 euros, which means that disputes worth up to 15,000 euros can now be judged by the justice of the peace court in an oral procedure and without the obligation for the litigant to be represented by a lawyer. Therefore, justice has been made more accessible to the litigant and less costly.

The procedure for conditional payment orders has also been simplified and made more efficient.

In written proceedings and for less complex cases with a value in dispute of between EUR 15,000 and EUR 100,000, a simplified pre-trial procedure is now provided for (time limits within which lawyers must file their submissions and limitation of written submissions to two per party). Lawyers will also have to draw up summary submissions containing all their arguments before the end of the preliminary investigation, which will allow the judge to assess the case before him more promptly.

Similarly, the procedure for appealing against decisions handed down by justice of the peace courts in civil and commercial matters has been standardised. Appeals will be lodged with the District Court in an oral procedure, as representation by a lawyer in such court is no longer mandatory.

The draft Law on the organisation of a Supreme Council of Justice as submitted to the Chamber of Deputies by the Ministry of Justice on 22 June 2018 is still under discussion in the Chamber of Deputies. As a reminder, the purpose of the Supreme Council of Justice is to ensure the proper functioning of justice and **guarantee the independence of judges and prosecutors**.

From the perspective of the **training of lawyers**, a draft law and its implementing Grand-Ducal Regulation will soon be tabled before the Chamber of Deputies and will replace the amended law of 18 June 1969 on higher education and the accreditation of foreign titles and degrees as well as its amended implementing Grand-Ducal Regulation of 10 June 2009 on the organisation of the judicial internship and regulating access to the notarial profession. The new law also amends (i) the amended Law of 10 August 1991 on the legal profession and (ii) the amended Law of 4 December 1990 on the organisation of the bailiffs' service.

The aim of the measure is to improve the training of lawyers by selecting candidates on the basis of their knowledge of the law, thereby increasing the quality of training, since the quality of the administration of justice depends in particular on the qualifications of lawyers. The aim is therefore to improve the quality of justice and the service provided to citizens.

The Netherlands

While there is no immediate threat to the rule of law, there are some concerns reported which may result in a deficit in the rule of law.

Court capacity and efficiency

General and worrisome tendency of cut backs regarding court capacity, which reflects on the quality of the proceedings: less time and space for fact inquiry, further restrictions on witness hearings, etc. There have been financial cutbacks and continuous pressure in the interest of 'efficiency', reducing the quality of court proceedings.

Legal remedies

There is a general tendency to reduce or abolish legal remedies, trying to keep people away from the courts which are considered 'petty cases' and 'too expensive' for society. There have been increasing voices in the political arena that advocate for reducing or abolishing remedies that make it possible to have legislation and regulations reviewed in court (on constitutional grounds and/or under international law).

Immunity for public authorities

Spaces of immunity for public authorities in large areas covered by administrative law have been created: lawyers are basically barred from commencing effective remedies in such areas as immigration and asylum law and social aid ('Dutch childcare benefits scandal'), either because public funding is cut back or because the legal remedies are restricted or a combination of both.

Questioning public authorities in court

There is a tendency to keep Dutch lawyers curtailed in their possibilities to question public authorities and to have their conduct examined in court by calling witnesses, especially to call and cross-examine prosecution witnesses (see most recent conviction of the Netherlands in the case Keskin v. Netherlands of the ECHR, 19 January 2021[4]).

Resilience/protection of lawyers

Increasing the resilience and awareness of the possible vulnerability of lawyers is an important and topical subject for the legal profession in the Netherlands. The direct reason for this is the murder on Derk Wiersum (September 2019), lawyer for a state witness in a case against members of a violent drug gang. Additionally, the Netherlands Bar has been noticing an increase in threats against lawyers. Initial observations amongst lawyers in various areas of law and in several roles (besides lawyer also curator and supervisor) underline that importance. The protection of lawyers against criminal subversion is another point of attention of the Netherlands Bar in 2022.

At the same time, it seems to be difficult to make the topic vulnerability a subject of discussion in the legal profession. However, there is need for support with regard to this issue. The Netherlands Bar is coordinating this support with the Judiciary, prosecutors and journalists.

In 2021, some concrete steps to support lawyers were put into practice and these will be strengthened in 2022.

These steps include:

i) trainings to increase resilience that are an inherent part of the vocational training,

ii) a free "object scan", through which lawyers can have their own law firm checked for physical vulnerabilities and for findability in registers, and

iii) the national bar initiative to set up a center of expertise and training for lawyers, and other (legal) professionals like judges, notaries, prosecutors but also journalists, bailiffs and public

administrators. Possibly, this center will be expanded to a refuge for persons threatened in their professional practice. The so-called "Wijkplaats" intends to provide a quiet shelter to share negative experiences with violence and threats.

Legal aid

Since 2008 the Dutch government has cut back a number of times on the subsidized legal aid system. As a result, legal aid lawyers do not receive reasonable remuneration for their work. It is only recently that the former government was forced by the Dutch parliament to structurally invest in higher remuneration for legal aid lawyers. Until that moment the former minister had refused to carry out the Van der Meer report: an independent committee, called the Van der Meer-committee, evaluated all the case codes and determined how many hours should be reimbursed per case in 2017.

Notwithstanding the campaigns of the Netherlands Bar, the legal profession and even the parliament, the Minister for Legal Protection focused on a reform of the system that could only be implemented in 2025; a system reform that has already been criticized on several points.

Already for several years the Netherlands Bar is making efforts to achieve an intensification of legal aid regarding the imposition of penal orders. A well-organized legal aid system is essential in a model in which a prosecutor acts as judge.

The turning point was the resign of the whole cabinet last year. The cabinet resigned because of the ''Toeslagenaffaire'', the Dutch childcare benefits scandal. In short: thousands of parents were wrongfully labeled as fraudsters and had to pay back thousands of euros of surcharges for childcare. Some of these parents were targeted because of their nationality. This resulted in enormous debts for the parents. The collateral damage is substantial: mental problems, unemployment, divorce, custodial placements of children.

After the March 2021 Dutch general elections, the Netherlands Bar drew the attention of the new government and parliament to the acute needs of legal aid users and the importance of investing in access to justice. Also, the Netherlands Bar advised on the creation of a legal aid settlement-procedure for damages claims.

Due to the harsh treatment of victims in the childcare benefits scandal, the Dutch Parliament urged the government to strengthen the rule of law and legal aid. Parliament proposed by motion that the Van der Meer report should be implemented by 1st January, 2022. The cabinet decided that the legal aid budget will increase with 154 million euros per year extra, but that this extra budget would decline to 64 million euros in 2025. Also, the cabinet demanded a contribution of the ''commercial'' law firms, who do not participate in the legal aid system.

In January 2022 a new cabinet was formed. The coalition agreed on strengthening legal aid. The budget will not decline to 64 million euros in 2025. However, a (financial) contribution of the ''commercial'' law firms remains a possibility. The reform plans of the former minister will be developed further. The Netherlands Bar, along with other stakeholders, will present a plan with improvements on the current system as an alternative to the reform plans of the former minister. Also, the Netherlands Bar will assist with the implementation of the Van der Meer report.

In addition, the coalition agreement introduces a Taxpayer Advocate Service, based on the Taxpayer Advocate Service of the Internal Revenue Services (IRS) of the United States.

Confidentiality

In the past years consistent calls have also been made for containing legal professional privilege of lawyers and notaries (and medical practitioners), the main reason being that this privilege is 'bothering' (fiscal) investigation authorities during the performance of their work activities. In 2017, the Dutch government proposed to eliminate fiscal confidentiality. Some have argued that this is hypocritical: the Dutch government has created laws to make tax evasion possible. In addition, the Tax Authorities can already demand that all

information, which is required for the Tax Authorities to carry out all the audits, is shared (except for the communication between lawyer and client).

The Netherlands Bar is committed to put the importance of professional secrecy and legal professional privilege into the right perspective, namely to protect the litigant.

Approach on organised crime

Last year the former minister introduced several measures to combat organised crime. Some of these measures have an effect on the prosecution, detention and legal assistance of suspects.[6] They breach the fundamental rights of suspects, for example, the right to choose your lawyer or the right to be present (physically, not digitally via videoconferencing) at trial.

The Netherlands Bar finds that strengthening the supervision of lawyers and the resiliency of lawyers is the right course of action. The Netherlands Bar will speak with the ministry about the balance between countering organized crime on one hand and protecting fundamental rights on the other hand.

[6] An incident in the prosecution of a drug lord has prompted these measures. The suspect was represented by his cousin. This cousin was arrested for preparing a prison outbreak for the suspect.

Poland

Cases/examples undermining the independence of the Bar and independence of lawyers (including access to the profession and the disciplinary procedure process).

In 2021 the government has continued its attacks against advocate Roman Giertych, continuing criminal actions which have been marked by numerous irregularities and illegal actions on the part of public prosecutors.

On 15 October 2020, Roman Giertych was detained by the Central Anticorruption Bureau (CBA) on accusations of money laundering. The detainment was obviously entirely unnecessary from a legal point of view - a fact subsequently confirmed by the court.

Roman Giertych has worked on a series of high-profile cases against the governing Law and Justice party. He has also represented various prominent opposition figures, including Donald Tusk, the former Polish prime minister and head of the Civic Platform opposition party, and former president of the European Council. Mr. Giertych's detainment took place one day before the scheduled detention hearing in another politically significant high-profile case, concerning Leszek Czarnecki, in which Roman Giertych was appointed as defense counsel.

Roman Giertych's house was searched – in breach of law, before the representatives of the Warsaw Bar Association could arrive. During the search in his home Mr. Giertych fell unconscious on his bathroom floor and was rushed to the hospital. Consequently, he could no longer participate in the house search. After being hospitalized and while still unconscious, the public prosecutor tried to present Mr. Giertych with charges.

Additionally, the public prosecutor decided on using preventive measures against Mr. Giertych and applied for them to the court.

Throughout the final months of 2020 and 2021 almost all of the actions of the public prosecutors and the Central Anticorruption Bureau have been found by the courts to be illegal, unnecessary, and disproportionate.

Sources:

- https://tvn24.pl/polska/zatrzymanie-romana-giertycha-obroncy-mecenasa-skierowali-zazalenia-na-dzialania-sledczych-4728767
- https://kirp.pl/oswiadczenie-prezesa-krajowej-rady-radcow-prawnych-z-16-pazdziernika-2020-r/
- https://www.ora-warszawa.com.pl/aktualnosci/wiadomosci/komunikat-w-sprawie-zastosowaniu-wobec-adw-romana-giertycha-srodka-zapobiegawczego-w-postaci-zawieszenia-w-czynnosciach/?fbclid=IwAR0ZhPNL1IOdW0rmMGLBg2aO-usC7Vga9t5vyYBbGyBpkrbzDNFa4TwB1c4
- https://bip.brpo.gov.pl/pl/content/-rpo-do-premiera-prokuratura-ws-romana-giertycha-razaco-naruszyla-prawo
- https://oko.press/piata-porazka-prokuratury-ziobry-ws-giertycha-sad-jego-zatrzymanie-bylo-nielegalne/
- https://www.gazetaprawna.pl/wiadomosci/kraj/artykuly/8317609,prokuratura-tymczasowe-aresztowanie-roman-giertych.html

In 2021, the government continued to harass advocates who questioned the legality of appointment of judges to the disciplinary courts for judges (who are appointed by the Minister of Justice acting without any limitations on his freedom of decision and without the need to obtain any consent from any external body) or judges sitting in the illegal Disciplinary Chamber of the Supreme Court.

For example, Advocate Mikołaj Pietrzak, The Dean of Warsaw Bar Association, one of three defense counsels of judge Waldemar Żurek, an outspoken defender of the rule of law in Poland, has had a disciplinary notice filed against him because of his defence of judge Żurek. During a hearing before the disciplinary court in Mr. Żurek's case, the defense counsel filed a motion for the disciplinary judges adjudicating in this case to recuse themselves – on the grounds that because of the manner of their appointment they do not meet the requirements of independence and impartiality laid down in EU law and Polish law.

Sources: https://komitetobronysprawiedliwosci.pl/wpis-wokanda/opinia-kos-wz-z-dzialaniem-zastepcy-rzecznika-dyscyplinarnego-wobec-adw-mikolaja-pietrzaka/

Advocate, Professor Michał Romanowski is under investigation by the Internal Affairs Department of the National Prosecutor's Office as result of his defence of the Polish judge Juszczyszyn. When the judge was authorized, by the District Court of Bydgoszcz, to resume adjudicating cases at the court where he was employed, the President of the District Court of Olsztyn, Mr. Nawacki refused to enforce this decision. After advocate Romanowski notified the actions of Mr. Nawacki to the public prosecutor's office, he was accused by Mr. Nawacki of the crime of false accusations and an investigation was opened against him. Mr. Nawacki has also contacted the Warsaw Bar Association in order to initiate disciplinary proceedings against advocate Romanowski. Moreover, advocate Romanowski was accused of defamation by the Deputy Disciplinary Ombudsman of the Common Law Court Judges after advocate Romanowski sent a letter to the European Commission Vice-President for Values and Transparency concerning the decision by the District Court of Bydgoszcz and the failure of the relevant authorities to reinstall judge Juszczyszyn. Advocate Romanowski was accused of publicly insulting a constitutional organ of the state after writing a critical open letter that challenged the independence of the First President of the Supreme Court.

Sources:

https://oko.press/radzik-ktory-sciga-sedziow-chce-dopasc-prawnika-tulei-i-juszczyszyna-zada-procesu-i-dyscyplinarki/

https://lawyersforlawyers.org/en/end-harassment-of-michal-romanowski/

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

a. The Polish Bar Council is monitoring the cases where advocates are being released from the confidentiality privilege. In 2021 we recorded 125 cases. The number has significantly increased over the years in comparison to data from 2017 and 2018. In 2017 there were 102 recorded cases, in 2018 - 100 cases, in 2019 – 129 cases and in 2020 – 125.

Sources: Internal research conducted by the Polish Bar Council.

b. The Polish Bar Council is worried and specifically monitoring any information and cases related to the use of surveillance systems and software against advocates. At the end of 2021 and beginning of 2022 news agencies and interested persons – including advocate Giertych, prosecutor Wrzosek and Senator Brejza (and his wife who is an advocate) reported that they have reliable information (verified by Citizens Lab) that their telephones have been hacked and surveilled using Pegasus software which enables full control and surveillance. They have reported that their telephones were multiple times hacked in the years 2019-2021. Senator Brejza in 2019 was leading the opposition's campaign to the Parliament. Advocate Roman Giertych handles a number of high-profile political cases, concerning either criminal charges brought by the politically-controlled public prosecutors against opposition politicians or other adversaries of the current government (at the time when the hacking began, he was representing former Prime Minister Donald Tusk, now head of the largest opposition party, and former Foreign Minister Radoslaw Sikorski, now a European Parliament member, or alleged criminal misconduct on the part of members of the ruling party (including a case against Jarosław Kaczyński, leader of the ruling party, concerning fraud and infringement of the laws on financing of political parties).

The use of this software raises questions related to the lawfulness of such surveillance in Poland and raises questions if such use was authorized by the Court. The Polish Bar Council will continue to monitor and voice its objection to the use of such methods against advocates, where it compromises the confidentiality privilege.

Sources:

https://tvn24.pl/polska/pegasus-czym-jest-co-o-nim-wiemy-5542081

https://oko.press/pegasus-gorzej-niz-podsluch-potrafi-tez-podrzucac-dowody/

https://www.washingtonpost.com/politics/polish-leader-admits-country-bought-powerful-israeli-spyware/2022/01/07/7ab41ad2-6f86-11ec-b1e2-0539da8f4451_story.html

https://apnews.com/article/technology-business-middle-east-elections-europe-c16b2b811e482db8fbc0bbc37c00c5ab

https://www.politico.eu/article/polish-spyware-scandal-stokes-up-tensions-with-eu/

https://abcnews.go.com/International/wireStory/ap-exclusive-nso-spyware-hacked-polish-opposition-duo-81862002

Trends and significant developments justice system

There were three major reforms of the justice system announced in 2021. That is, the continuation of introduction of significant changes to the civil procedure, introduction of justices of the peace (presidential initiative), and the announced by the Ministry of Justice elimination of one level of the judiciary. Moreover, Mr. Kaczynski – the President of the ruling party, announced that the whole judicial system will be reformed and significantly simplified. Not all drafts of these laws were presented for review. Some of these projects seem contradictory to each other and also unconstitutional. The Polish Bar Council was not formally consulted during the drafting process. Introduction of such significant changes to the judicial system should be widely consulted with all stakeholders. The current system after the reforms introduced earlier by the government did not reach its intended (communicated) goal of shortening the time periods required for completion of cases in courts. There is a risk that these reforms will be used to review and release from service the judges who are contesting the constitutionality of the past and current actions of the government and wrongly appointed judges.

Sources:

https://www.gov.pl/web/sprawiedliwosc/reforma-sadownictwa-wzmocni-niezawislosc-i-niezaleznosc-sedziow

https://serwisy.gazetaprawna.pl/orzeczenia/artykuly/8318118,reforma-wymiaru-sprawiedliwosci-sedziowie-losowanie-spraw.html

https://www.ora-warszawa.com.pl/aktualnosci/wiadomosci/ora-w-warszawie-jednoglosnie-krytycznie-o-instytucji-sadow-pokoju/

https://serwisy.gazetaprawna.pl/orzeczenia/artykuly/8285166,sedziowie-pokoju-kim-sa-czym-sie-zajmuja-jakie-wymogi.html

https://www.prawo.pl/prawnicy-sady/zmiany-w-postepowaniu-cywilnym-wielka-reforma-procedury-na-razie,504262.html

On October 7, 2021, case ref. K 3/21, the Polish Constitutional Tribunal ruled that the provisions of the TEU are non-compliant with the Polish Constitution – if interpreted in a way that:

a) allows the CJEU to interpret EU law in a way that would (1) expand competences of the European Union beyond these conferred by Poland in the treaties; (2) cause the Polish Constitution to no longer be

the supreme law in Poland (3) make it impossible for Poland to operate as a sovereign and democratic state;

b) allows Polish courts to (1) disapply the Constitution, and (2) base their judgments on the provisions of Polish law that were abolished by Parliament or ruled unconstitutional by the Constitutional Court;

c) allows Polish courts (1) to assess the independence of a judge who issued a ruling which is under appeal; or (2) review the legality of his appointment.

The Constitutional Tribunal's decision is affected by numerous legal flaws. First of all, it has been issued by an illegal panel, comprising persons who are not judges of the Constitutional Tribunal (as they have been appointed to their positions by the current government contrary to law[7]). Secondly, the recent decision ignores the fact that the constitutionality of the TEU has already been reviewed by the Constitutional Tribunal[8] and contradict the previous jurisprudence of the Constitutional Tribunal.

The decision aims at undermining both the CJEU's competences which ensure the full effectiveness of EU law, as well as the competence of Polish courts to act according to EU law and enforce its principles. Its real purpose is to help the Polish government maintain its attack on human rights, the rule of law and independence of the judiciary – by trying to present arguments with which to justify the continued operation of the illegal disciplinary regime for common court judges together with the illegal Disciplinary Chamber of the Supreme Court, and the illegal procedure for appointing and advancing judges[9].

Sources:

https://ruleoflaw.pl/tag/k-3-21/

https://trybunal.gov.pl/en/hearings/judgments/art/11662-ocena-zgodnosci-z-konstytucja-rp-wybranych-przepisow-traktatu-o-unii-europejskiej

https://verfassungsblog.de/gazing-into-the-abyss/

d) On November 24, 2021, case ref. K 6/21, the Polish Constitutional Tribunal ruled 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

– in the scope in which it is applicable to the Polish Constitutional Tribunal and in the scope in which the European Court of Human Rights can assess the legality of the appointment of judges to the Polish Constitutional Tribunal.

The judgment was handed down after the motion of the Prosecutor General which was filed after the European Court of Human Rights in the case Xero Flor v Poland has questioned the validity of the appointment of certain judges sitting in the Polish Constitutional Tribunal and indirectly the validity of the appointment of members of the National Council of the Judiciary.

The Prosecutor General in 2021 has also filed a motion to the Polish Constitutional Tribunal to rule 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

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7 See judgements of the Constitutional Tribunal of 3 December 2015 (K 34/15) and 9 December 2015 (K 35/15).

8 In its judgment of 11 May 2005 (K 18/04) the Constitutional Tribunal ruled that the Treaty of Accession 2003, thanks to which Poland joined the EU in 2004 and accepted it's the primary and secondary law, is complaint with the Polish Constitution. In its judgment of 24 November 2010 (K 32/09) the Constitutional Tribunal ruled that the so-called Lisbon Treaty is compliant with the Polish Constitution.

9 See Resolution of the combined Civil Chamber, Criminal Chamber, and Labour Law and Social Security Chamber of the Supreme Court of 23 January 2020, BSA I-4110-1/20. After being illegally dissolved and then appointed with representative of the current government, the National Judiciary Council, a key institution in the procedure of appointing and advancing judges, has been suspended in its membership of the European Network of Councils for the Judiciary (ENCJ), stripped of its voting rights and excluded from participation in ENCJ activities on 17 September 2018, based on the assessment that it was no longer the guardian of the independence of the judiciary.

of Human Rights to challenge the status of judges appointed at the request of the National Council of the Judiciary. The Constitutional Tribunal has set the hearing for 19.1.2022 (case ref. K 7/21).

Sources:

https://trybunal.gov.pl/postepowanie-i-orzeczenia/wyroki/art/11709-art-6-ust-1-zd-1-konwencji-o-ochronie-praw-czlowieka-i-podstawowych-wolnosci-w-zakresie-w-jakim-pojeciem-sad-obejmuje-trybunal-konstytucyjny

https://trybunal.gov.pl/postepowanie-i-orzeczenia/wokanda/art/11744-dokonywanie-na-podstawie-art-6-ust-1-zd-1-ekpcz-przez-sady-krajowe-lub-miedzynarodowe-oceny-zgodnosci-z-konstytucja-i-ekpcz-ustaw-dotyczacych-ustroju-sadownictwa-wlasciwosci-sadow-oraz-ustawy-dotyczacej-krajowej-rady-sadownictwa

https://www.rp.pl/sady-i-trybunaly/art19291631-w-srode-tk-pod-przewodnictwem-piotrowicza-zajmie-sie-wnioskiem-ziobry

e) The National Council of the Judiciary was nominating judges and functioning throughout 2021 despite the judgments of the ECJ (e.g. C-824/18, A.B.) and the judgments of the National Administrative Court. In December 2021 new elections to the National Council of the Judiciary began and are now being finalized. The Council will most probably be composed of the same persons (with one exception). Very few candidates decided to participate in this process due to a boycott of these elections by the majority of the judges. The composition of the Council suggests that this institution that is crucial for the democratic state has strong personal links to the Ministry of Justice.

Sources:

https://www.rp.pl/sady-i-trybunaly/art19241121-wybory-do-krs-starzy-czlonkowie-moga-zostac-na-dluzej

https://oko.press/sami-swoi-ida-do-nowej-krs-bis-piebiak-zastepczyni-i-kolezanka-ziobry-oraz-jego-nominaci/

- The rates of attorney's fees for cases assigned to a professional attorney ex officio were not significantly changed, as well as indexed starting from 2016, i.e. from the entry into force of the Regulation of the Minister of Justice of 22 October 2015 on fees for attorney's activities (Journal of Laws 2015.0.1800). It is worth mentioning, the amendment of the said regulation of 27 October 2016 introduces a number of changes in the amount of minimum rates, mainly causing their reduction in relation to the regulation in the version in force since 1 January 2016. At the same time, it is obvious that over the last 7 years there has been a significant increase in consumer prices, as well as an increase in the cost of doing business. In 2015, the average annual consumer price index was at the level of -0.9%[10], while in December 2021 alone, according to a quick estimate, compared to the same month of 2020, the price index was at the level of as much as 8.6%[11] It should be pointed out that the Courts continue to award minimum rates to advocates, moreover, despite the requests and grounds in criminal or misdemeanor proceedings for their increase under Article 17 of the Ordinance of the Minister of Justice of 22 October 2015 on fees for attorney's activities, they continue to find that the involvement in a case, which, for example, has lasted since 2013 and included 23 hearings, to date, does not merit an increase in the remuneration of a professional attorney. For example, in a labor law case, where the value of the subject matter of the dispute is between PLN 1500 and PLN 5000, the attorney appointed ex officio receives for representation a rate of PLN 900. Despite numerous objections and motions, the State remains inactive.

[10] *Komunikat Prezesa Głównego Urzędu Statystycznego z dnia 15 stycznia 2016 r. w sprawie średniorocznego wskaźnika cen towarów i usług konsumpcyjnych ogółem w 2015 r.*

[11] *https://stat.gov.pl/obszary-tematyczne/ceny-handel/wskazniki-cen/szybki-szacunek-wskaznika-cen-towarow-i-uslug-konsumpcyjnych-w-grudniu-2021-roku,8,68.html*

Progress and developments in comparison to 2021

Changes to law and the way courts work which have been implemented in response to the COVID-19 pandemic have been made in a way which impedes access to justice, the parties' right to actively participate in judicial proceedings, and the right to fair trial - both in civil proceedings before common courts and in proceedings before administrative courts. In civil proceedings, pursuant to the law which entered into force on 3.07.2021, online hearings have become the default option, and the court may even in some scenarios decide the case without holding a hearing (i.e. in closed session). Traditional hearings have been relegated to being a third, unfavored option, to be held only if they do not cause excessive health risk to their participants.

Administrative courts have started to decide the majority of cases without holding a hearing (i.e. in closed session).

Sources:

https://www.prawo.pl/prawnicy-sady/rozprawy-online-posiedzia-niejawne-i-jednoosobowe-sklady,509203.html

https://www.prawo.pl/prawnicy-sady/rozprawy-online-problemy-techniczne,512278.html

ADDITIONAL SOURCES:

The Polish Bar Council (*Naczelna Rada Adwokacka*) and its President has issued the following statements related to the Rule of Law in 2021:

Statements related expressly to rule of law in Poland:

https://www.adwokatura.pl/z-zycia-nra/nra-deklaruje-wsparcie-w-pracach-nad-rozwiazaniem-kryzysu-praworzadnosci/page/4/

https://www.adwokatura.pl/z-zycia-nra/stanowisko-nra-ws-rozstrzygniecia-tk-z-7-pazdziernika-br/page/6/

https://www.adwokatura.pl/z-zycia-nra/nra-w-obronie-prawa-do-zgromadzen-uchwala/page/6/

https://www.adwokatura.pl/z-zycia-nra/prezydium-nra-o-orzeczeniu-tk-z-7-pazdziernika-2021-r-uchwala/page/7/

https://www.adwokatura.pl/z-zycia-nra/prezydium-nra-apeluje-o-wykonanie-postanowien-tsue/page/14/

https://www.adwokatura.pl/z-zycia-nra/memorandum-w-sprawie-prawa-obywatela-do-sadu/page/15/

https://www.adwokatura.pl/z-zycia-nra/rule-of-law-in-poland-spotkanie-robocze-z-komisja-europejska/page/24/

Statements related to the migration crisis and the involvement of advocates:

https://www.adwokatura.pl/z-zycia-nra/kolejna-interwencja-prezesa-nra-u-premiera-ws-pracy-adwokatow-przy-granicy/page/8/

https://www.adwokatura.pl/z-zycia-nra/nra-o-sytuacji-na-granicy-polsko-bialoruskiej-uchwala/page/6/

https://www.adwokatura.pl/z-zycia-nra/uchwala-prezydium-nra-dot-ustawy-o-ochronie-granicy/page/5/

https://www.adwokatura.pl/z-zycia-nra/prezes-nra-do-rzecznika-praw-dziecka-dzieci-imigrantow-potrzebuja-pomocy/page/9/

https://www.adwokatura.pl/z-zycia-nra/prezes-nra-ponownie-interweniuje-ws-pracy-adwokatow-przy-granicy-polsko-bialoruskiej/page/9/ Spotkanie Prezesa NRA z marszałek Sejmu Elżbietą Witek - Z życia NRA - Naczelna Rada Adwokacka - Warszawa (adwokatura.pl)

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https://www.adwokatura.pl/z-zycia-nra/wszyscy-adwokaci-powinni-moc-dzialac-w-obszarze-objetym-stanem-wyjatkowym/page/10/

https://www.adwokatura.pl/z-zycia-nra/interwencja-prezesa-nra-ws-zwolnienia-afganskiej-adwokat-z-osrodka-dla-cudzoziemcow/page/11/

https://www.adwokatura.pl/z-zycia-nra/prezes-nra-domaga-sie-wyjasnien-nt-utrudniania-pracy-pelnomocnikom-na-granicy-polsko-bialoruskiej/page/12/

https://www.adwokatura.pl/z-zycia-nra/petycje-nra-ws-przeszukan-u-adwokata-i-zawieszenia-w-wykonywaniu-zawodu-do-dalszych-prac-w-senacie/page/7/

https://www.adwokatura.pl/z-zycia-nra/stanowisko-prezydium-nra-w-sprawie-ujawnienia-korespondencji-i-lamania-tajemnicy-adwokackiej/page/25/

https://www.adwokatura.pl/z-zycia-nra/petycja-nra-ws-zasad-przeszukiwania-pomieszczen-nalezacych-do-adwokata-i-zawieszenia-w-wykonywaniu-zawodu/page/29/

Statements related to confidentiality privilege:

Prezes NRA w Tvn24 o sprawie inwigilowania adwokata - Z życia NRA - Naczelna Rada Adwokacka - Warszawa (adwokatura.pl)

https://www.adwokatura.pl/z-zycia-nra/interwencja-prezesa-nra-ws-doniesien-o-inwigilowaniu-adwokata/page/1/

https://www.adwokatura.pl/z-zycia-nra/petycje-nra-ws-przeszukan-u-adwokata-i-zawieszenia-w-wykonywaniu-zawodu-do-dalszych-prac-w-senacie/

Portugal

Cases/examples undermining the independence of the Bar and independence of lawyers (including access to the profession and the disciplinary procedure process)

A project of law presented by the Government's parliamentary group foresees amendments to the access to the profession and respective training, as well as the possibility to have non-professionals overseeing disciplinary jurisdiction and regulating our legal practice.

The introduction of Multidisciplinary professionals in law firms' partnerships raises concern as far as conflict of interests and professional secrecy compliance is due.

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

Ordem dos Advogados has sustained fiercely against the violation of professional secrecy and proportionality which (DAC 6) AML Directive's transposition has brought upon the legal profession, absolutely unnecessary for the rule of law´s sake.

After several diligences from Ordem dos Advogados, the Portuguese Ombudsman (Provedoria de Justiça) has accepted our views and in September 2021, presented a Constitutional Inspection request before the Constitutional Court, over the rulings put in place by this Directive (Lei n.º 26/2020, de 21 de Julho).

Please find the Press Release on this issue (in Portuguese) by our President Bastonário Luís Menezes Leitão, here.

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

We have had a large number of cases of illegal representation in our national jurisdiction, some gave place to effective prosecution of perpetrators, in each region but citizens face real danger when it comes to alleged professionals that have no registration before the Ordem.

Reported cases of unsafe Lawyers' Room in courts throughout the territory either by lack of physical security or COVID safety measures.

Reported cases of disrespect of professional prerogatives in access to Tax, Civil (IRN), Car, Commercial and Real Estate register services (no availability for booking, long waitings, no professional priority in line, etc).

Reported cases of disrespect of professional prerogatives and COVID safety measures, in Guimarães, Leiria and specifically in Family Court of Aveiro, where adults, lawyers and children are kept waiting for hearings with no safe distance guaranteed or sanitary procedures.

Trends and significant developments in justice system

The introduction of Multidisciplinary professionals in law firms raises concern to the Ordem dos Advogados as far as conflict of interests and professional secrecy compliance is due.

Reported cases of disrespect of professional prerogatives in Boarders and Foreigners Service (SEF).

Legal aid fees shamefully low (average 389 euros per case)

Progress and developments in comparison to 2021:

https://portal.oa.pt/comunicacao/comunicados/2021/comunicado-do-conselho-geral-de-12-de-outubro-de-2021/

https://portal.oa.pt/comunicacao/comunicados/2021/comunicado-do-bastonario-regulamentacao-da-lei-552021-de-13-de-agosto/

https://portal.oa.pt/comunicacao/comunicados/2021/comunicado-do-bastonario-lei-n%C2%BA-782021-de-24-de-novembro/

Romania

In 2021, there were no notable events in the field of the legal profession. The anticipated reforms are delayed due to a prolonged political crisis in Romania, which ended during last December.

A positive development was reported by the Bar - lawyer M.Rosu, being sentenced to 5 years in prison was acquitted in cassation procedure in November 2021.

Slovakia

INDEPENDENCE OF LEGAL PROFESSION

Legal profession in Slovakia is governed by the Act on the Legal Profession and internal (ethical) regulations adopted by the Bar. Based on them, it is the **duty of the lawyer to act independently**.

Violations of the Act and regulations by lawyers themselves (which may also include a breach of the duty to act independently) are ass**essed and punished in individual cases by the Bar in disciplinary proceedings**. If a violation is found, a disciplinary measure may be imposed on the lawyer in accordance with the Act on the Legal Profession (written or public reprimand, fine, suspension of practice, disbarment). Disciplinary proceedings belong to the competence of independent bodies of the Slovak Bar Association (Disciplinary Committee and Disciplinary Committee of Appeal). Final decisions of disciplinary bodies may be subject to judicial review by the Supreme Administrative Court of the Slovak Republic. Ministry of Justice has powers to file a complaint or submit a petition to directly initiate disciplinary proceedings.

Different situation arises with regard to **alleged external interference** with the independent exercise of legal profession. If there is a violation of law other than the Act on the Legal Profession, the lawyer may initiate the relevant proceedings, which is in the competence of public authorities (e.g. law enforcement authorities, courts, etc.) for example arguing the misuse of powers, corruption, unlawful detention, etc. The lawyer concerned may equally file a constitutional complaint or application to the European Court of Human Rights.

The Slovak Bar Association **responds to legislative initiatives** that could affect the independence of lawyers or the Bar itself. For this purpose, the Slovak Bar Association is actively involved in the legislative process in many areas and maintains a dialogue with representatives of both the legislative and executive bodies.

Current situation and issues

Lawyers in Slovakia are facing an indirect threat to their independence in two forms:

- First being the threats and harassment of lawyers from persons encountered in the course of their practice, and
- Secondly, identification of lawyers with their clients, which is especially problematic in case of defence lawyers.

The purpose of defence is still misinterpreted and misunderstood by the media and society. Unfortunately media often use expressions that intensify the wrong impression of lawyers and the concept of defence. Fulfilment of lawyer´s obligation to represent a client does not mean that the lawyer approves of the client´s doing and lawyers cannot be harassed or prosecuted for the fulfilment of their statutory and constitutional duties.

In recent years, there is a growing concern that **lawyers are targeted (and also under surveillance) because they provide legal services to certain persons.** There are cases when lawyers have been put in collusive custody, their offices were searched and they were associated with their clients in media, without concrete foundations. Particularly in the past two years this have had a chilling effect on the legal profession. It is not necessary to have a high number of cases of this kind, even a few cases may have impact on the whole legal profession.

In the past **the appointment of ex offo defence counsel by judges was perceived as having negative effect on the principle of independence**. Judges used to appoint only a certain circle of lawyers in the region. This was changed in 2019 by a new legislation that introduced an automated system of appointments of lawyers that guaranteed even distribution of cases without any interference of judge.

Examples:

- A lawyer has been kept in collusive custody for 565 days and the accusation was based on the fact that he provided legal defence to members of organised crime group in criminal proceedings. The unconstitutionality of the detention was confirmed by the Constitutional Court of the Slovak Republic three times (https://www.ustavnysud.sk/vyhladavanie-rozhodnuti#!DecisionsSearchResultView). Slovak Bar Association was involved through Amicus Curiae and called for respect of the principle that a lawyer cannot be prosecuted for the provision of legal services.
- Lawyers were detained by National Criminal Agency without proper grounds (confirmed by the Supreme Court of the Slovak Republic).
- Lawyers were put under surveillance after taking over defence of certain persons.
- It was publically suggested by state body that a member of the Judicial Council, who is a lawyer, should resign from the post due to the personalities of clients she represented.
- 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 written warrant.
- Several defence counsels have drawn Bar´s attention to the tendency to criminalize lawyers´ activities, not only in the scope of the lawyer's activities in criminal proceedings, but also in representing clients' rights in all types of court proceedings and other proceedings before public authorities. Proposing witnesses and examination of witnesses by a lawyer on behalf of the client are considered by law enforcement authorities and, in rare cases, by the courts as fulfilling the objective aspect of the crime of obstructing justice or the crime of perjury.

Press release - Search of offices:

https://www.sak.sk/web/sk/cms/news/form/list/form/row/1079926/_event

A lawyer's duty of confidentiality is the right of his client and cannot be arbitrarily violated, not even by law enforcement bodies

Source: Slovak Bar Association, dated November 26, 2021

In the case of police search of the non-residential premises of a lawyer – the law firm, a representative of the Slovak Bar Association is also sent to be present and to supervise the proper performance of the search securing compliance with professional regulations, especially the duty of confidentiality. The duty of confidentiality is one of the fundamental principles of legal profession, it can be compared to the seal of confession, which the priest is obliged to observe and which is the right of the confessing believer. Similarly, all matters that the lawyer learns while representing the client and all communication with the client are subject to this obligation. It is therefore a client's right and must be respected as part of the constitutional right to a fair trial and the protection of privacy.

The Slovak Bar Association noted another case when the duty of confidentiality was endangered (if not directly violated) by law enforcement authorities. In the law office of lawyer JUDr. P.S. they carried out a search in connection with the representation of a client who is suspected of committing a crime. During the search, lawyer´s computer with the data of all his clients was confiscated, including his personal and business correspondence, as well as other client files that were not related to the matter. This procedure was objected to directly during the search. In spite of the lawyer´s willingness to issue the required documents related to the criminal case, the prosecutor was not willing to make selection of files and ordered to confiscate everything.

The breach of confidentiality cannot be justified by the difficulty of separating the information relevant to the criminal proceedings stored on a data carrier from other information not relevant for the proceeding which are, furthermore, protected by the obligation of professional secrecy.

In a similar matter, the Constitutional Court (III. ÚS 68/2010-62) has already ruled on the violation of the lawyer's rights, stating that even if the search order is lawful but its execution interferes with the lawyer's duty of secrecy, it amounts to an interference with the constitutional right to privacy, secrecy of correspondence, secrecy of transported messages and other documents.

Given the severity of the threat to clients' rights, as well as the repeated actions of police officers and prosecutors (despite the case law prohibiting such actions), the President of the Slovak Bar Association will turn to the Prosecutor General of the Slovak Republic.

Press release – Prosecution for exercising profession

https://www.sak.sk/web/sk/cms/news/form/list/form/row/1011575/_event

https://www.sak.sk/web/sk/cms/news/form/list/form/row/601057/_event

Prosecutor General: Charging a lawyer for actions in pursuit of her professional practice is unlawful

Source: Slovak Bar Association, dated March 26, 2021

Slovak Bar Association welcomes the decision of the Prosecutor General in the case of the accused lawyer A.Ž. According to the Bar, the lawyer was charged only for actions taken in pursuit of her professional practice.

The lawyer A.Ž. forwarded the resolution issued by the Prosecutor General to the Bar. Pursuant to the resolution, the charges brought against the lawyer were unlawful. The Slovak Bar Association was informed of this fact within the limits of its powers when deciding on the potential suspension of the lawyer's activities due to the ongoing criminal prosecution.

The matter is related to a case with a significant media coverage in which a lawyer was accused of obstructing justice, or a blackmail. The Prosecutor General's resolution states the charges brought against the lawyer and the procedure that preceded the presentation of charges were unlawful. The Slovak Bar Association draws attention to this case because the lawyer was accused of the pursuit of her profession of lawyer.

In this respect, the Prosecutor General also referred to the findings of the pre-trial judge, who stated, when deciding on taking the accused into custody, that actions of the accused lawyer did not meet the characteristics of a criminal offense, emphasizing that "pursuit of the legal profession cannot be confused with committing a criminal offense".

The Slovak Bar Association welcomes the fact that in this case, despite the initial excessive use of state power, the legal situation was corrected. Nevertheless, we consider it our duty to repeatedly point out that the identification of lawyer's activities with the criminal activity of his/her clients is a well-established myth not only among the general public, but, unfortunately, such distorted understanding of legal profession also affects the practice of law enforcement bodies. As such it presents a serious threat to the independence of legal profession and therefore of the right to accessible legal aid. We consider such practices unacceptable in a state governed by the rule of law.

The Bar draws attention to this case also in the context of similar cases of criminal prosecution of lawyers apparently prosecuted for the provision of legal services in the Czech Republic. In this way,

the Bar expresses its support and solidarity to its colleagues from the Czech Bar Association in the matter of protecting the independence of the legal profession.

We are also highlighting this case in connection with our recent statement on suspected serious violations of the rule of law principles in the area of criminal law.

Press release – lawyers targeted with hate speech

https://www.sak.sk/web/sk/cms/news/form/list/form/row/965971/_event

Statement: LAWYERS MUST NOT BE THE TARGET OF HATE SPEECH

Source: SAK, 20th September 2021

The Slovak Bar Association is extremely sensitive to any hate speech against lawyers performing their profession, especially when it comes to verbal attacks by politicians.

Recently, we have noted such inappropriate pronouncements addressed to a colleague on account of his exercise of the profession. We consider it our duty in this context to recall that the only way towards fair Slovakia is respect for the law, the presumption of innocence, but also respect for opinion opponents and adequate prudence and restraint in categorical considerations.

We do not think that generalized labelling of opponents as members of the mafia is conducive to public debate. On the contrary, it only incites further and further inappropriate attacks.

When it comes to important issues of the rule of law, we call on all parties concerned to exercise the necessary restraint and matter-of-factness in their statements, as well as to adhere to the principle of professional secrecy. We would like this message to be taken to heart by all those involved, including lawyers, also those who are currently politically active, or possibly in a different position in addition to their legal practice.

Press release:

https://www.sak.sk/web/sk/cms/news/form/link/display/551009/_event

Excessive use and duration of detention and deaths in police custody are unsustainable

Source: Slovak Bar Association, dated March 3, 2021

The Slovak Bar Association considers cases of deaths in detention associated with unreasonably long terms under the most severe conditions to be alarming and unsustainable. This is not a new phenomenon, the Bar has been raising this issue for years and it is also a regular topic in the reports of the Committee Against Torture (CAT).

We are convinced that equally the last case of the accused lawyer's death due to COVID-19 in detention must lead not only to individual responsibility but also to a fundamental reassessment of the criminal policy, and at least to its partial approximation to the standards in advanced democracies. We fear that cases with media publicity are just the tip of the iceberg, and there have been, and are, many more cases of inadequate treatment of people and overuse of criminal law.

The latest case of the death of the lawyer in detention raised suspicions of several, even absurd, individual failures. We therefore welcome the Prosecutor General's decision to launch a review on this matter.

At the same time, we think that the necessary degree of attention should be paid to the very fact that the accused has been held in the strictest conditions in collusive detention for almost a year.

For the sake of comparison, in the neighbouring Czech Republic, collusive detention can last a maximum of three months. It is common in our country that the accused is locked in a small cell with artificial lighting all year long, daily, 23 hours a day, with the possibility of a short hour "walk" in between the concrete walls, without social contacts, with delayed correspondence from the family and friends. If the accused becomes infected with a coronavirus and succumbs to the disease, we believe that invoking the state's responsibility for failing to fulfil its positive obligation to protect the health of the accused and convicted is also appropriate. This is all the more true if the length of detention itself and the overall criminal policy fall outside European standards.

The Slovak Bar Association therefore reiterates its call for the adoption of changes in criminal law as regards the exercise of the institution of detention, and calls on other judicial authorities - the prosecutor's office and courts - to carefully consider the use of this repressive tool against people. It must be recalled again that these are people who are not convicted and are presumed innocent.

As early as January 2021, the Bar sent a proposal to the Minister of Justice to change the legislation, given the fact that a working group has been set up to revise the Criminal Code and the Criminal Procedure Code.

However, it is necessary to rely not only on the legislation and its application, but also on improvement of the conditions in custody, which is another interconnected issue.

Of course, the Slovak Bar Association will not and cannot enter or intervene in specific cases by any legal acts. This is always the duty of a particular lawyer to act in the best interests of the client(s). Nevertheless, we feel obliged to point out that the practical implementation of criminal policy in Slovakia is often inadequate, contrary to the principles of the rule of law and the protection of human dignity.

Venice Commission asked to assess the efficiency of the Slovak Bar Association

Ministry of Justice requested the Venice Commission to assess whether it would be in accordance with the rule of law principles if the Bar was fragmented by the government on territorial or sectoral principle and if the disciplinary competence was transferred from the Bar to the newly established Supreme Administrative Court. The discussion with the Venice Commission was very constructive but the step taken by the Ministry was perceived by the Bar members as a kind of "retaliation" for active involvement of the Bar in the public debate or as a result of misunderstanding of the role of the Bar . Despite various active proposals by the Bar, the only official communication by the Ministry of Justice was a letter with two questions addressed to the Venice Commission which caused concerns that the well-meant effort to contribute to the rule of law and offer our expertise was misunderstood.

Opinion available here: https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)042-e

ANTI-CORRUPTION MEASURES

Slovak Bar Association welcomes initiatives taken in the past year to fight corruption.

We would, however, like to point out that there are **changes that are officially motivated by fighting corruption but do not offer targeted solutions**, such as e.g. Judicial Map Reform. The SBA supports efforts to adopt tools that, in the current challenges the justice in Slovakia faces, will help to improve the image of

justice in the eyes of the public. The objective of the reform and the proposed instruments is to respond to the current situation of loss of confidence in the courts and its basic goal is to break corrupt links in the judiciary. However, the proposal does not contain direct measures to combat corruption in any of the articles of the proposal. Achieving this goal through the proposed administrative and technical change of court districts is questionable and may ultimately be counterproductive in relation to the fulfilment of the other legitimate objectives of the reform set out above.

Secondly, we would like to point out that there is a **concern that widely formulated provisions aimed at the corruption may be misused or may cause a significant side effects of mistrust in the society**. In an attempt to encompass all corruption we reached a stage when natural aspects of social life may meet the characteristics of the criminal offence. SBA regularly sends its comments to legislative proposals if we encounter provisions we consider to be vague or not in itself meeting the attributes of being a rule of interpretation in terms of legal certainty. In general, in Slovakia, there is a tendency to excessively criminalise and penalise actions instead of focusing on other measures to tackle corruption.

LEGISLATIVE PROCESS – TRANSPARENCY

Slovak Bar Association again expresses its **concerns about the level of stakeholders' involvement in the legislative process**. In comparison with 2020 the legislative processes were more standard and regular (as opposed to accelerated procedures, lack of possibility to file official comments, significant amendments adopted via MP proposals at the very last moment before its adoption by the Parliament, etc.) but it has not yet met the level of transparency and cooperation as before 2020. These concerns are shared with academic bodies and human rights institutions. Examples:

- 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 and we only learned about its content from the official legislative draft. Similarly, the significant revision of the Civil Code is said to be prepared in camera and although its draft was sent to stakeholders, no response to the comments followed.
- The legislative process concerning the first Judicial Map Reform in spring was not evaluated, the vast number of comments were not taken into consideration via official procedures, no reaction or discussion followed. However, in autumn, a new legislative process was initiated, the original proposal appeared with various changes in five parallel yet different legislative processes with slightly alternative solutions that overlapped and made the whole process unclear and confusing with only a short time for preparation of comments. Again, the comments by stakeholders were not evaluated and on the day of the meeting with stakeholders the Ministry issued a press release with the third version of Judicial Map Reform. Stakeholders did not get a chance to discuss the second version and were not ready to discuss the third version. No information followed.

On the other hand, we wish to add that there was a number of standard legislative processes with transparent discussion with the representatives of the Ministry but these concerned either a commercial law issues or less significant changes. The perception remains that there is a tendency to avoid discussion with stakeholders if there is a significant change proposed that would most likely lead to opposing arguments.

Slovak Bar Association reiterated its call for the adoption of changes in criminal law as regards the exercise of the institution of detention, and calls on other judicial authorities - the prosecutor's office and courts - to carefully consider the use of this repressive tool against people. It must be recalled again that these are people who are not convicted and are presumed innocent. The Bar has therefore welcome the legislative change amending the maximum length of the detention, although its preparation and adoption was very political and unsystematic.

There is also another worrying tendency of enacting laws based on particular action of one individual or in one case that was publically rejected. Example below:

Press release – https://www.sak.sk/web/sk/cms/news/form/list/form/row/937919/_event

Statement of the Slovak Bar Association on the use of the legal competence of the General Prosecutor

Reducing the credibility of constitutional institutions and their representatives simply because the fulfilment of their legal obligations does not meet political ideas and expectations is unacceptable. In a state governed by the rule of law, it is unacceptable to consider changing a legal norm only because of a legal but unpopular decision. ***The change of any legal instrument motivated by the current reaction of the public to an individual decision is in conflict with the constitutional principle of predictability and stability of the legal order.***

*Amendments to the law, motivated only by specific cases, have historically always brought a taste of abuse of power for political purposes, which we cannot allow in the 21st century European Union. Democratically elected institutions vested with constitutional competences as well every public official or political representative, must lead by example in respecting the Constitution and constitutional rights, especially when it comes to the issue of personal freedom and the state penal policy****. Reducing the credibility of individual constitutional institutions and their representatives simply because they do not meet political ideas and expectations by fulfilling their legal obligations is unacceptable.*** *Such approach deepens the disillusionment of citizens and their distrust in institutions as such.*

In the vast majority of cases, the legal instrument of annulment of valid decisions in the pretrial proceedings by the Prosecutor General reversed the illegality of the prosecutors' decisions, either in favour or to the detriment of the accused. The system of checks and balances in the pretrial proceedings is necessary to maintain the confidence of citizens in the fact that the Slovak Republic not only formally but also materially fulfills the basic attributes of the rule of law.

In each rule of law state, the representative of the state is responsible for the legality of the pretrial proceedings, the so called "dominus litis - master of the dispute". In case of Slovakia, it is the prosecutor. Challenging this competence is contrary to the rule of law principles. *The rule of law is always better served by the composed and humble approach of the holders of political power and not by a sudden, ill-considered and politically motivated arbitrary decisions.*

RULE OF LAW CULTURE (awareness raising)

In September 2021, the government established a Working Group to restore the confidence in the Rule of Law. It was announced that the group issued 17 recommendations but the government would disclose them only after reaching political consensus. Its activities were interrupted at the end of the year. This was explained by the fact that fighting pandemics is a greater priority. Slovak Bar Association considers several aspects of the Working group disturbing:

- First, the fact that it was created as a working group of the Security Council of the Slovak Republic.
- Secondly, Judicial Council expressed its concerns that members appointed by the Government or Parliament may be dismissed from the Judicial Council should they express certain opinions within the Working Group (https://www.aktuality.sk/clanok/91tsss8/jana-mazaka-neschvalili-za-clena-skupiny-pre-obnovu-dovery-v-pravny-stat/)
- Most of the institutions refused to be part of the Working Group (Judicial Council, Council of Prosecutors, and Supreme Court - https://www.webnoviny.sk/rada-prokuratorov-vyjadrila-svoj-postoj-k-hegerovej-pracovnej-skupine-na-rokovaniach-sa-nezucastni/)

Slovak Bar Association considers dialogue to be crucially important. We perceive the lack of mutual dialogue of justice sector stakeholders and representatives. After initiating meeting with immediate past and current Head of Guards and Prison Wardens Corps as well as with the Head of the Police, on September 23, the Slovak Bar Association invited the highest representatives of judicial institutions in Slovakia to a round table:

Press release: https://www.sak.sk/web/sk/cms/news/form/list/form/row/967235/_event

The Slovak Bar Association considers the building and protection of the attributes of the rule of law to be one of its highest priorities. The rule of law requires that all institutions involved in the justice system functioned properly, including the judiciary, the prosecution office, and independent legal profession and, in a broad sense of justice, the police authorities. The proper functioning of these institutions is based on the respect for their position and the powers conferred on them by law. The legality of their actions is a basic precondition for maintaining citizens' confidence in the functioning of the state. It is right that these institutions should also be subject to appropriate factual criticism from the media or politicians, which, however, must not be confused with undue pressure or interference in their decision-making, which ultimately has a negative impact on the healthy functioning of the civil society.

The meeting was attended by President of the Constitutional Court of the Slovak Republic, Vice-President of the Constitutional Court of the Slovak Republic, President of the Supreme Court of the Slovak Republic, Vice-President of the Supreme Court of the Slovak Republic, President of the Supreme Administrative Court of the Slovak Republic, General Prosecutor of the Slovak Republic, Deputy General Prosecutor of the Slovak Republic, President of the Slovak Bar Association and Vice-Presidents of the Slovak Bar Association.

After discussion the representatives of these institutions signed a joint statement: *"We, the undersigned representatives of the judiciary, in view of the challenges our society has been facing in recent months, bearing in mind that trust in institutions is the basis of the stability and prosperity of the state, would like this statement to reassure citizens that institutions, which we represent, on a daily basis pursue their mission adhering to values, lawfully and strictly in accordance with the Constitution and applicable laws. We do not object to public scrutiny but it should remain scrutiny and not public coercion. Institutions are made of people who are fallible but for that very reason the legal system has been developing its checks and balances and was crowned with the protection of fundamental rights and freedoms, guaranteed both by the Constitution and at the international level. This system, despite its faults, is functional and we want to assure all the citizens of Slovakia that we use all legal instruments so that we can live in a country where law, morality and justice prevail. Any systemic changes must be approached with caution and after a thorough professional discussion so as not to ultimately reduce the quality of protection of citizens´ rights."*

It is important to raise awareness on the rule of law principles and concepts in the Slovak society 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.

Slovak Bar Association organised a panel discussion (panellists: member of the Slovak Judicial Council, ECtHR judge, Slovak Bar President and Czech Supreme Administrative Court judge) moderated by an investigative journalist on the topic of ethics of judges, prosecutors and lawyers and its relevance for the fair trial (https://www.sak.sk/web/sk/cms/news/form/link/display/981196/_event). The panellists commented on the current topics related to the rule of law deficiencies within the justice sector.

SURVEY ON UNLAWFUL PROCEDURES BY LAW ENFORCEMENT AGENCIES

The Slovak Bar Association conducted an internal survey concerning the legality of the procedures of authorities active in criminal proceedings, ie the police and the prosecutor's office. The objective of the survey was to find out what experience lawyers have with law enforcement authorities.

The survey has shown that as many as 72 percent of lawyers surveyed said that illegal coercion was a common practice by law enforcement agencies. Only 28 percent said they had not encountered illegal coercion. Lawyers have also found that their clients have been offered certain benefits, such as guarantee of separate procedure, release from custody, etc., if they provide a statement that amounts to incriminating evidence against another person. Lawyers even encountered pressure to end the client's defense, or pressure on the client to stop working with a lawyer.

Respondents also answered the question which National Criminal Agency (NAKA) workplaces are most prone to illegal coercion and to what extent. Most respondents identified illegal coercion in the case of the NAKA Bratislava department and the NAKA West department. The lawyers were also asked to answer whether they had experience or knowledge that members of the law enforcement authorities visit the accused in custody without notifying the lawyer. 56% of respondents confirmed that they had such experience or knowledge. Visits were carried out most often by police officers, followed by investigators. The lawyers also had an opportunity to add comments or other observations related to the issue. The Bar presented the results of the survey to the relevant persons in May 2021 - the Minister of Justice, the Prosecutor General, the Minister of Interior and the Police President. Despite the promise that the competent authorities would deal with it, the Bar has not received any response to date.

QUALITY OF JUSTICE: TRAINING OF JUDGES, PROSECUTORS AND LAWYERS

In Slovakia, there is no system of mandatory training of qualified lawyers. Nevertheless, the Slovak Bar Association provides training to its members on voluntary (qualified lawyers) and mandatory basis (trainee lawyers). Lawyers look for further training among private providers depending on their area of expertise. Slovak Bar promotes training events with European dimension organised by its partners.

In 2021 the Bar organised more than 150 training events for circa 6500 participants. This was possible due to the prevailing online format of regular weekly seminars and thanks to the gradual increase in the number training activities as well as European projects. Slovak Bar Association has been involved in several training projects with European dimension:

- Cooperation with Council of Europe within HELP (Human Rights Education for Legal Practitioners) Programme: implementation of the course on Domestic Violence and Violence against Women, Ethics for judges, prosecutors and lawyers and translation of the course Access to Justice for Women. The Bar has also adapted course on Procedural guarantees for accused and suspected persons and victim rights as well as Data protection and privacy rights
- Cooperation with Academy of European Law (ERA) in organising a conference on EU Antidiscrimination law and Young Lawyers Contest, as well in promoting EU Litigation seminars and Mediation in the EU: Language, Law and Practice
- Cooperation with European Lawyers Foundation (ELF) in implementing project on internships of young lawyers within EU (LAWYEREX)

Slovak Bar Association organised a panel discussion (panellists: member of the Slovak Judicial Council, ECtHR judge, Slovak Bar President and Czech Supreme Administrative Court judge) moderated by an investigative journalist on the topic of ethics of judges, prosecutors and lawyers and its relevance for the fair trial (https://www.sak.sk/web/sk/cms/news/form/link/display/981196/_event). The panellists commented on the current topics related to the rule of law deficiencies within the justice sector and what are the challenges legal professionals face today. The recording is available here: https://www.youtube.com/watch?v=zZbEMWh-DsY

Slovenia

In 2021, 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 Slovenia influencing the functioning and independence of the Bar and lawyers.

Spain

It is reported that work is being developed on the drafting of a Law on the Right to Defence, which the *Consejo General de la Abogacía Española* is confident can be approved by Parliament during this legislature.

Professional secrecy is an essential and inalienable principle of the legal profession, a sign of identity and the backbone of the fundamental right of defence that makes the rule of law and effective justice possible. In 2021, the legal profession expressed its concern about breaches of professional secrecy, particularly in the indirect cases of "dragnet recordings" (eavesdropping on the client's environment, including lawyers), with regard to the disproportionate search and seizure of documentation in offices and with regard to the Spanish transposition of the so-called "DAC 6 Directive".

New trends on limitations of length on lawyers' interventions, both written and oral, are of concern.

Significant developments likely to affect the general public's perception of the independence of the judiciary

There are a number of relevant factors, including the following:

- the lack of concord/agreement on the renewal of the *Consejo General del Poder Judicial* (already mentioned above and on which there is a reasonable expectation that it will be resolved after the renewal of the Constitutional Court).
- disinformation, and
- the treatment of judicial news on specific issues.

Accessibility of courts

The new report of the Free Justice (Legal aid) Observatory is available here: https://www.abogacia.es/wp-content/uploads/2021/07/XV-Informe-del-Observatorio-de-la-Justicia-Gratuita.pdf

The main problems are as follows:

1. Perception and assessment of the legal aid service during the state of alarm due to the health crisis resulting from the COVID-19 pandemic. Difficulties encountered by professionals. Need to provide the Courts and Detention Centres with resources so that the service can be provided with the necessary sanitary conditions.
2. Provision of the legal aid service by distance means: advantages and disadvantages. Positive assessment of the Agreement with the General Secretariat of Penitentiary Institutions for the implementation of the videoconference communication system between local Bars and Penitentiary Centres.
3. New Regulation: Royal Decree 141/2021, of 9 March, approving the Regulation on free legal aid. Assessment of the main new features.
4. New Additional Provision 130 of Law 11/2020 of 30 December, on the General State Budget. Problem of the remuneration of legal professionals appointed by the legal aid office. Positive assessment, although it does not include all cases.
5. Shortcomings of the new Free Legal Aid Regulation.
6. Right to free legal aid for people with disabilities and minors.
7. Other proposals and issues of interest to be raised by experts.
8. Aliens and International Protection.

Sweden

In 2021, there were no cases reported which would undermine the independence of the Swedish Bar and independence of lawyers and there were no major developments in justice system of Sweden influencing the functioning and independence of the Bar and lawyers.

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

- To secure access to justice for all. There are still many shortcomings in relation to state funding of legal counsels and far too low remuneration for lawyers in their role as legal aid counsels. There are also regulations limiting the right to legal counsels in court proceedings; e.g. no right to counsel for an aggrieved party in courts of appeal if not special circumstances are at hand.
- 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 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.
- Another main challenge for the Swedish justice system is how to meet the increased level of organized crime, without sacrificing the rule of law, the procedural guarantees for the accused, and the personal integrity of individuals, when enacting stricter and stricter laws in the criminal law area. This includes balancing harsher sentences, against the effects that such sentences has on crime overall. Furthermore, it is important to uphold conditions in terms of necessity, effectiveness and proportionality when introducing legislation extending the possibility for crime investigating authorities to use secret coercive measures.
- Legislation threatening the core values of the legal profession (advocates) – independence, confidentiality/legal privilege and client loyalty. Unfortunately, we have the last couple of years seen a number of legislations that are threatening these core values, which is very worrying. Examples of such legislations are the AML-legislation (and especially with the current Commission Action Plan against money laundering with the proposed supra national EU-supervisory Authority), DAC6-legislation, VAT-disclosure legislation, and other national implementation of EU legislation putting information obligations on lawyers in relation to different state authorities.
- Lack of understanding for the role of lawyers.
- 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).