AEAJ Rule of Law Report to the European Commission

I am giving the contribution as judicial association (on the European level).

Main areas of work: justice systems

the main areas of presence online: www.aeaj.org and https://twitter.com/AEAJ2000

Description of the Association: European-wide judicial association. Members: national associations and individual members of area of Council of Europe. Cover all stages of administrative judiciaries. Active not only in area to defend independence and RoL but also in subject areas of law of relevance at the European level (asylum, immigration/environment/tax). We are partners of EJTN, cooperation with other international organizations, actors and observer of CCJE and CEPEJ. See also https://www.aeaj.org/page/About-Us

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Publication of our contribution: Public!

I agree with the personal data protection provisions!

Vienna, 08/03/2021,

Report follows hereinafter (page 2 et seq): horizontal level and country specific: Croatia, Estonia, France, Greece, Lithuania and Poland: basically the input of AEAJ for the Rule of Law Report 2020 is still valid.

Horizontal level input:

We want to refer to the situation report of CCJE 2019, CCJE-BU(2020)3 to which AEAJ has also given input and refer to it.

https://rm.coe.int/ccje-report-2019-situation-of-judges-en/16809e0d05

Country-wise input:

CROATIA:

I.A. Justice System - Independence

1. Appointment and selection of judges and prosecutors:

No changes, see AEAJ report 2020:

The existing appointment system is adapted primarily to ordinary (regular) courts, without taking into account the specificities of the administrative judiciary. In practice, it significantly complicates the appointment of administrative judges from the corps of civil servants, and thus prevents the appropriate balance of professional background among administrative judges.

3. Promotion of judges

No changes, see AEAJ report 2020:

The system applicable to the promotion of judges does not consider the experience gained within the same branch of the judiciary. In addition, this system emphasizes quantitative indicators, which are not sufficiently comparable between the judicial branches. Therefore, when advancing to the administrative court of the second (also the highest) instance, better formal results are achieved by judges of the first instance ordinary courts, without any experience in administrative judiciary.

10. Significant developments – perception of public on independence of judiciary

No changes, see AEAJ report 2020:

The impression of the general public on the entire judiciary is mostly generated by negative media reviews on several of the most exposed criminal cases, with general theses on incompetent and / or biased and / or "untouchable" judiciary. Most media approaches do not understand the extent to which the independence of the judiciary (including independence from public expectations), just as the independence of the media (despite the weaknesses of both sectors), is important for a democracy based on the rule of law. Examples of individual dissatisfaction are used to generally undermine the authority of the institutions themselves. In order to gain voter support, some politicians pander to such views.

The reactions usually come from the president of the Supreme Court and/or from the president of the Association of Judges, sometimes from the president or the spokesperson of a given court (but they are usually publicly portrayed as pre-biased), not from the politicians, including the justice minister(s).

B. Quality of Justice

11. Accessibility

No changes, see AEAJ report 2020:

The current model of free legal aid allows plaintiff with lower incomes in administrative disputes to be represented by attorneys, and to suggest that appropriate evidence be presented. Once these activities were transferred to the scope of the public administration, the courts were released of activities related to free legal aid.

Since 2013 the granting of free legal aid (provided by attorneys, expert witnesses ...) according to income criteria, in all judicial branches, falls into the scope of public administration. So the judges don't have to perform tasks related to establishing facts on one's assets and decisions on granting free legal aid any more.

14. Digitalization

Administrative Judiciary is expected to move on the next stage of digitalization, scheduled deadline is 1 July 2021.

IV: other institutional issues related to checks and balances:

A. 41: COVID-19:

In the first wave of the epidemic (spring 2020), there were no official measures introduced specifically in relation to the judiciary. Therefore, there was neither influence on the separation of powers, nor the rest stated ad 1). General measures have not been adopted on the basis of emergency legislation.

In the second wave of the epidemic (autumn 2020), the President of the Supreme Court issued an Instruction regulating the work models of the courts (depending on the current level of the epidemiological situation), as well as protective measures within the courts.

Despite the announcements, no law has been passed to extend the procedural deadlines. Besides the epidemic, there was an additional need for this in the area of Zagreb and its surroundings due to the strong earthquake in March.

Measures to protect health and safety were appropriate.

The manner in which professional duties were performed in the first wave depended on the assessment (improvisation) of each court president.

Legislative changes have been made regarding the postponement of civil enforcement proceedings.

So far, no specific measures related to backlog management have been adopted.

The general urgency criteria of the case, prescribed by regular, pre-epidemic legislation, apply.

At the level of operational functioning of the Ministry of Justice, it was possible to relocate funds in the financial plans of courts, in order to procure the necessary protective equipment and resources, et To the extent that there are resources for this in a particular court, and depending on the applicable procedural law, hearings and other remote actions are held. The amendments to the Rules of Procedure (applicable in all branches of the judiciary) introduced the possibility of holding closed sessions of higher court chambers online.

The epidemic was also the cause for the Ministry of Justice to make a complete inventory of the suitability of existing IT equipment in the courts for remote work.c.

C. 44: Enforcement, Implementation of final court decisions:

See report AEAJ 2020, no changes:

The existing model, according to which in the case of non-enforcement of the judgment of the administrative court, the head of the administrative body is warned with a fine, has proved effective. In practice, it's almost always enough to „threaten" with such a measure. However, the parties of administrative disputes do not yet sufficiently recognize the possibilities offered by the enforcement process of judgments, but more often deciding to initiate a new administrative dispute (silence of the administration).

ESTONIA

I. Justice System

Independence

A.2. Irremovability of judges; including transfers, dismissal and retirement regime of judges, court presidents and prosecutors

Negative development: for the release from office at the request of the judge the request must be submitted at least nine months prior to the desired date of the release (before it was six months).

A.7. Remuneration/bonuses for judges and prosecutors

Due to impact of the Covid-19 crises and economic decline there have been some pressure to lower salaries of higher state servants, incl. judges.

B. 14. 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)

C. 17. Length of proceedings

During the Covid-19 pandemic: difficulties in carrying out court sessions in bigger criminal matters; slight lengthening of proceedings in criminal matters. Positive development: more extensive use of electronic communication tools in conducting hearings during the pandemic; improved confidence in using these tools.

IV.A. 41. COVID-19: provide update on significant developments with regard to emergency regimes in the context of the COVID-19 pandemic –

- measures taken to ensure the continued activity of Parliament (including possible best practices)

Sessions of the committees of the Parliament are held using videoconferencing solutions. The law was changed to enable a remote-participation sitting of the Parliament.

FRANCE

I. Justice System

A Independence

3.Promotion of judges and prosecutors

No changes, see AEAJ report 2020:

The French admin justice system is in a very specific situation, where the Council of State (CoS) plays three roles: legal advisor of the Govmt, the Sup.Admin.Court, since 1987, the manager of the admin justice system as a whole.

Moreover, the legal texts on the admin justice system, following an unwritten convention, are drafted by the CoS itself, most of the time its secretary general, under the authority of the VP of the CoS.

The Vice-President (VP) of the CoS has extended prerogatives concerning the nomination, career, discipline and rem remuneration of the members of the CoS, as well as a decisive influence on the part of their career pursued into the regular administration.

The VP of the CoS and the secretary general have prerogatives of a similar extent towards admin courts of first instance and appeals, impeding their own independence when they adjudicate on internal issues.

The CoS recently adjudicated (CE, 25 March 2020, M. Le Gars, n° 411070) that its own independence is not infringed by its vice-president, "whatever are his prerogatives on the nomination or the career of admin

justice members", as long as the members who took part into the preliminary process of the administrative decision do not participate to the adjudicating panel deciding the legality of this decision. This follows a

similar decision of the Constitutional Council (n° 2017-666 QPC, 20 October 2017).

This statement makes confusion between impartiality and independence. The duality of the manager /supreme court roles do not raise the same issues as the duality of the advisory/supreme court roles, which was previously settled by the ECtHR, Kleyn v. The Netherlands, 2003. It is not in line with the case-law of

the ECtHR on the internal independence of judges, which examines in depth the prerogatives of the

president of the court on the court members.

Moreover, this case-law has been settled in cases where 1 or 2 members of the adjudicating panel (on 9) did previously take part into the preliminary process of the decision which legality was challenged.

This situation infringes the right of admin judges to an effective judicial review, as well as to their right to a

fair trial, which are regarded as essential guarantees of their independence now. It has led during the last decades to a very restrictive case-law of the CoS on the internal issues of the administrative justice system, including on the independence of admin courts and admin judges.

case law:

CE, 25 mars 2020, Syndicat de la juridiction administrative, n° 421149, A CE, 25 mars 2020, M. Le Gars, n °411070, A

CC, 20 oct. 2017, décision n° 2017-666 QPC

CE, 4 févr. 2005, Syndicat de la magistrature et Robin, n° 264843, A

CC, 22 juil. 1980, décision n° 80-119 DC

5. Independence (including composition and nomination of its members), and powers of the body tasked with safeguarding the independence of the judiciary

No changes, see AEAJ Report 2020:

a) see above under "Promotion of Judges": this affects not only Promotion but indidivudal Independence of admin Judges in France in many other ways in their daily work.

b) Lack of a proper constitutional status for the administrative justice system (topic I.A.5)

Unlike judiciary justice in France and administrative justice in many other European countries, the French Constitution does not expressly protect the independence of administrative courts and

administrative judges. This independence has only been protected at the constitutional level by the case-law of the Constitutional Council (decision n° 80-119 DC, 22 July 1980).

The lack of a proper textual protection in the French Constitution does not help to protect this independence.

For a recent example, the legislator recently suppressed all administrative consultative obligations for the measures intended to fight the propagation of the covid-19 virus, foreseen at a "legislative or regulatory level". The mandatory obligation to consult the French High Council of administrative courts of first instance and appeal (Conseil supérieur des tribunaux administratifs et cours administratives d'appel – CSTACAA)

has therefore been suppressed on these measures, including for the major texts about the functioning of the administrative justice system during the covid-19 crisis. The consultation of the CSTACAA is generally seen as a guarantee of the independence of administrative judges.

Moreover, the role of the CSTACAA is closer to the one an administrative commission for regular civil servants. The CSTACAA cannot be considered as a proper judiciary council in any way. It is not a member of the European Network of Councils for the Judiciary (ENCJ).

6. Accountability of judges and prosecutors, including disciplinary regime and ethical rules.

No changes, see AEAJ report 2020:

The vice-president (VP) of the Council of State (CoS) issued new deontological restraints concerning the freedom of expression of admin judges on the Internet in 2018, after having been given such powers about deontology by the legislator in 2016 (article L. 131-4 of the French administrative justice code – CJA).

The charter of deontology of admin justice members now states for example that: "Even when they express themselves only under their name without mentioning their quality of judge, the greatest caution is

mandatory to members when they express publicly any opinion, either political, legal, religious or associative (...)" (§46) "(...) it is recommended to admin justice members to not use social networks to comment on political and social news" (§47-4, al. 1) "Concerning legal and admin news, members have to (...) manifest a vigilance (on social networks) equivalent to a publication into a scientific review" (§47-4, al. 2) "Concerning admin case-law more specifically, from one's own court or not, it is recommended to make measured comments only" (§47-4, al. 3). These recommendations are specific to AJ and differ widely from the deontology of ordinary judges.

The decision of the VP of CoS has been legally challenged by the main union of French admin judges (Syndicat de la juridiction administrative – SJA).

The CoS recently adjudicated (CE, 25 March 2020, n° 421149) that the charter of deontology only states by nature recommendations and reminders of general legal obligations; its provisions cannot be the basis for disciplinary proceedings by themselves, but could be taken into account for such proceedings (as "clues", acc. the rapporteur public of the panel of the CoS); the disputed provisions

are only recommendations and therefore, do not infringe the freedom of expression of admin judges. This is not in line with the case-law of the ECtHR.

7. Remuneration/bonuses for judges and prosecutors

No changes, see AEAJ report 2020:

The remuneration of admin judges, as well as judiciary judges, is mainly composed of a base part, which progresses according to seniority, a fixed functional part, and an individual bonus based on performance.

The bonus is determined by the application of an individual coefficient, varying between 0 and 3, to a standard bonus corresponding to the coefficient of 1. The standard bonus is very substantial by itself, and even more if the multiplicative coefficient is taken into account. Most judges are granted a coefficient close to the average, comprised between 1 and 1,1.

The annual remunerations of admin judges are the following (2018 figures):

Councillor:

- base part 21 500 – 35 000 €
- fixed functional part 13 000 – 14 600 € (depending of functions)
- standard bonus 4 500 € (legally varying between 0 and 13 500 €)

First councillor:

- base part 35 000 – 60 000 €
- fixed functional part 19 000 – 24 100 € (depending of functions)
- standard bonus 7 500 € (legally varying between 0 and 22 500 €)

President of chamber:

- base 46 000 – 63 000 €
- fixed functional part 25 500 – 26 000 € (depending of functions)
- standard bonus 8 500 or 9 000 € (legally varying between 0 and 25 500 or 27 000 €)

The individual bonus is discretionally granted by the president of the court, based on its personal appreciation of the individual professional merits of the judge. There aren't any specific criteria or guidelines concerning the granted bonus. This problem is furthermore impeded by the lack of a proper admin or judicial review concerning bonuses and other remuneration issues.

The Council of State (CoS) has adjudicated that the remuneration of judiciary judges is not a part of their specially protected legislative status, that the Govnmt is therefore fully competent to fix the level and the modalities of their remuneration, and that the creation of an individual bonus based on

performance does not raise an issue concerning judicial independence (CE, 4 February 2005, Syndicat de la magistrature et Robin, n° 264843). This case-law covers admin judges as well.

This issue is analogous to a current preliminary ruling by a Hungarian court to the EUCJ (ref. C-564/19).

The remuneration of admin judges has been slopping down in the past decades compared to the remunerations of similar civil servants ("corps issus de l'ENA").

In the negotiations between the ministry of budget and the CoS (as manager of the admin justice system) concerning the remuneration of admin judges, the ministry of budget has recently announced that pay raises for admin judges would only be through individual bonuses based on performance in the future, due to general civil service regulatory policies.

It should be noticed that the position expressed by the French member of the CCJE during the preparation of its opinion n° 17 (2014) does not properly reflect the situation in France.

GREECE

I Justice System

A. Independence

7. Remuneration/bonuses for judges and prosecutors

No changes, see AEAJ report 2020:

The level of judges' remuneration in Greece remains unchanged in 2019. As reported in the press, the government is currently preparing a bill that will enable wage maturation and time allowances for the years 2017-2018.1 The salary of retired judges is an issue following several reductions of their remuneration. As a result, their income is still reduced by more than half compared to their salary while in office. Currently there are no legislative plans envisaged by the government on this matter, but relevant decisions are issued by Admin Courts such as the Decision no. 391/2019 by the Admin Court of Athens that characterises as unconstitutional the reduction in judicial pensions.

B.12 Resources of the judiciary (human/financial)

No changes, see AEAJ report 2020:

Judicial Staff

In the Regular Administrative Courts and the General Commission of the State for the Regular

Administrative Courts, 978 statutory posts are provided for judges and 946 posts are currently filled. In particular, by means of Article 19 of Law 4429/2016 (A' 199) and Article 25 of Law 4491/2017 (A' 152), the statutory posts for judges in the Regular Administrative Courts have been increased by

forty (40) positions in total. (Data retrieved by the " General Report on the 2019 state of play for the Regular Administrative Courts" submitted to the Minister of Justice by the General Commissioner of the State for the Regular Administrative Courts , Ref. No. 1173/30.03.2020).

Such an increase in the posts for judges however, has not been coupled with a corresponding increase in

the posts for court staff, even though this parameter should be an essential condition for any proposed increase in the foreseen statutory posts for judges.

In any case, however, a benchmarking at a national level leads to the conclusion that the statutory posts for judges and court staff are not commensurate with the workload of each administrative Court, partly because of cronic vacancies in the statutory posts over a significant period of time, and partly due to variations caused by a steady increase in the court cases handled by certain courts and a reduction observed in others, as a result of a regulatory redistribution of competences.

Court Staff

Nowadays, the statutory posts foreseen for court staff and bailiffs both in the General Commission of the State for the Regular Administrative Courts and the Regular Administrative Courts amount to 811 amd 103 posts respectively (112742/27.9.2004 Secretary General Decision of the Ministry of Justice - B' 1498/6. 10.2004 and Article 31 Law 4446/2016), while only 573 Court Staff and 50 bailiffs currently serve. However it should be noted that in 2019 the court staff recruitment procedure has started again, via three tenders launched in 2017 by the Supreme Council for Civil Personnel

Selection (ASEP), 1K/2017, 2K/2017 and 8K/2017, that will considerably increase the number of serving court staff members. It should be nevertheless highlighted that, even if all currently vacant statutory posts for court staff are filled, the ratio to serving administrative judges will be approximately to 1, compared to the 1 to 3,5 ratio observed in other countries of the Council of Europe. Such vacancies lead to operational difficulties in certain Provincial Administrative Courts (Administrative Court of Tripolis, Administrative Court of Mytilene) at a time when there is an increased need for human resouces due to the additional tasks imposed for supporting the operation of the Integrated System of Administrative Justice Case Management (OSDDY- DD).

court Buildings:

Poor and inadequate conditions in the buildings where the administrative courts operate remain in

2019. The organisation and accessibility of court premises continue to affect the delivery of high quality justice, the reception of court users and the existence of satisfying working conditions for court staff and security in several premises such as the Administrative Courts of Piraeaus, Chania, Alexandroupolis, Patras, Nafplion, Herakleion and Pyrgos.

B.15 Use of assessment tools and standards (e.g. ICT systems for case management, court statistics, monitoring, evaluation, surveys among court users or legal professionals)

No changes, see AEAJ report 2020:

The gradual switching to the mandatory electronic filing and processing of legal documents is progressing, starting from the administrative jurisdictions via the Integrated System of Administrative Justice Case Management (OSDDY-DD).

The aim of the OSDDY-DD project is to accelerate the effective administration of Administrative Justice, reduce its operating costs and improve the quality of services provided to citizens. It includes centralized case management and case law systems, a portal through which all interested parties can access the unified database of Administrative Justice, as well as applications for providing citizens, lawyers and public bodies with updated information and follow-up of case process, filing remedies online, the handling of documents, the notification of decisions, the filing of applications for issuing certificates. Even though the Integrated System of Administrative Justice Case Management (OSDDY-DD), has been officially launched in 2015 it is constantly updated and enriched with new functions and the government has issued in 2019 L. 4635/2019 (A'167), which ensures the continuous financing of this IT tool and foresees a series of actions for improving e justice services. For example, as of 1/1/2021 the electronic submision and service of judicial documents becomes mandatory for Administrative Courts (Articles 75-77). In the "General Report on the 2019 state of play for the Regular Administrative Courts" submitted to the Minister of Justice by the General Commissioner of the State for the Regular Administrative Courts , it is indicated that the option of submiting electronically the documents instituting the proceedings has been active since 29-05-2018 and up until the 31-12-2019 3.024 documents have been submitted electronically across all Greek administrative Courts out of which 2.248 (74%) in 2019.

Further plans for supporting the IT development of administrative courts include: 1) the digitisation of judges' personal records held by the Ministry of Justice, the Council of State and the General Commission of the State for the Regular Administrative Courts , as well as the personal records of court staff, 2) the digitisation of Court decisions and the acquisition of an anonymisation software, 3) preparation of essential infrastructure for holding teleconferences [the option of holding a teleconference is provided by L. 4635/2019 (A'167)], especially in remote island areas, d) development and operation of a Bussiness Intelligence software for advanced statisitcal data analysis according to international statistical standards.

Information retreived by the Ministry of Justice
https://www.ministryofjustice.gr/English/?page_id=792 and the the " General Report on the 2019 state of play for the Regular Administrative Courts" op.cit.

C.17 Length of proceedings

Regarding the case load in the Regular Administrative Courts there is a steady decrease in the volume of pending cases.

The total number of pending cases in Administrative Courts (Appeal and First Instance) fell to 173.123 cases on 31.12.2019 , from 196.130 cases on 31.12.2018, 235.260 cases on 31.12.2017, 280.519 on 31.12.2016 and 307.379 on 31.12.2015. In total the pending cases decreased by 56% between 2015 and 2019 .

Such regular improvement in court performance (a significant and steady decrease in pending caseload) can be attributed to two factors. The increase in the administrative judges' productivity, on the one hand, as reflected on the Internal Rules of Procedure of Administrative Courts approved by the Plenary of the Council of State, contributed to this effect, since at least 210 cases are assigned per year to each judge serving in First Instance Administrative Courts and 110 cases respectively to those serving in the Administrative Courts of Appeal. On the other hand, the increase by forty (40) in the statutory posts foreseen for administrative judges in 2016 and 2017, also reflected in the legislation -3900/2010 (A' 213), 4055/2012 (A'51), 4274/2014 (A'147), 4446/2016 (A' 240) and 4509/2017 (A' 201), has positively affected the pending cases.

It should be noted that the intensification of efforts on behalf of the court staff has also contributed to this improvement in the pending cases number. Nevertheless, a significant boost to the functioning of the Administrative justice system is also expected by ammendments in the operation of the Integrated System of Administrative Justice Case Management (OSDDY-DD).

LITHUANIA

I. Justice System

A Independence

2. Irremovability of judges, including transfers of judges and dismissal

Dismissal of judges:

According Article 90 (2) of the Law on Courts, the judge may be dismissed by reason of his health only where, during one year he is ill for more than 120 calendar days in succession or for more than 140 calendar days during the last twelve months, or when he falls ill with an incurable or any other prolonged illness preventing him from discharging his duties as a judge.

Problem: The ground for the dismissal of the judge if he is ill more than 120 calendar days in succession or for more than 140 calendar days during the last twelve months violates the independence of the judge.

3. Promotion of judges and prosecutors

1) Persons seeking promotion in judicial office are evaluated on their quality of work in judicial office, professional and personal qualities, organisational abilities and priority advantages.

Specific criteria for the selection of judges seeking promotion are provided in the Selection Criteria for Persons Seeking Promotion in Judicial Office (SC) [3 judges, 4 non-judges, not part of the judicial council]. According to all criteria, the candidate can score up to 100 points. The obtained scores determine the candidate's place in the selection list of candidates prepared by the SC.

Subjective criteria have great significance. Subjective criteria are personal characteristics, cognitive abilities and general abilities of candidates. Subjective criteria can be evaluated as many as 40 points. Length of service as legal staff can be evaluated as many as only 5 points, quantitative and qualitative indicators of judicial practice – 45 points, professional competence and knowledge – 10 points.

Problem No. 1: This procedure shows that the significance of the subjective criteria is not proportional comparing with other criteria (length of service (5 points), professional competence and knowledge (10 points).

2) In its conclusion regarding the candidates the SC indicates to the President of the Republic one or more candidates most suitable to be promoted. The conclusion of the SC about the candidates is not binding for the President of the Republic who takes the final decision. The Judicial Council advises the President of the Republic on the appointment of a judge. A candidate has the right to challenge the decision of Selection commission on procedural basics before Supreme Court of Lithuania (from the 1st of January 2020). Problem No. 2: The SC gives in the conclusion the summarized report only about the most suitable candidates. The report about other candidates is missing. So there is no possibility to compare all candidates with each other. The President of the Republic does not receive the summarized report about all candidates. There are several problems: 1) the missing report about each candidate is an obstacle for the President of the Republic to make a selection from all candidates (the conclusion of the SC is not binding);

2) the missing report about each candidate burdens the possibility to challenge the conclusion of the SC. The role of the president of the court is very important both in evaluating performance of judges and in promotion of judges. The president of the court submits characteristics about judge's judicial performance and professional and personal qualities of a judge both to Permanent Commission for the Assessment of Activities of Judges and SC. President of the court prepares opinion about quality of work in judicial office, professional and personal qualities and organisational abilities of the judges.

The SC takes into account the opinion of the president of the court in which the judge is working. See I.A.5.

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

In a procedure for promotion of Judges: The opinions of the presidents of the courts and the opinion of the judges of the court in which the judge is applying are often tendentious and subjective. There are no criteria in the legal acts how the opinion should be structured and formulated. In 2019-2020 several judges initiated claims before the Judicial Council and the Judicial Court of Honour which were connected with the tendentious and subjective opinion. There is no regulated in the legal acts how such opinions can be challenged.

4) Procedures of the SC are not enough transparent. The information which is delivered to the candidate on his request is only about himself. It is not possible to get the information about the reasons why one or more candidates were chosen as the most suitable to be promoted.

Problem: The information about the reasons why one or more candidates were chosen as the most suitable to be promoted is not delivered. There are several problems: 1) the missing information is an obstacle for the President of the Republic to make a selection from all candidates (the conclusion of the Selection commission is not binding on the President of the Republic); 2) the missing information is an obstacle to challenge the conclusion of the SC. There is no possibility to compare one candidate with other candidates.

The presidents of the courts have a lot of competences to control the work of the judge. They are allowed to make the varifications of different kind. They have a right to initiate the assesment of the activities of the judge and they have a right to initiate the disciplinary procedure (he can make a proposal before the Judicial Ethics and Discipline Commission for the institution of a disciplinary case against a judge). These competences are used very broudly. It is a threat that the use of these broud powers can violate the independence of the judge. In 2019-2020 there were several claims of the judges before the Judicial Council regarding the actions of the presidents of the courts and the violation of the independence of the judge. Problem: The broad powers of the presidents of the court cause a threat of the violation of the independence of the judge.

See also I.A.6.

6. Accountability of judges and prosecutors, including disciplinary regime and ethical rules.

Assessment of judges:

The Assessment commission takes into account the opinion of the president of the court in which the judge is working and the opinion of the president of the higher court.

Problem: The opinions of the presidents of the courts are often tendentious and subjective. There are no criteria in the legal acts how the opinion should be structured and formulated. This fact violates point 44 of the CM/Rec (2010)12 not guaranteeing individual independence properly (see also CCJE, opinion No. 17).

7. Remuneration/bonuses for judges and prosecutors

Remuneration of judges:

As is well known many countries, also in Lithuania were forced to reduce salaries of civil servants, including judges, due to the economic crises (in 2009).

However the remuneration of judges has so far still not re-gained the full amount of that remuneration, which they had received before (!) 2009. It must be noted that the general price level has increased relevantly. The remuneration of judges in Lithuania does not commensurate with the profession and responsibilities of Lithuanian judges, nor implies sufficient shields for their independence.

Problem: The level of the remuneration of judges is not restored to level before 2009. This fact violates point 54 of the CM/Rec (2010)12.

POLAND

I.Justice System

A.Independence

1.Appointment and selection

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

Partly also Administrative Justice is affected:

Muzzle Law of 14/02/2020 is partly also relevant for administrative judges.

See recent Judgement CJEU: 824/18 of 2 March 2021 with effects.

From the inner circle of Minister of Justice 4 persons were appointed as justices to the Supreme Administrative Court recently.

To be noted: The Supreme Administrative Court is relevant not only as court of appeal but also for organizational and staff issues as well as service rules of administrative judges of the Wojwodship courts.

In general with updates on https://www.aeaj.org/blog/Situation-in-Poland_22_02_2021

MEDEL, EAJ, Judges for Judges, ENCJ web-pages also show information.

Order CJEU of 8 April 2020, C-791/R still ignored by the executive power. Judges are persecuted with disciplinary allegations, intending also chilling effect for all Polish judges, including administrative judges. The first and most high-profile disciplinary proceeding under Poland's new system for judicial discipline cases was opened against a judge Igor Tuleya (allowing media representatives to attend the December 2017 hearing). The reasons to open the case the alleged disclosure of the evidences from the preparatory proceedings, including witness testimony.

Others judges are:

Judge Beata Morawiec that 12 October 2020 her immunity was waived by Adam Tomczyński from Disciplinary Chamber of the Supreme Court; she was accused for accepting a bribe (a mobile phone) for a favorable sentence and receipt of public funds for preparing analysis which was in fact not delivered. A judge denied all of accusations . 20 January 2021 The Court of Appeal issued the verdict in process of defamation of a judge Beata Morawiec stating that that Zbigniew Ziobro as a Ministry of Justice should to apologize for defamation caused. Zbigniew Ziobro announced a cassation appeal to Supreme Court to be filed.

Judge Paweł Juszczyszyn – 6 February 2020 he was suspended because during the examination of the appeal in one of the cases (IX Ca 1302/19), he decided to examine the legal status of the judge who issued the ruling in the first instance as an element decisive for the validity of the decision of the court of lower instance.

The above are the most typical examples . For all those judges they current status is that they adjudicate on the cases and their remuneration is reduced by 50%.

13. Training of administrative judges:

EJTN trainings are not directly available, but mediatized via the Polish Supreme Administrative Court.