

# 2023 Rule of Law Report - targeted stakeholder consultation

Fields marked with \* are mandatory.

## Introduction

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The annual Rule of Law Report lies at the centre of the European rule of law mechanism, which acts as a preventive tool, deepening multilateral dialogue and joint awareness of rule of law issues. So far, three editions of the Rule of Law Report have been published in 2020, 2021 and 2022.

In the preparation of the first three editions of the Rule of Law Report, the Commission has relied on a diversity of relevant sources, including from Member States, country visits, and stakeholders' contributions collected through the targeted stakeholder consultation [1]. The information provided has informed the Commission's country-specific assessments in preparing the Report. Building on the positive experience from the first three editions of the Rule of Law Report, the Commission is now inviting stakeholders to provide written contributions for the preparation of the 2023 Rule of Law Report through this targeted consultation.

The contribution to be provided should include (1) information on measures taken to implement the recommendations addressed to the Member State in the 2022 Rule of Law report, as well as developments with regard to the points raised in the respective country chapter and (2) any other significant developments since January 2022 [2] falling under the 'type of information' outlined in the next section.

The input should be short and concise and summarise information related to one or more of the areas referred to in the template. You are invited to focus on the areas that relate to the scope of work and expertise of your organisation. Existing reports, statements, legislation or other documents may be referenced with a link (no need to provide the full text). Stakeholders are encouraged to make references to any contributions already provided in a different context or to Reports and documents already published. Contributions should focus on significant developments both as regards the legal framework and its implementation in practice.

**If you wish to submit information concerning several Member States, you will have to fill-in the questionnaire separately for each Member States (due to the size of the questionnaire). There is no limit to the number of contributions submitted by a single participant. In such cases, you are not required to repeat the information in the section "about you" that is non-mandatory nor the information on horizontal developments.**

Please provide your contribution by **20 January 2023**. Should you have any requests for clarifications or encounter difficulties in filling in the questionnaire, you can contact the Commission at the following email

address: rule-of-law-network@ec.europa.eu.

[1] For the consultation for the 2022 Report, see [https://ec.europa.eu/info/publications/2022-rule-law-report-targeted-stakeholder-consultation\\_en](https://ec.europa.eu/info/publications/2022-rule-law-report-targeted-stakeholder-consultation_en)

[2] Unless the information was already submitted in the consultation for the previous Rule of Law Reports.

## Type of information

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The topics are structured according to four pillars: I. Justice system; II. Anti-corruption framework; III. Media pluralism; and IV. Other institutional issues related to checks and balances. The replies could include aspects set out below under each pillar. This can include challenges, current work streams, positive developments and best practices:

### **Legislative developments**

- Newly adopted legislation
- Legislative drafts currently discussed in Parliament
- Legislative plans envisaged by the Government

### **Policy developments**

- Implementation of legislation
- Evaluations, impact assessment, surveys
- White papers/strategies/actions plans/consultation processes
- Follow-up to reports/recommendations of Council of Europe bodies or other international organisations
- Important administrative measures
- Generalised practices

### **Developments related to the judiciary / independent authorities**

- Important case law by national courts
- Important decision/opinions from independent bodies/authorities
- State of play on terms, nominations and expired mandates for high-level positions (e.g. Supreme Court, Constitutional Court, Council for the Judiciary, heads of independent authorities included in the scope of the questionnaire[1])

### **Any other relevant developments**

- Respondents are free to add any further information, which they deem relevant; however, this should be short and to the point.

If there are no changes, it is sufficient to indicate this and the information covered in the contributions for the previous Rule of Law Reports should not be repeated.

[1] Such as: media regulatory authorities and bodies, national human rights institutions, equality bodies, ombudsman institutions, supreme audit institutions and, where they exist, transparency authorities.

## About you

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\* I am giving my contribution as

- ☐ Academic/research institution
- ☐ Business association
- ☐ Civil society organisation/NGO
- ☐ International organisation
- ☒ Judicial association or network
- ☐ Media organisation or association
- ☐ Public authority or network of public authorities
- ☐ Other

\* Organisation name

250 character(s) maximum

Magistrats Europeens pour la Democratie et les Libertes

Main Areas of Work

- ☒ Justice System
- ☐ Anti-corruption
- ☐ Media Pluralism
- ☐ Other

Please insert an URL towards your organisation's main online presence or describe your organisation briefly:

500 character(s) maximum

MEDEL is an association that was founded in 1985 in Strasbourg, France, and gathers 24 associations of judges and prosecutors, coming from 16 European countries, all members of the Council of Europe, representing a total of around 18.000 magistrates. It's main goal is the defense of the independence of the judiciary and rule of law.

Transparency register number

Check if your organisation is in the transparency register. It's a voluntary database for organisations seeking to influence EU decision-making

981119221130-18

\* Country of origin

Please add the country of origin of your organisation

- ☐ Afghanistan
- ☐ Albania
- ☐ Algeria

- ☐ Andorra
- ☐ Angola
- ☐ Antigua and Barbuda
- ☐ Argentina
- ☐ Armenia
- ☐ Australia
- ☐ Austria
- ☐ Azerbaijan
- ☐ Bahamas
- ☐ Bahrain
- ☐ Bangladesh
- ☐ Barbados
- ☐ Belarus
- ☐ Belgium
- ☐ Belize
- ☐ Benin
- ☐ Bhutan
- ☐ Bolivia
- ☐ Bosnia and Herzegovina
- ☐ Botswana
- ☐ Brazil
- ☐ Brunei Darussalam
- ☐ Bulgaria
- ☐ Burkina Faso
- ☐ Burundi
- ☐ Cabo Verde
- ☐ Cambodia
- ☐ Cameroon
- ☐ Canada
- ☐ Central African Republic
- ☐ Chad
- ☐ Chile
- ☐ China
- ☐ Colombia
- ☐ Comoros
- ☐ Congo
- ☐ Costa Rica
- ☐ Côte D'Ivoire
- ☐ Croatia
- ☐ Cuba
- ☐ Cyprus
- ☐ Czechia
- ☐ Democratic Republic of the Congo
- ☐ Denmark
- ☐ Djibouti
- ☐ Dominica
- ☐ Dominican Republic

- ☐ Ecuador
- ☐ Egypt
- ☐ El Salvador
- ☐ Equatorial Guinea
- ☐ Eritrea
- ☐ Estonia
- ☐ Eswatini
- ☐ Ethiopia
- ☐ Fiji
- ☐ Finland
- ☒ France
- ☐ Gabon
- ☐ Gambia
- ☐ Georgia
- ☐ Germany
- ☐ Ghana
- ☐ Greece
- ☐ Grenada
- ☐ Guatemala
- ☐ Guinea
- ☐ Guinea Bissau
- ☐ Guyana
- ☐ Haiti
- ☐ Honduras
- ☐ Hungary
- ☐ Iceland
- ☐ India
- ☐ Indonesia
- ☐ Iran
- ☐ Iraq
- ☐ Ireland
- ☐ Israel
- ☐ Italy
- ☐ Jamaica
- ☐ Japan
- ☐ Jordan
- ☐ Kazakhstan
- ☐ Kenya
- ☐ Kiribati
- ☐ Kuwait
- ☐ Kyrgyzstan
- ☐ Laos
- ☐ Latvia
- ☐ Lebanon
- ☐ Lesotho
- ☐ Liberia
- ☐ Libya

- ☐ Liechtenstein
- ☐ Lithuania
- ☐ Luxembourg
- ☐ Madagascar
- ☐ Malawi
- ☐ Malaysia
- ☐ Maldives
- ☐ Mali
- ☐ Malta
- ☐ Marshall Islands
- ☐ Mauritania
- ☐ Mauritius
- ☐ Mexico
- ☐ Micronesia
- ☐ Monaco
- ☐ Mongolia
- ☐ Montenegro
- ☐ Morocco
- ☐ Mozambique
- ☐ Myanmar
- ☐ Namibia
- ☐ Nauru
- ☐ Nepal
- ☐ Netherlands
- ☐ New Zealand
- ☐ Nicaragua
- ☐ Niger
- ☐ Nigeria
- ☐ North Korea
- ☐ North Macedonia
- ☐ Norway
- ☐ Oman
- ☐ Pakistan
- ☐ Palau
- ☐ Panama
- ☐ Papua New Guinea
- ☐ Paraguay
- ☐ Peru
- ☐ Philippines
- ☐ Poland
- ☐ Portugal
- ☐ Qatar
- ☐ Republic of Moldova
- ☐ Romania
- ☐ Russian Federation
- ☐ Rwanda
- ☐ Saint Kitts and Nevis

- ☐ Saint Lucia
- ☐ Saint Vincent and the Grenadines
- ☐ Samoa
- ☐ San Marino
- ☐ Sao Tome and Principe
- ☐ Saudi Arabia
- ☐ Senegal
- ☐ Serbia
- ☐ Seychelles
- ☐ Sierra Leone
- ☐ Singapore
- ☐ Slovakia
- ☐ Slovenia
- ☐ Solomon Islands
- ☐ Somalia
- ☐ South Africa
- ☐ South Korea
- ☐ South Sudan
- ☐ Spain
- ☐ Sri Lanka
- ☐ Sudan
- ☐ Suriname
- ☐ Sweden
- ☐ Switzerland
- ☐ Syrian Arab Republic
- ☐ Tajikistan
- ☐ Tanzania
- ☐ Thailand
- ☐ Timor-Leste
- ☐ Togo
- ☐ Tonga
- ☐ Trinidad and Tobago
- ☐ Tunisia
- ☐ Turkey
- ☐ Turkmenistan
- ☐ Tuvalu
- ☐ Uganda
- ☐ Ukraine
- ☐ United Arab Emirates
- ☐ United Kingdom
- ☐ United States of America
- ☐ Uruguay
- ☐ Uzbekistan
- ☐ Vanuatu
- ☐ Venezuela
- ☐ Viet Nam
- ☐ Yemen

- ☐ Zambia
- ☐ Zimbabwe

First name

Monika

Surname

Frackowiak

Email Address of the organisation (this information will not be published)

[REDACTED]

#### \* Publication of your contribution and privacy settings

You can choose whether you wish for your contribution to be published and whether you wish your details to be made public or to remain anonymous.

- ☐ Anonymous - Only your type of respondent, country of origin and contribution will be published. Organisation name, URL, transparency register number, first name and surname given above will not be published. **To maintain anonymity, please refrain from mentioning the name of your organisation and any details from which your organisation can be identified in the rest of your contribution.**
- ☒ Public - Your personal details (name, organisation name, transparency register number, country of origin will be published with your contribution).
- ☐ No publication - Your contribution will not be published. Elements of your contribution may be referred to anonymously in documents produced by the Commission based on this consultation.

☒ I agree with the personal data protection provisions.

[Specific privacy statement targeted stakeholder consultation 2023 rule of law report.pdf](#)

## Questions on horizontal developments

In this section, you are invited to provide information on general horizontal developments or trends, both positive and negative, covering all or several Member States. In particular, you could mention issues that are common to several Member States, as well as best practices identified in one Member State that could be replicated. Moreover, you could refer to your activities in the area of the four pillars and sub-topics (an overview of all sub-topics can be found below), and, if you represent a Network of national organisations, to the support you might have provided to one of your national members.

Overview topics for contribution

[list of topics 2023 Report.pdf](#)

Please provide any relevant information on horizontal developments here

*5000 character(s) maximum*

1.The attacks on the independence of judicial systems are persisting and multi-faceted, ranging from reforms



that undermined the separation of powers to the systematic weakening of institutions in charge of ensuring the accountability and transparency of government action, from the attack on individual judges to public delegitimation campaigns against the whole judiciary. Even in contexts where judicial independence is rooted in a stable constitutional framework, there are attempts to introduce reforms that would represent a step back. For instance in Italy there are currently envisaged reforms of the public prosecution that would move it away from the model of independent public prosecutor as it results from the elaboration of common European principles and the advance represented by the establishment of the EPPO.

A critical situation persists as well for the institutions that ensure the self-government of the judiciary, that represent a key bulwark in the maintenance of the independence of the courts (Poland). In addition to the situations where the Councils of Justice have lost their role in safeguarding independence (Poland), there are also situations in which their authority is dangerously undermined for political reasons. MEDEL has, e.g., recently raised the alarm about the situation of the General Council of the Spanish Judiciary, which has been working under an expired mandate for more than four years, highlighting the urgency of restoring the full functionality of this institution.

When it comes to positive trends, one can note the reaction to the strengthening of the EU framework for the protection of the Rule of Law. The cases initiated by Hungary and Poland about the conditionality mechanism allowed the further clarification by the CJEU of the nature of article 2 of the EU Treaty, to be considered not merely as a statement of policy guidelines but rather as a definition of values that are an integral part of the “very identity” of the EU, providing for legally binding obligations for Member States.

In line with this vision of Rule of Law as a set of non-negotiable values, which encompasses not only formal legality but also democracy and respect for fundamental rights, an active role has been assumed by the section of civil society more focused on the protection of fundamental rights, that acts and perceives itself as a fully European community of associations of judges and prosecutors, and representatives of the legal profession and the academia, and specialised NGOs.

In this regard it has to be stressed that MEDEL, together with other European judicial associations, recently lodged with the Court of Justice of the European Union an application for the annulment of the EU Council decision to unblock Recovery and Resilience funds for Poland, specifically as regards Rule of Law milestones, that the associations consider inconsistent with the case-law of the Court and insufficient to ensure effective protection of the independence of judiciary.

2. In various contexts one can easily spot (this is the case of Italy and France) risks implied in reforms solely centred on the achievement of measurable objectives, typically of a quantitative rather than qualitative nature. These reforms are usually inspired by a management vision prioritising a strict control over magistrates, with increasingly demanding performance standards the violation of which can bring to preliminary sanctions and increased discretion of the heads of the office. Such policies unavoidably harbour incentives to bureaucratisation and conformism in judicial and prosecutorial decision making.

Such transformation processes are often taking place in the context of planning of the use of resources recently made available, as the post-Covid recovery funds in Italy and France. There is here a substantial risk to disregard the fact that the increased funding of the justice system should be in any case used to pursue its core mission, i.e., the protection of fundamental rights, with particular attention to the most vulnerable.

3. The debate animated since its foundation by MEDEL in this field has increasingly proved the necessity to have strong and effective Rule of Law monitoring tools, covering the whole spectrum of the values of democracy and fundamental rights. A request that MEDEL recently advocated in this respect concerns European migration policies, recalling that these shall stick to a substantive reading of Rule of Law

principles, including the protection of human rights. Their violation in the case of migrants, asylum seekers and refugees, shall accordingly be treated as a serious breach of the founding values of the EU, enshrined in article 2 TEU. Therefore, migration policy should be included in the European Commission's Annual Rule of Law Report (<https://medelnet.eu/statement-on-migration/>).

## Questions for contribution

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The following four pillars (I.-IV.) are sub-divided into topics (A., B., etc.) and sub-topics (1., 2., 3., etc.). For each of the topics and sub-topics, you are invited to provide (1) information on measures taken to implement the recommendations addressed to the Member States in the 2022 Rule of Law report, as well as developments with regard to the points raised in the respective country chapter of the 2022 Rule of Law Report and (2) any other significant developments since January 2022<sup>[1]</sup>. Please include a link to and reference relevant legislation/documents (in the national language and/or where available, in English) if relevant. Significant developments can include challenges, positive developments and best practices, covering both legislative developments or implementation and practices.

If there are developments you consider relevant under each of the four pillars that are not mentioned in the sub-topics, please add them under the section "other - please specify". Only significant developments should be covered.

Information provided in reply to the first question under each pillar, related to the follow-up to the recommendations, does not need to be repeated in subsequent parts of the questionnaire, but can be cross-referenced in the subsequent questions, where relevant. All other questions are not limited to the recommendations, but as in previous years, cover the entire scope of the Report.

[1] Unless already covered in the input for the previous Rule of Law Reports.

Member State covered in contribution [only one choice possible]

**If you wish to submit information concerning several Member States, please fill in the questionnaire separately for each Member State. There is no limit to the number of contributions submitted by a single participant.**

- ☐ Austria
- ☐ Belgium
- ☐ Bulgaria
- ☐ Croatia
- ☐ Cyprus
- ☐ Czechia
- ☐ Denmark
- ☐ Estonia
- ☐ Finland
- ☐ France
- ☐ Germany
- ☐ Greece
- ☐ Hungary
- ☐ Ireland
- ☐ Italy

- ☐ Latvia
- ☐ Lithuania
- ☐ Luxembourg
- ☐ Malta
- ☐ Netherlands
- ☒ Poland
- ☐ Portugal
- ☐ Romania
- ☐ Slovak Republic
- ☐ Slovenia
- ☐ Spain
- ☐ Sweden

## I. Justice System

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Please provide information on measures taken to follow-up on the recommendations received in the 2022 Report regarding the justice system (if applicable)

*3000 character(s) maximum*

No recommendation has been implemented.

In July 2022 the law on the Supreme Court was amended, in consequence the Disciplinary Chamber was liquidated, and the new Professional Responsibility Chamber has been created. However, the newly created chamber doesn't fulfill the criteria of the properly established court due to its composition. Out of 90 judges of Supreme Court, 33 are randomly selected and President of Poland Andrzej Duda discretionally picks up 11 of them to serve for 5 years. Due to court packing, there are currently 6 (majority) of neo- judges, whose status was already questioned by CJEU and ECHR.

Judicial review of appointment's system is dysfunctional, judges are still forbidden to apply the CJEU's test imposed by AK case (C-585/18). The „muzzle law” penalizing “questioning status of judge” is still in force and used for initiating new disciplinary proceedings.

See Iustitia's opinion: <https://www.iustitia.pl/dzialalnosc/opinie-i-raporty/4489-opinia-stowarzyszenia-sedziow-polskich-iustitia-w-przedmiocie-zgodnosci-ustawy-z-dnia-9-czerwca-2022-r-o-zmianie-ustawy-o-sadzie-najwyzszym-oraz-niektorych-innych-ustaw-dz-u-z-2022-r-nr-480-poz-1259-z-kamieniami-milowymi-krajowy-plan-odbudowy-i-zwiekszenia-odpornosci>

PL Parliament works on adoption of new draft of the Act on the Supreme Court, which is another non-compliant legislation unable to solve most important problems:

- the existence of the illegal National Council of the Judiciary (NCJ) and its involvement in the judicial appointment procedure;
- the provisions of the „Muzzle Law”, which prohibits judges to implement rulings of C-585/18 A.K. test of judges)
- it violates PL Constitution by entrusting constitutional body - Supreme Administrative Court (NSA) whose constitutional tasks are administrative cases - with the competence to rule on judges of common courts and the Supreme Court (SN). PL Constitution provides autonomy of judicial branches, none of which has authority over the other (Articles 183 and 184 of the Polish Constitution).
- it makes an unwarranted distinction between judges and representatives of other legal professions, who – all but judges – are disciplined in Supreme Court, Chamber of Professional Responsibility;
- it ignores the fact, that almost 1/3 of the NSA's composition are defectively appointed judges. Thus, without the exclusion of these persons, this body does not guarantee that cases will be heard by a court established by law (Article 19(1) of the Treaty on European Union; TEU)

## A. Independence

### Appointment and selection of judges, prosecutors and court presidents (incl. judicial review)

*(The reference to 'judges' concerns judges at all level and types of courts as well as judges at constitutional courts)*

*3000 character(s) maximum*

Upon the end of term of unconstitutional NCJ in 2022, regardless appeals of lawyers societies, the NCJ election procedure remained unchanged. In May 2022, lower chamber of parliament elected 15 judges, including 11 already serving, for next term of illegal and politicized NCJ.

In 2022 neo-NCJ recommended to judicial posts over 200 persons, including:

- 118 candidates to district courts;
- 77 to regional courts;
- 18 to courts of appeal;
- 4 to administrative courts;
- 1 to Supreme Administrative Court

Most of them have been already appointed by President of Poland. In cases of all those judges, especially in regional and appellate courts, the party to the case can effectively challenge the verdict by reference to ECHR ruling.

The appeals from neo-NCJ resolutions are considered by Extraordinary Control and Public Matters Chamber, already considered invalid by ECHR and CJEU.

Each president and deputy president of all courts in Poland are now the direct nominees of Ministry of Justice. There is no appeal to his decisions in this matter.

<https://ruleoflaw.pl/appeal-of-50-judges-from-the-former-legal-ncj-dissolve-the-neo-ncj-stop-appointing-neo-judges/>

<https://www.iustitia.pl/81-uchwaly/4453-uchwala-zarzadu-ssp-iustitia-z-13-maja-2022-r-w-sprawie-wyboru-sedziow-do-neokrs>

<https://www.gazetaprawna.pl/wiadomosci/kraj/artykuly/8417204,wybory-krs-sejm-wybral-15-czlonkow-krajowej-rady-sadownictwa.html>

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

*3000 character(s) maximum*

In 2022 three judges from the Court of Appeal in Warsaw were transferred without their consent from the Criminal Division to the Labour and Social Security Division: Marzanna Piekarska – Drażek, Ewa Leszczyńska – Furtak and Ewa Gregajtys. The decision was taken by Piotr Schab – the president of the Court of Appeal in Warsaw, appointed by the Minister of Justice (and the Disciplinary Officer for the Common Judges appointed by MoJ and Extraordinary Disciplinary Officer appointed by President of PL directly to persecute former president of Supreme Court, prof. Małgorzata Gersdorf for the resolution of Supreme Court). Judges transfer was an unlawful form of reprisal for implementing the judgments of the ECtHR and the CJEU (they questioned the legality of the neo-NCJ and the neo-judges).

On December 6th, 2022 ECHR issued interim measure requesting restoring judges to Criminal Division (<https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-7293770-9941557&filename=Interim%20measure%20in%20cases%20concerning%20charges%20brought%20against%20Polish%20judges.pdf> )

But it has been ignored by Piotr Schab who declared in his official statement, that he is not going to implement ECHR decision. (see <https://waw.sa.gov.pl/oswiadczenie-prezesa-sadu-apelacyjnego-w-warszawie-z-13-grudnia-2022-r,new,mg,264.html,598>)

Prosecutors: National Prosecutor's Office continues the previous practice of reprisal against independent prosecutors by delegating them for long term to lower-level units.

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

*3000 character(s) maximum*

Invalid neo – NCJ is still operating. In addition to political dependence, there are no substantive criteria of promotion, which is granted arbitrarily. PL President does not question these proposals and keeps appointing persons suspected of participation in so called “troll farm”, organizing internet smear campaigns against other judges. The promotions include Rafał Puchalski and Dariusz Drajewicz, members of neo-NCJ, promoted from lowest level courts to courts of appeal. While preparing the report, there is ongoing contest to the Supreme Court, in which members of NCJ are verifying (by asking argumentative questions), whether a candidate is going to obey CJEU and ECHR judiciary or be loyal to the “new order”.

Prosecutors loyal to the political superiors (Heads of Regional Prosecutor's Offices in Lublin, Łódź, Warszawa) are promoted to senior prosecutor position in National Prosecutor's Office in order to ensure their high status in case of losing their function in the future (e.g. due to changes in government).

## Allocation of cases in courts

*3000 character(s) maximum*

In the result of the Supreme Administrative Court's decision issued on 19.04.2021, The Ministry of Justice finally revealed some documentation containing block algorithm of the system of random assignment of cases [SLPS – see Medel's RoL report 2021). Nevertheless, neither the source code nor configuration dataset/method were revealed, so it is impossible to verify the operations of the system. On 26.05.2022 The Supreme Administrative Court obliged the Ministry of Justice to reveal it as well.

[https://siecobywatelska.pl/wp-content/uploads/2022/05/orzeczenie\\_kod\\_zrodlowy.pdf](https://siecobywatelska.pl/wp-content/uploads/2022/05/orzeczenie_kod_zrodlowy.pdf)

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

*3000 character(s) maximum*

See the „Appointment and selection of judges”

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

*3000 character(s) maximum*

The disciplinary system for common judges hasn't changed. The same 3 disciplinary officers appointed by the Minister of Justice (2 of them allegedly involved in troll farm and smear campaign). Piotr Schab and Przemysław Radzik were promoted by neo-NCJ to appellate court and appointed president and vice president of the Court of Appeal in Warsaw.

Michał Lasota has been promoted by neo-NCJ to the regional court in Olsztyn and became its president. From 2022, after expiry of terms of office of local disciplinary officers (at regional courts) previously elected with participation of assemblies of judges, new disciplinary officers – thanks to the “muzzle law” of February 2022 – were arbitrarily selected by Piotr Schab – main Disciplinary Officer. In consequence, local disciplinary officers posts are manned mainly by beneficiaries of the new system, new MoJ-appointed presidents or courts and/or judges promoted by the neo-NCJ.

As an example, Tomasz Koszewski - local disciplinary officer in Olsztyn – in December 2022 has initiated another three disciplinary proceedings against Paweł Juszczyński for questioning status of neo-judges. (<https://ruleoflaw.pl/judge-juszczyński-prosecuted-applying-eu-law-disciplinary-commissioner/>)

The most outrageous disciplinary proceedings were initiated in 2022:

- by Piotr Schab (this time acting as Extraordinary Disciplinary Officer appointed by President of Poland against the former President of the Supreme Court – Małgorzata Gersdorf) for “failing to prevent the issuance” of the historic resolution of 23 January 2020 by the full composition of the Supreme Court, in which the Supreme Court constructed the test on the basis of A.K. case issued by CJEU in November 2019;
- against Marzanna Piekarska – Drążek, Ewa Leszczyńska – Furtak, Ewa Gregajtys – for applying CJEU and ECHR decisions;
- against Dorota Tyrała who issued a ruling that was favourable for judge Igor Tuleya and implemented the judgments of the CJEU and the ECtHR;
- against Anna Głowacka and Joanna Hetnarowicz-Sikora for implementing CJEU and ECHR verdicts;
- against Igor Tuleya – for conducting law lectures at the University.

The prosecutors still face disciplinary consequences both for the decisions they take and their public activity. The management of the National Prosecutor's Office continues to institute proceedings against prosecutors for their media statements:

- especially against Katarzyna Kwiatkowska, the president of the board of the Lex Super Omnia Prosecutors' Association; practically every statement made by her in the media is the basis for formulating separate disciplinary charges; certain novelty in this reprisal system is SLAPP lawsuit by National Prosecutor's Office against Katarzyna Kwiatkowska, seeking compensation of PLN 180,000 (EUR 40,000) for the infringement of the personal rights of the National Prosecutor's Office.

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

*3000 character(s) maximum*

Judges: see Medel's report from 2022.

The statutory mechanism, thanks to which wages in courts and prosecutor's offices increase yearly is still blocked – third year in a row, despite two-digits inflation.

Prosecutors: in 2022 about 70 percent of prosecutors received financial awards in 2 tranches - in July and November 2022, in the total amount of approx. 1,600 euros per person. The payment of awards was officially justified by the losses incurred by prosecutors as a result of inflation, but their distribution was discretionary and some prosecutors from the Lex Super Omnia Association did not receive them.

## Independence/autonomy of the prosecution service

*3000 character(s) maximum*

See Medel's report from 2021 and 2022

The Polish prosecution service is fully subordinated to the executive and to a politician who simultaneously holds the position of the Prosecutor General and the Minister of Justice.

The Prosecutor General (thus Minister of Justice) often exercises his prerogatives of issuing instructions for individual cases, transferring cases to other prosecution units and transferring prosecutors.

## Independence of the Bar (chamber/association of lawyers) and of lawyers

*3000 character(s) maximum*

See Medel's report from 2021 and 2022

The highest disciplinary court for advocates and solicitors is the Professional Responsibility Chamber, which doesn't fulfill the criteria of an independent court - see above

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

*3000 character(s) maximum*

1. Open and blatant ignoring of the rulings of European courts by Polish authorities: the interim measures in case of judges Marzanny Piekarskiej Drażek, Ewy Leszczyńskiej – Furtak i Ewy Gregajtys (restoration to criminal division) were officially dismissed by Piotr Schab as unlawful (<https://ruleoflaw.pl/schab-ziobros-enforcer-confirms-the-repressions-in-the-court-of-appeal-are-for-applying-eu-law/> , <https://www.prawo.pl/prawnicy-sady/piotr-schab-nie-wykona-orzeczenia-strasburga,518886.html>
2. Further information surfaced in the cases of “troll farm” and “smear campaign”, yet prosecution controlled by Zbigniew Ziobro keeps stalling the investigation. No progress has been observed since 2018. Moreover, the members of the scandal have been appointed to high judicial positions.
3. Country's Prosecutor/deputy Prosecutor General Bogdan Świączkowski has been appointed a judge of Constitutional Tribunal.
4. Activities (or rather non-activity) of Constitutional Court, which is acting with illegally appointed judges and ruled on “incompatibility” of ECHR rulings with PL Constitution.
5. Professional Responsibility Chamber (a clone of Disciplinary Chamber) adjudicates with violation of court rules (e.g. silently ignoring motions of defendants – case of judge Piotr Gąciarek)
6. New disciplinary proceedings against judges implementing EU law.
7. The actions of neo-NCJ, enjoying mutual promotions, promoting persons unfit to perform judicial functions, persons disgraced by participating in “troll farm” and “smear campaign.
8. Member of troll farm, with the history of disciplinary penalties for abusive behavior while intoxicated, became disciplinary officer for district court judges in Warsaw.

## B. Quality of justice

*(Under this topic, you are not required to give statistical information but should provide input on the type of information outlined under section*

*2)*

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

*3000 character(s) maximum*

The threat posed by COVID-19 has affected the Polish justice system on many different levels. The most important include changes in court procedures established under the covid laws for the duration of the state of pandemia or epidemic threat (in the current state of law also one year after the repeal of either of these states). We do not know how long they will shape the functioning of the proceedings before Polish courts, primarily in the area of civil and administrative law.

Most crucial changes are:

- a. elimination of the possibility for parties to the proceedings to object to the decision to send the case to a closed hearing. In the first instance the case should be held as a remote [online] trial. When it is not possible to proceed remotely and the public hearing is not necessary in the judge's opinion, the case should be referred to a closed session;
- b. limitation of the collegiality of adjudication; courts, as a rule, adjudicate in civil cases in the first and second instance in the composition of a one judge;
- c. remote [online] hearings:

The pandemic and the consequent changes in the law meant that the Polish justice system had to suddenly and at an accelerated pace implement a number of online solutions. Their implementation carries the potential to speed up judicial proceedings or increase access to justice. Nevertheless, it should be noted that it also brings the risk of lack of a uniform approach to the conduct of hearings or public hearings remotely and, as a result, variation in the realization of the right to court depending on the court in which the case is conducted. Such differences at the same time negatively affect the consistency of the judiciary. There are deficiencies in terms of adequate training of judges and the administrative staff regarding the introduced solutions. In addition the technical assistance is limited and they are judges who have to cope with technical problems and malfunctions of the systems, which disrupt and sometimes make it impossible to conduct hearings.

In addition to affecting the openness of court proceedings, online hearings have also positive aspects, significantly improving citizens' access to the court and ensuring significant time and cost savings for parties and witnesses.

See more:

[https://www.iustitia.pl/images/pliki/e-Raport\\_COVID-19-opt.pdf](https://www.iustitia.pl/images/pliki/e-Raport_COVID-19-opt.pdf)

[https://courtwatch.pl/wp-content/uploads/2022/09/OMS\\_2022\\_WEB.pdf](https://courtwatch.pl/wp-content/uploads/2022/09/OMS_2022_WEB.pdf)

## Resources of the judiciary (human/financial/material)

*(Material resources refer e.g. to court buildings and other facilities)*

*3000 character(s) maximum*



Polish judiciary invariably faces the same problems for many year, with the most important:

- too few assistant judges, who admittedly have the ability to autonomously carry out basic tasks, prepare uncomplicated orders and decisions without the need of constant supervision by a judge who just provides final verification and signature; nevertheless, their number is insufficient and in practice judges are down to performing all simplest bureaucratic tasks.
- too few court registrars who should relieve judges of all activities in range of court registrars' duties [e.g. almost all execution proceedings in civil proceedings]; however, in the reality of the Polish justice system, the registrar work is limited to issuing simple payment orders; there has been no change in this regard for over a dozen years, despite the fact that the scope of registrars' adjudicatory powers has in the meantime been significantly expanded by subsequent amendments to the law;
- high turnover of administrative staff in the poorly paid positions of court secretaries and court reporters; the inability to establish a long-term cooperation with a person who would be a real support for the judges in the management of cases; a position of "acting intern" is the best example here. <https://krotoszyn.sr.gov.pl/konkurs-na-stanowisko-po-stazysty,new,mg,7.html,331>

#### Training of justice professionals (including judges, prosecutors, lawyers, court staff)

*3000 character(s) maximum*

See Medel's report from 2022

#### 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)

*3000 character(s) maximum*

To date, the digitization of court files has not been introduced into the Polish legal order. Despite the technical possibility for judges to work remotely (good Internet penetration and quality) in practice the VPN access to the judicial systems is rare and lack of digitalized files result in the need to still transport case files between the work and home, what also affects security of the files.

It is also not possible for parties to use government-based ePUAP (electronic platform for public administration, each citizen can have their account there) to send digitally signed documents to common court (administrative courts have this function). The functionality is there (e.g. everyone can send digital document requesting public information to any common court), the only limitation is the lack of necessary law amendments.

See more:

[https://www.iustitia.pl/images/pliki/e-Raport\\_COVID-19-opt.pdf](https://www.iustitia.pl/images/pliki/e-Raport_COVID-19-opt.pdf)

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

*3000 character(s) maximum*

Ministry of Justice introduced Random Case Allocation System in 2017. System in theory has to randomise case assignment (which were assigned randomly also before) but failure to disclose the algorithm, source code, control parameters and procedure casts doubt on the transparency of case assignment. In particular, any random system will always assign particular case to particular judge, if there is only one case and one judge assigned to randomisation. Case files do not include full report of the randomisation process nor its parameters, so any verification is impossible.

On April 19, 2021, the Supreme Administrative Court gave a ruling which obligated the Ministry of Justice to share with the public, information about the algorithm behind the random assignment of cases. Until now, no substantial information has been revealed by the Ministry of Justice in this regard.

The basic computer programs for managing cases and obtaining statistics, are the "Curenda" and "Judge" programs. As a rule, they facilitate the control by the court employees and judges over the cases, the timeliness of actions taken. However, the parties to the proceedings have access to this system to a very limited extent. They can, for example, obtain information that the opposing party has filed a motion to the court, but they will not learn its contents. Here the problem of the lack of digitalization of court records returns again. Motions filed on paper are not scanned into the aforementioned programs, therefore the parties to the proceedings can only become familiar with them by coming to court or when serving them from court or directly between attorneys.

There are also actions taken by the MoJ (desperate to demonstrate improvements in judiciary despite deteriorating performance indicators) to manipulate them by creating "artificial" short-lived cases (e.g. separating enforcement clause from main case), which - after averaging – sometimes even double their value.

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

*3000 character(s) maximum*

see Medel's report from 2022

## C. Efficiency of the justice system

*(Under this topic, you are not required to give statistical information but should provide input on the type of information outlined under section 2)*

Length of proceedings

*3000 character(s) maximum*

The length of proceedings grows since 2015, on average by 66%, according to Helsinki Foundation research. The foundation exposed also new MoJ regulations, allowing to manipulate court efficiency data, such as enforcement clauses (usually taking week or less to resolve) which are registered as new case (they used to be a part of main case). This is the way to halve average case time, what obstructs greatly any meaningful analysis of the real case duration.

<https://oko.press/raport-hfpc-sady-reforma>

Other - please specify

*3000 character(s) maximum*

## II. Anti-Corruption Framework

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Where previous specific reports, published in the framework of the review under the UN Convention against Corruption, of GRECO, and of the OECD address the issues below, please make a reference to the points you wish to bring to the Commission's attention in these documents, indicating any relevant updates, changes or measures introduced that have occurred since these documents were published.

Please provide information on measures taken to follow-up on the recommendations received in the 2022 Report regarding the anti-corruption framework (if applicable)

*3000 character(s) maximum*

### A. The institutional framework capacity to fight against corruption (prevention and investigation / prosecution)

List any changes as regards relevant authorities (e.g. national agencies, bodies) in charge of prevention detection, investigation and prosecution of corruption and the resources allocated to each of these authorities (the human, financial, legal, and technical resources as relevant), including the cooperation among domestic authorities. Indicate any relevant measure taken to effectively and timely cooperate with OLAF and EPPO (where applicable)

*3000 character(s) maximum*

Safeguards for the functional independence of the authorities tasked with the prevention and detection of corruption

*3000 character(s) maximum*

Information on the implementation of measures foreseen in the strategic anti-corruption framework (if applicable). If available, please provide relevant objectives and indicators

*3000 character(s) maximum*

### B. Prevention

Measures to enhance integrity in the public sector and their application (including as regards incompatibility rules, revolving doors, codes of conduct, ethics training). Please provide figures on their application

*3000 character(s) maximum*

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

*3000 character(s) maximum*

Rules and measures to prevent conflict of interests in the public sector. Please specify the scope of their application (e.g. categories of officials concerned)

*3000 character(s) maximum*

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

*3000 character(s) maximum*

List the sectors with high-risks of corruption in your Member State and list the relevant measures taken /envisaged for monitoring and preventing corruption and conflict of interest in these sectors (e.g. public procurement, healthcare, citizen investor schemes, risk or cases of corruption linked to the disbursement of EU funds, other), and, where applicable, list measures to prevent and address corruption committed by organised crime groups (e.g. to infiltrate the public sector)

*3000 character(s) maximum*

Any other relevant measures to prevent corruption in public and private sector

*3000 character(s) maximum*

## C. Repressive measures

Criminalisation, including the level of sanctions available by law, of corruption and related offences, including foreign bribery

*3000 character(s) maximum*

Data on investigation and application of sanctions for corruption offences, including for legal persons and high level and complex corruption cases and their transparency, including as regards to the implementation of EU funds

*(Please include, if available the number of (data since 2019): indictments; first instance convictions; first instance acquittals; final convictions;*

*final acquittals; other outcomes (final) (i.e. excluding convictions and acquittals); cases adjudicated (final); imprisonment / custodial sentences through final convictions; suspended custodial sentences through final convictions; pending cases at the end of the reference year)*

*3000 character(s) maximum*

Potential obstacles to investigation and prosecution as well as to the effectiveness of criminal sanctions of high-level and complex corruption cases (e.g. political immunity regulation, procedural rules, statute of limitations, cross-border cooperation, pardoning)

*3000 character(s) maximum*

Information on effectiveness of non-criminal measures and of sanctions (e.g. recovery measures and administrative sanctions) on both public and private offenders

*3000 character(s) maximum*

Other - please specify

*3000 character(s) maximum*

### III. Media Freedom and Pluralism

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Please provide information on measures taken to follow-up on the recommendations received in the 2022 Report regarding media freedom and pluralism (if applicable)

*3000 character(s) maximum*

#### A. Media authorities and bodies

*(Cf. Article 30 of Directive 2018/1808)*

Measures taken to ensure the independence, enforcement powers and adequacy of resources (financial, human and technical) of media regulatory authorities and bodies

*3000 character(s) maximum*

Conditions and procedures for the appointment and dismissal of the head / members of the collegiate body of media regulatory authorities and bodies

*3000 character(s) maximum*

Existence and functions of media councils or other self-regulatory bodies

*3000 character(s) maximum*

## B. Safeguards against government or political interference and transparency and concentration of media ownership

Measures taken to ensure the fair and transparent allocation of state advertising (including any rules regulating the matter)

*3000 character(s) maximum*

Safeguards against state / political interference, in particular:

- safeguards to ensure editorial independence of media (private and public)
- specific safeguards for the independence of heads of management and members of the governing boards of public service media (e.g. related to appointment, dismissal), safeguards for their operational independence (e.g. related to reporting obligations and the allocation of resources) and safeguards for plurality of information and opinions
- information on specific legal provisions and procedures applying to media service providers, including as regards granting/renewal/termination of licenses, company operation, capital entry requirements, concentration and corporate governance

*3000 character(s) maximum*

Transparency of media ownership and public availability of media ownership information, including on direct, indirect and beneficial owners, as well as any rules regulating the matter

## C. Framework for journalists' protection, transparency and access to documents

Rules and practices guaranteeing journalist's independence and safety, including as regards protection of journalistic sources and communications

*3000 character(s) maximum*

Law enforcement capacity, including during protests and demonstrations, to ensure journalists' safety and to investigate attacks on journalists

*3000 character(s) maximum*

Access to information and public documents (incl. transparency authorities where they exist, procedures, costs/fees, timeframes, administrative/judicial review of decisions, execution of decisions by public authorities, possible obstacles related to the classification of information)

*3000 character(s) maximum*

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

*3000 character(s) maximum*

Other - please specify

*3000 character(s) maximum*

## IV. Other institutional issues related to checks and balances

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Please provide information on measures taken to follow-up on the recommendations received in the 2022 Report regarding the system of checks and balances (if applicable)

*3000 character(s) maximum*

### A. The process for preparing and enacting laws

Framework, policy and use of impact assessments and evidence based policy-making, stakeholders'[1] /public consultations (particularly consultation of judiciary and other relevant stakeholders on judicial reforms), and transparency and quality of the legislative process

[1] *This includes also the consultation of social partners*

*3000 character(s) maximum*

Most of crucial legislative is presented as a parliamentary draft, even if it is prepared in the government. It formally allows to skip public consultations. There is no real debate in Sejm, the only chance to discuss the draft is at the level of Senat.

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

*3000 character(s) maximum*

Regime for constitutional review of laws

*3000 character(s) maximum*

COVID-19: provide update on significant developments with regard to emergency regimes/measures in the context of the COVID-19 pandemic

- judicial review (including constitutional review) of emergency regimes and measures in the context of COVID-19 pandemic
- oversight (incl. ex-post reporting/investigation) by Parliament of emergency regimes and measures in the context of COVID-19 pandemic
- processes related to lessons learned/crisis preparedness in terms of the functioning of checks and balances

*3000 character(s) maximum*

## B. Independent authorities

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

*(Cf. the website of the European Court of Auditors: <https://www.eca.europa.eu/en/Pages/SupremeAuditInstitutions.aspx#>)*

*3000 character(s) maximum*

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

*3000 character(s) maximum*

## C. Accessibility and judicial review of administrative decisions

Transparency of administrative decisions and sanctions (incl. their publication and rules on collection of related data)

*3000 character(s) maximum*



Judicial review of administrative decisions:

- short description of the general regime (in particular competent court, scope, suspensive effect, interim measures, and any applicable specific rules or derogations from the general regime of judicial review)

*3000 character(s) maximum*

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

*3000 character(s) maximum*

## D. The enabling framework for civil society

Measures regarding the framework for civil society organisations and human rights defenders (e.g. legal framework and its application in practice incl. registration and dissolution rules)

*3000 character(s) maximum*

Rules and practices having an impact on the effective operation and safety of civil society organisations and human rights defenders. This includes measures for protection from attacks – verbal, physical or on-line –, intimidation, legal threats incl. SLAPPs, negative narratives or smear campaigns, measures capable of affecting the public perception of civil society organisations, etc. It also includes measures to monitor threats or attacks and dedicated support services.

*3000 character(s) maximum*

Organisation of financial support for civil society organisations and human rights defenders (e.g. framework to ensure access to funding, and for financial viability, taxation/incentive/donation systems, measures to ensure a fair distribution of funding)

*3000 character(s) maximum*

Rules and practices on the participation of civil society organisations and human rights defenders to the decision-making process (e.g. measures related to dialogue between authorities and civil society, participation of civil society in policy development and decision-making, consultation, dialogues, etc.)

*3000 character(s) maximum*

## E. Initiatives to foster a rule of law culture

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

*3000 character(s) maximum*

Other - please specify

*3000 character(s) maximum*

### Contact

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