

EUROPEAN ASSOCIATION OF JUDGES

ASSOCIATION EUROPEENNE DES MAGISTRATS

RESPONSE

to the

CONSULTATION QUESTIONNAIRE

by the

EU COMMISSION

for the preparation of the

REPORT on the RULE OF LAW 2024

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## (I) HORIZONTAL DEVELOPMENTS

The European Association of Judges (EAJ) is honoured to respond to this Stakeholder- Consultation.

The EAJ, which has 44 member associations, including associations from all of the 27 EU Member States, regularly receives reports from its member associations on the state of the rule of law in their respective European countries. The EAJ may also be asked by member associations for support in their endeavours to resist infringements of the independence of the judiciary and the rule of law in their country. In addition, in order to collect accurate information from which to prepare this response, the EAJ requested its member associations in the Member States of the European Union to respond to the questionnaire. A summary of the relevant parts of the responses is as follows.

With some satisfaction the EAJ notices that awareness of the importance of the rule of law has been increasing all over Europe. This is not only the result of the efforts of European and national judges' associations but is also prompted by the activities of the European authorities. Faced by the infringements of this fundamental principle, which may be observed in many parts of Europe, the actions taken in response by the organs of the European Union and the Council of Europe present an ever clearer picture of what rule of law means, what it requires and its indispensability in a democratic state.

The European Union meanwhile has created a whole toolbox for use in monitoring the situation in this regard and an essential role is played by the jurisprudence of the Court of Justice of the EU

and the European Court for Human Rights in their interpretation of the common European values laid down in the basic principles of Article 2 TEU and Article 6 ECHR.

But such increased awareness and monitoring do not prevent these basic principles from being disregarded in one or the other of the Member States.

Another aspect which deserves closer attention is the effectiveness of the respective justice systems. Here again big differences may be observed.

The EAJ asked its members whether since the last report, taking both aspects into account, the overall situation of the judiciary had improved, deteriorated or remained the same. Of the 17 member associations which answered this question, seven (Croatia, Estonia, Germany, Poland, Romania, Slovenia and Spain) saw a deterioration and only five claimed an improvement (Cyprus, Hungary, Ireland, Latvia and Luxembourg). The others reported that the over-all situation remained the same. Of course, improvement and deterioration are relative to the situation in the relevant jurisdiction a year before and do not reflect the situation of the judiciary tested against the ideal.

The existence of differences in the ability, or in most cases the willingness, to make improvements can best be seen if one examines the extent to which the recommendations made by the Commission in last year's report have been followed. In this regard the EAJ was able to examine the recommendations made to 18 Member States (Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Estonia, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Poland, Slovakia, Spain, Sweden). Out of 35 recommendations concerning the judiciary only two were implemented and in addition 14 were implemented in part. The outcome of this examination is not very encouraging.

The EAJ also asked its members to indicate what they saw as the most serious problem in their country. Salaries of judges were mentioned most often, followed by the need for additional judges, attacks against the judiciary and individual judges, the lack of respect for the separation of powers and by reducing backlog. . When asked for the top three problems in their country, in addition to the problems just mentioned, more than one member association reported in answer:- lack of resources; remuneration and working conditions of staff; a need for digitalization; and the influence of executive power.

Indeed, the problem of resources remains one of the most challenging issues. It has a major influence on the length of proceedings, access to justice and the trust placed in the judiciary. There were effective increases in the budget for the justice system in Italy, Sweden and Austria. In other judiciaries any increase in the budget was either insufficient or wholly absent. Increasing workloads in particular resulted in greater demands on resources.

In several EU Member States a new phenomenon has emerged, namely that it is becoming ever more difficult to find candidates wishing to enter the judiciary and also to find persons interested in other employments in the judicial system. This originates on the one hand from demographical developments (many retirements) and keener competition on an employee-driven labour market resulting very often in remuneration and working conditions in the private sector being more attractive. In some countries such developments have been aggravated by judges leaving the judiciary because of a deterioration of the pension system (e.g. Romania) or increased workload (Estonia, Lithuania).

On some occasions in countries with the status of candidate to become member of the European Union the announcement of vetting procedures triggered a wave of resignations by judicial office holders, thereby leading to a very large number of vacancies (Albania, Ukraine). The introduction of such vetting procedures is also under discussion in some other countries. The EAJ has had to deal with this issue on several occasions and maintains its position of opposing such extraordinary assessments of judges and recommends the use of ordinary disciplinary or evaluation procedures, even though some of those might benefit from improvement.

Adequate salaries commensurate with the responsibility and the tasks of a judge are still a concern in many member states (Bulgaria, Croatia, Czechia, Estonia, Finland, Germany, Hungary, Lithuania, Romania, Slovenia, Spain). The EAJ will have to deal with this issue more intensively in the near future.

Further progress in regard to the use of IT was achieved in many judiciaries (Austria, Finland, Germany, Ireland, Italy, Latvia, Romania, Slovenia, Sweden) although some problems in its use were encountered (Croatia, Finland, Germany, Hungary, Italy, Romania, Slovenia, Sweden). In general, it may be observed that acceptance among judges of IT tools has increased and their use is becoming widespread.

As central self-governing bodies, with the overriding mission of protecting the independence of judges and the judiciary, Councils for the Judiciary are still the focus of tension between the powers of the state. The executive power and politicians incline to seek control over such Councils. Such considerations are reflected also this year in several countries. In Slovakia immediately after a new government assumed power the three members of the Council who had been appointed by the previous government were replaced. In Slovenia there is a proposal to allow the parliament to have influence on the appointment of the non-judicial members of the Council. The Spanish Council is still limited in its competences and the election of a new Council continues to be blocked in the parliament. In Italy the election system has been changed making it easier for the executive to influence its results; and an amendment of the Constitution is envisaged to replace the existing Council for all magistrates with two separate councils, one being for judges and the other for prosecutors. On the other hand, the newly created Council in Luxembourg has started its activities. The jurisdiction of the Hungarian Council has been considerably extended. In Estonia a working group has been established to draft a law to improve the independence of courts and of the Council; and in Bulgaria the necessary separation of judges from the dominance of prosecutors by splitting the common Council into two has been adopted as provision of the constitution, although it still needs to be adopted in a corresponding ordinary legislative measure.

A novel experience has been the attack on the independence of judges by a foreign state. Lithuanian judges who made up the court which convicted certain high ranking Russian citizens for their participation in war crimes committed after the declaration of independence of Lithuania in 1991, were subjected to criminal investigation for making an “obviously erroneous” decision by a Russian Federal Investigation Committee; and a Russian District Court in Moscow issued an international arrest warrant, which was forwarded to Interpol. The EAJ condemned this attempted interference and informed Interpol accordingly.

In Austria and Germany there are still no changes in the status of the prosecution, which is still under the ministry. In Luxembourg the independence of the prosecution service is now confirmed in the Constitution.

As regards efforts to reduce the length of proceedings, Cyprus, Italy and Slovenia report some success. Problems are mentioned in reports from Croatia, Finland, Germany, Ireland, Romania, and Sweden. Some of these countries mentioned proceedings in asylum and other administrative cases as being particularly prolonged.

The involvement of the judiciary in important changes in the justice field was regularly afforded to the judiciary in Czechia and in Slovakia. The judges’ associations of Bulgaria, Croatia, Finland Hungary, Italy, Lithuania, and Spain regretted that there was either no involvement or insufficient involvement.

## (II) SUMMARY of ANSWERS to the QUESTIONNAIRE

This summary contains observations of EAJ and its member association regarding the parts I (Justice system) and IV (Other institutional issues related to checks and balances) of the stakeholder consultation form. It encompasses the observations since the delivery of our report for last year's stakeholder consultation (16.12.2022)

### I. JUSTICE SYSTEM

#### **A. Independence**

##### **1. Appointment and selection of judges and prosecutors and court presidents (including judicial review)**

Positive developments since 16.12.2022:

On 29.12.2022 a law was adopted which provides judicial involvement in the appointment of the President and the Vice-Presidents of the Supreme Court. Like for all other vacancies (except the position of presidents of the administrative courts of the Länder) it is now also introduced that a panel of judges (Personalsenat) is involved in the procedure for appointing the President and the Vice-Presidents of the Supreme Court and delivers a proposal whom to appoint. **(Austria)**

Previously the proposal, whom to appoint to the position of a candidate judge (trainee judge), was forwarded to the Minister of Justice by the Presidents of the Upper Appellate Courts. Now a legal amendment involves the respective Personalsenat (panel of judges) in the adoption of this proposal. **(Austria)**

Since 1.7.2023, the Council for the Judiciary (in its new composition consisting only of the members of the Cyprus Supreme Court) is responsible for the selection and appointment of new judges. A new procedure has been put in place to appeal decision of the Judicial Council to the Cyprus Supreme Constitutional Court. **(Cyprus)**

Since 1.6.2023 the powers of the National Judicial Council were extended among which is the jurisdiction to define the principles to be taken into account when evaluating applications to become a judge and got the right to issue a binding opinion on the draft degree of the Minister of Justice on the detailed rules for the evaluation of judicial candidacies and the points to be awarded in the ranking of candidates. Form which the MoJ may not deviate. **(Hungary)**

The President of the Supreme Court (Curia) is bound by the proposal of the Judicial Council and the College of the Supreme Court in the case of the appointment of heads of the College, Presidents of Chambers etc.) **(Hungary)**

The Supreme Court in December 2023 upheld the constitutionality of the legislation establishing the Judicial Appointment Commission which is intended to ensure a merits-based approach to appointment of judges and greater independence in the judicial appointments process. **(Ireland)**

In May 2023 the first exams under the new law took place, which provided for access to the judiciary competition the sole requirement of a law degree. The obligation for candidates to attend

specialized schools, undergo training internships, obtain professional legal practice certification, or a doctoral degree (so-called second-degree competition) has been eliminated. **(Italy)**

A new system and means for the written exams was introduced. **(Italy)**

Government proposed a draft to reform the the organization and structure of magistrates, the disciplinary procedure, the eligibility and reassignment conditions for magistrates, and the establishment and functioning of the Superior Council of the Judiciary by creating new procedure and requirements for managerial positions of judges, new evaluation procedure and files, reorganisation in disciplinary matters etc. The draft is still pending. **(Italy)**

New certifications of education and work experiences for candidates to get a position of a judges for those who had not been a judge before **(Latvia)**

New extraordinary evaluation of judges to evaluate the suitability for work in a regional court. **(Latvia)**

A president of the Supreme Court was finally appointed on 14.3.2023. **(Lithuania)**

The Conseil National de la Justice is in place since the month of July 2023. This organ is responsible for the appointment of judges and prosecutors to different positions. **(Luxembourg)**

During 2023, two competitions for direct admission to the judiciary each foreseen for 149 available positions were completed and one for 397 direct admission and 300 for palcese in the National Institute of Magistracy, which is still pending. Due to the high standard of teh selection process not all applications in the two completed compettions could be filled, only 169 candidates succeeded. However, the successful candidates will start working as judges and prosecutors only in 2025, after completing their initial training. In the new competition the way of testing the legal knowledge has been simplified, so that so far (after two out of three tests) there are indications that all places will be filled. **(Romania)**

Negative developments since 16.12.2022:

The position of President of the Federal Administrative Court, the largest Court in Austria and the one that controls the executive branch, has been vacant since 1 December 2022, i.e. for more than a year because the government didn't agree on a candidate. This is alarming in terms of the rule of law. **(Austria)**

Due to the fact that a new composed Supreme Judicial Council is not in place so far also considerable concerns about the independence of the previously elected presidents of the courts and prosecutor's offices remain. **(Bulgaria)**

No changes, the law still does not provide objective criteria as basis for appointment **(Estonia)**

The amount of non-permanent judges in Finland is significant which constitutes a threat to the judges independence. From all the judges 34 percent are in non-permanent positions. The amount of non-permanent judges in district courts is 31 percent. The Supreme Court appoints judges to a fixed-term public-service relationship of more than one year to a court of appeal, the Labour Court and a district court on the proposal of the head of the court in question. Similarly, the Supreme Administrative Court appoints judges to an administrative court, the Market Court and the Insurance Court. The head of court appoints judges to a fixed-term public-service relationship of at most one

year to the court in question. The appointment procedure creates a need for fixed-term positions, and fixed-term positions have been opened for even shorter terms. **(Finland)**

In criminal cases in district courts there is the lay judge system widely in use. The lay judges are elected and selected based on political nominations and the lay judges use the same authorities as the professional judges. In February 2023 the former government launched a memorandum that stressed that the use of lay judges will not be abolished, but the system how the lay judges are elected could be reorganized. Several changes would be necessary in the selection procedure, but there are no steps forwards and the budget does not provide the necessary financial means. The current system is seen as problematic in terms of the requirement of judicial independence and the Association of Judges demands the abolition of the lay judge system and the money saved to be used to use professional judges handling the cases. **(Finland)**

The political discussion concerning the appointment of the President of the Münster Higher Administrative Court is a cause for concern (<https://www.lto.de/recht/nachrichten/n/vg-muenster-besetzungsstreit-ovg-nrw-limbach-ausschuss-landtag/>). This position is the highest judicial office in North Rhine-Westphalia and has been vacant for more than two years until today. According to a decision by the Münster Administrative Court, the Ministry of Justice of North Rhine-Westphalia stopped an ongoing application process involving several candidates just after the current Minister of Justice took office in order to give preference to another candidate ([https://www.vg-muenster.nrw.de/behoerde/presse/10\\_pressemitteilungen/10\\_230928/index.php](https://www.vg-muenster.nrw.de/behoerde/presse/10_pressemitteilungen/10_230928/index.php)). **(Germany)**

No changes regarding the situation, when a judge applies for several vacancies at the same time so that it is still up to the appointing organ to choose the order in which the decisions on the different vacancies are taken. **(Hungary)**

In the first and second instance courts Presidents of courts are not bound to the opinion of local Judicial Councils, when appointing presidents of chambers, of college etc. **(Hungary)**

A constitutional amendment is proposed by the government, which should separate the career of judges and prosecutors and should delegate the requirements for non-magistrates to enter the judiciary at every level to the ordinary legislation. The draft is still pending. **(Italy)**

The Minister of Justice still appointed presidents of courts without any consultation with judges **(Poland)**

Regardless of the new competitions to become a judge, given the very long duration of the competition and the length of the initial training of successful candidates, the large number of vacancies in the judiciary remains a major problem. Unfortunately, the prospects of solving this problem are still remote. Unfortunately, the number of retiring judges and prosecutors is still expected to be very high, given that a considerable number of judges of the High Court of Cassation and Justice and of the Courts of Appeal have met the retirement conditions or will do so in the coming years. **(Romania)**

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

Positive developments since 16.12.2022:

The decision of the President of the National Judicial Office to second a judge to another court now needs the consent of the National Judicial Council. **(Hungary)**

A secondment of a judge to the Supreme Court now needs the consent of the Judicial Council of this court. **(Hungary)**

As the general elections dated 15<sup>th</sup> October 2023 were approaching all the decisions seemed to slow and froze completely. **(Poland)**

The decisions of the new Professional Responsibility Chamber of the Supreme Court were very pro-judges. **(Poland)**

After the entry into force of the new law on the status of judges and prosecutors in December 2022, two transfer sessions were held, organised by the Superior Council of Magistracy in 2023. The human resource needs of courts and prosecutors' offices between transfer sessions were met by temporarily delegating magistrates to both executive and managerial positions, with the frequency of delegation decisions being relatively high. However, this was the only way of ensuring that the work of the courts and public prosecutors' offices was carried out in conditions which did not affect the quality of justice. **(Romania)**

Negative developments since 16.12.2022:

During the reporting period. The legislative framework on secondment of judges remained unchanged. The number of judges seconded to higher instances has increased in November 2023 to 200 out of near 2100 judges in the country – near 10 % and there are secondments lasting more than 5 and even 10 years. There are no legal provisions regulating the criteria for selection of judges seconded to higher instances and in many cases this selection is being made by court presidents in an arbitrary way. **(Bulgaria)**

Although the Constitution follows the principle of the unity of jurisdiction of magistrates (judges and prosecutors) the possibility to change between the two functions was widely reduced. **(Italy)**

On 29 June 2023 the Parliament (Seimas) adopted the laws implementing the reform of district courts (judicial map changes). At the first stage, as of 1 January 2024, five courthouses (in five district courts) which have uneconomical court buildings and too low workload will be closed. The Law foresees that any changes to the structure of the court (the closure of the courthouses) do not affect the exercise of the powers of the judges appointed to that court until 31 December 2023. The judges, appointed until 31 December 2023 to the district courts which structure is being changed, after the entry into force of this law continue to work *in the relevant district court*, and are considered appointed to that district court or those courthouses in the territory of which the courthouse to which they were appointed operated. If there are several premises of the district court or courthouse, the changing decrees of the President of the Republic specify the residential areas where the judge will work in the premises of the court or courthouse. The problem with the latter rule is the President of the Republic formally is not bound by the consent or a will expressed by the judges working in the courthouses which are due to be closed. This problem became evident as the President of the Republic requested the approval of the Council of Judges for the specification of the residential areas in which 5 judges (from 3 of those courthouses) will work. According to the draft decree of the President of the Republic those 5 judges are to be assigned to the courthouses which are situated in a 50-70 km distance from their places of residence: 1) without their consent; 2) disregarding their previous requests to be assigned to the courthouses situated in a closer distance to their place of residence; and 3) despite the existing vacancies in the latter courthouses. The decision of the Council of Judges is awaited on 29 December 2023. **(Lithuania)**

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

Positive developments since 16.12.2022:

Since 1.7.2023, the Judicial Council (in its new composition consisting only of members of the Cyprus Supreme Court) is now responsible for the promotion of judges. A new procedure has not been established to appeal the decision of the Council for the Judiciary to the Cyprus Supreme Constitutional Court. **(Cyprus)**

The number of judges has been increased during the year 2023. The retirement of judges has also increased. Especially due to the retirement the appointment of judges has been rapid, and the appointment age of judges is reasonably low. Retirement of judges has opened possibilities to judges to be promoted faster than before in higher positions. **(Finland)**

The National Judicial Council got powers to define criteria and binding regulations of points regarding the ranking of candidates **(Hungary)**

The possibility to appoint judges, who had been seconded to the National Judicial Office to higher positions without participating in a competition after their secondment was abolished. They will be re-assigned to positions at their previous level. Also some restrictions for appointment of members of the Constitutional Court after their mandate were introduced. **(Hungary)**

Considerations to reform the assignment of managerial other prestigious positions by ensuring greater objectivity , greater transparency and meritocracy with more stringent criteria are on the way. **(Italy)**

The Conseil National de la Justice, in place since July 2023 is now in charge of this responsibility. The length of the time in service is not the only criteria anymore in that regard. Personal skills and experience are now also taken into account according to the law. **(Luxembourg)**

Law No 303/2022 changed the competition procedure insofar that the test of legal knowledge was replaced by selection on the basis of an assessment of the candidate's judgments, plus an interview before a committee set up at the level of the higher court (to which the candidate wishes to advance). The competitions held in 2023 were exclusively aimed at effective promotion to executive positions, in order to fill vacancies, especially at tribunal (county court) level where there was a dramatic situation, with half of the posts vacant in several courts in the country. After a competition a large number of judges obtained the grade of the superior court as of 1 January 2023, with only 2 candidates being rejected, the difficulty of the competition not being very high. Usually, promotion competitions were very difficult. These judges subsequently form a basis for selection for transferring judges to the higher court or for delegating them by decision of the President of the Court of Appeal - a frequent and often necessary situation in practice. **(Romania)**

Negative developments since 16.12.2022:

There are no changes in the practice of the (old) Supreme Judicial Council. Which did not always follow the ranking of the Selection Board, which sometimes led to a annulment by the Supreme Administrative Court **(Bulgaria)**

No changes, the law still does not provide objective criteria as basis for appointment **(Estonia)**

Decisions of the Supreme Court on promotion are not motivated. **(Estonia)**



There is no judicial majority in the Judicial Appointment Commission **(Ireland)**

Although the Constitution follows the principle of the unity of jurisdiction of magistrates (judges and prosecutors) the possibility to change between the two functions was widely reduced. **(Italy)**

Almost all issues which were indicated for the 2022 and 2023 reports remain relevant: relatively high weight of subjective criteria in a process of selection of candidates to judicial positions; relatively high weight of the opinion of the president of the court in the procedures of the evaluation of the activity of a judge and consequently - the promotion of a judge; the discretion of the President of the Republic and Parliament not to follow the proposal of the Selection Commission of Candidates to Judicial Office (which is consultative) without an obligation to state reasons when rejecting a proposed appointment. **(Lithuania)**

A lot of judges that supported members on Neo-NCJ were rewarded with nominations to higher courts or were given the administrative functions (presidents of vice-presidents of the courts). **(Poland).**

A lot of new nominations for prosecutors and the different levels of the prosecutors' offices were done just before a new government was appointed without any judicial review possible. A lot of new nominations proposed to the President by Neo-NCJ. **(Poland)**

#### **4. Allocation of cases in courts**

Positive developments since 16.12.2022:

In all courts all cases are allocated randomly using computer algorithms **(Croatia)**

At the Supreme Court (Curia) the determination of the criteria of assignment of allocation of cases now needs the consent of the Council and College of this court. **(Hungary)**

Negative developments since 16.12.2022:

There is still no connection between the electronic system for allocation and managing the cases applied in the Administrative courts and the Supreme Administrative Court and the electronic system for allocation and managing the cases applied in all other courts. **(Bulgaria)**

At the first and second instance courts there are no regulations regarding the allocation of cases like those, which have been introduced at the Supreme Court. **(Hungary)**

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

Positive developments since 16.12.2022:

On 20.12.2023 the Bulgarian National Assembly (Parliament) approved amendments to the constitution related with composition of the Supreme Judicial Council. The positive note about the

passed amendments is their compliance with the European standard that the body deciding on judges' careers shall consist primarily of judges elected by judges, reducing the public quota elected by the National Assembly. Currently the Judicial College of the SCC consists of 6 judges chosen by judges are 6 out of 14 members, while according to the amendments judges will choose 8 out of 15 members while the National Assembly will choose 5 members. For the first time a different approach to the status of judges and of prosecutors is proposed, taking into account their different functions in the judiciary. The amendments changed the former system of two colleges of a common Supreme Judicial Council into two separate councils – a Supreme Judicial Council for judges only, and a Prosecutors' Council. These constitutional amendments will be implemented with the respective amendments of the Judiciary System Act where the competencies of the two councils and the procedure for election of their members will be regulated. The procedure for amendments of the Judiciary System Act is in progress. **(Bulgaria)**

Since 1.7.2.2023 members of the Court of Appeal are appointed by the Council for the Judiciary. Members of the Supreme Court and the Supreme Constitutional Court are appointed by the President of the Republic. **(Cyprus)**

A working group has been established, to draft a law to improve the independence of courts and of the Council of Judiciary. **(Estonia)**

The powers of the National Judicial Council have been enlarged regarding appointment and promotion, the right to agree with the conditions and rates of non-salary benefits ordered by the President of the National Judicial Office, an extension of the possibility to remedies against the National Judicial Office or the Curia as a party, the right to propose legislation and to comment on draft legislation **(Hungary)**

The legal status and the resources of the National Judicial Council have been improved **(Hungary)**

Since July 2023 there is the Conseil National de la Justice, a Council for the Judiciary **(Luxembourg)**

Negative developments since 16.12.2022:

The Supreme Judicial Council continues its activities, although its term of office had expired and therefore lacks any legitimacy. An audit of the voting system for the elections or a re-modelling is missing. **(Bulgaria)**

Several problems are unsolved among which are the possibility to appoint judges of the Constitutional Court to the courts of appeal, the possibility that the President of the Supreme Court (Couria) could stay in office if a new President cannot be elected, the possibility that the President of the Supreme Court also becomes President of the National Judicial Office and the possibility that members of the National Council for the judiciary are appointed to judicial leaders (presidents of courts etc.) subject to the power of appointment of the President of the National Judicial Office. **(Hungary)**

Law No. 71 of 2022 contains immediately prescriptive provisions regarding the establishment and functioning of the Superior Council of the Judiciary (CSM). It is a comprehensive intervention that impacts the composition and organization, powers, and functioning of the CSM, as well as the electoral system for the appointment of the toggged members and their reassignment at the end of their term. Concerning the new system for electing the 20 (no longer 16) toggged members of the CSM, a new structure of electoral colleges is identified which besides of a national college for members of the Court of Cassation and the General Prosecutor creates regional colleges, which are

defined by order of the Minister of Justice. To stand as a candidate has been simplified. The necessity of a signed presentation is abolished and gender parity has to be reflected and if there are not enough candidates a lot of all judges, who had not explicitly declared that they don't want to be a candidate will substitute a vote. **(Italy)**

An amendment of the Constitution is proposed to create two instead of one Superior Councils, one for judges and one for prosecutors. The Head of the state should be excluded from presiding the councils. The jurisdiction should be reduced to assignments, promotions and transfer of magistrates, by that not referring to measures to protect the independence of individual judges and the right to comment on draft laws. **(Italy)**

After a change of the government in September 2023 the three members of the Judicial Council, who had been elected by the previous government were removed without giving reasons and three other persons were appointed. In Slovakia one expects that also the members, which had been appointed by the previous parliament will be exchanged. **(Slovakia)**

There is a debate to change the composition of the Judicial Council. It is currently proposed to increase the number of members of the Judicial Council from 11 to 15 and to nominate the non-judicial members elected by Parliament not by the President of the Republic from among distinguished jurists (professors, notaries, etc.) but by Parliament itself (political parties), without any guarantees as to the qualifications of the candidates. This would pose a great risk of politically controlling the Judicial Council and, moreover, the judiciary itself. The Slovenian Association of Judges as well as the Supreme Court and the current Judicial Council are strongly opposed to the proposed amendment and express serious concerns if these constitutional changes are adopted. **(Slovenia)**

The General Council of the Judiciary remains unchanged and there is no will to change the law so that it is elected from among its peers. Political consensus is very distant, and this has repercussions on the functioning of the judiciary, especially the Supreme Court, which has a significant number of vacancies in several of its sections that cannot be filled until the General Council of the Judiciary is renewed., because an Organic Law of 2021 prohibits making these appointments to the acting Council for the Judiciary. In October of this year, the Constitutional Court rejected the appeal of unconstitutionality against the Organic Law of 2021, without analysing the implications that exist for judicial independence from the perspective of European Union Law, that is, without addressing the issue from the perspective of the rule of law value (Art 2 TUE). **(Spain)**

The situation at the Supreme Court has seriously worsened since the last report. Currently, practically a third of its staff is unfilled because of the prohibition imposed by the Organic Law of 2021 to proceed to fill vacancies that arise because of the retirement or death of some of its judges. This situation very negatively compromises the constitutional function of the Supreme Court, which accumulates a significant delay and issues almost 1,500 fewer sentences per year than it should issue in a situation of institutional normality. **(Spain)**

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

Positive developments since 16.12.2022:

Since 1.7.2023 the Council for the Judiciary is the body responsible for disciplinary matters regarding judges. The decisions of the Council for the Judiciary can be appealed to the Cyprus Supreme Court. **(Cyprus)**

There is a draft law, which partly changes the disciplinary regime according to the recommendation of GRECO **(Czechia)**

A draft law contained the proposal to extend the possibilities of referral to the Superior Council of the Judiciary by the litigant and the conditions of admissibility of complaints from litigants and strengthens the powers of investigation of the commissions in charge of addressing these complaints (the commissions are part of the Council). Even though the commissions have dismissed a complaint, their decisions will be communicated to the Minister. This mandatory transmission will give litigants the power to indirectly refer a case to the Minister, who can then order any further investigations against a magistrate and finally refer himself the case to the Council. Such possibilities may be especially dangerous due to the fact that the composition of the Council violates European standards since its members are not, for the most, magistrates. **(France)**

The Judicial Conduct Committee of the Judicial Council is fully up and running now and working well so far. **(Ireland)**

A judgment of the Constitutional Court clarified what the law should consider when excluding persons from the possibility to become a judge, who had been accused of committing a crime but were neither sentenced nor acquitted but their procedure terminated. A draft law following this decision was prepared by the Minister of Justice **(Latvia)**

The CNJ is now in charge of the deontology and has to establish now a book of deontological rules for judges and prosecutors. First complaints against judges have already been filed. **(Luxembourg)**

Negative developments since 16.12.2022:

The procedure of selecting the inspectors of the Inspectorate of the Supreme Judicial Council and their possibilities after their term is finished remain unsolved in practice. **(Bulgaria)**

Disciplinary proceedings are not finished within reasonable time **(Croatia)**

Regarding the Code of ethics adopted by the National Judicial Council there is a standstill after the President of the Supreme Court (Curia) appealed to the Constitutional Court and the Court did not decide the case so far. **(Hungary)**

There is a rather high proportion of disciplinary sanctions imposed for failure to comply with the obligation to settle cases promptly, in terms of the length of time taken to draft the grounds for court decisions. Here it is worth mentioning the context of overcrowding of judges due to the large number of cases, their complexity and the lack of staff in the courts. The Superior Council of Magistracy, by Decision No 2040/2023, has established, by way of recommendation, a limited number of cases to be handled by each judge per month. The decision has not been applied by all courts. Where it has been

applied, it has contributed, on the one hand, to reducing the vulnerability of the status of judges in this respect, but on the other it led to a lengthening of proceedings so that bar associations were unhappy about this. **(Romania)**

Another worrying aspect is the number of disciplinary sanctions imposed by the sections of the Superior Council of Magistracy and subsequently annulled by the High Court of Cassation and Justice. This underlines the need to adapt the Council's disciplinary practice to the standard set by the High Court of Cassation and Justice. This seems to be important because of the increased media attention to disciplinary proceedings against judges and prosecutors, with public attention and media coverage having a knock-on effect on the whole judicial system. **(Romania)**

No safeguards that criminal liability for the crime "abuse of Law) may not be misused as regards judicial decisions. There is a lot of pressure by several politicians and media to hold judges accountable for the content of their decisions. **(Slovakia)**

As a consequence of the pacts for the investiture of the new government under President Sánchez, who has needed agreements with pro-independence parties an amnesty law regarding cases of corruption, sedition and disobedience of several politicians had been enacted and it was agreed the prosecution of an alleged "lawfare" against judges who have acted against them within the scope of their jurisdictional functions, had been agreed, which encourage appearances of these judges in the Spanish and Catalan Parliaments, so that they can explain the motivations and the reasonableness of their rulings. In short, a kind of "political responsibility" for judicial decisions was introduced that compromises judicial independence. So far, three such parliamentary commissions have been set up. **(Spain)**

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

Positive developments since 16.12.2022:

The salaries of candidate judges were increases, which is important for the recruitment of new judges. **(Austria)**

Ministry of Justice and Administration and Croatian Government fulfilled first part of the commitment they took to solve the issue of judges salaries. First step has been fulfilled and salaries of first instance judges were raised to the level of approximately 2.000 Euros per month what was raise of 25%. Salaries of judges of court of appeal, high specialized courts and Supreme Court were raised as well but in more modest percentage which having in mind extremely low salaries of first instance judges before the raise was fair and just decision. The second part of the reform, judges are still waiting to see some concrete moves from the Ministry according to the promises of the Minister of Justice was that a new Law on Salaries of Judges will be drafted where all salaries of all judges will be reformed by introducing a new base for calculation and coefficient (factor for multiplication – every salary is result of multiplying base with coefficient) the latter depending on level of a judge and his/her position where president of Supreme Court has highest coefficient and judge of municipal court the lowest one. The base for calculation will follow the amount of average salary in the county for previous year on the basis of State Statistic Bureau's official announcement. If this will be achieved salaries of judges will not depend on the will of current Government but will be objectively calculated with parameters set up in the Law. **(Croatia)**

During the year 2023 the remuneration of judges and prosecutors increased at the same rate as other public officials and public employees. To that extent they benefit from the overall development in salaries and receive a compensation for the rising expenses due to the current inflation rates. This compensation, however, does not even fully equalize inflation and all public servants as well as most of the general population have to expect losses in real income. The Länder, which did not do so previously, but not the Bund, entered legislation to implement Constitutional Court decisions concerning minimum salaries for public officials including judges and public prosecutors. In line with the relevant legislation of those Länder that introduced such legislation already in 2021 or 2022 they decided in general to significantly increase family benefits instead of raising salaries as such. Some of those benefits are also available for judges and public prosecutors. However, family benefits should in general not be considered as appropriate means of remuneration for judges and public prosecutors. **(Germany)**

The decision on amount and conditions of other benefits than remuneration are now decided by the President of the National Judicial Office in cooperation with the interest representation bodies and with the agreement of the National Judicial Council. **(Hungary)**

2023 saw the welcome restoration of judicial pay cuts which had been introduced during the post-2008 economic crash. **(Ireland)**

As of January 1, 2023, the new coefficients attached to the base monthly salary of a judge have entered into force. **(Latvia)**

On 25.5.2023 the amendments to the Law on Remuneration of Judges were adopted, increasing the salaries of judges (at all levels). The amendment entered into force from 1 July 2023. The salaries of judges are calculated by multiplying the *salary coefficient* established in the Annex to the Law Remuneration of Judges by the official *salary base amount* of state politicians, judges, state officials, civil servants, employees of state and municipal budget institutions of the Republic of Lithuania. The *salary base amount* will be reviewed every three years, taking into account the trends in wage changes in the labour market and the country's economic situation. This new system is expected to be less politicized and responsive to economic changes, helping to avoid a gap between judges' salaries and the general labour market. **(Lithuania)**

The GML negotiated with the Ministers in charge and achieved some improvements in that regard: automatic financial advancement in the career, bonus at the age of 55 for judges and prosecutors who attained a certain grade, larger number of positions named "with particular responsibilities" that can be rewarded extra. **(Luxembourg)**

One of the changes introduced by the new law on judicial organization (Law No 304/2022) was the takeover of the budget for court staff costs from the Ministry of Justice by the President of the High Court of Cassation and Justice, as an element of strengthening the financial independence of the judge. The President of the High Court is therefore the chief authorizing officer for all salary entitlements of judges and court staff. In April 2023 she issued new salary orders for all judges in office, setting the level of monthly salary in line with the level already recognized for them by final court decisions since 2016. Basically, the president of the supreme court has implemented final court rulings that the minister of justice unjustifiably refused to enforce. In the same way, the Prosecutor General of Romania, who is the main authorizing officer for prosecutors' offices, has issued new salary orders for prosecutors. **(Romania)**

After almost 20 years of non-compliance with the law on remuneration of judges and prosecutors (which requires regular meetings of a specific commission at least every five years) and after the

judicial associations signed a lawsuit against the government, the "remuneration table" was convened. **(Spain)**

Negative developments since 16.12.2022:

The differences of salaries between different levels of the judiciary remained still unproportional. **(Bulgaria)**

For the moment only Association of Judges is really pushing the promised second step of the reform of salaries of judges. Government is doing whatever is possible to prevent putting this issue aside again. It is interesting and it should be mentioned that State Judicial Council which is by the Constitution the highest body of judiciary with task to protect independence of judges is passive in this issue without any public statement or official position. **(Croatia)**

A new law, which reduces remuneration for judges (together with prosecutors, president of the country, members of Parliament and government) will come into power 1<sup>st</sup> January 2024. A court action will be taken by several judges. The Constitutional Court will decide, if the new law comply with the Constitution or not. **(Czechia)**

Whilst in the previous version of the law it was foreseen that salaries of judges were indexed to take into account the inflation amendments to the law of 7.12.2023 order that for the next four years no indexed increase will take place. This means that the salaries of judges due to inflation would decrease. **(Estonia)**

The indexation of salaries was introduced in 2013 when social security guaranties were abolished. Judges were subject to the normal pensions system since then. Without reestablishing these guarantees the indexation was suspended for four years now. **(Estonia)**

Big concern about the independence of the Judges concerns the salary system of Judges. At the moment it is bind to collective bargaining agreement as it is organized in general with public sector government officials salaries. Only the salary system of the Judges in Supreme Court and Supreme Administrative court Judges is regulated in law. It has been Judges Associations aim to get a salary system regulated in law for all the Judges since over 10 years now. One concern is the low level of salaries and the other big concern is that the judges (excluded Supreme Court and Supreme Administrative Court) are paid two separate salaries even tough they have the same position and their duties as a judge are the same. A reform is envisaged since long time. It should be prepared by a committee of the National Courts Administration. The work of the committee board is not open and judges don't have a representative in the committee board. Despite the requests, working group hasn't been founded to continue with the preparation of the salary system. The salary levels of judges are not competitive and the salaries have been significantly fallen behind the general development of the level of wages. A career as a judge has become less attractive, partly because of the salaries of judges that are low compared to other judicial professions. Judges have resigned from permanent positions and moved on to legal duties, for example to work as an attorney. The Association of judges in Finland is forwarding large scale salary reform. Which so far was not taken into account. **(Finland)**

There have been no further legislative efforts to significantly improve the level of remuneration of judges and prosecutors in 2023 – apart from certain family benefits. The recommendations of the European Commission in its Report of 2022 and 2023 still seem to be unheard. **(Germany)**

According to a recent study conducted by Kienbaum Consultants International GmbH on behalf of the German Association of Judges, judges and public prosecutors are increasingly losing ground compared to lawyers in companies and large law firms (<https://www.drb.de/newsroom/presse-mediencenter/nachrichten-auf-einen-blick/nachricht/news/justiz-wird-beim-einkommen-abgehaengt>). The average salaries of young lawyers in large law firms are now more than twice as high as the annual remuneration of young judges and prosecutors. The gap widens even further in later professional life, as the salaries of lawyers and in-house counsels rise faster with increasing experience and responsibility than those of judges and public prosecutors. The latest study on lawyers' salaries clearly shows that the state is becoming less and less competitive as employer due to its entry-level salaries, especially as a deep gap has also opened up between the Länder.

**(Germany)**

Different from other branches including public service the salaries of judges are not sufficiently increased, the inflation was not taken into account and a proposal of a new system of salaries elaborated by the Judges Association and agreed by the National Judicial Office, the National Judicial Council and the Trade Union of Court Employees was so far not answered by the competent political authorities. Whilst a full-time construction worker earns 600.000.- to 700.000.-HUF a year is the remuneration of am judges at the beginning of the career less than 600.000.-HUF. This leads also to an increased number of 'vacancies and by that endangers the efficiency and quality of the justice system. **(Hungary)**

In spite of the increase of salaries and the new system of remuneration of judges as of 1.7.2023, the salaries of judges still do not have the same purchasing power in comparison with purchasing power of judicial salary of 2008; moreover, taking into account the average salary in the country, judicial salary in 2023 is relatively lower compared to 2008; according to the amendments salaries of judges do not any more depend on the length of service and that is an exception to the general principle applied with respect to the majority of public sector employees **(Lithuania)**

On 11.12. December 2023 a draft law was registered by the government, which provides a different system regarding judicial pension`s. The possible effects of the draft law on the calculation of judicial pensions are yet to be assessed. However, based on preliminary assessment there are certain risks that, if enacted, it might curtail the existing guarantees of acting judges regarding judicial pensions. **(Lithuania)**

Different from judges prosecutors (but not all of them) were given significant money bonuses last year. **(Poland)**

Although the President of the High Court of Cassation and Justice requested the allocation of budgetary resources both for the full payment of monthly salaries at the level set by his order and for the payment of salary arrears from previous years, the Minister of Finance refused to approve the budget increase. This refusal led to strong concerns and reasoned requests, expressed both by the Romanian Magistrates' Association, together with 3 other professional associations, and by the plenary of the Superior Council of Magistracy. The situation was likely to affect the principle of financial independence of judges and prosecutors, the status of judicial authority and the separation of powers in the state. Therefore, the situation created by the executive, led the vast majority of courts and a number of public prosecutors' offices to adopt in December 2023 a form of protest consisting in suspending their activities, except for urgent cases. **(Romania)**

In 2023, an extensive draft law was initiated to change the conditions for the retirement of judges and prosecutors, with several legislative proposals that seriously affected the principle of independence of justice. In this context, in June 2023 the vast majority of courts decided to suspend their work, with only urgent cases being heard. After the adoption of the amending law, the President of the High Court



of Cassation and Justice initiated an *a priori* constitutionality review, supported by amicus curiae briefs by the Romanian Magistrates Association and the Superior Council of Magistracy. After the decision of the Constitutional Court the law was amended but it still contains provisions that undermine the principle of the financial independence of the judiciary and elements of the consolidated statute of magistrates, although the Constitutional Court has explicitly pointed out the unconstitutionality of similar amendments and it contained a decrease in the amount of judges' and prosecutors' service pensions, violating the principle of independence of justice and the fundamental right to a pension. This time the High Court of Cassation and Justice and also the People's Advocate refused to refer the matter to the Constitutional Court again. The amendments have therefore entered into force. **(Romania)**

Despite the clear decision of the Constitutional Court of the Republic of Slovenia that the salaries of judges are too low and contradict the responsibility of judges, the principles of independence of judges and separation of powers as well as the Constitution, the government is not implementing the decision of the Constitutional Court. The deadline for implementation is 3 January 2024 and the government has not yet offered a solution. What's more! The Prime Minister has publicly stated that, despite the constitutional decision, the issue of judges' salaries will be resolved in two, three, four months as part of the changes to the public sector salary system. The Minister of Finance has just signed an agreement with the public sector union in which the union guarantees not to strike until September 2024, on the condition that no one paid from the state budget (power holders – “functionaries” included) will receive a salary increase until then. **(Slovenia)**

The financial offers made to Judges and Prosecutors were approximately half, in percentage terms, of the increase offered to other bodies of the administration of Justice; in particular, to the Letrados de la Administración de Justicia (formerly called Secretarios Judiciales), who depend on the Ministry of Justice. The majority association of judges (APM) did not accept the agreement as insufficient, although other associations signed it. **(Spain)**

## **8. Independence/autonomy of the prosecution service**

Positive developments since 16.12.2022:

On 12.6.2023, the Plenum of the Supreme Judicial Council ruled that chief prosecutor Ivan Geshev had violated ethical norms with his words: "It's clear who is the political garbage in the National Assembly" uttered during the press conference, at which he refused to resign and tore his written resignation to pieces demonstratively in front of the media. The decree of the President for the removal from office was issued on 15 June 2023. **(Bulgaria)**

The Government and Ministry of Justice and the office of the Attorney General are considering measures to increase the independence and autonomy of the prosecution service. **(Cyprus)**

The independence of the prosecution service is now integrated in the Constitution. **(Luxembourg)**

Negative developments since 16.12.2022:

After the dismissal of the then chief prosecutor Ivan Geshev, the members of the Prosecutors' College elected his late deputy, Borislav Sarafov, to serve as a temporary substitute. There were some hesitations which raised questions regarding integrity issues. The new chief prosecutor will be

appointed after adoption of the amendments of the Judiciary System and election of the new Prosecutors' Council. **(Bulgaria)**

Although the governing parties agreed in their coalition agreement to adapt the ministerial right to refer individual cases to the public prosecutor's offices in accordance with the requirements of the European Court of Justice, no draft regulation has yet been presented. **(Germany)**

The question of the organizational independence of the public prosecutor's office was also subject of public debate in one case. This was triggered by the plans of the North Rhine-Westphalian Ministry of Justice, which have since been withdrawn, to split up an investigative department of the Cologne public prosecutor's office involved in the so-called cum-ex investigations against its will (<https://www.tagesschau.de/investigativ/ndr-wdr/cum-ex-statsanwaltschaft-100.html> and <https://www.drb-nrw.de/nachrichten-1/meldungen-des-landesverbandes/nachricht/news/presseerklaerung-vom-29092023>). This debate alone is likely to create the appearance of influence on the decisions of the public prosecutor's offices. **(Germany)**

In the Italian legal system, the principle of the mandatory nature of criminal action prevails (Article 112 of the Constitution). The workload nevertheless made it common that over the years, the issue of the so-called "priority criteria" in the exercise of criminal action has been repeatedly addressed. In the new law, the task of identifying priority criteria will be assigned to the prosecutor's offices, within the framework of general criteria set out by a law of Parliament. Within the framework outlined by the law, investigating offices must specify in the organizational projects of the Public Prosecutors' Offices the criteria in greater detail, taking into account the number of cases to be handled, the specific criminal reality related to individual offices, and the available human and material resources. The control and approval of organizational documents will be entrusted to the Superior Council of the Judiciary. The question arises if this has the potential to clash with the principle of separation of powers. **(Italy)**

There is no independent prosecution **(Poland)**

The public positions of the new State Attorney General have always been favourable to the Government's proposals and in support of its positions, even in cases in which he was clearly not legally correct (e.g. in the reform of the Criminal Code in the area of crimes against sexual freedom and the possibility of retroactive application of the most favourable rules, in which he defended the Government's position, while the Courts defended the opposite). The independence of the State Attorney General has once again been called into question. After the Minister of Justice moved directly to the post of State Prosecutor General, she resigned and a new Prosecutor General, a close associate of the former Minister, was appointed. The latter, in turn, appointed the former minister to a discretionary post which has recently been annulled by a Supreme Court ruling which has found "misuse of power" in the appointment. Despite this ruling, the Government immediately confirmed the same State Attorney General without requesting the appropriate explanations for the "misuse of power" attributed to him by the Supreme Court. **(Spain)**

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

Positive developments since 16.12.2022:

The newly elected presidents of the local branches of the Bar seem to be pro-democratic **(Poland)**

Negative developments since 16.12.2022: no observations reported

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

Positive developments since 16.12.2022:

A constitutional reform created to separate councils for judges and for prosecutors and introduced a majority of 8 out of 15 members for judges in the Supreme Judicial Council. **(Bulgaria)**

In an effort to increase transparency on the appointment and promotion of judges, since 1.7.2024 the Cyprus Bar Association and the office of the Attorney General have a defined role in the process and may offer their opinion on the suitability of candidates. In addition a representative of the Cyprus Bar and the Attorney General may be present (with no voting right) during the interview of candidates by the Council of the Judiciary. **(Cyprus)**

Since 1.7.2024, in appointing judges to the Supreme Court are appointed by the President of the Republic on the recommendation of the Supreme Constitutional Court and in appointing judges to the Supreme Constitutional Court are appointed by the President of the Republic on the recommendation of the Supreme Court. The President is not obligated to follow these recommendations. **(Cyprus)**

The general public opinion is very confident of the independence of the judiciary. The independence of the judiciary is on high level. Supreme courts are also evaluated independent. **(Finland)**

There was the implementation of the Judicial Conduct regime including the introduction of the Judicial Conduct Committee which deals with complaints concerning judicial conduct. **(Ireland)**

The creation of the Conseil National de la Justice and its start had a positive impact on the perception of the independence of the judiciary **(Luxembourg)**

Negative developments since 16.12.2022:

Public perception of judges and judiciary is derogating on daily basis. Media with bias comments are main source of information and inevitably creator of public perception. **(Croatia)**

In last two years courts do not take pro-active role in informing public about decisions and explaining reasons for them, which opens space for miss-interpretation. **(Croatia)**

The State Judicial Council could and should take more active part in general issues regarding judiciary, status and salaries of judges, issues on independence of judges and media attacks on judges because by the Constitution State Judicial Council is the body which has to protect independence of judges. **(Croatia)**

The developments in connection with the appointment of the President of the Münster Higher Administrative Court as described above potentially may very well have negative effects on the public perception of the independence of the judiciary. **(Germany)**

The independence of the judiciary was negatively affected by the measure that resulted in the release of 1,634 foreign convicts convicted of human trafficking from Hungarian penitentiary

institutions by a government decree, which the government announced as a government decree instead of a law, on the grounds of the state of emergency. The release was accompanied by the order to leave the country within 72 hours. **(Hungary)**

The legislature introduced a significant change in the regulation of professional evaluations of magistrates, with more detailed judgments (no longer only positive or negative) and participation of lawyers in the evaluation. **(Italy)**

The public debate is currently particularly heated on the issues of the independence of the judiciary and the separation of careers. **(Italy)**

In the context of the draft law amending the conditions for the retirement of magistrates and reducing the amount of service pensions in payment, the representatives of the political parties involved in the legislative process have developed an extensive and aggressive public campaign against magistrates. Under these circumstances, a considerable part of public opinion has adopted a critical stance against the profession of magistrate. This campaign has contributed to a drop in confidence in the judiciary to 46%, according to data published by the National Institute of Statistics in April 2023, after confidence in the judiciary had been rising in recent years, reaching 49% in 2022. **(Romania)**

Demonstrations by those with political responsibilities are increasingly aggressive against judges and their rulings. **(Spain)**

There was an especially serious episode carried out this December by the parliamentary spokesperson for the independence party Junts per Catalunya who, from the tribune of the Congress of Deputies, referred to several judges of the Supreme Court by names and surnames, describing them as "indecent characters" and that, "in a normal country, they would be fired and tried immediately." This serious incident has been condemned by most political forces (not all), by all judicial associations and as well as by a large majority of civil society, rejecting such insults and public threats to members of the judiciary "for not be acceptable in democracy". But there was no defence of the attacked judges by the government. **(Spain)**

The amnesty law currently being processed, which has been criticised by practically the entire legal community, has given rise to a feeling of ineffectiveness in judicial action. **(Spain)**

Accusations of "lawfare" seek to discredit the democratic legitimacy of the role of judges. **(Spain)**

The (still) interim situation of the General Council of the Judiciary, without renewal five years after the expiry of the term of office of its members, and the lack of the necessary political consensus (practically impossible due to the polarity and aggressiveness of Spanish politics) make this body not very operative and give citizens the feeling that judges (not the members of the body, but all those who act with jurisdictional functions) are politicised, which does not correspond to reality. **(Spain)**

## **11. Other developments since 16.12.2022, which may have an impact on the independence- please specify**

Positive developments since 16.12.2022:

New government, with Adam Bodnar, the former ombudsman as Minister of Justice **(Poland)**

Negative developments since 16.12.2022:

Salaries, working conditions of courts, salaries of court staff and their working conditions.

Amendments to Law on Courts which introduces more powers to executive toward judges and courts in appointing court interpreters, expert witnesses, and proposing practically ban on all extrajudicial activities of judges, a proposal initiated by President of Supreme Court and President of State Judicial Council accepted by Ministry of Justice but rejected by large majority of judges at General Assembly of Supreme Court.- 28.12.23. **(Croatia)**

It is already now difficult to find new judges. Approximately 25 % of judges will retire in the next years. Several already left the judiciary and others consider to resign, because of the enormous workload. The amendments to the law on salaries of judges , which de facto is a decrease of income makes it even more difficult to find new judges. **(Estonia)**

In April 2023 the President of the State issued an amnesty for a large number of persons, among which also were convicted politicians sentenced for terrorism and other crimes in a high profile case, the Hunnia trial, without lifting the 5 years ban on public offices imposed as collateral sanction with the same sentence. In November Initiated a one-sentence amendment to the Criminal Code, which had the effect that the probation period ended five years earlier and the ban therefore was invalidated. This change of law is a clear example of a personalised legal amendment. **(Hungary)**

An new experience was the attack on the independence of judges by a foreign state. Lithuanian judges, who had convicted high ranking Russian citizens for their participation in war crimes committed after the declaration of independence of Lithuania in 1991, were subjected to criminal investigation for making an obviously erroneous decision by a Russian Federal Investigation Committee and a Russian District Court in Moscow issued an international arrest warrant, which was forwarded to Interpol. **(Lithuania)**

## **B. Quality of Justice**

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

Positive developments since 16.12.2022:

There is now a government review of inadequate civil legal aid scheme underway under chairmanship of former Chief Justice. **(Ireland)**

A judgment of the Constitutional Court widened the possibility of legal aid in Civil Procedures for certain private law legal entities and the Minister of Justice prepared a corresponding draft law. **(Latvia)**

Negative developments since 16.12.2022:

The fee of the lawyers provided by the state in criminal procedures is determined in a very low amount for a long time and in 2024 will be only a little increase. Therefore, such activity is less and less attractive for lawyers. **(Hungary)**

There is no registry of legal interpreters and it is unclear who is entitled to do interpretation. **(Hungary)**

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

Positive developments since 16.12.2022:

The positive trend in the justice budget has continued. The budget was increased, additional posts for judges have been allocated (30). Moreover posts for additional support staff have been established. **(Austria)**

The government has made funds available for the refurbishment of existing court buildings to address immediate problems. Efforts have been made to increase court security. In addition there is an effort underway to improve electronic means available to the district courts. There has also been an increase in the number of personnel for the court registries. **(Cyprus)**

Very small positive development in the remuneration of court staff. **(Czechia)**

Some, but not all of the Länder announced to create new positions for judges and prosecutors in 2024. However, the number of new posts in most of the Länder is by far not enough. As the number of criminal cases has increased extremely in most of the Länder, many public prosecutor's offices are clearly understaffed. **(Germany)**

Following the publication of the Report of the Judicial Planning Working Group in December 2022, a series of additional judicial appointments have been made at District, Circuit and High Court level. **(Ireland)**

The revised National Recovery and Resilience Plan for Italy, which after amendments by the government was finally approved by the EU Commission and the EU Council, provided for financing of different staff till 2026, and new targets to reduce the backlog of civil cases. **(Italy)**

The contracts of employees of the "*Ufficio del processo*" (a group of professionals who support the judge and perform secretary work) will be extended until 2026 and a. Additionally, a new public competition has been scheduled to hire 4200 new employees in the field of justice. **(Italy)**

Capital repair and extension works have been completed at several court premises or construction works for new premises were done. Both are up to European standards, and the efforts made in this respect are to be appreciated. **(Romania)**

For this year the courts will receive a supplement of SEK 50 million, which altogether will lead to a budget of SEK 7559 million. **(Sweden)**

Negative developments since 16.12.2022:

In 2023. Budget for Judiciary has been raised on all expenditure positions but mainly for salaries and objects which need reparation after earthquake. The Supreme Court is still waiting to be repaired. **(Croatia).**

The lack of new judges triggered by the change in the regulations of the salaries of judges and the workload may have a negative effect. **(Estonia)**

The National Courts Administration has distributed extra resources to the courts for year 2022 and 2023. The problem is that the case load of the courts was remarkable even before pandemic and the extra resources for the year 2022 and 2023 are not sufficient to change the overall situation. The duration of the legal proceedings is mainly consequence of insufficient resources. The other problem is to find suitable employees for the courts, since the timetable for recruiting is challenging. The processes for recruiting new judges are not adequate. The amount of non-permanent judges in Finland is significant which is not satisfying, since the judges should act independently. The judges should not be dependent on chief judges, who decide the appointments of temporary judges. If the chief judge is not able to maintain proper procedures for recruiting new judges, there is a risk that budgetary resources are used in arbitrary appointments. **(Finland)**

Although the governing parties of the Federal Republic of Germany had agreed to renew the so-called "Pact for the Rule of Law" in their coalition contract of 2021, the Federal Government has still fallen short of that promise so far. At the end of 2023 there was a shortage of about 1,500 judicial posts in the public prosecutor's offices and criminal courts nationwide. The situation of court administration is also very tense, especially regarding shortages of office staff and IT specialists. In particular at the public prosecutor's offices backlog is rising (see e.g. Süddeutsche Zeitung, 6th Jan. 2024 „Wenn die Strafverfolgung an ihre Kapazitätsgrenze kommt“). In North Rhine-Westphalia by the end of 2023 there was a shortfall of 360 public prosecutor posts out of 1461 existing posts - in addition to problems with creating additional posts. The NRW Minister of Justice intends to at least partially fill these gaps in the public prosecutor's offices by converting judges' posts. However, transferring jobs to the public prosecutor's offices is not a suitable solution to the problem. It does not address the cause and rather would create new shortages at the courts that would then have to be filled themselves (<https://www.drb-nrw.de/nachrichten-1/meldungen-des-landesverbandes/nachricht/news/presseerklaerung-vom-13122023>). Also, in Lower Saxony an extreme workload of public prosecutors reached unprecedented dimensions and endangers the rule of law ( [https://www.nrb-info.de/fileadmin/user\\_upload/Pressemitteilung\\_vom\\_8.12.2023.pdf](https://www.nrb-info.de/fileadmin/user_upload/Pressemitteilung_vom_8.12.2023.pdf) ). **(Germany)**

For the 2891 available positions for judges only 2.688 judges are appointed, which are 40 less than in 2022. Working in the judicial system is not attractive any more for young legal professionals. For 35 positions of trainees there were only 43 applications. **(Hungary)**

There is a relatively high number of vacancies in the judiciary which results in an increased workload for the remaining judges **(Lithuania)**

Salaries of courts' staff (assistants of judges, secretaries) are well below the national average, as the judicial system is not provided with the necessary funding. There is a constant lack of candidates for the positions of assistants of judges and secretaries in courts. Such situation poses a serious risk to the quality of justice. **(Lithuania)**

Growing large numbers of civil cases in courts create massive delays in recognising the cases. The reason may be it is because of government's and parliament's inaction against the so called "CHF mortgage loans". It is estimated millions of new lawsuits in courts to be put next year. The problem should be solved on the national level by Parliament not to be left on judiciary. **(Poland)**

The shortage of human resources is a constant and increasingly serious problem of the judiciary in Romania, both in terms of the number of magistrates and in terms of the need to ensure the necessary number of specialist auxiliary staff. In relation to the very large number of cases, the way in which staffing schemes are set up reveals, in most courts, a shortage of human resources. The number of judges and prosecutors retiring during 2023 has been increasing quarter by quarter, driven by legislative changes to retirement conditions and the amount of the service pension. The context was

aggravated by the public debate created and exacerbated by the draft law on the modification of judges' and prosecutors' service pensions. According to data published on the website of the Superior Council of Magistracy, on 1 January 2024, 1,147 out of a total of 4,944 posts for judges were vacant. **(Romania)**

Investment in the infrastructure of the judiciary continues to be insufficient, with no significant improvement compared to the situation reported in the previous report. There are still a number of courts and prosecutor's offices which do not have premises that meet the requirements of a court or prosecutor's office. **(Romania)**

There is also a serious problem of underfunding of the staff budget of courts and prosecutors' offices by the Ministry of Finance, with the monthly salaries of all staff partially unpaid as of April 2023. Also, salary arrears due since 2015-2016 have been staggered for payment for a period of 5 years by Government Emergency Ordinance No 3/2019. After the debtor, the Romanian State only partially honored its payment obligation, it unilaterally set another payment instalment for a new period of 5 years by Government Emergency Ordinance No. 115/2023. **(Romania)**

The lack of adequate resources led to protests of the Superior Council of Magistracy and the President of the High Court of Cassation and the judges associations due to the fact that the financial independence component of the principle of the independence of the judiciary has been violated and the implementation of final judgments a large number of courts decided in general assemblies to protest in December 2023 by suspending their work, except in urgent cases. **(Romania)**

The government has not listened to the demands of the judiciary for an increase in the judicial budget or an expansion of the staffing plan (increase in human resources). The material working conditions of judges and court staff are poor and the courts suffer from space problems. The situation is particularly depressing at the largest court in the capital Ljubljana, where the construction of a new court building has been awaited for almost 20 years. The processing of the largest (and often high-profile) cases is jeopardised because there are not enough hearing rooms that are large enough, well-equipped and suitable for security reasons. **(Slovenia)**

#### **14. Training of Justice professionals (including judges, prosecutors, lawyers, court staff, clerks/trainees)**

Positive developments since 16.12.2022:

There are ongoing training initiatives underway to increase awareness and familiarity with the new civil procedure rules that came into form on 1.9.2023. In addition there is ongoing training of judges, registry and administrative staff on electronic justice pending the introduction of the new "e-justice" platform which became operational in December. **(Cyprus)**

There are more trainings with face to face attendance again, although the number of online courses is still larger. **(Hungary)**

Training of Judges through office of Director of Judicial Studies Committee has continued successfully. **(Ireland)**

Preparatory work is ongoing to create the new centralised Academy of Justice. **(Latvia)**



Negative developments since 16.12.2022:

The training of Justice professionals is insufficient. Judges have no time to take part in the training. The quantity of training is insufficient, and the quality of training is also lacking. This is largely due to the heavy workload of judges and the insufficient resources of the courts and the National Courts Administration. There is a growing need for training of the Judges. There has not been any positive development concerning the training of judges. The amount of training available to the judges has even reduced because of the insufficient resources of the National Courts Administration. **(Finland)**

It remains the case that insufficient time is made available to judges to avail of training although that has been the subject of commitments in the Report of the Judicial Planning Working Group in December 2022 **(Ireland)**

A new Director of the School for Judges and Prosecutors was appointed, who is connected with late government. **(Poland)**

#### **15. Digitalisation (e.g. use of digital technology, particularly electronic communication tools within the justice system and with court users, procedural rules, access to judgments online.**

Positive developments since 16.12.2022:

The roll-out of electronic files is advancing and is planned to be completed till the end of 2025. **(Austria)**

The implementation of the E-justice platform has moved forward. The platform became operational in December 2023 and will be fully implemented, replacing the I-Justice platform on 15.1.2024. the E-justice platform is designed to be a full court filing and management electronic system and its implementation will transform the administration of justice in Cyprus. **(Cyprus)**

There are new aspect on digitalisation launched in the government's program. In the future, the oral evidence received in the district court will be accepted in the court of appeals and the supreme court from the video recording made in the district court. The reform aims to increase the certainty of the trial and people's legal security. Thanks to video recordings, the screen available to the Court of Appeal and the Supreme Court will be fresher and better compared to today. **(Finland)**

More and more courts all over Germany have been introducing electronic files in civil law. **(Germany)**

The Courts Service continues to implement its modernisation programme with a focus on the development of web based information tools and services for stakeholders. **(Ireland)**

The National Recovery and Resilience Plan for Italy originally envisaged the digitization of 10,000,000 judicial files related to the last ten years of civil and appellate proceedings at the Tribunals, Courts of Appeal, and the Court of Cassation. This was changed following the proposal to expand the digitization process to judicial files related to criminal, juvenile, and supervision proceedings, many of which are still paper-based, and whose digitization could directly impact the reduction of trial times. With the agreement of the European Commission the original target was reduced from 0,000,000 to 7,750,000 files but the application of the measure should be extended to the criminal sector. **(Italy)**

The e-file supervisory board approves the e-file action plan and the agreement on the transition period for the complete transition to the process of implementation in an electronic environment in all processes **(Latvia)**

The Ministry of Justice is currently working on the configuration of the future version of the IT application, which will be called ECRIS V, but there are not many accessible technical details that would allow us to assess the progress for the work of the courts. E-filing has finally been implemented at national level but there are still courts where access to the parties' own e-file is conditional on a request to that effect, while most courts communicate *ex officio* to the parties, with the first summons, the details of access to their own e-file. **(Romania)**

The first steps towards digitalisation in family and inheritance matters have been taken. **(Slovenia)**

There is the introduction of a fully digitalized system for judgements in criminal cases (DiBa). Positive aspects of the system are a more user-friendly digital interface, the possibility of signing judgements digitally and the highly automatized distribution of judgements. **(Sweden)**

Negative developments since 16.12.2022:

There is a broad application of ICT-system but the problem is that such systems should be properly maintained and advanced which is not always the case. **(Croatia)**

The number of oral hearings executed via videoconference in court sessions has risen. The problem with these measures has been, that in some district courts the hardware for videoconferences and internet-connections are not up-to-date. Increased need for connections also loaded the system and there were regularly interruptions during the court sessions. Mostly, it is the duty of the court secretaries to take care of technological means and connections. Neither secretaries nor judges have got a systematic training on new procedures. Even technical support has been insufficient. **(Finland)**

The switch to electronic files is not going smoothly everywhere; media disruptions, duplicate handling, printed e-files and scanned paper files are still part of everyday court life. The Federal Minister of Justice promised 2022/2023 to support the digitalisation of the judiciary of the Länder with 200 Mio € in the course of a "Digital Pact for the Judiciary". This Pact remains controversial, however in the meantime, the German Bundestag released almost 100 Mio € from this Pact for new software and more AI for the judiciary. This is still by far not sufficient to ensure that the legally required switch to electronic files and seamless digital communication between the judiciary and authorities, citizens and companies can be achieved everywhere by 2026. This would require billions of euros to be invested in hardware and software, network expansion and useful AI assistance tools. The experts from the E-Justice Council of the Federal and Länder governments have calculated that initial Federal funding of 1 billion € would be the lower limit of what is necessary. **(Germany)**

Although announced several times, the Federal government has not yet presented a standardized nationwide portal for video hearings in civil courts or a legislative proposal for accelerated online proceedings for smaller disputes in civil justice. **(Germany)**

The establishment of new terminals needed for videoconferences was stopped upon financial reasons although the judges are urged to increase number of such hearings. **(Hungary)**

For the new electronic criminal process, the system includes differentiated and differently modulated deadlines and methods for filing acts depending on the types of subjects, offices, and acts. A transitional phase is provided with a system of the so-called dual track (electronic and paper filings). **(Italy)**

The professional associations were not involved in the discussions on the functioning and dysfunctions of the IT application that should be developed/corrected to ensure that the needs of the judicial system are met with the goal that justice is delivered with quality and speed. **(Romania)**

Due to the low salaries of IT engineers, they leave for better-paid jobs outside the judiciary, so there are often problems in the operation of registers and databases, which hinders the work of judges and court users. **(Slovenia)**

The negative aspects of the introduction of a fully digitalized system for judgements in criminal cases (DiBa) are Positive aspects of the system are a severe decrease in reading friendliness of the written judgements and occasional impossibilities of making the system accept what actually has been ruled in a specific case. The latter problem has been notified to the Parliamentary Ombudsmen as a possible infringement of the independence of the courts. **(Sweden)**

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

Positive developments since 16.12.2022:

In November 2023 the National Judicial Office with the approval of the National Judicial Council determined the developed methodology of measuring workload of judges. **(Hungary)**

The Courts Service continues to implement its modernisation programme although many courts and case management systems remain dependent on very outdated technology. **(Ireland)**

Negative developments since 16.12.2022:

Since the commissioning of the new data processing tool *Aipa* (October 2019) mainly in civil cases, there are no tools to estimate the number and scope of the cases brought to the court. *Aipa* or *Haipa* are not providing adequate information or statistics that would support management in courts or give any tools to assess the budgetary needs of the courts. *Aipa* has still significant deficiencies and reliability issues. *Aipa* project is lacking money to be able to develop *Aipa* and correct the serious defects of the program. Similar was the case with *Haipa*, which is used in the administrative courts. It was so deficient that the legal assistants had stopped using it. New versions of *Haipa* have been launched. The new versions are better and improvements have been made. **(Finland)**

#### **17. Geographical distribution and number of courts jurisdictions (“judicial map”) and their specialization, in particular specific courts or chambers within courts to deal with fraud and corruption cases**

Positive developments since 1.1.2022:

On 1.7.2023 the new Cyprus Court of Appeal was established. At the same time the Supreme Court was split into the new Cyprus Supreme Court and the Cyprus Supreme Constitutional Court. The Appeal Court now has jurisdiction to hear and decide appeals from the Courts of First Instance. The Supreme Court has jurisdiction to hear and decide appeals from the Appeal Court and the Supreme Constitutional Court hears and decides appeals on constitutional matters and referrals from the President of the Republic. **(Cyprus)**

On 24<sup>th</sup> November 2022 the new process concerning the crimes of particular importance related to exercising political power or handling public property /including corruption crimes also/ came into

effect; if the prosecution service ceases the investigation, any person has the right to ask for the judicial review of the decision of the prosecution. **(Hungary)**

With a decree dated April 12, 2023, the Italian government determined the concrete resources (personnel and service locations) for the delegated European prosecutors (EPPO). **(Italy)**

As part of a broader reform of the civil process, Article 1, paragraph 24, of Law No. 206 of 2021 established principles and guiding criteria for the establishment of the Tribunal for individuals, minors, and families, intended to replace the current juvenile court. The new tribunal will acquire both civil and criminal competencies and absorb the civil competencies of the ordinary court concerning the status and capacity of individuals and families. The tribunal is expected to be organized into a district section, established at each Court of Appeal seat, and local sections, established at each seat of the ordinary court within the district. The delegation provides provisions on the assignment of judicial (judges and honorary) and administrative personnel and stipulates that the reform will take effect two years after the entry into force of the implementing legislative decrees. **(Italy)**

On July 1, 2023, the Daugavpils court was added to the Rēzekne court (courts in Latgale region of Latvia), while the name of the court will be changed to the Latgale district court. The mentioned changes are a continuation of the territorial reform of the courts, the aim of which is to make the work of the courts more efficient and reduce the time limits of court proceedings. The territorial reform of courts envisages combining the territories of several courts in one judicial district, legally creating one larger court of first instance. The decision was made by Judicial Council in order to improve judicial efficiency as a continuation of the judicial map reform launched in 2015. **(Latvia)**

Negative developments since 1.1.2022:

The number of Courts of First Instance and Administrative Courts previously significantly had been reduced in 2019. The new evaluation was released in January 2023. which concluded that the reducing of the courts has not resulted in saving of money. The geographical distances have increased and it has become more complicated for parties to access the courts because of the remote distances and the grown expenses. It has also led to complexity concerning the remaining court premises and obliged courts to organize court hearings in remote court premises. **(Finland)**

## **18. Other developments, which may have an impact on the quality of justice - please specify**

Positive developments since 16.12.2022:

The government has committed to a series of substantial reforms recommended in the Report of the Judicial Planning Working Group in December 2022 which are intended to improve judicial resources, improve the effective use and management of judicial resources and ultimately improve services to court users including by making litigation more efficient and less costly. The Judiciary have established a working group to ensure that the recommendations in the Judicial Planning Working Group Report are delivered from the judicial end. **(Ireland)**

The Judiciary are also involved in a working group implementing the civil justice review reforms recommended in a 2020 report. **(Ireland)**

## C. Efficiency of the justice system

### 19. Length of proceedings

Positive developments since 16.12.2022:

The project for clearing the backlog of cases in courts is well underway and has been outperforming its targets. **(Cyprus)**

The introduction of the new civil procedure rules on 1.9.24 is expected to transform the process of delivery of justice and greatly reduce the length of time required of a case to be adjudicated. **(Cyprus)**

According to statistics updated as of June 30, 2023, compared to 2019 data, the average duration of legal proceedings has significantly decreased. There has been a reduction in times of 19.2% in civil cases and 29% in criminal cases. **(Italy)**

There are no problems with numbers of cases done by criminal courts **(Poland)**

The Romanian Magistrates' Association (AMR) has initiated a debating program, in collaboration with the Ministry of Justice, with a view to developing alternative case resolution mechanisms. The program has started to be implemented. However, legislative changes are needed to make mediation more accessible. **(Romania)**

The duration of court proceedings is slowly being shortened, the proceedings of organized crime, fraud and corruption are unfortunately still taking longer. **(Slovenia)**

Negative developments since 16.12.2022:

Still major problem for some courts and some kind of cases. But statistic shows that length of proceedings is coming close to European standards in many kind of cases. **(Croatia)**

Smaller cases (even with no grounds for quickened proceeding) are handled faster and this can make the statistics about the length of proceedings misleading. But the length of the legal proceedings are too long and this consist a threat to the perception that the general public has to the judiciary. For individuals to obtain legal safeguards is endangered by the length of the legal proceedings. The amount of non-permanent judges in Finland is significant which constitutes a threat to the judges independence. The duration of the legal proceedings has still increased in 2023. The longest length of the proceeding is with large scale civil disputes, that demand oral hearings. This is the case in the majority of civil cases. In Helsinki District Court it takes over two years on average for this kind of dispute to be resolved. This is weakening the protection under the law of private persons and entrepreneurs. The duration of the legal proceedings is mainly consequence of insufficient resources. **(Finland)**

The actual figures from the Federal Statistical Office on the work of the criminal justice system show a trend towards longer proceedings. The average duration of first-instance criminal proceedings before the regional courts has risen to a new high of 8.6 months in 2022. Calculated from the time they are received by the public prosecutor's office, first-instance proceedings at the regional court now take an average of 21,6 months, compared to four months faster in 2012. The duration of

proceedings at the district courts has also increased significantly to 6 months. In a ten-year comparison, the district courts were almost two months faster. **(Germany)**

In autumn of 2023 the Minister Presidents of the Länder and the Federal Chancellor have called for more speed from the authorities and courts in asylum procedures. In the future, court proceedings are supposed not to take longer than three months for nationals of countries with little chance of being granted the right to stay. In all other cases, the maximum duration is supposed to be a maximum of six months. The current processing times of the administrative courts in asylum procedures are clearly decreasing: While asylum cases at first instance still took an average of 20 months nationwide in 2022, the duration has fallen to around 17 months in 2023. They range from 3.5 months in Trier to 38.5 months in Cottbus, according to a survey of all administrative courts conducted by the "Deutsche Richterzeitung" (DRiZ 11/2023, p. 370 f.). However, they are still a long way from the politically desired deadlines of a maximum of three and six months. The figures do not match up, unless the Länder invest massively in personnel also for the administrative courts.

**(Germany)**

By the middle of 2023, the investigating authorities had reported almost 850,000 open cases nationwide, according to a survey of all 16 Länder conducted by the Deutsche Richterzeitung (10/2023, p. 326 ff.). The number of unresolved cases has risen by almost 30 percent compared to the middle of 2021. The increase is particularly high in Hamburg at 57 percent. The number of cases also jumped by 36% in the most populous Land of North Rhine-Westphalia. According to the latest annual report on criminal justice published by the Federal Statistical Office in August 2023, the number of cases received by public prosecutors in 2022 rose to more than 5.2 million, more than ever before. Compared to the previous year 2021, this is a further increase of more than 300,000 cases. **(Germany)**

The system of forensic experts is underfunded, mainly in criminal cases in which the state advances the fee of the experts, there is a lack of personnel in certain geographical areas or professional fields.

**(Hungary)**

Backlogs in many areas still continue including criminal cases across all jurisdictions, childcare and domestic disputes. **(Ireland)**

Huge delays on civil cases. The problem of neo-judges needs to be solved quickly. **(Poland)**

The length of proceedings was negatively influenced by the high volume of cases, the complexity of cases and the lack of staff in courts and prosecution offices. **(Romania)**

The duration of court proceedings is slowly being shortened, the proceedings of organized crime, fraud and corruption are unfortunately still taking longer. **(Slovenia)**

There are still problems with long proceedings in administrative cases concerning social welfare and migration. **(Sweden)**

## **20. Other developments, which may have an impact on the efficiency of the justice system (like enforcement of judgements etc.) - please specify**

Positive developments since 16.12.2022:

The Implementation of human resources in the justice sector and allocation of PNRR funds for digitization should have a positive impact. **(Italy)**

Negative developments since 16.12.2022:

No changes but still one of main obstacles for efficiency of enforcement system is the general public perception that debt is not necessary to pay, that obligations are not there to be fulfilled and public is very often advocating debtor against creditor. **(Croatia)**

The latest budget law does not allocate funds for the justice sector, with the sole exception of benefits due to honorary magistrates following rulings by the Court of Justice of the European Union. **(Italy)**

#### **IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES**

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

**1. Framework, policy and use of impact assessments and evidence based policy-making (which includes also the consultation of social partners, stakeholders/public consultations (including consultation of judiciary and other relevant stakeholders on judicial reforms), and transparency and quality of the legislative process both in the preparatory and the parliamentary phase**

Positive developments since 16.12.2022:

Traditionally, Czech Union of Judges and presidents of high courts etc. are partner for Ministry of Justice and Parliament when a new law concerning judiciary is prepared. **(Czechia)**

There was an involvement of stakeholders including association of judges in the law-making process e.g. the new legal map by the previous as well as by the new government, except in the case of hasty recodification of the criminal law by the new government. **(Slovakia)**

Negative developments since 16.12.2022:

The recent important constitutional amendments regarding the Supreme Judicial Council and other important issues for the Judiciary were initiated with a draft without necessary reasoning and this was subject to criticism by the Venice Commission and national stakeholders. The process for adoption of these amendments was public but not transparent enough. **(Bulgaria)**

Association of Judges and courts are sometimes involved in preparatory legislative work through their representatives in drafting committees and through giving proposals to the legislator. The problem is firstly, there is usually not enough time to properly react, and what is more important almost always Association's proposals are ignored. In practice it could be said that Association very often has no real impact on legislative process. **(Croatia)**

The legislative process is lacking significantly financial resources. There has not been any positive development during 2023 in providing additional resources to the legislative process by the government. The quality of legislation is weakened due to the lack of financial resources and

pressured time schedule. The level of estimation of impact of a certain legislation (financial impact and other impacts) is unsatisfactory and tendentious. **(Finland)**

No changes. The main problem remains in many cases the accelerated pace of legislation without public consultation. The quality of legislation and the frequent changes to legislation remain a major concern. The combination of lack of public consultation and fast-track legislation has further weakened the quality of the regulatory environment. **(Hungary)**

Consultation currently takes the form of either parliamentary hearings or, much more rarely, prior discussions with the Minister. **(Italy)**

There are a number of draft laws concerning the reform of the Superior Council of the Judiciary, which would no longer be able to give opinions on draft laws on justice. **(Italy)**

Association of Judges of the Republic of Lithuania and even courts concerned were consulted only at the final stages of the adoption of laws implementing the reform of district courts (judicial map changes). **(Lithuania)**

Immediately after the recent amendments on the law on the status of judges and prosecutors came into force a new initiative to amend this law started, which is a way to hamper legal certainty. **(Romania).**

Although the Guide on the relationship between the Superior Council of Magistracy and the legislative power, which was adopted in the framework of the project "Transparency, accessibility and legal education by improving public communication in the judiciary" expressly recommends that the parliamentary committee of the first chamber of the Parliament and the Superior Council of Magistracy consult the professional associations of magistrates on draft legislation amending justice laws or laws, which have an impact on the work of the judiciary, judges associations were not consulted. **(Romania)**

The new Slovak government hastily changed the criminal code using an urgent legislation procedure without proper consultations. **(Slovakia)**

Increasingly frequent use continues to be made of the system of emergency legislation (by Decree to be subsequently validated by Parliament) and the mechanisms of "draft legislation" (which are presented for parliamentary processing directly by the political parties) instead of the preliminary drafts and projects technically prepared by the Government. This circumvents the mandatory but non-binding reports of advisory bodies (General Council of the Judiciary, Council of State, etc.). It is common for relevant legislative changes to be introduced during the process, which, in many cases, have nothing to do with the subject matter of the legislation. **(Spain)**

Judicial associations are not given the opportunity to be heard on measures affecting the judiciary. **(Spain)**

There is a will to make many changes fast in Sweden especially concerning criminal and migration laws, which has the effect that the time for the different steps in the process of preparing the laws are short and that has an impact on the quality of the process and outcome. **(Sweden)**



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

Negative developments since 16.12.2022:

In 2023 417 laws, 121 government emergency ordinances and 42 government ordinances were adopted and published in the Official Gazette. The proportion of legislation adopted under the urgency procedure continues to be very high. In this context, it should also be stressed that one and the same emergency ordinance often amends provisions of several pieces of legislation. In reality, therefore, the actual number of legislative solutions adopted under the urgency procedure is higher than the above figure. This is of particular concern, especially in situations where measures adopted through emergency ordinances affect the rights of magistrates, i.e. affect the independence of justice. There are serious concerns about the constitutionality of these emergency ordinances. A serious problem with the adoption of emergency ordinances is also the lack of preparatory public debate, which is the case in ordinary laws, in which representatives of the judiciary and professional associations could have expressed their position. **(Romania)**

With 139 times of use (approved up to July), Pedro Sánchez's government has transformed this exceptional resource into the usual way of legislating. In fact, The Council of State reproaches the government for the abuse of urgency in the consultations it has carried out. The 2022 Report presented by this organ highlights a practice that is supposed to be exceptional and which the government has multiplied in recent years. **(Spain)**

## **3. Rules and application of states of emergency (or analogous regimes) including judicial review and parliamentary oversight.**

Negative developments since 16.12.2022:

The government continues to make extensive use of its emergency powers, which undermines legal certainty and affects the way businesses operate in the Single Market. Hungary has been under a special legal regime for a longer period of time, first in response to pandemic COVID-19, the government maintained the "state of emergency" from 11 March 2020 to 18 June 2020, and then from 1 January 2021 to 1 June 2022. On 25 May 2022, the government declared an "emergency state of emergency" "in view of the armed conflict or humanitarian disaster in Ukraine and in order to avert and manage the consequences thereof in Hungary", which is still in force. On 22 November 2022, the National Assembly, through Article 2(1) of Act XLII of 2022, authorised the Government to extend the "state of emergency" (under the current provision) until 23 May 2024. **(Hungary)**

## **4. Regime for constitutional review of laws.**

Positive developments since 16.12.2022:

According to the constitutional amendments of 20.12.2023 each court can address an issue of compliance of a law with the constitution to the Constitutional Court. Before these amendments only

the Supreme Court of Cassation and the Supreme Administrative Court were allowed to do so. **(Bulgaria)**

Issues relating to the constitutionality of laws are now in the jurisdiction of the new Cyprus Supreme Constitutional Court. This is expected to establish a uniform approach on such fundamental matters by quickly and definitively dealing with issues as they arise. **(Cyprus)**

Czech Constitutional Court has very solid, strong and independent position and is seen as a credible and impartial institution by public. **(Czechia)**

Negative developments since 16.12.2022:

There is a high workload at the Constitutional Court, which can be addressed by certain institutional bodies like the Peoples Advocate, the High Court of Cassation and Justice or by individuals, who are affected by the application of a law, which they claim to be unconstitutional. In 2022, 1360 referrals were dealt with (some of which were registered in 2021), while 2896 of the cases registered in 2022 constituted a stock to be dealt with in 2023. **(Romania)**

The appointments that have been made to act as judges of the Constitutional Court at the request of the Government, Parliament and the General Council of the Judiciary itself, have fallen on people with a very pronounced political profile: the current President of the Constitutional Court was Attorney General of the State with the Socialist Party and another Minister of Justice has been appointed as a judge with the Government of President Sánchez, and a chief of staff of another of his ministers. In short, people closely linked to a very specific political party. The opposition has done the same with the candidates that it has been able to appoint at its behest (this is not the case for all those appointed, but for most of them). This strong political profile discredits their impartiality to some extent. **(Spain)**

## **B. Independent authorities**

### **5. Independence, resources, capacity and powers of national human rights institutions (NHRIs), ombudsman institutions, if different from NHRIs, of equality bodies, if different from NHRIs and of supreme audit institutions;**

Negative developments since 16.12.2022:

In 2022 and 2023 the former head of the National Audit Office of Finland (NAOF) was condemned of malpractice and misuse of the money of the office. **(Finland)**

Ombudsman institutions (control of legality) are considered to be independent. The lack of resources is complicating the effectiveness and independence of the control of legality institutions. **(Finland)**

In November 2023, the Deputy Chancellor of Justice Puumalainen stopped the government's proposal on the restriction of the eastern border and took it to a new preparation, because at that time there were no legal conditions for closing the border. The Deputy Chancellor of Justice has the task to oversee the legality of the government's decisions but also to supervise the operation of the courts. His decision was harshly criticized by MPs and even by the President of the Supreme Administrative Court. His dismissal was proposed and considered to ignore his assessment. Such

political pressure is especially problematic, due to the competence in regard of the justice system, because it may endanger the principle of separation of power and independence of judiciary if the independence of the Deputy Chancellor of Justice is not guaranteed. **(Finland)**

There are concerns about the independence and effectiveness of the Commissioner for Fundamental Rights. Concerns about the independence of the Commissioner have been exacerbated by the fact that he has taken over the functions of the Equal Treatment Authority. Stakeholders have reported that the Equal Treatment Directorate of the Commissioner's Office has broken with the previous practice of the Equal Treatment Authority by repeatedly refusing to protect the rights of LGBTIQ persons. The Commissioner has also taken over the functions of the independent mechanism provided for in the UN Convention on the Rights of Persons with Disabilities. **(Hungary)**

The Supreme Court has annulled the appointment of the President of the Council of State because, although her political capacity was accredited (she had also been a minister in the government of Pedro Sánchez), it was not accredited that she was a "jurist of recognised competence" and both requirements are necessary to hold the position. **(Spain)**

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

No observations reported

#### **C. Accessibility and judicial review of administrative decisions**

#### **7. Transparency of administrative decisions and sanctions (including their publication and rules on collection of related data)**

Negative developments since 16.12.2022:

The new Law on the Judicial Organization transferred most administrative decisions at court level from the College Board to the President of the Court. In addition, the new rules of procedure of the courts no longer provide for the mandatory publication on the court's website of either the decisions of the College Board or the decisions of the President of the Court. **(Romania)**

#### **8. Judicial review of administrative decisions**

Positive developments since 16.12.2022:

The Civil Justice Review Implementation Group has been undertaking a review of the rules relating to judicial review of administrative decisions and it is expected that new rules in this area will be introduced in 2024. **(Ireland)**

Negative developments since 16.12.2022:

The administrative divisions of the courts, which have the power to assess the legality of decisions issued by administrative authorities, continue to be particularly busy. This is also due to the fact that the administrative work of public institutions does not adapt to the jurisprudence of the courts. If a new but identical case comes before the administrative bodies they often decide as previously ignoring court decisions in corresponding cases. **(Romania)**

#### **9. Rules and practices related to the application by all courts, including constitutional jurisdictions of the preliminary ruling procedure (Art. 267 TFEU)**

Positive developments since 16.12.2022:

A new law will fully implement the 2022 EU Recommendation by removing the possibility for the Supreme Court (Curia) to review the necessity of a request for a preliminary ruling in criminal proceedings, in line with EU legal requirements. **(Hungary)**

The Constitutional court has delivered two decisions applying the preliminary ruling procedure. **(Latvia)**

Negative developments since 16.12.2022: no observations reported

#### **10. Follow-up by the public administration and State institutions to final (national/supranational including the European Court of Human Rights) court decisions, as well as available remedies in case of non-implementation.**

Positive developments since 16.12.2022:

An amendment to the law introduced the possibility of judicial review of prosecutors' decisions on corruption, budget fraud and other high-profile, so-called "dedicated crimes", reducing the risk of arbitrary decisions. Previously, concerns had been raised about the discretionary power of the prosecution to investigate and prosecute cases. A newly introduced chapter of the Criminal Procedure Law provides for judicial review of prosecutors' decisions not to open or to close an investigation in a corruption case in the above cases. **(Hungary)**

Legal certainty has been improved as final court decisions can no longer be challenged by the authorities before the Constitutional Court. **(Hungary)**

Negative developments since 16.12.2022: no observations reported

## **D. The enabling framework for civil society**

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

Negative developments since 16.12.2022:

A new law, the law on the protection of sovereignty introduced a new criminal offence in the Criminal Code punishable by up to three years imprisonment, which is committed when a member, responsible person or senior official of an organisation (i.e. not only a political party) participating in the elections, as well as a candidate, uses foreign aid or, in order to circumvent this prohibition, uses a financial advantage derived from an agreement to conceal the origin of the prohibited foreign aid. **(Hungary)**

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

Positive developments since 16.12.2022:

At the regional level, the legislative initiative principles of public involvement have been strengthened (types of public involvement contained in the Law on Municipalities). **(Latvia)**

Negative developments since 16.12.2022: no observations reported

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

No observations reported

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

No observations reported

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

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

Positive developments since 16.12.2022:

The Minister of Justice's report on the judiciary gave a summary of the status of the judiciary in Finland and triggered a debate on the Rule of Law and the necessary resources, which led to an increase of 30 Million EUR in the budget for 2024. **(Finland)**

The National Association of Magistrates has been particularly active with initiatives to promote the culture of the rule of law especially among students through educational and didactic initiatives. **(Italy)**

Meetings and other activities were generally structured around the components of "education for democratic citizenship", "human rights education", "non-formal education" as defined by the Council of Europe Charter on Education for Democratic Citizenship and Human Rights Education. On 23 November 2022, a new Protocol of cooperation on legal education was signed between the Ministry of Justice, the Ministry of Education, the Superior Council of Magistracy, the High Court of Cassation and Justice, the Prosecutor's Office of the High Court of Cassation and Justice and the National Union of Romanian Bar Associations. In March 2023, the Superior Council of Magistracy launched the selection procedure for judges from all over the country who have agreed to participate in specific activities to promote legal education in pre-university and university education. Subsequently, the Council appointed judges for each court of appeal to carry out specific legal education activities. **(Romania)**

Negative developments since 16.12.2022:

There is general lack of fair, accurate and fact-based discussion on this issues especially in the Parliament or media. **(Croatia)**

Since the previous report, the trend has remained unchanged: the EU rule of law mechanism and the expectations it raises are reflected negatively in the political discourse. According to official government communication, the Hungarian rule of law is without flaws. **(Hungary)**

The general perception is of a deterioration of the rule of law and a weakening of the guarantees of the separation of powers, and there are no exemplary actions that can be perceived by society to the contrary. The executive branch has practically confused itself with the legislature and gives the impression that it intends to subjugate the judiciary. There is no culture that promotes the values of plurality, tolerance and the guarantees of the rule of law, there is a scenario of continuous confrontation between parties and only the prevalence of legitimisation by electoral results is taken into account, which, it seems, enables action to be taken without being subject to any limits. **(Spain)**

**16. Other issues, which may have an impact on institutional aspects related to checks and balances, - please specify**

Positive developments since 16.12.2022:

On 1.7.2023 the Supreme Court was divided into the new Supreme Court and the Supreme Constitutional Court. One of the reasons for this was to create a system of checks and balances to the previously unlimited power of the Supreme Court. Now when the Supreme Court acts in its capacity as Judicial Council of the Judiciary , its decisions can be reviewed/appealed to the Supreme Constitutional Court. **(Cyprus)**

Negative developments since 16.12.2022:

The position of President of the Federal Administrative Court, the largest Court in Austria and the one that controls the executive branch, has been vacant since 1 December 2022, i.e. for more than a year because the government didn't agree on a candidate. This is alarming in terms of the rule of law. **(Austria)**