

EUROPEAN ASSOCIATION OF JUDGES
ASSOCIATION EUROPEENNE DES MAGISTRATS

RESPONSE
to the
CONSULTATION QUESTIONNAIRE
by the
EU COMMISSION
for the preparation of the
REPORT on the RULE OF LAW 2021

(I) HORIZONTAL DEVELOPMENTS

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

In order better to inform its response the EAJ requested its member associations in the Member States of the European Union to respond to the questionnaire and has prepared the summary of the responses set out below. The EAJ, which has 44 member associations, regularly receives reports from its member associations on the state of the rule of law in their respective European countries and may be asked by member associations for support in their endeavours to resist infringements of the independence of the judiciary and the rule of law in their country.

The period since the delivering of our contribution to last year's Rule of Law Report has been overshadowed by the Covid 19 pandemic. The pandemic has presented the judiciary with new challenges to master over and above their already existing tasks and has resulted in additional workload and new types of cases. As early as April 2020 the EAJ-President, José Igreja Matos, published an article in this regard "Being a Judge in times of a pandemic". Subsequently the members were asked to report on their experiences in their respective justice systems. Meanwhile some general observations can be made.

Due to health reasons physical contact has been restricted, which has consequently slowed down non-urgent cases, prolonged procedural deadlines and produced some backlogs; but in several states these were not as large as expected due to the enormous dedication and engagement of judges and court staff. On the other hand, the use of IT-facilities has

intensified, which has given an incentive for a new wave of technological progress in many countries.

In some countries the balance of power between the three branches of state was put in jeopardy. Using the argument that speedy reaction to the epidemic was necessary, governments acted and the legislature was only involved *ex post facto*. Sometimes this was based on an existing state of emergency regime, sometimes it was an *ad hoc* arrangement. So far as concerns the judiciary, questions came up that concerned the independence of the judge and an undue influence of the administration.

The use of electronic means for conducting litigation raised questions of access to justice and other rights of parties and the ability of the public to observe the working of the justice system. Only a few states were prepared for such a situation. One lesson learned is that legislation should adopt a legal framework for such situations in advance.

Regrettably, some governments have tried to take advantage of the concern and involvement of the general public with the problems caused by the pandemic in order to proceed with their agenda of increasing their control of the judiciary. In the first line of attack were the Councils for the Judiciary (Poland, Spain, Hungary, Bulgaria), by changing the system for selecting members or by altering the composition of the Council. Training institutions were concerned by such a plan (France). But there was also direct pressure on judges by unwarranted disciplinary measures or intended amendments to the disciplinary procedure (Poland, Romania, Bulgaria).

The most dangerous development, which it is very worrying to observe, was that certain governments refused to implement decisions of the Court of Justice of the EU or the European Court of Human Rights. (Poland, Hungary). If such behaviour is not met by prompt condemnation and effective sanctions from the European Institutions, not only will people in the Member States concerned lose trust in those institutions but also the standing and the work of both of those courts is likely to be seriously hampered.

In short, the problems briefly summarised above are the principal and most common problems which our members have had to address and those which have principally dictated the activities of our office holders.

(II) SUMMARY of ANSWERS to the QUESTIONNAIRE

I. JUSTICE SYSTEM

A. Independence

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

Positive developments:

Judicial bodies within individual courts (“Personalsenate”) make non-binding appointment proposals (short lists) to the MoJ. In 2020 a new rule was brought into effect which should lead to more transparency. If the MoJ does not intend to follow any of the proposals for appointments, written notification, stating the essential considerations, must be given to the Personalsenate in question, which may then submit a written statement within a period of 14 days. When submitting his or her nomination to the Federal President for appointment, the MoJ shall also include these comments as well as giving his or her reasons for departing from the ranking of the Personalsenate. **(Austria)**

The newly elected State Judicial Council (SJC) is significantly less exposed to the criticism from the press and public in regard to their decisions on the appointment and promotion of judges and their liability to disciplinary measures. **(Croatia)**

The election of the President of the Court is solely the responsibility of the Judicial Council. **(Latvia)**

The Constitutional Court had squashed several legal provisions regarding the appointment procedure as unconstitutional (key aspects of the contest are not regulated, no remedy etc.) **(Romania)**

Negative developments:

The *de facto* composition of the Supreme Judicial Council (SJC), which is in charge of the selection and appointment of judges and prosecutors raises concerns about the independence of the elected presidents of the courts and prosecutor’s offices. The selection of these office holders is not in the hands of the Judges’ College (JC) of the SJC, which consists of 6 judges elected by their peers, 6 members elected by the Parliament, and the Presidents of the Supreme Court and the Supreme Administrative Court. Instead, the selection has to be decided by the

plenary of the SJC. The plenum also includes the Prosecutor's College composed of the Prosecutor General, 5 prosecutors elected by the prosecutors and 5 members elected by the Parliament. In practice the prosecutors and the members elected by the Parliament vote in the same way as the General Prosecutor and this results in the judges elected by their peers always being in a clear minority. **(Bulgaria)**

There has been a serious breach by the President of the Republic of the proper procedure for the appointment of the President of the Supreme Court. The Constitution prescribes that the President of the Supreme Court is appointed by majority vote in the Parliament upon proposal of President of the Republic. According to the procedure, which is regulated in the Law on Courts, a vacancy is to be announced and any person who fulfils the criteria for appointment can apply. Before nominating his candidate to the Parliament the President of the Republic must seek a non-binding opinion from the General Assembly of the Supreme Court on the candidates who had applied within the term for application. At the closure of the term for applications for the recent vacancy (30 days) three applications were made, one by the current President of the Supreme Court and two by lawyers. The President of the Republic has however made several public statements that he does not consider that he is bound by the Law on Courts and the applications duly submitted and that he will propose another candidate outside of the list of applicants. This would be a clear infringement of the expectations of the applicants and of the rule of law. **(Croatia)**

In 2016, the Federal Minister of Justice and the presidents of the Federal Courts agreed on guiding principles for the selection of senior judges of Federal Courts, which required – among others - at least 5 years of practical experience as a judge at the respective Federal Court. In a current process regarding the selection of the president and the vice president of the Federal Fiscal Court, the Federal Minister of Justice decided to set aside this established criterion for the nominees. The German Judges Association criticizes that decision as detrimental to public trust in the independence of the judiciary, as the public could get the impression that top judicial positions are filled having regard to political considerations rather than judicial competence. **(Germany)**

The new President of the Supreme Court (Curia) was elected by a two-thirds majority in Parliament, despite the fact that the candidate previously was not a judge within ordinary judiciary, but a constitutional judge coming from the prosecution service, namely the vice general prosecutor. This was only possible because the parliament amended the respective legal provisions. Under pre-2020 rules the President of the Curia required to be a judge. These rules were amended by Parliament, providing for constitutional judges to be appointed directly to the ordinary judiciary. In accordance with the law prevailing before his election, the candidate elected to the post of president of the Curia was heard by the National Judicial Council (OBT) but the Council did not support his election because the candidate had not carried out any judicial activities in the judicial system and therefore had no courtroom experience. **(Hungary)**

The President of the National Judicial Office (OBH) more or less continues the practice of the former OBH president in declaring – in a growing number of cases - applications for judicial leadership positions to be ineffective despite the support of the applicants by the review bodies. The reasons offered for these decisions sometimes refer to investigations which are not made available., as was the case of the Metropolitan Court, where the rejection of the candidate favoured by 12 votes was not explained. As a result, appointments to leading positions in the courts are in fact increasingly decided by the President of the OBH alone. **(Hungary)**

Executive power in the shape of the Ministry of Justice is trying to bypass the established procedures by not publishing applications in time or not publishing subsequent applications, if candidates have not applied in the first announcement of the **(Latvia)**

The Ministry of Justice, which since 2020 has the discretionary power to appoint court presidents, appointed a new President and a new Vice-President of the Warsaw Regional Court, the biggest court in the country. Both appointees are at the same time disciplinary commissioners, who keep on pressing disciplinary charges against Polish judges. **(Poland)**

A decision of the Constitutional Court which declared several legal provisions regarding the procedure for appointment to be unconstitutional has led to a standstill with no judicial appointments in 2020, thus increasing the shortage of human resources. The draft text of the new provisions also seems to be unconstitutional, because it retains the same provisions regarding the interview, which may lead to very subjective results which cannot be challenged. **(Romania)**

The Prime Minister blocked the appointment of two delegated members as European Public Prosecutors and thus the beginning of the work of this institution, because the candidates have already investigated corruption cases in which he was also involved. **(Slovenia)**

In order to solve the long existing problems involved in assessing candidates for appointment to higher positions in the courts (presidents of courts, Supreme Court judges etc.) where merit criteria exist but the weight of each criterion compared with the others is discretionarily chosen in the individual calls for applications to fill a vacancy, the General Council of the Judiciary drew up a guide to fix the prioritization of merits with a view to guaranteeing a uniform application in 2020. However, this guide was neither published nor applied by the Council itself. **(Spain)**

Impact of Covid-19 on these issues :

The evaluation for the application to leading positions of the court (President, Vice-President, Leader of Collegium) was repeatedly delayed by the Covid-19 outbreak because the review bodies could not be convened due to epidemiological regulations. As a result, vacant posts

remained empty or were filled by the President of the National Judicial Office (OBH) **(Hungary)**

The Covid 19-pandemic caused a suspension of examinations for entry to the judicial career. **(Spain)**

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

Positive developments:

Regarding promotion of judges the same improvement was introduced as for other appointments (see above). **(Austria)**

The government suspended the lowering of the retirement age of Supreme Court Judges due to a decision of the European Court of Justice. **(Poland)**

The Constitutional Court declared the Law regarding transfer of judges as unconstitutional due to the fact that the key aspects of the transfer procedure were not regulated by the law but left to the Superior Council of Magistracy. **(Romania)**

Negative developments:

Secondment of judges is still a widespread practice, rather than an exception. It is a result of the lack of regular competitions for promotion of judges and prosecutors. The secondment is most often carried out only at the discretion of the relevant president of the court, without observing any objective criteria. The period of secondment lasts 5, 6 and even in some cases over 9 years. **(Bulgaria)**

The three judges Tuleaya, Morawiec and Juszczyszyn have been suspended in the course of a politically motivated proceeding. **(Poland)**

After the Constitutional Court declared the provisions of the law regarding transfer of judges as unconstitutional, a new law has not yet been adopted. The serious human resources crisis remains. **(Romania)**

Impact of Covid-19 on these issues :

Parliament passed a law with measures to help deal with the aftermath of the covid-19 pandemic. Among the measures is also the possibility of early retirement, which currently applies only to employees in the economy and civil servants, under certain conditions. There is a tendency for this option to apply to judges as well. The trade unions have filed a request for a review of constitutionality. **(Slovenia)**

3. Promotion of judges and prosecutors

Positive developments:

none

Negative developments:

The Supreme Judicial Council still does not hold regular and timely competitions for appointment and promotion of judges. Another issue is that the Supreme Judicial Council does not comply with the rankings made by the selection boards in the competitions. So far, within the mandate of this Supreme Judicial Council - for more than 3 years - no competition for the promotion of judges has been completed. **(Bulgaria)**

There has been no legislative change. In practice, however, the President of the National Judicial Office (OBH) has repeatedly appointed a judge serving in the OBH to a higher judicial level at the end of his/her term of office without the vacancy having been advertised. **(Hungary)**

For the release from office at the request of the judge the request must be submitted at least nine months prior to the desired date of the release (it was previously six months). **(Estonia)**

In exercising its discretionary power to promote judges and prosecutors the only criterion applied by the MoJ is obedience to the will of the MoJ. **(Poland)**

There is a draft law by the MoJ providing that the careers of judges and prosecutors should not remain separate from each other. Consequently, decisions regarding judges will not be taken by the judges' college of the Superior Council of Magistracy alone but by the Plenum of the Superior Council of Magistracy, where judges are in a clear minority. This is despite opposition to such changes from two judges associations and the Venice Commission. **(Romania)**

The Judicial Council of the Republic of Slovenia proposed to the Ministry of Justice the abolition of one of the possibilities for the promotion of judges, namely exceptional promotion to a higher title in the same judicial position (a district court judge can be promoted to the title of higher court judge after many years of good or excellent work). In this way, the Minister wanted to penalise local court criminal judges because they do not want to apply for vacant posts of district court criminal judges. The Slovenian association strongly protested that this proposal could not achieve the desired goal; and at the same time it deprived first instance judges, who are the pillar of the first-instance courts, of obtaining a slight increase in salary after 20 years. **(Slovenia)**

4. Allocation of cases in courts

Positive developments:

Cases under appeal are no longer distributed on the basis of territorial principle but randomly though out the country among all 15 appellate courts of general jurisdiction. A computer calculates the backlog at every court and distributes cases in a way equalises the load of cases for all courts and all judges at second instance jurisdiction. This reform has resulted in greater efficiency of the courts and a decrease in the backlog with high clearance rate. **(Croatia)**

The rules for the allocation of cases are transparent and predictable and are changed in a legal order. Integrity has come into focus and even the manager who hands out the case is being investigated for incompatibility **(Hungary)**

Negative developments:

In 2020 a new electronic system for allocation and managing the cases in courts has been introduced by the Supreme Judicial Council. Unfortunately, the pilot implementation of that system was judged as delaying the work of the courts and hindering the parties' access to cases rather than facilitating them. Therefore, the introduction of the system in all courts has been postponed and revisions are underway **(Bulgaria)**

Administrative courts do not have random allocation of cases done by computer, but it is expected that this will change in July 2021 **(Croatia)**

It still happens that a judge who has been temporarily appointed to another court continues to deal with cases from that judge's original court, which means in reality a transfer of the case. Moreover, the distribution of cases is still not automatic, which would guarantee an impartial distribution of cases. **(Hungary)**

The system of random allocation of cases does not allocate the cases in a proportional way and is continuously corrupted by the activity of the MoJ. **(Poland)**

The allocation of cases is done by computerized random allocation. Previous criticism that the system is merely administrative and not public, and therefore not at all transparent, led to the adoption of a legal amendment requiring that every two years an external audit should be carried out, and its results published. Although in 2020 such report should have been published, this was not done. Public mistrust has accordingly increased. **(Romania)**

A provision was introduced that members of the Superior Council of Magistracy, other than the president and the vice-president, should not work fulltime but between the sessions perform their activities in the courts. This endangers the immediacy of decisions in criminal and civil cases and affects the activities of these members in both the courts and in the Superior Council of Magistracy. **(Romania)**

Impact of Covid-19 on these issues:

Due to the spread of Covid-19, certain court procedures have been simplified. For example, a special law permits cases to be dealt with by written process even in litigation where such procedure was not previously provided. It must be acknowledged that due to the pandemic certain court proceedings have become more efficient. For example, a variety of video conferencing tools are used in court hearings more often. **(Hungary)**

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

Positive developments:

The assembly of delegates (elected in different courts) has elected the members and substitutes of the National Judicial Council (OBT), so the board is fully staffed. The President of the National Judicial Office (OBH) has provided a co-worker (staff member) for the OBT office. The OBT has an agreed budget. **(Hungary)**

Negative developments:

The independence of the judiciary in Bulgaria is still seriously compromised through the composition of the Supreme Judicial Council (SJC), which is dominated by a large majority of members elected by the National Assembly and by prosecutors. All prosecutors and investigators are subordinate to the Prosecutor General in their work before and after their five years term in the Council. It could be easily confirmed that the members of the Prosecutorial College of the SJC and the members of the Judges College elected by the National Assembly always vote unanimously with the Prosecutor General. The most important decisions for the judiciary including the selection of the President of the Supreme Court and the President of the Supreme Administrative Court are decided by the Plenary session of the Supreme Judicial Council, so that the 6 judges of the Judges College, who are elected by their peers, in practice have no decisive power. **(Bulgaria)**

The legislation governing the National Judicial Council (OBT) has not been changed. The OBT has no legal personality and its competencies have not been extended in accordance with the legislative amendment it has initiated. This is despite the fact that the law on the courts relating to their administrative rules has been amended several times. The President of the National Judicial Office (OBH) is still not present until the end of OBT meetings, and up to now OBT is still not provided with the possibility of communication through the court website. Obligatory announcements on the court website lack systematic organisation and difficult to find. **(Hungary)**

The Judicial Council is also composed of politicians. Minister of Justice, Chairman of the Legal Affairs Committee of the Parliament **(Latvia)**

The Polish Council for the Judiciary, which was unconstitutionally appointed, promotes all candidates put forwarded by the MoJ, and proposes them for appointment without adequate scrutiny of these candidates. **(Poland)**

The Council for the Judiciary has never issued any statement in defence of persecuted judges **(Poland)**

A draft amendment has been proposed to change the way judges are elected by their peers from a system which guarantees that every court level will vote its representatives to a system in which all positions are elected by all the judges. This would lead to domination by the judges of the lowest level, who form the largest category of the judiciary, and may result in an absence of judges serving in the higher courts. **(Romania)**

Impact of Covid-19 on these issues:

The National Judicial Council (OBT) held its meetings online from February 2020 to September 2020 and continued again from December 2020 until now. **(Hungary)**

The Parliament has still not been able to elect new members of the General Council of the Judicial Power. Members whose terms have expired are therefore still in office. There was a draft constitutional law to reduce the quorum for electing a new member. This would have enabled the party having the majority to support a government also to have the majority to elect members of the Council. However, this draft law was not passed. There is now a new proposal pending, which is to suspend the powers of the Council to appoint higher positions in the judiciary for so long as such the situation exists in which members whose tenure has expired and have to stay on until their successors are appointed. **(Spain)**

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

Positive developments:

The Ministry of Justice has set up a committee to recast the rules of disciplinary procedure regarding judges. The National Judicial Council (OBT) reviews the Judges' Code of Ethics and takes a position on the need for an amendment. **(Hungary)**

A new Code of Ethics for Judges has been developed, updating the standards of conduct for judges **(Latvia)**

Negative developments:

Disciplinary proceedings against judges and prosecutors are conducted by the Inspectorate of the Supreme Judicial Council, which consists of the Chief Inspector and 10 inspectors, who are elected by the Parliament in a very untransparent and highly political procedure, which is dominated by the principle of proportionality of the political parties in the parliament and not on merits of the candidates. The mandate of the inspectors and the mandate of the Chief Inspector expired in March 2020 and for over a year no steps have been taken to initiate a procedure for the election of new inspectors. **(Bulgaria)**

The problem with financial and career bonuses for inspectors and members of the Supreme Judicial Council still exists. After their term of office, they may be reinstated not only to the position they held prior to their election, but also to a higher position. In addition, prosecutors and investigators can be reinstated as judges. In this way, a district prosecutor after being an inspector can be reinstated as a judge in a Court of Appeals. These bonuses suggest that the inspectors and members of the Supreme Judicial Council will not be objective and impartial but loyal to the political party which elected them; and at the same time they violate the principle of the Judiciary Act that career advancement is only through competition and are discriminatory against other magistrates. **(Bulgaria)**

The negative impact remains that it is unclear which procedural rules (civil or criminal) apply to judges in disciplinary proceedings. It is of highest importance for guarantee. Due to the lack of these rules, only the Rules of Procedure of the Disciplinary Court provide guidance on this matter. **(Hungary)**

There is a clear contrast between those judges who decide cases in accordance with the MoJ, who are not prosecuted even for blatant offences, and those judges who decide against the government, who are persecuted, suspended, have their salaries partly cut and are subjected to defamatory campaigns in pro-governmental mass media. **(Poland)**

The MoJ has proposed a draft law giving the MoJ the power to initiate disciplinary proceedings even where the judicial inspection has found that there are no reasons to do so. The MoJ may trigger an investigation by the judicial inspection and the MoJ may file a disciplinary action to the Superior Council of Magistracy's Plenum. **(Romania)**

The proposed abolition of the special Section for the Investigation of the offences within the Justice System (SIJJ), which was proposed by the government and supported by the European Commission, was put before the parliament in spite of the negative opinion of the judges and the Superior Council of Magistracy. **(Romania)**

7. Remuneration/bonuses for judges and prosecutors

Positive developments:

In the course of the last consultation the German Judges Association pointed out the insufficiency of the remuneration of judges and prosecutors in general. In May 2020 in two decisions, the Federal Constitutional Court found the remuneration of judges to be unconstitutional. In one decision it declared the remuneration of judges and prosecutors in Berlin between the years 2009 and 2015 to be “evidently insufficient” and therefore unconstitutional. In another decision the Federal Constitutional Court found the remuneration of judges and prosecutors with large families in the state of Nordrhein-Westfalen to be unconstitutional. While the latter has meanwhile been taken into account at least for Federal Civil Service, certainly the overall exceptionally low remuneration of judges and prosecutors in Germany in comparison with other European countries has not changed significantly. **(Germany)**

A government decision to increase the salaries of judges and prosecutors has been taken, some of which came into force on 1 January 2020. Judicial and prosecutorial salaries were raised by an average of 25-30%. **(Hungary)**

The issue of remuneration of judges has been stabilized and developed in a way that it adapts to the economic situation of the country. **(Latvia)**

Negative developments:

There is a huge difference between the salaries of magistrates from different levels of the judiciary in Bulgaria. For example, the salary of a supreme court judge is a more than twice the salary of a district court judge. Instead of adopting a system of remuneration which reduces this difference, the Supreme Judicial Council has actually increased it, and this year all remunerations were updated again by the same percentage. At the same time, the additional remuneration is regulated in such a way that it allows for a subjective attitude of the administrative heads and benefits mainly the specialized courts, which are by far not the busiest judicial bodies. **(Bulgaria)**

Salaries of judges and prosecutors are regulated by the Law but have not been increased for several years despite the fact that cost of living is significantly higher. **(Croatia)**

The bonus for leading positions has become high disproportionately between judges and prosecutors. In addition to this general disproportionality only prosecutors have got an additional jubilee reward. **(Hungary)**

Due to economic decline, there has been some pressure to lower salaries of higher state servants, incl. judges. **(Estonia)**

Only Judges and prosecutors who decide in accordance with the views of the MoJ are rewarded with different perks, like being invited as speakers in conferences, where they earn extra money etc. Judges and prosecutors, who do not act in accordance with the wishes of the MoJ are sometimes based far away from their hometowns **(Poland)**

There are still inconsistent aspects between the remuneration of judges and public servants, between judges and prosecutors and also regarding prosecutors working at the National Anticorruption Directorate. **(Romania)**

Remuneration of judges and prosecutors is used in public debate with false statements by politicians (Minister of Labour) to create the impression of privileges. **(Romania)**

Public prosecutors had their salaries reduced by 30% during the lockdown in the spring of 2020 but judges managed to prevent this by means of an immediate sharp protest. There is no doubt, however, that the salaries of judges will be reduced after the end of the pandemic, because the state will need money to start the economy. **(Slovenia)**

8. Independence/autonomy of the prosecution service

Positive developments:

In January 2021, the Federal Ministry of Justice opened the stakeholders' consultation on a draft law that is aimed at granting the prosecution service a higher level of independence. The draft law was initiated due to the judgements of the European Court of Justice of 27 May 2019 (C-508/18 and C 82/19 PPU) and of 24 November 2020 (C-510/19). The draft proposes that in the law the narrow legal limits of the right to issue directives be clarified. Furthermore, a requirement for all external directives to be in writing and reasoned is foreseen. This is aimed at "increasing transparency in cases where ministerial directives are given to the public prosecutors' offices". The German Judges Association supports this draft law in general but argues that it should not be limited to the field of European judicial cooperation. The Ministers of Justice of some Länder are opposed to this draft law and are committed to keeping the right of individual ministerial directives as it is. **(Germany)**

Negative developments:

In July 2020, the Prosecutor General ordered a search of offices in the building housing the President of the Republic of Bulgaria. This search was carried out not only by a prosecutor and an investigator, but also by a group of armed individuals from the Prosecutor General's Office's Defence Bureau. Two advisers of the President were arrested during the operation. At present, the arrests have been declared illegal by the court. As a result of these actions of the Prosecutor

General, which were apparently perceived by the citizens as an attack on the President in favour of certain political circles around the ruling party, mass protests began, which lasted for months. Such actions, and in particular the manner in which they are carried out, undermine the prestige of the judiciary and create a sense of lack of independence in the prosecution service. The Bulgarian Judges Association sent a reasoned request to the Supreme Judicial Council to initiate disciplinary proceedings against the Prosecutor General, but the proposal was rejected without serious discussion. **(Bulgaria)**

The Prosecution Service is subject to serious attacks from the different politicians. **(Croatia)**

Prosecutors are totally subordinated to the MoJ, who at the same time is General Prosecutor. Prosecutors who try to act independently formed a prosecutors' association. They are persecuted and several of them relocated to offices which are far away from their home towns. **(Poland)**

There is a tendency of the current government to gain greater influence over the work of public prosecutors **(Slovenia)**

A draft law to amend the Criminal Procedural Code is pending. It envisages that the role of the investigating judge should be abolished but that the prosecutor should act objectively and impartial. However this is not safeguarded, due to the fact that the State Attorney General, who heads the hierarchy of the prosecution service, is appointed by the government, former politicians are not excluded and tenure of the position is not guaranteed. **(Spain)**

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

Positive developments:

none

Negative developments:

At the beginning of 2020, several attacks were launched in the media against lawyers in general and against law firms in connection with the procedures for the compensation of prisoners due to the over crowding and poor conditions in prisons. A list was published giving details of the attorneys who took part in these procedures with their names, the number of their clients and the total amounts of the compensation awards. **(Hungary)**

Government promotes pro-government candidates for posts of presidents of Bars, **(Poland)**.

Proceedings, resulting in a conviction, were taken against a lawyer, Robert Rosu, on the basis of statements which he made when representing a client. This triggered a reaction from the National Association of the Romanian Bars, the International Association of Lawyers and the Institute for the Rule of Law (UIA). **(Romania)**

Impact of Covid-19 on these issues:

The President of the Supreme Court ordered the judges of the first instance to first ask the lawyers if they could call a main hearing, which to decide is in the jurisdiction of the judge of the respective case. **(Slovenia)**

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

Positive developments:

The President of the National Judicial Office (OBH) rejected the political criticisms in which judicial judgments were publicly criticized in an intolerable tone and in a way that called into question the impartiality of the court. **(Hungary)**

The judiciary actively cooperates with journalists and explains unclear issues to the public. Frequently judges also provide explanatory comments in response to questions of journalists after the verdict has been announced **(Latvia)**

Negative developments:

In both civil and criminal matters judges and the judiciary are constantly the target for negative comments and are subject to serious, mostly unfounded, accusations of incompetence, lack of impartiality and corruption. The approach of the press is to put forward only examples which can be negatively presented frequently using only statements by those who are negatively affected by the court decision or those who have been found liable to fulfil some obligations. An educational role of the press does not exist. Press releases issued by the courts and/or associations are not published so there is no balanced approach to the work of courts. **(Croatia)**

Severely negative political manifestations of judicial judgements during the proceedings. The government has had as a key communication theme the so called „prison business” at the beginning of 2020. This is an expression for the cases in which a court decision ordered that the prison inmates have to get compensation due to overcrowding and poor conditions in the prisons. Some representatives of the media and politics claim that the inmates and their attorneys have become rich because of these cases and that the court helped them in this. The prime minister announced that it is impossible to pay money to criminals and suspended the payout of the compensation both for the future and for the cases in which the court had already passed the judgment. In relation all these cases there were several press releases which declared that the court „stands on the side of the criminals” and that the judgments do not meet the expectations of society. **(Hungary)**

The Minister of Justice quite regularly exceeds the permissible level of criticism and makes unreasoned, unjustified and inaccurate criticisms of the judiciary, which borders on populism. **(Latvia)**

The defamatory smear campaign against judges in the pro-governmental mass media is ongoing. **(Poland)**

Since 2016 there is an unlawful interference by the Romanian secret service. All bodies of the judicial authorities have signed secret protocols with the secret service. This infringes the independence of the judiciary and the trust in the judiciary. The Constitutional Court already in 2016 ruled that any technical surveillance ordered by the prosecutor must be performed only by the criminal investigation body or police experts, not by secret intelligence agencies. That decision should have removed the secret service from the criminal investigations. Despite the fact that the decision is generally binding, the new draft laws on Justice again opens up the possibility of concluding secret protocols aimed at justice, although they have profoundly affected the independence of the judiciary and the fundamental rights and freedoms of citizens. **(Romania)**

Case resolution times have been considerably extended due to lockdown, so the general public has become even more dissatisfied. **(Slovenia)**

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

Positive developments:

A strong sign of an independent judiciary for the society at large was the decision of the Supreme Court (Curia), which upheld a decision of the Debrecen Court, which decided that Roma pupils who had been unlawfully separated from their peers in primary school and provided with a lower standard of education, must be compensated by substantial cash payments. **(Hungary)**

Negative developments:

The government proposed and parliament enacted a law on parliamentary inquiries which allows commissions set up in parliament and composed of MP's to "judge" the correctness of court proceedings. The Judicial Council has filed a request for review of the constitutionality of certain articles of this Act and the Constitutional Court of the Republic of Slovenia recently declared this article unconstitutional. **(Slovenia)**

Attacks on the judiciary when the judiciary takes proceedings against politicians have increased. On three occasions in 2020 the General Council for the Judicial Power required to issue statements reminding of the necessary respect which judicial decisions deserve to receive. The first occasion was in reaction to the Second Vice-president of the Government on 15.1.2020; the second as a reaction to the same person on 23.4.2020; and the third as a reaction to the Secretary General of a political party on 19.8.2020. **(Spain)**

B. Quality of Justice

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

Positive developments:

Digitalization has made procedures cheaper, and in many cases, litigants could save oneself postal fee or the cost of travelling **(Hungary)**

The purpose of the state fee in civil cases is also to reduce the submission of unfounded application or appeals. The law stipulates that the only criterion for partial or complete exemption of a person from the payment of court expenses in the state income is the property status of the submitter. The state provides free legal aid in certain cases, specified in the Civil Procedure Law, if the income of such person does not exceed the amount of the minimum monthly salary specified in Latvia. The court proceedings are conducted in the official (state) language. In point of fact the right to have an interpreter in the court is adequately guaranteed in the judicial system of Latvia. **(Latvia)**

Negative developments:

The amount of state fees in Latvia is higher, in comparison with other European Union member states, which may raise doubts on court accessibility. Litigation costs are the determining factor. If the participants in the court during the court proceedings do not involve a lawyer, the court proceedings may become cumbersome, as the court has to act as a lawyer. **(Latvia)**

The court fees in civil cases were increased and some restrictions on legal aid in criminal cases were introduced. **(Poland)**

Impact of Covid-19 on these issues:

For a short period of time in the spring 2020 the courts were closed for all except urgent cases and any communication with the courts was only through electronic means of communication. **(Croatia)**

In the context of Covid-19 pandemic some people have lost their incomes, which could limit access to justice. **(Latvia)**

An insufficient response to the challenges of the pandemic as far as amendments of the civil and criminal procedural law is concerned together with a lot of vacancies has reduced the access to courts **(Poland)**.

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

Positive developments:

In the last two years, the resources of the justice system (also for IT) have been increased. There has been an increase in the number of posts for prosecutors (40 posts), but not for judges. **(Austria)**

There were no general changes regarding human and financial resources of the judiciary. However, the “pact for the Rule of Law” mentioned in the consultation of 2020 caused the recruitment of different numbers of additional judges and prosecutors in some of the Länder. However, due to the fact that additional human resources in many Länder only filled gaps, and due to new legislation especially in the field of criminal law necessitating many more human resources in the judiciary (asset recovery and confiscation, money laundering, fight against hate crime, sexual child abuse etc.), the situation has not improved sufficiently in most of the Länder. Therefore, the German Judges Association is demanding renewal of the pact including a digital pact for the justice sector. Some justice ministers of the Länder expressed their support for this view. **(Germany)**

The necessary tools for working and defending at home were acquired, although slowly, taking 8-10 months. **(Hungary)**

With regard to material resources, the recent powerful digitalisation of courts should be mentioned. **(Latvia)**

The Judicial Council has approved the procedure for selecting new candidates for the position of district (city) and regional court judge, establishing a conceptually new approach to the professional standard of a judge, when highly qualified lawyers with a perfect reputation,

appropriate professional skills and personal qualities become judges. It has already been used in the selection process of candidates for the position of judge of the Economic Court. **(Latvia)**

The work on increasing the status of court staff as well as on improving other working conditions continues, for employees to get a competitive salary. This would attract good candidates and would also promote lasting career for court staff. **(Latvia)**

In the autumn of 2020, the government allocated funds for the courts to purchase video conferencing equipment and laptops to allow judges to work remotely. **(Romania)**

Negative developments:

Deficits in the State Budget has had consequences for investments in the judiciary - which are on hold because of lack of resources caused by slowdown of economy caused by the Covid-19 crisis. **(Croatia)**

There are still a lot of judicial vacancies. **(Poland)**

There were fewer financial resources to improve the material working conditions of the courts. Some urgent investments - e.g. the purchase of printers and the purchase of recording devices in courtrooms has been postponed indefinitely. **(Slovenia)**

The Covid-19 pandemic revealed the deficit of investment in material means for communication by telematic and teleworking **(Spain)**

Impact of Covid-19 on these issues :

As in other countries, the Covid-19 pandemic required all German courts to evaluate possibilities for reducing the risk of infection at court, such as installing plexiglass walls and/or air filters within court rooms, or other technical means. The material resources for these changes were largely made available, although a general answer cannot be given due to the federal structure of the German judiciary **(Germany)**

A significant effort was required to obtain protective equipment: masks, disinfectants, Plexiglas walls in courtrooms. **(Hungary)**

Due to pandemic, courts increasingly hear cases remotely, which is more efficient both – in terms of judicial resources and in terms of the resources and convenience of the participants in court proceedings, as they can attend court hearings from their place of residence. **(Latvia)**

The investments in the court infrastructure are insufficient. There are still court offices in a state of accentuated degradation, which endangers even the safety of those who work in those spaces,

as well as of the participants in the justice system. The inadequate budget allocated to the courts is a recurring problem for the Romanian judiciary system and is constantly raised by judges. In terms of human resources, the system is on the verge of a major crisis. due to this situation. **(Romania)**

14. Training of Justice professionals (including judges, prosecutors, lawyers, court staff)

Positive developments:

While the Covid-19 pandemic initially led to lots of training sessions being cancelled due to the risk of infection, online training capacities have significantly improved since March 2020. **(Germany)**

The system of training with digital tools started slowly but has now become operational. This allows one to participate in the training without space, headcount, or time constraints. **(Hungary)**

More than 9,000 court employees have participated in the activities of the Project “Justice for Development” implemented in Latvia. Plans were put in place for training more than 2,000 people in 80 topics in 2020. This project provides an opportunity in a medium term to increase intensively the competence of judicial and law enforcement officials, from investigators and prosecutors to judges and court staff. **(Latvia)**

All training sessions take place online, which means less waste of time and lower costs (no travel expenses, per diems, hotel bills) **(Slovenia)**

Negative developments:

A process for the election of the director of the National Institute of Judiciary (NIJ), the training institute of the judiciary, is underway, which does not create minimum guarantees for a fair and competitive selection process, as far as the current director has proposed, and the Board of NIJ has adopted a tailored procedure for his re-election for a new 5-year term. **(Bulgaria)**

The Covid-19 pandemic initially led to lots of training sessions being cancelled due to the risk of infection **(Germany)**

Few of the digital courses are interactive, so it is not possible to ask questions, consult or exchange real ideas within the framework of the training. **(Hungary)**

Free training courses for lawyers are insufficient **(Latvia)**

The quality of training is reduced due to more politically motivated obedience and loss of many experienced lecturers. **(Poland)**

The Covid pandemic directly affected the continuous training of magistrates. Most seminars and courses were cancelled but some of them were held in video conferencing. At the level of the courts of appeal, quarterly meetings at which the issues of non-unitary practice at the level of courts and tribunals were to be discussed were cancelled. These are expected to be resumed starting with the spring of this year, if the conditions allow it. **(Romania)**

The remote training, means less opportunities for socializing and conversation. **(Slovenia)**

Impact of Covid-19 on these issues:

Where possible, training events were offered as online events (webinars). **(Austria)**

Paradox is that Corona -19 circumstances made programs for judges even more accessible because new technologies are used which increased the number of educational programs and decreased the costs of organizing and providing them to judges. **(Croatia)**

Covid-19 certainly influenced the way judicial training was held in 2020. It must be noted as a positive development, though, that online training sessions – which had been very unusual in Germany before – have become a new possibility that will probably remain as an addition tool even when personal training sessions become possible again. **(Germany)**

The pandemic has banned face-to-face trainings, so they take place remotely on digital platforms. **(Latvia)**

Most of the new developed training courses were online courses **(Spain)**

15. Digitalisation (e.g. use of digital technology, particularly electronic communication tools within the justice system and with court users, including resilience of justice systems in Covid-19 pandemic)

Positive developments:

Courts and judges discovered possibilities offered through new technologies. **(Croatia)**

There was more extensive use of electronic communication tools in conducting hearings during the pandemic; improved confidence in using these tools. **(Estonia)**

The use of video conference tools in civil court sessions was significantly put into practice during the Covid-19 pandemic. While the German Code of Civil Procedure had already foreseen the possibility of holding a court hearing via video conference before the pandemic, this provision was actually put into practice due to the pandemic in order to minimize the risk of infections. Digital files are not yet generally available in many German courts, although more and more courts are taking part in pilot projects and some states (“Länder”) have recently installed it comprehensively. Therefore, digital communication between courts and court users is not yet a general standard at German courts. **(Germany)**

Everyone has access to the court's internal IT network from home. Electronic communication has become a practice in lawsuits, which helps to control the epidemic and speeds up the procedure. Electronic communication tools are now available. The online system of professional deliberations and college meetings (office skype) is developing slowly **(Hungary)**

For the period of the emergency, the procedural laws have been amended on a temporary basis to give greater scope to no-hearing, document based procedural solutions. With the expansion of no-hearing case management, some proceedings become shorter. Procedures requiring personal participation, especially high-volume criminal cases, have stalled in many cases because remote hearings are technically impossible above a certain number of participants. Joining a skype conference requires a voluntary effort from the actors and is otherwise unenforceable for those whose participation is mandatory in the proceedings. In many cases, summoned participants stay away from court building referring to illness. **(Hungary)**

Latvia is among the most developed countries in terms of use of the information and technologies in courts. Technological means are used for remote communication – electronic communication with the court clients, using e-mail. The courts have been able for some time to organise court hearings by videoconferences with other courts, prisons and thus the court staff is familiar with usage of these technologies. Other digital technologies are also allowed in the emergency situation resulting from the pandemic. **(Latvia)**

Digitalisation of files facilitates the work in judges' offices on daily basis **(Poland)**

During the state of emergency, the courts made an express recommendation to the parties and lawyers, as well as to other participants in civil and criminal proceedings, to send the documents to the files (or in connection with the files) by means of rapid communication provided by law (fax, e-mail). Transmitting of documents and files by electronic means was increased. Parties can view the file by electronic access programs. In urgent criminal cases hearing of persons could be mastered by video-conferencing. In some courts it has been recommended, by the management department or by the president, that the court hearings in civil cases be held by videoconference, during the state of emergency, if the parties agreed to it and if the judge considered that this method ensured compliance with the principles governing the civil proceedings. **(Romania)**

The importance of digitization has greatly increased, both for internal communication purposes (e.g., departmental zoom meetings, etc.) and with court users. **(Slovenia)**

Negative developments:

The legislator is not following the practice in the court by amending procedural rules to adjust them to new realities offered by new technologies **(Croatia)**

Legislation has accelerated even further. There is a lot of change, social consultation is in many cases formal, not real. Sometimes there is not enough time at all to prepare for entry into force. Rapid changes in the law are made on the basis of an individual case that stirred a large amount of dust or receives a lot of attention in the press. This is true not only for legislation on the management of the epidemic, but also for legislation that is completely independent of it. **(Hungary)**

Increasing digitalisation possibly complicates access to justice for low-income/deprived people and those, who do not have access to a computer, internet or have not sufficient technological knowledge to attend online court hearings. **(Latvia)**

Digitalisation of files allowed the MoJ to have unrestrained and uncontrolled access to all judicial files - which constitutes a blatant breach of privacy law. **(Poland)**

The limited human resources of the courts do not allow the scanning of all acts carried out during the criminal investigation, especially since, in many cases, the volume of criminal investigation acts is large or very large. **(Romania)**

Procedural laws only allow the performance of individual procedural actions by modern technical means like videoconferencing instead of an hearing in person, if both parties to the litigation consent. The parties, especially the lawyers, were reluctant to give consent to conduct the hearings by videoconference, although a secure, encrypted connection is provided. **(Slovenia)**

Impact of Covid-19 on these issues :

More notebooks were purchased for judicial staff. In some cases, cameras and loudspeakers were also purchased to conduct online hearings. However, the equipment is insufficient. **(Austria)**

In the first half of the year, procedural rules were amended several times in response to the epidemic, and some of the new rules were repealed with the end of the emergency in June, while others remained temporarily in force until 1 January 2021 as originally planned, and further on until 30 June 2021 due to the most recent amendment **(Hungary)**

Teleworking has been promoted on a voluntary basis but in fact it was widely used when the necessary means had been available, which was often not the case. **(Spain)**

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

Positive developments:

All processes in the courts are digitalized, from filing, keeping registers, producing statistical data, and providing transparency of the process to court users. **(Croatia)**

The Latvian judicial system is one of the most developed in the EU in terms of the use of ICT for case management and the compilation of statistics on judicial activity, for communication with parties of proceedings and online publication of judgments. **(Latvia)**

Negative developments:

Problems arise from the use of the assessment tools in an untrustworthy way by the MoJ and the forwarding of information to mass media **(Poland)**

The assessment and analyses remained unchanged but the results of the analyses are not comparable with previous years and are misleading **(Slovenia)**

17. Geographical distribution and number of courts jurisdictions (“judicial map”) and their specialization

Positive developments:

None

Negative developments:

The Judge’s College of the Supreme Judicial Council adopted an inadequately reasoned and unfounded project for reform of the district courts and for a complete change in the jurisdiction of cases, which creates a real danger of distancing justice from the citizens and of complete personnel and financial collapse of the justice system. **(Bulgaria)**

There are concrete plans of the MoJ to change the judicial structure from a four level to a three level one, which will create a patch net and may be used to start mass re-appointments of judges. **(Poland)**

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

Positive developments:

Despite the Covid-19 crisis and an earthquake in two regions in Croatia the courts increased their Clearance Rate index (105%) and the number of undecided cases has decreased by more than 20.000 **(Croatia)**

Negative developments:

The number of cases at first instance level is increasing, with numerous claims (in thousands) caused by breach of employees' rights and cases caused by CHF loans, **(Croatia)**

Establishment of a separate Economic Court (10 judges) should be also mentioned, which is competent to hear both civil and criminal cases. This court was created as a result of political promises made by Minister of Justice and not only against the opinion of the Judicial Council, but also against the judicial reform of the last five years, aimed at establishing large courts of first instance and specialization in criminal/civil matters. **(Latvia)**

Within the last 5 years the efficiency of Polish judiciary has sharply decreased. Citizens have to wait for justice twice as long as before 2015. **(Poland)**

The number of unresolved cases has increased and case resolution times have lengthened **(Slovenia)**

C. Efficiency of the justice system

19. Length of proceedings

Positive developments:

The average length of proceedings has decreased in general but there are some problems in certain types of cases. **(Croatia)**

In 2021, a number of amendments to the Criminal Procedure Law entered into force. These promote the reduction of the length of proceedings by dispensing with the need to summon a witness to a court hearing, if the participants in the proceedings can agree the content of the

witness' testimony. Also, a judge now has the right to limit the time available to participants in court debates and replies, as well as the last word of the accused, after the participants in the court proceedings have expressed their opinion. As of January 1, 2021, a temporary legal rule (Section 32.1 of the Civil Procedure Law), which gives the right to transfer a case from a more congested court to a less congested court, thereby giving the opportunity to hear the case in a shorter term, has been established as a permanent rule of the Civil Procedure Law. **(Latvia)**

On a proposal of the Judicial Council, a working group was set up in 2020 to assess the length of the court proceedings, preparing a report on this research. The Judicial Council has evaluated this report and sent it to Saeima, to the Prime Minister and all the institutions mentioned in the report, whose activities are related to legal proceedings. **(Latvia)**

The Judicial Council has approved the procedure for the selection of candidates for the position of a judge of a district (city) court and a regional court, which opens up an opportunity to fill vacant positions of judges quickly and efficiently, thus reducing the workload of judges and speeding up case review deadlines **(Latvia)**

Maintaining a short duration of proceedings was made possible in times of pandemic by the effort of judges who agreed to work regularly even during judicial vacations (in July). Also, the judges increased the number of cases per court hearing and granted short time-limits, taking into consideration the circumstances of each case. These measures have certainly increased the workload of judges. **(Romania)**

Negative developments:

Length of proceedings is still big challenge in certain types of cases, such as war crimes cases, high level corruption cases and land property disputes **(Croatia)**

Probably the Covid-19 pandemic had a negative effect on the length of proceedings. Statistics that would allow an assessment of the influence of the Covid-19 pandemic on the length of proceedings are not yet available **(Germany)**

A party to a litigation who is not interested in a fast hearing of the case will use all legal means to delay the proceedings and have the case adjourned. This can also be applied to Covid-19, since many participants in court proceedings plead that they are either in isolation or quarantined as contact person, thus preventing timely court hearings. **(Latvia)**

Within the last 5 years the efficiency of Polish judiciary has sharply decreased. Citizens have to wait for justice twice as long as before 2015. **(Poland)**

The number of unresolved cases has increased and case resolution times lengthened **(Slovenia)**

The number of legal actions has dropped significantly due to the restrictions caused by the pandemic **(Spain)**

Impact of Covid-19 on these issues :

Due to the Covid 19 pandemic, the duration of proceedings has increased slightly - but there is no statistical evaluation yet. In March / April 2020, a law stipulated that court hearings could only be held in urgent cases; in addition, deadlines were suspended. There have also been more frequent adjournments because of travel restrictions and health risks or Covid-19 measures (e.g. parties/witnesses under quarantine, high-risk groups). **(Austria)**

Covid-19 has opened up the opportunity of using a variety of technologies to hear cases remotely, reducing the terms of identity check and the lengthy coordination times for interrogation with other EU member states. Moreover, the legislature has laid down a number of legal provisions in the Law on the Management of the Spread of Covid-19 infection, which allow cases to be heard by written procedure, if it is possible to ensure that the procedural rights of the participants in the court proceedings are respected. This reduces the backlog of cases as written procedure is applied in minor cases, avoiding need to hold hearings, which were required before Covid-19. The videoconferencing in prisons is overloaded, which prevents the timely handling of cases where the presence of convicts or detainees is required. Moreover, the transfer of persons in prisons to court is limited. **(Latvia)**

Closure of courts and measures in courts to protect the health of judges, staff and parties slowed down the frequency of hearings constituting an additional element in increasing the length of proceedings. **(Croatia)**

There were difficulties in carrying out court sessions in bigger criminal matters; slight lengthening of proceedings in criminal matters. **(Estonia)**

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

Positive developments:

From the beginning of 2020 most court judgments are sent for execution electronically, which saves both time and court costs. E-cases and electronic communication are gradually being introduced, enabling participants to follow court proceedings, submitted documents and decisions remotely. **(Latvia)**

Negative developments:

The Ministry of Justice and legislator are trying to rapidly introduce e-cases in the courts in order to polish their political image in the eyes of the society; however, the developed systems are not adapted to the real situation and complicate the work of the court and other institutions. The solutions are chaotic, the systems are not tested nor adapted to the court specification. **(Latvia)**

As a result of the covid-19 pandemic, many people have lost their jobs, and many companies have gone bankrupt. This has already and will in future, after the end of the pandemic, lead to even more insolvency and thus the impossibility of obtaining satisfaction of judgments **(Slovenia)**

Impact of Covid-19 on these issues:

In order to reduce negative aspects of Covid - 19 crisis to companies and citizens a special law was enacted by parliament freezing most enforcement and bankruptcy proceedings for period of 6 months **(Croatia)**

In criminal cases the execution of some criminal penalties is difficult and even impossible. Similarly, in a number of other cases enforcement of judgments is not possible or limited due to limited direct contact between persons in the country. **(Latvia)**

II. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES

A. The process for preparing and enacting laws

21. Framework, policy and use of impact assessments, stakeholders'/public consultations (particularly consultation of judiciary on judicial reforms), and transparency of the legislative process.

Positive developments:

The executive power develops and the legislator adopts draft laws both in the usual manner and as a matter of urgency by developing annotations. Formal consultations are held with the judiciary, although the views expressed are not taken into account (**Latvia**)

Negative developments:

In 2020 the National Assembly continued with its obnoxious practice of amending, between the first and second voting in plenary, through transitional and final provisions of other laws, important legislation and codes without any public discussion or any impact assessment. In this way, surprisingly and vaguely, rules important to citizens are introduced and changed, and heavy lobbying is disguised. (**Bulgaria**)

Stakeholders are formally invited to give their contribution and advice, but that work is almost always ignored. (**Croatia**)

It must be noted that especially in 2020, the deadlines set in stakeholders'/public consultations on judicial reforms on the Federal level have been set remarkably shorter than in the past. Several large legal reforms that were not in any way linked to the Covid-19 pandemic were presented with extremely short deadlines of only a few days or very few weeks during holiday season, making it difficult to deliver substantial observations on the proposed reforms. (**Germany**)

The latest topical laws on remuneration of judges and the consultations on structural reforms of the court have been made, but the reforms have been carried out only by

political interests. Draft laws are prepared spontaneously, without a systematic vision. The Judicial Council in 2019 pointed out that the project prepared by the Ministry of Justice on the establishment of the Court of Economic Affairs is not related to the results of the judicial system reforms, carried out in recent years, but also contradicts them. However, the legislature, without listening to the opinion of the Judicial Council, established a new Economic Court in 2021. The selection of judges was rapid and chaotic. The Economic Court was established with the aim of starting work from January 1, 2021, but the unconsidered date and problems in selection means that the work of the Economic Court will probably be able to start only on March 31, 2021. Moreover, the legislature has defined the jurisdiction of the Economic Court in terms which, in essence, would not be applicable to economic disputes and violations. In other matters, concerning the judiciary, the views of the Judicial Council are also formally heard but not taken into account in decision-making. **(Latvia)**

There are no consultations at all - especially in the field of judicial reforms. So some legal amendments which weaken the position of the judiciary and strengthen the position of the public prosecutors have come into force. **(Poland)**

The decisions are made quickly - overnight, every day is different. There are no consultations with the judiciary. **(Slovenia)**

There is no legal provision directed to consultation of the judiciary on new laws. Last year the General Council for the Judicial Power asked the parliament to forward in advance a draft of a very important draft law, which is intended to reduce the jurisdiction of the General Council for the Judicial Power but the parliament refused to do so. To date, there has been no consultation of the judiciary at all. **(Spain)**

Impact of Covid-19 on these issues :

The emergency situation law authorizes the executive power (the Cabinet of Ministers) to adopt the legal norms necessary for the emergency situation administration. Such arrangement conforms to the principle of separation of powers. The efficiency of the exercises of state power is achieved through authorization, which allows responding more quickly and adequately to the need for regulatory changes, as the Cabinet of Ministers or other authorized state institutions are often more competent than the legislator in drafting technical regulations, and the decision-making process in these institutions is less complicated. However, in any case, the Saeima will always have the right to adopt legal norms that are aimed at achieving any legitimate aim set out in the Constitution **(Latvia)**

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

Positive developments:

For the most part, in the case of proposed amendments to the law which affect the judiciary, the opinion of the Judicial Council is sought in formal terms but often that opinion is not taken into account. Under the accelerated procedure, such amendments are not actually made, except for the strengthening of the Economic Court in the regulatory framework, which took place fairly quickly. **(Latvia)**

Negative developments:

None

Impact of Covid-19 on these issues :

A major issue affecting the legislative process and the quality of laws and regulations is the so-called urgent draft legislation. Proposals submitted under the emergency procedure often do not ensure sufficient participation of the judiciary and the society, by reason of the fact that the draft regulatory enactment is being promulgated as a matter of urgency and consequently the involvement of interested parties in the development of the project is not organized. Society is informed about the draft law after the draft is announced. Agreements with other ministries and institutions have not been reached, full impact assessment has not been ensured, normal requirements for drafting a legal act may not have been observed, or linguistic correction of the draft text has not been performed. In consequence, the quality of draft legislation suffers. **(Latvia)**

During the lockdown, the courts delivered decisions only in urgent proceedings, which are defined as such in the law and by the Order of the President of the Supreme Court of the Republic of Slovenia. This does not mean special fast-track procedures. Judges are trying to do this in the criminal field in particular, but since state prosecutors are not enthusiastic about this way of working there are not many cases resolved in this way. **(Slovenia)**

On the occasion of the Covid 19 pandemic the activities of the courts were reduced following a Royal Decree which declared the state of emergency. When applying the corresponding legal provisions the General Council for the Judicial Power defined which essential services should not fall under the stoppage of the activities. **(Spain)**

23. Regime for constitutional review of laws.

Positive developments:

None

Negative developments:

Independent constitutional review of laws currently does not exist, because the Constitutional Court was taken over by individuals who are politicians and serve only the needs of the government. **(Poland)**

24. Covid-19 provide update on significant developments with regard to emergency regimes in the context of the Covid-19 pandemic

- Judicial review (including constitutional review) of emergency regimes and measures in the context of Covid 19 pandemic
- Oversight by Parliament of emergency regimes and measures on the context of Covid 19 pandemic
- Measures taken to ensure the continued activity of Parliament (including possible best practice)

The Constitutional Court has annulled several legal acts as unlawful. **(Austria)**

Sessions of the committees of the Parliament are held using video conferencing solutions. The law was changed to enable a remote-participation sitting of the Parliament. **(Estonia)**

Courts have played an important role in Germany in overseeing the legality of emergency regimes in the context of the Covid-19 pandemic. Thousands of such cases have already been decided all over Germany, so an overview cannot be given. Recent reports also mention a large number of cases to be referred to the Federal Constitutional Court in 2020 and early 2021. **(Germany)**

Orders of the Cabinet of Ministers on restrictions during the emergency situation are subject to control by the administrative courts. In turn, the Constitutional Court reviews the compliance with the Constitution of laws adopted by Saeima (Parliament). **(Latvia)**

In accordance with Section 10, paragraphs one and two of the Law “On Emergency Situation and State of Exception” the Presidium of the Saeima shall include in the agenda of the Saeima, without delay, any decision of the Cabinet on the emergency situation, or on any amendments to a decision on emergency situation which lay down additional territorial restrictions or restrictions of rights, or any extension of the declared state of emergency. If, on examining the decision in question, the Saeima rejects it, the decision shall be rescinded and the measures introduced by the decision shall be revoked without delay. **(Latvia)**

There has been tailor-made technological solution for the needs and specific procedures of the Saeima - called e-Saeima - which enables remote plenary sittings, with MPs participating from outside the Parliament premises. MPs can connect to sittings from any computer with an internet connection, using a secure authentication method – the e-signature. The e-Saeima platform ensures that MPs can debate and vote on items included in the plenary agenda. **(Latvia)**

The current political coalition is constantly attacking rulings of the Romanian Constitutional Court (CCR). The political coalition is threatening to change the law governing the CCR. One line of attack against CCR is that the court declared as unconstitutional several populist laws which were poorly drafted and could not pass the constitutionality check. Nonetheless in order to score political points, the current political coalition is blaming the Constitutional Court for their poorly written or unconstitutional laws. **(Romania)**

In the Republic of Slovenia, a constitutional review of emergency regimes and measures in the context of covid-19 pandemic is envisaged. The Constitutional Court has repeatedly reviewed the adequacy or proportionality of measures - restriction of movement, early retirement, even the validity of the extension of measures that were not published in the Official Gazette. **(Slovenia)**

An application to examine the constitutionality of the decree of a state of emergency and some applications to examine provisions which were adopted on basis of the state of emergency are pending before the Constitutional Court **(Spain)**

B. Independent authorities

25. independence, capacity and powers of national human rights institutions (NHRIs), ombudsman institutions, if different from NHRIs, of equality bodies, if different from NHRIs and of supreme audit institutions:

Positive developments:

Extended powers of the State Audit Office (an independent, collegial supreme audit institution, which, by performing audits, controls state and municipality budget revenue and expenditure, as well as disposal of state and municipality property or part of it) in the recovery of losses. Currently the Council of the State Audit Office has the right to recover losses caused by person's illegal action, which have been revealed in the Council's audit (**Latvia**)

In spite of attacks by the government the Polish Ombudsman still fights for democracy and protection of the people. (**Poland**)

Negative developments:

The 2020 CXXVII. Act abolished the Equal Treatment Authority on 1 January 2021. The competence of the Authority has been assigned to the Office of the Commissioner for Fundamental Rights. The Commissioner for Fundamental Rights acts within the framework of an administrative authority procedure, and the remedy against his decision is secured by administrative litigation, for which the Metropolitan Court has exclusive jurisdiction. The actual effect in practice can be judged later. (**Hungary**)

Generally the activities of all NGOs and NHRIs which are not in line with the politics or the church are restricted or attacked by politicians and mass media (**Poland**)

During 2020 and in 2021, until the date of writing this report, severe attacks have been mounted against the Ombudsman because the Ombudsman challenged before the Romanian Constitutional Court several laws passed during the state of emergency which restricted fundamental rights and freedoms. Many of the provisions thus challenged were found to be unconstitutional by CCR. The coalition in power is threatening to change the Ombudsman before the current term of office expires so that they can replace the present Ombudsman with one likely to agree with their policies and unlikely to raise challenges before the Constitutional Court. (**Romania**)

C. Accessibility and judicial review of administrative decisions

26. Transparency of administrative decisions and sanctions (including their publication and rules on collection of related data) and judicial review (incl. scope, suspension effect)

Positive developments:

All administrative decision are subject to two instances of judicial review with full jurisdiction. In some specific circumstances, upon request of State Prosecutor, the decision can be reviewed before Supreme Court. **(Croatia)**

Negative developments:

Transparency and reasoning of administrative decisions has become very questionable. Judicial review of administrative decisions is not very effective since this review often takes very long time. **(Poland)**

Impact of Covid-19 on these issues :

In accordance with special law, in organising court proceedings, administrative courts may make maximum use of written procedure or hear the case remotely by video conferencing. Accordingly, the powers of court to hear cases by written procedure has been extended (a court may hear the case by written procedure if the conformity with the procedural rights of the participants to the case can be ensured and the court has not deemed it necessary to try the case in a court hearing). This has reduced the ability of the participants to the case to object to its being decided by written procedure (in accordance with the ordinary procedure the court of first instance hears the administrative case in written procedure only if the participant to the case does not object to it). If a court deems that it is necessary to try a case in a court hearing, video conferencing (incl. *Microsoft Teams* platform) must be used in order to achieve the epidemiological safety objectives. Only a person not represented by a lawyer may object and that only if there is an objective ground. **(Latvia)**

There is an increasing number of misdemeanour cases due to the situation **(Slovenia)**

27. implementation by the public administration and State institutions of final court decisions

Positive developments:

None

Negative developments:

Payment of court-awarded compensation due to prison conditions which violated the fundamental rights of detainees was suspended until the end of 2020. This was for reasons completely independent of the epidemic, the explanation offered being that detainees and their legal representatives should be prevented from enriching themselves through compensation. **(Hungary)**

It has become a common practice that legislature or government defy judgments, if the judgment does not accord with their view. This also applies to judgments of the European Courts. This is a terrifying negative impact on the credibility of the judiciary. **(Poland)**

D. The enabling framework for civil society

28. Measures regarding the framework for civil society organisations (e.g., access to funding, registration rules, measures capable of affecting the public perception of civil society organisations etc.)

Additional state budget funds for 2019, 2020 and 2021 have been allocated for ensuring tasks of this plan. The Ministry of Culture implements an annual NGO's support program in regions, at the result of tender providing funding to the approved projects in three priorities: Civil Society Initiatives, Promotion of Intercultural Dialogue and Minority Initiatives. NGO support is also implemented by the Society Integration Foundation. For instance, in 2021 this foundation plans to support projects that include such activities as: 1. "Strengthening of Activities of the NGOs"; 2. "Strengthening the Protection of the NGOs Interests"; 3. "Support for NGO Civil Society Activities"; 4. "Strengthening the Cooperation of NGO and Citizens" **(Latvia)**

Recently the government has been trying to prevent, or at least significantly complicate, the work of civil society organisations and to silence their voice by reducing the funding of non-governmental organisations, especially those in the field of environmental protection. **(Slovenia)**

E. Initiatives to foster a rule of law culture

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

Positive developments:

In 2020, for the first time, the President of the Republic convened representatives of all three branches of government to discuss or agree on mutual cooperation. The conversation was tolerable, but there was no improvement in the culture of conversation and respect for the rule of law, especially by representatives of the executive branch. The debate on the rule of law in parliament was unfortunately conducted at a very low level. **(Slovenia)**

Negative developments:

Rule of law issues are used as excuse to diminish role of courts and their role in society without any wish to educate and give complete and information to the general public. The same applies to public surveys where it is impossible to know what the questions were, who was asked and in what circumstance **(Croatia)**

The rule of law and rule of law mechanisms have generally emerged in a negative light in official public discourse. The government claiming there is no deficiency or need of improvement in Hungary, as there is no clear and universally accepted definition of the rule of law concept. **(Hungary)**

There are ongoing smear campaigns against the judiciary, the ombudsman, civic society organisations and NGOs by politicians and mass media **(Poland)**

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

Positive developments:

There are still many judges who continue to fight for their independence , for democracy and for European values. **(Poland)**

Increasing the role of the Judicial Council in regard to the careers of judges (for instance, the Judicial Council decides on matters such as the promotion of judges to a higher instance and the approval of the court president and deputy). **(Latvia)**

Negative developments:

Courts have no autonomy in financial and personal matters and are therefore completely dependent on the Ministry on Justice. After the last elections the Ministry of justice and the Ministry of Administration were merged into one Ministry of Justice and Administration which caused still unsolved organizational issues. **(Croatia)**

The executive power and the legislator show little respect for decisions taken by the Judicial Council. For example, the creation of a separate Economic Court was due to political promises and was contrary to the opinion of Judicial Council. The Ministry of Justice resists any greater role for the Judicial Council's role (for example, taking over the field of continuing education for judges and court staff; taking control of court administration, which ensures the organizational functioning of first two instances; requesting the necessary budgetary resources for the courts rather than relying on executive power demand). **(Latvia)**

The future does not look rose-coloured. The judiciary is still not respected as an equal branch of state power. The other two branches of government do not respect court decisions, and the government did not even consider it necessary to publish intervention laws during the pandemic, which meant a serious encroachment on freedom of movement and association. Hate speech, supported by government officials, is growing. "Media independence is threatened" (European Commission President Von der Leyen). Inspired by the actions of the Hungarian Prime Minister, the government wants to have an influence on the work of state prosecutors. **(Slovenia).**

In Spain debates initiated by certain political parties have questioned the democratic legitimacy of the judiciary by claiming that the way judges are selected enables only members of the elite to become judges; and others raised questions of the jurisdiction of judges because of the territorial divisions of some parts of Spain. **(Spain)**
