

# CCBE Contribution for the 2024 Rule of Law Report

14/02/2024

## EXECUTIVE SUMMARY

The Council of Bars and Law Societies of Europe (CCBE) represents the bars and law societies of 46 countries and, through them, more than 1 million European lawyers.

The CCBE welcomes the explicit recognition in the 2023 Rule of Law Report of lawyers as key actors for judicial systems based on the rule of law.

In September 2023, the CCBE created a network of national contact points responsible for monitoring and reporting the relevant national rule of law related issues, as well as facilitating and strengthening the contribution from national Bars and Law Societies to the CCBE input to the Rule of Law Report of the European Commission.

In its contribution to the 2024 Rule of Law Report, the CCBE lists its actions, activities and policy documents relevant to different rule of law related aspects. This submission is accompanied by input received from the national Bars and Law Societies of 25 EU Member States regarding different rule of law developments at national level, with a particular focus on those posing a risk and potentially undermining the independence of lawyers and Bars and access to justice.

According to the responses from national Bars, all national Bars are independent from the executive or other state authorities in the EU Member States. However, many national Bars have provided information on developments and indicated some trends which pose a risk to the independence of the legal profession and functioning of the justice system in particular Member States. They have also provided some positive examples and best practices relevant to this assessment.

Specific cases, concrete examples, and trends are listed and explained in detail in the national Bar reports in the Annex to this contribution. In the conclusion part of the document, only some examples and developments in the justice systems of concrete EU Member States are briefly mentioned.

For example, members of the CCBE reported about the concerns and trends posing a risk to the independence of the legal profession and functioning of the justice system in the following areas:

- confidentiality of lawyer-client communications;
- physical, online or legal threats or harassment of lawyers;
- legal provisions and policies which could negatively influence the independence of the Bar and lawyers;
- cooperation between the national Bar and the executive branch of the government and supervisory authorities;
- implementation of the case law of national, European, and international courts;
- perception of the judicial system by the general public;
- training of lawyers;
- legal aid;
- digitalisation of justice;
- other relevant national developments in various areas.

For more complete and detailed information, the Annex part of the CCBE contribution for the 2024 Rule of Law Report should be consulted.

## Introduction

The Council of Bars and Law Societies of Europe (CCBE) represents the bars and law societies of 46 countries, and through them more than 1 million European lawyers.

The regulation of the profession, the defence of the rule of law, human rights and democratic values are the most important missions of the CCBE. Several areas of special concern to the CCBE include access to justice, the development of the rule of law, the respect for the right to a defence and the effectiveness of the justice system, which are core values of the profession.

With this input, the CCBE submits its contribution for the 2024 Rule of Law Report by the European Commission.

## 2023 Rule of Law Report

The presentation of the [2023 Rule of Law \(RoL\) Report](#) by the European Commission took place at the CCBE Standing Committee meeting in September 2023, where CCBE members had the possibility to ask questions and express their remarks as regards the RoL Report and recommendations to the Member States.

The CCBE welcomes the explicit recognition in the RoL Report of lawyers as key actors for judicial systems based on the rule of law, as well as a reference to the importance of the respect for the confidentiality of communications with clients as one of the essential elements of the freedom of exercise of the legal profession.<sup>1</sup>

In the Report it is stressed that “Lawyers play a key role in ensuring the protection of fundamental rights and the strengthening of the rule of law, including the right to a fair trial”. Moreover, concrete examples on relevant developments in some Member States related to legal assistance, including legal aid, as well as cases related to client-lawyer confidentiality were listed in this Report. In addition, the relevant country reports covering all Member States provide a more detailed analysis and explanation of developments related to the legal profession and national Bars and Law Societies in Member States.

## Relevant CCBE actions in 2023

The [CCBE contribution to the 2023 RoL Report](#) was adopted by the Standing Committee in February 2023, in response to the invitation and the public consultation launched by the European Commission. In its submission, the CCBE highlighted the most important rule of law developments and concerns involving legal professionals, as well as some trends which may pose a risk to the independence of lawyers and Bars as identified by its members regarding particular Member States.

In addition, the CCBE monitored relevant developments in different countries and, among other issues, on request of the Polish delegation, issued a [Statement on upholding the independence and self-regulation of the legal profession in Poland](#) and a [CCBE Statement on the Polish law establishing a state committee for the examination of Russian impacts on internal security](#). Moreover, in September 2023, following an invitation from the Polish delegation to the CCBE, the CCBE Standing Committee was

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<sup>1</sup> Under Chapter 2.1. on Justice systems of the [2023 RoL Report](#), there is a subchapter on the access to justice and the role of lawyers in the justice system (See page 10).

organised in Warsaw, Poland. In the margins of this event, an exchange of views was organised with the Senators of the Republic of Poland on the challenges related to justice reforms in Poland and the important role of lawyers.

In September 2023, following the agreement of the CCBE delegations, a **network of CCBE contact points on rule of law** related issues was created for monitoring and reporting to the CCBE the relevant national rule of law related issues during the year, as well as facilitating and strengthening the contribution from national Bars and Law Societies to the draft CCBE input to the RoL Report of the European Commission.

The CCBE's specific actions undertaken in 2023 regarding various fields of law are described below. Additional information about the policy documents and activities of the CCBE is available on the [CCBE website](#) and, more particularly, in the CCBE 2023 annual report.

### European Lawyers' Day (ELD 2023) - Confidentiality of client-lawyer communications

On 23 October 2023, the CCBE organised a high-level event on *"The role of the European institutions in upholding the core values of the legal profession in the administration of justice"*. The event was organised in order to raise awareness and understanding of the role of the EU institutions in upholding the core values of the legal profession and how these core values are essential in order to ensure the effective administration of justice. More detailed information (and a recording of this event) is available on the [CCBE website, including the overview of events and activities organised by the national Bars for the ELD 2023](#). The CCBE also produced [an explanatory note](#) on the importance of confidentiality of lawyer-client communications providing explanations to the EU institutions, as well as to the general public on the importance of this principle.

Most importantly, the CCBE highlighted to various stakeholders the essential need to respect and ensure the principle of client confidentiality when discussing various legislative proposals and policy documents. The CCBE and its members will continue to monitor relevant developments and engage with key stakeholders to ensure that the client confidentiality principle is respected, in particular in the legislation regarding the use of spyware against lawyers, child sexual abuse, anti-money laundering, reporting in the field of taxation and other relevant proposals.

### Convention on the protection of the profession of lawyer

In 2023, the CCBE, as an observer, continued to actively contribute to the work of the Committee of Experts on the Protection of Lawyers (CJ-AV) which is tasked to prepare the future legal instrument to strengthen the protection of the profession of lawyer and the right to practise the profession without prejudice or restraint. The CCBE strongly supports the adoption of a binding instrument which it considers to be essential in order to respond to the growing attacks and challenges faced by the legal profession which have the consequence of directly hindering the respect for the rule of law and access to justice for lawyers' clients.

### Execution of judgments of the European Court of Human Rights

Since 2022 the European Commission analyses the overall non-implementation of the European Court of Human Rights ("ECtHR") judgments in the RoL Report. The CCBE has been regularly providing its input in the ongoing process to improve the efficiency of the ECtHR, including several proposals to

address the increasing backlog of cases. The CCBE considers in this regard that lawyers and Bars and Law Societies need a clearer opportunity to be heard and to contribute to addressing the backlog of pending cases, both at the level of the Court and at the level of the execution of the Court's judgments.

In that context, in addition to its proposals on reform of the ECHR machinery adopted in 2019 and 2021, the CCBE published a [Statement on the declaration made at the 4<sup>th</sup> Council of Europe Summit on recommitting to the Convention System as the cornerstone of the Council of Europe's protection of human rights](#) and welcomed the commitments undertaken by Member States at the 4<sup>th</sup> Council of Europe Summit in relation to the Convention system and declared itself ready to work together with the relevant bodies of the Council of Europe to address the Court's backlog and to achieve the more effective implementation of the Court's judgments.

## 4<sup>th</sup> Council of Europe Summit

In view of the 4<sup>th</sup> Council of Europe Summit that took place in Reykjavík in May 2023, the CCBE submitted its [Response to the open call](#) where the CCBE notably addressed the issue of how the Council of Europe can create a framework for efficient action on current and future challenges, including on the rule of law, the protection of lawyers, human rights, procedural safeguards, migration, digitalisation of justice and AI, as well as the environment and climate change.

## Legal aid

In 2023, among other issues, the CCBE finalised its work of the update of the [CCBE Recommendations on legal aid](#) setting out a number of guiding principles for the proper delivery of legal aid, which is an essential tool for ensuring access to justice. As legal aid is a fundamental tool for safeguarding access to justice, the CCBE stressed that governments must guarantee that legal aid systems are practical, flexible and effective, and that adequate funding for legal aid is in place. The CCBE highlighted that legal aid should be available at the earliest stage possible and regularly evaluated, taking into consideration new developments and needs.

## Anti-money laundering (AML)

Since 2021, the CCBE has been monitoring the progress on the AML package. In 2023, the CCBE reiterated its concerns from its 2021 position paper regarding risks of undue influence from the Anti-money laundering authority (AMLA) and national supervisors, hence potentially hindering the independence of bars and lawyers. In addition, the CCBE has been actively engaging with legislators in regard to the European Parliament proposals concerning the AML Regulation that would limit the confidentiality of lawyer-client communications as protected by the principle of professional secrecy (also known as legal professional privilege (LPP)). The CCBE found these proposals particularly concerning and has contacted the legislators on these topics on several occasions.

The CCBE has also analysed the 3<sup>rd</sup> European Commission Supranational Risk Assessment and [published comments](#) addressing some of the conclusions regarding lawyers. The CCBE considers that in the Commission document, there appears to be a misunderstanding regarding the application of professional secrecy/LPP in the field of AML/CFT. The CCBE provided comments in order to clarify principles governing the application of LPP. The CCBE also recalls that the oversight of self-regulatory bodies by public authorities might pose risks to the independence of Bars and that it should be accompanied with proper safeguards.

## Sanctions

The CCBE has been following discussions regarding a Commission [proposal](#) on the “Definition of criminal offences for the violation of sanctions”. The proposal aims to harmonise the relevant criminal offences related to the violation of sanctions and penalties for those offences across the EU and make it easier to investigate and prosecute such violations in all Member States in the same way. The CCBE appreciated the Commission’s effort to harmonise criminal offences and penalties, while stressing the need to ensure that certain provisions of the proposal do not impact on professional secrecy/LPP.

## Tax

In 2023, the CCBE analysed the proposal of the Commission for a Directive regarding VAT rules for the digital age and its potential impact on professional secrecy. In [its position paper](#), the CCBE sets out possible problems that the introduction of e-reporting and e-invoicing could create for lawyers, recalling that in principle, the identity of the client and the lawyer and the existence of their relationship are covered by professional secrecy and that lawyers cannot disclose in detail what type of services they provide to their clients.

Moreover, the CCBE has been closely monitoring the implementation of DAC6 in various Member States and the amendment of DAC following the ruling of the Court of Justice of the EU of 8 December 2023 (Case C-694/20) whereby the Court declared that the obligation for a lawyer to inform other intermediaries involved is not necessary and infringes the right to respect for communications with his or her client.

The CCBE has also monitored the pending Case C-432/23 in which the main question is whether legal advice provided by a lawyer on matters of company law – in this case on setting up a corporate investment structure – falls within the scope of the strengthened protection of exchanges between lawyers and their clients afforded by Article 7 of the Charter. In a document supporting written observations of the Luxembourg Bar, the CCBE recalled that there is no doubt that the principle of professional secrecy/LPP is protected in the exercise of legal defence by Article 6 of the European Convention on Human Rights and Article 47 of the Charter and, in the exercise of his or her activity as an adviser, even if it is not related to any litigation, by Article 8 of the Convention and Article 7 of the Charter.

## Surveillance of lawyers – Pegasus inquiry

In June 2023, the European Parliament adopted [recommendations](#) following the Pegasus inquiry. Importantly, the recommendations condemned the use of spyware leading to, among other things, undermining the rule of law by targeting judges, prosecutors and lawyers for political purposes. The CCBE supported the Rapporteur regarding the need to adopt common EU standards regulating the use of spyware as well as a common definition of national security.<sup>2</sup>

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<sup>2</sup> See also [CCBE recommendations on the protection of client confidentiality within the context of surveillance activities \(2016\)](#), and [CCBE Recommendations on the protection of fundamental rights in the context of "national security" \(2019\)](#).

## The use of AI in the justice system

In May 2023, the CCBE adopted a [statement on the use of AI in the justice system and law enforcement](#) in which it recognised its benefits but stressed that any use of AI tools must be carefully considered in light of the risks of their use and their impact on human rights and the rule of law. The statement also stressed the need for such tools to take into account the specificities of the justice system and law enforcement. This matter was also addressed with different stakeholders during the discussions on the AI regulation.

## Migration

In 2023, the CCBE continued to follow closely the work of legislators on the New Pact on Migration and Asylum. In its numerous contacts with legislators, the CCBE has in particular stressed the necessity to secure provisions in the future Asylum Procedure Regulation and the Screening Regulation that will ensure effective legal assistance for migrants.

The CCBE has also expressed, in its [position regarding the proposal for an Instrumentalisation Regulation](#), its general concerns about derogations that this proposal would allow, as well as formulated suggestions for specific provisions with regard to the issue of access to justice and access to a lawyer. At the end of 2023, the CCBE reiterated these views with regard to the potential merger of the Instrumentalisation Regulation into the Crisis Regulation.

In July 2023, the CCBE published [a statement following the shipwreck off Pylos regarding unacceptable practices at EU borders](#). The CCBE expressed its concerns about a series of recent developments that would mark a new threshold in unacceptable practices at the EU external borders that are characterised by their non-conformity with the EU and international fundamental rights framework. The CCBE called on the Member States to stop the dangerous tendency of developing practices at the EU external borders that lead to fundamental rights violations and put the lives of migrants at risk and urged Member States to respect the right to asylum.

## Main conclusions from the input received from CCBE members

According to the responses received by the CCBE, all national Bars are independent from the executive or other state authorities in the EU Member States.

However, as indicated below, the CCBE has been informed about some cases in certain countries which may pose a risk to the independence of the legal profession and functioning of the justice system. The annex to this paper includes the contributions received from the national Bars and Law Societies of 25 Member States on the relevant rule of law developments in concrete Member States, with a particular focus on developments that undermine the independence of lawyers and Bars, access to justice, quality of justice, fundamental freedoms, democracy and the rule of law. Several national Bars have also provided information and examples referring to broader elements. Therefore, the relevant parts of the annex should be consulted.



As indicated above, the confidentiality of lawyer-client communications is protected by the principle of professional secrecy (also known as legal professional privilege). According to the answers received from national Bars in January 2024, over half of the Bars have not recorded any cases undermining or not respecting the principle of professional secrecy/LPP. As such, no references were made to concrete instances including the search and seizure of electronic data held by the lawyer, interception of lawyer-client communications, the surveillance and searches of the premises of the lawyer, unjustified administrative checks, or general challenges faced by the Bar in addressing instances of breaches of confidentiality of lawyer-client communications.

Notably, several Bars have informed about upward trends regarding the overall development of protecting the confidentiality of lawyer-client communications. The Polish Bar Council, for example, provided statistical data which indicates slowly declining levels of violations of professional secrecy-LPP, highlighting that while there were still 125 cases reported in the first three quarters of 2021, there were 111 cases reported in 2022, and only 88 cases in 2023. The Czech Bar informed about the draft Amendment of the Act on the Legal Profession currently in the legislative process which broadens the protection of confidential information as such additionally to the confidentiality obligation of the lawyer. Furthermore, the Slovak Bar informed about a favourable legislative amendment to the Criminal Procedure Code, which introduces rules to protect the confidentiality of client-lawyer communications during inspections of a lawyer's premises, stating that its implementation would reinforce people's fundamental rights and the protection of the rule of law.

However, most national Bars have provided some relevant information on developments and indicated some cases and developments which may pose a risk to the independence of the legal profession and functioning of the justice system in certain Member States. For example, the Lithuanian Bar highlighted various developments which show a potential decline in the guarantee of client-lawyer confidentiality relating to covert investigative actions, broad seizures of data and documents, as well as the interception of lawyer-client communications being continuously implemented in all police detention facilities. The French Bar also criticised the legal reduction of the scope of protection of confidentiality, especially related to the rights of defence. Similarly, the Dutch Bar also noted the working method used by the Public Prosecution Service during an investigation, underlining that the screening, assessment and destruction of confidential information is a reality. The German Delegation reported that public prosecutors were increasingly ordering the inspection of privileged (and marked) defence correspondence, although both the order itself and the subsequent actual review are inadmissible under German Law. According to the information received, a common denominator in raising concerns about the scope of protection is the introduction of anti-money laundering laws in several countries (for example in Cyprus, the Netherlands and Slovenia). The Czech Bar informed about the permitted contact of a lawyer with a witness as a reason for detention for the accused client of the lawyer, proven leaks of information from the non-public part of the criminal proceedings, from which lawyers were purposefully (untruthfully) accused, which then damages the legal profession in general.

Looking at specific cases, most instances and violations of the principle of confidentiality of lawyer-client communications seemingly present examples of search and seizure of electronic data held by the lawyer, as well as interceptions of lawyer-client communications (for example in Hungary, Luxembourg, Slovakia and Portugal).

## Physical, online or legal threats or harassment of lawyers

Several national Bars, following their national surveys among lawyers, have reported cases and examples of physical, online or legal threats, as well as harassment and unjustified attacks made against lawyers while they were exercising their professional duties.

According to the survey carried out by the Order of Flemish Bars (OVb) of Belgium, 81% of lawyers participating in an online survey have experienced some form of aggression over the past two years with almost one in five respondents dealing with physical aggression. Surveys conducted by national Bars in Poland and Slovakia revealed that around half of the respondents believe that threats, harassment and aggression against lawyers had intensified over the last five years. Results of the surveys show that respondents experienced various forms of harassment and threats, including verbal aggression, threatening behaviour or physical harm.

At the same time, a majority of Bars disclosed no specific occurrences or information relating to attacks against lawyers and Bars or have explicitly mentioned that the national bar had not been aware of such cases or examples of physical, online or legal threats or harassment of lawyers in their countries. In some cases a lack of data could be explained by still ongoing surveys at national level.

In addition, Belgium, France and Poland disclosed specific cases and examples in their reports. According to the information received, some lawyers have experienced some forms of harassment and threats, including verbal aggression, pressuring, provoking, stalking, and blackmailing (for example in Denmark, Estonia, Ireland, Poland). A few national Bars reported on cases of violence and physical harm, including kidnapping and beatings, and in most severe cases even death (for example, in Belgium, France, Ireland, Poland).

Both the French and Croatian Bars further informed about instances of cyber-attacks targeting lawyers and law firms for reasons of profit, espionage and destabilisation operations. Belgium additionally highlighted the increased pressure from the public prosecution and investigating judges experienced by lawyers.

The CCBE was informed that in Luxembourg, a lawyer was criminally convicted for *outrage à magistrat* (contempt of court / insulting a judge) in relation to an e-mail he sent in a professional capacity to two government ministers and the General State Prosecutor. The lawyer in question has filed an application with the European Court of Human Rights alleging a violation of his rights under Article 10 (free speech). The Luxembourg Bar Association and the CCBE each applied for permission to file written observations to the court. Permission was granted in both cases. The case is currently pending.

In addition, several national Bars informed about preventative measures taken to enable lawyers to do their work in a safe environment and without fear (for example in Belgium, Denmark, Netherlands, Sweden). Reported measures include, for example, legal amendments to the Criminal Code, resilience training (physically and online), research studies into the safety of lawyers, emergency telephone services, free identification of physical vulnerabilities, reducing findability of information in public registers, as well as mental health care.

## Legal provisions and policies in the relevant Member States which could negatively influence the independence of the Bar and lawyers

With references to the reports received from national Bars, a majority of countries have not reported any specific legal provisions or policies, currently being drafted or adopted, which could negatively



influence the independence of the Bar and lawyers especially regarding the profession's self-regulation or disciplinary procedures.

Several national Bars, however, did report on legal developments that could potentially impact the independence of the legal profession. The Belgian and Cypriot Bars equally raised concerns about the draft implementation of AML legislation which could impact both the independence of the Bar as well as the lawyer-client confidentiality. Similarly, the Finnish Bar reported about the recent enforcement of the Finnish Act on a Transparency Register, noting that the reporting requirements under this new legislation could potentially threaten legal professional secrecy as lawyers are required to reveal the existence of their client relationships without needing consent from their client. The Portuguese Bar informed that the President of the Republic had vetoed the amendments made to the Legal Acts Regime and to the Statute of the Bar, however, the Portuguese Parliament ignored the veto and confirmed these amendments. Both have been published on 19 January 2024.

A number of national Bars have further drawn attention to issues relating to self-regulation and court interference (for example, in Estonia, Lithuania, Slovenia and Sweden). The Lithuanian Bar reported on its obligations by the Law on the Bar to coordinate procedures of examination of disciplinary actions against lawyers with the Ministry of Justice, underlining the disproportionate influence of the Minister of Justice in the disciplinary procedure. According to the Swedish Bar, a similar suggestion was made by the minority government in Sweden, seeking to establish an external disciplinary supervision with state involvement. However, to date, no concrete legislative suggestions have been proposed.

The Slovenian Bar has also encountered interferences by the courts in the autonomy of disciplinary proceedings which are carried out by the Bar itself. In a similar manner, the Estonian Bar reported that the Circuit Court had handed down a decision ruling that the Bar itself cannot determine the evaluation methodology of the Bar exam and subsequently cancelled the examination procedure. According to the information received, on 16 January 2024, the Supreme Court decided to take the case into proceedings.

### Cooperation between the national Bar and the executive branch of the government and/or supervisory authorities, and cases of political pressure and interference regarding the role of the Bar or lawyers in the relevant Member State

According to the information received by the CCBE, the majority of the national Bars have not encountered specific problems in relation to the cooperation with the executive branch of the government and/or supervisory authorities, or made reference to cases of political pressure and interference.

However, several national Bars have reported on a variety of problems relating to examples including cumbersome conditions for involvement in the law-making process (for example, in Estonia and Poland), legal reforms without proper and informed consultations (for example, in Lithuania, Poland, Slovakia and Portugal), and the clarifications on the role of the Bar (Finland). The Slovenian Bar further reported on the ongoing conflict with the AML Authority (UPPDFT - Office for Money Laundering Prevention of the Republic of Slovenia) which they deem to be constitutionally controversial. The Czech Bar reported on the lack of resources in the judiciary in general, which also led to a reduction of awarded legal aid fees (non-systemic, decided by the courts themselves) and delays in payments of legal aid fees for months. Notably, efforts were made by national Bars to counter some of the pressures experienced. For example, the Danish Bar Council has requested a thorough investigation to be made into a recent case relating to the Danish Defence Intelligence Service (DDIS), which had sparked debates around rule of law principles. To further clarify the role and status of the Bar as an independent regulatory body founded by public law, the Finnish Bar and Slovak Bar have underlined their active

advocacy campaign for introducing legislative changes that would clearly state the scope of confidentiality of lawyer-client communications as well as secure the independence of the profession of lawyers on a constitutional level. Due to the efforts by the Lithuanian Bar to show the negative impact of a planned tax reform, part of the reform was halted.

## Implementation of the case law of national, European, and international courts

The great majority of national Bars have not reported on any problems or difficulties in their respective countries concerning the implementation of case law deriving from national, European, and international courts due to legal, administrative or procedural issues.

However, several Bars have flagged issues regarding non-implementation, especially in relation to ECHR case law (Belgium, Estonia, France and Poland). Regarding the reasons for non-implementation and lack of enforcement of the ECHR decisions, the Belgian Bar pointed to structural problems, general shortcomings which are insufficiently addressed, and the refusal by the competent Secretary of State to comply with and carry out court judgments. Similarly, the Finnish, French and Polish Bars indicated that the difficulties seem to lie with their respective governments refusing to comply with international obligations. The Polish Bar in particular stressed the role the Polish Constitutional Tribunal seemingly plays in evading the international law obligations of the Polish authorities related to the execution of judgments of international tribunals issued against the background of the rule of law crisis in Poland.

The Portuguese Bar criticised that amendments to the Statute and Legal Acts Regime are a clear violation of Directive (EU) 2018/958 which they attribute to a failure of adopting a proportionality test in the amendments. In terms of moving forward with implementation efforts, the German Bar underlined the importance to take further legislative steps specifically concerning the enforcement of administrative judgments against public authorities.

## Perception that the general public

The majority of national Bars did not report any significant developments capable of affecting the perception that the general public has of the independence of the judiciary and of lawyers.

In terms of positive developments, the Luxembourg Bar highlighted the enshrining of the independence of the Public Prosecutor's Office in the country's new Constitution applicable from 1 July 2023. As for developments swaying the public perception towards a more negative image of the independence of the judiciary and the independence of lawyers, national Bars have offered different reasons. For example, the French Bar flagged a couple of reasons explaining the change in public perception, specifically noting a growing public distrust of the judiciary due to relations between the police and the judiciary, the increasing remoteness and disembodiment of the justice system, as well as the perceived existence of the application of an exceptional jurisdiction in the Court of Justice of the Republic. For example, the national Bars of Bulgaria and Cyprus pointed to the establishment and changes in the status of the Supreme Judicial Council. The Danish Bar made reference to a draft proposal for anti-money laundering which envisions that self-regulatory bodies shall be subject to public supervision in the member states, worrying about the impact of publicly controlled supervision of the Bar Council in the form of "legal oversight".

Several Bars underscored their efforts to remain an active stakeholder in public debate as an attempt to address and to remedy such developments (for example in Croatia, Finland, Greece, Poland and Sweden). For example, the Finnish Bar has indicated that it remains vigilant in its pursuit to advocating for legislative changes where the scope of confidentiality of lawyer-client communications and the

position of independent supervisory body and profession of lawyer would be secured at constitutional level. The Latvian Bar informed about their media intervention before a court judgment enters into force, increasing visibility in individual cases.

### Training of lawyers as well as relevant initiatives of the Bar in this area

The vast majority of national Bars reported that training opportunities for justice professionals and lawyers in particular exist in their respective countries.

While some Bars have mandatory training obligations for lawyers and trainee lawyers (France, Germany and Hungary), others offer specialised training courses for specialised lawyers and those providing legal aid in special areas (for example in Estonia, Germany and Lithuania). They do so by means of established law academies (for example, in Croatia, Germany and Slovenia) and/or through training programmes offered by the Bars and lawyers associations themselves (for example, in Bulgaria, Cyprus, Czechia, Denmark, Estonia, France, Germany, Greece, Latvia, Lithuania, Poland and Slovakia). There are also other national as well as international initiatives aimed at prospective and young lawyers meant to strengthen the understanding of the law, democratic values and the role of lawyers such as the “Lawyers in schools” in Germany, for example.

In particular, the Latvian and Luxembourg Bars have disclosed plans to enhance training opportunities for lawyers, in Latvia by establishing a law academy, and in Luxembourg by enhancing the training of trainee lawyers and putting emphasis on legal and non-legal topics within the governmental initiative to reform access to the legal professions, respectively.

Finland and Portugal reported problems and challenges regarding the delivery of the training. The Portuguese Bar flagged that the proposed changes to the initial training programme would likely result in the discontinuation of traditional or sole practice mentoring.

### Legal aid

Several countries informed that access to legal aid and, explicitly, the adequate level of legal aid fees is still an important difficulty and several national Bars are addressing this issue on a permanent basis with their national governments. However, while in some countries this debate on legal aid fees is still ongoing, there are a few positive examples where legal aid fees have recently been raised, for example, in Belgium, Estonia, Ireland, Lithuania. In Bulgaria, for example, the circle of persons who may benefit from legal aid has expanded.

### Digitalisation

In addition, national Bars have reported about problems and challenges, as well as positive developments in the area of digitalisation of justice. While the Finnish Bar raised concerns about the unavailability of e-services and digital tools available to parties in judicial proceedings as well as a lack of access for lawyers in the judicial case management systems, the Austrian Bar referred to urgent concerns related to connections to the electronic filing systems as well as the need for a uniform and modernised regulation of electronic deliveries. The German Delegation reported that despite the funding deployed in the framework of the “*Digitalpakt*”, the federal government and also the federal states (“*Länder*”) have to provide further resources for the digitalisation of justice. The German

Delegation is also concerned that the draft law for a digital recording of the main hearings in criminal procedures might not be adopted (the draft law of the audio-visual recording unfortunately has already been narrowed down to an audio recording of the main hearing).

Difficulties with the implementation of the relevant legal frameworks and with the access to central databases of judgments, as well as e-justice systems for filing cases were signalled, for example, by Belgium and Denmark, Cyprus.

A majority of national Bars recognised that while there are some progress related to the digitalisation of justice systems in their countries, there are still a lot of difficulties and challenges related to the implementation of the relevant legal provisions, technical tools and digital solutions.

More detailed information on digitalisation aspects as well as views of national Bars on the efficiency of justice systems in their countries, as well as different aspects related to the work of the judiciary at national level is available in the Annex to this contribution.

# Annex

## AUSTRIA

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### General comments

The Austrian Bar (ÖRAK) pointed out that a large number of the EU Commission's legislative proposals during the survey period also affected core values of the rule of law, for example by jeopardising the independence of bars and by cutting back on the fundamental judicial right to the protection and preservation of LPP/PS.

The ÖRAK suggests to call on the Commission to pay more attention to rule of law aspects in its decision-making on new proposals. This is also a question of credibility vis-à-vis the Member States.

On national level there is an emerging trend that the unconstitutionality of some new laws seems to be accepted when making political decisions. Unconstitutional conditions are accepted and/or it is expected that the Constitutional Court's assessment will be made too late, so irreversible factual situations are created. Measures should be taken to ensure that concerns about fundamental rights and constitutional conformity are structurally considered during the legislative process.

### Follow-up on the recommendations received in the 2023 Report regarding the justice system

The Constitutional Court ruled in its decision of 14 December 2023 that the seizure of mobile data in criminal proceedings without prior judicial authorization is unconstitutional. Some of the considerations cited are in line with the criticism from the Zerbes/Ghazanfari report at the time. The Commission's previous Rule of Law Report unilaterally took up criticism from the prosecution authorities that the now confirmed need for fundamental rights safeguards when securing data/data carriers appeared to counter the prosecution authorities' need for efficient investigations. The judgment of the Constitutional Court shows that the Commission's position was premature and unfortunately one sided.<sup>1</sup>

### Appointment and selection of judges, prosecutors and court presidents

The post of President of the Federal Administrative Court has been vacant for months, which alone is a prominent example of a structural problem. Filling such a responsible position is essential for a functioning judiciary.

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<sup>1</sup> See footnote 107, Rule of law report 2023, country chapter Austria: "Another point that the WKStA referenced as potentially impacting their work relates to an ongoing public debate on the opportunity of reforming the seizure and evaluation of data for securing evidence, especially on corruption-related cases. The public debate started on the basis of a recent study by the Bar Association, with no concrete outcome so far on the legislative level. Prosecutors underlined the practical necessity in investigations to have access to digital data, especially in corruption-related cases, where very few witnesses and documents are available, and call for clear regulation allowing the seizure of relevant evidence. See Austrian Bar Association (2022), ÖRAK calls for far-reaching reforms in the safeguarding and evaluation of data and data carriers."

The ÖRAK specifically calls for the position of President of the Federal Administrative Court to be filled without delay. In general, it is necessary to fill key positions in the judiciary in the broader sense in a timely manner. In addition, measures must be taken to avoid the impression that appointments are based on mere political considerations in order to increase confidence in the rule of law.

## Quality of justice

### Accessibility of courts

Access to justice is not only defined by access to court, but also by access to legal advice, as the following examples show at very different levels:

On 14 December 2023, the Constitutional Court ruled that the independence of legal advice for asylum seekers and foreigners by the so-called Federal Support Agency (*Bundesbetreuungagentur*) is not sufficiently guaranteed by law. The corresponding provisions in the BBU-G and the BFA-VG are repealed as unconstitutional. On the one hand, it is positive from the ÖRAK's point of view that the Constitutional Court has now made such a clear statement, but the question arises as to why the criticism of constitutionality that had already been expressed previously was not taken into account when the law was adopted (the ÖRAK had made a critical contribution to a previous consultation on the EU Rule of Law Report).

The same applies to further proceedings before the Constitutional Court regarding legal aid in administrative court proceedings. Currently, the right to legal aid is made dependent on whether fundamental rights under Art. 6 ECHR or Art. 47 Charter of Fundamental Rights are the subject of the proceedings (the scope of both articles is interpreted narrowly in these circumstances). § Section 8a VwGVG therefore excludes the granting of legal aid for all other proceedings. The Constitutional Court provisionally assumed that the provision is unconstitutional in a recent decision. Even outside the scope of application of these fundamental rights (according to the previous narrow interpretation), there could be proceedings in individual cases in which legal aid must be granted to ensure effective access to legal protection. This could be the case, for example, if proceedings are very complex or the personal circumstances of the person concerned require assistance. The next step is to review the law.

In practice, there can also be insurmountable obstacles with regard to the right to legal advice. For example, the responsible officers at the Federal Office for Immigration and Asylum increasingly assumes that *written* powers of attorney are necessary for lawyers to represent persons in need. Furthermore, the officers assume that they are allowed to decide whether or not a lawyer may be present when their client is questioned. This potentially excludes people already at an early stage from legal advice, meaning advice that would make them understand whether and how they can assert their rights through administrative channels or in court.

## Resources of the judiciary as well as any efforts of the government or judiciary to address the relevant challenges

The ÖRAK repeatedly hears criticism from individual lawyers regarding personnel planning at individual courts and the lack of permanent posts for judges.

As in the past, the ÖRAK demands that courts be staffed in such a way that provision is made for medium or even long-term vacancies so that no de facto "interruption" of proceedings can occur for months on end.



## Digitalisation

It is an urgent concern of the ÖRAK to also connect the LVwGs and the BFG to the electronic filing system (ERV). The ERV has been established in Austria for years and functions perfectly to the satisfaction of all parties involved.

Another curiosity that leads to confusion in practice and referrals to the highest courts is the different triggering of time limits depending on the type of service (ERV or other digital service.)

A uniform and modernised regulation of the relevant delivery times for electronic deliveries is urgently needed in order to create the legal certainty necessary for a state governed by the rule of law.

## Publication of last-instance decisions in the RIS databank

In addition to decisions by the Supreme Court, decisions by the higher regional courts, the regional courts and the district courts should also be available in the federal legal information system. However, research by the ÖRAK revealed that the option of anonymised publication is very rarely used.

It should be noted that courts already have unilateral access to such decisions and cite them in their decisions. This means that the parties cannot argue with the respective case law from the outset (and corresponding advice to clients is excluded), the decisions cannot be reviewed or cannot be reviewed promptly, as researching the decisions takes time and costs money, and ultimately this also prevents appeals from being lodged. Under certain circumstances, there is even a lack of equality of arms between the parties involved, as lawyers who have already been confronted with one or another of such unpublished decisions in similar cases have an advantage in their arguments.

## Other institutional issues linked to checks and balances

### Minimum standards for legislative procedures

In recent years, the quality of the legislative process has repeatedly been sobering. Legislative review procedures occasionally meet the minimum deadline of six weeks recommended by the Federal Chancellery (BKA), however, there are still significant underruns. For example, the review period for the 2nd Finance Organisation Reform Act and the federal law amending the AMA Act was only one week. The federal law amending the Narcotic Substances Act was only given 11 days for review. The 55-page Minimum Taxation Act was only given 2.5 weeks for review.

The ÖRAK continues to call for the introduction of binding minimum standards for the legislative process:

- Sufficient review periods are necessary for a conscientious examination of draft legislation.
- Only after a verifiable and comprehensive review should government bills be submitted to the National Council by the Council of Ministers and laws ultimately passed by the National Council.
- In case of serious changes to draft legislation, there should be a new review process.
- Furthermore, in a constitutional state, laws must be promulgated in good time.

## BELGIUM

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

#### **Violence and aggression against lawyers**

In October 2023, Flemish lawyer Claudia Van Der Stichelen (58) was shot dead in the garden in front of her home. Although the investigation is still ongoing, and it is not yet certain what the motive of the killer was, the public prosecutor's office declared it assumes it was an act of revenge against her because of her work as a lawyer.

In general, there is an increasing fear that lawyers are being threatened, blackmailed and pressured by criminal organisations, more specifically related to drug trafficking.

Additionally, a recent survey on aggression towards lawyers shows problematic results: 81% of the participating lawyers have experienced some form of aggression over the past 2 years and almost 1 in 5 respondents has had to deal at least once with physical aggression. Almost half of them has considered leaving the profession because of it and 62% has indicated that it affects them and/or their professional practice.

Backed by these figures, OVB has successfully requested an amendment to the newly proposed Criminal Code to include lawyers in the list of persons with a societal function. Consequently, violence against lawyers will be punished more severely.

Since this year, OVB organises resilience training to prepare and give tips to lawyers for when they face aggression. OVB also works with (teams of) confidants which lawyers can contact to have a talk about their problems.

#### **Pressure from the prosecution**

Several penal lawyers have reported increasing pressure from the public prosecution and investigating judges, identifying lawyers with their clients, interrogating them accordingly, suggesting alleged involvement with their clients' practices. This has a severe impact on the independence and confidentiality of the profession and the manner in which lawyers may defend their clients.

An example is the case of Dutch lawyer Yehudi Moszkowicz, who was arrested in Belgium and brought before the investigative judge for alleged participation in the criminal organisation in which his client is allegedly involved. The arrest took place during a consultation with his client in prison, raising serious concerns regarding the confidentiality of the lawyer-client relationship. The investigative judge released Mr. Moszkowicz the next day, but was pressured to withdraw from further representing his client.

### Specific legal provisions and policies which could negatively influence the independence of the Bar and lawyers

#### **Supervising public authority on AML**

Belgium is generally not known for its timely implementation of European directives. Therefore, it was

quite surprising to learn that the General Administration of the Treasury has drafted a text to implement, amongst others, article 38 of the *'proposal for a directive of the European Parliament and of the Council on the mechanisms to be put in place by the Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849'*, which obligates member states to appoint a public authority to supervise self-regulatory bodies, even though the directive is – at the time of writing – still the subject of triologue discussions between the Council, the European Parliament and the Commission.

Even worse is that the draft text suffers from severe symptoms of “gold-plating” which negatively impacts the independence of the Bar and of lawyers (and that of other legal professions as well, such as notaries). Even though article 38, §3 of the new directive proposed by the European Commission only requires of Member States to grant the supervising public authority “adequate powers to discharge its responsibilities”, the draft implementation text attributes the General Administration of the Treasury in its new capacity as supervisor of the self-regulating bodies (in the case of lawyers: the presidents of the local bar associations) with far reaching powers that stand at odds with the independence of the Bar and of lawyers. In particular, the General Administration of the Treasury can impose the administrative measures and sanctions listed in article 59, § 2 of the current AML-directive of 2015 on the self-regulating bodies in order to coerce them to implement the instructions of the General Administration. The Flemish bar association and the Association of French and German speaking bars have already voiced vehement criticism against this draft text.

#### **Control and possible sanctions for professional activities regarding amicable collection of consumer debts**

Following modifications to the Belgian Code of Economic Law, activities by lawyers in the context of amicable recovery of consumer debt will be subjected to control by the Federal Public Service Economy. Lawyers are in other words subjected to governmental inspection with regard to the substantive work they do in the context of their profession. Additionally, the new law includes lots of obligations that each actor performing an activity of amicable debt recovery has to comply with. This means that lawyers risk administrative or even penal sanctions and can personally be held criminally liable for performing their function as debt collector on behalf of their clients. This law impacts the freedom of the lawyer to freely practise his/her profession as well as his independency. OVB has lodged an appeal before the Constitutional Court.

#### **Implementation of the case law of national, European, and international courts due to legal, administrative, or procedural issues**

The Belgian state has been convicted by the ECtHR and national courts countless times with regard to overcrowded prisons and poor living conditions, internment, judicial backlog (e.g. ECtHR 5 September 2023, Van den Kerkhof v. Belgium) and the provision of shelter for asylum seekers (e.g. ECtHR 18 July 2023, Camara v. Belgium), yet no real implementation or progress has been made on these topics. Sometimes this is due to structural problems and shortcomings which are insufficiently addressed, but other times it is also the result of outspoken refusal by the competent Secretary of State to comply with and carry out court judgments.

At the end of the summer 2023, the Secretary of State for Asylum and Migration took the decision to exclude unaccompanied men for the reception system of asylum seekers, which is of course illegal. Such decision has been suspended as a matter of extreme urgency on 13 September 2023 by the Council of State which stated that (the law) provides that 'all' asylum seekers are entitled to reception (including housing and financial allowance) to enable them to live a life compatible with human dignity.

DG Human Rights and Rule of Law is aware of the serious implementation problems on these topics and the Committee of Ministers has held three separate meetings on them in the course of 2023. The Council of Europe has also published a report on Belgian prisons in which it states that the treatment of prisoners is inhumane and humiliating and that the focus should be on limiting the number of prisoners rather than increasing prison capacity. Despite all this, no real progress has been made so far.

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

Occasionally, politicians make inappropriate/populistic statements about court decisions and about the legitimate intervention of lawyers in court cases, especially cases that receive a lot of public attention, thus compromising the separation of powers.

## Appointment and selection of judges, prosecutors and court presidents

### Substitute judges

Lawyers are systematically asked to perform duties as substitute judges, often for long periods of time. This structural problem due to a lack of judges obscures the role of both actors and thereby also the different branches of the judicial system, especially for citizens.

### Appointment/promotion of judges

Since the beginning of this century, the appointment and promotion of judges and prosecutors have been at the discretion of the Superior Council for the Judiciary (HRJ/CSJ). The council is staffed by magistrates, academics and lawyers and was conceived as a safeguard against the political appointments of the past. However, it is increasingly observed that in its nomination policy, the Council seems to have traded political appointments for cronyism. Certain people say it is no longer important to belong to the right political party, but rather to know the right people.

The oral part of both the examinations and the assessment of candidatures are moments of choice where arbitrariness seems to rear its head.

The technique of not nominating any candidate for a particular vacancy, even though several candidates meet all the formal requirements, raises serious suspicions about ulterior motives.

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

Hardly any disciplinary cases are lodged against judges and prosecutors. The complainant and the public do not have insight in the handling of these cases either.

## Independence/autonomy of the prosecution service

The prosecution plays a threefold role in proceedings concerning the order of payments in criminal cases: they set the prosecution policy, operate as a 'first judge' because they decide that there is an offence and act as an executor by creating the executory title itself.

Socio-economic disadvantaged people do not always understand the potential legal scope of a letter from the public prosecutor that may result in an enforceable title. Moreover, even if socially vulnerable people have legitimate reasons to challenge the order to pay, they will quickly be tempted not to pursue a legal remedy because of a cost-benefit analysis. In their correspondence, the public prosecution has even been known to threaten citizens: the longer one waits to pay, the higher the fine. Another barrier to asserting his/her rights.

Moreover, it is not insignificant that the Public Prosecutor's Office does not write to the person concerned in the language the person can speak. Thus, many do not even understand the content of the letter containing the order to pay. The right to interpretation is acquired only after an appeal is lodged.

Finally, the public prosecutor regularly abuses the payment order. Lawyers have indicated that there are regularly cases where the person concerned was able to prove beyond doubt that he/she did not commit the offence but where the Public Prosecutor issued an order to pay anyway. Then when an appeal is lodged with the Police Court, the prosecution suddenly no longer insists.

If the prosecution can no longer issue an order to pay as soon as there is a dispute, this would already make a big difference. Moreover, the payment order should be accompanied by a copy of the entire file of the public prosecutor's office: after all, how else can a decision on a possible appeal be made in full knowledge of the facts?

### Accessibility of courts

The length of proceedings can put people off to actually try and enforce their rights before the court, thereby affecting the accessibility of justice.

Maximum income limits for legal aid have been raised by 100€ in 2023.

Despite thorough controls by the Bars are in place to verify the professional activities of pro Deo lawyers, their remuneration takes a very long time (up to 1,5 years). While legislative changes to the legal aid system are coming (e.g. the value of one point for the performance of a pro Deo lawyer (approx. 90€) will be fixed by law), the speed and frequency of remuneration will still differ significantly from neighbouring countries (the Netherlands, France) and from other professions that are being paid back by the government in exchange for their professional services.

Both lawyers and magistrates are complaining about the transport of prisoners to court. These problems sometimes even lead to the decision to organise the court hearing without the detainee, which is in violation of the European Convention of Human Rights. Current solutions are however equally problematic: postponing the case ought to be avoided considering the already lengthy proceedings and holding court hearings in prison is reprehensible. Despite longstanding criticism by OVB and other actors on the terrain, the government has continued for years to build courtrooms in new prisons. This entails a significant risk for the presumption of innocence. Justice should be spoken in a courtroom, not a prison. More efforts should be taken to have prisoner transports adequately organised.

### Resources of the judiciary as well as any efforts of the government or judiciary to address the relevant challenges

Although the budget for the justice department has increased significantly in recent years, there still

seems to be insufficient funds for modern informatics, courthouses, sufficiently humane prisons, and enough magistrates.

The Belgian State's policy is to delay the recruitment of magistrates and court clerks to make savings. This practice has reached such proportions that the French and German speaking bar association took legal action. In a judgment of 6 November 2023, the Court of Appeal of Brussels condemned the Belgian State to publish all the vacancies of magistrate and court clerk positions as well as the calls for applications, within a period of three months, subject to a penalty of 1,000 euros per day of delay for each unpublished position, up to a maximum of 250,000. This decision confirms the judgment of 13 March 2020.

This shortage of staff is one of the causes of major delays in the handling of cases for which Belgium was convicted by the ECtHR (see above).

## Digitalisation

The Law of 16 October 2022 provides the legal framework for the creation of a central database of judgments and decisions, rendered by the ordinary courts. That central database is meant to provide citizens general access to practically all (pseudonymised) decisions of civil and criminal courts, thereby ensuring full disclosure of the way the law is interpreted by all Belgian jurisdictions (judgments of the Constitutional Court, the Council of State, the regional administrative courts and most of the judgments of the Court of Cassation are already publicly available for some time).

The central database would mark a turning point in the publication of judgments and decisions of the ordinary courts, as the wider public can only viably consult those by subscribing to expensive law journals. And even those journals only publish less than 1% of all judgments and decisions rendered each year.

However, besides the fact that the central database is still nowhere in sight, the Law of 16 October 2022 is also the source of widespread legal uncertainty, as its different but interdependent parts have entered or will enter into force in multiple stages, without proper 'attunement' to existing rules as regards the publicity of judgments and decisions.

Finally, the law makes a distinction in access levels to the database between lawyers and citizens on the one hand and magistrates, including the prosecution, on the other. This creates a structural inequality of arms.

## Use of assessment tools and standards

On 16 October, two Swedish football supporters were killed during a terrorist attack in Brussels. The subsequent investigation exposed problems with case management by the prosecution and FPS Justice. All information on the terrorist in question, who had been wanted for several years, was available, but lack of (adequate) communication had led to his dossier not being handled.

## Geographical distribution and number of courts/jurisdictions and their specialisation, in particular specific courts or chambers within courts to deal with fraud and corruption cases

There are no specific courts, but it should be noted that economic/white collar crimes are prosecuted only very occasionally. The prosecution service appears to be understaffed for these crimes, as precedence is always given to "*infractions de droit commun*".



## Efficiency of the justice system

### Length of proceedings

The length of proceedings has unfortunately been a recurring theme in our contributions for the report. The Brussels Court of Appeal remains the biggest problem (especially in fiscal matters).

This was once again confirmed when, in July this year, the ECtHR found the Belgian state to be (again) in violation of article 6 of the Convention for not providing the right to a fair trial within a reasonable time (Van den Kerkhof v. Belgium). The judicial backlog in the Brussels Court of Appeal reached headlines once more a couple of months later, when a lawyer was informed about the court date of his case in 2040.

### Additional information

As pointed out above, Belgium has been convicted countless times regarding problems with imprisonment and internment.

Despite the opening of two new prisons in 2023, problems with overpopulation have only increased, e.g.:

- The overpopulation is almost 13%
- 175 prisoners have to sleep on the ground
- In Gent, 150 prisoners are sleeping with three persons in a single person cell
- two written off old prisons had to be re-opened

The number of internees in (inadequately equipped) prisons is almost a thousand, more than double compared to a couple of years ago. Additionally, there is a substantial shortage of psychiatrists to assess the mental state and capacity of the person involved, a necessary requirement for internment. More resources are necessary to address this problem.

## BULGARIA

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### Measures taken to follow-up on the recommendations received in the 2023 Report regarding the justice system

On 22- December 2023 the National Assembly of Bulgaria adopted a Law on Amendments and Supplements of the Constitution, according which there are significant changes in the status of the Supreme Judicial Council and the Prosecutor General.

### Independence of the Bar and lawyers

The Bulgarian Bar did not report about any cases breaching confidentiality of lawyer-client communications nor threats or harassment of lawyers.

### Appointment and selection of judges, prosecutors and court presidents

Appointment and selection of judges and Presidents of the Supreme Courts (of Cassation and Administrative) will be done by new Supreme Judicial Council among the members of which there will be no longer prosecutors.

### Irremovability of judges, including transfers, dismissal and retirement regime of judges, court presidents and prosecutors

Irremovability of judges, including transfers, (incl. as part of judicial map reform), dismissal and retirement regime of judges and court presidents will be done by the new Supreme Judicial Council among the members of which there will be no longer prosecutors.

### Promotion of judges and prosecutors

Promotion of judges will be done by the new Supreme Judicial Council among the members of which there will be no longer prosecutors.

### Allocation of cases in courts

No changes

### Independence and powers of the body tasked with safeguarding the independence of the judiciary

There will be a Supreme Judicial Council consisting of 15 members and including the Presidents of the Supreme Court of Cassation and Supreme Administrative Court, who are its members according to the law, 8 members elected directly by the judges and 5 elected by the National Assembly.

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

No changes

## Remuneration/bonuses/rewards for judges and prosecutors, including observed changes

No changes

## Independence/autonomy of the prosecution service

A separate Supreme Prosecutors' Council is established. In the composition of the Council the prevailing quota will be 6 members elected by the National Assembly. The others are the Prosecutor General, who is an ex officio member, along with 2 members elected directly by the prosecutors and 1 of the investigators.

## Quality of justice

### Accessibility of courts

A positive example is the amendment of the Law on Legal Aid by expanding the circle of persons who benefit from it and the legal spheres to which it refers. A negative example is the continued restriction to lawyers' access to court buildings compared to other magistrates. Lawyers are subject to thorough check every time they enter the building.

## Training of justice professionals

Magistrates are trained by the National Institute of Justice and lawyers – from the Attorneys' Training centre to the Supreme Bar Council. The two training organisations invite speakers from all legal professions.

## Digitalisation

The digitalisation of the administration of Justice is still in its infancy. The Bar constantly invests resources and effort to do its part. The process continues.

## Geographical distribution and number of courts/jurisdictions and their specialization, in particular specific courts or chambers within courts to deal with fraud and corruption cases

No changes

## Efficiency of the justice system

### Length of proceedings

No changes

### Measures taken to follow up on the recommendations received in the 2023 Report regarding the justice system

The Governmental proposal for the amendment of the Act on the Public Prosecution was delivered to the Chamber of Deputies of the Parliament at the beginning of June 2023. The proposal is still in the Chamber of Deputies after the second reading and recommending position of the Committee on Constitutional and Legal Affairs. It should be debated in the Chamber again as of 16 January 2024.

The amendment to the Act on Public Prosecution in the Czech Republic brings several changes with the aim of strengthening the independence and transparency of the Public Prosecutor's Office.

Key aspects and discussions surrounding this amendment include: The draft amendment aims to increase the independence of the position, with a non-renew term of seven years. Criticism has been raised in connection with the fact that the amendment does not prohibit the appointment of persons with limited previous experience in the public prosecution system. The possibility of dismissing the Prosecutor General in disciplinary proceedings with clearly defined grounds for dismissal is intended to limit political influence and increase the transparency of decision-making. The introduction of competitions for other senior positions in the prosecution service is seen as a step towards increasing the objectivity and transparency of the appointment process. The draft amendment emphasises the professional knowledge, professional experience and moral qualities of chief public prosecutors, which should increase the quality of the performance of their functions. The need for strict independence of the Prosecutor General is stressed, in particular, because of his significant powers.

The current legislation has been criticised for reducing the independence of the Public Prosecutor's Office, and although the amendment brings some reforms, there are still concerns that it does not address the key issues of independence.

We described in detail the relevant parts of the functioning of the justice system in the Czech Republic in previous contributions, we refer to those contributions for the context, if necessary.

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

The Czech Bar Association is the largest self-governing professional legal organisation in the Czech Republic, established based on Section 40 of Act No. 85/1996 Coll., on the legal profession, as amended. The Bar provides both for the public administration of the legal profession and its self-government. In the latter area, the Bar is not subordinate to the State and is in no way financed by it. The performance of self-governing activities relates to the mandatory membership of all lawyers in the Czech Bar Association, disciplinary liability, supervision over compliance with ethical rules, issuing professional regulations, etc. The Bar's self-governing power is limited by the competence of the Minister of Justice, as defined in Sections 50 to 52c of the Legal Profession Act. According to these provisions, the Minister of Justice appoints members of the examination committee, issues decrees comprising the lawyers' disciplinary rules and lawyers' examination rules and is authorised to bring disciplinary lawsuits. The Minister of Justice also strives to ensure compliance with the professional regulations with the law and issues decrees regulating lawyers' fees. Individual lawyers are also independent in the provision of their legal services, as laid down by Section 3 of the Legal Profession Act, which further states that in the provision of legal services, a lawyer is bound by the laws and regulations and, within their limits, by the client's instructions.

This means independence of the State power, various bodies and anyone who might want to try and specify how the lawyer should provide their services.

### **Draft amendment to the Act on the Legal Profession currently in the legislative process**

The purpose of the entire amendment is primarily to specify the protection of the confidentiality of the relationship between the lawyer and the client; to enable part-time legal trainees to practice law; to extend the protection of attorneys against fraud; to ensure digitisation and access of attorneys to certain public administration systems; to allow the Chamber to act remotely; and to regulate the appointment of attorneys by the Czech Bar Association.

#### **Confidentiality Principle/Legal Professional Privilege**

The primary objective of the proposed regulation on the protection of confidentiality of information in the practice of law is the protection of the rights and legitimate interests of the client, not the protection of the lawyer. The attorney is an instrument of professional, statutory protection or enforcement of the rights and legitimate interests of the client, which the legislator provides with an increased level of protection, as it is based on the assumption that the client discloses to the attorney facts that have (or may have) an immediate impact on his/her rights and obligations, legal position, etc. The protection of the client therefore follows from the constitutional principles of the right to legal aid and access to justice, which is at the same time inseparably linked to the protection of confidentiality of information concerning the provision of legal services in a particular legal case by a given lawyer. The obligation of confidentiality of the lawyer and other persons under Section 21 of the Advocacy Act is in this respect only a manifestation (consequence) of the protection of confidentiality of information, directed precisely to the person of the lawyer and persons with whom he or she jointly provides legal services. However, the core of the protection is the information as such, by virtue of its confidentiality.

The protection of confidentiality of information under Section 3a of the draft Act on the Legal Profession is based on the analogous legal regulation contained in the Civil Code (Act No. 89/2012 Coll., as amended - hereinafter "Civil Code"). According to the cited provision, "if a party obtains confidential information or communication about the other party during the negotiation of a contract, it shall take care that it is not misused or that it is not disclosed without lawful reason. If he breaches this duty and is thereby enriched, he shall give to the other party what he has been enriched." The construction of the legal norm proposed in section 3a rests on the same conceptual basis, which is the intention of the legislator to ensure that certain specifically defined information must be treated under a special regime. Thus, a person who obtains such information cannot dispose of it arbitrarily, but in a qualified (i.e., statutorily prescribed) manner to prevent the misuse of the information (whether by that person or by a third party) or its disclosure (without a lawful reason). The specificity therefore lies in the nature of the information, similar to the case of trade secrets, where a qualified manner of dealing with the information is also prescribed by law, including penalties for violation of this regime.

#### **Amendment to the Lawyer's Tariff**

A revised draft amendment to the Lawyer's Tariff was prepared during the summer of 2023 by a working group of the Ministry of Justice and the Czech Bar Association. The draft was also discussed with representatives of the judiciary, who perceived the need to increase the remuneration and compensation of lawyers in connection with economic developments, also with regard to ensuring the availability of legal services in regions. Thanks to the amendment, hopefully, the lawyer's fees and compensation for the provision of legal services will be increased. The increase is intended to take into account, in particular, the inflation rate and the increase in costs since the last increase (the Tariff has not been indexed since

2006!). The increase in the lawyer's tariff is important not only for adequate remuneration of ex officio lawyers and appointed representatives but also for fair compensation of the costs of the proceedings to the successful parties. More information on the current situation is available here<sup>2</sup>.

### **Amendment to the Statutory Regulation on the conduct of lawyer's escrows**

Based on the embezzlement of lawyer's escrows by a lawyer who embezzled more than CZK 120 million (damaging 19 clients), the Czech Bar Association made another change in the regulation of lawyer's escrows.

In April, the Board of Directors of the CBA approved a conceptual material concerning the approach of the Bar to ensuring the increase of the credibility of lawyers' escrows and raising the standards of protection of client funds in the management of foreign property by lawyers. Based on this material, an amendment to the resolution on the custody of a client's money, securities or other property by a lawyer is being submitted, which, as part of the implementation of Phase I, obliges lawyers to inform their clients for whom custody of funds is being performed about the possibility of sending notifications by the bank performing the custody and to ensure that notifications are made by the relevant bank if a client so requests. The instruction obligation must be fulfilled by the lawyer in writing so that it can become part of the documentation of the services provided. If a client requests to be notified of account movements, the lawyer must arrange for the bank to send such notification, provided that the consent given may not be withdrawn subsequently.

The second step leading to increased transparency of the custody of money is the obligation of the lawyer to send the client's e-mail address to the electronic custody register maintained by the Chamber, to which the Chamber will send a confirmation of the notification of the establishment and termination of the custody in accordance with the relevant provisions of the resolution. However, the lawyer will only be obliged to do so if the client expressly wishes to do so.

### **Request sent to the Ministry of Justice to issue a methodology on the procedure of the courts in resolving conflict situations in the case of concurrence of several courts or other hearings with lawyers**

The Czech Bar Association was interested in negotiating with the Ministry of Justice the issuance of a methodological guideline that would recommend to courts of all levels a uniform procedure for preventing and resolving conflict situations in the case of concurrence of multiple court or other proceedings by lawyers while respecting the right to choose a lawyer and the right to legal aid. These cases happen quite often, sometimes even at the same court and the judges are not willing to adjourn the hearings even if there is justified reason. This matter has not yet been advanced in the negotiations with the Ministry.

### **The Constitutional Court's ruling on the lawyer's confidentiality obligation and the imposition of a fine by the courts**

On 21 November 2023 the Constitutional Court issued a very important decision for the legal profession, as it dealt with the duty of confidentiality and the imposition of fines on a lawyer who refused to testify (as a witness) about a client, citing the duty of confidentiality, claiming that she had doubts about the circumstances of the waiver of confidentiality. The Constitutional Court emphasised that maintaining confidentiality is not the RIGHT of an attorney, but his/her duty. The lawyer is obliged to comply with this

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<sup>2</sup> <https://advokatnidenik.cz/2023/10/02/novelizace-advokatniho-tarifu-z-pohledu-vopoza/> and <https://advokatnidenik.cz/2023/10/06/emeritni-predseda-cak-v-jirousek-nekolik-poznamek-k-novelizaci-advokatniho-tarifu/>



obligation even after he/she has been duly exempted from confidentiality in a situation where the lawyer considers that the client has done so under duress (Section 21(2) of the Advocacy Act).

The Constitutional Court considers the duty of confidentiality of a lawyer to be one of the important components of the guarantee of the constitutionally guaranteed fundamental human rights to judicial protection under Article 36(1) of the Charter and to legal aid under Article 37(2) of the Charter, which requires special protection. It is one of the pillars on which the relationship of trust between the lawyer and his client is built. The importance of that relationship of confidentiality in a democratic state governed by the rule of law is cardinal since it constitutes a prerequisite for the real fulfilment of the right to qualified legal assistance in any particular case. It was further stated that if the Presidents of the court's chamber consider that lawyers and prosecutors have committed acts otherwise punishable by a fine, they should refer them to the appropriate disciplinary authorities, i.e. in this case the Czech Bar Association.

### **Counselling body of the Czech Bar Association on infringement cases**

The Committee for Professional Assistance and Protection of Interests of Lawyers was constituted by the decision of the Board of Directors of the Czech Bar Association on 13 December 2005. The Committee follows cases of individual lawyers on systemic risks, individual excesses in the proceedings or cases endangering lawyers' integrity. The committee always reports on the cases from the previous year in spring. The report includes also recommendations. The Board of Directors of the Bar Association then adopts necessary measures. The reported cases from 2022 – 2023 (spring) included, for example:

- the permitted contact of a lawyer with a witness as a reason for detention for the accused client of the lawyer,
- proven leaks of information from the non-public part of the criminal proceedings, from which they are purposefully (untruthfully) accusing lawyers, which then damages the legal profession as a whole (trust in the legal profession) and the clients of the case,
- Refusal to adjourn court hearings (main trials) at the request of the defence counsel or representative of the injured party, which curtails clients' rights to representation,
- insufficient remuneration of lawyers appointed as ex officio defence counsel or guardians, the lawyer's tariff, which has not responded to the increase in the costs of the legal profession in the long term, has not yet been amended, and such inadequate remuneration is regularly arbitrarily reduced by the courts – which directly threatens the provision of legal services and is dangerous for the defence of clients and their right to a fair trial.

### **Appointment and selection of judges, prosecutors and court presidents**

Apart from the debated amendment to the Act on Public Prosecution Service mentioned above, there have been several changes introduced regarding the Act on Courts and Judges and the implementing regulation regarding the selection of judges.

Concretely, the draft amendment of Act amending Act No. 6/2002 Coll., on Courts, Judges, Associate Judges and the State Administration of Courts and on Amendments to Certain Other Acts (Act on Courts and Judges), prepared by the Ministry of Justice was sent to the legislative procedure on 13 December 2023. According to the Government, it is necessary to revise the legal regulation of the Institute of lay judges. The draft amendment pursues the need to meet the requirements of application practice to limit the participation of the lay element to the smallest possible number of cases, as well as the legitimate requirements of the international community and the public to maintain the participation of the lay element in the decision-making of courts in those cases where it is justified. The aim of the amendment to the Act on Courts and Judges and other related acts is to revise the legislation on the institute of lay

judges in labour and criminal court proceedings and to streamline the decision-making activities of courts. The relevant documents are available [here](#).<sup>3</sup>

On 30 June 2023, the decree of the Ministry of Justice on the professional judicial examination, the selection and training of judicial candidates, the selection of candidates for the position of judge, the selection of court presidents and the amendment to the Decree on the Rules of Procedure for District and Regional Courts was published in the Collection of Laws. This amendment then came into effect on 1 July 2023. The decree reacts to the criticism of the College of Presidents of Regional Courts which declared that "in practice, it has been confirmed that the new regulation in the Act on Courts and Judges, which has been in force for more than a year, has brought interpretation difficulties. The legal basis for entering the judiciary turned out to be nonsensical, lifeless, unnecessarily complicated, even cumbersome, and not leading to the proclaimed goal".<sup>4</sup>

The decree<sup>5</sup> introduces changes in the area of the professional judicial examination. It has been clarified that, in addition to completeness, the admissibility of the application is also assessed, and the conditions of the Board of Examiners' meetings are specified. The explicit mention of financial law in the list of areas of law, the knowledge of which is verified during the oral part of the professional judicial examination, has been removed. This does not mean that the examiners of the candidate cannot verify knowledge in this area of law.

In the area of the selection procedure for the position of judicial candidate and the training of judicial candidate, there are in particular adjustments in the area of the notice of competition; inadmissibility of the application; the requirements of the application and its assessment; the removal of a different level of difficulty for the test of application of the law compared to the selection procedure for the position of judge; refinement of the content of the interview and extension of the number of persons training judicial candidates.

Changes similar to those described above are enshrined in the selection procedures for the position of judicial candidate. These include changes in the area of the notice of announcement of the selection procedure, the inadmissibility of the application, the requirements of the application and its assessment, the removal of the different levels of difficulty of the test of application of law compared to the selection procedure for the position of judicial candidate, the provision of an exception to the repetition of the test of application of law, the modification of the rules for advancing to the oral part of the selection procedure, the specification of the content of the interview and the establishment of the rule of the so-called purse.

In the case of the selection of future court presidents, it is proposed to reflect the key changes in this type of selection procedure with regard to the concept of similar rules for the selection of future judges and the selection of court presidents.

### Irremovability of judges, including transfers, dismissal and retirement regime of judges, court presidents and prosecutors

No changes were further introduced in this regard. We refer to our previous contributions regarding the general rules and amendments which entered into effect in January 2022.

<sup>3</sup> <https://odok.cz/portal/veklep/material/ALBSCT8FY5AQ/>

<sup>4</sup> <https://www.ceska-justice.cz/2023/02/zpusob-vyberu-novych-soudcu-se-ukazal-jako-nesmyslny-a-tezkopadny-shodli-se-predsedom/>

<sup>5</sup> <https://www.zakonyprolidi.cz/cs/2021-516>

The Supreme Court adopted interesting resolution 21 Cdo 450/2023 on 28 August 2023<sup>6</sup>, regarding the nature of the function of the judge (public/labour law application) in case the judge does not want to retire at the end of the year when he/she is 70 years old. The Supreme Court reopened the proceedings.

### Promotion of judges and prosecutors

No changes were further introduced in this regard. We refer to our previous contributions regarding the general rules and amendments which entered into effect in January 2022.

### Allocation of cases in courts

No changes were further introduced in this regard. We refer to our previous contributions regarding the general rules and amendments which entered into effect in January 2022.

### Independence and powers of the body tasked with safeguarding the independence of the judiciary

We refer to our previous contributions, no development in this regard.

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

On 31 October 2023, the Ministry of Justice sent a draft Amendment to the Act No. 7/2002 Coll., on Proceedings in the Matters of Judges, Public Prosecutors and Bailiffs, as amended (the Disciplinary Code) to the Government. In addition to strengthening the responsibility of judges, public prosecutors and bailiffs, the Amendment to the Act on Proceedings in the Matters of Judges, Public Prosecutors and Bailiffs also aims to strengthen the right to a fair trial by introducing an instance review – an appeal. Furthermore, the aim is to increase the efficiency of disciplinary proceedings in matters of judges, public prosecutors and bailiffs.

According to available information, the disciplinary actions will be heard at first instance by the High Courts. The High Court in Prague will eventually have jurisdiction over lawsuits against judges from the Czech "judicial regions", while the Olomouc Court will have jurisdiction over the regions within its district. Cases involving judges would be decided by panels of seven judges, headed by a judge of the relevant High Court. The members should be judges of the Supreme Court ("SC") and the Supreme Administrative Court ("SAC"), representatives from the district or regional court in the district of the High Court and assessors from the ranks of public prosecutors, lawyers and other legal professionals. Disciplinary proceedings of public prosecutors would be chaired by a judge of the relevant High Court, judges of the Supreme Court and the Supreme Administrative Court, but the assessors would be three public prosecutors from district, regional and high public prosecutor's offices and a representative of lawyers. In the case of bailiffs, the members of the Chamber would again be three judges, and the assessors would be two bailiffs, a lawyer and a representative not nominated by the ombudsman.

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<sup>6</sup> <https://www.zakonyprolidi.cz/judikat/nscr/21-cdo-450-2023>

The appellate instance for judges of general courts (except judges of the Supreme Court) would be an eight-member Disciplinary Chamber attached to the Supreme Court. It would consist of six members from the ranks of judges (three from the Supreme Court, including the presiding judge, and three judges from the Supreme Administrative Court) and two assessors from the ranks of lawyers. In cases of judges of administrative divisions, the disciplinary panel would be decided by the same composition, but at the SAC and headed by a chairman from among the SAC judges. The SAC would also have disciplinary appeals chambers for disciplinary proceedings in matters of public prosecutors and bailiffs. These would again be made up of six judges from the two supreme courts. In the case of public prosecutors, the assessors would be two prosecutors of the Prosecutor General's Office and in the case of bailiffs, two assessors from among bailiffs. If more than one Disciplinary Board of Appeal is established, the agreement also provides for the establishment of a special Grand Disciplinary Chamber for unifying case law. The amendment should come into effect on 1 January 2025, and the provisions necessary for the creation of new Disciplinary Chambers should be effective from 1 July 2024.

### Remuneration/bonuses/rewards for judges and prosecutors, including observed changes, transparency on the system and access to the information

There was an increase in the remuneration of judges and prosecutors in 2023 after the freeze of salaries in 2021 and 2022. However, the consolidating package presented by the Government in 2023 counts with further savings. The salaries of representatives of state power are based on the so-called salary base. In the case of judges, the average gross monthly nominal wage per recalculated number of employees in the national economy is now always for the year before last and the statutory coefficient 3. The new coefficient is to be reduced to 2.82. The Ministry of Justice emphasised that the adjustment of the calculation of salaries will not mean a reduction in salaries and, on the other hand, they will not increase as much as they would under the current formula. In addition, the salary cuts will affect the entire public sector. The Governmental decision raised criticism in the judiciary. More information is available [here](#).<sup>7</sup>

### Independence/autonomy of the prosecution service

So far without changes. The key changes of the draft amendment to the Act on Public Prosecution, including the independence safeguards for the Prosecutor General are mentioned above.

### Accessibility of courts

#### **Appointment of lawyers by the Czech Bar Association**

The Constitutional Court ruled in the ruling Pl. ÚS 44/21 on the repeal of part of Section 18c of the Act on the Legal Profession, which regulates the appointment of lawyers by the Czech Bar Association to provide legal services to an applicant whose income and financial circumstances make it impossible for him to obtain legal services for a fee. The Constitutional Court stated that "the contested provision of the Act on the Legal Profession, by limiting the right to have the Bar Association appoint a lawyer to provide legal services only to applicants whose income and financial circumstances justify it, constitutes an impermissible arbitrariness, as it blanketly excludes from the right of access to court and the right to legal aid persons who cannot secure legal assistance from a lawyer on other grounds.

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<sup>7</sup> <https://www.ceska-justice.cz/2023/09/valkova-odmita-dalsi-zmrazeni-platu-soudcu-a-statnich-zastupcu-predlozila-pozmenovaci-navrh/>

For this reason, it is proposed in the draft amendment to the Act on the Legal Profession to divide the appointment of lawyers under Section 18c to provide legal services by the Czech Bar Association into two separate cases. The first one will cover the so-called free legal aid, i.e. the appointment of lawyers to applicants whose income and financial circumstances justify it, while the second one will deal with the issue of appointing lawyers to applicants who can pay the lawyer's fee themselves but are unable to obtain legal services themselves for other reasons. Free legal aid will retain the existing legal framework, i.e. the submission of applications on a form established by a Ministry of Justice decree, proof of indigence based on the applicant's income and financial circumstances, and payment of fees by the State in the case of representation in administrative proceedings and in the proceedings before the Constitutional Court. The newly conceived legal aid for applicants who will pay the lawyer's fees themselves will also be based on an application, the form of which will be formalised by a decree, which will need to be reflected in the form of a new form in Decree No. 120/2018 Coll.

## Resources of the judiciary

There were several discussions this year in media<sup>8</sup> regarding the lack of resources in justice area in general in 2023. Several courts reported in August, that they were running out of money - not only unable to pay experts or interpreters but also to pay ex officio representations (legal aid) and there was a risk that there would be no money left in the autumn to pay the salaries of judges. For example, the Příbram District Court reported that had seven Czech crowns on its account, similarly Prague-East District Court and many others throughout the country.

According to the available information this situation was caused by several aspects. Firstly, there was an increase in the remuneration of experts and interpreters, which the Ministry of Justice decided to do at the end of 2022 after their public complaints. Payments to bailiffs have also increased, among other things, due to the dismissal of a large number of banal executions. As in other sectors, the operating costs of the courts, such as payments for energy or postage, have increased (in the case of postage, it is an increase of up to a quarter of a million crowns per court).

The so-called ex officio lawyers assigned to some cases by law have not been reimbursed by the courts in full or at all for some time. In some places, defence attorneys were threatening the courts with execution. The financial situation is so alarming that even the judges in charge of the courts were calling for it.

The courts then received additional funding, in the amount of CZK 919 million, for the fees of ex officio lawyers, experts, interpreters and bailiffs. On 30 August, the government approved an increase in the budget of the Ministry of Justice, which also officially informed the President of the Czech Bar Association in a letter.

In December 2023, the Ministry of Justice announced another request for an extraordinary budget increase for the second time in 2023. This time, in the amount of more than CZK 500 million. In addition to the above-mentioned salaries of judges and prosecutors, according to the Ministry, there was not enough money for the salaries of civil servants of the Prison Service of the Czech Republic and the operating expenses of the courts.

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<sup>8</sup> For example, here:

<https://www.respekt.cz/newsletter/jen-at-na-nas-uvali-exekuci>;

[https://advokatnidenik.cz/2023/12/08/msp-zada-o-navyseni-rozpocetu-na-odmeny-pro-advokaty-soudy-penize-maji](https://advokatnidenik.cz/2023/12/08/msp-zada-o-navyseni-rozpocetu-na-odmeny-pro-advokaty-soudy-penize-maji/);

<https://www.ceska-justice.cz/2023/09/penize-pro-justicni-personal-stale-chybi-brzdi-se-i-jmenovani-soudcu-upozornuje-mistopredseda-n/>

## Training of justice professionals

There is no mandatory training for lawyers in the Czech Republic (unlike for trainee lawyers). Nevertheless, the Czech Bar Association has prepared an optional three-year educational programme for lawyers (Continuing lawyers' education), which started in 2019. A lawyer who earns at least 36 credits in the field of law, legal or related fields, lawyering skills or other areas over three years is eligible for a Czech Bar Association certificate of completion of continuing lawyers' education. A lawyer who has completed this programme and has been certified by the Bar has the right to inform the clients and the public of this fact and may use the advantages, discounts and other benefits provided or arranged by the Czech Bar Association in the following three-year cycle of continuing education programme.

The Bar offers most of the educational activities to trainee lawyers or qualified lawyers both online and offline. The Czech Bar Association has been also continuously involved in EU projects, mainly in cooperation with the CCBE and the European Lawyers Foundation.

### **Legal practice of part-time trainee lawyers**

As a part of the draft amendment to the Act on the Legal Profession, the Czech Bar Association is attempting to deal with parents of children through cases worthy of consideration regarding part-time trainee lawyers. The practice of a trainee lawyer can only be carried out if the weekly working time of 40 hours, currently. Pregnant employees, carers and those who can prove that they are caring for a dependent will be given an exemption. Therefore, it is proposed that in cases of special consideration, the requirement of a fixed weekly working time need not be complied with, and under the proposed amendment to Section 5, the length of the legal practice would be in such cases extended proportionately.

The Czech Bar Association also developed many other projects in cooperation with the Ministry for Education, for example, "Lawyers to Schools" or "Lawyers to Childcare Facilities". More information is available [here](#).<sup>9</sup>

## Digitalisation

We refer to our previous contributions in this regard. The development in general is very slow and lacks transparency and systemic involvement. The Czech Bar Association is actively involved in the digitalisation process whenever it is possible.

### **E-Legalization**

The draft amendment to the Act on the Legal Profession contains, among other things, a legislative solution to the attorney's declaration of the authenticity of the electronic signature. Together with the Ministry of Justice, the Ministry of the Interior and the Digital Information Agency, a solution is to be found that will allow attorneys to use the same tool that the Ministry of the Interior and the Digital Information Agency are preparing for eLegalization (i.e. official verification of electronic signature), namely through CzechPOINT. Once the legal framework is established in the Act on the Legal Profession, it may lead to the registration of the eLegalization agenda for lawyers in the basic registers and, subsequently, to the modification of CzechPOINT to include, in addition to the official verification of the electronic signature, the advocate's declaration of the authenticity of the electronic signature. The technical details will follow after the legislative changes.

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<sup>9</sup> <https://www.cak.cz/scripts/detail.php?id=27177>



The Ministry of Justice published a reaction to the criticism regarding the speed of digitalisation of justice in October 2023<sup>10</sup> stating that the digitalisation of justice is a priority of the current Government and the Ministry of Justice is working hard on the implementation of individual digitisation projects. The Ministry of Justice is still working to ensure the specific objectives set out in the original eJustice Strategy and the new strategic documents, for the period 2023-2028. The Ministry agrees with the fact that the Strategy for the Development of e-Justice 2016-2020 has been only partially fulfilled. However, it is necessary to take into account that this was a very "visionary" strategy and it was not entirely realistic to implement all of these projects in the given period, given the personnel capacities and financial resources available. The eSIR project, i.e. the construction of a new insolvency register, also includes a module for maintaining an electronic judicial file, the so-called eSpis. The Ministry considers this project to be a priority and an unavoidable goal for building a new justice. The Ministry does not deny the delays caused mainly by objective facts consisting of the complexity of the preparation of the technical assignment of the key information system. The project "Development and implementation of eSIR and its common parts" is currently under implementation and the Ministry of Justice, in cooperation with the contractor, is working on the completion of the project, or rather on the takeover and acceptance of the system, by the end of 2023. The actual deployment of the system at individual courts and its launch into routine operation is planned for the first half of 2024. This entire project is implemented and funded by the Integrated Regional Operational Programme.

The electronic system of law-making e-Legislative, which is currently under preparation will probably not be introduced all at once at the beginning of next year but will be gradually launched in a test operation. The changes are to be brought about by a bill amending certain acts in connection with the computerisation of selected agendas, which was approved by the Senate on Wednesday 8 November. According to the draft, the government should submit decrees and regulations electronically from 1 October 2024, while bills should not be in electronic form until the beginning of 2025. The regulation will now go to the President for signature.

## Use of assessment tools and standards

At its meeting held on 11 and 12 September 2023, the Board of Directors of the Czech Bar Association adopted the Opinion on the use of artificial intelligence (AI) in the provision of legal services. In the Opinion, the Bar in summary concludes that AI is a tool that a lawyer can use in connection with the provision of legal services by the law and professional regulations. However, AI in any form cannot be a provider of legal services within the meaning of Section 1 of the Act on the Legal Profession. If a lawyer uses AI as part of the provision of legal services, this does not affect their general legal liability as well as the lawyer's liability under the Act on the Legal Profession and Professional regulations. When using AI, the lawyer is obliged to fulfil all obligations imposed by the Act on the Legal Profession and professional regulations, in particular, they are obliged to protect the client's interests and comply with the legal duty of confidentiality of the advocate. The client's prior consent for the lawyer to process information or data provided by the client or containing information about clients or their cases (even if they are doing so only to 'learn' AI and thus improve its capabilities) must include an explicit statement that the client knows that AI can operate unpredictably, as well as explicit consent that AI can share this information (albeit anonymized) with unspecified similar systems. The Opinion is available [here](https://advokatnidenik.cz/2023/09/15/stanovisko-cak-k-vyuzivani-ai-pri-poskytovani-pravnich-sluzeb/).<sup>11</sup>

<sup>10</sup> <https://www.justice.cz/?clanek=reakce-ministerstva-spravedlnosti-na-clanek-idnes-digitalizace-justice-stoji-na-miste-statni-rozpocet-to-muze-stat-1-5-miliard-1>

<sup>11</sup> <https://advokatnidenik.cz/2023/09/15/stanovisko-cak-k-vyuzivani-ai-pri-poskytovani-pravnich-sluzeb/>.

## CROATIA

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### Independence of the Bar and lawyers

The Croatian Bar Association did not report about any cases breaching confidentiality of lawyer-client communications.

### Physical, online or legal threats or harassment of lawyers while exercising their professional duties, as well as unjustified attacks on the role of lawyers and Bars, including preventive measures taken by the Bar

The Croatian Bar Association noticed an increased number of hacker attacks targeting lawyers and law offices.

### Perception that the general public has of the independence of the judiciary and independence of lawyers

The Croatian Bar Association continuously act to increase the public perception of the independence of lawyers.

### Quality of justice

#### Accessibility of courts

The Croatian Bar Association continuously makes efforts aimed at positive development in the area of accessibility of courts, inter alia, through cooperation with the Ministry of Justice.

### Resources of the judiciary as well as any efforts of the government or judiciary to address the relevant challenges

In 2023 funds were invested in the improvement of the judiciary, and it is necessary to continue with the investments.

### Training of justice professionals

Positive developments in the area of training of lawyers and positive initiatives of the Croatian Bar Association in this area, are mainly manifested through the activities of the Lawyers Academy of the Croatian Bar Association.

### Digitalisation

Positive development in the area of digitalisation of justice is noticed and it should be further improved.

### Measures taken to follow-up on the recommendations received in the 2023 Report regarding the justice system

The Office of the Attorney-General is expressly considered under Article 112 of the Constitution to be independent. Furthermore, pursuant to Article 113 of the Constitution, the Attorney-General is the Legal Advisor and Advocate of the Government, representing the latter in judicial proceedings before the Courts. The President of the Republic of Cyprus appoints the Attorney General and the Deputy Attorney General who hold their respective offices until the age of 68 and are not removed from office except on like grounds and in the like manner as the Judges of the Supreme Court. There is currently no separate and independent Public Prosecution Service. Additionally, a draft Legislation is pending for discussion in the House of Representatives of the Republic of Cyprus, that being the Parliament of the Republic of Cyprus, regarding the independence and complete autonomy of the Office of the Attorney General (concerning relevant Statements of the Attorney General on the draft Legislation kindly see [here](#)<sup>12</sup>).

Additionally, the Independent Authority Against Corruption has been fully established at the end of 2022, and the Cyprus Bar Association (CBA) has been actively involved in the matter, either by commenting on the relevant legislation, or by participating in the parliamentary discussions for the matter. Additionally, CBA has created its own Sub-Committee for Anti-Corruption. With the Establishment and Operation of the Independent Authority Against Corruption Rules on 16 December 2022, the Authority can now perform its competences in a sufficient and significant way. CBA has also organised a major seminar on the matter, with the participation of stakeholders from all the State powers (legislative / executive / judicial).

Furthermore, a legislative proposal is pending at the Parliament, amending the Civil Procedure Law. The proposal aims to bring about changes regarding the measures for the enforcement of Court judgments, including but not limited to the enforcement against officials including the seizure of assets of officials. The CBA significantly participated in the drafting of this legislative proposal and is continuously discussing the matter with the Ministry of Justice in order for the legislative proposal to be submitted to Parliament for further actions.

As regards to the reform and modernisation of the law pertinent to the judicial system, the CBA is actively participating, either through the drafting of amendments to laws which are being forwarded to the relevant ministry (Ministry of Justice) or via the participation in the relevant parliamentary committees for several matters. Additionally, the CBA is constantly commenting on new Laws or amending acts that enter into the public consultation procedure.

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

#### Confidentiality of lawyer-client communications

Within the ambit of a meeting between the President of the Republic of Cyprus and the newly elected Chairman and Members of the Council of the Cyprus Bar Association, held at the Presidential Palace

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<sup>12</sup> <https://www.law.gov.cy/law/law.nsf/All/F6D131E3DD6D91DBC22589B300192062?OpenDocument>

on 16 November 2023, which had been subsequently reported in the Cyprus Press<sup>13</sup>, the President of the Republic of Cyprus noted the will of the Government for the enactment of legislation to establish a National Independent Supervisory Authority for Anti-Money Laundering and Sanctions' Supervision Purposes, which would directly supervise Advocates and Auditors. The Chairman of the Council of the Cyprus Bar Association explicitly noted, as also reported in the Cyprus Press, the firm position of the CBA, that the responsibility of the supervision of Advocates must remain with the Cyprus Bar Association, mainly due to the most important issues of Legal Professional Privilege and Client Confidentiality as enshrined in the judgments of the Court of Justice of the European Union (including the judgment dated 8 November 2022 in Case C-694/20) and the European Court of Human Rights (including the judgment dated 17 December 2020 in Case 459/18 SABER v. NORWAY), copies of which had been submitted before the President of the Republic of Cyprus during the said meeting, as well as in the Cypriot Advocates' Code of Conduct, which constitutes a Secondary Legislative Act pursuant to Advocates' Law Cap. 2.

Further, the Cyprus Bar Association took the following steps so as to protect the Application of the Legal Professional Privilege and Clients' Confidentiality Principle:

Firstly, an Announcement was issued on the Cyprus Bar Association website on 17 November 2023 within the ambit of the application of the Principle of Transparency informing Advocates and all the members of the public regarding the above-mentioned meeting with the President of the Republic dated 16 November 2023 and what had been stated during the said meeting.<sup>14</sup>

Secondly, a very detailed Letter with Recommendations and Appendices had been compiled by the Council of the Cyprus Bar Association and sent to the President of the Republic of Cyprus and the Parliamentary Committee on Legal Affairs on 13 December 2023 also dealing extensively with the subject matter of the need to protect the Application of the Legal Professional Privilege and Clients' Confidentiality Principle. A copy of the said bundle had been subsequently provided to the relevant Consulting Committee founded pursuant to the Republic of Cyprus Anti-Money Laundering Law.

Thirdly, a day conference will be organised by the Cyprus Bar Association during mid-January 2024 concerning the Court of Justice of the European Union case-law developments as to the Application of the Legal Professional Privilege and Clients' Confidentiality Principle, as well as to the impact of the above on the self-regulation of the legal profession.

### Legislation and policies which could negatively influence the independence of the Bar and independence of lawyers in the future

The Cyprus Bar Association is an independent and non-political body. Steps have been taken to enhance disciplinary mechanisms. Firstly, CBA's AML and KYC mechanisms via the establishment of the position of "Head of the AML Department" within the Cyprus Bar Association and further with the addition of new personnel enhancing the relevant department(s). Investigations have become more efficient as a result of the amendment of Advocates Law Cap. 2 recently, Section 16. The AML unit of the Bar Council is under constant training and enrichment with forensic fraud experts. Fines are on the increase and disciplinary proceedings strengthened. We have also enhanced our cooperation with all State Authorities related to the matter.

<sup>13</sup> <https://news.rik.cy/article/2023/11/16/sunantese-proedrou-khristodoulide-me-to-neo-sumboulia-tou-pagkupriou-dikegorikou-sullogou/> and <https://www.kathimerini.com.cy/gr/politiki/borkas-i-epopteia-ton-dikigoron-prepei-na-paramenei-ston-pds>

<sup>14</sup> <https://www.cyprusbarassociation.org/index.php/en/news/37770-anakoinose-pds-anaphorika-me-te-synantese-me-ton-proedro-tes-kypriakes-demokratias>

There are discussions regarding the establishment of a National Independent Supervisory Authority for Anti-Money Laundering and Sanctions' Supervision Purposes, by the Government, monitoring the organisations offering administrative services, as such are related to AML purposes. The Cyprus Bar association strongly disagreed with the plans of the Government, stating that the independence of the Bar is crucial and the attorney-client privilege is a principle that cannot be bypassed. However, there is no objection from the Cyprus Bar if this Authority will be of advisory / coordinating nature for the individual supervisory authorities and the Bar will retain its regulating/ supervising authorities vis-à-vis advocates and law firms.

### Implementation of the case law of national, European and international courts

The courts are implementing and following the case law. First instance courts are bound by the decisions of the Supreme Court and the Supreme Court is bound by the European courts. Administrative final Court decisions are not always complied with. After annulment, the Administration will find ways and means to come back with the same decision, although there is a strict provision in Law 158(I)/1999 (article 57) regulating the obligation of State Authorities to comply with Court Decisions. The Administrative Justice system is ultimately judged by the confidence of the Public in the Administration. There is room for improvement.

### Perception that the general public has of the independence of the judiciary

The establishment of a new Supreme Judicature Council, that includes the President of the Supreme Court as President, the judges of the Supreme Court as members. Additionally the Attorney-General, the President of the Cyprus Bar Association and two lawyers who have the credentials to be appointed as a judge of the Supreme Court are also members of the Council without the right to vote.

### Appointment and selection of judges, prosecutors and court presidents

Judges are appointed from the body of practising Advocates. The first appointment as District Judge requires 6 years of practising law as per section 6(1) Law 14/60.

For senior appointments to the position of Senior District Judge, President or Judges of the Supreme Court, steps have been taken to improve the system to enable senior advocates to fill such vacancies, by the amendment of Law 33/1964. The amendments have entered into force as of 1 July 2023. These amendments include the establishment of a new Supreme Judicature Council, that includes the President of the Supreme Court as President and the judges of the Supreme Court as members. Additionally, the Attorney-General, the President of the Cyprus Bar Association and two lawyers which have the credentials to be appointed as a judge of the Supreme Court are also members of the Council without the right to vote. Incentives must be provided to advocates to apply for the position of a judge.

In addition and pursuant to the new amendments to Law 33/1964, an Advisory Judicature Council for appointments of Judges to the Supreme Court and to the Supreme Constitutional Court, which will advise the President has been established as of 1 July 2023 and includes the President of the Supreme Court or the Supreme Constitutional Court (as the case may be) as President and the judges of the respective aforementioned Court as members. Additionally the Attorney-General, the President of the Cyprus Bar Association and two lawyers which have the credentials to be appointed as a judges of the Supreme Court will also be members of the Council without the right to vote. In the new legislation reference is made to the need to enrich the judiciary with experienced advocates at all levels. It is crucial for the Judiciary to open senior judicial appointments to experienced advocates. The decision for the participation of

non-judges without the right to vote in the aforementioned councils, was taken in order to further comply with the latest opinion of the Venice Commission, which also agreed with their participation in the Advisory Council without the right to vote. New positions for judges have been created and steps are being taken forward to enhance the judicial system with new judges.

### Irremovability of judges, including transfers, dismissal and retirement regime of judges, court presidents and prosecutors

See above. Moreover, disciplinary proceedings against judges are heard by the Supreme Court.

### Promotion of judges and prosecutors

See above. Important steps have been taken and are in place, to open in practice the Judiciary to qualified senior advocates.

### Allocation of cases in courts

With the enactment of the Laws amending the justice system and the amendment of the Cyprus Constitution (article 144) that have entered into force on 1 July 2023, the Supreme Court and the Supreme Constitutional Court have been created and are Courts of third instance. Additionally, a Court of Appeal has been created, which acts as the second instance Court. Matters regarding the unconstitutionality of a Law may be referred to the Supreme Constitutional Court. This was necessary to separate the powers of the existing Supreme Court as per the suggestions of the Venice Committee and to speed up the justice procedures in Cyprus. An important step is the establishment of two new specialist courts, the Commercial Court and the Admiralty Court. With the establishment of these Courts to resolve commercial and admiralty disputes efficiently and expeditiously, and Cyprus' competitiveness as a centre for the provision of quality services will strengthen. An important step is also the act pending in the parliament for alternative dispute resolution in civil and commercial cases. CBA is assisting in the process.

Important steps have been taken, however more needs to be done as to procedural matters arising due to the changes in the justice system to ensure smooth enactment of the new Laws.

### Independence and powers of the body tasked with safeguarding the independence of the judiciary

In accordance with the Greco Report and in order to avoid cronyism, members of the Council should be chosen from all ranks of judges. The changes in the composition of the Council of Judges of the Supreme Court and the Advisory Judicature Council have now been enacted and officially entered into force as of 1 July 2023. New discussions are being made towards the establishment of an independent Court Service Body as recommended by the Report of the Institute of Public Administration of Ireland.

The Supreme Court amended its rules as to Conflicts of Interest and adopted the Bangalore principles for judges. This is an improvement towards the right direction.

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

For lower Court judges the Disciplinary Council consists of the Judges of the Supreme Court who decide on the investigation of complaints, charges and hearing of the matter. After the case of the ECHR, *Kamenos v. Cyprus*, amendments have taken place and specifically amendments in Law 33/1964.

Under the new amendments, a new Court structure is established including separate Supreme Constitutional Court and a Supreme Court for civil and criminal cases. Members of each Court will check each other for disciplinary matters. This constitutes a substantial improvement. For lower Courts (First Instance Courts and Court of Appeal) discipline will be enforced by the new Disciplinary Council consisting of judges of the Supreme Court. It is noted that for disciplinary matters, the Attorney General, the President of the Cyprus Bar Association and the two lawyers (as mentioned in A1, above), do not take part in the Council.

It is also very important to note that the decisions of the Supreme Judicature Council (including the Disciplinary Council) are subject to appeal to the Supreme Constitutional Court as an appellate Judiciary Council, with its decisions having an annulment effect over the decisions of the Disciplinary Council.

## Remuneration/bonuses/rewards for judges and prosecutors, including observed changes, transparency on the system and access to the information

The relevant figures are being published on Annual Basis by the Office of the Accountant General of the Republic of Cyprus, the latest relevant data as on 1 June 2023<sup>15</sup> and re-published in the Cyprus press<sup>16</sup>, hence achieving the aim of abiding by the Principle of Transparency. To that effect, the following are indicatively noted, as presented in the Cyprus press:

This is a breakdown of the net monthly salaries of certain of the highest paid government officials (non – judiciary positions included for comparison purposes)

- Attorney General €8,633
- Deputy Attorney General €8,633
- President of the Supreme Court €8,633
- President of the Republic of Cyprus €8,611
- President of the House of Representatives €7,011
- President of the District Court €6,933
- Senior District Judge €5,813
- President of another court €5,813.

Data for previous years are also published online by the Office of the Accountant General of the Republic of Cyprus.<sup>17</sup>

## Independence/autonomy of the prosecution service

The Office of the Attorney-General is provided for expressly under Article 112 of the Constitution and is independent. Further, pursuant to Article 113 of the Constitution, the Attorney-General is the Legal

<sup>15</sup><https://www.treasury.gov.cy/Treasury/treasurynew.nsf/All/90442C5849CAF434C225893C004659BE?OpenDocument>

<sup>16</sup><https://in-cyprus.philenews.com/local/monthly-state-salaries-exceeding-e5000-are-plenty-official-data-shows/>

<sup>17</sup><https://www.treasury.gov.cy/Treasury/treasurynew.nsf/All/D9A05727E0431CA2C225893C004458BB?OpenDocument>



Advisor and Advocate of the Government representing the latter in judicial proceedings before the Courts. The President of the Republic of Cyprus appoints the Attorney General and the Deputy Attorney General who hold their respective offices until the age of 68 and cannot be removed from office except on the like grounds and in the like manner as Judges of the Supreme Court. Additionally, a draft legislative proposal is pending for discussion in the Cyprus Parliament, regarding the independence and complete autonomy of the Office of the Attorney General.

### Accessibility of courts

An act is pending in the parliament for discussion, regarding the provision of legal aid to victims of domestic violence. The Legal Aid Law is also under discussion in the Cyprus Parliament after suggestions of the Cyprus Bar Association, to improve the legal aid system and accessibility to the courts through the legal aid mechanism and avoid malicious abuse of the Law by relevant individuals and/or lawyers. Additionally there is a discussion regarding the increase of the court fees payable to lawyers undertaking to represent clients under the legal aid scheme, as the amounts payable to lawyers are amongst the lower in EU.

### Resources of the judiciary

The Government needs to increase its budget on matters affecting the Court system in general. The number of judges must increase. Courts are in general understaffed. More clerks, registrars, steno typists, administrative staff, etc, must be appointed. Technologically wise the system still needs to be improved. The District Court of Nicosia Buildings are deplorable. Plans for a New Court are in place. The Appeal Court is already functioning in new premises. Meanwhile steps have and currently are being taken to improve the situation as a result of efforts of the Cyprus and Nicosia Bar Associations.

### Training of justice professionals

The Cyprus Bar Association has enacted a continuous professional training system that requires lawyers to undertake specific hours of training each year (total 12 hours) in order to renew their professional licence. In addition to the Scheme, the Bar regularly organises courses (live seminars and online courses). In 2023 the number of seminars and courses organised by the Bar has been significantly increased, and especially seminars on the new Civil Procedure Rules are being organised by CBA regularly. Additionally for trainee lawyers a scheme is in place that covers the remuneration of trainee lawyers in order to encourage more lawyers and law firms to hire trainees in their offices.

### Digitalisation

After the establishment of an interim i-justice system, the new Ejustice system is ready and will enter into force as of 15 January 2024. Many difficulties encountered especially in relation to the inability of the Courts and Registries to run in parallel the system with physical filings as interim stage. As from February 2023 i-justice was mandatory for all new cases but not for older ones and will officially cease operating on 15 January 2024. Additionally, the Administrative Court of International Protection is exempt from the electronic justice system at present. A new regulation in place allows electronic communication with the court. This is a substantial improvement.

Introduction of digital recording of proceedings is pending.

The Cyprus Bar Association has regular meetings with relevant authorities to establish ODR (Online Dispute Resolution) in the hearing procedures and ADR (Audio Digital Recording) regarding for the minutes of the hearing.

Digitalisation of justice is required in Cyprus and many steps need to be taken towards that direction. The Bar has proposed specific actions and is continuously having meetings and discussions with all relevant authorities. Specifically, the Bar has proposed to install ADR (Audio Digital Recording) in the Cyprus Courts and ODR. A few suggestions are (a) for routine appearances for directions by the Court to be effected through online platforms / video conference, (b) to install contemporary systems for record keeping in the trials, to ensure that the testimonies and speeches are duly held.

## Use of assessment tools and standards

There is a discussion for establishing an Independent Court Service Body, as recommended by the Report of the Institute of Public Administration of Ireland.

## Efficiency of the justice system

### Length of proceedings

Two tier system: On average 4-6 years first tier and six years for the appeal. Total 10-12 years. The amendments proposed by the Report of the Institute of Public Administration of Ireland, the Commission and the Council of Europe (March 2018) are in the process of being introduced. Three legislative proposals for restructuring of the Supreme Court, the creation of the Appeals Court, a new Judicature Council have been enacted and entered into full effect in July 2023. District Court for trial of Civil cases and backlog of some 40,000 cases are still not dealt with sufficiency.

New Civil Procedure rules, applicable to all cases filed after 1 September 2023, have entered into force on 1 September 2023. Their introduction will gradually improve the situation as it will speed up case management and pre-Hearing procedures. The Bar Association made recommendations for the improvement of the administration of justice at the lower level and for the effective handling of the backlog. The Bar Association is continuing its training sessions to all advocates.

## DENMARK

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### Measures taken to follow-up on the recommendations received in the 2023 Report regarding the justice system

In the 2023 Rule of Law report, the case handling times at the Danish courts was once again mentioned as a justice issue. The Danish government has for the finance bills of 2023 and 2024 allocated significantly higher sums to the courts, which we expect will have a positive effect lowering the waiting time. However, on the human resource side, it is expected to take some time to have enough sufficiently trained judges. Another challenge is that the government has also introduced some reforms to cut costs. But in our view, these reforms have significant negative impacts on access to justice while at the same time only very low economic impact. In our view they are unbalanced and problematic. Specifically, three elements are worrying: 1) increased limits to the small claims process, where the amount limit is raised from DKK 50.000 to DKK 100.000. This will make it more difficult for citizens to get assistance from a lawyer and coverage from their legal aid insurance. 2) the appeal limits in civic cases are to be raised from DKK 20.000 to DKK 50.000, also making it difficult for completely justified claims to be tried at more than one level. And 3) in criminal cases, the suggestion is to raise the level for jury trials from cases with a penalty framework of now four years to six years. We have through the latest year seen an increase in jury cases due to political decisions to increase the penalty framework for a number of offences. Changing the limit on jury trials decreases the access to justice for the defendant.

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

#### Confidentiality of lawyer-client communications

The Danish Bar and Law Society has nothing to report.

#### Cases/examples of physical, online or legal threats or harassment

The Danish Bar and Law Society has for the last few years had a continued focus on threats and harassment against lawyers. We have been in dialogue with the Ministry of Justice to include lawyers in the protection of violence against a civil servant in office, as described in the Criminal Code Article 119. The Danish Bar and Law Society has not officially received a response. However, in November 2023, the Ministry of Justice answered a parliamentary question regarding the criminal protection of lawyers and in that connection stated that there is no basis for allowing lawyers to be covered by Article 119 of the Criminal Code in the same way as judges, prosecutors and other "public" members of the court actors. The Danish Bar and Law Society is however still concerned. We have members who report experiences with harassment and/or threats in connection with their work. In the more severe end of the scale, we have a case where a lawyer is exposed to threats to their life as part of their work, which means that they have to be debarred, receive an assault alarm and for a period change address.

### Specific legal provisions and policies which could negatively influence the independence of the Bar and lawyers

The Danish Bar and Law Society has nothing to report.

## Cooperation between the Bar and the executive branch of the government and/or supervisory authorities, and cases of political pressure and interference regarding the role of the Bar or lawyers

In Denmark, we have recently seen a case relating to the Danish Defence Intelligence Service (DDIS), which has sparked debate around several questions of principle when it comes to the rule of law. The case involved the former Minister of Justice Claus Hjort Frederiksen and the Chief of the Danish Intelligence Agency Lars Findsen, who were both accused of leaking state secrets. One of the questions of principle has been whether the accused in the case have had the opportunity to conduct an independent defence. On the basis of an inquiry from the two defence lawyers to Lars Findsen about the closed nature of the case and the application of the departmental security notice. The Danish Bar Council chose to provide support to the lawyers in order to ensure that the procedural framework for conducting a defence was in accordance with the legal requirements, e.g. that the defence could be conducted completely independently of the state power. In November 2023, the public prosecutor's office dropped the charges against Lars Findsen and Claus Hjort Frederiksen, after the Danish Supreme Court decided that the prosecution would have to make their sources and evidence partly public if they wanted to proceed with a trial. The Danish Bar Council has, in reference to this, requested the cases to be subjected to a thorough investigation into how the authorities have handled it, whether the legislation has been complied with, and whether the necessary and relevant steps (and only these) has been taken by the authorities.

## Implementation of the case law of national, European, and international courts due to legal, administrative, or procedural issues

Denmark generally has a high implementation rate regarding rulings from the European Courts. In 2023 we have one case regarding failure to implement Directive 2019/7901 on copyright and related rights in the Digital Single Market.

## Perception that the general public has of the independence of the judiciary and independence of lawyers

It follows from the proposal for regulation 2021/0240 of the European Parliament and of the Council on i.a. the establishment of the Authority for Anti-Money Laundering (AMLA)[1], article 32, and proposal for directive 2021/02392 on anti-money laundering (AMLD6)[2], article 38, that the Council of the Danish Bar and Law Society (the Bar Council), as a “self-regulatory body”, shall be subject to public supervision. Furthermore, it follows from the proposal for the above-mentioned regulation, article 5 (4) and article 31, that the Bar Council, as a “non-financial supervisor”, shall be subject to “peer reviews” in the non-financial sector.

The final regulation of the AMLA now states that for the non-financial sector, AMLA will have a supporting role, carrying out reviews and investigating possible breaches in the application of the AML/CFT framework. AMLA will have the power to issue non-binding recommendations.

AMLD6 is not final, however it is still a part of the proposal that self-regulatory bodies shall be subject to public supervision in the member states.

The Bar Council finds that for the Bar Council to be subject to the peer review scheme even though the recommendations will be non-binding or to public supervision by an independent public authority conflicts with the independence of lawyers – a fundamental rule of law principle.

The independence of lawyers and the independence of the supervision of lawyers are closely connected, and it is worrying from a rule of law perspective to have publicly controlled supervision of the Bar Council in the form of “legal oversight”.

In continuation of this, the Bar Council finds that the lack of protection of the independence of lawyers causes a rule of law problem. It is vital for the trust in a society based on the rule of law that lawyers are not only independent, but that they also appear independent and uninfluenced by external interests - including influence from the state and authorities.

### Allocation of cases in courts

In Denmark, the political interest to give priority to the most serious criminal cases, to ensure short processing time, is still prevalent. In February 2023 we saw a shift in the focus for this prioritisation. Where “VVV cases” (violence, rape and weapons) were given highest priority earlier, the new focus was changed to PFK - (crimes dangerous to persons) and PRIO cases (cases which, according to the prosecution's assessment, will lead to an unconditional custodial sentence). The purpose of this is to create a consistent prioritisation throughout the chain of criminal proceedings.

### Independence and powers of the body tasked with safeguarding the independence of the judiciary

The courts in Denmark are governed by the Council for the Judiciary (*Domstolsstyrelsen*), which has the status of an agency under the Ministry of Justice. The Danish Council for the Judiciary is managed by a board of directors and a director. The members of the board, the majority of which are judges and other employees at the courts, is appointed by the Minister of Justice. The Minister of Justice has no instructional powers over the Council for the Judiciary. The director is appointed and dismissed by the board.

There is thus a degree of arm's length, although not complete independence in principle, between the Ministry of Justice (the executive branch) and the Council for the Judiciary (the judicial branch).

### Accessibility of courts

The Danish Bar and Law Society is pushing for re-activation of the pre-legislative committee established by the then-government in 2020. The committee was established to revise the regulations regarding legal aid and free process. The committee was put on hold due to Corona and set to be revived by Summer 2023. However, at present, the committee is still dormant and results remain to be seen. We find that this poses an Access to Justice issue.

### Resources of the judiciary as well as any efforts of the government or judiciary to address the relevant challenges

More funding has been allocated for the Courts from 2023 and onwards. This is highly welcomed by the Danish Bar and Law Society as well as other stakeholders. A transition period until enough personnel has been recruited and trained is to be expected, before the full impact on lower processing times can be expected.

## Training of justice professionals

The Danish Bar and Law Society offers the initial training of new lawyers. The programme is defined by the Ministry of Justice and The Danish Bar and Law Society together, through a joint Education Committee. The programme is increasingly popular, and in 2023 we have had to offer one extra class. Furthermore, we have introduced reserved places for assistant attorneys/lawyers, as the programme is also sought by law graduates with different careers, e.g. public employees, prosecutor trainees, etc. The increased interest in the programme is, we find, a positive development.

With regards to continuous training, the Danish Bar and Law Society has in 2023 updated its policy on what is accredited. From May 2023 the criteria include courses that do not primarily have a legal aim and content, but which may nevertheless be of importance to the legal profession. Examples of this include courses in management, project management, business understanding and communication.

Due to the Danish opt-out from the EU cooperation in the area of justice, Danish lawyers cannot partake in EU funded training activities regarding e.g. European courts. This can be seen as a barrier, because European legislation and regulation also to a wide extent applies to Danish citizens and companies.

## Digitalisation

Probate matters: A new electronic probate portal has been introduced, which supports routine tasks digitally and eases the administrative burden. Resources are thus freed up for other tasks, and challenges with waiting times and the risk of not being notified in time for claims are reduced for creditors.

The judgment database: electronic in January 2022, but only with new judgments after this date. This means that history is not included. This presents challenges.

Electronic identification: MitID has replaced NemID, and makes it possible in many contexts to identify oneself electronically, which provides better opportunities for technological support in many aspects of the justice system, both in relation to the courts/trials and in relation between lawyer and client, regardless of whether the client is a private person or company.

We have actively followed the discussions of the EU's upcoming AI Act, and hope that it will be sufficiently inclusive to provide the necessary opportunities to increase access to justice for many groups in society, both private individuals and companies.

## Use of assessment tools and standards

In 2022, the Danish Court Database was launched. The database increases transparency, even though it does not presently offer statistics or other forms of quantifiable data. The database does, however, not include all judgments passed, and primarily from 2022 onwards.

## Efficiency of the justice system

### Length of proceedings

We have seen average processing time for the main legal proceedings in jury cases up to about 8.5 months, 7.7 months for the main legal proceedings in cases with lay judges, and 7.5 months for the main legal proceeding in cases without lay judges.

The processing time for main legal proceedings in general, civic cases has been up to 20.6 months and 14.5 months for small claims cases. We have reached the highest processing times in ten years.

## Pre-trial detention

Denmark remands far more than comparable countries. In terms of legal certainty, this is a challenge, as remand prisoners have not been sentenced and are held under far more restricted conditions compared to serving regular prison time post-conviction.

According to statistics from the Council of Europe's annual report on the prison population, 38 percent of all inmates in Denmark are held in pre-trial detention.

We hear from legal experts and defence council that the prison conditions under which pre-trial detainees are held are not taken seriously enough into account when the courts decide to prolong pre-trial detention. We see examples where no or very little progress has been made in the investigations since the last court hearing. And we see examples where pre-trial detentions are being upheld, even when the investigative steps they were based on have been concluded. The Danish Bar and Law Society finds it difficult to understand why Denmark is less inclined than its neighbouring countries to investigate a crime when the charged/indicted is not detained.

It is stated in the Administration of Justice Act that pre-trial detention cannot be used 'if the deprivation of liberty will be disproportionate to the resulting disruption to the accused's relationship, the importance of the case and the legal consequences that can be expected if the accused is found guilty.

The long waiting times in the Danish courts, we have seen in later years, and lengthy investigations, should lead to the courts paying more attention to how intrusive custody is for charged persons, even though we acknowledge, that such cases are given priority. If a person has been charged, and the trial date has been set, they can be held in pre-trial detention until then, without further consideration. From this follow, that the prolonged case handling times does in some cases lead to charged persons being held in pre-trial detention for very long periods of time. Even though the Danish Criminal Act (*straffeloven*) section 765 makes it possible to use less intrusive measures than detention, it is not used often.

## Legal Aid

In Denmark, work on a reform of the legal aid system has dragged on, which means that legal aid functions far from optimally. In 2020, the then government set up a legislative committee to review the rules on legal aid and free process. The work was put on stand-by due to Corona, and the work extended until the summer of 2023. But at this time, there is still no result of the work and the committee seems inactive. The Danish Bar and Law Society finds it problematic that such important work is not given a higher priority.

## Reform of the judicial framework for the Courts

The Danish Bar and Law Society is pleased to see that the last two Finance Acts has allocated an increased budget for the Danish courts in line with what we have suggested in our analysis "Danish Courts on the heels".<sup>18</sup> We expect the increased budget to help bring down case handling times to a reasonable level, in time when sufficient human resources has been employed and trained.

However, with the recent political multi-year agreement on the finances for the Danish courts, the Danish government also made a political agreement on "simplifying the administration of justice". Apart from prioritising much needed funding for employing more judges and more personnel at the Danish courts,

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<sup>18</sup> *Domstolene i knæ*, Copenhagen Economics for The Danish Bar Council:  
<https://www.advokatsamfundet.dk/media/v2anytzq/domstole-i-kn%C3%A6-oktober-2022.pdf>



the agreement also included initiatives to reduce costs. While applauding the increase in resources for the Danish courts, the Danish Bar and Law Society is at the same time concerned that the initiatives aimed at simplifying and cost-reduction will lead to a lower degree of access to justice for Danish citizens. Our main concerns are the changes of the financial limit for small claims processes and the amount limit for appeals. In criminal cases, the sentence limit for when a case is tried before a jury will be raised from four to six years.

At the Danish Bar and Law Society, we acknowledge that there has been an ambition from the political side to improve waiting times at the courts. We fully share that. Reducing waiting times requires a long-term commitment to where more funds are given to the courts, which must finance more judges and more staff. The new initiatives introduced with the political agreement on increased funding are, however, problematic because they harm citizens' legal certainty. We are concerned by the extension of the so-called small claims process for civil cases, where the amount limit is doubled with the agreement.

In the small claims process it is implied that no legal assistance is needed during the pre-trial phase of the case. As a result the awarded costs in the small claims process only cover the hearing and will be rather low based on an hourly rate. Legal assistance in the pre-trial phase must be covered by oneself. Therefore, it will be difficult and expensive to get assistance from a lawyer in these cases, since also coverage via legal aid and legal aid insurance will follow the court's decision on awarded costs.

Furthermore, the amount limit for the right to appeal is more than doubled, which means that citizens and small businesses will thus lose the opportunity to have the cases tried at the high court. It can be completely justified claims that are of decisive importance to them, for example in connection with employment law disputes, which in the future cannot be tried twice.

With regards to criminal cases, the limit for jury trials is raised from cases with a criminal allegation of a minimum of four years' imprisonment to cases where the prosecution alleges six years' imprisonment or more. A number of cases will therefore in the future only be assessed by one legal judge rather than by three and by fewer lay judges. The desired change must be seen in the light of the fact that more jury trials are being held today because the politicians have increased the penalties in a number of areas. Instead of raising the limit for when a case must be treated as a jury trial, one could also politically let the money follow the austerity.

## ESTONIA

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### Measures taken to follow-up on the recommendations received in the 2023 Report regarding the justice system

There were no specific recommendations for the Bar/attorneys, but we would like to bring out one recommendation, as it may also affect the work of the attorneys. This recommendation for Estonia was: Advance with the efforts to ensure consistent and effective implementation of the right of access to information taking into account European standards on access to official documents.

Actually, the ministries have submitted a number of proposals to amend the Public Information Act, in order to limit public access to information and expand the possibilities to close documents.<sup>19</sup>

The Ministry of Justice has confirmed that these proposals will not be directly included in the intention document to develop the draft of the new Public Information Act and further actions will be revealed in spring 2024.<sup>20</sup>

The Bar wishes to mark that this tendency to close even more documents for internal use is worrisome, because it affects attorneys' work and the protection of the rights of their clients, when information is not easily available.

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

#### Confidentiality of lawyer-client communications

In 2023 there were no searches in law offices.

Estonia is currently in the process of taking over the ECN+ directive<sup>21</sup> and the draft bill foresees provisions of search in law offices. The Bar has been involved in drafting these provisions and we are monitoring the outcome closely.

### Physical, online or legal threats or harassment of lawyers while exercising their professional duties, as well as unjustified attacks on the role of lawyers and Bars, including preventive measures taken by the Bar

Recently the Bar got the information where a state legal aid attorney was threatened by the detainee. The Bar also conducted CCBE survey regarding threatening or harassment of attorneys and the responses show that verbal violence/harassment is very present.

### Specific legal provisions and policies which could negatively influence the independence of the Bar and lawyers

This is not the case of legislation, but we would like to bring out that we have a court case in progress, where the Circuit Court has decided that the Bar itself cannot determine the evaluation methodology of

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<sup>19</sup> <https://www.err.ee/1609165687/ministeeriumid-tahaksid-paljud-dokumendid-avalikkusele-ligipaasmatuks-muuta>

<sup>20</sup> <https://www.err.ee/1609178425/ministeerium-suurema-salastamise-soovitused-ei-joua-otse-eelnousse>

<sup>21</sup> [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2019.011.01.0003.01.ENG&toc=OJ:L:2019:011:TOC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2019.011.01.0003.01.ENG&toc=OJ:L:2019:011:TOC)

the Bar exam and cancelled the examination procedure which has been valid for ten years. The Bar has filed a cassation in this case, but the Supreme Court has not yet decided whether to take it into proceedings.

### Cooperation between the Bar and the executive branch of the government and/or supervisory authorities, and cases of political pressure and interference regarding the role of the Bar or lawyers

The relations with the ministries are otherwise good, but the involvement in the law-making process is very hectic, there are unreasonably short deadlines for expressing an opinion, some drafts concerning attorneys have not been submitted to the Bar for review/expressing an opinion (e.g. the draft bill for International Sanctions Act). Also, solutions to the problems the Bar has raised, or draft bills prepared by the Bar are not considered a priority.

There is a new Insolvency Division under the Competition Authority who supervises over the activities of the debtor and persons connected with it/him/her in connection with bankruptcy proceedings of the debtor. It is also responsible for administrative supervision of the bankruptcy trustees in Estonia. There are signs that the Insolvency Division wants to control more extensively the work of attorneys who act as bankruptcy trustees (demanding information, etc. also when an attorney was not in a position of a bankruptcy trustee).

### Implementation of the case law of national, European, and international courts due to legal, administrative, or procedural issues

There has been a decision of the European Court of Human Rights in the case of Särkava v. Estonia on 16 November 2021<sup>22</sup> which found that attorney-client confidentiality is not sufficiently guaranteed in Estonia. The law has not been amended yet, even though the Bar already submitted a relevant draft bill to the Ministry of Justice two years ago.

### Perception that the general public has of the independence of the judiciary and independence of lawyers

In 2023, there have not been such important events that would change the public perception of the independence of attorneys.

### Remuneration/bonuses/rewards for judges and prosecutors, including observed changes, transparency on the system and access to the information

To resolve state budget related difficulties, the state decided to freeze the indexation of judges' salaries. Through this, the social guarantees of judges will decrease for some time. For balancing the situation, their salaries will increase significantly in four years' time.<sup>23</sup> But the process how this draft bill was processed raises questions – it was sent to the courts.<sup>24</sup>

<sup>22</sup> [https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22001-213208%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-213208%22]})

<sup>23</sup> <https://www.err.ee/1609197547/nelja-aasta-parast-ootab-korgemaid-riigitootajaid-aegade-suurim-palgatous>

<sup>24</sup> <https://www.err.ee/1609112522/riigikohus-palgatousu-karpest-see-annab-riigikogu-liikmetele-eelise>

## Accessibility of courts

State legal aid fees rose on 6 February 2023<sup>25</sup>, but the Bar wishes to emphasise that these fees do not ensure the sustainability of the system, does not attract younger attorneys to enter the state legal aid system and as a result, individual fundamental rights may not be adequately protected. There is also no promise from the state to increase the state legal aid fees.

There have been some cases where the court has not fully accepted attorneys' application for paying out state legal aid fees. The court has rejected requests to increase the limit of state legal aid fee (there is such a possibility if the case is complex and of high volume) – the court has found that the case is not complex or of high volume. Also, the courts have found that the entire time attorneys spent on document analysis and communication with the client is not justified. But at the same time, there are also cases where attorneys contest these court decisions, because the concrete case/recipient of state legal aid needed this extra time, and the Circuit court has satisfied these complaints.

In addition to the insufficiency of state legal aid fees, the fact is that in general legal services are expensive and may be out of reach for the middle class (those who do not qualify as recipients of state legal aid).

## Resources of the judiciary as well as any efforts of the government or judiciary to address the relevant challenges

The Ministry of Justice has a plan to make judges position more flexible and attractive (for example there would be a possibility for a judge to work part-time for a longer period, to allow judges to engage in business and to more easily apply for an extension of the upper limit of a service age<sup>26</sup>).

The Bar is also preparing amendments to the Bar Association Act to make attorneys profession more flexible and attractive (for example the permissibility of working at another workplace, abolition of the personal responsibility of the attorney).

## Training of justice professionals

The Bar organises only continuous training. We would like to point out that we have separate special training courses for attorneys who represent minors, and in 2024 there will be more attention paid to topics such as artificial intelligence and preparing to crisis. Together with Supreme Court and Prosecutors Office joint trainings are conducted, but we see that there is even higher need for these, as it is important that all professional parties of the proceedings would be in the same information room.

## Digitalisation

Overall, the level of digitalisation in Estonia is very good, but the work must be carried on. For example, machine readability of the documents in E-file (<https://etoimik.rik.ee/>) would be very necessary. Criminal cases are still on paper. Based on the data of the digital file, the automatic generation of procedural documents are welcome, but there is no such possibility yet. Digitalisation also brings information security problems/challenges. Attorneys and the Bar must raise the level of information security. The Bar has developed an IT security guide, but it also needs to be implemented, currently it is certainly not at the required level. The risk of cyber incidents is increasing and many law offices are not really prepared for it.

<sup>25</sup> <https://www.riigiteataja.ee/akt/103022023051>

<sup>26</sup> <https://www.err.ee/1609168447/noorte-ligitombamiseks-on-kavas-kohtunikutoo-kitsendusi-leevendada>

Regarding the developments of E-file, attorneys themselves turn to the developer and make proposals for amending the system functionality. These proposals are evaluated and in practice, taken into account. One recent functionality update concerned the new possibility to submit one document into several proceedings (for example sick leave paper of an attorney).

## Use of assessment tools and standards

In Estonia we have procedural statistics<sup>27</sup>, also the survey on the reliability of courts has been carried out and the trust level is high.<sup>28</sup>

There has also been a survey among professional parties of the proceedings.<sup>29</sup>

## Geographical distribution and number of courts/jurisdictions and their specialisation, in particular specific courts or chambers within courts to deal with fraud and corruption cases

There is a plan to close smaller courthouses in order to save money.<sup>30</sup>

The specialisation of judges is a relevant topic now, in 2023 the Act on the Amendment of the Courts Act came into force.<sup>31</sup> On the one hand, this should raise the professional level of judges and the efficiency of the proceedings, but since Estonia is so small, specialisation can also mean that only a very small number of judges hear certain types of cases. For example, money laundering cases are discussed by a very small circle of judges and maybe this could lead to some problems, maybe the proceedings will become somehow too personal.

## Efficiency of the justice system

### Length of proceedings

Overall, the effectiveness in proceedings in Estonia is high, there are some long general proceedings though.

But since soon many judges will retire, then there is a risk of prolongation of proceedings and consequently, the protection of individual rights. The situation depends on whether there will be new judges entering the profession and whether any technology solutions will be used in the proceedings to simplify some processes.

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<sup>27</sup> <https://www.riigikohus.ee/et/riigikohus/statistika>

<sup>28</sup> <https://www.riigikohus.ee/et/uudiste-arhiiv/uuring-kohtuid-usaldab-71-eestimaalastest>

<sup>29</sup> <https://www.kohus.ee/sites/default/files/inline-files/MORU%20aruanne%202021%20%28professionaalsed%20menetlusosalised%29%20%28002%29.pdf>

<sup>30</sup> <https://www.err.ee/1609165807/villu-kove-vaiksemad-kohtumajad-voiks-sulgeda>

<sup>31</sup> <https://www.riigiteataja.ee/akt/101032023001>

## FINLAND

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

### Confidentiality of lawyer-client communications

There were no cases violating confidentiality of lawyer-client communications reported to the Bar in 2023.

### Physical, online or legal threats or harassment of lawyers while exercising their professional duties, as well as unjustified attacks on the role of lawyers and Bars, including preventive measures taken by the Bar

There were no such cases reported to the Bar in 2023. The Finnish Bar conducted an online study on the harassment and aggression that lawyers are facing in their practice during autumn 2023. The results and conclusions are still to be made on this.

### Specific legal provisions and policies which could negatively influence the independence of the Bar and lawyers

The Finnish Act on Transparency Register which enters into force 1 January 2024. This Act includes paragraphs which obligate also lawyers to report their activities partially – Lawyers are obliged to report any/all activity which may be considered lobbying. Taking into account the case CJEU C-694/20 (Orde van Vlaamse Balies & others), the reporting requirements threaten the legal professional secrecy as lawyers are required to reveal the existence of their client relationships without consent from the client. According to the understanding of the Bar Association this is contradictory to the judgment of the CJEU in the above referred case (paragraph 79).

### Cooperation between the Bar and the executive branch of the government and/or supervisory authorities, and cases of political pressure and interference regarding the role of the Bar or lawyers

As also reported for the 2023 ROL report, the Bar Association still has an active need to clarify and ensure the basic principles, the rule of law relation and functionality and the proper interpretation and consideration of the legal professional privilege as such, including the role and status of the Bar as an independent regulatory body founded by public law, which is not a representative organisation of lawyers' interest. In most cases this role is understood and respected by the authorities, but in some cases, this is only due to the constant active efforts made by the Bar association.

As stated in the question no. 13, the guarantees regarding the confidentiality of the lawyer-client relationship are generally well respected by government officials and executives where the legislation is clear. However, in areas, where there is a legislative contradiction or conflict of norms, the subject leads to constant debates and active clarification requirements for the Finnish Bar Association. This is mostly related to national tax authorities and legislation on taxation, ambiguities in national legislation on anti-money laundering (the national legislation obliges lawyers to reveal their client-relationships in some cases) and competition legislation, where it not possible for attorneys to challenge the decision of the

national competition authority on which materials are deemed falling into the scope of legal professional privilege in any reasonable way.

The Finnish Bar Association is actively advocating for legislative changes where the scope of attorney-client privilege would be more clearly stated, and the position of independent supervisory body founded by public law as well as the independence of the profession of attorneys-at-law would be secured at constitutional level.

### Perception that the general public has of the independence of the judiciary and independence of lawyers

As stated in the question no. 13, the Finnish Bar Association is actively advocating for legislative changes where the scope of attorney-client privilege would be more clearly stated, and the position of independent supervisory body and profession of attorneys-at-law would be secured in constitutional level.

The Bar is represented in working groups that are established to monitor the follow-up and actions on the first ever report on state of judiciary and to assess the independence of judiciary as a whole. According to the understanding of the Bar association, this assessment also includes the assessment of the status of an independent Bar Association and its legislative safeguards.

### Accessibility of courts

The Finnish Bar Association has brought up on a national level its worry about the level of legal aid fees payable to private practitioners and the fact that these fees have not been raised in any way (even regular indexations) since 2014. The Bar Association has a concern that the level of legal aid fees paid to private practitioners is not sufficient when compared to the cost of providing such services, and that this could lead to decreased access to justice especially in the rural areas in Finland. Simultaneously with the custom that the travel time is not compensated as a fee, it may not be feasible for private practitioners to take on legal aid cases in the same scale than they have done historically.

The Bar Association sees this as a worrying development as the Finnish legal aid system heavily relies on private lawyers taking on legal aid cases from which they are compensated as regulated. More information regarding the matter can be found on the first ever Governmental report on administration of justice published in 2022, but it can be stated that especially in criminal cases the majority of defence cases are currently handled by private lawyers.

### Digitalisation

For the last ROL report the Bar association reported that more attention should be paid towards the independence of all actors within the Judicial system and a more general perspective of the general public should always be taken into account in regards of the practical planning of courthouses and e-services and digital justice systems. In order to maintain the trust of the general public, the independence of prosecutors, judges and attorneys should always be considered both separately and from a reciprocal perspective with each other as independent and separate actors.

Regretfully the Bar association has to state, that at least before the end of 2023, no positive development regarding the availability of e-services and digital tools available to parties in judicial proceedings has been made. This mainly concerns the case management system of the Finnish courts (AIPA and its equivalent for the administrative courts side HAIPA). It is still not possible for lawyers to gain the same access and



visibility to case via e-services as it is for the prosecutors. The Bar association still sees this as a problem for the realisation of the principle of equality of arms as, especially in criminal procedure, the defence should have the same access and visibility than prosecution.

The lack of access for lawyers in the judicial case management systems was already noted by the EC in its 2023 ROL report as a shortcoming (Country chapter for Finland, p. 7).

## Efficiency of the justice system

### Length of proceedings

Length of proceedings is still an issue but as of the beginning of 2024 there are more resources and funding allocated to the Courts and prosecutor services and this should start to improve the situation.

# FRANCE

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

## Confidentiality of lawyer-client communications

### Scope of the legal professional privilege

The French Bar is concerned about the legal reduction of the scope of protection to only those exchanges related to the exercise of the rights of defence. Therefore, the legal professional privilege would not apply to investigations into tax fraud, corruption and influence peddling in France and abroad, as well as the laundering of these offences and where the consultations, correspondence or documents held or transmitted by a lawyer or their client provide evidence that they were used to commit or facilitate the commission of these offences.

### Search of a lawyer's office/home

When a lawyer is implicated, the search, which is conducted by the Judge of liberty and detention (JLD) is subject to the existence of plausible grounds for suspecting the lawyer of having committed or attempted to commit the offence that is the subject of the proceedings. On the other hand, the search remains possible even when the lawyer is not implicated. The Constitutional Council considers that no constitutional provision specifically enshrines a right to secrecy of lawyers' exchanges and correspondence and that no infringement of lawyers' professional secrecy or of the rights of the defence can therefore be established in the event of a search.

### Mobilisation of the profession

In 2022, a circular disregarded the principle of indivisibility of professional secrecy. The Constitutional Council declared the provisions in question to be compatible with the Constitution. However, thanks to the effort of the legal profession, it was possible to avoid the non-enforceability of professional secrecy in cases where the lawyer had been the subject of "manoeuvres or actions designed to unintentionally enable the commission, prosecution or concealment of an offence".

### The issue of electronic invoicing

Lawyers are required to issue an electronic invoice for all economic transactions falling within the scope of VAT, which poses difficulties in terms of preserving professional secrecy, as this means that the lawyer has to inform the tax authorities of the precise identity of their client, their address and the nature of the service provided, whereas this information is essentially covered by professional secrecy.

## Cases/examples of physical, online or legal threats or harassment of lawyers while exercising their professional duties, as well as unjustified attacks on the role of lawyers and Bars, including preventive measures taken by the Bar

Physical attacks: in September 2023, a criminal lawyer at the Paris Bar was kidnapped and beaten by two of his former clients.

Cyber-attacks: law firms are regularly the target of cyber-attacks mostly for profit, espionage and destabilisation operations.

## Implementation of the case law of national, European, and international courts due to legal, administrative, or procedural issues

### Enforcement of decisions on the expulsion of foreign offenders

In the context of the terrorist attacks, the Minister of the Interior ordered the expulsion of an Uzbek national despite an interim measure issued by the European Court of Human Rights warning of the risk of inhuman and degrading treatment. The Conseil d'État enjoined the State to make every effort to have him returned, which the government refuses to do. By refusing to comply with the injunctions of the European and French courts, the government is undermining the principle of *res judicata*.

## Perception that the general public has of the independence of the judiciary and independence of lawyers

### Relations between the police and the judiciary

The French Bar notes a growing public distrust of the judiciary due to relations between the police and the judiciary, and in particular the reluctance of the Ministry of the Interior to initiate disciplinary proceedings against police officers responsible for misconduct.

### Remoteness and disembodiment of the justice system

The French Bar fears that the general public's perception of the independence of the judiciary is being undermined by the increasing remoteness and disembodiment of the justice system, particularly as a result of the extension of the fixed fine for misdemeanours.

### Trial of the Minister of Justice

The acquittal of Garde des Sceaux Éric Dupond-Moretti, a former lawyer, by the Court of Justice of the Republic (CJR) for "illegal taking of interest" in 2023, was likely to have a negative impact on the general public's perception of the independence of the judiciary and lawyers and raised debates about the relevance of the existence of the exceptional jurisdiction that is the Court of Justice of the Republic.

## Appointment and selection of judges, prosecutors and court presidents

### Status of public prosecutors within the judiciary

The French Bar regrets that this issue has not been raised by the national authorities. Indeed, the prerogatives available to the executive to make or break the careers of public prosecutors give rise to suspicion about the way in which the public prosecutor's office handles so-called "sensitive" cases, particularly political and financial cases. The reform of the Public Prosecutor's Office to ensure its independence from political power now appears urgent, particularly in view of the entry into operation of the European Public Prosecutor's Office.

## Access to the judiciary

The French Bar welcomes the opening up and simplification of access to the judiciary, with the aim of attracting more candidates.

## Allocation of cases in courts

### Diversion of criminal cases

The French Bar is concerned about the growing trend towards the diversion of criminal cases to the detriment of the rights of the defence, and in particular the extension of the fixed fine for misdemeanours. It believes that this undermines the principles of equality before the criminal justice system, the principle that prosecution and conviction should not be concurrent, the right of defence and the individualisation of sentences.

### Generalisation of departmental criminal courts (CCD)

The French Bar considers that this system, which gives the CCDs jurisdiction to try adults accused of a crime punishable by 15 or 20 years of imprisonment where the state of legal recidivism is not retained, complicates the material organisation of the courts, creates extra work for judges and registry staff, leads to numerous additional costs due to the effects induced by their introduction, introduces confusion in the minds of litigants, has no decisive effect on the correctionalisation of criminal cases, struggles to absorb the stock of cases awaiting trial, increases the appeal rate and continues to undermine the principle of oral hearings.

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

Referral to the *Conseil supérieur de la magistrature* (CSM): any citizen may refer a matter to the CSM if he or she believes that a member of the judiciary may have committed a disciplinary offence in the performance of his or her duties. The French Bar welcomes the recent adoption of a law reforming the responsibility, deontology and protection of judicial magistrates in order to clarify and simplify the filing of complaints with the CSM.

## Independence/autonomy of the prosecution service

Powers of the Public Prosecutor's Office: over the last 15 years, judicial reforms in France have tended to strengthen the powers of the Public Prosecutor's Office in relation to the judicial judge, which raises questions within the French Bar, particularly concerning the compliance of French procedural provisions with European regulations as interpreted by the CJEU and the ECHR.

## Quality of justice

### Accessibility of courts

Legal aid: the Paris Bar notes that lawyers' fees remain inadequate despite the latest increases. The amount of the UV, currently set at €36, and the number of UV, capped by type of procedure, do not cover the operating costs of a law firm.

## Resources of the judiciary as well as any efforts of the government or judiciary to address the relevant challenges

Lack of human, material and budgetary resources: the French Bar has associated itself with the report of the États généraux de la justice, which notes a lack of human, material and budgetary resources in the courts and considers that "at least 1,500 additional magistrates should be recruited (in addition to replacing those retiring) over the next five years".

Proposed government solutions: the Minister of Justice has announced 60 measures, including an annual budget of €11 billion to be reached by 2027 and 10,000 additional jobs, including 1,500 magistrates and the same number of court clerks by 2027. The legal profession welcomes this budgetary effort.

## Training of justice professionals

### **Initial training for lawyers**

The French Bar raises the issue of the status of student lawyers, who are no longer students and have a precarious social status during their training. They also suggest modernising and digitising training courses, training future lawyers in the use of AI in their professional practice, reinforcing training in deontology and professionalising training.

### **Continued training for lawyers**

The Paris Bar considers it necessary to make training attractive so that every lawyer completes 20 hours of training at a time when the application of the law is becoming increasingly technical, and to professionalise the training on offer and adapt it to the needs of the profession.

### **Decree on the training of lawyers**

Decree no. 2023-1125 of 1 December 2023 on the professional training of lawyers<sup>32</sup> significantly amends the initial and ongoing professional training of lawyers, in particular by introducing the possibility of omission for lawyers who fail to meet their ongoing training obligation as of 2024.

## Digitalisation

The process of digitising the justice system has continued in France, with the following initiatives:  
Deployment of the QPC platform: website dedicated to the Priority Constitutional Question (QPC) for legal professionals and litigants.

Launch of electronic divorce by mutual consent: dematerialised transmission of the e-DCM providing lawyers, notaries and couples with a fluid and efficient digital solution for divorce by mutual consent (DCM) agreements.

Digital partnerships: in particular to develop the dematerialisation of procedures, redefine the approach to the ministry's digital policies, and organise the technical work to interconnect the new E-Bar.

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<sup>32</sup> Published in the Journal Officiel of Saturday 2 December 2023.

Cybersecurity in law firms: to encourage lawyers to take up this issue, the CNB organised a day dedicated to cybersecurity and published a guide on the subject.

Implementation of the legal aid information system (SI AJ): although the CNB (and the Paris Bar through the CNB legal access commission) have participated, some of their requests have not been taken into account: the Paris Bar in particular regrets that lawyers do not have access to the platform.

Dematerialisation of public services: the Paris Bar raises a problem of access to law with regard to the dematerialisation of many public services without satisfactory alternative access.

## Geographical distribution and number of courts/jurisdictions and their specialization, in particular specific courts or chambers within courts to deal with fraud and corruption cases

National prosecutors' offices: the National Financial Prosecutor's Office and the National Anti-Terrorist Prosecutor's Office, based in Paris, centralise cases to the detriment of traditional territorial jurisdictions and require considerable financial resources, to the detriment of local jurisdictions and complicate access to law.

Court specialisation: it is now possible for one of the department courts to hear technical civil or criminal cases. However, this specialisation distances the litigation and undermines the fundamental principle of citizens' access to law and justice.

## Efficiency of the justice system

### Duration of the procedure

Reducing case processing times: solutions have been put in place to this end, but they do not provide for any significant increase in human or financial resources, which risks leading to rushed methods of processing cases to the detriment of the rights of litigants.

Development of amicable settlement: a decree of 2023 introduced two new tools into the Code of Civil Procedure: the amicable settlement hearing (ARA) and the caesura of civil proceedings.

### Conditions of detention

Prison overcrowding: the French Bar is very concerned about the state of the prison system and the record number of prisoners that will be reached by the end of 2023. The French Bar takes due note of the government's wish to increase the prison stock by 15,000 additional places, but considers this insufficient to meet European and international requirements and is calling for the introduction of a binding prison regulation mechanism.

## Additional information

Immigration bill: the French Bar considers that this bill seriously undermines the right to an effective judicial remedy and radically reforms the asylum procedure, to the detriment of applicants' rights. The Constitutional Council is due to give its ruling on 26 January 2024.

Death of Nahel Marzouk: the death of the 17-year-old shot dead during a police raid has reopened the debate on the use of legitimate police defence, particularly in cases of resisting arrest.

## Best Practices of the French Bar

Vienna Declaration in favour of the rule of law: recalls the unwavering commitment of the legal profession to fundamental European values and the historic responsibility of the European bodies and the Member States to uphold and strengthen the rule of law as a founding European principle and an intangible common value.

European Convention on the profession of lawyer: the French Bar follows and supports the work initiated under the aegis of the Council of Europe and calls on the EU to lend its support to this project.

Lawyers' G7: this annual meeting of the representative bodies of the Member States and the CCBE provides an opportunity to discuss issues of common interest and to make useful representations to the G7 on a number of subjects, including strengthening justice and the rule of law.

*Bâtonnier's* right to visit places of deprivation of liberty: the French Bar supports this initiative and recommends the introduction of a right of visit for *bâtonniers* or representatives of the legal profession at European level. It considers that this would be a powerful means of bringing States into line with the European Commission's recommendations on deprivation of liberty.

International Observatory for Lawyers in Danger (OIAD): this initiative of the CNB (France), the Paris Bar (France), the Consejo General de la Abogacía Española (Spain) and the *Consiglio Nazionale Forense* (Italy), aims to defend lawyers threatened in the exercise of their profession and to denounce situations which violate the rights of the defence.

*Conseil national de la médiation* (CNM) (National Mediation Council): created in 2021 and attached to the Ministry of Justice, the CNM is responsible for issuing opinions on mediation and proposing to the public authorities any measures likely to improve it.

Strengthening dialogue with institutional actors in the rule of law: the French Bar continues to strengthen its institutional relations with the authorities and actors in the rule of law and fundamental rights in France in order to find practical solutions to the protection they require.

Weimar Triangle of Lawyers: three bodies representing the legal profession in Germany (Deutscher Anwaltverein - German Lawyers' Association), Paris (Paris Bar) and Warsaw (Warsaw Bar) have decided to join forces to take action to defend the values of the rule of law in those three countries, and throughout Europe.

Respite programme: this programme run by the Paris Bar is designed to give beneficiary lawyers the opportunity to get away from their respective countries and find refuge from immediate danger in Paris, for stays of up to three months.

Marianne Initiative for human rights defenders: launched by the Presidency of the French Republic with the participation of the Paris Bar, this programme welcomes human rights defenders to France for a period of six months.



## GERMANY

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### Measures taken to follow-up on the recommendations received in the 2023 Report regarding the justice system

We took note of the European Commission Recommendations for Germany in the 2023 Rule of Law Report according to which no further progress has been made “on continuing efforts to provide adequate resources for the justice system as part of the Pact for the rule of law”.

We welcome that at least in the framework of the digital pact (“*Digitalpakt*”) the federal government is providing a total of up to 200 million euros for the years 2023 to 2026 and that the federal government committed itself to concrete goals in its digital strategy (“*Digitalstrategie*”). Nevertheless it has to be pointed out that also the German Länder will have to provide adequate resources for the justice system. We also took note of the draft “law for the further digitalisation of the judiciary” (see below - on quality of justice).

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

Lawyers are independent agents in the administration of justice according to § 1 BRAO. Individual freedom and independence are only guaranteed if the legal profession is self-governing. In Germany these essential values are secured by a system of self-administration and self-regulation of independent regional Bars, regrouped under the German Federal Bar in addition to the German Bar Association in which membership is voluntary.

Practising German lawyers (*Rechtsanwälte*) are registered with the respective regional Bar (27 + one for the lawyers with rights of audience in civil matters at the German Federal Court of Justice) that is competent for the lawyers established in its district. The regional Bars are independent from the State and self-regulatory within the statutory framework set by the federal legislator. They are public bodies (*Körperschaften des öffentlichen Rechts*) which are under the legal supervision of the legal authorities of the respective Federal State (*Bundesland*). Such supervision is strictly limited to ensuring that the law and the by-laws are observed and in particular, that the duties assigned to the Bar are performed (*Rechtsaufsicht*). The regional Bars are in charge of admission to the profession, the control of compliance with legal professional rules and regulations and decisions on enforcement of violations within the limitations provided by the law. The regional Bars issue warnings and impose sanctions on a lawyer who violates his professional duties. This is in turn controlled by an independent disciplinary jurisdiction for the legal profession. Its highest instance is the Federal Court of Justice (*Bundesgerichtshof*). The regional Bars are headed by practising lawyers who are elected by their peers and fulfil their various tasks on an honorary basis, supported by a professional administration.

The German Federal Bar (*Bundesrechtsanwaltskammer*, BRAK) is a self-regulatory body incorporated under public law (*Körperschaft des öffentlichen Rechts*) and represents the interests of all 28 Bars in Germany and thus of all 166,000 German lawyers. Its role includes representative and other functions provided for in Art 177 of the [Federal Lawyers Act](#) (in English, but unfortunately does not reflect the latest version of the Act). In particular it is incumbent to the German Federal Bar to determine the opinions of the individual bars when it comes to issues which affect the Bars as a whole and to establish the opinion held by the majority by way of joint discussions; to draw up guidelines for the welfare institutions of the bars (section 89 (2) no. 3); to bring the opinion of the Federal Bar to bear vis-à-vis the competent courts and authorities in matters which affect the Bar as a whole; to represent the Bars as a whole vis-à-vis

authorities and organisations; to render expert opinions requested by an authority or federal body involved in the legislative process or by a federal court; to promote the continuing professional development of lawyers; to support electronic communications between lawyers and courts, authorities and other third parties; to support the Bars and lawyers in fulfilling their obligations in the fight against money laundering.

Within the organisation of BRAK, there is a so-called lawyers' parliament (*Satzungsversammlung*) that acts as a legislative body for issues which are delegated for self-regulation to practising lawyers. It determines the rules applicable to all German lawyers of all regional bars.

Since 1871 German lawyers have organised themselves within the German Bar Association (*Deutscher Anwaltverein*, DAV) as an independent representation of interest aimed at pronouncing itself as the lawyer of lawyers in all economic, public and professional interests as well as policy related and political questions. This also includes topics related to the rule of law and the tasks lawyers fulfil within the rule of law.

### Confidentiality of lawyer-client communications

Cases of search and seizure of material can be demonstrated by the example of the Jones Day case, in which the premises of the law firm in Munich were searched and files were seized. The case is still pending before the European Court of Human Rights.

Furthermore, we became aware of a development that is highly questionable in terms of the rule of law: public prosecutors are increasingly ordering the inspection of privileged defence correspondence. Both the order itself and the subsequent actual review are unacceptable – any privileged correspondence with defence counsel must not be subject to review by investigation authorities. In fact, it is protected by a ban on seizure under Section 97 (1) of the Code of Criminal Procedure.

It should be mentioned here that also on a European level it is aimed to increase the supervision on the legal profession and restrict the principle of professional secrecy, in particular in the field of anti-money laundering. This is to be strongly criticised to maintain the independence of the profession as a cornerstone of the guarantee of access to justice for everyone and the preservation of the rule of law. We also notice with concern that according to the Draft Legislation on Corporate Sustainability Due Diligence (CSDDD) currently discussed at European level law firms could fall directly or indirectly under the scope of the Directive. In that case, the law firm would be obliged to prove their clients' compliance with sustainability and social standards or, in the indirect constellation, to prove its own compliance with these standards, potentially facing even a search of the law firm by the own client. These cases would conflict with the core principle of professional secrecy, the right of access to justice and the special relationship of trust between lawyers and clients.

### Implementation of the case law of national, European, and international courts due to legal, administrative, or procedural issues

We deem it necessary to take further (legislative) steps with regard to the enforcement of administrative judgments against the public authorities. Several examples have shown that these judgments are not effectively enforced (e.g. the non-implemented diesel driving bans following a ruling by the BayVGH (Az.: 22 C 18.1718; see also judgment of CJUE of 19 December 2019 C-752/18); the current rules provide only for the determination and the execution of coercive fines which is not sufficient; a legislative proposal providing for additions and clarifications has not been decided on (see BT-Drs 20/2533).

## Independence of the judiciary

We suggest that the German judiciary be protected preventively against possible influence of political parties. A reform is needed at a time when there is no concrete threat to judicial independence and when the current procedure is largely consensual. Current European examples show that as soon as there is a concrete fear of political influence, a reform to protect the courts can hardly be realised.

## Irremovability of judges, including transfers, dismissal and retirement regime of judges, court presidents and prosecutors

The initiative to tighten disciplinary laws to make it easier to remove extremist civil servants (incl. judges) from the bench is ongoing; see also the [Amendment](#) to the German Judiciary Act. This was prompted by the fact that, among others, a judge and other civil servants were suspected of having been involved in the preparation of an extremist coup.

## Remuneration/bonuses/rewards for judges and prosecutors

The situation varies with regard to the different federal states ("Länder"). Whereas in some of them the judiciary is quite competitive towards the other legal professions, in some of them the lack of personal resources is still considerable, especially with regard to non-judicial staff of the courts.

## Quality of justice

### Accessibility of courts

In September 2023, a draft law on the further digitalisation of the justice system was published. From 1 January 2026, all newly created files in the justice system must be kept electronically. The federal states and the federal government are currently piloting the e-file. The draft law enables various forms of hybrid file management. In particular, paper files that have already been created may continue to exist unchanged for the past, but be kept electronically in respect of all subsequent documents. The aim is to avoid resource-intensive scanning to digitise old files. Another main aim of the draft law is to enable citizens to submit a criminal complaint by email or online form if the identity of the person submitting the complaint and their request to prosecute the offence are clearly identifiable. Moreover, according to the draft law lawyers can send applications or statements from clients to the courts as a scan.

As a more general remark: Guaranteeing the principles of the rule of law also requires financial resources by the member states to a greater extent than currently provided.

## Resources of the judiciary

There are remaining challenges as the high number of retirements that are to be expected in the coming years and the need to recruit personnel in the judicial and prosecution services; The challenges that had to be met in the past two years have impressively demonstrated that the ability of the rule of law to function depends to a large extent on the judiciary's ability to work - also digitally. In order to be able to meet current and future challenges it is necessary to provide the judiciary with all the material and financial resources it needs to reliably ensure access to justice.

## Training of justice professionals

To be admitted as a “*Rechtsanwalt*” in Germany, you have to be qualified to become a judge in accordance with the German Judiciary Act (*Deutsches Richtergesetz, DRiG*). To obtain this qualification, it is necessary to first study law at a university and pass the First State Examination, then undergo practical legal training and finally pass the Second State Examination. The first examination comprises an elective subject from an academic priority area and a compulsory subject set by the state.

Pursuant to § 43a (6) of the Federal Lawyers’ Act (*Bundesrechtsanwaltsordnung, BRAO*) the lawyer is obliged to regularly pursue continuing training. Pursuant to § 15 FAO (*Fachanwaltsordnung*) Bar-approved specialist lawyers are obliged to pursue continuous training in their field of expertise. Bar—approved specialist lawyers are obliged to provide proof of their continuous training vis-à-vis the Bars. Otherwise, they lose the right to call themselves a specialist lawyer.

§ 43f of the Federal Lawyers’ Act will oblige lawyers to undergo mandatory training. Lawyers need to acquire knowledge of professional law in the future. In detail, Lawyers must pursue training in the amount of at least ten hours of professional law by the end of the first year of their admission at the latest. Deutsches Anwaltsinstitut, Deutsche Anwaltsakademie und Deutsche Richterakademie and others provide training for justice professionals. To prepare law students in addition to their mandatory education at universities for the legal profession as well as professional law issues, The BRAK, the Hans Söldan Foundation, the DAV as well as the *Deutsche Juristen-Fakultätentag* are jointly supporting the Söldan Moot for eleven years - a student competition on legal professional law, which is organised by the Institute for Procedural Law and Legal Profession at the University of Hanover. Furthermore, the BRAK is working together with schools in Berlin to familiarise pupils with the legal profession, its importance for the Rule of Law and the system of self-administration at an early stage. The DAV is also engaged in several projects such as “Lawyers in schools” which is aimed at strengthening the understanding of the law, democratic values and the role of lawyers therein.

## Digitalisation

It is a positive development that concrete steps to further digitalisation are made in the framework of the pact for digitalisation – “*Digitalpakt*” (in October 2023, the German Federal Parliament (“Bundestag”) released 93 million euros from the Digital Pact for the judiciary of the Länder. The money is to be used for new software and more AI.

In several Länder there are projects on a generative language model of the judiciary (such as “FRAUKE” in Hessen). North Rhine-Westphalia and Bavaria are to develop and test a language model specifically tailored to the needs of the judiciary in a research project as well.

On the use of AI in the judiciary: the supportive use of AI might be, in particular situations like in high standardised proceedings acceptable, as far as the judicial decision-making as such is guaranteed and not replaced by AI (principle of judicial reservation and of the statutory judge) and no criminal proceedings or law enforcement proceedings are concerned. It is of the utmost importance that the legal profession is involved in the development of the digitalisation of the judiciary and in the development of AI based models.

Audiovisual documentation of main hearings in criminal cases: In 2022 the Federal Ministry of Justice finally presented a draft law on the audio-visual documentation (finally adopted by the Bundestag only as audio-documentation), which was highly welcomed by BRAK and DAV. Unfortunately, by the end of 2023 we are facing the situation that the second chamber of the German Parliament, the Bundesrat, is blocking the draft law, so that it may never come into force.

## Efficiency of the justice system

### Length of proceedings

German first instance court proceedings in civil and commercial matters at the district court level often can be accomplished within a year. However, in many complex matters they take much longer, notably if the court appoints an expert.

In the last ten years, German civil cases have decreased. In September 2020, the Federal Ministry of Justice commissioned a comprehensive research project to investigate the causes of the decline in the number of cases filed with the civil courts. The 400-page final report was published in April 2023 (see [here](#)).

Proceedings before the German Federal Constitutional Court can take several years; there are cases pending before the Court for six to seven years. With regard to administrative court proceedings, the main obstacle still is the length of proceedings, which has not decreased following the end of the pandemic situation in Germany.

## Additional information

German Act implementing DAC-6 – Directive on mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements.

The Directive imposes reporting obligations with regard to cross-border tax arrangements also on intermediaries. The Directive provides for an exemption of the legal profession; the German Act implementing the Directive, however, does not. Thus, lawyers, insofar as they act as intermediaries, are subject to reporting obligations. Such gold-plating is per se not prohibited. The German implementing Act provides for the possibility to release the lawyer from professional secrecy obligations in accordance with § 138 f of the German Fiscal Code (*Abgabenordnung*, AO). In this case, the lawyer has to report all the information listed in § 138 f AO. Where the client decides not to lift the obligation of secrecy, the lawyer still has to report some of the information and the client has to report the remainder, even if the client could be identified on the basis of the information that remains to be provided by the lawyer. Furthermore, the lawyer's professional secrecy obligations are also at risk in two other respects. On the one hand the existing obligation for intermediaries to disclose cross-border tax arrangements in accordance with Section 138d AO should also be extended to particular domestic tax arrangements. In addition, the introduction of mandatory invoicing in the B2B sector is being sought in the German implementing act. Here, too, the lawyer's professional secrecy obligations are at risk: according to Directive 2014/55/EU, an invoice must also include information on the recipient of the service - i.e. the client in the case of lawyers, as well as information on the service. It is to be criticised that the German legislator did not make use of the possibility of exemption as provided for in the Directive. The reporting obligations are contrary to the relationship of trust between the lawyer and the client, which is fundamental for the access to justice and a cornerstone of the lawyer's professional practice.

## GREECE

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### Confidentiality of Lawyer-Client Communications

The Greek Bars do not possess any record or official information on cases undermining the confidentiality of lawyer-client communications. No complaints or reports in this regard have reached the official channels of the Bar.

### Threats or Harassment against Lawyers

The Greek Bars have no official data gathered regarding the physical, online, or legal threats or harassment directed towards lawyers in the exercise of their professional duties. The Bar remains vigilant in promoting a secure environment for its members, though no specific instances have been officially documented.

### Legal Provisions and Policies

Currently, there are no specific legal provisions or policies in our country, whether in draft or adopted form, that are identified as negatively impacting the independence of the Bar or lawyers.

### Cooperation with the Executive Branch and Political Pressures

The Greek Bars maintain a commitment to the rule of law and the independence of the legal profession. While there have been routine interactions with the executive branch and supervisory authorities, there are no notable problems or instances of political pressure or interference regarding the role of the Bar or lawyers. The Bar remains steadfast in resisting any undue influence on its activities.

### Implementation of Case Law

The implementation of case law from national, European, and international courts has not presented significant problems or difficulties in our country. Any challenges faced are primarily administrative or procedural in nature.

### Perception of Independence of the Judiciary and Lawyers

The Bar is actively monitoring developments that could affect the public's perception of the independence of the judiciary and lawyers. Initiatives are underway to address concerns and maintain public confidence in the legal profession.

### Quality of Justice

#### Accessibility of Courts

The Bar acknowledges the importance of court accessibility. Efforts are being made to address challenges, including legal aid systems, remuneration of lawyers, court/legal fees, and language barriers.

## Resources of the Judiciary

The Bar recognises the challenges faced by the judiciary in terms of human, financial, and material resources. While ongoing efforts are being made by the government and judiciary to address these challenges, there is still room for improvement.

## Training of Justice Professionals

The Bar is actively involved in initiatives related to the training of lawyers. Challenges are recognised, and efforts are underway to enhance both initial and continuous training for justice professionals.

## Digitalisation

The Bar has identified certain challenges in the digitalisation of the justice system in 2023, including consultations and involvement of the Bar in relevant developments. Efforts are being made to ensure that lawyers have access to necessary digital tools and are consulted in the development of digital processes.



## HUNGARY

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### Measures taken to follow-up on the recommendations received in the 2023 Report regarding the justice system

According to the new report, Hungary has made progress on the rule of law in the justice areas, as judicial reforms have been completed, which was also a key issue for the HBA in our previous written submission.

Concerning the previous recommendations, the Hungarian government and parliament have implemented the recommendation to strengthen the role of the National Council for the Judiciary, abolished the appointment of judges outside the ordinary procedure, tightened the criteria for eligibility for the post of President of the Kúria and strengthened the powers of control of the judiciary over the President of the Kúria.

The preliminary reference cases as such other reform area set by European Commission, where further proof was required of the proper implementation of the milestones to verify compliance. The necessary legislative steps were taken to fully restore the right of Hungarian judges to make preliminary references to the Court of Justice of the European Union (CJEU) in mid-December.

In summary, Hungary's judicial reform has addressed the deficiencies in judicial independence, which were the reason for blocking the release of most of the cohesion funds earmarked for Hungary.

However, legal certainty has been undermined by the unpredictable regulatory environment and the extensive and prolonged use of the Government's emergency powers as the government since 2020 extended the state emergency, which means the laws can still be regularly amended by lower-level legislation and government decrees. No legislative steps have been taken to restore legal certainty as pointed out by the EC's 2023 Rule of Law Report, even the state of danger declared with a reference to the war in Ukraine is currently extended from 25 November 2023 with an additional 180 days until 23 May 2024.

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

#### Confidentiality of lawyer-client communications

The Report of the Commission and the recommendations mention the Pegasus spyware scandal, where investigative journalist and lawyers were also targeted, and unfortunately further concerns have been raised due to the absence of effective oversight as regards the use of secret surveillance measures outside criminal proceedings. The regulation of independent control over secret state surveillance should still be introduced.

#### Cases/examples of physical, online or legal threats or harassment of lawyers while exercising their professional duties, as well as unjustified attacks on the role of lawyers and Bars, including preventive measures taken by the Bar

The Bar did not report about experience of such problems.

## Specific legal provisions and policies which could negatively influence the independence of the Bar and lawyers

The bar does not see general, system-wide problems, nor extraordinary actions against lawyers.

## Cooperation between the Bar and the executive branch of the government and/or supervisory authorities, and cases of political pressure and interference regarding the role of the Bar or lawyers

The Hungarian justice government and the Hungarian Bar Association are in constant dialogue, and we wish to maintain a good working relationship based on professionalism.

## Implementation of the case law of national, European, and international courts due to legal, administrative, or procedural issues

It is a work in progress, the Bar does not see major problems.

## Appointment and selection of judges, prosecutors and court presidents

The appointment of judges outside the ordinary procedure was abolished at Kúria.  
The criteria for eligibility for the post of President of the Kúria was tightened.

## Irremovability of judges, including transfers, dismissal and retirement regime of judges, court presidents and prosecutors

The Bar does not see major problems in this regard.

## Promotion of judges and prosecutors

This is not really applicable in Hungary. There is no press in Hungary discussing court matters, beyond the publication of cases in official gazettes. The internal evaluation work of the judges, prosecutors is not public, if any.

## Allocation of cases in courts

The lack of transparency of case allocations at lower courts was also recognised by the EC's 2023 Rule of Law Report. It was recommended to improve the transparency of case allocation systems in lower-instance courts taking into account the European standards on case allocation.

However, there are reform areas, such as the proper implementation of the case allocation scheme at the Kúria (Supreme Court), which was implemented by the Hungarian government recently in December. It has been decided, a new automated case allocation system will introduce, strengthening the Kúria's independence.

## Independence powers of the body tasked with safeguarding the independence of the judiciary

The role of the National Council for the Judiciary was strengthened and at the same time the powers of control of the judiciary over the President of the Kúria was strengthened. It should be noted that the mandate of the current members of the National Council for the Judiciary will expire on 30 January 2024. The result of the new election will be published soon.

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

The Bar does not see major problems in this regard.

## Remuneration/bonuses/rewards for judges and prosecutors, including observed, transparency on the system and access to the information

No increase in judges' salaries in recent years.

## Independence/autonomy of the prosecution service

In ordinary cases we do not see problems with the independence and autonomy of the prosecution service. In politically sensitive matters critical voices can be heard and read in the press, however, we do not have direct information and experience.

## Quality of justice

### Accessibility of courts

The report and the recommendation also mention the access to justice and the role of lawyers in the justice system, where it was recommended *"the access to justice for vulnerable groups could be improved."*

We agree with this point, and at the same time, we stress the importance of strengthening the legal aid system, which allows citizens seeking justice to enforce their rights without financial means. It has to be emphasised that lawyers' remuneration should be increased, which is still low (16 euro/hour).

## Resources of the judiciary as well as any efforts of the government or judiciary to address the relevant challenges

The bar believes that the judiciary has access to necessary human, financial and material sources.

## Training of justice professionals

The mandatory continued legal education for lawyers has been implemented four years ago and it works seamlessly.

## Digitalisation

The digitalisation of the justice system in Hungary is overall high, the use of digital solutions is very widespread in court proceedings, such as online access to published judgments by the general public, such as the use of electronic communication tools by courts. There are digital solutions to initiate and follow proceedings in civil/ criminal/ commercial and administrative cases.

## Use of assessment tools and standards

There are internal ICT systems used by the Court internally, but they are not accessible to the Court users or legal professionals.

## Geographical distribution and number of courts/jurisdictions and their specialization, in particular specific courts or chambers within courts to deal with fraud and corruption cases

The Bar does not see major problems in this regard.

## Efficiency of the justice system

### Length of proceedings

As regards the estimated time needed to resolve litigious civil and commercial cases, as well as administrative cases at all court instances, the efficiency remains high, according to the EU Justice Scoreboard. However, more complex civil, commercial, administrative and criminal cases the procedure may be significantly longer. An average duration of a standard civil lawsuit can be estimated between 2 and 3 years, including appeals. In more complicated cases the duration can be 3 to 5 years.

## Additional information

The new Hungarian Digital Citizenship Act would make communication with public administration, as well as management of official documents easier and more user-friendly. Most provisions of the Act will enter into force on 1 July 2024, while certain provisions concerning digital communications on 1 January 2025. The new, upgraded platform related to digital citizenship services would incorporate e-identification, e-signage and e-posting solutions, make it easier to pay public charges and various fees. It would also enable the production and management of authentic electronic documents.

## IRELAND

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### Measures taken to follow-up on the recommendations received in the 2023 Report regarding the justice system

#### Family Courts Bill

In April 2023, the Department of Justice published its annual [Justice Plan](#) which is the third and final instalment of annual plans outlining the actions required to deliver the goals established in the 2021-2023 Statement of Strategy. Improving access to justice and modernising the courts system remains a high priority for both the Department of Justice and The Council of The Bar of Ireland.

2022 saw the publication of the Family Courts Bill and the establishment of a Family Justice Implementation Group to roll out the Family Justice Strategy, which commits to ensuring the family court system is more accessible, easier to understand, and improves its responsiveness to users' needs through investing in digital services. As previously stated in the 2023 Rule of Law Report, the Council of The Bar of Ireland has expressed its concerns in the proposal to expand the jurisdiction of the District Court under the Family Courts Bill as it will drastically increase and overwhelm the workload of the court. The District Court is a court of summary jurisdiction and is not set up to process complex cases nor does it have the resources to do so. Further, the summary manner in which the District Court approaches cases is not appropriate for lengthy and multi-issue substantive family law cases. The Council therefore remains very concerned that any expansion in jurisdiction proposed under the Family Courts Bill 2022 will overwhelm the District Courts and result in lengthy delays for clients in being able to access justice.

#### Litigation Costs

The European Commission report on the 2023 Rule of Law detailed the recommendation for Ireland to continue actions aimed at reducing litigation costs and take into account European standards while the economic analysis of litigation costs is finalised. While the Council appreciates any judicial system of costs should be fair and equitable, the assertion that Ireland is a high legal costs jurisdiction compared to its European counterparts is not strongly supported by evidence.

It is crucial to highlight distinctions between common law jurisdictions and civil jurisdictions regarding state funding in adversarial versus inquisitorial systems. In essence, making a direct comparison of Irish litigation costs with those of European counterparts may not be accurate. [An independent report](#) commissioned by the Council of The Bar of Ireland and the Law Society of Ireland has further found that complaints in relation to litigation costs have fallen since the Legal Service Regulatory Authority (LSRA) began its role in managing complaints.

In May 2023, the National Competitiveness & Productivity Council published its [annual report](#) on the key competitiveness and productivity challenges facing the Irish economy and suggests specific policy actions to address these challenges. The Council also produces Ireland's Competitiveness Scorecard on a three-year cycle which provides a comprehensive statistical assessment of Ireland's competitiveness performance. This year, the report noted that:

*'For the first time, the NCPC also sought to include indicators to benchmark Ireland's performance in key areas for Irish business, and especially SMEs, such as insurance and legal costs, and the quality and efficiency of the judicial system and the planning process (and associated time costs). However, data limitations prevented the NCPC from examining these issues in detail. For example, while the European Commission for the Efficiency of Justice (CEPEJ) collects and publishes data on clearance rates for court*

*cases and the time taken for court cases to be resolved, 11 significant caveats apply to this data when interpreted for civil law jurisdictions, including Ireland. Additionally, while the CSO's Services Producer Price Index (SPPI) tracks costs relating to 'Legal, Accounting, Public Relations and Business Management Consultancy', there is no specific breakdown on legal costs.*

*The NCPC will consider how best to address these issues moving forward.'*

*(see page 13, paragraph 2.1 of Ireland's Competitiveness Scorecard 2023)*

A report was commissioned by the Department of Justice in 2022 to undertake an economic evaluation on options to control litigation costs. This report has yet to be published.

Since the passage of the Legal Services Regulation Act 2015, legal practitioners are required to disclose to clients expected legal costs and inform them if they become aware of any factors that could increase anticipated costs. This promotes transparency and enables clients to assess associated financial risks before committing to a legal service. The Council stresses the importance of considering multiple factors when addressing litigation costs moving forward, including the complexity of individual cases and the need to invest in various aspects of the justice system. The Council recommends supporting greater investment in the justice system, allow the Legal Costs Adjudication System time to "bed down" as it is too early to assess its efficiency and introduce non-binding guidelines for legal cost levels, as controlling direct litigation costs should allow for flexibility to each individual circumstance.

### Reform of Civil Legal Aid

The Council continues to prioritise reform of the Civil Legal Aid Scheme and in February 2023, made a [submission](#) to the Independent Review Group established by the Minister for Justice. In its current state, the Civil Legal Aid Scheme is inflexible and is serving as a barrier to access to justice for the most vulnerable sectors of society on a long-term and sustainable basis. The Council reemphasises a successful reformation of the Scheme should provide broad applicability, eligibility and accessibility in order to protect the rights of those most vulnerable while protecting the greatest number of rights for citizens. The Council looks forward to publication of the report in early 2024 from the Independent Review Group to assess next steps in addressing reform of the Civil Legal Aid Scheme.

### Reform of the Defamation Act

The Council appreciates the EU Commission's recommendation regarding the continued advancement on reform of the Defamation Act in Ireland. The Council [outlined its position](#) in detail in a [submission](#) to the Joint Committee on Justice in relation to the General Scheme of the Defamation (Amendment) Bill in May 2023. While the Council understands that the media will prominently contribute to the context of making proposals for reform, it is important to note the majority of defamation claims are made in proceedings which do not involve any media Defendant. Further, regarding the significant proposal to abolish juries in civil actions, the Council stresses the importance of the role juries have in society and the balance they provide to the judicial arm of the State. The proposal runs contrary to the long-established jurisprudence involving the importance of members of the public being called upon to determine issues with respect to damage to reputation and free speech.

A significant concern relating to the role of juries in defamation actions, and therefore the greatest argument for their removal, involves their function in assessing damages. There have been examples in the past of damages awards made by juries being more modest than the monetary amount that may have been awarded by a Judge. However, as a result of the recent Supreme Court case decision in *Higgins v. Irish Aviation Authority* [2022] IESC 13, it is now possible to provide a jury with bands indicating the appropriate amount of damages in defamation actions. As progress continues on reformation of the Defamation Act, the Council would encourage government to take caution with any decision to remove juries in their entirety without considering alternative methods of controlling the issue of excessive

monetary awards and evaluating the impact the removal of juries have had in other countries' jurisdictions.

### Judicial Appointments Commission Bill

The Council shares the concerns of the EU Commission Report regarding progress on the appointment and promotion of judges, specifically the composition of the proposed Judicial Appointments Commission. The Judicial Appointments Commission Bill 2022 goes against European standards in that it does not include a requirement for a judicial majority to sit on the Commission. On 13 October 2023, the Judicial Appointments Commission Bill 2022 was referred by the President of Ireland, Michael D Higgins, to the Supreme Court for a decision on its constitutionality, provided for in Article 26 of the Constitution of Ireland. The Supreme Court heard the matter on 15 and 16 November 2023 and published its judgment that the Judicial Appointments Commission Bill 2022 is constitutional on 8 December 2023. Following the decision of the Supreme Court, Article 34.3.3 of the Constitution precludes the possibility of any further legal challenge to the constitutionality of the legislation.

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

Physical, online or legal threats or harassment of lawyers while exercising their professional duties, as well as unjustified attacks on the role of lawyers and Bars, including preventive measures taken by the Bar

There are frequent occurrences of physical/online threats or harassment made by clients against lawyers while practicing their professional duties. Owing to sensitivity of some of the cases that are still active, we are not in a position to provide links to specific examples at this time. Incidents of this nature are brought to the attention of The Council and are monitored/responded to accordingly.

### Specific legal provisions and policies which could negatively influence the independence of the Bar and lawyers

Not aware of any. The Legal Service Regulatory Authority (LSRA) has been established since 2016 and is responsible for oversight of all complaints and disciplinary matters in relation to the legal profession.

### Appointment and selection of judges, prosecutors and court presidents

Judges: The Judicial Appointments Commission Bill 2022 completed the final stages in the Oireachtas on 4 October 2023. The Bill provides for the establishment of a new, independent Judicial Appointments Commission to select and recommend persons for judicial office in Ireland and in the EU and international courts.

On 13 October 2023, the Judicial Appointments Commission Bill 2022 was referred by the President of Ireland, Michael D Higgins, to the Supreme Court for a decision on its constitutionality, provided for in Article 26 of the Constitution of Ireland. The Supreme Court heard the matter on 15 and 16 November 2023 and published its judgment that the Judicial Appointments Commission Bill 2022 is constitutional on 8 December 2023.

Prosecutors: There is no change in respect of the appointment of prosecutors.



## Irremovability of judges, including transfers, dismissal and retirement regime of judges, court presidents and prosecutors

Judges (including Court Presidents): No Change.

As per our contribution to the Rule of Law Report in 2022, the Guidelines for Judicial Conduct and Ethics<sup>33</sup> were drafted by the Judicial Conduct Committee and adopted by the entire Judicial Council on 4 February 2022. The Judicial Conduct Committee's procedures relating to complaints were finalised in September 2022 with the Minister for Justice commencing the provisions of the Judicial Council Act 2019 in October 2022. This enables a person to make a complaint about the conduct of a judge in Ireland in respect of allegations of misconduct arising on or after that date.

A determination by the Judicial Conduct Committee as to whether the complaint has been substantiated must be in writing and must give the reasons for the determination and may include a recommendation for the issuing of advice to the judge, the making of a recommendation that the judge pursue a specified course of action, and/or the issuing of an admonishment to the judge.

Unsatisfactory determinations made by the Judicial Council Committee; the Committee is permitted to take further action including making a referral to the Minister for the purposes of Article 35.4 of the Constitution of Ireland (provides for the removal of a judge).

The retirement age for all judges remains unchanged at 70.

Prosecutors: No Change.

## Promotion of judges and prosecutors

Judges: A number of reforms to the appointments process for judges, including the elevation of serving judges, is being addressed under the Judicial Appointments Commission Act 2023. The Act provides that all serving judges must participate in the same selection process for appointment to a higher court as other candidates.

Prosecutors: No change.

## Accessibility of courts

Access to justice and a sustainable criminal bar remains a key concern for The Bar of Ireland. As a direct consequence of the deep cuts ranging from 28.5%-69% that were applied to the professional fees paid to criminal barristers during the financial crisis of 2008–2011, a career choice for recently qualified junior barristers in crime has become unattractive when compared to opportunities in other areas of law. The evidence shows that two-thirds of barristers who commence a career in criminal law leave after only 6 years in practice and that this is as a direct consequence of the deep cuts that were applied. A skilled and experienced criminal prosecution bar can only emerge after many years of practice in the junior ranks of criminal defence law. It takes many years of practice at the Bar to acquire the necessary experience to effectively and skilfully prosecute serious cases on behalf of the State and it is imperative that newly qualified talented barristers are encouraged to practice in the area of criminal law. One significant form of such encouragement is to be fairly and reasonably rewarded for their services. The government's own [2018 spending review report on criminal legal aid](#) recognised that our cost effective and robust criminal legal aid system facilitates a high standard but low-cost representation of defendants through skilled advocates engaged by the State and recognised that the fee structure and the incentives of this fee

<sup>33</sup> [https://judicialcouncil.ie/assets/uploads/documents/Guidelines for Judicial Conduct and Ethics.pdf](https://judicialcouncil.ie/assets/uploads/documents/Guidelines%20for%20Judicial%20Conduct%20and%20Ethics.pdf)

structure must be monitored on an ongoing basis to ensure a fair, effective and efficient criminal justice system.

As mentioned as part of the horizontal developments in this report, criminal barristers, on the recommendation of Council of The Bar of Ireland, withdrew their professional services nationwide on 3 October 2023. This was in response to the failure of successive Governments to adequately resource the criminal justice system, and specifically in relation to the fees payable to barristers by the Director of Public Prosecutions and under the Criminal Justice (Legal Aid) scheme. Later, on the 10 October 2023, the Government announced an increase in [funding](#) for professional fees of criminal barristers as part of Budget 2024. The 10% increase in the budget for professional fees payable to barristers by the Director of Public Prosecutions and under the Criminal Justice (Legal Aid) Scheme was welcomed by the Council as a positive first step in ensuring fairness in the level of fees paid under criminal legal aid. Now, more than ever, it is crucial that the Department of Justice and the Office of the Director of Public Prosecutions ensure appropriate fee payment structures, unravel existing cuts, and restore the link to public pay agreements in order to promote fairness in the Irish legal system and sustainable access to justice.

### Resources of the judiciary as well as any efforts of the government or judiciary to address the relevant challenges

The Council appreciates the EU Commission's recognition of the significant increase in judges in 2023 and for 2024. An announcement was made by the Minister for Justice in February 2023 to increase the number of judicial appointments in step with the Organisation for Economic Co-operation and Development's (OECD) recommendation. Specifically, Government approval was secured for 24 additional judges to be appointed in 2023 and for significant investment to support the establishment of Planning and Environment Court and dedicated Family Courts. In 2024, it is intended to increase the number of judicial appointments to a further 20 judges subject to assessment of the impact of the 24 initially appointed judges. Overall, it will increase the number of judges from 173 to 217. However, increasing judicial capacity alone is not sufficient to improve efficiency within the courts system, and additional supports such as courts service, IT and estate resources are crucial to manage complex caseloads effectively.

Perhaps most notably, the proposal to expand the jurisdiction of the District Court under the Family Courts Bill will drastically increase the workload of the court. The Council will continue to express its concerns on these proposed changes, as an expansion in jurisdiction will overwhelm the lower courts in terms of caseload. Although a planned increase in the number of judges is a positive development in resource expansion, the District Court is a Court of summary jurisdiction and is not set up to process complex cases such as financial relief applications in the context of judicial separation/divorce and cohabitation/civil partnership breakdown. Further, the summary manner in which the District Court approaches cases is not appropriate for lengthy and multi-issue substantive family law cases. Unless settled, such cases are regularly of long duration and the District Court is not equipped to deal with lengthy cases. Further, the District Court is not a Court that delivers regular written judgments which contribute to the development of vital case law in this area. In addition, the increase in monetary jurisdiction of the District Court of up to land with a value of €1 million, with the option to increase this to €2 million at the election of the Minister for Justice is inappropriate and indicates a significant departure from its current jurisdiction.

Ultimately, the transfer of adjudication from the High and Circuit Courts to an already overburdened District Court will lead to:

1. Reduced court time for families and children in the determination of their rights.
2. The application of a more summary process for the determination of those rights.
3. Less authoritative jurisprudence in family and child law due to fewer written judgments from Circuit and High courts.
4. Limited access to the specialist input and expertise of counsel as District Court litigation is often conducted solely by solicitors.

## Training of justice professionals

### **Barristers**

On foot of recommendations made by the Legal Services Regulatory Authority (LSRA) and updated in 2020 (<https://www.lsr.ie/wp-content/uploads/2020/11/Section-34-ET-Final-Report-to-Minister.pdf>) The Bar of Ireland continues to follow its Competency Framework for Continuing Professional Development which was established in October of 2021. The framework guides members in the identification and selection of CPD activities that are relevant to their professional learning needs.

### **Judges**

The Judicial Studies Committee (<https://judicialcouncil.ie/judicial-studies-committee/>), established on 10<sup>th</sup> February 2020 pursuant to the Judicial Council Act 2019, continues to oversee a modernised programme of judicial training and education on topics such as Judicial Conduct and Ethics, Avoiding Re-traumatisation, Unconscious Bias and Vulnerable Witnesses, Induction, Mentoring, Assisted Decision-Making and Training of Judicial Trainers.

The Committee is committed to maintaining public trust in the judiciary and the administration of justice by delivering appropriate, effective, and timely training. The training is based on the core values and principles set out in the Guidelines for the Judiciary on Conduct and Ethics, including independence, impartiality, integrity, propriety, equality, competence, and diligence.

In 2023, with the assistance of the Associate Director, the Committee developed the [Judicial Studies Committee Workplan 2023-2026](#) to set out a strategic approach to training and ensure sustainable programmes. This plan highlights four key priority areas: developing and delivering training programmes, ensuring adequate resources and supports, establishing policies and procedures, and raising awareness of the importance of judicial education and training. This plan is underpinned by a detailed Annual Action Plan, which is a dynamic document that will be reviewed and updated as necessary.

## Digitalisation

The Report of the Review of the Administration of Civil Justice, also known as the Kelly Report, was published by the Department of Justice in May 2022 and sets out over 90 recommendations to reform civil law in Ireland. Among the recommendations, an approach to advance the reform in the area of technology and e-litigation was established. The overall aim is to create a secure digital environment to facilitate e-litigation and to modernise the digital facilities of Irish Civil Courts. This includes equipping courtrooms across jurisdictions with Wi-Fi and evidence display hardware to enable practitioners to use e-Litigation software to present cases in court electronically. Varying levels of access to the digital court record for parties, judges, court staff and members of the public, will also be facilitated, consonant with data protection and privacy rights.

According to the Courts Service [Annual Report](#) for 2022 (published 28 September 2023), the number of video technology enabled courtrooms was increased by 14 in 2022, bringing the number of courtrooms across the country that can support remote courts and video-link appearances to 120. Further, there was a total of 23,214 Irish Prison Service video courtroom appearances. The technology supports virtual appearances from litigants, legal professionals, expert witnesses, prisoners, and Gardaí dialling-in from remote locations to a physical courtroom with digital evidence display.

The Courts Service Annual Report for 2022 highlights the completion of the eCharge sheets project which automatically pulls charge sheet and station bail data from An Garda Síochána's system (Irish police enforcement) into the Courts Service system (up to 2021, all data was manually typed in). The new system is used to now process 95% of charge sheets and has reduced the time taken to process a charge sheet by 77%.

The report further outlines a 10-year Modernisation Programme and breaks the programme into long and short-term planning goals. The Corporate Strategic Plan 2021-2023 sets out ICT strategic goals and adopts a "digital first" approach with two priorities to develop an ICT and data strategy to define the application, infrastructure and data architecture to support a modern and digitally-enabled Courts Service and engage in collaborative digital initiatives with other agencies to drive efficiencies.

### Use of assessment tools and standards

As mentioned in the previous question regarding modernisation and digitisation of the justice system, the Courts Service Annual Report for 2022 details that the legacy case management systems are in the process of being replaced through virtual software (Microsoft Power Platform) with a single modern platform capable of offering online services. In 2022, the Court Service concentrated on developing a unified case management system for the Courts and in 2023 has started to replace Civil legacy systems in the High Court and the Family Law system in the Circuit Court.

### Geographical distribution and number of courts/jurisdictions and their specialization, in particular specific courts or chambers within courts to deal with fraud and corruption cases

On 11 December 2023, a new division of the High Court dedicated to Planning and Environment cases was formally established. The new division of the High Court aims to improve the delivery of housing by reducing planning delays and will also allow for greater efficiency and specialism in the handling of litigation relating to planning and environmental matters, particularly judicial reviews. In summary:

- The new Division will replace and expand the scope of the "Commercial, Planning and Environment List" of the High Court, which became operational on 17th April 2023. This was in line with the Government Decision of 2nd November 2022, which approved the establishment of a dedicated Planning and Environment division of the High Court including, if necessary, on an administrative basis.
- It is now to become fully operational following on from the assignment of an additional High Court judge to the area and the publication by the President of the High Court of 'Practice Direction HC 124', which is to take effect from 11 December 2023.
- The Practice Direction sets out the expanded scope of the new High Court Division and has been finalised following on from two public consultations undertaken by the Courts Service; a necessary element for compliance with the Aarhus Convention in respect of environmental law.
- The expanded scope now encompasses proceedings related to 21 identified pieces of EU environmental legislation and 16 identified areas of national legislation, which include, planning,

transport, water, climate, natural heritage, built heritage, waste, mineral exploration, the marine, agriculture and pollution.

- The new Practice Direction provides that cases will be assigned different priorities. A stated objective of the Court is that capacity is retained to deal expeditiously with urgent cases such as proceedings that concern large-scale projects of strategic importance, or matters of significant environmental impact. This is to ensure that these proceedings can continue to be prioritised and afforded an early hearing date.
- The new High Court Division will therefore deal with proceedings which include strategic infrastructure and commercial planning matters and decisions involving EU and national environmental and planning legislation.
- Cases will now be heard by the three judges assigned to the new Court Division.

## Efficiency of the justice system

### Length of proceedings

The Courts Service Annual Report for 2022 provides updated data on the average length of proceedings across the various courts. District Court criminal proceedings, from issue to disposal, averaged at 369 days and 569 days in the Circuit Court. The average length of civil proceedings from the Circuit Court and District Courts weren't available. In the High Court the average length of civil proceedings, from issue to disposal, increased from 797 days in 2021 to 871 days in 2022. Personal Injury cases accounted for the lengthiest of proceedings at 1,325 days. Average length of proceedings in the Central Criminal Court, from receipt of return for trial to final order, was 738 days (an increase from 668 in 2021), and 464 days from receipt of charge sheet to final order (an increase from 423 in 2021). Civil proceedings in the Court of Appeal averaged at 527 days, from issue to disposal, and 461 days from issue of notice of appeal to final order in criminal proceedings. In regard to the Supreme Court, the average length of time for an Application of Leave Determined (issue to determination date) was 18 days in 2022 compared to 23 in 2021 and the average time for an Application of Leave Determined (from papers being ready to determination) was 5 days (unchanged from 2021). The average length of appeals is 63 days in 2022, an increase from 52 in 2021.

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

Advocates shall be independent and shall be subject only to the Law in their professional activities. State and local government authorities, courts, prosecutors and pre-trial investigation institutions shall guarantee the independence of advocates.

It is prohibited to:

- interfere in the professional activities of advocates, exert influence or bring pressure upon them;
- request information and explanations from advocates, and also interrogate them as witnesses regarding the facts which have become known to them in providing legal aid;
- control postal and telegraph correspondence and the documents which advocates have received or prepared in providing legal aid, to examine or confiscate them, and also to execute a search in order to find and confiscate such correspondence and documents;
- control, also by applying the procedural measures referred to in Clause 3 of this Section, the information systems and means of communication, including electronic means of communication, used by advocates in providing legal aid, to remove information from them and to interfere with the operation thereof;
- request information from clients on the fact of aid provided by advocates and the contents thereof;
- subject advocates to any sanctions or threats in relation to the provision of legal aid to clients in accordance with the Law;
- hold advocates liable for written or oral announcements which they have made while performing their professional duties in good faith.

An unlawful action of an advocate in the interests of a client, and also an action for the promotion of an unlawful offence of a client shall not be recognised as a provision of legal aid.

### Confidentiality of lawyer-client communications

A complaint shall be made in accordance with procedural procedures, if such cases come to light;

No complaints have been received regarding cases that have not been resolved;

The Latvian Bar Association draws attention and strongly points to the importance of the confidentiality of lawyer-client communication.

### Physical, online or legal threats or harassment of lawyers while exercising their professional duties, as well as unjustified attacks on the role of lawyers and Bars, including preventive measures taken by the Bar

If information is received regarding the possible threat, immediate action shall be taken and attention shall be drawn to the unacceptable.

### Specific legal provisions and policies which could negatively influence the independence of the Bar and lawyers

Not detected by the Latvian Association of Sworn Advocates. The Latvian Association of Sworn Advocates itself decides on issues of disciplinary responsibility.

Cooperation between the Bar and the executive branch of the government and/or supervisory authorities, and cases of political pressure and interference regarding the role of the Bar or lawyers

Not detected by the Latvian Association of Sworn Advocates.

Implementation of the case law of national, European, and international courts due to legal, administrative, or procedural issues

Not detected by the Latvian Association of Sworn Advocates.

Perception that the general public has of the independence of the judiciary and independence of lawyers

Media intervention before a court judgment enters into force (rare; in individual cases).

Allocation of cases in courts

#### **Distribution of Cases**

Before the beginning of each calendar year, the Court President shall approve a plan for the distribution of cases.

The Court President may amend the plan for the distribution of cases during the calendar year:

- due to the overload of work of judges;
- due to an insufficient workload of judges;
- in relation to a change of judges;
- in relation to judges being unable to fulfil their duties;
- in the distribution of cases, the workload of a judge when fulfilling duties in judicial self-government authorities shall be taken into account.

Independence and powers of the body tasked with safeguarding the independence of the judiciary (e.g. Council for the Judiciary)

#### **Independence of the Judiciary and Submission Solely to Law**

In administering justice, judges shall be independent and subject solely to law.

The independence of the judiciary shall be guaranteed by the State.

#### **Prohibition to Interfere with the Judicial Process**

State institutions, public and political organisations, and other legal and natural persons have the obligation to respect and abide by the independence of the judiciary and the immunity of judges.

The process of administering justice must be free from any restrictions, pressures, influences, direct or indirect threats or other unlawful interferences, irrespective of the purpose or intention of such actions. Demonstrations and picketing on the premises of a court building are prohibited in accordance with the



procedures specified in laws and regulations. Any influencing of judges or interference with the administration of justice shall be punished in accordance with the procedures specified in law.

No one has the right to request from a judge a report on or explanations of the course of examination of a particular case, or also the disclosure of the views expressed during deliberations.

### **Judicial Immunity**

In the fulfilment of the duties related to the administration of justice, the judge has immunity.

Only the Prosecutor General of the Republic of Latvia can initiate a criminal case against a judge. A judge may not be arrested or held criminally liable without the consent of the *Saeima*. A Supreme Court judge specially authorised for such purpose shall take the decision to arrest, convey by force, detain or subject to search a judge. If a judge is apprehended for committing a serious or especially serious criminal offence, the decision to convey by force, detain or subject to search need not be taken, but the specially authorised Supreme Court judge and the Prosecutor General must be informed thereof within 24 hours.

A judge is not financially liable for the damages incurred by a person who participates in a case as a result of an unlawful or unfounded court judgment.

A person who considers that a court ruling is unlawful or unfounded may appeal it in accordance with the procedures specified in the Law, but cannot bring an action before a court against the judge who examined this case.

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

The Cabinet of Ministers shall, not less than once in four years, assess the remuneration system of officials and employees of State and local government authorities and also judges and prosecutors and, if necessary, submit proposals for the improvement thereof to the *Saeima*.

The monthly salary of a judge shall be determined by linking it to the base monthly salary with a corresponding coefficient. The monthly salary of a prosecutor shall be determined by linking it to the monthly salary of a district (city) prosecutor with a corresponding coefficient.

### **Quality of justice Accessibility of courts**

Accessibility of courts is assured. However, there are some problems with State-provided legal aid. Paying those lawyers who provide state-provided legal aid in Latvia is one of the lowest in Europe. The Latvian Council of Sworn Advocates has launched a proposal to increase the payment of summaries. No charges shall be paid for entry into the administrative areas where payment is foreseen. Car parks outside courthouses. Certain procedural items are not paid at all.

## Resources of the judiciary

Resources of the judiciary - It is sufficient to deal regularly with issues if problems are identified.  
In criminal proceedings an interpreter shall be ensured.  
Relatively lengthy litigation deadlines.

## Training of justice professionals

Training of justice professionals - It is planned to open a law academy, where training will take place for judges and prosecutors, as well as judicial and prosecutorial candidates.  
The training system of the Latvian Bar Association includes a regular and annual duty of further training (16 hours per year is the minimum).

## Digitalisation

Development of the e-case is underway. Lawyers are involved in the working process. The implementation of the system is slow and technically complicated.

Starting in February/March 2024 it is scheduled to move fully to handling cases in the e-case system.

## Use of assessment tools and standards

Regular cooperation with institutions is carried out in order to improve the work.

## Geographical distribution and number of courts/jurisdictions and their specialization, in particular specific courts or chambers within courts to deal with fraud and corruption cases

Civil, criminal and administrative cases in Latvia are heard in 17 courts, which are divided into three levels – nine district (city) courts, six district courts and the Supreme Court.

Court of Economic Affairs. The territory of operation of the Specialised Court of Economic Affairs covers the whole of Latvia. It is competent for specific commercial disputes and criminal cases of particularly serious crimes that cause significant damage to the business environment and economic development.

## Efficiency of the justice system

### Length of proceedings

A working group, the Working Party on Judicial Efficiency, has been set up under the Council for the Judiciary. The Working Party on Judicial Efficiency implements the tasks of Action Line 3 "Efficient and High-Quality Judiciary" of the Judicial Council Action Strategy 2021-2025. The strategy of the Council for the Judiciary outlines the following directions:

### Effective and high-quality judiciary

Objective: An efficient, convenient, timely, publicly understandable and accessible justice system.

Tasks: identify the factors essential for ensuring the quality and continuous improvement of judgments and provide a vision for the solution of problem situations;

- to continuously monitor and evaluate the deadlines for handling cases and the adequacy of the resources of the judicial system to ensure reasonable time limits for proceedings;
- to assess the efficiency of the work of the justice system and the respect of guarantees of access to justice, focusing in particular on the results of the territorial judicial reform and its impact on the functioning of the justice system, as well as the need for further steps;
- to stimulate discussion on the improvement of the process of routine evaluation of judges, to ensure a more comprehensive and objective evaluation;
- to promote digitalisation processes facilitating the work of the justice system;
- to develop standards for the specialisation of judges;
- to contribute to the identification of problems in the judicial system;
- to ensure links with the presidents of the courts;
- to promote the establishment of a common methodology for the evaluation of court staff and a common remuneration system attached to it.

### **Additional information**

The Latvian Council of Sworn Advocates has approved the by-law of the Ethics Commission, determining the time periods for examination of ethical issues (previously there were no precise time periods).

The Ethics Commission must carry out an examination within two months of the transmission by the Council of all relevant material to the Ethics Commission. The Ethics Commission shall take a decision in the matter within a month of the completion of the examination.

## LITHUANIA

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### Measures taken to follow-up on the recommendations received in the 2023 Report regarding the justice system

In the Country Chapter for Lithuania, the very first recommendation noted that:

“Some progress on continuing the reform of the legal aid system, including by ensuring adequate conditions for the participation of legal aid providers, taking into account European standards on legal aid.”

Lithuanian Bar considers that no systemic reform was carried out. The hourly fee from 1 January 2024 will be raised from 20 to 25 EUR before taxes. It is to be noted that a 20 EUR hourly fee was established only in 2022, therefore the increase of the fee by 5 EUR (25 percent). Such an increment should be regarded as bare nominal because only in 2022 the average inflation rate nearly has reached 20 percent. In 2023 the inflation was still raging and is estimated to be about 8-10 percent. Accordingly, a lawyer providing legal aid, even after the increase of the legal aid hourly fee in 2024, economically will be in a worse situation than in 2022. Therefore, the increment obviously is not sufficient.

However, it should be recognised that the Ministry of Justice agreed with the position of the Bar, that there should be another rate for the lawyers who completed special training. The priority areas for such training are established by the Minister of Justice. For 2024 these priorities are set for vulnerable groups. Therefore, as an example a lawyer who completed special training on how to provide legal minors or victims of criminal acts will be entitled to the rate of EUR 50 in such cases. The first training courses will be organised for lawyers in 2024.

Unfortunately, the (public) administration of legal aid is very cumbersome and very costly. The administration part has not undergone any significant and essential changes.

It is also to be considered whether the administration of the legal aid system by the state does not affect the independence of lawyers. That is especially relevant in comparison with the countries where legal aid system is administered by the Bar.

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

#### Confidentiality of lawyer-client communications

There is no progress to report from the previous submission of information for the RoL-2022 report. However there some developments which show further and constant degradation of confidentiality. Formally there are guarantees for the lawyers established in the Law on the Bar. However, these guarantees are not well respected because of many reasons. Only some of them might be mentioned.

1. Article 46 and particularly part 3 of the Law on the Bar establishes lawyer's guarantees. This provision was construed by the Supreme Court of Lithuania in case No. 2K-346/2011. The Supreme Court established that these guarantees do not apply when the advocate is suspected or accused of having committed a criminal act. Accordingly, the criminal acting of a lawyer in no way is compatible with the advocate's professional activity. Therefore, the use of covert investigation actions was not contrary to the guarantees for lawful activities of an advocate provided for in the Law on the Bar.

Thus, according to the case law of the cassation court, covert investigation actions can be used against an advocate also in case if he/she is not yet officially suspected of having committed a crime (an act of suspicion, an act of indictment is not yet officially served to him/her), but investigators have data that the advocate behaves criminally. Thus, this case law negates the guarantees of protection of advocates' communication, which are set in the laws.

Therefore, law enforcement agencies can use any covert investigation actions, measures, and equipment to control the actions of a lawyer. The criteria applicable in such cases is "having data". If law enforcement has data, they can ask the court to authorise (sanction) these covert investigation actions. As a general rule, courts nearly always authorise (sanction) such actions. If as a result of such covert actions, no incriminating evidence was collected, neither a lawyer nor a Bar will be informed about such covert actions. In case a lawyer or a Bar would file a request regarding the application of such covert actions against them, the answer will always be the same – that any of such covert actions is considered a state secret and cannot be disclosed, unless the case is sent to court. Because of such an approach against the Lithuanian Bar, the Bar after the exhaustion of national remedies has filed a petition to the ECHR (64301/19). The case is pending before the Court. It is also to be noted that in national court proceedings, national courts have not even considered (examined) the Bar applications to refer the case to the ECJ concerning the interpretation of the Law Enforcement Directive (LED).

Moreover because of the incorrect transposition of LED into national legislation the Bar submitted a complaint to the European Commission (CHAP(2019)02116).

2. Maybe the Lithuanian Bar Association could be perceived as allegedly exaggerating the situation regarding the almost uncontrolled and widespread usage of covert investigative actions. The decision of the ECJ in "Lithuanian" case C-162/22 clearly showed that national legislation which was previously even confirmed as compliant with the Lithuanian Constitution by the Constitutional Court, was found genuinely and strictly not corresponding to the objectives of the E-Privacy Directive (2002/58/EC). This is a very illustrative example.

3. According to the laws, the data or documents of a lawyer could be seized only under the authorisation (sanctioning) of the court. However, sometimes court sanctions are so abstract that it results in extremely broad seizures against the advocates. For example, in April 2022, the Bar Council even adopted a formal document (position) on the interpretation of the lawyer's guarantees. The Council of the Lithuanian Bar noted that court sanctions established that the following should be seized: "working notes", "agreements with the clients", "computers used by the lawyer and data storage" or "other things and documents". Such type of sanctioning makes it completely impossible to ensure that the client's secret will be respected, as a lawyer who supervises such a search or seizure cannot argue that certain information or documents are irrelevant to the current investigation.

4. Moreover, the Lithuanian Bar is concerned with the practice of law enforcement authorities who as a general rule examine the data seized by the method of making a "digital copy" (an image) of the advocate's computer, telephone, or any other device. As a rule, advocates empowered by the Council of the Lithuanian Bar participate and supervise are present in the official examination (analysis) procedure. However, there are no clear safeguards established that such a digital image is not examined "unofficially" and "to the full extent" or any other copies of such image are made for future investigations or any other purpose.

5. The interception of lawyer-client communication is continuously being implemented in all Police detention facilities. Any contact between a lawyer and his/her client is under permanent and continuous video surveillance. Such surveillance is motivated by the Police as ensuring the security of lawyers and preventing any possible illegal activities by the lawyers. The Bar addressed this issue by writing a letter to

the Police Commissioner General, however no follow-up reactions or developments yet. The Bar is very concerned as the equipment installed in the police facilities has also audio recording function and there are no guarantees that it will always be switched off. Finally, the Bar believes that the lawyer should have the possibility to consult the client confidentially, that is even without video surveillance.

6. From time-to-time the Lithuanian Bar Association receives notifications from attorneys or their assistants that they are invited to testify about the circumstances that became known for them during communication with the client or to testify about the nature of the meeting with the client, etc. In 2022 (case No. 2K-7-76-719/2022) the Supreme Court of Lithuania spoke up on this matter. In this case an attorney was questioned as a witness about the circumstances which he learned while performing as a defender. The Supreme Court of Lithuania asserted that although the attorney did not fulfil attorneys' duties related to the security of the client's secret, the violations of the right to a fair trial and the right to defence, in this situation, were mainly caused by the actions of the state authorities. The Supreme Court of Lithuania also stated that the information disclosed during the interrogations constitutes the professional secret of the client and that the individual right to defence was violated. In this case the Supreme Court of Lithuania pointed out that the efficiency of the defence in the criminal process is associated with mutual trust between an attorney and a client, and that in this case interrogations took place at the time when the attorney performed as a defender during the hearing of the case in the court of appeal, without court or the client knowing about such interrogations. Moreover, the Supreme Court of Lithuania stated that in this case the right to a fair trial was also violated.

After evaluating from time-to-time received notifications, it may be concluded that although the laws of the Republic of Lithuania prohibit questioning an attorney as a witness about the circumstances that the attorney learned while performing as a defender, such guarantees of an attorney or his client may not be ensured by law enforcement authorities.

Physical, online or legal threats or harassment of lawyers while exercising their professional duties, as well as unjustified attacks on the role of lawyers and Bars, including preventive measures taken by the Bar.

The Lithuanian Bar Association has no information about such cases.

Specific legal provisions and policies which could negatively influence the independence of the Bar and lawyers

The activities of the Lithuanian Bar Association are based on the principle of independent self-governance of advocates (lawyers), however, following the Law on the Bar regulating the activities of the Lithuanian Bar Association, the Lithuanian Bar Association is obligated by the Law on the Bar to coordinate the procedures related exclusively with activities of advocates (7 procedures in total, for example, the procedure of taking the Bar exams, the procedure of certification of copies and registration of legal services documents) with the Ministry of Justice. The procedure of examination of disciplinary actions against advocates, also the Code of Ethics for Advocates, which are adopted by the General Assembly of Advocates, are announced publicly via the Ministry of Justice.

Because of the disciplinary case against the former (2014-2021) President of the Bar, the Bar openly expressed its point of view that the Disciplinary Court should: 1) be elected by the General Assembly; 2) consist only of practising lawyers. There were also some legislative initiatives in the Parliament to limit the powers of the Minister of Justice. Because of the developments in the Parliament, the Minister of Justice submitted a draft proposal to decrease the role of the Minister, however, the Bar Council was of the view

that the proposal submitted still does not guarantee the independence of the Disciplinary Court. As a result, there is no agreement or understanding reached between the Bar and the Minister of Justice. Another aspect to be mentioned in this context is that the Minister of Justice seeks to create a unified system (principles) of procedure and composition for the Disciplinary Bodies of notaries, bailiffs, and lawyers.

It is to be noted that the Law on the Bar, the Disciplinary Court consists of five lawyers, members of the Bar. Three out of five are elected by the General Assembly of the Bar. Any lawyer who has more than 10 years of practice is eligible as a candidate. The General Assembly also has a right to revoke them. This right is established in the Statute of the Bar.

However, another two members of the Disciplinary Court are appointed by the Minister of Justice. The appointees also must have 10 years of practice. However, there are no criteria or order for the selection of candidates established. Accordingly, the Minister of Justice has full discretion to appoint any lawyer as a member of the Disciplinary Court. Moreover, the lawyers appointed by the Minister of Justice cannot be revoked even by the General Assembly. Therefore, the status of the members of the Disciplinary Court is not equal. Even more, there are no safeguards established against the revoking of these two members of the Disciplinary Court by the Minister of Justice him/herself. There was no such decision of the Minister of Justice to revoke the appointed members, but since there are no legal obstacles to doing so such a possibility remains open.

To sum up, this leads to the disproportionate influence of the Minister of Justice in the disciplinary procedure. First, the Minister might initiate a disciplinary case against a lawyer. Secondly, there is no procedure established on how and when the Minister has a right to initiate such cases. Thirdly, the Minister can appoint two members of the Disciplinary Court and has a right (although it was never used yet) to revoke the appointed Members of the Disciplinary Court. And finally, the Minister has a right to be represented in the proceedings of the Disciplinary Court in the cases initiated by the Minister him/herself.

### Cooperation between the Bar and the executive branch of the government and/or supervisory authorities, and cases of political pressure and interference regarding the role of the Bar or lawyers

This could not be regarded as a complete problem for the Bar, but rather a perception of the profession of lawyer. In 2023 the Government proposed a tax reform which was intended to be a major recast of the existing taxation regime. One of the axes of the reform was directly aimed at self-employed professionals, first of all lawyers, because this was publicly and specifically made clear that lawyers earn more income than persons employed under the labour contract. This was done despite the efforts of the Bar to explain the risks to be met by self-employed persons, such as: no major social insurance or guarantees, no paid vacations, all business costs, etc. Such tax reform would have had a very negative impact on lawyers and other self-employed professionals as it was intended to raise the tax burden by up to approximately 30 per cent. Because of major efforts of the Bar finally, this part of tax reform was halted.

### Perception that the general public has of the independence of the judiciary and independence of lawyers

As a general issue, the identification of the lawyer with the client persists very strongly in the media. In the past even in debates in the Parliament lawyers who were candidates for the positions of judges in general were perceived negatively reminding the cases where they were defenders or representatives (agents).



It may be noted that in 2023 there was a case when the Lithuanian Bar Association received a formal written writ from the judge requesting to provide an attorney's personal code. The judge wanted to receive the attorney's personal code only from the Lithuanian Bar Association and he did not apply with such request to states register. The Lithuanian Bar Association did not provide such information to the judge because of the lack of information and justified purpose of using the requested data (according to the regulations of GDPR).

However, no very significant or major challenges could be identified at the moment.

## Appointment and selection of judges, prosecutors and court presidents

The former (2014-2021) President of the Constitutional Court (hereinafter – CC) was appointed as a judge of CC in March 2011. He was appointed as the President of the CC in July 2014. His term as a judge of CC should have ceased exactly after 9 years (that is in March 2020) in the office as established by the Constitution. However, because the Parliament did not appoint another (that is replacing) judge, the President of CC remained in the position of judge and President of CC until May 2021. Therefore, more than a year longer as provided by the Constitution. Former judges of CC expressed heavy criticism of such a situation.

In 2023 this (already former) President of CC announced his candidacy in the upcoming elections for the position of President of the Republic.

This could have been seen as an isolated situation, however, this year, in 2023, a judge of CC was appointed a member (from the ruling majority) of Parliament and Chairman of the Committee on Legal Affairs. This raised serious concerns about the independence and neutrality of such a judge. Moreover, this is considered as a precedent for similar possible future appointments. To some extent, such a situation resembles the one in Poland where gaining control over CC was among the first steps of the ruling majority.

## Allocation of cases in courts

In 2023 the Lithuanian Bar Association applied in writing asking to indicate how many times in 2020, 2021, 2022 and 2023 Supreme Court of Lithuania prioritised the hearing of certain cases (did not follow the queue). No answer was given. The possibility of (possibly untransparent) prioritising the hearing of certain cases is uncertain.

## Quality of justice

### Accessibility of courts

In 2023 the Government adopted an amendment based on which the basic amount of payment for attorneys who provide secondary legal aid increases from 1 January 2024 from 20 to 25 euros per hour. Moreover, another amendment was adopted by the Government, on the basis of which from 1 January 2024 attorneys who provide secondary legal aid in special areas (for example for minors, victims of terrorism, human trafficking, domestic violence criminal acts, etc.), who have a certificate which certifies that they had a special training courses, their payment for provided legal aid per hour will be doubled (50 euros).

However, payment for attorneys who provide secondary legal aid in Lithuania is one of the lowest in Europe. It is important to note, that there are strict time limits for an execution of procedural actions and

if it is exceeded, attorneys' services are unpaid. Moreover, the time that attorney spends traveling to the place where secondary legal aid will be provided is still not paid.

### Training of justice professionals

As it was mentioned, the Government adopted an amendment based on which from 1 January 2024 attorneys who provide secondary legal aid in special areas (for example for minors, victims of terrorism, human trafficking, domestic violence criminal acts, etc.), will be able to participate in specialised training courses. Accordingly, a special description determining the organisation of these training was adopted. The Lithuanian Bar Association is responsible for the organisation of these trainings. Currently all preparatory work is made.

## LUXEMBOURG

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### Measures taken to follow-up on the recommendations received in the 2023 Report regarding the justice system

With regard to legal aid, the law of 7 August 2023 on the organisation of legal aid and repealing article 37-1 of the LPA has been adopted.

Key elements of the reform:

1. Introduction of partial legal aid: legal aid is extended to people with resources slightly in excess of the REVIS, by setting income levels to determine the proportion covered by the State. Lawyers' fees are charged on the basis of a fee agreement negotiated between the client and the lawyer, as well as the tariff in force for legal aid.
2. Legal aid for minors: end of cost recovery from parents of minors receiving legal aid.
3. Scope: the scope of legal aid remains broadly the same, with coverage of mediation costs and wider access to legal aid in collective debt settlement proceedings, subject to the discretion of the President of the Bar.
4. Limitation on change of lawyer: save in exceptional circumstances, the client may only request a change of lawyer once, leaving the President of the Bar free to decide on other requests for change.
5. Adaptation of the closure procedure: the procedure for closing a legal aid file allows the beneficiary and his lawyer to check the benefits withheld before transmission to the Ministry of Justice, in order to reduce subsequent administrative appeals.
6. Definition of billable services: a Grand-Ducal regulation clarifies the services that are admissible and excluded in the context of legal aid.

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

#### Confidentiality of lawyer-client communications

1. In the context of a search by the International Rogatory Commission / European criminal investigation, documents falling within the scope of professional secrecy were seized. An appeal was lodged by the lawyer whose office was searched and the Luxembourg Bar Association intervened in the proceedings. In its decision, the Chambre du conseil drew a distinction, in the activities carried out by lawyers on behalf of their clients, between those who act on behalf of their clients and those who act as advisers. In short, according to this decision, secrecy now applies only to exchanges between lawyer and client and advice given by the lawyer in the course of a defence. All documents communicated by the client to the lawyer are not covered, nor are all documents relating to the lawyer's advisory activity.

The reasoning is clearly *contra legem*, since Luxembourg law on the legal profession does not distinguish between the different types of work carried out by lawyers, the uniqueness of the profession being the rule.

As this is an international letter rogatory, this order is not subject to appeal (article 10.4 of the law of 8 August 2000 as amended on international legal assistance).

2. As part of a national criminal investigation, a search was carried out in a lawyer's office and documents covered by professional secrecy were seized. The law firm appealed against the seizure and the Luxembourg Bar Association intervened in the proceedings.

In the decision of the Council Chamber, it is held that the mere fact that the file seized from the applicant's law firm constitutes a litigation file does not *ipso facto* lead to the conclusion that all of the documents assembled therein must be protected by the rights of the defence. Consequently, according to this decision, a litigation file could be subject to seizure. The Council Chamber also considered that the protection of professional secrecy applies only to correspondence exchanged between the lawyer and his client or other colleagues, consultations sent by the lawyer to his client, and writings and interview notes relating to the client's defence.

The Council Chamber also considered that a poorly drafted report on the nature of the documents seized validates the seizure. The lawyer would thus have the burden of proof *in concreto* for the protection of the documents for which he invoked secrecy, failing which the entire litigation file could be seized, including lawyer-client exchanges.

3. As part of a national criminal investigation, a search was carried out in a lawyer's office and documents covered by professional secrecy were seized. The law firm appealed against the seizure and the Luxembourg Bar Association intervened in the proceedings.

The Council Chamber based its decision on rulings by the French Court of Cassation to decide that, apart from the exception relating to the criminal activity of the lawyer, the French Court of Cassation has established as a general rule that professional secrecy does not prevent the investigating judge from seizing documents when they do not relate to the exercise of the rights of the defence. Therefore, only documents relating to the exercise of the rights of the defence are exempt from the investigating magistrate's power of investigation and seizure. Confidentiality is not sufficient to prevent the investigating magistrate from exercising his powers if the documents in question do not relate to the exercise of the rights of the defence. The breach of professional secrecy must be strictly necessary and proportionate.

According to the *Ordre des avocats*, the reference to the developments of the French Cour de cassation is erroneous, whereas the French texts make a distinction between the lawyer's activities relating to the defence and advice, contrary to Luxembourg law.

The Council Chamber also considered that lawyer-client privilege does not prevent the investigating judge from seizing documents in a lawyer's chambers that are covered by lawyer-client privilege, if they are useful for establishing the truth and are not related to the exercise of the client's rights of defence.

The chambers therefore made an *in concreto* assessment of the seized emails, correspondence and a lawyer's fee note, and considered that they did not relate to the client-lawyer relationship.

According to the *Ordre des avocats* and the law, any fee note from a lawyer to his client is by its very nature covered by secrecy, as the very wording of the note provides very important information about the client/lawyer working relationship.

4. The Bar Association has been informed during 2022 that on basis of a letter rogatory issued by a foreign tax authority, the Luxembourg tax authorities had requested from a Luxembourg law firm communication of information protected by the professional secrecy.

The law firm refused to comply with the request, invoking the professional secrecy rules which led to the issuance of an administrative fine in a substantial amount against the law firm.

The law firm decided to challenge this decision of the Luxembourg tax authorities in front of the Luxembourg administrative court, and the Bar Association decided to intervene in these proceedings in order to support the position of the law firm.

After several decisions, the *Cour Administrative* decided to refer several questions for a preliminary ruling to the European Court of Justice on the scope of the professional secrecy of lawyers. These proceedings are currently pending.

### Physical, online or legal threats or harassment of lawyers while exercising their professional duties, as well as unjustified attacks on the role of lawyers and Bars, including preventive measures taken by the Bar

On 8 June 2023, the Court of Cassation of the Grand Duchy of Luxembourg handed down judgment no. 68/2023 (n°CAS-2022-00085) in which it dismissed an application for cassation review by a lawyer against judgment no. 195/22 X of the Court of Appeal of 6 July 2022. Under the terms of that judgment, the Court of Appeal had in part upheld a judgment of the criminal court insofar as it had found the lawyer in question guilty of contempt of court (*outrage à magistrat*).

The contemptuous conduct described by the above-mentioned courts concerned an e-mail that the lawyer had sent to the Public Prosecutor General, the Minister of Justice and the Minister of the Economy. The e-mail concerned a case in which the lawyer in question was defending the interests of a company operating a factory whose operations had come to a standstill due to the sealing of an electrical chamber by an examining magistrate following a fatal accident. The lawyer was seeking to have the seals lifted as a matter of urgency. When the examining magistrate did not respond to his attempts to contact him, the lawyer wrote to the Public Prosecutor General, the Minister of Justice and the Minister of the Economy, saying: "*I would like the seals to be lifted as a matter of urgency:*

*"Ladies and Gentlemen,*

*Please find below an email I have just sent to the examining magistrate [...].*

*It's not the first time I've had an incident with him.*

*Needless to say, this is totally unacceptable.*

*I've just tried at 3.20pm to call him on his direct line, then on the generic line for the examining magistrates' chambers, but no answer.*

*At 4pm I had a clerk on the line who told me he'd be there in a quarter of an hour. I've just called his direct line again, as well as the general line for the examining magistrate's chambers, but there's no answer.*

*I'll leave it to you to guess the conclusions I draw.*

*Kind regards."*

The same facts were brought to the attention of the President of the Luxembourg Bar Association under her disciplinary powers. After investigating the facts, she closed the disciplinary case.

On 29 September 2023, the lawyer who convicted for contempt of court (*outrage à magistrat*) filed an application with the European Court of Human Rights. In his application, he alleges that his criminal conviction constituted a violation of his right to free speech protected by Article 10 of the European Convention of Human Rights.

In light of the importance of the case for *inter alia* the (i) free speech of lawyers and (ii) independence of individual lawyers as well as of bar associations and the profession as a whole, the Luxembourg Bar

Association and the CCBE each applied for permission to file written observations to the courts. Permission was granted in both cases. The case is currently pending.

## Perception that the general public has of the independence of the judiciary and independence of lawyers

The National Council for the Judiciary has been in office since 1 July 2023. Its remit is to ensure that the justice system functions properly while respecting its independence. In particular, it is responsible for recruiting and appointing magistrates, and for making recommendations to the Chamber of Deputies and the Minister of Justice on the organisation and operation of the justice system. The law gives citizens the possibility of referring complaints directly to the Council, either concerning the operation of the justice system or when they consider that the conduct of a magistrate in the performance of his or her duties constituted a disciplinary offence.

Since the adoption of the new Constitution applicable from 1 July 2023, the independence of the Public Prosecutor's Office has been enshrined: it is independent in carrying out individual investigations and prosecutions.

## Appointment and selection of judges, prosecutors and court presidents

Future magistrates, i.e. attachés de justice, are recruited through a competitive examination.

To be admitted to the competitive examination, the following conditions must be met:

- be of Luxembourg nationality;
- enjoy civil and political rights and be of good repute;
- hold a Luxembourg university law degree corresponding to a recognised master's degree or a foreign university law degree corresponding to a recognised master's degree and approved by the Minister for Higher Education in accordance with the amended law of 18 June 1969 on higher education and the approval of foreign higher education qualifications;
- have an adequate knowledge of Luxembourgish, French and German;
- have completed the judicial or notarial traineeship for at least twelve months;
- meet the physical and mental fitness requirements, which are verified by a medical and psychological examination.

Recruitment may also be based on an application.

To be eligible to apply, you must meet certain conditions required for admission to the competitive examination, in particular:

- be of Luxembourg nationality;
- have an adequate knowledge of Luxembourgish, French and German;
- meet the physical and mental fitness requirements, which are verified by a medical and psychological examination.

Once recruited, the Grand Duke appoints the magistrates proposed by the National Council for the Judiciary in accordance with the conditions laid down by law.

### Law of 23 January 2023 on the status of magistrates:

#### Chapter 2. Appointments

##### Art. 3.

(1) The magistrate's personal file is kept and updated by the secretariat of the National Council for the Judiciary.

(2) The secretariat of the National Council for the Judiciary shall destroy the personal file within six months of the day on which the magistrate ceases to hold office.

##### Art. 4.

Calls for applications for vacant positions in the judiciary are published on the Justice website.

Art. 5.

(1) In the event of a vacancy in the posts of President of the Superior Court of Justice, Public Prosecutor General or President of the Administrative Court, the National Council of Justice shall determine the profile sought.

(2) For judicial vacancies other than those referred to in paragraph 1, the determination of the profile sought is optional.

(3) The call for applications and the profile are published together on the Justice website.

Art. 6.

(1) Candidates must complete a biographical note and indicate their professional experience, acquired before joining the judiciary and, where applicable, during their time as a magistrate.

(2) Applications shall be sent through the hierarchy to the President of the Conseil national de la justice.

Art. 7.

(1) In the event of an application for a vacant post, the National Council for the Judiciary shall seek the reasoned opinion from:

1° the head of the department to which the magistrate reports at the time of submitting his or her application;

2° the head of the department responsible for the vacancy if the magistrate wishes to move to another court, another public prosecutor's office or another judicial department.

(2) The provisions of paragraph 1 shall also apply when the attaché de justice applies for a judicial post.

Art. 8.

(1) With a view to issuing the opinion referred to in article 7, the candidate's professional skills and human qualities are assessed by the head of the corps to which he/she reports.

When the candidate is a head of department, the professional skills and human qualities are assessed by:

1° the President of the Superior Court of Justice in respect of the Presidents of the District Courts and the Managing Justices of the Peace;

2° the Public Prosecutor General in respect of Public Prosecutors General and the Director of the Financial Intelligence Unit;

3° the President of the Administrative Court with regard to the President of the Administrative Tribunal.

(2) The competent head of department may seek the opinions of any magistrate or public official assigned to the judicial services.

They issue their reasoned opinion.

They communicate their opinion and, where applicable, the opinions referred to in paragraph 1 to the candidate.

The candidate may submit their observations within ten days of the notification.

(3) The secretariat of the National Council for the Judiciary shall take care of:

1° the Filing of opinions and observations in the candidate's personal file;

2° the destruction of notices and observations within six months of the date on which the decision on the application became final.

Art. 9.

(1) To be appointed as a magistrate, one must be of good repute.

(2) The National Council for the Judiciary may have access to the personal data referred to in this article for the purpose of checking the good repute of a candidate for a vacant post in the judiciary.

It assesses the candidate's good character on the basis of an opinion to be issued by the Public Prosecutor General.

(3) In their opinion, the Public Prosecutor General refers to:

1° entries in bulletin N° 2 of the criminal record;

2° information resulting from a court decision establishing facts relating to a criminal conviction for a felony or misdemeanour for which a pardon has not already been granted at the time the application is submitted;



3° information from a police report which establishes facts likely to constitute a felony or misdemeanour when these facts are the subject of ongoing criminal proceedings, excluding facts which have resulted in a decision to acquit, dismiss or close the case.

(4) Where the candidate is a national of a foreign country or resides or has resided in the territory of a foreign country, the Public Prosecutor General may require the candidate to produce an extract from the criminal record or a similar document issued by the competent public authority of the foreign country concerned.

In its opinion, the Public Prosecutor General will include information from the extract from the criminal record or a similar document issued by the competent public authority of the foreign country concerned.

(5) For as long as the facts in question are covered by the secrecy of the investigation provided for in Article 8 of the Code of Criminal Procedure, the opinion of the Public Prosecutor General shall state only:

1° the surname, forenames, date and place of birth of the candidate and his identification number within the meaning of the amended law of 19 June 2013 on the identification of natural persons;

2° the legal classification of the alleged offences.

(6) The secretariat of the National Council for the Judiciary is responsible for:

1° the filing of the opinion of the Public Prosecutor General in the candidate's personal file;

2° the destruction of the opinion of the Public Prosecutor General within six months of the day on which the decision on the candidacy has acquired the force of *res judicata*.

Art. 10.

(1) In the event of a vacancy for the office of President of the Superior Court of Justice, Public Prosecutor General or President of the Administrative Court, the National Council of Justice will invite candidates to a personal interview with its members.

(2) For vacant judicial posts other than those referred to in paragraph 1, the personal interview is optional.

Art. 11. Candidates are selected by the National Council for the Judiciary on the basis of their professional skills and human qualities, as well as their rank in the judiciary.

Art. 12. The candidate's professional skills and human qualities will be assessed taking into account:

1° where applicable, the suitability of the profile referred to in Article 5;

2° previous professional experience, as documented in the biographical note referred to in Article 6(1);

3° the reasoned opinion of the head of the corps, if not of the magistrate referred to in Article 8, paragraph 1, subparagraph 2, points 1° to 3°, and, where appropriate, the candidate's observations;

4° any information obtained in the course of the checks on good repute referred to in Article 9;

5° where applicable, the individual interview referred to in article 10.

Art. 13. In a reasoned decision, the National Council for the Judiciary proposes the appointment of a candidate to the Grand Duke.

Art. 14. The Grand Duke appoints the candidate proposed by the National Council for the Judiciary.

## Irremovability of judges, including transfers, dismissal and retirement regime of judges, court presidents and prosecutors

Judges are irremovable. None of them may be deprived of his or her position or be suspended except by a judgment. They may only be transferred by a new appointment and with their consent. However, in the event of infirmity or misconduct, they may be suspended, dismissed or removed in accordance with the conditions laid down by law.

## Allocation of cases in courts

Article 101 of the Constitution:

The law governs the organisation of the courts.

Law of 7 March 1980 on judicial organisation:

Generally speaking, the heads of department allocate cases to the chambers or judges.

## Independence powers of the body tasked with safeguarding the independence of the judiciary

The Constitution in force since 1 July 2023 guarantees the independence of members of the judiciary from political power. The office of magistrate is incompatible with that of member of the Government, with the mandates of deputy, burgomaster, alderman or municipal councillor, with any public or private salaried function, with the functions of notary, bailiff, with military and ecclesiastical status and with the profession of lawyer.

### Article 107 of the Constitution:

The National Council for the Judiciary (Conseil national de la justice) ensures that the judicial system functions smoothly and independently.

The composition and organisation of the National Council for the Judiciary are regulated by law. A majority of the members of the National Council of the Judiciary must be judges.

The Grand Duke appoints magistrates proposed by the National Council for the Judiciary in accordance with the conditions laid down by law.

The powers of the National Council for the Judiciary in disciplinary proceedings against magistrates are determined by law.

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

Judges are impartial and bound by professional secrecy.

### Article 110 of the Constitution:

The law guarantees the impartiality of the judge, the fair and equitable nature of the proceedings, reasonable time limits, respect for the adversarial process and the rights of the defence.

### Law of 23 January 2023 on the status of magistrates:

#### Chapter 4. Deontology

##### Art. 17.

The ethical rules for magistrates, drawn up by the National Council for the Judiciary, are declared binding by a Grand Ducal regulation.

##### Art. 18.

The National Council for the Judiciary monitors the application of ethical rules by magistrates.

##### Art. 19.

Any member of the judiciary may refer a matter to the National Council for the Judiciary for an opinion on an ethical issue.

##### Art. 20.

(1) Members of the judiciary may be reminded of their duties by the head of their department, without any disciplinary action being taken.

(2) When the head of department intends to issue a call to duty, he or she shall inform the member concerned of the grounds for his or her action and ask him or her to state his or her position within a fortnight.

(3) If the magistrate concerned requests a personal interview with the head of department in his or her position statement, a personal interview must be organised.

(4) Once the formalities referred to in paragraphs 2 and 3 have been completed, the head of department shall issue the call to duty and forward it to the National Council for the Judiciary, together with the statement of position, if any.

(5) The secretariat of the National Council for the Judiciary shall file the reminder of duties and, where applicable, the statement of position in the personal file of the magistrate concerned.

## Chapter 5. Discipline

### Section 1 re. Disciplinary misconduct and disciplinary sanctions

#### Art. 21.

Any act committed in the course of or outside the performance of his duties by which:

- 1° magistrates may compromise the service of justice;
- 2° the member of the judiciary disregards the duties of his office, namely independence, impartiality, integrity, probity, loyalty, conscientiousness, dignity, honour, respect, consideration for others, reserve and discretion, as set out in the ethical rules for members of the judiciary;
- 3° the member of the judiciary seriously and deliberately infringes a procedural rule constituting an essential guarantee of the rights of the parties, established by a final court decision.

#### Art. 22.

Disciplinary sanctions are:

- 1° warning;
- 2° reprimand;
- 3° fine, which may not be less than one tenth of a gross monthly basic salary, nor more than this monthly basic salary, and which is recoverable by means of an unopposable constraint, to be issued by the collector of the Administration de l'enregistrement, des domaines et de la TVA;
- 4° downgrading, which consists of classifying the member of the judiciary in the grade immediately below his former grade prior to the downgrading or in the grade preceding the grade immediately below. The grade and salary step in which the member of the judiciary is classified are set by the disciplinary court, whose decision must result in the newly set salary being lower than the salary before the disciplinary sanction. A downgraded member of the judiciary is appointed hors cadre;
- 5° temporary exclusion from service, which may be imposed, with or without partial or total deprivation of remuneration, for a maximum period of two years. The period of exclusion does not count as time served for biennials, advancement in salary and pension;
- 6° retirement;
- 7° revocation: the sanction entails the loss of employment, title and pension entitlement, without prejudice to the rights arising from retroactive insurance as provided for in the coordination of pension schemes.

#### Art. 23.

(1) The application of disciplinary sanctions is governed by the seriousness of the misconduct committed, the nature of the duties and the background of the magistrate in question.

(2) Disciplinary sanctions may be applied cumulatively.

#### Art. 24.

(1) Judicial decisions on public prosecutions do not constitute an obstacle to the application of disciplinary sanctions.

(2) In the event of prosecution before a criminal court, the disciplinary court may suspend the disciplinary proceedings pending the final decision of the criminal court.

### Section 2. Suspension

#### Art. 25.

A member of the judiciary shall be automatically suspended from the performance of his duties:

- 1° detained by virtue of a criminal conviction, for the duration of his detention;
- 2° held on remand, for the duration of his detention;
- 3° against whom there is a judicial decision that is not yet final, entailing loss of employment, until the final decision acquitting him or sentencing him to a lesser penalty;
- 4° has been disciplinarily dismissed or retired by a decision that is not yet final, until the end of the disciplinary proceedings.

#### Art. 26.

In the event of criminal or disciplinary proceedings, suspension may be ordered at any time by:

- 1° the National Council of Justice in respect of the President of the Superior Court of Justice, the Public Prosecutor General and the President of the Administrative Court;
- 2° the President of the Superior Court of Justice with regard to the magistrates of this court and the presidents of the district courts;
- 3° the Public Prosecutor General in respect of the magistrates of the Public Prosecutor's Office, the Public Prosecutors General and the Director of the Financial Intelligence Unit;
- 4° the Presidents of the district courts with regard to the magistrates of these courts and the managing justices of the peace;
- 5° the Public Prosecutors General with regard to the magistrates of the public prosecutor's offices attached to the district courts;
- 6° the justices of the peace as directors in respect of justices of the peace;
- 7° the Director of the Financial Intelligence Unit with regard to the magistrates of this unit;
- 8° the President of the Administrative Court with regard to the magistrates of this Court and the President of the Administrative Tribunal;
- 9° the President of the Administrative Tribunal in respect of the magistrates of that Tribunal.

### Remuneration/bonuses/rewards for judges and prosecutors, including observed changes, transparency on the system and access to the information

Judges' remuneration is set by law, which ensures the transparency of the system.  
There has been no significant change in the remuneration of magistrates.

### Independence/autonomy of the prosecution service

#### Article 104 of the Constitution:

The Public Prosecutor's Office is responsible for public prosecutions and for enforcing the law. It is independent in carrying out individual investigations and prosecutions, without prejudice to the Government's right to issue criminal policy directives.

### Quality of justice

#### Accessibility of courts

With regard to legal aid, the law of 7 August 2023 organising legal aid and repealing article 37-1 of the LPA has been adopted. Key elements of the reform:

- a) Introduction of partial legal aid: legal aid is extended to people with resources slightly in excess of the REVIS, by setting income thresholds to determine the proportion covered by the State. Lawyers' fees are charged on the basis of a fee agreement negotiated between the client and the lawyer, as well as the tariff in force for legal aid.
- b) Legal aid for minors: end of cost recovery from parents of minors receiving legal aid.
- c) Scope: the scope of legal aid remains broadly the same, with coverage of mediation costs and wider access to legal aid in collective debt settlement proceedings, subject to the discretion of the President of the Bar.
- d) Limitation on change of lawyer: save in exceptional circumstances, the client may only request a change of lawyer once, leaving the President of the Bar free to decide on other requests for change.
- e) Adaptation of the closure procedure: the procedure for closing a legal aid file allows the beneficiary and his lawyer to check the benefits withheld before transmission to the Ministry of Justice, in order to reduce subsequent administrative appeals.

- f) Definition of billable services: a Grand-Ducal regulation clarifies the services that are admissible and excluded in the context of legal aid.

## Training of justice professionals

There is currently a draft law No. 7958 relating to access to and training in the professions of barrister, notary and bailiff. One of the aims of this reform is to put in place a system that places more emphasis on quality than quantity.

The main changes proposed are as follows:

- Introduction of an entrance examination for complementary courses in Luxembourg law. The purpose of this entrance exam is to make an initial selection.
- It is also proposed that university diplomas be abolished as a criterion for access to complementary courses in Luxembourg law. It is important to be able to check whether a person has completed a full course in law and to be able to check the authenticity of diplomas, including if the diplomas come from official training in the country taught.
- For the complementary courses in Luxembourg Law, it is proposed to introduce the possibility of offsetting certain marks under certain conditions.
- The main changes proposed for the judicial internship (Chapter 3) are as follows:
- The examination at the end of the legal traineeship, known as the "*avoué*" examination, has been replaced by a number of knowledge tests throughout the two years of the traineeship.
- The maximum duration of the training period is 4 years. Once this period has elapsed, the Conseil de l'Ordre may decide to omit the candidate from the roll.

Following objections from the Council of State to the draft legislation, the bill is still under discussion.

## Digitalisation

Since 24 April 2023, a secure electronic exchange platform (via MyGuichet.lu using a LuxTrust product) has been available to administrative courts on an experimental basis (see Online services / Forms).

Still in its pilot phase, this service is currently reserved for summary proceedings (articles 11 and 12 of the amended law of 21 June 1999 on the rules of procedure before the administrative courts) relating to administrative decisions emanating from the State and is only accessible to lawyers at the Court.

Lawyers may voluntarily file their application for interim relief and related documents electronically via MyGuichet.lu, in parallel with the physical filing on paper, which currently remains the only admissible filing.

The use of this MyGuichet.lu assistant presupposes the prior certification by the relevant Bar Council of the lawyers' electronic professional spaces required to connect to this platform.

The request is made from a certified professional space in MyGuichet.lu and requires a LuxTrust product (e.g. Token, SmartCard or Signing Stick) or an electronic identity card (eID). The procedure is also available in the mobile application.

The Bar is regularly consulted on these projects, but progress is slow. Today, we can speak of electronic filing rather than digitisation.

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

### Breach of confidentiality of lawyer-client communications

The Bar is not aware of any such cases.

Physical, online or legal threats or harassment of lawyers while exercising their professional duties, as well as unjustified attacks on the role of lawyers and Bars, including preventive measures taken by the Bar.

Unfortunately, there are situations where lawyers receive threats or are harassed, however there are little tools to redress such situations.

### Specific legal provisions and policies which could negatively influence the independence of the Bar and lawyers

The Bar is not aware of any legislation or particular policy which negatively affects the independence of the bar and lawyers.

### Cooperation between the Bar and the executive branch of the government and/or supervisory authorities, and cases of political pressure and interference regarding the role of the Bar or lawyers

The Chamber of Advocates is a non-governmental, independent body. On the whole, the Chamber is not subject to much political pressure or governmental interference, however, recently there have been pressures related to the verification of lawyers and the award of the warrant.

### Perception that the general public has of the independence of the judiciary and independence of lawyers

The main issue boils down to lack of a resources and the need for more investment and qualified personnel.

### Appointment and selection of judges, prosecutors and court presidents

Judges and magistrates are appointed by the President of Malta, acting in accordance with the recommendation of the Judicial Appointments Committee. The Judicial Appointments Committee is composed of the Chief Justice, two Judges elected by their peers for a period of four years, a Magistrate elected by his or her peers for a period of four years, the Commissioner for Administrative Investigations (Ombudsman) and the President of the Chamber of Advocates. When a vacancy in the office of Judge or Magistrate occurs, the Committee shall send to the President of Malta the names of three candidates that the Committee considers to be most suitable along with a detailed report on the

suitability and merit of these three candidates. The President shall be entitled to elect a Judge or a Magistrate exclusively from the names of the three candidates.

The notion of a court president comes into play either in a case before the Constitutional Court or in a case before the Court of Appeal in its superior jurisdiction, which are presided by three judges. The President of the Court is generally the Chief Justice, unless there is some form of a conflict in which case a senior judge will be appointed as President for the purposes of that particular case. It should be noted that the Chief Justice is a judge who is appointed by the President, acting in accordance with a resolution of the House of Parliament, supported by the votes of not less than two-thirds of all the members of the House.

In terms of prosecutors, there exists the Office of the Attorney General. The Attorney General is considered to be the Chief Prosecuting Officer in Malta and is appointed by a special Appointment Commission, consisting of *“persons who in [the Justice Minister’s] opinion are respected and trusted by the public and are technically qualified to examine whether candidates for the office of Attorney General have the appropriate qualifications and other merit and suitability requirements to occupy the said office”* after a public call for applications (Attorney General Ordinance).

### Irremovability of judges, including transfers

Judges and magistrates enjoy security of tenure until they reach the age of sixty-five (65) years of age. It is possible for judges and magistrates to remain in office until reaching the age of sixty-eight (68) years, provided that they inform the Chief Justice and The President of Malta of this decision prior to the expiration of their tenure.

Judges and magistrates can only be removed if they breach the Code of Ethics for Members of the Judiciary, which breach is so severe that it merits their removal, or if there are ground of incapacity (whether bodily, mental illness or for any other reason) which render them incapable of performing their functions. The decision to remove a judge/magistrate is taken by the subcommittee of the Commission for the Administration of Justice and such decision may be appealed before the Constitutional Court.

In terms of transfers, it is possible for judges/magistrates be transferred to different courts, such as from the Criminal Courts to the Civil Courts. The distribution of duties of judges and transfer of judges is regulated by Article 11 of the Code of Organisation and Civil Procedure which provides that *“(1) The President of Malta shall assign to each of the judges his duties by assigning to him the court or the chamber of the court or section in which he is to sit ordinarily, and may transfer a judge from one court or chamber or section of a chamber to another: Provided that a judge may be assigned to sit ordinarily in more than one court or more than one chamber or section of one or more courts”*. It should be noted that the Chief Justice provides recommendations in this respect.

In essence the removal of a judge from the position of Chief Justice is done by virtue of a resolution of the House of Representatives supported by the votes of not less than two-thirds of all the members of the House.

Attorney General can only be removed from his office by the President of Malta upon an address by the House supported by the votes of not less than two-thirds of all the members thereof and requesting such removal on the grounds of proved inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause) or proved misbehaviour.



## Promotion of judges and prosecutors

The offices of judges and magistrates are considered to be separate and distinct offices. In order for a magistrate to be appointed as a judge, the procedure established by the Constitution has to be followed. In this respect, the Judicial Appointments Committee will consider the magistrate as a candidate for judgeship, after the magistrate duly applies for the role, and may include that magistrate in the list of candidates provided to the President. It could also be the case that the Prime Minister asks the Committee to give advice on the eligibility and merit of a magistrate of the Inferior Courts to be appointed to an office in the judiciary.

## Allocation of cases in courts

The Chief Justice provides recommendations on how Judges and Magistrates are to be allocated between the different courts, and then the judges/magistrates are assigned to sit in a particular court by the President (to sit in criminal court, civil, family, commercial, etc.).

## Independence and powers of the body tasked with safeguarding the independence of the judiciary

The Commission for the Administration of Justice is tasked with safeguarding the independence of the judiciary. The Commission is composed of ten members: the President of Malta, the Chief Justice, the Attorney General, two members elected from among the Judges of the Superior Courts, two members elected from among the Magistrates of the Inferior Courts, one member appointed by the Prime Minister and one member appointed by the Leader of the Opposition, and the President of the Chamber of Advocates.

The functions of the Commission are:

1. to supervise the workings of the superior and inferior courts and to make recommendations to the Minister responsible for justice for the more efficient functioning of the courts;
2. to advise the Minister responsible for justice on any matter relating to the organisation of the administration of justice;
3. when so requested by the Prime Minister, to advise on any appointments of judges, magistrates or Chief Justice;
4. to draw up a code or codes of ethics regulating the conduct of members of the judiciary;
5. on the advice of the Committee for Advocates and Legal Procurators, to draw up a code or codes of ethics regulating the profession;
6. to draw the attention of any Judge or Magistrate on any matter, in any court in which he sits, which may not be conducive to an efficient and proper functioning of such court, and to draw the attention of any judge or magistrate to any conduct which could affect the trust conferred by their appointment or to any failure on his part to abide by any code or codes of ethics relating to him;
7. to exercise, in accordance with any law, discipline over advocates and legal procurators practising their profession; and
8. such other function as may be assigned to it by law.

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

Any breach of ethical rules by judges/magistrates could result in disciplinary action. Whilst minor breaches will result in the issuance of a warning or the imposition of a pecuniary penalty (not exceeding 10% of annual salary), serious breaches may result in suspension for a period not exceeding six (6) months or even the removal of the judge/magistrate. In terms of accountability of the Attorney General, it ought to be noted that one of the main roles of the Attorney General is to decide whether or not to prosecute someone before the courts of criminal jurisdiction. The decision not to prosecute shall be subject to judicial review before the courts of justice of civil jurisdiction.

## Remuneration/bonuses/rewards for judges and prosecutors, including observed changes, transparency on the system and access to the information

The remuneration of judges, magistrates and the Attorney General is fixed by law and therefore, the system is completely transparent in this respect.

## Independence/autonomy of the prosecution service

Prosecution in Malta is the role of the Attorney General and, in certain situations, the Executive Police. Independence is somewhat incomplete since the Attorney General is appointed by the government and the Police Commissioner is similarly appointed.

## Quality of justice

### Accessibility of courts

The courts in Malta are highly accessible, particularly because fees are relatively low and affordable.

## Resources of the judiciary (human/financial/material) as well as any efforts of the government or judiciary to address the relevant challenges

While the court has sufficient staff, the need for more highly-trained and qualified staff is felt. There is currently a project underway to build new halls within the court building. Nevertheless, most would agree that there is a need for more investment in the judiciary.

## Digitalisation

Many within the industry resist to digitalisation and refuse to do things differently, including some judges.

## Efficiency of the justice system

### Length of proceedings

Depends on a number of factors including type of proceedings, complexity, number of parties, re-shuffling of judges, death of any of the parties, whether the matter has a cross-border element which would delay proceedings further, etc.

# NETHERLANDS

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## General remarks

According to the Rule of Law Index of the World Justice Project, the Netherlands ranked 7<sup>th</sup> out of 31 countries in the European Union, European Free Trade Association, and North America in 2023. Compared to 2022, this is a drop of two places in rank. A substantial drop is shown in the areas of order and safety.

A rule of law balance between professional cooperation of the state powers and sufficient distance from each other, as well as an improvement of access to and accessibility of the state powers - and in particular access to justice - align with the statutory task of the Netherlands Bar, which involves promoting, in the interest of a proper administration of justice, a proper practice of the legal profession (article 10a, paragraph 2 of the Act on Advocates). The Netherlands Bar considers it essential that future-proof measures are taken to strengthen the rule of law in the Netherlands, including:

1. implementing a politically neutral budget and necessary recalibration and investments in the compensation of the system of funded legal aid;
2. carefully restoring injustice in the childcare allowance affair and the damage as result of the gas extraction in Groningen, using overarching legislation for legal redress for unlawful government action against large groups of citizens; and
3. continuing to respond to undermining activities in a rule of law manner.

## Confidentiality

Confidentiality of the contact between lawyer and client is one of the legally entrenched core values of the lawyer. The Netherlands Bar stresses the importance of confidentiality between lawyers and clients, which is necessary for proper legal assistance and good administration of justice. The lawyer's confidentiality obligation and their legal professional privilege should be handled prudently, and ultimately determined by the judge in concrete cases while taking into account the importance of confidentiality in the context of the good administration of justice.

The confidentiality of the contact between lawyer and client has been under pressure for several years now and in many ways. An example of this is the working method used by the Public Prosecution Service when it comes across potentially confidential information during an investigation. The screening, assessment and destruction of that information takes place in a manner that does not do sufficient justice to the principle of confidentiality. In many cases there is no judicial review. In September 2023 preliminary questions were submitted to the Supreme Court regarding the handling of confidential information and the distinction in roles between the judiciary and the prosecution in this regard. The Netherlands Bar gave its view on the way the preliminary questions should be answered. According to the Advocate General of the Supreme Court, the Supreme Court must determine that, due to insufficient guarantees in legislation with regard to legal professional privilege, the supervisory judge has a role to play in more cases than prescribed by law. Another development in which the confidentiality of contact between lawyer and client has been increasingly under pressure is the approach to (continued) criminal conduct in detention (as put forward in the proposal to amend the Penitentiary Principles Act). There is rightly a lot of attention paid to this problem. However, restricting the free and confidential communication between detainees and their lawyers – by visual supervision during the visit of a lawyer to high- security prisons and restricting the number of lawyers for detainees who stay in high-security facilities to two – is not the right route to address this problem. The responses to activities that undermine the rule of law must remain the rule of

law. The Prevention of Money Laundering Act<sup>2</sup> has also been putting pressure on lawyers' professional secrecy. The proposed legislation includes an obligation to exchange data between lawyers (and law firms) serving the same client in the event of certain indications of a high risk of money laundering or terrorist financing.

Lawyers from whom information is requested on the basis of the obligation to inquire are obliged to provide information to the lawyer who requests it, provided that risks have given rise to taking measures, including refusing or terminating the provision of services. The same may apply to proposals regarding the renewal of sanctions legislation, where confidentiality may also come under pressure. In the coming years, efforts will also have to be made to tackle subversive activities. The Netherlands Bar believes that a new government must at the same time guard against further deterioration of the lawyer's duty of professional secrecy. That legal professional privilege is respected, even (or better: especially) when the pressure is high, is not an interest of the legal profession alone, but of the rule of law as a whole.

### **Resilience/protection of lawyers**

In the context of the proper administration of justice, lawyers must be able to do their work in a safe environment and without fear. In recent years, there have been several situations in which the safety of lawyers has been seriously compromised. The report "Surveillance and protection. Lessons from three security situations" that was published by the Dutch Safety Board in March 2023, showed that the government – given the position of the lawyer within the rule of law – has a special responsibility when it comes to protecting the lawyer. If a lawyer cannot take a client for reasons of security, or has to give up the client's defence, this does not only affect the specific case but also the interests of litigants and the rule of law in a broader sense.

### **Protection against criminal subversion task force**

Together with the Ministry of Justice and Security and the National Coordinator for Counterterrorism and Security (NCTV), the Netherlands Bar is enhancing the security and resilience of the legal profession. The Netherlands Bar has developed an approach that focuses on increasing resilience and awareness of potential risks. The Netherlands Bar founded the 'protection against criminal subversion task force' at the end of 2021. With this task force, the Netherlands Bar aims to strengthen the rule of law. Also, the Netherlands Bar wants to increase the awareness of the possible vulnerability of lawyers, just as their resilience and safety. The following initiatives are part of the task force, were promoted in 2023 and will be continued in 2024:

1. research into the safety of lawyers; The Netherlands Bar has commissioned a survey in 2022 on aggression, threats and harassment among lawyers in the Netherlands. The insights obtained are confronting: 50% of all lawyers (more than 18.000) have faced aggression, threatening behaviour or harassment at least once in the past year. Four in ten experienced multiple incidents. 37% rated the incident they experienced as serious or very serious. This survey will be repeated early in 2024 to see the developments.
2. the emergency telephone of the Netherlands Bar; Lawyers who want to report a threat or are feeling threatened can call the NOvA emergency telephone 7 days a week, 24 hours a day. In response to a call, the Netherlands Bar can immediately alarm the NCTV to request them to take measures to mitigate the threat.
3. the confidant for lawyers. This person, who is a lawyer as well, can be consulted in absolute confidentiality and separate from the supervisor. With this confidant, lawyers could exchange views on threats and matters that deal with (attempts to) criminal subversion.
4. a free safety scan through which lawyers can have their own law firm or private house checked for vulnerabilities; A specialised and certified company investigates physical vulnerabilities such as locks, windows, access control and cameras in the building. If needed, the lawyer will be advised about the security measures to take.

5. trainings to increase resilience; In 2023 the Netherlands Bar offered 600 spots free of charge. Hundreds of lawyers in the Netherlands have already participated in a resilience training. At the beginning of 2023, the Netherlands Bar started to offer the training to increase resilience to starting lawyers and trainee lawyers so that they could learn how to deal with threats and which preventive measures could be taken.
6. digital resilience to increase the awareness of the risks of internet communication; The Netherlands Bar listed tips for confidential internet communication.
7. blocking the home address in the trade register; since 1 January 2023, the Chamber of Commerce in the Netherlands blocks the home address in the trade register of owners from sole proprietors<sup>4</sup>, partners of general partnerships<sup>5</sup>, limited partnerships<sup>6</sup> and professional partnerships<sup>7</sup>. The blocked home addresses are only visible for government organisations like the Tax and Customs Administration or for authorised professional groups such as lawyers and bailiffs. As of 15 December 2022, blocking is also possible without demonstrable threat towards the lawyer. The Netherlands Bar and the Chamber of Commerce in the Netherlands have concluded a covenant that provides for blocking based on the mere demonstrability of being a lawyer. A very similar covenant will be concluded early 2024 between the Netherlands Bar and The Netherlands' Cadastre, Land Registry and Mapping Agency.
8. findability of information in public registers; The Netherlands Bar intends to make a tool available in 2024 to lawyers to check in which public registers their (private) address details appear and to request the relevant register(s) to protect the lawyer's data.

#### Regulation on collaborators of justice

From 1 October 2022 to 16 October 2023, Leiden University conducted a research commissioned by the Netherlands Bar concerning the risks for lawyers that are accompanied by the expansion of the regulation on collaborators of justice. Its conclusion is that the impact of the regulation on the safety and the practice of the (legal) profession could be significant, now and in future security situations. Due to the murders of Reduan B., Derk Wiersum and Peter R. de Vries, the security aspect is strongly felt by lawyers and other people who have a role in the trial with a collaborator of justice. Even after these violent crimes, lawyers who defend collaborators of justice and their immediate environment were confronted with a persistently threatening situation, resulting in drastic security measures. This security impact also means that in 2023, few lawyers appeared to be willing to defend collaborators of justice. Lawyers in general also seem more hesitant to take part in major organised crime cases such as Marengo, even when they are not defending the collaborator of justice. The general council of the Netherlands Bar embraces the recommendation of the researchers that safety should be a guiding principle when a collaborator of justice is used. In line with this, the regulation on collaborators of justice should not be expanded as long as the safety of all people concerned including lawyers and their relatives is not yet in order. The General Council of the Netherlands Bar underlines the importance of adequate and high-quality legal aid. Moreover, it is up to the individual lawyer to consider whether or not to defend a collaborator of justice.

#### Supervision of the legal profession

The General Council of the Netherlands Bar supports the plan of the Minister for Legal Protection in which supervision is exercised both at national level and within the profession, the Netherlands Bar. Supervision within the profession is necessary for the independent position of lawyers and the litigants. The national supervisor (OTA9) will be responsible for national supervision especially on AML, sanction regulation etc. National supervision leads to the pooling of knowledge and experience and to harmonisation of supervision. The local embedding should be secured by (specialised) supervisors. A good exchange of information between the local bar president and supervisors is required. Dialogues about this are taking place with the local bar presidents.

Members of the OTA shall not be a member of other bodies within the Netherlands Bar and the local bars. They will also be exempted from lawyer's activities. In appointing members of the OTA, independence is strengthened by using an outward-looking approach. Besides, the OTA appoints its own personnel and personnel is exclusively accountable to the OTA. Financial independence is ensured, as the OTA has its own autonomous budget, which it determines in consultation with the general council and with the 'view from outside'. The general council will consult the (outgoing) Minister to further discuss this. With the introduction of the OTA, there will no longer be any role for the supervisory board. The general council will address the new supervision model to the members of the bar. On 29 June 2023, the Minister announced his position on supervision, as described above. The general council discusses this position with its stakeholders, before it gives its opinion on this matter. The plan of the (outgoing) Minister for Legal Protection will be discussed in the (new) Dutch parliament, most likely in the first quarter of 2024 in the (new) Dutch parliament.

### Rule of law in Dutch parliamentary election programmes

In September 2023, the Netherlands Bar established a committee to assess the adherence to the rule of law for the Dutch parliamentary elections on 22 November 2023 in the parliamentary election programmes. The rule of law is an important topic for the Netherlands Bar. After all, it is the lawyer who plays a crucial role in the legal protection of the rights and freedoms of citizens in a democratic society. The committee considered it important that voters can be informed about the views of political parties that can strengthen the rule of law or pose a risk to it. Although the committee gave positive evaluations for most of the plans of the political parties, proposals that do not meet the minimum standards of the rule of law were found in ten out of the eighteen programmes examined. The analysis of the election programmes shows a mixed picture. The committee noted that many parties reflect on the risks of a business-like and anonymous government, in light of the childcare allowance affair and the earthquake damage due to gas extraction in the province of Groningen. This leads to a lot of attention for the individual, customisation, and, for instance, the desire for a human face of the government in the programmes. The committee sees citizen participation as a trend. Numerous proposals were made to strengthen the citizen's involvement in legislation and administration. However, according to the committee these proposals were insufficiently elaborated in the election programmes. Yet, the committee is positive about the attention many parties give to the Constitution, but it raises various questions about how testing should take place. The committee's picture became more worrying when it comes to guaranteeing fundamental rights and freedoms for all citizens. This also applies to the certainty of a fair trial and effective access to justice for everyone. These are often proposals in the field of major social and political issues such as immigration and (organised) crime. It is these issues that showed that the rule of law, also internationally, comes under pressure first. In these real challenges faced by politics, solutions must be chosen that do not undermine the rule of law itself. Proposals that want to limit access to justice for certain groups do violence to the rule of law itself. Still, the analysis of the committee of most of the examined political party election programmes' plans is positive, no matter how diverse and sometimes rudimentary those proposals are.

### Legal aid

In 2023 the Netherlands Bar continued to work hard for litigants and their lawyers within the system of government funded legal aid. Legal aid and the judiciary depend on the departmental budget of the Ministry of Justice and Security. This means that there is an annual political discussion on the budgets for the judiciary and funded legal aid. According to the Netherlands Bar, such political discussions can lead to an increased risk of violations of access to justice. This is an undesirable situation. The Netherlands Bar is seriously concerned about the future supply of legal aid lawyers if no long-term policy is developed to



reverse the downward trend. According to the Netherlands Bar, legal aid for specific groups of litigants, such as the citizens who have fallen victim to the childcare allowance affair and the habitants of the earthquake zone in Groningen, must remain a priority of the Dutch government.

After fees for legal aid lawyers were raised to more realistic levels in 2021, this positive change was virtually offset by high inflation rates in 2022. The Netherlands Bar has therefore proposed to the (outgoing) Minister for Legal Protection and several political parties that those fees should be adjusted to reflect actual inflation rates. The Netherlands Bar also requested a permanent adjustment of the lagging travel expense allowance for legal aid lawyers.

In December 2023 legal aid lawyers will receive a one-time compensation of 4.62 percent from the Legal Aid Board. This results from the motion of Mr. Sneller (a Dutch social liberal politician), urging the government to make an emergency investment in funded legal aid. This one-time measure aims to partially offset the cost increases for legal aid providers due to the high inflation of recent years. The amount to be received is determined based on the number of granted legal aid assignments, emergency duty reports, and additional hours allocated between 1 October 2022 and 1 October 2023. This calculation considers a rate of 4.62 percent, which represents the difference between the indexing rates as of 1 January 2023 (0.67%) and 1 January 2024 (5.29%).

The Netherlands Bar regards this one-time compensation as a first necessary step and is cautiously positive about the supplementary remuneration. However, the compensation is not enough to relieve the pressure on the government funded legal aid system and to guarantee legal aid for everyone. In the near future, the financing of the legal aid system must therefore be fundamentally improved. A politically neutral budget for the system of funded legal aid, which is separate from the legislative and executive branches, is an important precondition for this.

Another motion of Mr. Sneller was adopted in October 2023 which calls on the government to make an emergency investment. According to the Netherlands Bar it is important that the compensation moves with the ever-changing work activities. This avoids the need to negotiate an emergency investment every year.

## Access to information

The Netherlands Bar notes that the government often approaches information provision with regard to people's rights and obligations with the aim of preventing procedures. This is a cause for concern. Information provision on legal rights should aim at ensuring that litigants are aware of their rights and can exercise them effectively. It is crucial that this information is provided by independent authorities and that litigants are not forced to settle for ready-made solutions or information packages offered by the government, which often serves as the potential opposing party. In short, promoting the right to information is undoubtedly good, but it should not replace the right to (independent) legal advice and legal assistance.

## Improving low-threshold access to justice

The Netherlands Bar recognises the importance of improving low-threshold access to justice, one of the objectives of the renewal programme concerning the legal aid system of the Ministry of Justice and Security. The experience shows that litigants do not always know how to find their way to legal assistance. Good cooperation between legal aid providers reduces barriers. First-line legal aid, such as provided by the Legal Service Counter, also makes a necessary contribution to finding the best solution for litigants. Where necessary, they advise or refer to other entities or the lawyer. In recent years, these entities have



been overloaded with tasks and the necessary funding is lacking. However, for a sustainable system of funded legal aid, entities such as the Legal Service Counter must be able to continue to do their work well. Finally, this also applies to cooperation with the so-called 'second line', such as the legal profession. Initiatives to strengthen this cooperation show that investing in closer cooperation between the first and second line leads to better service to litigants and to finding a speedier solution to their problem. This cooperation must also be continued in the future.

## Preventing conflicts of interest

From the perspective of procedural justice and trust in the government as a counterparty, it is important that the separation of powers is explicitly enforced. In 60% of cases in which funded legal aid is provided, the government is the opposing party. In 60% of cases, therefore, the government has direct influence on how the case is initiated and whether a solution (outside of court) is possible. That same government is also responsible for financing the lawyers who assist citizens in funded legal aid cases. In other words, the government organises its own counterforce, but at the same time has its own procedural interest. The appearance of a conflict of interest is lurking. This also applies to the role the government takes in restoring justice in the childcare allowance affair and the damage as result of the gas extraction in Groningen. In both cases, the ministries responsible for violating the rule of law (respectively, the Ministry of Finance and the Ministry of Economic Affairs and Climate), are also responsible for shaping legal redress for the affected people. Furthermore, these restoration operations are carried out under great pressure on an ad hoc basis. No careful standard procedure has been developed, nor is there overarching legislation for legal redress in cases of unlawful government action against large groups of citizens.

## Alternative dispute resolution

The Netherlands Bar agrees that it is good if disputes can be resolved through parties reaching agreement via mediation. However, the Netherlands Bar makes a reservation for the promotion of mediation and other forms of alternative dispute resolution (ADR). These options can be an excellent solution for certain litigants in addition to the route to the court, but from a rule of law perspective, they can never replace it. The way to the court should also not be obscured or discouraged by alternative (digital) dispute resolution, for example by setting up ADR as a mandatory pre-portal, or by providing procedural or economic obstacles to the court process that de facto force ADR. It should not be an end in itself. Furthermore, not every case is suitable for mediation. For this reason, the Netherlands Bar emphasises that the conditions of mediation must be taken into account, in particular voluntariness and autonomy.

## Digitisation of justice

### Civil and administrative law

In 2023 the Council for the Judiciary has again digitised a number of case flows, see below overview. In the coming years, the Council for the Judiciary will realise simple digital access for all litigants and their defending counsels in civil and administrative law. This project is called Digital Access. Digital litigation is still voluntary, but will be required for lawyers at any time.

There is currently a request before the legislator to make the case flow of seizure petitions mandatory.

### Criminal cases

There were no significant developments in 2023 with regard to digital litigation in criminal cases. The Dutch Code of Criminal Procedure is being modernised. One of its objectives is a "technology

independent” organisation of criminal procedural law. This will take several years. Lawyers do already receive digital files in almost all criminal cases in first instance and also more and more frequently in appeal cases.

### **Online hearings**

Digital litigation does not mean that the hearing could also take place online. Due to the absence of legislation, the hearing could only take place online with the permission of the parties at this moment. The Council for the Judiciary is developing a more tailored application to organise online hearings. Legislation for this is under preparation.

### **System link**

Next to the web portal “Mijn Rechtspraak”, the Council for the Judiciary also developed a system link for lawyers. With this link, which is not free of charge, it is easier to litigate digitally as all relevant documents become directly available in the own working environment of lawyers.

### **Secure mailing**

Via secure mailing it is possible to send documents to courts using an own selected supplier of secure mailing, but it is also possible to start secure communication by mail via the website of the Council for the Judiciary without subscription and free of charge.

### **Council of State**

Lawyers can submit documents in immigration cases to the Council of State via the web portal “Mijn Zaak”. In some cases it is also possible to deliver procedural documents via secure mailing. The Council of State is transitioning to a completely new case system for both of its tasks: administrative justice and legislative advice.

### **Supreme Court**

Lawyers and the Supreme Court exchange digital messages and documents in the web portal “Mijn Zaak Hoge Raad”. This is mandatory for lawyers dealing with civil and criminal cases. Digital litigation is not yet mandatory with regard to tax and administrative cases. This also applies to submitting written comments in criminal cases, tax cases, administrative and civil law cases in the preliminary ruling procedure at the Supreme Court.

### **Development digitisation Council for the Judiciary 2023 (project Digital Access)**

Civil and administrative law: Since 11 April 2022 lawyers have been able to submit a joint application of divorce digitally at the Midden-Nederland district court (location Utrecht) and the Overijssel district court (location Almelo). Since 15 May 2023, this has also been possible at the Amsterdam district court and since 6 November 2023 at the district courts of Rotterdam, Limburg and Midden-Nederland (location Lelystad). Since 27 November 2023 digital proceedings have been possible at the Gelderland district court in civil juvenile law (youth protection cases) and in custody and access cases.

Since 16 October 2023 lawyers have been able to litigate digitally at the Rotterdam district court for interim relief in commercial and family cases. The pilot was successful and will be implemented nationwide.

Since 4 December 2023, digital litigation has been possible in appeal cases for all tax cases. This applies to citizens and to lawyers and other professionals.

## POLAND

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### Measures taken to follow-up on the recommendations received in the 2023 Report regarding the justice system

In accordance with Recommendations following RoL 2022, Poland was recommended to:

- Separate the function of the Minister of Justice from the Prosecutor General and continue efforts to ensure the functional independence of the prosecutor's office from the Government;
- Strengthening existing integrity rules by introducing lobbying rules and a unified online system of asset declarations for public officials and members of parliament;
- Ensure independent and effective investigations and prosecutions, address a wide range of immunities for top executives and refrain from introducing impunity clauses in legislation to enable robust outcomes in high-level corruption cases;
- Ensuring compliance with fair, transparent and non-discriminatory procedures for granting operating licenses to media;
- Strengthening the rules and mechanisms enhancing the independent management and editorial independence of public media, taking into account European standards for public media;
- Ensure a more systematic follow-up to the Supreme Audit Office's findings and ensure the urgent appointment of members of the Supreme Audit Office's college to ensure its effective functioning;
- Improve the framework for civil society action and continue efforts with regard to the Ombudsman, taking into account European standards on civil society and the institution of the Ombudsman.

#### Current situation and actions

After the parliamentary elections in Poland on 15 October 2023, a coalition agreement was concluded on 10 November 2023 between the parties forming the majority in the Polish Parliament, i.e. Civic Coalition, Polish People's Party, Polska 2050 and Lewica (Left). It constitutes the basis and action plan of Prime Minister Donald Tusk and the current government, appointed on 12 December 2023. Due to the fact that at the date of preparation of this report, the current government has only been in operation for a few days, it should be assumed that at least some of the recommendations will be implemented within the next months. The changes that begin to improve the rule of law and the independence of courts and public media include the following:

1. Prof. Adam Bodnar (previously Ombudsman) has been appointed as Minister of Justice. Resolutions on the Constitutional Tribunal and the National Council of the Judiciary are to be adopted by the Sejm. At the same time, organisational and personal changes are planned in the National Media Council and in public television, public radio and Polish Press Agency.
2. The courts are to be free from political pressure, the prosecutor's office will be independent and apolitical in order to ensure the legality of the functioning of the justice system and constitutional courts. The constitutional and apolitical structure of the National Council of the Judiciary and the Supreme Court is to be restored. The reform of the legislative process is to be open to broad public consultations.
3. One of the most important tasks of the ruling Coalition is to support professions that are key to the functioning of the state. Draft laws on pay raises for teachers, public service employees, including administration, courts and prosecutors' offices are to be submitted within the first hundred days of the operation of the new government. Schools are to gain greater autonomy, while maintaining values and human rights.

4. In the coming days, actions initiating the depoliticisation of public media are to be carried out. It is also aimed at eliminating hate campaigns conducted on TVP (public TV broadcasting company) and drawing legal consequences against those spreading hatred using public funds.
5. The Coalition intends to return predictability in the tax system as soon as possible, by stabilising the law and restoring dialogue with organisations representing employers and trade unions. A fair tax system is a priority; the principle of a minimum six-month *vacatio legis* is to be introduced for changes in tax law, as well as a reduction in the tax burden imposed on working people in order to stimulate professional activity and support families.
6. One of the priorities of the ruling Coalition is to depoliticise State Treasury companies by introducing clear recruitment criteria for management positions and hiring competent and professional managements. Political independence is to be maintained and the highest standards of corporate governance are to be implemented in companies controlled by the State Treasury.
7. Another point, consistent with the recommendations in the RoL of 2022, is the planned depoliticisation of uniformed services and secret services and the introduction of clear rules of state control over them. The subordination of the Police and secret services to the ruling option over the last eight years has led to their extreme politicisation, repeated use for political struggle and restriction of civil rights. The actions planned for the coming days are also aimed at limiting the number of services with statutory authorisations to perform operational and reconnaissance activities and introducing an effective mechanism for controlling the performance of these activities by the services. The Central Anticorruption Bureau will be liquidated and its resources and competences transferred to other services, including: to the department for combating corruption crimes in the Central Police Investigation Bureau. Thanks to this, the fight against corruption, which was underserved by the previous government, will be strengthened. Citizens will have the right to information about the services' interest in them, in particular information about operational control carried out on them.
8. In accordance with the postulate of state decentralisation, local governments are to be entrusted with appropriate competences and provided with appropriate financial resources. Their own income is to be strengthened, among others, by: through an increased share in the PIT tax and re-granting them decision-making power in those areas where they have lost it in recent years. Funds from the National Reconstruction Plan are to be released, which will allow local governments to freely plan key investments.
9. It should be emphasised that the following actions are to be taken:
  - a. bringing to constitutional responsibility those responsible for attempting to illegally change the state system, for violating the Constitution and laws and violating the rule of law, for illegal influencing public institutions, for misappropriation of public funds and for their illegal, pointless and uneconomic spending;
  - b. appropriate parliamentary investigative committees will be established in areas requiring detailed and transparent investigation;
  - c. accountability by an independent prosecutor's office and independent courts of all persons guilty of:
    - abuse of powers and failure to fulfil duties by officials and other public officials, as well as incitement to such action;
    - misappropriation of public funds for party and personal purposes;
    - nepotism in public institutions and State Treasury companies and political corruption, including invoking influence;
    - an organised system of spreading hatred in the government media and other means of mass communication directed against citizens, opposition activists and non-governmental organisations;
    - using public funds and institutions such as the media and State Treasury companies to influence society's electoral decisions;
    - forgery of documents and official forgeries.

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

### Confidentiality of lawyer-client communications

Available statistical data and information provided to the Polish Bar Council (Advocates profession) by District Bar Councils indicate that the problem of violations of attorney-client privilege remains at a similar, or perhaps lower level, than in the previous two years. According to available data, in the first three quarters of 2023, there were 88 cases of attempts to lifting the lawyer-client privilege, while in 2022, 111 cases were reported, and in 2021, 125 cases were reported. Most notifications about such attempts come from lawyers practising in the largest Polish cities, and the largest number - from the most populated Warsaw Bar Association (over the last 3 years, advocates from the Warsaw Bar Association accounted for almost 50% of notified cases).

The information collected by the Polish Bar Council shows that the most common cases of violations of professional secrecy concern applications for exemption from professional secrecy and questioning of lawyers as witnesses, where advocates refuse to answer questions covered by lawyer-client privilege. There are also cases of searches of law offices or problems with respecting the confidentiality of communications between lawyers and persons deprived of liberty (e.g. censorship of correspondence). In case of one of the lawyers, a notification on suspicion of committing a crime related to wiretapping of her conversations with a client was submitted to the Prosecution.

Please note that the data mentioned above is not complete (not all district bars collect this information) and that data from the National Bar of Attorneys-at-law (*Krajowa Izba Radców Prawnych*) will be provided in due course.

### Physical, online or legal threats or harassment of lawyers while exercising their professional duties, as well as unjustified attacks on the role of lawyers and Bars, including preventive measures taken by the Bar

Recently the Human Rights Commission of the Polish Bar Council conducted a survey on threatening behaviour and aggression towards lawyers. The survey was conducted among advocates and advocate trainees on behalf of the CCBE in order to obtain information on the scale of the phenomenon in individual CCBE member states.

The survey was completed by almost 900 people from 5 out of 24 bar associations in Poland and shows, among others, that in the last two years over half of the respondents have experienced verbal aggression, such as swearing, shouting, insulting or making negative or discriminatory comments (either online or offline), and almost 1/3 experienced other forms of harassment, such as pressuring, provoking, stalking or blackmailing. About 10% experienced physical aggression such as shoving, hitting, kicking, spitting, grabbing or injuring, causing physical obstruction or throwing/destroying objects. Almost 60% of cases of violent behaviour occurred during personal contact or by telephone, the rest via e-mail or social media. In most cases, aggressive behaviour was committed by former clients or the opposing party. Almost 47% of respondents believed that threats, harassment and aggression against lawyers had intensified over the last 5 years, and 21.1% said that it had intensified very much.

The results of the survey shall be the basis of report for the Polish Bar Council and the CCBE. According to the information we have, a similar survey has been conducted by the National Bar of Attorneys-at-law and sent to CCBE on 31 December 2023.

Among the events that took place last year, it is worth mentioning the attack in public television on advocate Kamila Ferenc, representing a woman humiliated by the police in connection with an abortion. Public television, being controlled by the former governing party (Law and Justice) - TVP Info - called her a "militant activist of a left-wing organisation" that "openly politicises the issue." In one of the programmes the host stated that advocate Ferenc presented herself as a defender of women, but "does not hesitate to create fake news and false accusations in the name of ideology". In response to this press material, the President of the Polish Bar Council issued a statement underlying that it is unacceptable to attack an advocate because she undertook to provide legal assistance in a matter of public interest. Pointing to the essence of the profession, he emphasised that "The way the press material is presented and its content is offensive not only to advocates themselves, but also to those people who entrust us with their cases and problems every day".<sup>34</sup>

### Specific legal provisions and policies which could negatively influence the independence of the Bar and lawyers

In 2023 during the election campaign to the Parliament the past ruling party was vocal about their perceived need to reform the Acts regulating the advocates and attorneys-at-law profession. One of the statements was: *"We will complete the opening of the legal profession. We will abolish ossified structures and, in their place, we will combine the professions of legal counsel and advocate into one bar. Advocates will be able to take up full-time work under the same conditions as legal advisers today. Thanks to this, citizens will have wider access to professionals who will help them protect their rights"*. In reality the past ruling party wanted to abolish District Bar Councils, the Polish Bar Council, District Chambers of Attorneys-at-Law and the National Bar of Attorneys-at-law. In their place, a new organisation of lawyers was envisioned. This raised concerns that the reorganisation of the currently independent legal professions was a cover for introducing control over them and appointing government-dependent persons to managerial positions of this new entity. If the authorities had gained increased control over our professions, it would have put pressure on counsellors and advocates not to engage in any activities connected to defending the rule of law and criticising the government. Lawyers engaging in such activities may have been subject to repression, e.g. disciplinary action – just as the authorities were treating independent judges and prosecutors over the last 8 years.

On 21 September 2023 the Presidium of the Polish Bar Council, in connection with these announcements, made a declaration that it is against the implementation of this postulate and indicated that:

*"1. the merger of the professions of advocate and attorneys-at-law and the local governments of these professions of public trust on the basis of an arbitrary political decision would be inconsistent with the principles of a democratic state of law, the prohibition of excessive interference, the protection of acquired rights, the proper protection of professions of public trust, as well as the protection of property rights as expressed in the Constitution of the Republic of Poland.;*

*2. the implementation of this political announcement - contrary to the claims of its authors - will in no way expand citizens' access to professionals;*

*3. there is a real fear that the idea of merging the two local bar associations will only be a pretext for their actual liquidation as organisations representing people performing professions of public trust, and thus also citizens and their rights and freedoms, independent of the public authorities. There is a danger of subordination to public authorities, including the Minister of Justice, of another important element of the justice system, which are independent advocates and attorneys at law supported by their own autonomous professional self-governments - similarly to what happened with prosecutors and with judges. This will have negative consequences for the rule of law in Poland, including the protection of civil rights and*

<sup>34</sup> [https://www.adwokatura.pl/admin/wgrane\\_pliki/file-20230722-oswiadczenie-mec-k-ferenc-37618.pdf](https://www.adwokatura.pl/admin/wgrane_pliki/file-20230722-oswiadczenie-mec-k-ferenc-37618.pdf)



*freedoms, which are guaranteed by the independence of self-governments of public trust professions. It will also raise further doubts as to Poland's respect for the European Union legal order.”<sup>35</sup>*

Similar statements were made by representatives of the National Bar of Attorneys-at-law, who underlined that the discussion about the merger of the professions of advocate and attorneys-at-law may be initiated and undertaken solely by the representatives of both Bars and not by the politicians or state authorities.<sup>36</sup>

Upon the motion of the Polish Delegation to the CCBE, during its Warsaw Standing Committee on 28 September 2023, the CCBE had supported both Polish legal professions by issuing the following statement:

*“During a gathering of the Council of Bars and Law Societies of Europe (CCBE) in Warsaw, Poland, on the occasion of its Standing Committee, the CCBE reaffirms its strong dedication and support to the Polish Bar Council and the National Bar of Attorneys-at-law in their efforts to uphold the independence and self-regulation of the legal profession and to protect the Rule of Law.*

*The CCBE is concerned by proposals being discussed in the lead-up to the upcoming elections in Poland, which have the potential to significantly undermine these fundamental principles. The CCBE urges all State authorities to uphold democratic values, including the independence and self-regulation of the legal profession which are essential to ensure the protection of the rights and interests of all citizens.”*

In this context, we would also like to report that on 11 December 2023, case K 6/22 that was pending before the Constitutional Court<sup>37</sup> was discontinued after the new Parliament was sworn in (due to procedural issues related to the discontinuance of the works of the parliament of the previous term). We reported on this case in our previous RoL report. The case was initiated in 2022 by the motion of the group of deputies forming the then parliamentary majority. The deputies urged the Constitutional Court to declare as unconstitutional statutory obligation of affiliation of advocates and attorneys at law to bars on the basis of the criteria of their professional residence or legal address. The case was of vital importance for the effective functioning of the bars and advocates’ and attorneys-at-law’s ability to protect the rights of the clients. Therefore the potential Constitutional Court’s judgment may have adversely affected not only the bars but also the effective protection of the rights of individuals. In practice the bars may have been deprived of their independence, and therefore their ability to effectively execute their functions. Our Bars were vocal and active in fighting this case.

### Cooperation between the Bar and the executive branch of the government and/or supervisory authorities, and cases of political pressure and interference regarding the role of the Bar or lawyers

The prevailing problem we experienced is related to the inadequate level of invitation of our Bars to participate in consultations and drafting of legal reforms. The Polish Bar Council and District Bars were vocal in relation to many breaches of the rule of law by the executive during the last 8 years and therefore as a critical actor not willingly invited for consultation by the executive. For example, The Polish Bar Council has issued a call to the Minister of Justice related to the need to increase the minimal fees of advocates remunerated by the state in pro bono/mandatory representation cases (these fees were not significantly changed for many year). Polish Bar pointed out that in a democratic state of law, the rule should be to consult any new legal regulations with entities that are directly affected by the proposed solutions.<sup>38</sup>

<sup>35</sup> <https://www.adwokatura.pl/z-zycia-nra/prezydium-nra-przeciwko-polaczeniu-samorzadow-i-zawodow-adwokackiego-i-radcowskiego/>

<sup>36</sup> <https://www.prawo.pl/prawnicy-sady/polaczenie-samorzadow-radcow-prawnych-i-adwokatow,523039.html>

<sup>37</sup> <https://trybunal.gov.pl/sprawy-w-trybunale/art/przynaloznosc-do-izby-adwokackiej-lub-izby-radcow-prawnych-na-podstawie-kryterium-miejsca-polozenia-siedziby-zawodowej-lub-miejsca-zamieszkania>

<sup>38</sup> <https://www.adwokatura.pl/z-zycia-nra/prezes-nra-przeslal-postulaty-ws-wynagrodzen-za-urzedowki-do-ministra-sprawiedliwosci/>



Please also see information provided above for some examples of specific actions by our Bar to resist or counter political pressure from the past authorities.

### Implementation of the case law of national, European, and international courts due to legal, administrative, or procedural issues

On 11 December 2023 the Constitutional Tribunal passed a judgment in case K 8/21, declaring that the Treaty on the functioning of the EU and CJEU Statute allowing for the CJEU temporary injunction to set a lump sum or penalty payment on the Member State infringing the EU law is contrary to the Constitution. The judgment was passed in a composition contrary to the Constitution and ECHR. The effect of the judgment may be to deprive EU law of its application on the territory of Poland.

The abovementioned judgment of the Polish Constitutional Tribunal is yet another example of the Constitutional Tribunal's judgment aimed at evading the international law obligations of the Polish authorities related to the execution of judgments of international tribunals issued against the background of the rule of law crisis in Poland.

It should be noted that in the most recent judgment *Wałęsa v. Poland*, the ECtHR noted that “the Committee of Ministers, in its decision taken at its 1468th Meeting of 5-7 June 2023 in the framework of the execution of the judgments of the so-called “Reczkowicz group”, expressed the Deputies’ grave concern regarding the Polish authorities’ persistent reliance on the Constitutional Court’s judgment of 22 March 2022 (no. K 7/21) to justify the non-execution of judgments and underlined that such an approach not only contradicted Poland’s voluntarily assumed obligation under Article 46 of the Convention to abide by the Court’s final judgments but also its obligation under Article 1 to secure the rights and freedoms as defined in the Convention” (§ 326, also § 121). The mentioned judgment of the Constitutional Tribunal issued in case K 7/21, same as the judgment of this Tribunal issued in case K 6/21, was aimed at challenging the applicability and binding force of Article 6 of the ECHR.

In 2022, the Secretary General of the Council of Europe issued a report under Article 52 of the Convention on the consequences of decisions K 6/21 and K 7/21 of the Constitutional Court of the Republic of Poland. The relevant concluding remarks of the Report, read as follows:

*“29. As a result of the findings of unconstitutionality in the judgments K 6/21 and K 7/21 of the Constitutional Court, the European Court’s competence as established in Article 32 of the Convention was challenged and the implementation of Article 6 § 1 of the Convention – as interpreted by the European Court in the cases of *Xero Flor w Polsce sp. z o.o.*, *Broda and Bojara*, *Reczkowicz*, *Dolińska-Ficek* and *Ozimek* and *Advanced Pharma sp. z o.o.* – has so far not been carried out. The ensuing obligation of Poland to ensure the enjoyment of the right to a fair trial by an independent and impartial tribunal established by law to everyone under its jurisdiction is not, at this stage, fulfilled.*

*30. To ensure the implementation of its international obligations under Article 1, Article 6 § 1 and Article 32 of the Convention, action is required by Poland. This action coincides with Poland’s obligation to abide by the judgments of the European Court in the cases of *Xero Flor w Polsce sp. z o.o.*, *Broda and Bojara*, *Reczkowicz*, *Dolińska Ficek* and *Ozimek* and *Advanced Pharma sp. z o.o.* In a nutshell, Poland has an obligation to ensure that its internal law is interpreted and, where necessary, amended in such a way as to avoid any repetition of the same violations, as required by Article 46 of the Convention. Poland has not been released from its unconditional obligation under Article 46 of the Convention to abide by the European Court’s judgments fully, effectively and promptly.”*

The domestic political situation after the parliamentary elections in autumn 2023 seems to move towards actions aimed at implementing the judgments of the CJEU and ECtHR issued against the rule of law crisis

in Poland. So far, the Polish Sejm issued a resolution calling on execution of the judgments of European courts regarding the functioning and composition of the National Council of the Judiciary. According to the newest judgment of the ECHR issued in *Wałęsa v. Poland*, Polish authorities were called to rapidly implement legislative amendments addressing the functioning and composition of the National Council of the Judiciary in a pilot judgment procedure.

## Perception that the general public has of the independence of the judiciary and independence of lawyers

All of the developments reported in this document affect the perception of the independence of the judiciary and the independence of lawyers. Please see specific points in this report with highlighted most important reactions and initiatives that our Bars have undertaken to address them.

Over the year 2023, the Polish Bar Council and its President has made many interventions and issued many statements related to irresponsible statements made by the then executive (Minister of Justice especially) that undermined the independence of the judiciary and lawyers.<sup>39</sup>

It is important to note here that our Bars, in September 2023, organised a CCBE Standing Committee in Warsaw, with a special focus on the rule of law and the situation in Poland. On this occasion, the CCBE had met with the Senate of the Republic of Poland. During the event the CCBE adopted and published a statement, reaffirming its strong dedication and support to the Polish Bar Council and the National Bar of Attorneys-at-law in their efforts to uphold the independence and self-regulation of the legal profession and to protect the rule of law. The CCBE also adopted a more general statement on the protection and enforcement of international law calling upon all governments and lawyers to protect and enforce the fundamental values upon which our shared humanity thrives: an international legal order based on democratic values and a strict adherence to the rule of law.<sup>40</sup>

## Appointment of judges

At this moment the procedure for appointing judges continues to be carried out with the participation of the National Council of the Judiciary (neo-NCJ), in a composition as provided by the provisions of the Act of 8 December 2017 amending the Act on the National Council of the Judiciary and certain other acts (Journal of Laws of 2018, item 3). The status of this body has been challenged by European Courts and national courts [see the judgment of the Grand Chamber of the Court of Justice of European Union of 19 November 2019 in the joined cases *A.K. v National Council of the Judiciary* (C-585/18), *CP* (C-624/18) and *DO* (C-625/18)], resolution of the Joint Civil, Criminal and Labour and Social Security Chambers of the Supreme Court of 23 January 2020 (Ref. No. BSA I-4110-1/20), judgments of the European Court of Human Rights (see i.a. *Reczkowicz v. Poland* (application No. 43447/19), *Dolińska-Ficek and Ozimek v. Poland*, (applications nos 49868/19 and 57511/19, most recently *Wałęsa v. Poland* (application no. 50849/21], which held that the neo-NCJ is not a body independent of the legislature and the executive, and therefore the judges selected by it (delegated to be appointed by the President of the Republic of Poland) cannot be considered to meet the standards of independence and impartiality resulting from the Polish Constitution or the norms of international and European law binding on Poland.

Despite the above, neo-NCJ has been continuously holding competitions for judicial posts since February 2018, and the persons recommended by it (but not all of them) are subsequently appointed by the

<sup>39</sup> <https://www.adwokatura.pl/z-zycia-nra/oswiadczenie-prezesa-nra-w-zwiazku-z-publicznymi-wypowiedziami-ministra-sprawiedliwosci-prokuratora-generalnego/>

<sup>40</sup> [https://www.ccbe.eu/fileadmin/speciality\\_distribution/public/documents/Statements/2023/EN\\_20230929\\_CCBE-Statement-on-upholding-the-independence-and-self-regulation-of-the-legal-profession-in-Poland.pdf](https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/Statements/2023/EN_20230929_CCBE-Statement-on-upholding-the-independence-and-self-regulation-of-the-legal-profession-in-Poland.pdf)

President of the Republic of Poland (the President) to judicial positions. As of the date of this report, more than 2,000 judges have been appointed in this way, including more than 100 after the recent parliamentary elections. In spite of the 15 October elections outcome, and numerous appeals by the new Parliament and judges' associations, the previous Minister of Justice, Zbigniew Ziobro, also announced further competitions for judicial posts after the elections, and neo-NCJ continues to hold such competitions.

As indicated in point 1 of this section, bringing the National Council of the Judiciary into compliance with the Constitution, i.e. implementing the judgments of the European Court of Human Rights (ECtHR) and the Court of Justice of European Union (CJEU), requires changes in domestic legislation, and the resolutions of the Sejm in this regard seem to be insufficient. It is necessary to amend the Act on the National Council of the Judiciary, but this may be prevented by the President, who has repeatedly made it clear in his speeches that he does not see the possibility of questioning the judicial appointments made by him, despite the fact that the neo-NCJ participated in the procedure.

On 19 December 2023, the Sejm undertook a draft resolution regarding the neo-NCJ. The Sejm, acting in order to restore the constitutional role of the National Council of the Judiciary, states that the resolutions of the previous Sejm on the election of members of the National Council of the Judiciary were adopted in gross violation of the constitution.<sup>41</sup> The resolution was adopted on 20 December 2023 by votes of the ruling Coalition.

It should be also noted that on 15 December 2023, the new Minister of Justice submitted for interministerial consultations a draft amendment to the regulation entitled "Rules of Procedure for the Administration of Common Courts", which, *inter alia*, provides for the exclusion of neo-judges from participation in the examination of motions to exclude a judge (or to test the independence and impartiality of a judge) when the basis for the request is the appointment procedure of a judge on the basis of a resolution of the new NCJ.

## Appointment of prosecutors

On 28 September 2023, the Act of 7 July 2023 amending the Code of Civil Procedure, the Law on the Organisation of Common Courts, the Code of Criminal Procedure and certain other acts entered into force, introducing new rules for the appointment and dismissal of the National Prosecutor and his deputies, introducing the requirement to obtain the consent of the President for their dismissal. Moreover, the position of the National Prosecutor was strengthened at the expense of the powers of the Prosecutor General – currently this is the National Prosecutor, who is solely responsible for making decisions on personal matters of prosecutors and assistant prosecutors, including the secondment of prosecutors, the appointment and dismissal of heads of units at all levels, and the appointment and dismissal of disciplinary officers. The general perception is that the above changes were aimed at making it more difficult for the ruling Coalition to carry out the necessary changes in the prosecutor's office – both in terms of personnel and system, since the function of the National Prosecutor is held by Dariusz Barski, a trusted man of the former Minister of Justice Zbigniew Ziobro.

## Appointment of the presidents of the courts

Until August 2017, the presidents of the courts of appeal and regional courts were appointed by the Minister of Justice, after consultation with the general assembly of judges and, in the case of a regional court, with the opinion of the president of the superior court of appeal. The presidents of the district

<sup>41</sup> [https://orka.sejm.gov.pl/Druki10ka.nsf/Projekty/10-021-18-2023/\\$file/10-021-18-2023.pdf#S.embed\\_link-K.C-B.1-L.1.zw](https://orka.sejm.gov.pl/Druki10ka.nsf/Projekty/10-021-18-2023/$file/10-021-18-2023.pdf#S.embed_link-K.C-B.1-L.1.zw)

courts were appointed by the president of the court of appeal of a given appeal, also after consultation with the assembly of judges of the court concerned and the president of the superior district court. Currently, the appointment of presidents of common courts at all levels is the exclusive competence of the Minister of Justice, which allowed the previous Minister of Justice Zbigniew Ziobro to conduct an active personnel policy in courts. Importantly, in the second half of 2023, Zbigniew Ziobro, using the powers described above, appointed presidents of several courts, including the Court of Appeal in Katowice (the new president of this court is Katarzyna Frydrych, previously serving as Deputy Minister of Justice), the District Court in Lublin, Radom or Krosno. All of them were appointed for 6-year terms. As per press reports on 19 December 2023<sup>42</sup> some of these appointments of court presidents have been revoked by the new Minister of Justice.

With regard to the issue of judicial review of decisions on dismissals of presidents, it is worth mentioning the judgment of the ECtHR in the case of Broda and Bojara v. Poland (applications no. 26691/18 and 27367/18), issued as a result of complaints lodged by the vice-presidents of the District Court in Kielce dismissed in 2017. The ECtHR found violation of the applicant's rights under Article 6(1) of the ECHR because the minister's decisions did not contain any justification and were not subject to review by an independent external body independent of the minister. Importantly, this state of affairs continues to this day, which means that there is no judicial remedy for the dismissal of court presidents.

### Irremovability of judges, including transfers, dismissal and retirement regime of judges, court presidents and prosecutors

According to the Constitution no judge can be dismissed without a valid judgment. However, they can be moved to other departments of the court and that can be done without their consent (appeal to the National Judiciary Council is possible). This measure was used in numerous cases to punish independent judges. For example, judge Paweł Juszczyszyn, despite a judgment of a court, was prevented for many months from returning to the civil department from the family department of the court where he was moved after his suspension.

The court presidents can be revoked by the Minister of Justice subject to opinion of the court's college. If such an opinion is negative, the Minister of Justice has to consult the National Judiciary Council which can oppose requiring a 2/3 majority.

The general retirement age of judges is 65. Female judges can retire upon their motion at 60 years of age. If a judge chose to continue working, they can do so with the consent of the National Judiciary Council until 70 years of age.

As for the prosecutors, they can be delegated to work in any unit without their consent and with no possibility to question such decisions apart from a lawsuit in front of a labour court. They can also be demoted to units of lower rank upon the pretext of particular needs of that unit.

These measures were also used by the Minister of Justice as a form of a punishment for prosecutors who voiced their critical opinions toward the then ruling governing majority and urged about the rule of law in Poland and the threats to the independence of the judiciary and prosecutors from political actors.

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<sup>42</sup> <https://radom.wyborcza.pl/radom/7,48201,30522606,nowy-minister-sprawy-wiedliwosci-wycofal-nominacje-prezesow-sadow.html>

## Promotion of judges and prosecutors

Please see information provided above. As for the prosecutors, they can be promoted by the Prosecutor General whose role is automatically assigned to the Minister of Justice, i.e. an active politician designated by the ruling party.

## Allocation of cases in courts

Cases are allocated randomly except cases before the Supreme Court. The President of the Supreme Court assigns cases to judges in the order in which they are received by the Chamber, separately for each category of cases for which a separate repertoire is kept, and regardless of the division in which the case is registered.

## Independence and powers of the body tasked with safeguarding the independence of the judiciary

The National Judiciary Council, responsible for proposing candidates for judicial posts to the President, consists of 25 members, including 15 judges. According to constitutional and European standards they should be nominated by their peers. However, since 2018 they are nominated directly by the Parliament (Sejm), what was subject of critical review by the CJEU and the ECtHR. The judgments of the ECtHR and the CJEU stating irregularities in the functioning of the National Council of the Judiciary, responsible for the selection of candidates for judges in Poland, remain unimplemented [i.a. ECtHR judgment of 15 March 2022, *Grzęda v. Poland* Grand Chamber); CJEU judgment of 6 October 2021, C-487/19 (Grand Chamber); ECtHR judgment of 7 May 2021, *Xero Flor v. Poland*, ECtHR judgment of 3 February 2022, *Advance Pharma v. Poland*].

The implementation of these judgments is necessary, and for this purpose, in particular, the National Council of the Judiciary should be reformed so that it becomes independent of the executive and legislative authorities. On 20 December 2023 the newly elected Sejm issued a resolution asking all state authorities to implement those judgments and amend the Act on the NCJ.

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

Under the Act of 26 May 2022, the Disciplinary Chamber of the Supreme Court has been abolished. In the light of the jurisprudence of the Polish Supreme Court, the CJEU and the ECtHR, this chamber did not meet the requirements of independence provided by the treaties and Article 47 of the EU Charter of Fundamental Rights (CFR) nor Article 6 of the European Convention on Human Rights (ECHR).

Secondly, the same Act of 26 May 2022 also strongly prohibits holding judges to disciplinary liability for initiating requests for a preliminary ruling to the CJEU, which, unfortunately, had previously been the case in situations where such references concerned the independence of the judiciary in Poland.

Thirdly, the same Act also prohibits holding judges to disciplinary responsibility for the content of judgments.

The Disciplinary Chamber of the Supreme Court has been replaced by the Chamber of Professional Responsibility (Accountability), which still raises concerns. This is due to the fact that judges appointed in the procedure before the National Council of the Judiciary adjudicate in this new Chamber, which in line

with the above-mentioned jurisprudence was also found incompatible with the requirements set by Article 6 ECHR and Article 47 CFR.

On 23 January 2023, the Sejm passed a law that transfers disciplinary cases of judges from the Chamber of Professional Responsibility of the Supreme Court to the Supreme Administrative Court. However, this Act is unacceptable for many constitutional reasons, among others because it establishes *sui generis* supervision of the Supreme Administrative Court over the Supreme Court, even though, according to the Constitution, these two courts are equal (cf. Article 183 (1) and Article 236 (2) of the Constitution).

On 11 December 2023 the Constitutional Court issued a judgment in case Kp 1/23 declaring that the law of 23 January 2023 is unconstitutional. The Office of the Prime Minister published this judgment on 13 December 2023, however with a note underlying the judgment was passed in a composition incompatible with the Polish Constitution and the ECHR.

### Remuneration/bonuses/rewards for judges and prosecutors, including observed changes, transparency on the system and access to the information

In Poland, the Constitution specifically regulates the issue of remuneration for judges. Judges stand as the sole professional group whose right to remuneration is constitutionally guaranteed to correspond with the dignity of their office and the scope of their duties, as outlined in Article 178(2) of the Constitution and referred in the Judgment of Constitutional Tribunal dated 12 December 2012 (Case K 1/12). Remuneration of judges and prosecutors should be calculated based on the laws: the Act on the Organisation of Common Courts (Prawo o ustroju sądów powszechnych) and the Act on the Public Prosecutor's Office (Prawo o prokuraturze). The mechanism for establishing the remuneration of judges and prosecutors involves the multiplication of the average salary in the second quarter of the previous year by specific multipliers. These multipliers are legally established, while the amount of the average salary is announced by the President of the Central Statistical Office (GUS).

The salaries of judges and prosecutors were frozen during the COVID-19 pandemic. And then they began to be valorised according to less favourable rules than had been done before. In 2021, the remuneration of judges and prosecutors were maintained at the 2020 level, and in 2022 they were indexed by the rate from the second quarter of 2020. There have been lawsuits in Polish courts due to allegations that remuneration was not calculated correctly, leading to legal disputes regarding the proper implementation of salary regulations for judges and prosecutors.

The rule regarding the remuneration of judges, court referendaries and assessors, as stipulated in the budget-related act for 2023, was deemed inconsistent with the Polish Constitution by the Constitutional Tribunal in its Judgment dated 8 November 2023. "In the opinion of the President of the Supreme Administrative Court - as mentioned in the Judgment of the Constitutional Tribunal - the judges' remuneration no longer corresponds to the dignity of the judge's office and the scope of duties. The President of the Supreme Administrative Court pointed to an increase in the number of cases submitted to administrative courts, with - in principle - an unchanged number of judges. No real increase in remuneration "with the increasing workload of judges with judicial duties, [...] violates Article 178(2) of the Constitution." In this judgment, the Constitutional Tribunal found the inconsistency of Art. 8 and Art. 9 of the Budget-related Act for 2023 with Art. 178 section 2 of the Constitution and the inconsistency of Art. 7 of the Budget-related Act for 2023 with Art. 195 section 2 of the Constitution (Judgment of the Constitutional Tribunal dated 8.11.2023 r., K 1/23).

While there exists a principle of equal remuneration for prosecutors and judges, it is noteworthy that the aforesaid Constitutional Tribunal's judgment did not explicitly address prosecutors.



On 9 January 2024, the Constitutional Tribunal scheduled a session at the request of the Association of Prosecutors and Employees of the Prosecutor's Office of the Republic of Poland to examine whether the provisions of the budget-related law concerning the method of determining prosecutorial salaries in 2023 are in line with the Constitution.

Pursuant to Article 133 of the Act on the Public Prosecutor's Office, prizes and awards may be granted by the Prosecutor General or the National Prosecutor to prosecutors who show initiative in their work, exemplarily and conscientiously fulfil their duties, and particularly contribute to the performance of official tasks.

The types of awards and prizes and the procedure for awarding them shall be determined by the Prosecutor General. Awards may also be promoted at an earlier date than provided for in the regulations on salary or appointment to a higher official position or special regulations. For this purpose, the Prosecutor General or the National Prosecutor shall establish reward funds.

### Independence/autonomy of the prosecution service

The foundational principle governing the prosecution service in Poland is that prosecutors are expected to have independence during the execution of tasks outlined in laws, subject to specific provisions. This principle is articulated in Article 7 of the Act on the Public Prosecutor's Office. Article 7 establishes the overarching independence of prosecutors in the discharge of their duties. However, this autonomy is complemented by the obligation of prosecutors to adhere to orders, guidelines, and directives issued by their supervising prosecutor.

In accordance with Art. 7 § 2a (1), as outlined in the same Act, the Prosecutor General imparts instructions to subordinate prosecutors through the Prosecutor General's delegate, known as the National Prosecutor (Prokurator Krajowy). This legal framework not only underscores prosecutorial independence but also establishes a structured hierarchy to facilitate effective coordination within the prosecution service.

The current form of prosecutorial independence in Poland seems not to conform to European standards. The orders, directives and instructions of a superior may concern any aspect of the prosecutor's professional activity, are not subject to public scrutiny (which is underscored by the legislature's statement that they are included in a file on hand, in principle inaccessible to participants in the proceedings) or an independent body, and do not have to be issued with a service route. More importantly, the executive authority (the Minister of Justice) can issue any order it deems appropriate in an individual case - including an order to refuse to initiate or discontinue proceedings, which in the case of many crimes (e.g. clerical crimes) can mean *de facto* impunity for the perpetrator.

In Poland, the functions of the Minister of Justice and the Prosecutor General are performed by one person. There are ongoing advocacies calling for the distinct delineation of these functions, asserting that the role of the Prosecutor General should be separated from that of the Minister of Justice. A deeper reflection on the systemic position of the prosecutor's office is also necessary. The Lex Super Omnia Association of Prosecutors has presented a far-reaching and comprehensive project to amend the law on the prosecutor's office aimed at strengthening the independence of the prosecutor's office. In particular, the current subordination of criminal policy and individual prosecutorial proceedings to short-term political goals needs to be changed.



On the other hand, there are claims that the full independence of the prosecutor's office from the executive branch will cause the executive branch to lose any influence in shaping criminal policy in the country.

## Quality of justice

### Accessibility of courts

1. The amount of court costs in Poland, e.g. in civil cases, is regulated in the Act of 28 July 2005 on court costs in civil cases (pl. "Ustawa o kosztach sądowych w sprawach cywilnych", Dz.U.2023.1144, 2023.06.20). On 13 September 2023, the Act was amended. The primary aim of the amendments was to eliminate doubts and discrepancies that had emerged in practice. In addition, the amendments aimed to increase access to courts by reducing court fees in certain cases. Examples of the amendments include, among others:

#### Article 35

In the current state of the law, in labour law cases up to PLN 50,000, fees for pleadings are collected exclusively from the employer. The pleadings on which fees are charged include an appeal, grievances, cassation appeals, and complaints aimed at finding the final ruling inconsistent with the law. In cases where the value of the subject of the dispute exceeds PLN 50,000, both the employee and the employer have so far been charged a proportional fee on all chargeable pleadings. For example, in the case of a lawsuit or an appeal, it was 5% of the value of the subject matter of the dispute. After the amendments entered into force, in cases where the value of the subject of the dispute exceeds PLN 50,000, an appeal fee will be charged from both the employee and the employer on the value of the subject of the dispute above that amount. Thus, as a result of the amendment to the Act on court costs in civil cases, an employee will be obliged to pay a fee only if an appeal is filed and only if the value of the subject of the dispute exceeds PLN 50,000. The employer, on the other hand, will still be obliged to pay the basic fee (currently amounting to PLN 30) for the pleadings referred to above. However, in cases where the value of the subject of the dispute exceeds PLN 50,000, the employer will not have to pay any other fees apart from the appeal fee.

#### Article 35.

*"1. In labour law cases, the employer shall be charged the basic fee only for appeals, grievances, cassation appeals, and complaints aimed at finding the final ruling inconsistent with the law. However, in cases where the value of the subject of the dispute exceeds PLN 50,000, the employee and the employer shall be charged an appeal fee on the value of the subject of the dispute exceeding this amount according to the rules provided for in Article 13.*

*1a. (repealed).*

*2. The employer shall pay a basic fee for the letters subject to a fee mentioned in paragraph 1, including in a case regarding the determination of the existence of an employment relationship brought by a labour inspector."*

#### Article 19 (3)(3), 23a, 79 (2e)

Under the current legislation, the fee for an application for a petition for summons to a conciliation hearing is 1/5 of the full fee. After the amendments came into force, the fee for this motion still amounts to 1/5 of the full fee in cases involving non-property rights. Additionally, the fee will not be less than PLN 100. Cases concerning property rights will be charged a fixed fee in the amount of PLN 120 when the value of the subject of the dispute does not exceed PLN 20,000, or in the amount of PLN 300 when the value of the subject of the dispute exceeds PLN 20,000. Moreover, if in the proceedings based on an petition for summons to a conciliation hearing an agreement is reached, the court will ex officio return to the party 3/4 of the fee paid by it on the application. An exception will be a situation in which the court

deems the settlement agreement inadmissible. In such a case, the reimbursement of the fee will not be due.

*“Article 19.*

*3. A fifth of a fee shall be collected for:*

*3) a petition for summons to a conciliation hearing in cases involving non-property rights, but not less than PLN 100.”*

*“Article 23a.*

*1. A fixed fee in the amount of PLN 120 shall be charged for a petition for summons to a conciliation hearing in cases involving property rights when the value of the subject of the dispute does not exceed PLN 20,000.*

*2. A fixed fee in the amount of PLN 300 shall be charged for a petition for summons to a conciliation hearing in cases involving property rights when the value of the subject of the dispute exceeds PLN 20,000.”*

*“Article 79.*

*2) three fourths of the fee paid for:*

*e) a petition for summons to a conciliation hearing, if a settlement has been reached in the proceedings on this petition, unless the court found the settlement to be inadmissible.”*

## **Article 25b**

Currently, a fee of PLN 100 is charged for a petition to serve a judgment or a decision on the merits of the case along with statement of reasons. In case of an application for serving other types of decisions or orders with justification, a fixed fee of PLN 30 is charged.

### *Article 25b*

*“1. A fixed fee in the amount of PLN 100 shall be charged for a petition to serve a judgment or a decision on the merits of the case along with statement of reasons, filed within one week from the date of its publication or service.*

*2. A fixed fee in the amount of PLN 30 shall be charged for a petition to serve a decision other than the one indicated in paragraph 1 or an order along with statement of reasons, filed within one week from the date of its publication or service.*

*3. Where an appeal is lodged, the fee paid for the petition to serve a decision or an order along with statement of reasons shall be counted towards the fee for the appeal. Any excess amounts shall not be refunded.”*

2. At the beginning of June 2023, the Presidium of the Polish Bar Council requested the Prime Minister, on the basis of Article 149(2) of the Constitution of the Republic of Poland, to submit a motion to the Council of Ministers to repeal in its entirety the regulation of the Minister of Justice of 3 October 2016 on incurring by the State Treasury the costs of unpaid legal aid provided by an *ex officio* lawyer. The constitutionality of these regulations was challenged by the Constitutional Tribunal. At the end of 2022, the Constitutional Tribunal ruled three times on the issue of the costs of unpaid legal aid provided by an *ex officio* lawyer rate in civil and criminal cases. Some of these cases concerned legal counsels, some concerned advocates, but the direction of the rulings was common. According to the Constitutional Tribunal, the provisions differentiating the remuneration of a defence counsel, an attorney 'by choice' and 'ex officio' are unconstitutional. The Ministry of Justice announced that it was working on amendments. The President of the Polish Bar Council has also repeatedly addressed the Minister of Justice on this issue. For example, on 25 April 2023, the President of the Polish Bar Council sent a letter to the Ministry of Justice, informing that the Bar Association is ready to actively engage in works aimed at the comprehensive regulation of the issue of remuneration for advocates' activities related to the provision of legal assistance *ex officio*.

Recently, the President of the Polish Bar Council had addressed the new Minister of Justice, advocating for changes that would not only equalise the costs of unpaid legal aid provided by an *ex officio* lawyer and elective rates, but also make them more realistic to correspond to current market conditions.

## Resources of the judiciary

The judiciary is financed entirely from the state budget, including material resources and salaries for employees of courts and prosecutor's offices.

## Training of justice professionals

Training for court employees is organised by the courts, and training for advocates, attorneys-at-law and their trainees is organised by the bar associations and chambers of attorneys-at-law. Online training, which is more accessible than traditional forms of training, has proven to be a great facilitation.

## Digitalisation

The following digital systems were implemented in Poland: Electronic Writ of Payment Proceedings, Electronic Land and Mortgage Registers (ie-KRS) (Electronic National Court Register) and the Court Portal for electronic communication with court users. On 1 October 2024, the e-delivery system will be implemented. It was originally planned to enter into force on 10 December 2023, but due to critical comments from legal organisations, this date was postponed.

## Use of assessment tools and standards

The European Procedural Efficiency Index (CEPEJ) is published by the Ministry of Justice. It is based on the relationship between the things that are done and the things that need to be done. There are no surveys among court users.

## Geographical distribution and number of courts/jurisdictions and their specialisation, in particular specific courts or chambers within courts to deal with fraud and corruption cases

There are 11 courts of appeal, 47 regional courts and 318 district courts located throughout the country. There are no separate courts to deal with fraud and corruption cases.

## Efficiency of the justice system

### Length of proceedings

The length of the proceedings depends on the particular type of court and type of case. According to data presented by the Ministry of Justice for the year 2022 the average length of proceedings in regional courts is 7 months and in district courts 10,2 months. This statistical data is easily manipulated and the common perception among lawyers is that proceedings in Poland take much longer than the numbers presented by the Ministry of Justice. It can be observed in practice that the problem of excessive length of proceedings in Poland remains one of the most common problems in Polish judicial system, as evidenced by the statistics of the ECtHR, and such situation strongly affects Polish citizens with their right to access to justice. Lawyers report that clients resign of legal actions when informed about the court fees and length of the court proceedings.

## Additional information

On 13 December 2023 a new government (with Donald Tusk as Prime Minister) was sworn in by the President. This report covers information up to this date. In the RoL report for 2024 we will include information covering the last two weeks of 2023.

# PORTUGAL

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

## Confidentiality of lawyer-client communications

The Portuguese Bar reported information about the Case of illegal seizure to the President Fernanda Almeida Pinheiro.<sup>43</sup>

## Physical, online or legal threats or harassment of lawyers while exercising their professional duties, as well as unjustified attacks on the role of lawyers and Bars, including preventive measures taken by the Bar

The Bar has responsibilities to defend lawyers harassed by parties, courts, judges, investigators or counterparties. The General Council has some in-house lawyers accompanying these kind of cases against professionals. Some criminal cases are directed against the actual Ordem.

Currently, a team of three in-house lawyers handles 25 criminal cases, involving arson, hijack, attempted murder, slander, defamation, physical assault, forgery, offence to a legal person, harm with violence, usurpation of functions (illegal representation) and intimidation.

In-house lawyers go to court to stand for Bar members, in some cases assisting the accusation of the State Attorney Officer.

[Searches to Female Lawyers](#) in Angra do Heroísmo's (Azores) prison facilities;

Reports of limitations to practise in Borders and Foreigners Service (abbreviated SEF) specifically in the centre regions of the country; in Companies' Registry Office of Porto and Working Conditions Authority (abbreviated ACT); Case to case intervention before public services, a [press release on threats to professionals](#).

## Specific legal provisions and policies which could negatively influence the independence of the Bar and lawyers

The President of the Republic has vetoed Amendments to [Legal Acts Regime](#) and to the [Statute of the Bar Association](#). However, the National Parliament ignored the veto and confirmed these amendments. Both legal acts were published on 19 January 2024.

## Cooperation between the Bar and the executive branch of the government and/or supervisory authorities and cases of political pressure and interference regarding the role of the Bar or lawyers

[Actions of protest against the amendments](#) in Point 12, carried throughout the country and covered daily by the national media and newspapers.

Unity and public support on media [against the law amendments](#) from *Conseil National des Barreaux (France)*, *Ordre des Avocats de Paris (France)*, Warsaw Bar Association (Poland), *La Plata Bar Association*

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<sup>43</sup> <https://portal.oa.pt/comunicacao/comunicados/2023/comunicado-sigilo-nas-comunicacoes-com-advogado/>

(Argentina), *Fédération des Barreaux d'Europe*, Council of Bars (CCBE) and *Unión Iberoamericana de Colegios y Agrupaciones de Abogados* (UIBA).

## Implementation of the case law of national, European, and international courts due to legal, administrative, or procedural issues

The *Ordem dos Advogados* (OA) considers the amendments to the Statute and Legal Acts Regime to be a clear violation of Directive (EU) 2018/958, issued on 28 June 2018, regarding regulated professions. The violation is due to the failure to adopt a proportionality test in the amendments.

## Perception that the general public has of the independence of the judiciary and independence of lawyers

Regarding the political/judiciary circumstances [surrounding the government's resignation](#), there are various public comments expressing different opinions and perspectives. It is a complex and dynamic situation that involves the interactions between political and judicial institutions.

The *Ordem dos Advogados* (OA) has shown its commitment to improving the social rights of female lawyers. Specifically, the [OA has advocated for waiving bar fees during maternity leave](#), recognising the importance of supporting female lawyers during this period.

Furthermore, the OA has also focused on enhancing providential rights for lawyers. This includes presenting opinions and [proposals to the national parliament](#) in order to bring about changes to the current regime, which is managed by the [Caixa de Previdência dos Advogados e Solicitadores](#) (Private Pension System for Lawyers and Solicitors).

## Quality of justice

### Accessibility of courts

Regarding Legal Aid, the Portuguese Bar Association (*Ordem dos Advogados Portugueses* - OA) is actively committed to updating and improving fees. This includes [implementing digital access solutions](#) and ensuring [timely payment processes](#).

## Resources of the judiciary

[Support to the Court Clerks Union](#) for better working conditions.

## Training of justice professionals

A major concern arises from the [proposed changes to Initial Training, as the recently vetoed bill aimed](#) to implement a training programme that does not require a final exam, reducing the duration to just one year instead of the current 18-month period. The compulsory remuneration of trainees, with a minimum salary of approximately 800 euros, would likely result in the discontinuation of traditional or sole practice mentoring. Consequently, it would create an environment where only large or medium-sized law firms in urban areas can flourish due to their ability to afford technical resources at lower costs.

However, the Bar acknowledges that the remuneration of trainees can be seen as a positive measure, given that it is accompanied by a public fund partnership through the state, such as the IEPF, to provide support for training.

## Digitalisation

[Better delivery of Documents in Administrative and Tax Courts](#), [training on IT platforms for Registries](#), nationality cases, [access to E-Court for lawyers](#).

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

The Bar highlights the jurisprudence being delivered in the jurisdiction of the [Competition Court](#) in Santarém for safeguarding consumers' rights.



## ROMANIA

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

### Confidentiality of lawyer-client communications

The National Association of Romanian Bars (NABR) informed about some cases when after a search of a law firm, the computers were taken away for complete electronic search. Other aspects which according to the Bar have become almost systemic are related to a lack of respect towards professional activities of lawyers, such as the respect for their procedural activities, the identification of the lawyer with their client, attempts to break professional secrecy, the limited time given to lawyers for presenting the defence for their clients, a lack of respect by the judicial authorities during investigations for the activity of lawyers “*ex officio*”, or chosen ones, abusive sentencing of lawyers to procedural fines, the repeated breach of the protocol signed by the National Association of Romanian Bars (NABR) with the Ministry of Justice and the General Prosecutor’s Office, establishing the payment of “*ex officio*” lawyers for their activities, etc. This led to the organisation, at the beginning of October 2023, of a national day of protest under the name of “The end of the Rule of Law – a day without lawyers”, at which all 42 member Bars took part. The NABR is still waiting for reactions from the part of judicial authorities, while monitoring continuously the situation.

### Physical, online or legal threats or harassment of lawyers while exercising their professional duties, as well as unjustified attacks on the role of lawyers and Bars, including preventive measures taken by the Bar

There were no complaints addressed to the NABR. Please see information provided above.

### Specific legal provisions and policies which could negatively influence the independence of the Bar and lawyers

The National Association of Romanian Bars has not reported about any of such legal provisions or policies.

### Cooperation between the Bar and the executive branch of the government and/or supervisory authorities, and cases of political pressure and interference regarding the role of the Bar or lawyers

No such cases were brought to attention of the National Association of Romanian Bars.

### Implementation of the case law of national, European, and international courts due to legal, administrative, or procedural issues

There were no difficulties identified by the National Association of Romanian Bars.

## SLOVAKIA

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### Measures taken to follow-up on the recommendations received in the 2023 Report regarding the justice system

Overall, concerning the recommendations in the 2022 Rule of Law Report, Slovakia has made:

No progress yet on ensuring that the members of the Judicial Council are subject to sufficient guarantees of independence as regards their dismissal, taking into account European standards on independence of Judicial Councils.

No progress on ensuring that sufficient safeguards are in place and duly observed when subjecting judges to criminal liability for the crime of “abuse of law” as regards their judicial decisions.

Some progress towards strengthening the legislation on conflicts of interest and asset declarations and no progress on introducing proposals to regulate lobbying.

No progress on improving the coordination among the different law enforcement entities and some progress to ensure the objectivity of prosecutorial decisions, including by continuing to advance the legislative amendments to restrict the power of the Prosecutor General to annul prosecutorial decisions with a view to promoting a robust track record of high-level corruption cases.

Some progress on advancing with the process to establish legislative and other safeguards to improve the physical safety and working environment of journalists, including the reform of defamation law, taking into account European standards on the protection of journalists.

#### Recommendations of the Commission:

- to advance the legislative amendments to restrict the power of the Prosecutor General to annul prosecutorial decisions with a view to promoting a robust track record of high-level corruption cases

#### *Press release – 9 February 2023<sup>44</sup>:*

*“We consider it necessary to re-emphasise that the possible cancellation of an extraordinary remedy in preliminary proceedings without an adequate compensation in the Criminal Code (and it does not matter whether as a result of a legislative amendment or a hypothetical finding of the Constitutional Court of the Slovak Republic) would lead to a serious threat to the rights of the accused, as well as the injured and other persons, who would lose the opportunity to defend themselves against illegal decisions. The removal of § 363 without the introduction of a relevant alternative would make it impossible not only to defend against illegal procedures against the accused, but also, for example, against the illegal termination of prosecution, which thwarted the possibility of victims to seek justice.”*

- Legislative progress on a bill amending the Criminal Code

#### *Press release – 28 June 2023<sup>45</sup>:*

*“Deputies of the National Council of the Slovak Republic today (28 June 2023) threw out the government's proposal for an amendment to the Criminal Code, which could have at least partially brought this code closer to the parameters common in advanced European legal systems. The Slovak Bar Association had several reservations about the presented legislative proposal, which was, in our opinion, unambitious in*

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<sup>44</sup> <https://www.sak.sk/web/sk/cms/news/form/link/display/1609502/ event>

<sup>45</sup> <https://www.sak.sk/web/sk/cms/news/form/list/form/row/1810002/ event>

*correcting the crooked setting of the Criminal Code. Nevertheless, if the proposal were to be approved by the MPs in the presented form, it would be a significant correction of Slovakia's criminal policy, which was incorrectly set by the law reform in 2005. This amendment could therefore undoubtedly help Slovakia in the field of criminal law to finally bring its politics closer to European standards. For the next indefinite period, the only chance to correct at least some of the excesses of the current Criminal Code will be the decision-making activity of the Constitutional Court of the Slovak Republic. However, this cannot replace the need for systemic and expertly prepared reform, which the entire professional public has been calling for many years."*

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

### Confidentiality of lawyer-client communications

*Press release – 16 March 2023<sup>46</sup>:*

*"Today, the National Council of the Slovak Republic approved a draft amendment to the Criminal Procedure Code, which introduces rules to protect the confidentiality of client-lawyer communication during inspections of the lawyer's premises. The Slovak Bar Association (SBA) welcomes the adoption of this amendment, which could help prevent violations of the fundamental rights of clients. "The adoption of this amendment is good news for the protection of people's fundamental rights. We see it as a reaction to repeated violations of clients' rights, which should have no place in a democratic and legal state. Therefore, we thank every member of the parliament who today took the side of protecting the rule of law," responded SBA President Martin Puchalla. In this context, SBA reiterates that it fully respects the powers of law enforcement authorities to investigate criminal activity, including among lawyers. The Bar supports the effective detection of criminal activity, but this must also be done with the necessary respect for legality and constitutional rights. In the past, unfortunately, we have repeatedly recorded cases when, as part of the investigation of a specific act, during searches of a law office, practically the entire computing equipment (hard drive) was seized, on which the data of potentially hundreds of clients could be stored. The court therefore authorised the search in a specific matter, but the illegal procedures of the law enforcement authorities repeatedly jeopardised the communication of a number of ordinary clients who had nothing to do with the investigated matter. The amendment to the law therefore introduces the necessary judicial review into the process of inspections of other premises. This means that in case of doubt about the extent of the seized documents, the matter will be submitted to an independent court."*

### Physical, online or legal threats or harassment of lawyers while exercising their professional duties, as well as unjustified attacks on the role of lawyers and Bars, including preventive measures taken by the Bar

In cooperation with the CCBE, the Slovak Bar Association undertook a survey in autumn 2023 among its members on the attacks they face due to the provision of professional services. In the first round of replies, we received 33 responses out of which 9 persons experienced verbal aggression, 4 persons threatening behaviour, 5 persons harassment and 2 persons physical attacks. Four respondents replied they knew more than two lawyers who ceased providing legal services due to attacks and 3 respondents replied they knew at least one lawyer who quitted the legal profession. 21 respondents claimed that the situation got worse in last five years.

<sup>46</sup> [https://www.sak.sk/web/sk/cms/news/form/link/display/1651592/\\_event](https://www.sak.sk/web/sk/cms/news/form/link/display/1651592/_event)

Press release 27 Octobre 2023<sup>47</sup> :

*"The Slovak Bar Association received with concern the report of a physical attack on a female judge of the City Court of Bratislava II. In this context, we express our full support and solidarity to the concerned judge and the entire judiciary.*

*"An attack on any judge is always an attack on justice, and thus also an attack on the system protecting the rights of all of us. Judges, as well as representatives of all other judicial professions, must feel safe in the performance of their profession. Otherwise, it is not possible to effectively protect basic rights and freedoms," said SBA President Martin Puchalla. Together with judges, the Slovak Bar Association therefore called on the public and politicians to always keep their public statements towards judges and the judiciary within the bounds of objectivity and decency, and never have the character of personal attacks. "*

## Perception that the general public has of the independence of the judiciary and independence of lawyers

In 2023, after two years, the Slovak Bar Association (SBA) conducted another survey among lawyers regarding the legality of the procedures of law enforcement authorities (LEA). The survey confirmed that illegal coercion is often part of the practice of law enforcement authorities, especially in pre-trial and preliminary proceedings. According to 64 percent of respondents, illegal coercion is part of the practice of LEA. Compared to the internal survey from 2021, when 72 percent of survey participants confirmed such a practice, this is only a slight decrease in the perception of this undesirable phenomenon. The SBA conducted this survey in an attempt to collect the practical experience of defence lawyers in the context of the continuing concern of the professional public about the illegal procedures of the LEA. The SBA conducted the first survey in 2021. 110 lawyers participated in the second survey this year, i.e. almost 40 more people than in the pilot survey. Defence lawyers most often encounter practices of illegal coercion at the stage of pre-trial and preliminary proceedings (more than 98% of respondents marked these answers). Compared to 2021, there was almost no improvement in this area. On the contrary, while in 2021 more than half of the respondents confirmed the existence of illegal coercion even after the first-instance verdict, in the new survey more than 65% of the respondents answered negatively. The survey further examined the experiences of lawyers with selected specific forms of illegal coercion. According to the survey, lawyers in practice less often encounter the practice, when the non-submission of a motion for detention is conditioned or stimulated by the confession of the accused (48% said that their client had such an experience, which is 15% less than in 2021). More than half of the respondents (as in 2021) said that the LEA promised their client certain benefits if he/she provided a statement that would be incriminating evidence against a co-accused person. 60% of respondents confirmed that they had encountered a situation when the court had initiated an informal negotiation regarding the form and amount of the punishment, on the condition of admitting guilt in its entirety, before the main hearing. The lawyers interviewed were also given the opportunity to describe what other illegal practices they encountered during their practice. The answers indicate that sometimes the procedures of LEA directly violate the right to defence guaranteed by the Constitution of the Slovak Republic. According to the answers, LEA bypasses the lawyer and negotiates directly with the client without the lawyer's knowledge. The respondents gave several answers, according to which LEA directly encouraged the accused to cancel the power of representative to their defence lawyer, sometimes even for the promise of facilitating certain benefits. According to responding lawyers, evidence obtained in this way is recognised and, in violation of the law, it is taken into account in the decision-making process. The Slovak Bar Association also reiterates in the context of this survey that any criminal activity can only be detected by legal means. Otherwise, there is a risk that not only specific proceedings will be thwarted, but ultimately also a deepening of people's mistrust of the rule of law.

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<sup>47</sup> <https://www.linkedin.com/feed/update/urn:li:activity:7123659717637287936>

## Independence/autonomy of the prosecution service

Press release – 4 February 2023<sup>48</sup>

*“The Bar regularly defends its members if they are the target of public humiliation or other attacks just for doing their job. Unfortunately, such unjustified attacks on lawyers often came from some representatives of law enforcement agencies. In practice, we have even witnessed that lawyers were prosecuted for the performance of their profession, while they found protection only before the Constitutional Court of the Slovak Republic. But if we see that representatives of other judicial professions (judges, prosecutors, other constitutional officials) are also the targets of unacceptable attack and intimidation, our position is the same, and we also consider it necessary to express our full support to them. This also applies to the last incident of the explosives report at the residence address of the special prosecutor Daniel Lipšic. If it is proved that this incident is related to the exercise of his powers, it would be a blatant attack on justice. We are therefore in full solidarity with D. Lipšic in this matter. We trust that the matter will be properly clarified, and the possible perpetrator(s) will be revealed (the same applies to the incident in the case of a member of the Slovak Republic). But at the same time, as in any other matter, it would be advisable to refrain from any blanket and unfounded accusations. This also applies to the special prosecutor, who should refrain from blanket attacks on defence lawyers, as he did during the reporting of the latest incident.”*

## Quality of justice

### Accessibility of courts

In January 2023 the Slovak Bar Association submitted to the Ministry of Justice a proposal to amend Regulation no. 655/2004 Coll. on Remuneration and Compensation of Lawyers for the Provision of Legal Services (“Lawyers’ Tariff”). The aim of the proposed amendment was (among other issues) to achieve that compensations for *ex officio* defence and remuneration within the legal aid system more closely correspond to the real costs and to improve the recoverability of compensations awarded to successful parties in the court proceedings. We expected to hold a meeting with the Ministry to discuss the comments provided in the official legislative procedure. However, at the agreed meeting, we were informed that the amendment to the Regulation had already been signed and will be published in the Collection of Laws. As a result, despite many clear positive amendments, the regulation will not adequately reflect the development of inflation and the real increase in the costs of legal representation. The parties who successfully claim their rights will continue to not have the real costs of legal representation sufficiently covered. Continuation of negotiations on important aspects of the rights protection system was thus not possible. Let it be reminded that the issue of the lawyer's tariff determined in the Regulation is not a question of lawyers' benefits, but it is in the interest of the citizens themselves, whose rights were violated and had to claim them. The Slovak Bar Association will therefore continue, regardless of political developments, to strive for the necessary improvement in this area.

## Training of justice professionals

The Slovak Bar Association provides training to its members on voluntary (qualified lawyers) and mandatory basis (trainee lawyers). Lawyers can undertake additional training choosing from among private providers depending on their area of expertise. The Slovak Bar Association organises regular hybrid training events for lawyers on Wednesdays, two annual two-day seminars, ad hoc seminars and several seminars initiated by regional representatives. The Slovak Bar Association has been involved in several training projects with European dimension co-organised by its partners - cooperation with the Council of Europe within HELP (Human Rights Education for Legal Practitioners): implementation of two new courses

<sup>48</sup> <https://www.linkedin.com/feed/update/urn:li:activity:7027562865217675264>

(Domestic Violence and Violence against Women, Cybersecurity and Electronic Evidence). Up to this day the Slovak Bar implemented 10 different HELP course and trained 426 persons. Cooperation with Academy of European Law (ERA) in organising and implementing project Young European Lawyers Academy (YELA), cooperation with European Lawyers Foundation (ELF) in implementing project on internships of young lawyers - LAWYEREX II. As ERA partner in the EU Litigation project, the Slovak Bar Association promoted and made available to its members ERA EU Litigation Project study materials on its website and via social media. In cooperation with the CCBE the Slovak Bar Association participated in the BREULAW project that enabled the Bar to send its representative to a study visit in the EU institutions. The Slovak Bar Association continued to organise or co-organise training to Ukrainian nationals in legal matters - open seminar in employment and labour law organised in April 2023 at the premises of the Slovak Bar Association, series of webinars in cooperation with Human Rights League on family law and related legal matters.

## Digitalisation

Mobile personal identity is in development at the national level. In the online world, lawyers can also identify and declare themselves with the help of a qualified mandate certificate or by means of communication via an electronic mailbox set up at the lawyer's ID number (Corporate Identification Number). The lawyer is identified by a physical card (with their data and photo) or electronically by a qualified mandate certificate. The Bar maintains a public list of lawyers, which is available on the Bar's website and updated daily. This list of lawyers serves as a source register for other reference registers – the register of legal entities and also for a service “OverSi” provided by the Central Management of Reference Data on dedicated web portal. We are not aware of critical problems in the context of cross-border provision of legal services. The Bar is unable to issue a mandate certificate as the visiting lawyer does not possess Corporate Identification Number and for the same reason the visiting lawyers cannot establish electronic mailbox. For persons who are not citizens of the Slovak Republic but at the same time need access to a Slovak electronic mailbox, the foreign police issues a so-called alternative authenticator (a card with a chip serving as a substitute for an ID card). Every citizen has the opportunity to have a qualified certificate issued free of charge, i.e. electronic identification is possible for all transactions (granting power of attorney, founding a company, signing a contract...). A citizen also has an electronic mailbox established by law, and if they activate it for delivery, they can use it to communicate with the public authorities. Lawyers are obliged to communicate with the public authorities through an activated mailbox.

## Geographical distribution and number of courts/jurisdictions and their specialization, in particular specific courts or chambers within courts to deal with fraud and corruption cases

The Slovak courts are undergoing changes in the context of the recent Court map reform. In connection with the implementation of the court map, SBA representatives agreed with the Minister of Justice in June 2023 to conduct a joint survey of expert public opinion on the first experiences with the functioning of the court map. The goal of the survey, which the Ministry of Justice of the Slovak Republic is conducting among judges and SBA should conduct among its members, will be to identify areas for practical improvement of the functioning of the judicial system. Changes at the ministry due to parliamentary elections postponed the survey.

## Efficiency of the justice system

### Length of proceedings

The initial phase is very long.



## SLOVENIA

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### Measures taken to follow-up on the recommendations received in the 2023 Report regarding the justice system

One of the main recommendations for Slovenia in the 2023 report was to take measures to increase the remuneration of judges and state prosecutors. This issue has not been resolved. On the contrary the issue worsened in 2023. The remuneration legislation was found in violation of the Constitution by the Constitutional Court in its decision U-I-772/21 from 1 June 2023. The Court set a deadline of 6 months to amend (correct) the legislation. This was not implemented and the decision at the moment is being violated by the government. The Slovenian Bar has voiced support for the struggles of judges and prosecutors to obtain adequate remuneration and emphasises that it is one of the obstacles to improve the quality of the entire justice system in Slovenia. Currently it remains as one of the key issues of the justice system, also discussed below.

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

#### Confidentiality of lawyer-client communications

Most issues found in 2023 concern activities of the Slovenian AML Authority (UPPDFT - Office for Money Laundering Prevention of the Republic of Slovenia). The UPPDFT (AML) is currently carrying out inspections of lawyers, and on the basis of preliminary information and direct cooperation, the members of the Slovenian Bar (OZS) Commission for PPDFT have drawn the following conclusions:

- Lawyers are not sufficiently aware of their role in protecting client confidentiality.
- The UPPDFT initially carries out general monitoring, before turning its attention to specific investigative actions against selected parties. It does not make this intention clear, but appears to act as a random selection of a client. After a certain period of time, the intention to carry out an investigation and to circumvent criminal procedural obstacles is formed.
- Monitoring takes 5-6 hours.
- The principle of proportionality - and in particular the principle of urgency - is generally not respected.
- The selection of the investigated subjects is made on the basis of suspicious transactions, in particular notifications from other stakeholders (banks). This is particularly the case for transactions through the lawyer's fiduciary account. The scope of supervision is not specifically explained to the investigated person before and during the investigation, lawyers' clients are dependent on the activities of the representative of the Slovenian Bar.

The role of the Bar is crucial to protect the client in a conflict of interest. Only through the active role of the Bar representative can the protection of clients and their privacy be ensured and, secondarily, the legitimacy of proceedings and thus the usefulness of investigations and inspections.

### Physical, online or legal threats or harassment of lawyers while exercising their professional duties, as well as unjustified attacks on the role of lawyers and Bars, including preventive measures taken by the Bar

No such cases were detected by the Slovenian Bar Association in 2023.



## Specific legal provisions and policies which could negatively influence the independence of the Bar and lawyers

The Bar Association of Slovenia has encountered interference by the courts in the autonomy of disciplinary proceedings carried out by the Bar bodies against lawyers, namely the court adopted the position that the validity of a final disciplinary decision can be (re)assessed in civil procedures.

The Bar does not agree with the court's position that disciplinary decisions of Disciplinary Commissions of 1st and of 2nd Instance can be reviewed (again) in court proceedings, as the composition of the disciplinary bodies ensures external control by representatives of the Ministry of Justice and a two-stage procedure. Such review undermines the independence of the Bar as it allows the possibility that final decisions on disciplinary issues are invalidated by the regular courts.

## Cooperation between the Bar and the executive branch of the government and/or supervisory authorities and cases of political pressure and interference regarding the role of the Bar or lawyers

The Bar Association of Slovenia is the supervisory authority for its members under the AML law (ZPPDFT-2). The conflict between the dual jurisdiction of the Slovenian Bar (OZS) and the AML Authority (UPPDFT - Office for Money Laundering Prevention of the Republic of Slovenia) is highlighted, which is constitutionally controversial.

The powers of control conferred on UPPDFT by the Inspection Act are not extended to the Slovenian Bar. The Slovene Bar was not invited to participate as a stakeholder in the adoption of the ZPPDFT-2.

No financial resources are provided for the implementation of the supervision by the Slovenian Bar. The role of the Slovenian Bar is crucial to protect the client in a conflict of interest. Only through the active role of the Bar representative can the protection of clients and their privacy be ensured and, secondarily, the legitimacy of proceedings and thus the usefulness of investigations and inspections.

The low number of notifications by the Slovenian Bar is put under scrutiny by the UPPDFT. This is partly due to poor awareness among colleagues, but mainly due to the fact that most transactions included in Article 90 of the law AML law (ZPPDFT-2), which require reporting from lawyers, are not carried out exclusively by lawyers, but through unregulated legal advisers or real estate agencies.

## Implementation of the case law of national, European, and international courts due to legal, administrative, or procedural issues

No difficulties were detected by the Slovenian Bar Association in 2023.

## Perception that the general public has of the independence of the judiciary and independence of lawyers

In case of supervision (AML), it is important that reporting does not violate client-lawyer relationship (privileges).

The independence of lawyers can be also affected if there will be a possibility to reevaluate a final disciplinary decision in a civil procedure.

## Remuneration/bonuses/rewards for judges and prosecutors, including observed changes, transparency on the system and access to the information

The question of remuneration of judges is a recurring concern in Slovenia. In its decision U-I-772/21 from 1 June 2023 the Constitutional Court of Slovenia found that the legislation on the remuneration of judges is not in line with the constitution and contravenes the principle of separation of powers, which requires all branches of power (legislative, executive and judicial) to have (substantially) equal conditions. The remuneration of judges was found to be excessively lower than that of members of parliament. Moreover, the current legislation that allowed remuneration of judges to stall for more than 10 years without adjustments with rising costs, was found in breach of the fundamental constitutional principle requiring the State to provide adequate conditions for the judiciary to function. The Court ordered the legislature to adopt amendments of the legislation in 6 months following the decision. This period elapsed on 3 January 2024 with no amendments implemented. On 4 January 2024 a one-hour strike was carried out by judges, supported by prosecutors and also the Slovenian Bar, as a warning to the government that this issue has to be handled. A 14-day protest limiting the judiciary only to work on urgent matter took place 10-24 January 2024.

## Independence/autonomy of the prosecution service

Regarding the supervisory bodies of the prosecution, the Slovenian bar noted a strong opposition from the members of the association of prosecutors towards involvement of lawyers in their self-governance body. Namely, a Slovenian lawyer (member of the Bar) was proposed by the President of the Republic (based on the recommendation of the Slovenian Bar) as a candidate to assume the position of member of the State Prosecutorial Council, a body with a similar position as the Council for the Judiciary, that performs the tasks of state prosecution self-governance and administrative tasks as determined by the State Prosecutor's Office Act, and participates in ensuring the uniformity of prosecution and safeguarding the independence of state prosecutors. The law requires membership of outside legal professionals, but lawyers have never been admitted to the Council. The association of prosecutors voiced strong opposition to the candidacy of a lawyer, which led to the rejection of the candidate in the parliament. It is a concern for the Slovenian Bar as outside membership of lawyers would ensure more transparency in the self-governance and autonomy of the prosecution service.

## Quality of justice

### Accessibility of courts

In 2023, the Bar Association of Slovenia was informed by his members about payment delays of remuneration of lawyers in legal aid (BPP) and EX-OFFO procedures by certain courts in Slovenia. The Bar Association of Slovenia informed the Supreme Court and the Ministry of Justice about the problem of remuneration of lawyers in legal aid (BPP) and EX-OFFO procedures.

## Resources of the judiciary

Regarding the material resources for the judiciary the most notable problem is the remuneration issue of judges (and prosecutors) already explained above.

## Training of justice professionals

The Bar Association of Slovenia through the Law Academia offers different programs and training of

lawyers. In 2023 training of defence attorneys and also training on AML regulation and other trainings (on SLAPP, for example) were organised.

The Bar also inform his members about updates in different legal topics through the website and its gazette "*Odvetnik*".

## Digitalisation

The Bar Association of Slovenia is disappointed about the missing consultations and involvement of the Bar by governmental authorities. In addition, the digitalisation is falling behind compared to the adopted and promised plans.

## Efficiency of the justice system

### Length of proceedings

The length of proceedings in Slovenia varies significantly between courts and procedures, in certain cases also between similar procedures at the same court (for example serious delays lasting many years for a hearing in a regular civil procedure, while a procedure at the same court in commercial matters is handled within one year). It remains a serious concern that such inconsistencies are not dealt with through better judicial management and seem to be getting worse.

## SWEDEN

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

In 2023, there were no cases reported which would directly undermine the independence of the Swedish Bar Association.

### Physical, online or legal threats or harassment of lawyers while exercising their professional duties, as well as unjustified attacks on the role of lawyers and Bars, including preventive measures taken by the Bar

During 2023, threats or harassment against lawyers (or other actors in the legal system) has been a rule of law focus issue for the Swedish Bar Association. In line with this, the Bar Association has discussed this issue in our media outlets, for example in our newspaper *Advokaten*. The Bar has also warned that this is an increasing issue. The Bar offers support from external health care staff free of cost for its members. This is also an issue which the Board of the Bar Association will continue to focus on during 2024, and there are a series of new preventative measures currently being discussed.

### Specific legal provisions and policies which could negatively influence the independence of the Bar and lawyers

The Liberals, one of three parties in the current minority government, have suggested an external disciplinary supervision with state involvement, which is the first time a government party has done so. Such ideas have previously been expressed by the Swedish Democrats (a political party formally outside the Swedish Government, but with a lot of political influence). However, although these political discussions are yet to result in any concrete suggestions, it is a matter which the Bar Association is following closely.

### Cooperation between the Bar and the executive branch of the government and/or supervisory authorities and cases of political pressure and interference regarding the role of the Bar or lawyers

One focus for the Bar Association has been, and remains, independence – both for the Bar Association itself and for its members in their daily work. The core values of the legal profession (namely independence, confidentiality/legal privilege and client loyalty) must be respected. Unfortunately, the last couple of years a number of legislations and political suggestions threatening these core values have been introduced, which is of great concern.

### Perception that the general public has of the independence of the judiciary and independence of lawyers

A lack of understanding for the unique role of lawyers is an ongoing issue, and the Swedish Bar Association is an active actor in public debate in an attempt to remedy this lack of understanding.

## Appointment and selection of judges, prosecutors and court presidents

The system of lay judges is, in the opinion of the Swedish Bar Association, long overdue for an overhaul. Currently, the lay judges' votes are equal to that of the legally trained judges. Lay judges are furthermore appointed from political parties. This system has, among other things, resulted in a series of judgments with legally incorrect verdicts which have resulted in widespread public debate and frustration.

## Accessibility of courts

Shortcomings regarding state funding of legal counsels remain, as do the far too low remuneration levels for lawyers in their roles as legal aid counsels. Furthermore, regulations limiting the right to legal counsel in court proceedings, such as no right to counsel for an aggrieved party in courts of appeal unless special circumstances are at hand, remain in place. Both these shortcomings affect access to justice.

## Resources of the judiciary

It is key to ensure secure and proper state funding of all parts of the legal chain – investigating authorities (police and prosecutors), the courts, as well as legal counsels (necessary level of remuneration for lawyers).

## Digitalisation

The Bar Association is aware of state initiatives to increase the digitalisation of the legal system further. It is essential for lawyers to be involved in such initiatives, but unfortunately, they have not always been included.

## Efficiency of the justice system

During this past year, we have seen the continuation of a previous trend, that is, an increasing amount of repressive criminal legislation along with repressive criminal procedural legislation being introduced. This repressive legislation is a result of, among other things, the Swedish society's grapple with increased level of organised crime. However, the Bar Association remains convinced that these extensive changes must be thoroughly analysed before introduction. We have, just as during 2022, noted a worrisome trend regarding the upholding of proper quality of legislation. We are continuing to move away from thorough investigating commissions with specialised legal experts to legal proposals directly by the Government Offices/Ministries. Another worrisome tendency, which has continued during 2023, is that of shorter and shorter time frames for consulting bodies to provide their views on legal proposals.

Meeting the increased levels of organised crime has been, and continues to be, a central challenge for the Swedish justice system. The Bar Association is attempting to raise awareness around the importance of meeting this challenge without sacrificing the rule of law, procedural guarantees for the accused and personal integrity. Furthermore, it is crucial to uphold conditions in terms of necessity, effectiveness and proportionality when introducing legislation which extends the possibility for crime investigation authorities to use secret coercive measures.