



European Network of Councils
for the Judiciary (ENCJ)

Réseau européen des Conseils
de la Justice (RECJ)

ENCJ contribution for the 2021 European Commission Rule of Law report

Relevant developments in relation to the independence of the judiciary

The ENCJ would like to contribute to the Rule of Law report. There are 2 sections to the contribution. Section 1 deals with the ENCJ statements in 2020 on Rule of Law issues. The second section provides an overview of relevant developments in the ENCJ Member countries in relation to Judicial Independence and is based on information provided by the Members.

In general, 2020 has been a challenging year for the judiciaries. The Covid-19 pandemic has boosted the digitisation of the judiciary. However, the pace at which this was developed to ensure that court hearings could take place even during lockdown, has meant that the judiciary has not always been sufficiently involved or consulted. This may be forgiven due to the emergency situation, but for the future it is paramount that the judiciary is involved. This also applies more broadly to judicial reform in general. It is essential that the judiciary, judicial councils and in particular judges and prosecutors be involved at each stage of development and implementation of reform plans. This is to ensure the independence of the judiciary and that reforms are effective and instil confidence.

I. ENCJ general statements and letters

In 2020 the ENCJ adopted a number of statements and opinions in relation to the Rule of Law in general and regarding specific EU Member States in particular.

- [Statement of the Executive Board on the situation in Poland – 10 January 2020](#)

In a reaction to the adoption of the Muzzle Law by the Polish government the Executive Board of the ENCJ reiterated that it is the duty of every judge in the European Union to apply European Union Law without any restrictions - whatsoever - from other branches of a state. Judicial independence is indispensable in order to comply with this duty. Furthermore, the Executive Board of the ENCJ stated that judicial independence is essential to guarantee the rights of the citizens of the European Union, is essential for mutual respect of the European Union's common values, is essential for mutual trust among European Union judges, and is an essential pre-condition for the mutual recognition of judgements within the European Union. Without judicial independence the European Union will – eventually – cease to exist as a common space for Democracy and the Rule of Law. The Executive Board of the ENCJ called upon everyone in the European Union to defend the independence of judges and thus defend the European Union.

- [Letter to President Von der Leyen 21 February 2020](#)
In the letter the Presidents of the ENCJ, the Network of Presidents of the Supreme Courts of the EU and the European Judges Association reiterate the message of their first letter and demand specific actions to be taken against Poland as a consequence of the entering into force of the Muzzle law in Poland.
- [Letter to the European Commission on developments in Hungary](#)
In the letter the ENCJ Board calls for action of the European Commission to protect the Rule of Law in Hungary with a view to the appointment of the President of the Kuria.

II. Councils for the Judiciary - Information from the ENCJ Members

Poland

The information on Poland was not gathered through the KRS, the National Judicial Council. In September 2018 the ENCJ General Assembly suspended the membership of the KRS (Krajowa Rada Sdownictwa) of Poland. Since then, the KRS is no longer allowed to participate in the ENCJ activities. Despite the KRS's suspension, the ENCJ has continued to follow the developments in relation to the judiciary in Poland. Therefore, the ENCJ wants to put forward the following information in relation to the Rule of Law in Poland and the KRS in particular:

- Since the publication of the first EC's Rule of Law 2020 report the situation of the judiciary has not improved, on the contrary, it has deteriorated.
- On 14 February 2020 the so-called "Muzzle Act" entered into force.
- The Disciplinary Chamber, ignoring the requirement set up in the *C-791/19 R Commission v Poland case*¹ that the Chamber will refrain from referring cases, continues to hear cases concerning the immunity of judges in criminal cases (lifting the immunity).
- The functioning of the new KRS has confirmed many of the concerns expressed before. The KRS still does not meet the European standards of a judicial council. The KRS has neither been properly fulfilling its role as the guarantor of independence of the judiciary nor has it completed its duty to select candidates for judicial positions to be appointed by the President of the Republic. The KRS did not intervene in cases of judges against whom politically motivated proceedings are initiated. Even worse, it seems that the KRS served to implement decisions which had been taken beforehand.
- The majority of the new judicial members are closely related to the Minister of Justice and the government. The government's interference with the independence of justice system institutions is to be observed.
- The government discussed further reforms in the Supreme Court, as well as the ordinary and administrative courts that reduce the independence of the judiciary.

¹ Order of the CJEU of 8 April 2020, *Commission v Poland (Disciplinary regime for judges)*, C-791/19 R, EU:C:2020:277.

- Concerns over the Supreme Court's role in defending the judiciary's independence have been intensified with the nomination of Malgorzata Manowska, appointed in May 2020 as the First President of the Supreme Court.
- The degradation of the Constitutional Tribunal's position has continued in 2020. Two important judgments issued in 2020 have to be underlined. The first is the judgment of 21 April 2020 (Kpt 1/20, OTK ZU 2020, A/60) on the dispute between the Supreme Court, on the one hand, and the Sejm and the President, on the other. The submitted application aimed at preventing the enforcement of the CJEU judgement of 19 November 2019 at the national level and therefore raised doubts regarding the relationship between the Polish Constitution and European law. The second is the judgement of 22 October 2020 (Kpt 1/20, OTK-A 2021/1) related to the law on abortion of 1993 and more precisely the provision which defined one of the three legal premises for performing an abortion. According to the Constitutional Tribunal, the above-mentioned provision was unconstitutional.
- Attacks by the government on the judiciary continue undermining the trust in the judiciary. A smear campaign against judges which seems to have been coordinated from the Ministry of Justice continued. At the same time, regular fast promotions of pro-government persons have been introduced.
- Prosecutors who decided to launch an investigation involving politicians of the ruling parties have been disciplined.
- The actions of the Polish government have the aim of limiting the importance, influence and power of the function of the Ombudsman. As example, the lodged application to the Constitutional Tribunal asking to interpret the Polish Ombudsman Act in a way which would prohibit the Ombudsman whose term has ended but whose successor has not been appointed, from executing his duties.

At the meeting on **10 February 2020** the Executive Board decided to start an inquiry into the question whether the KRS should be expelled. The Executive Board questioned whether the KRS has committed serious breaches of the aims and objectives of the Association as set out in Articles 3 and 4 of the Statutes of the ENCJ, and thus whether it should propose the expulsion of the KRS as a member of the ENCJ.

On **21 February 2020** the President of the ENCJ wrote a letter to the President of the KRS asking nine questions concerning the ENCJ membership of the KRS. On **13 March 2020** the President of the KRS responded to the nine questions. Then, on **22 April 2020** the Executive Board adopted the draft position paper and the President of the ENCJ sent the draft position paper to the President of the KRS asking for the reaction of the KRS to the draft position paper. On 20 May 2020 the President of the KRS responded to the draft position paper. Finally, on **27 May 2020** the ENCJ Executive Board convened for a virtual Board meeting. The ENCJ position paper on the expulsion of the Krajowa Rada Sadownictwa- National Council for the Judiciary of Poland (KRS) was discussed and subsequently adopted. In the position papers the Board sets out its reasons for proposing to the General Assembly to expel the KRS.

In the meantime, in **June 2020** the ENCJ has submitted 3rd party intervention before the ECHR – **Zurek v Poland case** (*application no 39650/18*) – concerning the interruption of the term of office of a judge – member of the National Council of the Judiciary, and repressions associated with his role as spokesperson for the National Council of the Judiciary.

During the 2020 Virtual General Assembly **on 10 June**, as regards the proposal of the Executive Board to put the expulsion to the General Assembly of the ENCJ, it was agreed that an extraordinary meeting of the General Assembly would be organised to decide on this matter. The proposal to expel the Polish National Judicial Council from the ENCJ is still being considered by some of the ENCJ Members. During the latest ENCJ Board meeting **on 23 November 2020**, the ENCJ Board agreed on the conclusion that the situation further deteriorated. No progress has been made, no actions have been taken by the Polish authorities with regard to respect for the rule of law and judicial independence.

A. Changes in the functioning of the Councils

General remarks

In the reference period a majority of the Councils² did not report any changes to the Council, or its functioning. Councils continued to exercise its tasks despite the Covid-19 pandemic crisis. The recent establishment of the **Tuomioistuinvirasto / Domstolsverket / National Courts Administration of Finland** has to be underlined. It has started operating in 2020 and joined the ENCJ as full member in June 2020. For those Councils that do report changes to the functioning, the information can be found in the country specific section of the report (see below).

Country specific section

The Conseil Supérieur de la Justice of Belgium provided the following information :

On structure : Le 13 octobre 2020, le Sénat a nommé les 22 membres non-magistrats du Conseil supérieur de la Justice (6ème mandat : 2020 – 2024). Les membres-magistrats du Conseil supérieur de la Justice ont été élus antérieurement (25 septembre 2020). Leur mandat de 4 ans a commencé le 10 décembre 2020.

On competences of the Council: *La loi du 23 mars 2019 modifiant le Code judiciaire en vue d'améliorer le fonctionnement de l'ordre judiciaire et du Conseil supérieur de la Justice*:

Depuis le 1^{er} janvier 2020, le Conseil supérieur de la Justice a bénéficié de moyens accrus pour exercer ses missions.

La loi du 23 mars 2019 '*modifiant le Code judiciaire en vue d'améliorer le fonctionnement de l'ordre judiciaire et du Conseil supérieur de la Justice*', entrée en vigueur, pour l'essentiel, le 1er janvier 2020, vise à répondre aux recommandations du Groupe d'États contre la corruption (GRECO), émanation du Conseil de l'Europe. Cette loi s'articule autour de trois axes : (1) le recours et le fonctionnement des juges et conseillers suppléants, (2) le fonctionnement du Conseil supérieur de la Justice ainsi que (3) la déontologie des magistrats.

(1) L'accès à la fonction de juge et de conseiller suppléant est ainsi désormais soumis à la réussite d'un examen de recrutement. Cet examen a été défini en ses modalités et organisé pour la première fois en juin 2020 par le Conseil supérieur de la Justice. La loi du 23 mars 2019 a également prévu que, si un avocat a exercé cinq ans comme juge suppléant, l'examen oral

² The Councils of : Croatia, France, Greece (both the Supreme Judicial Council for Civil and Criminal Justice and the Administrative Council), Italian CPGA, Romania and Portugal.

d'évaluation organisé par le Conseil supérieur de la Justice en vue de donner accès à la fonction (permanente) de magistrat lui est ouvert après quinze années d'exercice à titre principal de la fonction d'avocat (plutôt que vingt ans s'il n'est pas juge suppléant).

(2) Au niveau du fonctionnement du Conseil supérieur de la Justice, plusieurs changements sont intervenus. La loi du 23 mars 2019 permet ainsi formellement un échange d'informations entre les différentes commissions du Conseil supérieur de la Justice lorsque l'une d'elles dispose d'informations utiles au fonctionnement de l'autre.

Le législateur a également prévu que, si le quorum requis n'est pas atteint au sein d'une commission, le président du Conseil supérieur de la Justice peut procéder au remplacement des membres absents ou empêchés, par tirage au sort parmi les membres de l'autre commission du même collège linguistique dans le respect de la parité entre magistrats et non-magistrats.

Dans le cadre des audits ou des enquêtes particulières menés par le Conseil supérieur de la Justice, la loi du 23 mars 2019 prévoit que les autorités judiciaires sont tenues d'accéder aux demandes de documents et renseignements nécessaires à l'exercice de ses missions.

Le Conseil supérieur de la Justice peut désormais consulter et se faire produire des dossiers judiciaires en cours sans pouvoir toutefois s'immiscer dans le traitement de fond de ces dossiers.

(3) S'agissant de la déontologie, le législateur a rendu obligatoire une formation en la matière également pour les magistrats non-professionnels (assesseurs au tribunal de l'application des peines, juges sociaux).

Le code judiciaire prévoit désormais que le Conseil supérieur de la Justice établit les principes généraux relatifs à la déontologie des magistrats. Les devoirs de la charge des magistrats, la dignité de son caractère et les tâches qu'elle appelle seront, notamment, interprétés à la lumière de ces principes généraux.

La loi du 23 mars 2019 dispose par ailleurs que les cours et tribunaux mentionneront dans leur rapport annuel de fonctionnement les mesures prises en vue du maintien de la discipline et les initiatives prises en vue du respect de la déontologie. Un rapport consolidé de ces mesures et initiatives sera rendu public par le Conseil supérieur de la Justice.

Le législateur donne enfin la possibilité à chaque organe du Conseil supérieur de la Justice de saisir le tribunal disciplinaire lorsqu'il constate qu'un magistrat refuse d'apporter sa collaboration à l'exercice de ses compétences.

On way of nomination of the members: L'article 259bis-2, §5, du Code judiciaire prévoit le mode de désignation des membres du Conseil supérieur de la Justice. Les membres-magistrats sont élus par leurs pairs et les membres non-magistrats sont désignés par le Sénat.

Cette disposition prévoit également que le Ministre de la Justice publie la liste des membres entrants du Conseil supérieur de la Justice et de leurs successeurs au Moniteur belge au cours du troisième mois précédant l'expiration du mandat. Le Conseil supérieur publie quant à lui ensuite la composition du bureau et des commissions au Moniteur belge, cette publication vaut installation des membres entrants. Les membres sortants siègent jusqu'au terme de leur mandat et, dans tous les cas, jusqu'à l'installation des nouveaux membres du bureau et des commissions.

L'élection des membres-magistrats devait avoir lieu le 24 avril 2020. La crise sanitaire liée au Covid-19 et les restrictions qui y étaient associées n'ont pas permis d'organiser l'élection à cette date. L'arrêté royal du 16 avril 2020 a reporté les opérations de désignation des nouveaux membres du Conseil supérieur de la Justice, les membres sortants continuant de

siéger dans l'intervalle. Ce même arrêté a également prévu que la liste des membres entrants du Conseil supérieur de la Justice et de leurs successeurs serait publiée au cours du mois suivant l'organisation des élections. L'arrêté royal du 22 août 2020 a pour sa part donné la possibilité au Bureau du Conseil supérieur de la Justice d'organiser les élections de manière électronique.

Cette modalité de vote à distance par voie électronique a été mise en œuvre lors de l'élection des membres du Conseil supérieur de la Justice du 25 septembre 2020.

On general functioning and efficiency of the Council:

Nomination de magistrats et désignation des chefs de corps :

Entre le 18 mars 2020 et le 3 juillet 2020, les commissions de nomination et de désignation du Conseil supérieur de la Justice ont été autorisées à mener les procédures de présentation des candidats magistrats entièrement par écrit, sans entendre donc les candidats. Il s'agissait d'éviter autant que possible de mettre les personnes en présence les unes des autres, compte tenu du contexte sanitaire.

La commission de nomination et de désignation pouvait néanmoins décider d'entendre un candidat, soit de sa propre initiative, soit à la demande de ce dernier, en respectant les règles de distanciation sociale ou par vidéo-conférence (le président et le secrétariat de la commission accueillant les candidats au siège du Conseil supérieur de la Justice tandis que les membres de la commission assistaient à l'audition à distance).

The ВИСШ СЪДЕБЕН СЪВЕТ / Supreme Judicial Council of Bulgaria did not report any changes related to the structure of the Supreme Judicial Council (SJC).

However, with regard to the competence of the Plenum and the Colleges of the SJC, with the amendments to the JSA from 2020 / SG, issue 103 of 2020 / in Art. 30, para 5, a new item 19 has been created, according to which the Prosecutor's College selects the candidates for European delegated prosecutors and through the Minister of Justice notifies the European Prosecutor General of the nominated candidates (...). Ten applications for a European delegated prosecutor were designated, which were sent to the Minister of Justice by competence (...).

In view of the findings and recommendations contained in the Report of the European Commission of 30 September 2020 on the Rule of Law for 2020 and the Report of GRECO from the fourth round of evaluation, in the part for determining the additional remuneration in the judiciary, with decision under item 32 of protocol № 26 / 22.10.2020 of the Plenum of the SJC, a working group was formed, including representatives of the Budget and Finance Committee, the Committee on Legal Affairs and representatives of the judiciary (Supreme Administrative Court, Supreme Court of Cassation and Prosecutors' Office of the Republic of Bulgaria), which by 20.11.2020 to propose to the Plenum of the SJC an amendment to the Rules for determining and paying funds for additional remuneration of magistrates, by which clear, objective and transparent criteria for determining additional remuneration and limit the discretionary powers of administrative heads shall be established.

In the Plan for implementation of the measures in response to the recommendations and the indicated challenges, contained in the report of the European Commission of 30 September 2020, adopted by Decision of the Council of Ministers 806 / 6.11.2020, in measure 3 the establishment of a working group with the above mentioned task is set out and the Supreme Judicial Council is indicated as responsible institution.

At this time, a Draft Rules for the formation of additional remuneration of magistrates and court employees for the implementation of their current tasks during the year has been prepared. It complies with the recommendations in the Report of the European Commission of 30 September 2020 on the Rule of law for 2020 to overcome the administrative dependence of magistrates in determining the amount of additional remunerations from the administrative head by writing clear rules and indicators for assessing the activity of the magistrates, as well as auxiliary bodies for that, reducing and limiting the burden of the administrative head.

Measure 13 of the Plan "In connection with amendment and supplement of the Rules for keeping a central public register of the declarations under Art. 195a, para. 1 of the JSA, after 31.12.2020 to suspend the public access to the already submitted declarations by the magistrates for membership in professional organizations ", has been implemented.

By a decision of the Plenum of the Supreme Judicial Council under Protocol № 26 / 22.10.2020, item 2. 3. a total of 12 measures were approved in the areas on which findings were made in the Report of the European Commission on the Rule of law in Bulgaria for 2020. At the proposal of the SJC, they are included in the Plan of Implementation of Measures in Response to the Recommendations and the Challenges contained in the Report of the European Commission of 30 September 2020, approved by Decision of the Council of Ministers № 806 / 06.11.2020. on the Rule of law for 2020, the situation in the field of the Rule of law in Bulgaria.

In the section "Independence" of the Plan 9 measures are set out (№ 4 - № 12 Appendix 1), related to the powers of the SJC under Art. 16, para. 1 of the Judiciary System Act, of which 6 are short-term - with a deadline of April 2021, and the rest - with a deadline of October 2022. The SJC undertook, in the period October 2020 - February 2021, actions on the implementation of five of them, taking into account the implementation of short-term measure № 4 and activities under four short-term measures - № 5, № 7, № 9 and № 10.

Measure № 4 "Establishment of a public register of cases of violation of the independence of the judiciary" (Register) has been implemented and the register is published on the SJC website (Appendix 2). The register contains information on a total of 43 reactions in the period 2018 - 2020, of which 19 reactions for 2020.

On August 24, 2020, a National Meeting of the Prosecutor's Office was held with the participation of the members of the SJC on the topic "Upholding the independence of the Bulgarian Prosecutor's Office in order to prevent the risk of serious violation of the rule of law, under art. 7 of the Treaty on European Union ". It was implemented in pursuance of a decision of the Prosecutors` College of the SJC calling for the restoration of institutional dialogue, manifestation of state responsibility, respect for the rule of law, observance of established democratic principles and the rule of law of the Republic of Bulgaria, overcoming social tensions and maintaining social peace. In this regard, the Prosecutors` College of the SJC has introduced the practice of sending its declarations in cases of affecting the independence to the ambassadors of the EU, EC and others.

The Judges` College of the SJC adopted a decision under Protocol № 8 / 10.03.2020 "Mechanism for Action of the Judges` College in cases of violation of independence and / or attempt to put pressure on judges and the court". It was prepared in implementation of a decision of the Judges` College under Protocol № 7/25.02.2020 and in accordance with the "Standards for the Independence of the Judiciary", adopted by the Judges` College in 2018. It creates an opportunity for each judge, General Assembly of the judges to the respective court,

the respective administrative head or professional association of judges to refer to the Judges` College in case of interference with the independence of the judge, in case of pressure on him through insults, slander, threats, suggestions, disclosure of data from his personal life and that of his relatives, regardless of the forms and means used for this. In order to protect the magistrate and maintain trust in the judiciary, the Judges` College may request an inspection by the competent authorities - Prosecutor`s Office of the Republic of Bulgaria, The Commission for Combating Corruption and Confiscation of Illegally Acquired Property, Inspectorate at SJC, the relevant local commission on professional ethics and others, in any case where specific circumstances are indicated, outlining violations related to the organization of the work of the judge and the moral and ethical norms, or when there are doubts about his integrity and the existence of corrupt practices. The judge shall be notified of the actions taken and the results of the inspection and shall be made public.

The indicated documents are published on the SJC`s website: <http://www.vss.justice.bg/page/view/5250>

Tuomioistuinvirasto / Domstolsverket / National Courts Administration of Finland reported in relation to the structure and composition of the Council that the Finnish National Court Administration begun its operations in 2020. The following documents were adopted:

- Courts Act, Chapter 19a, Section 6 (209/2019)

“The highest decision-making body in the National Courts Administration is the board of directors. ...”

- Courts Act, Chapter 19a, Section 7, Sub-section 2 (209/2019)

“The board of directors consists of one judge of the Supreme Court and one judge of the Supreme Administrative Court as well as one judge from the courts of appeal, one judge from the district courts, one judge from the administrative courts, and one judge from the special courts. The board of directors also has one member representing the non-judicial personnel of the courts and one member with special expertise in the management of public administration. Each member has a personal deputy.”

When it comes to the **competences** of the Council, Courts Act, according to the Chapter 19a, Section 1 (209/2019), “The purpose of the National Courts Administration, which operates in the administrative branch of the Ministry of Justice, is to ensure a favourable operating environment for the courts and to develop, plan and support the activities of the courts. The National Courts Administration is an independent agency.”

In addition, according to the Courts Act, Chapter 19a, Section 2 (209/2019), “The National Courts Administration is responsible for ensuring that the courts are able to maintain a high level of quality in the exercise of their judicial powers and that the administration of the courts is organised in an efficient and appropriate manner.

The National Courts Administration shall especially:

- 1) make proposals to the Ministry of Justice on appropriations for the operating expenditure of the courts and decide on the allocation of the appropriations to the courts in accordance with the approved budget, in so far as the appropriations have not been allocated directly to a specific court;
- 2) be in charge of the premises management of the courts, in so far as the power of decision in this regard does not lie with the Ministry of Justice;
- 3) be in charge of the maintenance and development of the information systems of the courts;

- 4) be responsible for organising training for judges and other court personnel in cooperation with the Judicial Training Board referred to in chapter 21;
- 5) decide on matters related to the establishment, termination and transfer of positions and internal recruitment arrangements at the courts, and deal with matters related to the employment relationships of court personnel in so far as these matters do not fall within the competence of a court or some other authority;
- 6) support the courts in their communication activities;
- 7) monitor the performance of the courts and conduct studies and assessments concerning this;
- 8) act as the agency representing the court system in national development projects and other projects, unless this task falls within the competence of a specific court, the Government or some other authority;
- 9) participate in the overall development of the operations of the court system;
- 10) promote, support and coordinate development projects concerning courts and their activities;
- 11) submit initiatives to the Government on legislation, measures and development in its field of activity;
- 12) participate in international cooperation in its field of activity;
- 13) be in charge of the technical and routine central administration of the court system;
- 14) make proposals to the Ministry of Justice on appropriations for the operating expenditure of the Judicial Appointments Board and the Judicial Training Board, decide on the allocation of appropriations to the Boards, and attend to other central administration tasks concerning the Boards.”

On the way of **nomination** of the members, according to the Courts Act, Chapter 19a, Section 8 (209/2019), “The board of directors of the National Courts Administration is appointed after:

- 1) the Supreme Court has nominated a candidate for a member and a deputy member from among its personnel;
- 2) the Supreme Administrative Court has nominated a candidate for a member and a deputy member from among its personnel;
- 3) the heads of court of the courts of appeal and the district courts have, following an expression-of-interest procedure, nominated their candidates for members and deputy members representing the courts of appeal and the district courts, and the heads of court of the administrative courts and the special courts have, following an expression-of-interest procedure, nominated their candidates for members and deputy members representing the administrative courts and the special courts; before the nomination, the heads of court referred to above in this paragraph shall discuss the nominations among themselves and consult the employees; organisations representing judges; and
- 4) the heads of court have, in accordance with the procedure laid down in paragraph 3, nominated a candidate for a member and a deputy member representing other court personnel after consulting the employees³⁹; organisations representing the personnel. The Ministry of Justice announces vacancies in the board of directors and requests the parties concerned to nominate candidates as provided in subsection 1. Twice as many candidates for members and deputy members referred to in subsection 1, paragraphs 3 and 4 shall be nominated as will be selected for each position... “.

Regarding the **independence** of the Council, Courts Act, Chapter 19a, Section 1 (209/2019) states the following: “... the National Courts Administration, which operates in the

administrative branch of the Ministry of Justice, The National Courts Administration is an independent agency”.

As regards the **general functioning** and efficiency of the Council:

The National Courts Administration began its operations in January 2020, so it is a new organ. Almost immediately it had to respond to, and assist the courts to respond to, the global COVID-pandemic. It has, for example:

- invented and facilitated weekly meetings of the heads of courts where they could exchange ideas and solutions,
- assisted the courts in communication with the public,
- given the courts advice of matters related to human resources during exceptional times,
- ensured more video-conference equipment to the courts and taught the staff how to use them,
- published guides and trained the court on remote trials.

In addition, the National Courts Administration has both build its own structures and consolidated its own procedures, and build networks as well as fulfilled its ‘normal’ duties, such as, for example, budget of the courts and organised approximately 270 training events (many of which online) to the court staff with the total number of participants estimated at 15,000.

Moreover, the National Courts Administration was able to move to remote (and online) working as every staff member had a laptop and a smartphone with unlimited data connection. To sum up, the National Courts Administration is working well.

Consiglio Superiore della Magistratura – Italy

In 2020 relations between the CSM and other State powers remained at a high level of utmost cooperation and institutional fairness, i.e. with due respect of the characteristics and competences of each power.

The Government and the Parliament are discussing draft legislative amendments regarding several aspects of the Italian judicial system – including provisions concerning the election of CSM members. In this regard, as usual, the Italian CSM will deliver in due time its opinion according to Art. 10, par. 2 Law 195/1958.

In 2020 the autonomy of the judiciary has not been under attack, nor any other specific event undermined the independence of the Italian judiciary. In this regard, no injurious impact derived from the ongoing Covid-19 pandemic emergency. The legislative power adopted temporary provisions, exclusively technical and procedural measures, aimed at ensuring, as much as possible, the partial continuation of regular activities of the courts in the peak period of Coronavirus outbreak.

Tieslietu Padome of Lithuania

Structure / composition of the Council

The composition of the Judicial Council has been amended. From 1st November 2020, the Judicial Council shall consist of 17 members (was 23). The number of judges elected by the General Assembly of judges was revised: 3 shall be elected from the Supreme Court, 2 (was 3) – from the Court of Appeal and 1 (was 3) from the Supreme Administrative Court, 3 (was 5) from all regional courts, 1 (was 5) from all regional administrative courts and 4 (was 5) from

all district courts. The law provides that only judges serving in different regional courts and district courts can now be elected to the Judicial Council.

Seniority requirement for a candidate to the Judicial Council is now reduced: minimum period of service to enter the Judicial Council is 3 years (was 5). The number of terms of office is also fixed – judges may be elected to the Judicial Council for a maximum of 2 consecutive terms (Article 119 of the Law on Courts).

Competences of the Council

The Judicial Council has become one of the participants of the independent state strategic management system, established on 25 June 2020 in the Law of the Republic of Lithuania on Strategic Management No. XIII- XIII-3096 (entered into force on 1 January 2021). On 25 June 2020, a Law No. XIII-3133 amending Articles No. Nr. I-480 120, 124 and 128 of the Lithuanian Law on Courts, was adopted and established the following functions of the Judicial Council: The Judicial Council considers and approves proposals for court investment projects and proposals for court budget projects, and submits them to the Government; in accordance with its competence it submits proposals to the Government regarding the establishment of strategic goals and progress targets in the National Progress Plan and regarding the inclusion of measures in the national development programs.

The Judicial Council is now authorised to decide on the immediate sending of a judge for medical examination in accordance with the Law on Courts (before five years since the last medical examination of the judge have elapsed), if the president of the court or the body carrying out the external supervision of the administrative activities of the court reports a medical problem affecting service of a judge.

• Way of nomination of the members

In November 2020, the General Meeting of Judges (hereinafter referred to as the “VTS”) was held, where a new Judicial Council (in accordance with the provisions of the Law on Courts amendments valid as of 1 January 2020) was elected. After assessing the threats posed by the epidemic situation, the VTS and the election of the Judicial Council, which took place during its session, for the first time in the history of Lithuanian courts were organised in a non-traditional way. It was done remotely using information communication technologies: draft amendments to the VTS Rules of Procedure providing for such possibilities have been prepared and agreed with the judiciary; an extraordinary VTS meeting was held to adopt the changes; the new format for the election of the members of the VTS and the Judicial Council has necessitated detailed planning and technical implementation of the election of members of the VTS and the Judicial Council, to plan the elections and organise their technical implementation in such a way that all requirements are met while judges are enabled to exercise all the rights of VTS participants; The new format of the election of the VTS and members of the Judicial Council has also led to the need for more active and not only traditional forms of communication with the judiciary then before during similar circumstances (active cooperation with judicial IT specialists, judicial communication representatives and representatives of the constituency centres of the courts - members of the Judicial Council), to organise meetings, pilot remote connections; Two (extraordinary and ordinary) VTS sessions were held; Election of the members of the Judicial Council took place

over several days, focusing on the remote presentation of candidates to the judiciary. In the constituencies, elections were conducted by election commissions formed by the Judicial Council and these elections were observed for the first time by representatives of the public invited by the judiciary itself.

- **Independence of the Council**

For the first time, the Judicial Council appointed three judges as members of the Selection Committee of Candidates to Judicial Office (until 2020, this was an exclusive competence of the President).

- **General functioning and efficiency of the Council**

The Judicial Council, having considered finding of the working group, which during the period of May - December 2019 assessed the perspectives of possible optimisation of district courts, and in order to increase the efficiency of the use of funds allocated for the maintenance of courts, to optimise the workload of courts (chambers) and judges and to increase the opportunities for specialisation of judges, decided (1) to initiate the optimisation of Alytus District and Plungė District Courts: from 1 January 2021, to abolish the Lazdijai Chamber of the Alytus District Court by transferring their activities to the Alytus Chamber, and abolish the Skuodas Chamber of the Plungė District Court by transferring their activities to the Plungė Chamber; (2) to approve the draft amending law No. I-2375 and its accompanying documents to the Law of the Republic of Lithuania on the District Court Establishment and Determination of Areas of Activity of the District Courts, which governs implementing the closure of the said chambers. On 17 March 2020, the Judicial Council applied to the Ministry of Justice by initiating legislative procedures and submitting the draft amending law No. I-2375 to the Law of the Republic of Lithuania on the District Court Establishment and Determination of Areas of Activity of the District Courts.

The Judicial Council of was actively involved in coordinating draft amendments to legal acts (Law on Administrative Procedure, Law on Pre-Trial Administrative Disputes, Law on the Civil Service, etc.), which propose to expand administrative dispute resolution in independent collegial pre-trial institutions and thus to resolve such disputes more expeditiously, at the same time reducing the workload of Lithuanian specialised courts and allowing them to concentrate on the examination of important disputes. The Judicial Council also welcomed initiatives to establish a court order institute within the administrative process; the rule of case allocation established in civil proceedings, providing for an increase in the amount of the claim from which civil cases are to be assigned to regional courts as courts of first instance.

In response to the growing threat of COVID-19 in Lithuania, the Judicial Council in order to ensure the uninterrupted operation of the judiciary and to avoid adversely affecting the administration of justice, made recommendations to the courts to ensure a fair balance between the protection of personal and public health and the individual's right to go to court. The recommendations emphasize the need to make use of the possibilities provided by the legislation, for example, to ensure remote participation of the participants in the court hearing (centralised video conferencing equipment of the court system, video conferencing programs, telephone communication, etc.); to accept / serve procedural documents in all cases, to allow access to them by e-mail, having conducted a responsible assessment of potential risks and

consequences in each individual case; to flexibly assess the requests of persons to renew the missed deadline for the submission of a procedural document or to perform a procedural action, if these actions have been prevented from performing by the emergency situation declared in the country, etc.

In the case of state quarantine, the Judicial Council has also recommended that courts make it possible for individuals in all cases (civil, administrative, criminal and administrative offences) to receive / serve procedural documents and allow access to them through e-mail, but on a case-by-case basis when a responsible assessment of the potential risks and consequences of accepting / sending procedural documents through this channel must be carried out.

In line with the principle of publicity of court proceedings, in particular in cases of high public interest, the Judicial Council recommended that oral proceedings be organised in such a way as to guarantee the right of members of the public and the media to observe (in exceptional cases, only hear) court hearings. It is recommended to forecast and regulate in advance the flows of persons wishing to watch / listen to the court hearing (s) (to carry out pre-registration of the media and other members of the public by publishing information regarding the registration procedure on the court website). Due to the established restrictions on the minimum area allocated for 1 person in the courtroom, it is recommended to retransmit the image and / or sound of the court hearing to another room in the court building, which would be open to the public.

The Judicial Council, wishing to facilitate an easier administration of remote court hearings, in the light of the growing need for remote hearings due to the (COVID-19) pandemic and the practical problems identified, initiated amendments to the Description of the Procedure for the Use of Video Conferencing and Teleconferencing Technologies in Civil and Administrative Cases and the Description of the Requirements for Audio Recordings of Court Hearings Aimed to Record the Proceedings of a Court Hearing, approved by the Minister of Justice. The Ministry of Justice promptly responded to the proposals and made changes to the legislation. On 29 October 2020, Minister of Justice of the Republic of Lithuania by issuing Order No. 1R-355 approved a new version of the Description of the Procedure for the Use of Video conferencing and Teleconferencing Description of Video Conferencing Technologies in Civil and Administrative Cases (hereinafter referred to as the "Video and Teleconferencing Description"). Additionally, on 29 October 2020, the Minister of Justice of the Republic of Lithuania issued Order No. 1R-354 amending Description of the Requirements for Audio Recordings of Court Hearings Aimed to Record the Proceedings of a Court Hearing, approved by Order of the Minister of Justice of the Republic of Lithuania on 11 December 2012

The Judicial Council condemned Russia's decision to bring charges against the judges of the Vilnius Regional Court, which heard the case of "January 13th", and appealed to the Lithuanian and European institutions and the highest representatives of the government to take effective measures to ensure the physical safety of judges involved in proceedings. They are also being asked to ensure that the conduct of the Russian authorities in violation of international legal values is condemned and prevented. The European Commission fully rejects any false claims that attempt to distort the history or paint the victims as perpetrators and stands in full solidarity with Lithuania, the Lithuanian people and its independent judiciary.

The Raad voor Rechtspraak of the Netherlands reported on the prominent Council's role in the Crisis Management Team of the Judiciary. During a crisis the judiciary must follow a protocol. The protocol states that a crisis management team must be established. This team includes only members of the judiciary: Board members of the Council for the Judiciary, the director, the chief communication and the security officer of the Office of the Council for the Judiciary and the daily management of the Presidents' Meeting (three court presidents representing all the court presidents). This crisis management takes decisions regarding the safety and welfare of the judiciary during the COVID-19 crisis.

The Consiliul Superior al Magistraturii of Romania informed that a series of measures and decisions have been taken in the context of the COVID-19 pandemic situation.

A. Independence

1. Appointment and selection of judges, prosecutors and court presidents

Current updates in terms of amendments proposed in the matter of admission to the National Institute of Magistracy (NIM), the initial professional training of judges and prosecutors, the exam for graduating the National Institute of Magistracy, the internship and capacity examination of the judges and prosecutors:

In the meeting of 25.06.2020, the Plenum of the CSM decided to refer the Minister of Justice to initiate the amendment of some provisions of Law no. 303/2004 on the statute of judges and prosecutors, republished, as amended and supplemented.

The above-mentioned initiative of the Superior Council of Magistracy was determined by the Decision No. 121 of March 10, 2020 in which the Constitutional Court admitted an exception of unconstitutionality and found that the provisions of Art. 106 let. d) of Law no. 303/2004 on the statute of judges and prosecutors are unconstitutional, establishing, in essence, that the lack of regulations, within the scope of the Organic Law on the statute of judges and prosecutors, of the essential aspects regarding the competition for admission to the judiciary, such as phases and tests of the competition, the method of establishing the results and the possibility of challenging each phase of the competition, is contrary to the provisions of Art. 73 par. (3) let. I) of the Constitution, according to which the organisation and functioning of the Superior Council of Magistracy and the organisation of courts are regulated by organic law.

The Court held the existence of a lack of constitutionality both as regards the form of Law no. 303/2004 prior to the entry into force of Law No. 242/2018, and the Law no. 303/2004, in its current form, given that even in the new regulation essential aspects of admission to the judiciary are not provided for in the law.

The Court also noted that, in order to comply with the constitutional provisions, the legislator must supplement the provisions of Law no. 303/2004 not only with the essential aspects of the competition for admission to magistracy, organised according to Art. 33 of the law, but also with the essential aspects related to the occupation of the positions of judge or prosecutor by other means of admission to the magistracy. Thus, the Court held that even in the case of the competition for admission to the NIM, of the exam for graduating the NIM and the capacity examination of the trainee judges and of trainee prosecutors, the law must lay down the essential aspects, such as, for example, the conditions of participation, the general

rules for setting up the competition commissions, the type of competition phases and stages, the method of determining the results and the possibility of contesting each stage.

In the aforementioned context, The CSM formulated a number of proposals for amending and supplementing Law no. 303/2004, republished, with subsequent amendments and completions.

At the same time, these proposals aimed at regulating in a more efficient manner some aspects related to the admission competition to the NIM, the competition for admission to magistracy, the initial professional training of judges and prosecutors, the exam for graduation of the NIM, the traineeship and capacity examination of judges and prosecutors, in relation to the configuration of the new regulatory framework in the field.

In fact, previously, the CSM reported to the Ministry of Justice some practical difficulties that are emerging in the application of the new legal provisions regarding the organisation of the admission competition to the NIM, the training courses of the auditors of justice, the duration of the traineeship and the capacity examination of the judges and prosecutors.

Also, there was a reiteration of the proposals of the Plenum of the CSM aimed at amending the provisions of Art. 33¹ of Law no. 303/2004, republished, with subsequent amendments and completions, regarding the appointment in judge or prosecutor position, without competition or examination, of persons who have held for at least 10 years such positions, as well as of the provisions of Art. 102 of the same law.

By the Decision no. 161 of 24 August 2020 the Plenum of the CSM gave a positive endorsement, with observations, on the draft Law concerning some temporary measures regarding the admission to the National Institute of Magistracy, the initial professional training of judges and prosecutors, the exam for graduating the National Institute of Magistracy, the internship and capacity examination of the judges and prosecutors, as well as the examination of admission to magistracy.

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

Current updates in terms of amendments proposed in the matter of transfer of judges and prosecutors.

➤ Within the session of 12 November 2020, the Plenum of the CSM decided to refer the Ministry of Justice in order to initiate normative steps to amend and supplement Law no. 303/2004 on the statute of judges and prosecutors, republished, with subsequent amendments and completions, and also to supplement Law no. 317/2004 on the Superior Council of Magistracy, republished, with subsequent amendments and completions.

The proposals for amending and supplementing the mentioned normative acts concern the transfer of judges and prosecutors.

As regards the proposals on the transfer of judges and prosecutors, they were formulated in the context of the Constitutional Court Decision no. 454 of 24 June 2020. The aforementioned proposals were submitted to the Ministry of Justice on 24.11.2020 (letter no. 8138, 12924).

➤ **Regarding the provisions in the matters covered by points 1, 2, 3 of the contribution, the following updates should be mentioned, regarding the Council's position referring to the proposed amendments for all the 3 laws of the judiciary:**

On 30.09.2020, the Ministry of Justice published for public debate the new projects on the Laws on the Judiciary, namely the draft Law on the Statute of Magistrates in Romania, the draft Law on Judicial Organisation and the draft Law on the Superior Council of Magistracy. In this context, a preliminary analysis was carried out within the specialised commissions of the CSM and with this occasion some matters of principle regulated by the draft normative acts were discussed. Thus, in its meeting of 19.11.2020, the joint Commission No.1 “Legislation and Interinstitutional Cooperation” examined the draft Law on the CSM considering, that general observations should be made on certain aspects, with a consolidated opinion to be expressed by the CSM – including on matters that were not subject of the analysis – after consulting the judicial system. The Commission also analysed the draft Law on judicial organisation and draft law on the statute of magistrates in Romania, in terms of the proposals regarding the courts and the statute of judges. And considered that general observations on certain issues were necessary, and that a consolidated opinion would be expressed – including on matters not covered – after consultation of the judicial system. The comments made were sent to the Ministry of Justice by letter no. 11009/2020 of 4.12.2020.

At the same time, in the session of the Section for Prosecutors on 20 October 2020 it was decided to set up an interinstitutional working group composed of the CSM, the Prosecutor’s Office attached to the High Court of Cassation and Justice, the National Anti-Corruption Directorate, the Directorate for Investigation of Organised Crime and Terrorism and the professional associations for analysing the draft laws on the judiciary, sent for public debate by the Ministry of Justice on 30.09.2020. The working group held several meetings, and agreed to send out a questionnaire to the prosecutor’s offices within the Public Ministry.

3. 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)

➤ Current updates in terms of defending independence of the Judiciary and of judges and prosecutors; Proposals in terms of secondary legislation:

The CSM considered the need for amending and completing the secondary legislation regarding the requests for defending the independence of the judiciary as a whole, as well as the requests for defending of the independence, impartiality and professional reputation of judges and prosecutors

Therefore, by the decision no. 155 of July 23rd, 2020 of the Plenum of the CSM the Regulation (adopted by the SCM Plenum decision no. 1073/2018) for organising and functioning of the Council has been modified. The aim was to establish a **filter procedure** in order to ensure ways of rapidly solving requests for defending the independence of the judiciary as a whole, requests for defending of the independence, impartiality and professional reputation of the individual judge/prosecutor when it is obvious that the aspects in question do not involve any of their professional activity, as well as the requests for defending the independence of judges/prosecutors when these requests are being submitted by another individual than the judge/prosecutor subject to this request.

Thus, the Judicial Inspection shall be relieved of dealing with verifications in these cases, an aspect that leads to increasing the celerity in carrying out specific verifications in other cases where such verifications are needed.

In the session of November 16th, 2020, the joint Commission no.2 of the SCM “Human resources and organisation” has decided on publishing for public debate the draft of the

Plenum Decision for modifying the above mentioned Regulation of the Council **on another aspect**, namely, avoid rendering contradictorily decisions where, for the same deeds/aspects there are submitted, ex officio, both requests for defending the independence of judges or prosecutors, as well as requests for defending the independence of the judiciary as a whole. The draft document proposes a series of measures in this matter.

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

➤ Current updates in terms of legislative amendments:

Within the session of 12 November 2020, the Plenum of the CSM decided to refer the Ministry of Justice with the proposals to amend Law no. 303/2004 on the statute of judges and prosecutors, republished, with subsequent amendments and completions, and, respectively, to supplement Law no. 317/2004 on the Superior Council of Magistracy, republished, with subsequent amendments and completions.

The proposals are aimed at suspending judges and prosecutors from office if the corresponding Section of the Superior Council of Magistracy applies the disciplinary sanction of the exclusion from the judiciary, provided by Art. 100 letter e) of Law no. 303/2004, republished, with subsequent amendments and completions.

➤ Ethical rules

According to the provisions of the art. 30 para. (6) of the Law no. 317/2004 on the Superior Council of Magistracy, the CSM shall ensure compliance with the law and the criteria of professional competence and ethics in the conduct of the professional career of judges and prosecutors, and according to art. 38 of the same normative act, The Plenum of the CSM approves the Deontological Code of Judges and Prosecutors.

➤ Criminal liability

According to the provisions of art. 94 of the Law no. 303/2004, republished, with further amendments and completions, judges and prosecutors shall be subject to civil, disciplinary and criminal liability, according to the law. According to the provisions of art. 95 judges and prosecutors may be searched, restrained or held in custody only with the approval of the Section for judges or, as the case may be, of the Section for prosecutors of the CSM. In case of flagrant offence, judges and prosecutors may be held in custody and searched according to the law. The relevant section will be immediately informed by the body that ordered the custody or the search. Judges or prosecutors may be suspended from office in the following cases: a) he/she has been sent to trial for committing a crime, after the confirmation of the preliminary chamber judge; a¹) when the measure of preventive arrest or house arrest was ordered against him/her; a²) when against him/her the preventive measure of judicial control or judicial control on bail was taken and the judicial body established for him/her the obligation not to exercise the profession in whose exercise he/she committed the offence.

Judges and prosecutors shall be removed from office in case of conviction, postponement of the sentence and the renunciation to the sentence, ordered by a final decision, as well as the renunciation to the criminal prosecution, confirmed by the preliminary chamber judge, for an offense harming the prestige of the profession, among other situations.

Furthermore judges and prosecutors shall not benefit from the service pension if, even after the release from office, they have received a final conviction or it was ordered the

postponement for the application of the penalty for a corruption offense, a crime assimilated to corruption offenses or a crime in connection with them, as well as one of the offenses included in the relevant law.

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

➤ Regarding the legislative mechanism the Superior Council of Magistracy exercises for defending both the independence of the Judiciary as a whole and the independence, impartiality and professional reputation of individual judges and prosecutors, aspects that have been presented in our previous report, a statistical overview might be needed for the referred period, in terms of affecting the independence and how the Council has sanctioned it:

January 1 st 2020 – February 1 st 2021 (Plen, SJ, SP)			
TOTAL decisions: 52 ³	Defending the independence of the judiciary: Plenum 17	Defending professional reputation, independence and impartiality: Section for judges 22	Defending professional reputation, independence and impartiality: Section for prosecutors 13
	Out of which:	Out of which:	Out of which:
	Admitted: 1 Dismissed: 16*	Admitted: 7 Dismissed: 15**	Admitted: 9 Dismissed: 4

* out of the 16 dismissal decisions 8 requests were submitted by the same person, a judge (currently suspended from office as a consequence of submitting the second appeal against the decision of the Section for Judges of the SCM for sanctioning the judge in question with the disciplinary sanction of removing from office);

** out of the 15 dismissal decisions 6 requests have regarded requests for defending the

Súdna Rada / Judicial Council of the Slovak Republic informed that several changes were adopted regarding the overall functioning of the Judicial Council. These changes are related to parliamentary elections of February 2020 when the new elected government announced the cleansing process in the Slovak judiciary.

The following new legal provisions came into force during the year 2020:

- The President of the Judicial Council notifies the Vice-President of the Judicial Council of his resignation in writing, if not, the oldest member of the Judicial Council. The office of President of the Judicial Council expires on the day following the date of receipt of the notification⁴ (this applies to members as well)

³ There were not taken into account, by these statistics, the decisions where the Plenum/Sections have taken notice of the withdrawn requests.

⁴ underlined text – legal provisions were either amended or were added to the Act on the Judicial Council

- A motion to remove the President of the Judicial Council may be made by at least five members of the Judicial Council. The Judicial Council may remove the President of the Judicial Council if:
 - a) his tenure may seriously jeopardize the credibility of the judiciary or the reputation of the judiciary,
 - b) his state of health does not allow him to perform his duties properly for a long time, but at least for three months, or
 - c) repeatedly violates its obligations.
- During the absence of the President of the Judicial Council and the Vice-President of the Judicial Council and if the office of President of the Judicial Council and the position of Vice-President of the Judicial Council is vacant, their duties shall be performed by the oldest member of the Judicial Council

Sodni Svet / the Judicial Council of the Republic of Slovenia acknowledged that regardless of the extraordinary situation, the Council succeeded to achieve its main long-term goal, that is shortening the length of proceedings concerning selection and appointment of judges. As regards the Councils working bodies - the Ethics and Integrity Commission was dealing with 83 % more initiatives as in 2019, on the other hand the work of Disciplinary Court was a bit hindered due to the Covid-19 pandemic restrictions connected to disciplinary hearings.

The Consejo General del Poder Judicial of Spain reported that as the European Commission's Rule of Law Report 2020 highlights in its Spanish chapter the mandate of the members of the Council for the Judiciary expired in December 2018, but its new members have not yet been appointed. To unblock this situation a proposal was introduced in Parliament on the 13th October 2020 by the two parliamentary groups supporting the Spanish Government aiming at changing the system of appointment of the judicial members of the Council (in order to allow their election by absolute majority, if the 3/5 majority is not reached in the first round) and at restricting the powers of the Council in an interim situation (eliminating its competence to promote judges to certain posts and to nominate Justices of the Supreme Court and of the Constitutional Court). The current law foresees that the Council remains fully functional until the new one is elected and that the only election that is not possible for a Council exercising its powers *ad interim* is to elect a new President of the Council.

This proposal was strongly contested by the judges' associations, the European Commission and the GRECO. As a result, on the 2nd December 2020 a new proposal was introduced in Parliament by the same parliamentary groups, deleting the part that referred to the majorities for the election of the judicial members of the Council and keeping the limitation of the functions of the Council acting *ad interim*.

It has to be underlined that, since the reform was introduced by parliamentary groups and not by the Government, it was not submitted to the Council for its opinion, and that, although the Council has asked the Parliament twice to do so, the Parliament refused, what is in breach of the European standards (opinion CCJE n^o 10, paragraph 87 and ENCJ report 2010-2011 on Councils for the Judiciary).

B. Relations with the other State Powers

Several Councils for the Judiciary (Croatia, Italy CPGA, Greece - both the Supreme Judicial Council for Civil and Criminal Justice and the Administrative Council) reported that there were neither special remarks about their relations with other state powers, nor on the independence of the judiciary in times of Covid-19 pandemic crisis.

The Conseil Supérieur de la Justice of Belgium (CSJ) on the question of relations of the Council with the other State powers answered the following:

Le CSJ a soutenu la mobilisation intitulée "*L'état de droit, j'y crois*" mise en œuvre par des associations de magistrats et d'avocats tant néerlandophones que francophones. Ce manifeste insiste pour que soient adoptées des mesures visant à garantir l'accès à la justice. Il plaide également en faveur d'une répartition correcte des moyens, de la mise en œuvre effective de la gestion autonome, d'une bonne infrastructure, d'une digitalisation performante et d'un service de qualité aux citoyens.

<https://csj.be/fr/actualites/2020/le-csj-soutient-letat-de-droit-jy-crois->

Le Conseil supérieur de la Justice a également exprimé ses préoccupations concernant les mesures prises par le Gouvernement sur la base des "pouvoirs spéciaux" accordés par le Parlement. <https://csj.be/fr/actualites/2020/justice-et-pouvoirs-speciaux->

En cas d'atteinte potentielle à l'indépendance du pouvoir judiciaire, le Conseil supérieur de la Justice peut entamer une enquête particulière. Si une atteinte à l'indépendance du pouvoir judiciaire prend la forme d'une initiative législative, le Conseil supérieur de la Justice peut également émettre un avis à ce sujet à l'intention du Parlement. En 2020, une enquête particulière a été menée par le Conseil supérieur de la Justice (Affaire « Jozef Chovanec »). Dans le cadre de ce dossier, l'indépendance et l'efficacité de la justice avaient notamment été mises en cause par l'opinion publique.

<https://csj.be/fr/actualites/2020/enquete-particuliere-jozef-chovanec->

As regards question whether the independence of the judiciary was challenged because of the Covid-19 pandemic and subsequent measures taken, the **Conseil Supérieur de la Justice** answered the following:

Note de la Commission d'avis et d'enquête réunie : Comme tous les secteurs d'activité, le fonctionnement de l'ordre judiciaire a été affecté par la pandémie du Covid-19 et ses multiples conséquences. D'emblée, a été visé et inclus dans une loi de pouvoirs spéciaux, le bon fonctionnement de la justice qui n'a pas été oubliée et a donc été reconnue comme essentielle à celui de notre société. Le pouvoir exécutif fédéral a ainsi élaboré un projet d'arrêté royal de pouvoirs spéciaux qui a prorogé les délais de procédure devant les juridictions civiles et administratives et de la procédure écrite en ce qui concerne les procédures civiles.

A l'examen de ce texte, le Conseil supérieur de la Justice a invité le Gouvernement à mener une réelle réflexion et à ne pas confondre, sur des enjeux aussi fondamentaux que la justice ou l'État de droit, vitesse et précipitation. L'intégralité de cette note est consultable : [ici](#).

En matière d'audit: Le Conseil supérieur de la Justice a lancé, le 19 juin 2020 un audit relatif à la manière dont les tribunaux et les parquets ont géré la crise du COVID-19.

Cet audit examine :

- Si, lors de la crise sanitaire du COVID-19, les tribunaux et les parquets de première instance ont pu garantir la continuité de ses services tout en accordant une attention suffisante aux

droits des justiciables ainsi qu'à la sécurité et à la santé de leurs propres collaborateurs et des justiciables ;

- Si l'organisation judiciaire dispose des ressources et des compétences nécessaires pour garantir une continuité de ses services pendant la crise de COVID-19, ou à l'avenir en cas de crises similaires, tout en accordant une attention suffisante aux droits des justiciables ainsi qu'à la sécurité et à la santé de leurs propres collaborateurs et des justiciables ;
- Comment l'organisation judiciaire devrait se préparer pour garantir la continuité de ses services en cas de crises similaires à l'avenir.

Le Conseil supérieur de la Justice compte obtenir ainsi un aperçu de la manière dont la crise a été gérée et de ce qui peut éventuellement être amélioré. Lorsque cet audit sera clôturé, un rapport contenant les recommandations du CSJ sera rendu public.

Висш съдебен съвет / the Supreme Judicial Council of Bulgaria refers to the following reactions to statements made by representatives of other State powers in response to attacks against the judiciary:

- On February 6, 2020, the Judges' College discussed at an extraordinary session a statement by US Secretary of State Michael Pompeo with allegations of participation of Andon Mitalov - a judge in the Specialized Criminal Court, in corruption.

- On 08.07.2020 the Prosecutors' College of the SJC adopted a declaration regarding allegations of violation of the Constitution of the Republic of Bulgaria for refusal of the prosecution to exercise its legally established powers and service to political interests.

- On 13.07.2020 the Prosecutors' College of the SJC issued a declaration on statements of the President of the Republic of Bulgaria and bar associations with requests for the resignation of the Prosecutor General of the Republic of Bulgaria.

- With a decision of the Judges' College under Protocol № 25 / 14.07.2020 on the occasion of the anti-governmental protests and attempts to demand the resignation of Ivan Geshev - Prosecutor General of the Republic of Bulgaria, he stated in a position that as a representative of the Bulgarian judges he defended their independence by expressing of indifferent attitude to the political processes in the country and non-interference in the work of the Prosecutor's Office of the Republic of Bulgaria.

- With a decision under Protocol № 18 / 15.07.2020, item 1, the Plenum of the SJC adopted a position in connection with the declaration of the Prosecutors' College of 13.07.2020 for an institutional reaction to the unprecedented attack on the independence of the judiciary.

- With a decision under protocol № 30 / 10.08.2020, item 1, the Prosecutorial Board of the SJC adopted a declaration on the occasion of a publication dated 08.07.2020 with author Boris Mitov and video material with a statement by Hristo Ivanov, chairman of the Movement Yes Bulgaria "From 03.08.2020, published on the website of the Association" Democratic Bulgaria ", which deliberately and unscrupulously present the work and career development of Boryana Betsova - Prosecutor at the Sofia City Prosecutor's Office, and make manipulative suggestions about the activities of the prosecution.

- On 03.11.2020 the Judges' College of the SJC adopted with a decision under protocol № 38 / 03.11.2020, item 21, a declaration for expressing institutional support to judges on the occasion of a statement by Valeri Simeonov - Deputy Chairman of the 44th National Assembly of the Republic of Bulgaria, and Chairman of the NFSB (National Front for the Salvation of

Bulgaria), for the newspaper "24 Chasa" (published on 24.10.2020) with attacks against a panel of judges chaired by Veska Raycheva.

In addition, the **Supreme Judicial Council of Bulgaria** reported that the COVID-19 pandemic does not affect the independence of the judiciary but has to do with the organization of the work of the courts. Since March 2020, the Supreme Judicial Council has taken a number of actions to address the situation within the judiciary, taking the necessary measures to ensure that citizens' right of access to a fair trial is not restricted at any time. In this regard, many steps have been taken to protect the health of citizens, as users of services provided by the courts in Bulgaria (...).

Rules and measures for the work of the courts in the conditions of a pandemic have been created, adopted by a decision of the Judges' College of the Supreme Judicial Council under protocol № 15 / 12.05.2020, (amended and supplemented under protocol № 16 / 19.05.2020, amended and with additions under protocol № 17 / 02.06.2020, amended and with additions under protocol № 39 / 10.11.2020, amended and with additions under protocol 40 / 17.11.2020).

Državno sudbeno vijeće / State Judicial Council of Republic of Croatia reported absence of any specific relations with other state powers. In accordance with proclaimed and factual independence of the Council and judicial power no challenges occurred in that period. The Council had a successful cooperation with the Ministry of justice in implementation and production of the electronical service for publishing of the assets declarations for judges, which is operational from mid - January 2021. 2020 was a challenging year for the Republic of Croatia not only because of the epidemic COVID -19 disease but also because Croatia was hit by strong earthquakes that damaged facilities of judicial institutions. This required quick actions to avoid downtime. Courts, equipment and staff were relocated from the damaged facilities to safe locations. Judicial authorities carry out all procedures and actions with appropriate security controls, court hearings where possible were taken via videoconference. Employees were allowed to work from home where possible. Preference is given to the electronic communication of the parties with all courts. State Judicial Council also held were needed oral interviews with candidates for judges via conference.

Tuomioistuinvirasto / Domstolsverket / National Courts Administration of Finland acknowledged that there have been no difficulties in communication with the other State powers. If need arose, contact was made. But there were no unnecessary attempts to influence. This applied to both sides. Even when the state of emergency was declared in March 2020, the independence of the judiciary was respected. For example, the judiciary interpreted that the restrictions for the number of people allowed to gather did not apply to the courts when they were administering justice, that is to say conducting trials. This interpretation was never challenged.

The Conseil Supérieur de la Magistrature of France informed of its relations with the two other powers:

With the executive power: a continuous dialogue exists with the executive power, based on the Constitution⁵. The Council assists the President of the Republic in his role as guarantor of the independence of the Judiciary⁶. The plenary session shall respond to requests for opinions formulated by the President of the Republic. In 2020, the Council was seized once in this context, in June 2020.

The question concerned the possible existence of pressure on the National Financial Prosecutor's Office in a case involving a former Prime Minister. In deciding on this issue, the Council proposed on 15 September 2020 a twofold structural reform (a rationalisation of the feedback between the public prosecutors and the Ministry of Justice and a reform of the status of the public prosecutor's office; see below).

Moreover, the presidents of the Council have a meeting with the President of the Republic once a year, on the occasion of the submission of the activity report. According to the subjects on the agenda, other encounter can be organised. In the same way, the Council has regular meetings with the services of the Ministry of Justice in order to promote a constructive dialogue and make the appointment process more transparent for the Judiciary as a whole.

The plenary session of the Council shall also give its opinion on questions relating to the ethics of magistrates and on any question relating to the functioning of justice referred to it by the Minister of Justice⁷. This instance is seldom seized and the text does not provide that it can issue an opinion on its own initiative.

With the legislative power: The High Council for the Judiciary informed that the discussion of the annual finance bill is the occasion of a meeting between the legislative power and the Council. In the organization of its work - discussion of laws or commissions - Parliament shall regularly call upon the Judiciary to participate in the preparatory work.

The High Council for the Judiciary considers that it is within its competence to drive the attention of the other powers or of public opinion in case of a subject of major interest for the independence of the Judiciary. These statements are published on the Council's website and on social networks.

- Moreover, the challenges from the other State powers concern less the independence of the judiciary than the responsibility of magistrates. However, the two issues are linked.

On the other hand, in terms of independence, the French Council, which is in charge not only of the judges but also of the members of the public prosecutor's office, is campaigning for an alignment of the status of the public prosecutor's office with that of the judges. Indeed, members of the public prosecutor's office are appointed according to different rules from those applicable to judges: while the first presidents of courts of appeal, presidents of courts are appointed on the proposal of the Council and the other judges are appointed on the proposal of the Minister of Justice, after receiving the assent of the CSM, the magistrates of the public prosecutor's office at all hierarchical levels - public prosecutor of the Court of Cassation, public prosecutors of courts of appeal, public prosecutors of courts and all other magistrates of the public prosecutor's office - are appointed after an opinion of the CSM which is not binding on the appointing authority.

⁵ The third last paragraph of article 65 of the French Constitution provides: "With the exception of disciplinary matters, the Minister of Justice may participate in meetings of the formations of the High Council for the Judiciary."

⁶ Article 64 of the Constitution

⁷ 8th paragraph of Article 65 of the Constitution

This proposal was made to the President of the Republic in the Council's opinion delivered last September.

However, it should be pointed out that a draft constitutional revision that predates this opinion is currently before the French Parliament. It is limited to giving binding force to the Council's opinion on the appointment of members of the public prosecutor's office and to aligning the disciplinary powers of the two Council formations competent for judges and members of the public prosecutor's office respectively. As things stand, the dossier has not changed.

- In relation to the question whether the independence of the judiciary was called into question during the Covid-19 crisis, the High Judicial Council answered in the negative. Despite the exceptional legislation that came into force, the balance of power and the principles of the rule of law have been maintained and respected (principle of legality, legal certainty, control of proportionality of measures). Moreover, access to the judge was preserved, especially for urgent litigation. The fundamental principles have been maintained (access to the judge, adversarial principle, rights of defence), under the control of the judge. Effective remedies have also been guaranteed.

Ανώτατο Δικαστικό Συμβούλιο Διοικητικής Δικαιοσύνης / Supreme Judicial Council of the Administrative Justice of Greece reported that there is no official communication between the Council and the other State powers. However, a judge from each category (civil/criminal, administrative, Council of State, Court of Audit) is seconded for 2 years to the Ministry of Justice, their role being mainly to assist in law-drafting committees. During the reference period there have been no challenges to the independence of justice.

Tieslietu Padome Lithuania

The Judicial Council, expressing its support for the state and society struggling with the COVID-19 pandemic, in order to contribute to ensuring the stability of the country's economy during this period, addressed the Seimas, the President and the Government by proposing the implementation of measures recommended during the European Conference on Restructuring and Insolvency and issued in the statement of 20 March 2020 regarding the adaptation of the legal framework of insolvency in the conditions of crisis in Lithuania.

A discussion on "The Future of the Courts: Vision, Mission, Strategy" took place during the General Meeting of Judges held on 6 November last year, with the participation of representatives of the judiciary and academia, as well as political scientists. The discussion emphasized that the independence of the judiciary is a value, and that strengthening the independence of the judiciary requires judicial funding to be less dependent on the executive branch. In order to ensure this constitutional value, a dialogue with representatives of other state authorities is constantly maintained.

On 29 April 2020, during the meeting of the Anti-Corruption Commission of the Seimas of the Republic of Lithuania when the Special Investigation Service's (hereinafter referred to as the "STT") 2019 Activity Report was presented, due to statements made by the head of the STT and later inaccurate information published in the media, the judiciary was identified as one of the worst-performing public sectors, possibly reluctant to deal with corruption risks, despite

the fact that both an inter-institutional working group, which was set up by the Judicial Council and included a representative of the STT, as well as the NCA, have taken active steps to strengthen the anti-corruption environment in the judiciary and have adopted (and continue developing) appropriate measures. Responding to the stated position, the Judicial Council approached the head of the STT and expressed its concern regarding the improper character of the views expressed by him.

In 2020, in response to the information that appeared in the public domain, the Judicial Council addressed members of the Seimas of the Republic of Lithuania regarding public statements made by parliament members regarding the activities of the courts.

In 2020, the Judicial Council called on members of the Seimas to assume responsibility for decisions related to the dismissal of a judge of the Supreme Court of Lithuania from the position of the Chairman of the Civil Cases Division of this court without a legal basis.

The Judicial Council, as a representative of the constitutional judiciary and the Lithuanian judicial community, has expressed concern at the international and national level about the ongoing judicial reform in the Republic of Poland, in response to the European Parliament's Resolution of 17 September 2020, (text: https://www.europarl.europa.eu/doceo/document/TA-9-2020-0225_EN.html) and statements made by the Prime Minister of the Republic of Lithuania expressing support for Poland and going against the European Commission.

On 18 May 2020, a remote meeting between the members of the Judicial Council, the chairmen of the courts, the leadership of the Lithuanian Union of Journalists and individual media representatives / journalists took place and focused on ensuring the publicity of the court proceedings during the administration of justice in pandemic conditions. Following the meeting, on 27 May 2020, a document "On Communication with Media Representatives on Judicial Issues in Relaxed Quarantine Conditions" was developed and prepared in cooperation with the Lithuanian Union of Journalists.

In 2020, due to the pandemic, some of the judicial self-government institutions including the Judicial Council carried out their activities remotely- 9 from 24 meetings of the Judicial Council were remote (2 of these 9 were the mixed).

Nevertheless, the current health situation definitely has impact on the organisational changes in court activities; the remote communication became inevitable. The widespread use of remote means has had a definite positive effect: it has helped (helps) to ensure the functioning of the courts during the epidemic, the courts have not been completely closed and have not ceased their activities.

The courts are encouraged to use technological solutions not only for remote court hearings, but also any other communication (also within the court). The judges and court staff are provided with the opportunity to work remotely (also connecting to the Lithuanian Courts Information System (LITEKO)). Even though courts use a centralised video conference system for remote court hearings, at this time they also use other, non-centralised solutions like ZOOM and MS Teams.

Difficulties in using remote means are partly related to the insufficient amount of computer equipment and licenses available to the courts, as well as to the inability of those involved in the proceedings to attend court hearings remotely (e. g. due to the lack of skills). In 2020, additional number of computers were purchased for courts; juvenile interview equipment was updated / new purchases were made. At the beginning of 2020, regional courts were equipped to work with documents classed as “secret”. Also, in 2020, purchases were completed allowing a significant expansion of video conferencing equipment. However, courts are not yet equipped with sufficient technical means. Therefore, the NCA and the Judicial Council applied to the Government of the Republic of Lithuania and the Ministry of Finance regarding the need for funds to significantly upgrade computer equipment of the court system and other resources relevant to the digitisation of justice in the 2021-2022 period.

Due to the COVID-19 crisis, no additional financial or human resources were allocated to the judiciary, nor was there any reduction in their amount. 35,000 units disposable face masks, 17,000 pcs. disposable gloves and 165 pcs. FFP2 and FFP3 respirators were transferred from the state reserve to the courts.

NCA-managed real estate was included in the Government’s Resolution No. 798 of 16 July 2020, which approved the list of administrative and other state-owned real estate and land plots and long-term tangible assets required for the purposes of property management and use intended to be transferred to the state-owned company Turto bankas by the right of trust. It is envisaged that the state-owned company Turto bankas should sign the deeds of transfer and acceptance of the specified property with the users of the listed real estate by 31 December 2020 as well as centrally manage the lease agreements of the transferred property. The NCA has not given its consent to the inclusion of the real estate in the Government Resolution, nor has it objected at the stage of negotiating the Resolution.

Paragraph 5 of Article 128 of the Law on Courts of the Republic of Lithuania stipulates that property transferred to the courts and the NCA may not be seized without the consent of the Judicial Council. Therefore, the issue of the transfer of assets under the trust of the NCA was addressed by the Budget and Investment Committee of the Judicial Council and the Judicial Council itself. In order to ensure the initiation of the construction of premises suitable for the performance of court and NCA functions and sufficient financing for the lease, the Judicial Council approved the transfer of property, stating that the approval of real estate transfer will take effect from the date of adoption of the Government Resolution approving Vilnius Regional Court’s, District Court of Vilnius Region Vilnius District Chamber’s and NCA’s building renovation project.

The Raad voor de rechtspraak of the Netherlands reported that in recent years, several judicial decisions led to societal and political discussion: e.g. following [the PAS ruling of the Council of State](#), or the [Urgenda ruling](#) or [the ruling on the return of IS children](#). When the Urgenda case was in proceedings before the Supreme Court, the government argued that the judge should not meddle in political decision-making and order the making of law. In view of the relations between the state powers, it is solely the task of the legislator to decide whether certain legislation is made. The State argued that the underlying question of the case should be decided by the legislator and not by the (civil law) judge. The Urgenda ruling took place in

December 2019, the other rulings earlier in 2019, but the effects of these rulings relate to 2020.

Some parliamentary politicians criticised the judges for the above-mentioned rulings and stated that the judges took the place of the politicians by giving these verdicts. The criticism focused on the term “dicastracy” i.e. ‘government by the judges’ and resulted in [a round table](#) in March 2020 on the subject organised by the House of Representatives of the Netherlands.

[The Council for Public Administration](#) (Raad voor het Openbaar Bestuur, ROB) stated in its advisory report on the rule of law in The Netherlands ([“Een sterke rechtsstaat, verbinden beschermen in een pluriforme samenleving”](#)) (April 2020) that the judiciary in the Netherlands is under pressure and over demanded. The Council for Public Administration concludes that formally the independence of the judiciary is guaranteed. However, the Council sees clear signs that the level of knowledge, attitude and conduct of parties involved on the value of an independent judiciary put the position of the judiciary under pressure. According to the advisory report, challenges for the judiciary include the increasing workload due to more complex cases and vague legislation, a strong orientation on efficiency of the judiciary and access to the judiciary.

Regarding the COVID-19 pandemic, the Minister of Justice and Security requested advice from the Council for the Judiciary on the ‘Temporary law measures COVID-19’ (‘Tijdelijke wet maatregelen COVID-19’). The Council pointed out that the law could have severe effects on the fundamental rights of Dutch citizens. Also, the Council stated in its advice that court buildings have a special position in society due to its public justice function. Furthermore, the Council underlined the need for an independent position of the judiciary, the role of the Minister for Legal Protection and the Minister of Justice and Security and also the Council for the Judiciary itself with regard to (partial) closure of court buildings and the competence to take COVID-19 measures. Regarding that point the functional independence of the judiciary seemed to be at stake as a result of the COVID-19 measures proposed by the government, since the law initially indicated that the competence for closure of court buildings would not be in hands of the judiciary itself. The law proposal was amended on this particular point.

Another issue, beside the functional independence of the judiciary, is the development of digital technologies in the field of the judiciary. Due to the COVID-19 pandemic, this development was accelerated. On the one hand, the judiciary was able to function during the crisis because of the digital solutions: digital hearings offer changes for the accessibility to the judiciary. On the other hand the judiciary depends on commercial providers on the IT market. There is need for an open debate on the risks regarding the dependence on commercial parties. Questions as: does the judiciary have enough say in the arrangement of IT services? Can a public institution as the judiciary make use of commercial products like Skype for court hearings? Is personal data secured enough? The COVID-19 crisis showed that these issues and many other questions that touch upon these technological developments need to be addressed in the near future.

The Conselho Superior da Magistratura of Portugal has conserved a very high level of institutional cooperation, collaborating, whenever called upon to do so, with the Government and Parliament, in particular by issuing opinions on legal diplomas relating to judicial organization and statutory matters and, in general, on matters relating to the administration

of justice. The JHC had the opportunity to be consulted with regard to the measures adopted to combat the pandemic that covered the activity of the courts, which did not result in any limitation to independence of the judiciary.

The Consiliul Superior al Magistraturii of Romania underlined that in the exceptional context of the COVID-19 pandemic situation and of its evolution within Romania, the Superior Council of Magistracy has been expressing a constant concern for maintaining in safe parameters the health of the staff within courts and prosecution offices and of the court users as well. Therefore, SCM has adopted a series of decisions in order to ensure a proper unitary implementation of the preventive measures at the level of all courts / prosecution offices countrywide as well as guarantees in these matters for all those accessing the judiciary.

Sodni Svet / the Judicial Council of the Republic of Slovenia reported the following developments:

- In September 2020 the Council called on the Government for greater transparency and dialogue in the process of responding to the European Commission draft report on the Rule of Law.
- In April 2020 the Council selected a candidate for a judicial office in the Supreme Court and proposed him to the Parliament for the election. Nevertheless, the candidate was not elected by the Parliament as he did not get enough votes from the Members of Parliament. As no reasons for non-election were given during the proceedings in the Parliament, the Council fears the Parliament decision was not based on merits. Therefore, the Council decided to insist on the selection of the same candidate and proposed his election to the Parliament once again. In December 2020 the candidate was successfully elected as a supreme court judge.
- In 2020 the Council continued its activities directed in changing the procedure of electing new judges who are at the moment elected by the National Assembly. In this context the Council addressed the President of the State, the President of the Government and the President of the National Assembly encouraging them to initiate the changes of the Constitution and the Law.
- One of the very important competencies of the Council is submission of opinions to the legislative and executive branch on laws governing the courts and the judicial service. In this regard must the Council continuously explain to the Ministry of Justice and the Parliament its way of working (members of the Council are unprofessional and normally gather in session every two weeks) and ask for a longer term for submitting its opinions as mostly the terms are much too short and do not enable the Council to effectively perform its powers.
- Already last year the Council reported on a parliamentary investigation which was in July 2019 ordered by the National Assembly on the request of the National Council of the Slovenian Parliament (which is the upper chamber of the legislative branch). As one of the declared purposes of this parliamentary investigation was also to establish a political

responsibility of judges, who were involved in the specific criminal proceedings, the Judicial Council in 2019 adopted (and in 2020 insisted on) a position that by ordering such parliamentary inquiry the legislative branch exceeded its constitutional powers and violated the principle of separation of powers and the constitutional principles of the independence of the judiciary and immunity of judges. And as the Parliament Inquiry Act provides no legal remedy for preventing such actions against the judiciary (e. g. allowing the legislative branch to investigate a political responsibility of the judges), the Judicial Council in September 2019 initiated a procedure before the Constitutional Court of the Republic of Slovenia to determine the constitutionality of the Act. The Constitutional Court first issued a temporary decision in November 2019 by which it put on hold the implementation of the Parliament Inquiry Act and of the Rules on parliamentary inquiry as regards judges. In January 2021 the Constitutional Court reached its final decision, ruling the Parliament Inquiry Act and the Rules on parliamentary inquiry are unconstitutional.

- As regards Covid-19 pandemic, in April 2020 the Council had to form an opinion about the status of the judges during the epidemic period stating that temporary lay-off of the judges is not based in law as by the Slovenian Constitution the position of the judges is permanent.
- In 2020 the Council also had budget issues as due to Covid-19 pandemic the Government decided to significantly cut down the funding of all state institutions including the Council. Only after several requests to the Government, explaining the Council's operation was in danger, the funding was partially re-established, but the difference had to be reallocated from other internal sources (funds for employee salaries).

The Consejo General del Poder Judicial of Spain reported that the relations between the Council for the Judiciary and the Parliament have been quite tense. In an extraordinary plenary session held on the 28th October 2020 to examine the first proposal, the Council expressed its concerns and reminded that any reform of the law regulating the Judicial Power should be in conformity with the Constitution and the European Union Law, recalling that the renewal of the Council should take place as soon as possible. On the 17th December 2020 the Council decided to urge the Parliament to request its opinion on the legal reform, the opinion of the Venice Commission and of all the stakeholders in the field of justice, including judicial associations and procurators' associations, and to notify this agreement to the ENCJ. On the 13th January 2021 the Parliament rejected this request. Last 21st January 2021 the Plenary regretted that this request was not attended, without giving any reasons, and urged again the Parliament to submit the draft piece of legislation to its opinion. On the 3rd February 2021 the Parliament explained that it is not compulsory in this case to search for an opinion of the Council and that it has been decided to follow an urgent procedure.

In addition, there has been no challenge to judicial independence in Spain during the Covid-19 pandemic. Throughout the crisis the Spanish General Council for the Judiciary has cooperated effectively and in coordination with the other State powers in order to take the necessary measures within the framework of their respective competences and, although no formal consultation was made as regards the urgent declaration of the state of alarm by Royal Decree 463/2020, the essential services for guaranteeing judicial activity were agreed by the Ministry of Justice, the General Council for the Judiciary and the Attorney General's Office.

During the first wave of the pandemic (14th March to 21st June 2020) all terms were suspended, and time limits provided for in the procedural laws for all jurisdictional orders were suspended and discontinued. The Spanish Administration of Justice suffered a significant slowdown and it was therefore necessary to adopt measures in the field of the Administration of Justice, which aimed, inter alia, to seek an agile exit to the accumulation of the procedures suspended by the declaration of the state of alarm when the suspension that had been decreed with the alarm state were lifted and to anticipate the increased litigation as a result of the extraordinary measures taken and the economic situation itself arising from the health crisis. Therefore, procedural legal rules were adopted in order to reactivate judicial activity and recover for citizens the essential public service of the Administration of Justice and to establish the preferential treatment of certain procedures in the social, civil and contentious-administrative order directly arising from the health crisis by Covid-19.

It has to be pointed out that the existing remedies in law against excessive powers of Government were not restricted and that the measures taken at all times were aimed at ensuring the rule of law, protecting it in situations of extreme difficulty by organizing the regular functioning of courts.