



European Network of Councils
for the Judiciary (ENCJ)

Réseau européen des Conseils
de la Justice (RECJ)

ENCJ contribution for the 2022 European Commission Rule of Law report

Relevant developments in relation to the independence of the judiciary

The ENCJ would like to contribute to the Rule of Law report. There are 3 sections to the contribution. Section 1 deals with the ENCJ statements and actions in 2021 on Rule of Law issues. The second section deals with the consequences of the Covid-19 pandemic and the lessons learned in relation to guaranteeing access to justice in times of crisis. Section 3 provides an overview of relevant developments in the ENCJ Member countries in relation to Judicial Independence and is based on information provided by the Members.

During 2021, in some Member States, the judiciaries continued to face challenges such as attacks against Rule of Law and the judicial independence. The situation was aggravated by the Covid-19 pandemic, which highlighted the lack and sometimes the absence of involvement of the judiciary in the development and implementation of reform plans. This also applies to judicial reform in general. Furthermore, the challenges posed to the judiciary during the pandemic emphasis the need for an increased digitalization of the justice systems. Exchange and dialogue between the judiciary and the other state powers should be established thus enabling the judiciary, judicial councils and in particular judges and prosecutors to be involved to ensure that needs of justice are adequately considered.

In addition, structural problems concerning the governing bodies of the judiciary remain an important issue. Effective national check and balances upholding respect for the rule of law are key to prevent from, among other, the politicisation of justice. A democratic state governed by the Rule of Law should be based on a proper understanding of the autonomous roles and responsibilities of each of the branches of the state and the need for them to work together. This would prevent them from interfering with the independence of the judiciary and the administration of justice. Political attacks and disciplinary measures targeting judges increase the risk of creating a chilling effect on judges and the judiciary.

1. ENCJ general statements, actions and letters

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

Poland – expulsion of the Krajowa Rada Sądownictwa from the Network

In September 2018 the ENCJ suspended the membership of the KRS and the KRS was stripped of its voting rights and excluded from participation in ENCJ activities. After that decision the ENCJ Board stayed in contact with the KRS and monitored the situation. The Board felt however that after the suspension no improvements in the functioning of the KRS have been noted. The situation further deteriorated. Therefore, the Executive Board, convening on 17 September 2021 in Brussels, considered that the KRS did not comply with the statutory rule of the ENCJ that a member should be independent from the executive and legislature. The Board believed that the KRS is no longer an institution which is independent of the executive and, accordingly, which guaranteed the final responsibility for the support of the judiciary in the independent delivery of justice. In these circumstances, the Board decided to convene an Extraordinary General Assembly in Vilnius on the 28th of October 2021 to put the [proposal of the Board to expel KRS to the vote](#).

On 28 October 2021, the ENCJ General Assembly gathered in Vilnius to discuss the position of the Polish National Judicial Council, the KRS, in the ENCJ.

It is a condition of ENCJ membership, that institutions are independent of the executive and legislature and ensure the final responsibility for the support of the judiciary in the independent delivery of justice.

The ENCJ found that that the KRS does not comply with this statutory rule anymore. The KRS does not safeguard the independence of the Judiciary, it does not defend the Judiciary, or individual judges, in a manner consistent with its role as guarantor, in the face of any measures which threaten to compromise the core values of independence and autonomy.

Therefore, the ENCJ General Assembly [voted to expel the KRS](#).

This is and was by no means a decision to celebrate. The KRS was one of the founding members of the network and their representatives to the network were very much respected and contributed highly to the work of the network, both in the Board and in the various ENCJ projects over many years.

The ENCJ has been set up to improve cooperation between, and good mutual understanding amongst, the Councils for the Judiciary and the members of the Judiciary of the European Union Member States. To exclude a Council from this cooperation is counterintuitive and is not a decision that has been taken lightly. For each of the Councils that voted in favour, this was an act in defence of the ENCJ and the values it stands for such as Judicial Independence and the Rule of Law in Europe.

Councils for the Judiciary should support any judiciary which is under attack and do all they can to persuade the executive and legislature to support the action which they are taking in this regard. The prudent convention that judges should remain silent on matters of political controversy should not apply when the integrity and independence of the judiciary is threatened. There is a collective duty on the European judicial community to state clearly and cogently its opposition to proposals from governments which tend to undermine the independence of individual judges or Councils for the Judiciary.

- [Joint letter to trio Presidency of the Council of the EU on European Judges Forum](#), 18 January 2021

The ENCJ, together with European Association of Judges sent a joint letter to the Ministers of Justice of the trio presidency on the decision to set up a forum for judges in Europe to enter into dialogue on topics such as Rule of Law and Judicial Independence. Through their letter, the ENCJ and EJA called for a European dialogue between the state powers as a means to promote the Rule of Law and effective judicial protection in all Members States. Furthermore, the two networks called for a more formalised status within the EU, for judicial networks as representatives of the European judiciaries as they undoubtedly are.

- Contribution to [DRFMG meeting on latest developments in relation to the judiciary in Poland](#), 15 April 2021
- Contribution to the [High-Level Conference on the Rule of Law in Europe](#), 17-18 May in Coimbra (hybrid event)
- Contribution to the Conference on [“The role of self-governing justice institutions in strengthening professionalism and performance of the judiciary”](#), 01 October 2021, Tirana
- [ENCJ Compendium on Councils for the Judiciary](#), 29 October 2021

The ENCJ adopted the Compendium on Councils for the Judiciary at the 2021 General Assembly in Vilnius. The Compendium is a summary of the statements, declarations and reports that the ENCJ has adopted since its establishment in 2004 with some new standards and recommendations added. Some issues that are addressed in the compendium for the first time are: the presidency of a council, the functioning of the council, the term of mandate, security of tenure and cooperation. On cooperation the compendium states the following:

“The ENCJ activities are inspired and shaped by the principles and values of the European Union itself, as defined in the Treaty on European Union (TEU). Among those, the respect for democracy and Rule of Law is of focal importance. Article 4(3) TEU lays down the principle of sincere cooperation, according to which the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties. In the same spirit, Member States’ Councils for the Judiciary shall aspire to create close working links within the ENCJ, fostering information exchange and actively seeking cooperation, in order to contribute to stability of democratic institutions and the Rule of Law in the EU”.

- Contribution to the [LIBE inter-parliamentary committee meeting on the situation of the Rule of Law in the EU](#), 9 December 2021 (online)
- [EU Judicial Networks Joint statement on Judicial Independence](#), 20 December 2021

The ENCJ Board adopted the joint statement of the Network of the Presidents of the Supreme Judicial Courts of the European Union (NPSJC), the European Association of Judges (EAJ), the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union (ACA-Europe) and ENCJ on the judicial Independence in reference to the situation in Afghanistan.

The European Judicial Networks believe that in order to ensure and reinforce public confidence in the Justice systems of the States, the Judiciaries of Europe and throughout the world need to stand together in solidarity, strengthen mutual trust and protect judicial independence. Judges and

prosecutors in Europe and worldwide have to be in a position to administer justice regardless of their gender, religious or political belief or race.

2. Lessons learned from the Covid-19 pandemic: guaranteeing access to justice in times of crisis

Due to the special circumstances related to the Covid-19 pandemic, significant efforts have been made by most countries which contributed to enable the judiciaries to adapt to the new situation.

Therefore, it was considered timely to look closely into the consequences of the Covid-19 pandemic and the lessons learned in relation to access to fair and impartial courts and guaranteeing access to justice in times of crisis. Therefore, the ENCJ decided to study the lessons from the COVID-19 crisis and to formulate proposals of minimum requirements on the way and means helping preserve and maintain the rights to have access to a judge and to a fair trial in times of crisis. The minimum standards drawn up concerned, in particular, respect for the rule of law, guarantees of access to courts, preservation of the security of legal professional and users of the judicial system, processing and follow-up of cases and impact of use of new technologies on the judicial work. Furthermore, it appeared indispensable to identify the specific role that the Councils for the Judiciary and the courts should play in order to preserve independence of the judiciary, during crisis but also after crisis.

The following ENCJ Minimum standards for guaranteeing access to justice in times of crisis were adopted:

A. Exceptional legislation

1. Maintain the independence of the judiciary, the fundamental rights of litigants and the principles of transparency during times of crisis. The rule of law, legal certainty, access to justice, a judge and/or court, equality and proportionality should always be guaranteed.
2. In case of a state of emergency, a mechanism with a clear field and duration should be established, re-evaluated very regularly. Each measure taken during this state of emergency should be based on legal provisions. Derogatory measures should be circumscribed in time. Re-evaluation of the measures should be regularly installed

B. Access and functioning of the courts

3. Access to justice is a fundamental principle of the rule of law. Therefore, maintaining the openness and security of the courts and giving priority to essential services and urgent cases should be maintained.
4. Guaranteeing effective access to a judge/the court for all litigants in a fair trial within a reasonable period of time. Ensure effective remedies. Maintain physical hearings as much as possible.
5. Providing the courts with the necessary financial resources in order to have the right equipment for the crisis period: video-conferencing equipment, electronic filing of documents and electronic service provision, remote access to the network and to the files.

6. Ensure up-to-date and precise information for the public on 1) the regulations in force, 2) the practical rules of operation and organization of the court, as well as 3) information on the cases to be judged. Information on the list and contact details of all the services provided by the courts must be accurate and accessible.

C. Open judiciary

7. In all circumstances, ensure the rapid and free publications of decisions. Inform the public continuously (online) about the functioning of the judiciary.

8. Allow access to courts and hearings to as many journalists as possible. Also ensure and allow public access to courts and hearings (adjacent rooms or online) as much as possible.

D. Trust in the judiciary

9. It is the objective of the judiciary to fully ensure and to enhance the trust in the judiciary, both in normal times as in times of crisis. Therefore, it is necessary to agree on a specific communication strategy involving all stakeholders to enhance transparency and information on the functioning of the judicial system in times of crisis.

E. Processing of cases

10. Setting up an action plan involving the courts to determine what cases are urgent and limit as much as possible the cases that needed to be suspended. Fair and objective criteria should be established for the determination of an urgent case.

11. Setting up an action plan to solve possible backlogs for both criminal and civil cases.

12. Ensure that courts have additional (technological) material and human resources whenever they are in need.

13. Improve the training of judges and other courts' staff in new technologies.

F. Coordination with other state powers and other actors of the judicial system

14. Communication and coordination between other state powers/different branches of government and other juridical actors needs to be ensured.

15. Promote dialogue with stakeholders such as lawyers in order to implement the action plans, improve the working conditions and develop good practices

G. Roles of the courts and the Councils for the Judiciary

16. Judge's control over derogatory measures and compliance with international standards should be guaranteed.

17. In countries in which a Council for the Judiciary is established, the Council should be consulted on all matters concerning the judicial system in times of crisis as in normal times.

18. Build a strategy for future crisis situations in which good collaboration, prompt and efficient measures and a unitary evaluation are integrated. For this purpose, systematically collect and analyse information about court operations during and in the aftermath of a crisis in order to collect lessons learned.

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

A. Changes in the functioning of the Councils

General remarks

In the reference period a majority of the Councils¹ did not report any changes to the Council, or its functioning.

For those Councils that do report changes to the functioning, the information can be found in the country specific section of the report (see below).

Country specific section

On the general functioning and efficiency of the Council, **the Conseil Supérieur de la Justice of Belgium (CSJ)** stated that apart from some planned minor technical adjustments to the appointment procedure of magistrates, there were no major developments in legislation to report.

Despite the coronavirus pandemic, the members of the 6th mandate (12/2020 – 12/2024) have finalised the new multi-year plan of the Supreme Council of Justice (2021 - 2024). This multi-annual plan comprises four thematic programmes:

Programme 1 "The attractiveness of the position of magistrate and the selection procedure

Programme 2 "Access to justice"

Programme 3 "Improving the functioning of justice".

Programme 4 "Taking the measure of justice".

The entire plan can be consulted [here](#).

Državno sudbeno vijeće (DSV) / The State Judicial Council of Republic of Croatia reported that the general composition, competences and other relevant provisions on the functioning of the Council of the Judiciary have remained unchanged, however there is a legislative initiative to strengthen the role of the Council in the procedure of electing judges by increasing the number of points that the Council can award to the candidates and thereby increasing the significance of the Council in the procedure of electing judges. The legislation should be in front of the legislative body in the ongoing year (2022).

Tuomioistuinvirasto / Domstolsverket / National Courts Administration of Finland (NCA) reported in relation to the competence of the Council that there has been the following change to the competence of the NCA:

- The Courts Act, Chapter 19a, Section 2, Subsection 2, item 5 came to force. It stipulates that: "The National Courts Administration shall especially: ... 5)
- decide on matters related to the establishment, termination and transfer of positions and internal recruitment arrangements at the courts, and deal with matters related to the

¹ The Councils of: Supreme Judicial Council of Bulgaria, the Conseil Supérieur de la Magistrature of France, Supreme Judicial Council of the Administrative Justice of Greece, CPGA of Italy (Administrative Council), The Court Service of Ireland.

employment relationships of court personnel in so far as these matters do not fall within the competence of a court or some other authority; ...”.

- The Courts Act, Chapter 19a, Section 6, Subsection 2, item 6 came to force. It stipulates that: “The board of directors: ... 6) decides, in accordance with the Act on Public Officials in Central Government, on the establishment, termination and transfer of other positions of judge than those of the highest courts; ...”.

An tSeirbhís Chúirteanna/The Court Service of Ireland acknowledged that there were no significant developments in the last year. However, there is a Judicial Appointments Bill currently being considered by the Oireachtas [Irish Parliament]. It proposes the establishment of a Judicial Appointments Commission of 9 members to replace the Judicial Appointments Advisory Board (JAAB) which advises the Irish government on judicial nominations for appointment by the President of Ireland. Serving judges wishing to be considered for promotion to a higher judicial position will also be required to apply to the Commission under the Bill. Further information on the Bill can be found at the following link [here](#).

The membership of the Commission will be:

- Chief Justice, as Chair of the Commission;
- Two nominees of the Judicial Council, one having been a practising solicitor and one having been a practising barrister;
- One court president being the president of the court in respect of which the Commission is to recommend persons for appointment;
- Four lay members, three of which are to be selected by open competition by the Public Appointments Service and one of which will be nominated by the Irish
- Human Rights and Equality Commission
- The Attorney General, in an ex-officio non-voting capacity.

The Judicial Council of Latvia informed about several developments with respect to the competences, the general functioning and efficiency of the Council that are currently taking place regarding the judiciary and strengthening its independence:

- 1.1. There have been different opinions on the necessity and implementation of judicial reforms. The opinion of the judiciary has not been always heard by the executive and legislative powers. Example: **The creation of the new Economic cases court**

As rightly put by the European Commission *2020 Rule of Law Report Country Chapter on the rule of law situation in Latvia*, “this reform proved controversial, as the Council for the Judiciary issued two opinions against establishing a separate ‘economic court’, stating there is no evidence that it would bring improvements in quality and efficiency. In their opinion, a reform of the criminal procedure, as well as specialisation of judges within the existing courts (notably in cases of economic and financial crime) would be a more suitable solution.”²

² Council for the Judiciary of Latvia (2019), The Council for the Judiciary does not support the establishment of a specialised economic court in Latvia.

Council for the Judiciary of Latvia (2019), The Council for the Judiciary repeatedly rejects the establishment of the Economic Court it should be noted that the Parliament is discussing amendments to the Criminal Procedure Law, which aim to enhance the effectiveness of the criminal proceedings, among others, by ENCJ contribution for the 2022 European Commission Rule of Law report www.encj.eu

1.2. On January 22, 2021, the Minister of Justice Janis Bordans gave a statement to the media on the course and result of the **proceedings in the so-called "Magonis Case"**. In the article on the DELFI portal titled "Bordans is indignant about the judgement in the Magonis and Osinovsky case; he questions the professionalism of the judge" it is stated by the Minister that "In a situation where there is a case that has a major impact on the public's confidence in the judiciary, this case, as a result of the judge's deliberate action, reaches a judge regarding whom the facts are known and the judges themselves have established that Jansons is not having the best reputation, nor he has the highest evaluation of professional work in the judiciary."

In this situation, the **Judicial Council 20.02.2021 issued a RESOLUTION** STATING FOLLOWING:

A full judgment is not yet available in the case in question. Consequently, it is not possible at present for anyone who has not taken part in the proceedings to express a reasoned opinion on the quality of this judgment. In addition, this judgment is not in force and can be appealed before a higher court.

A distinction must be made between criticism of a judgment, a court or a judge and insults. Criticism means expressing a civilized, concrete and reasoned opinion about shortcomings and mistakes. Dislike of the outcome of the judgment does not in itself give rise to criticism, especially if it is not followed by a reasoned justification. (..)

The Rule of Law report³ points out that "the Council for the Judiciary is experiencing a shortage of human resources, which could impede the exercise of its new powers." The Judicial Council has 4 employees.

On 13 November, 2020 the Judicial Council heard a report from the working group on the causes of the long litigation and proposals to remedy it. At its February meeting, the Judicial Council called on the Supreme Court to set up a working group to analyze the causes of lengthy proceedings in Latvian civil, criminal and administrative cases, develop proposals to address these causes, and examine the findings of the European Court of Human Rights. The Report was sent to all judges of Latvia, the involved ministries, as well as other involved parties (police, lawyers, prosecutors etc)

After having been granted additional powers with a view to strengthening judicial independence, the Judicial Council adopted a new procedure for selecting candidate judges. In 2018, amendments to the Law on the Judicial Power entered into force, transferring a number of competences from the executive and the legislature to the Council for the Judiciary. This concerned, notably, the powers to appoint court presidents (previously by the Minister for Justice), to transfer a judge (previously by the Parliament), to approve judicial training (previously by the Court Administration, a body under the Ministry for Justice), and to determine the procedure for selecting candidate judges (previously by the Cabinet of Ministers). In April 2020, the Council developed and approved a new procedure for the selection of candidate-judges of district (city) and regional courts. Candidate judges are selected through an open competition organised by a commission established by the Council for three years, which is composed of three senators (Supreme Court judges), three judges of regional courts, and three judges of district (city) courts.

enhancing the involvement of defence lawyers and allowing as evidence undisputed facts from preliminary investigation, which would focus the court hearing on main disputed facts.

³ COMMISSION STAFF WORKING DOCUMENT 2020 Rule of Law Report Country Chapter on the rule of law situation in Latvia, SWD/2020/313 final

1.3. March 2021. **The Judicial Council adopted its five year strategy** by setting a strategic overarching goal – equal representation in the dialogue between branches of state power.

Commencing a discussion on the status and functions of the Judicial Council, in particular on the need to provide the Judicial Council with a legislative initiative and enshrine it in the Constitution as a constitutional body, is one of the tasks stated in the Judicial Council's strategy for the next five years approved on 12 March.

The strategy states that the overarching goal of the Judicial Council is to achieve equal representation of the judiciary in the dialogue between branches of state power in order to ensure the independence, quality, development and accountability of the judiciary.

The Judicial Council has identified **four main areas of action for the next five years**, as well as goals and objectives in each of these areas.

Strengthening the independence of the judiciary. The aim is to promote the independence of the judiciary from the executive and to develop guarantees of independence. Tasks for achieving the goal are as follows: to achieve the independence of the budget of the judiciary as a constitutional body; to take over the training of judges from the executive branch; to strengthen the institutions of self-government of judges and their cooperation with the Judicial Council; to raise the level of self-assessment of the independence of judges; to set professional standards for persons belonging to the judiciary; to participate in the development of a model of competitive remuneration of judges and court employees, as well as in the development of court policy and improvement of regulatory framework in matters that directly affect the functioning of the court system.

Strengthening the functionality and role of the Judicial Council. The aim is to ensure that the Judicial Council is a respected representative of the interests of the judiciary, including in the policy-making process.

The Judicial Council considers it necessary to initiate a discussion on its status and functions, especially on the need to envisage a legislative initiative for the Judicial Council and to enshrine it in the Constitution as a constitutional body. The Judicial Council will carry out an audit of the organizational management functions of the judiciary in order to take over a part of the functions of the executive branch, developing the administrative capacity of the Judicial Council accordingly. The Council has also set as its tasks to analyze and, if necessary, initiate changes in the composition of the Judicial Council, in the regulation of voting rights of Council members, so that decisions on career development of judges are the sole responsibility of judges, as well as to promote full involvement of judges in work of the Judicial Council and judicial self-government bodies. In developing the international cooperation of the Judicial Council, it will actively participate in the European Network of Councils for the Judiciary and will apply the experience of other countries in organizing the judicial system.

Efficient and high-quality judiciary. The aim is to make the Latvian court system more efficient, convenient, timely, understandable and accessible to the public.

The Judicial Council will focus on the quality of court judgments, deadlines of court proceedings, system efficiency and access to justice, the evaluation process of judges' performance, digitalisation processes of court system, judges' specialization standards, employee evaluation and remuneration system. The Judicial Council will facilitate the identification of problems in the judiciary and liaise with chairs of courts.

Public confidence in the judiciary. The aim is to raise public awareness of the judiciary in order to increase trust. The Judicial Council will promote the fulfilment of the tasks of the communication strategy of the judicial system and the observance of common communication principles in the institutions of the judiciary, as well as will constantly inform the public about its dialogue with the constitutional bodies. In order to create a successful dialogue, both the skills of the judiciary to provide information on topical issues of the judiciary will be developed and the society will be educated. The Judicial Council will periodically assess public confidence and attitudes towards the judiciary and the work of the judiciary.

1.4. 12 March, 2021. **The Judicial Council adopted a resolution on the dialogue between the executive and the judiciary on judicial training**, which explains that the public statement made by the Minister of Justice stating that the Chair of the Judicial Council is hindering the establishment of a judicial training institution is untrue. Taking over the training of judges from the executive has been identified as a priority strategic goal of the judiciary. The Judicial Council, under the management of the Chair, is actively working on the new judicial training system. The Judicial Council calls on the Minister of Justice to continue the dialogue with the Judicial Council, observing the principles of professional discussion and to refrain from using the judiciary in his own political interests.

1.5. Outside the approval of the strategy, the **Judicial Council generally decided that the strategic goal of the Council was to take over the training of judges from the executive.**

At present, the training of district (city) and regional court judges lie within the competence of the Court Administration, which is an institution subordinate to the Minister of Justice. Although the recipient of the training service is the judiciary, all organizational and financial issues are dealt with by the Court Administration under the Ministry's authority, which makes the system non-transparent and inefficient. In turn, the training of senators is the responsibility of the Supreme Court. It would be much more effective to create a single, flexible training system for judges, which would be under the direct responsibility of the judiciary (e.g., the Judicial Council) and without executive intermediaries. This would ensure not only the efficiency of the training centre, but also its compliance with the judicial training strategy and the annual training plan approved by the Judicial Council. It would also be easier to liaise with the judiciary's self-governing bodies, the Judicial Qualification Committee, the Judicial Disciplinary Committee and the Judicial Ethics Commission, whose information is important in the development of training programmes. At present, the Judicial Council is not involved in any stage of the planning and monitoring process. The Council considers that the judiciary should have greater authority in matters relating to the training of judges, including the design and content of training, the planning, request and use of funding, and the overall supervision of the judicial training institution.

1.6. The new **Code of Judicial Ethics is approved**. 02 February, 2021. Being aware of the fact that the promotion and maintenance of high standards of judicial ethics is a matter of responsibility of each judge, Latvian judges have adopted the Code of Judicial Ethics and have undertaken to adhere to the principles enshrined therein, as pointed out in the preamble of the Code of Judicial Ethics adopted on February 2. The Code of Judicial Ethics was approved at the Extramural Conference of Latvian Judges, which was attended by 484 out of 549 Latvian judges.

1.7. Action plan is developed to strengthen the efficiency and quality of the judiciary.⁴ At its meeting on 22 October, the Judicial Council heard and took note of the action plan developed by the Working Group for Strengthening the Efficiency of the Judiciary established in June.

The task of the Working Group was to develop an action plan for the implementation of the objectives mentioned in the action line No 3 of the Judicial Council Operational Strategy for 2021–2025 “Efficient and high-quality judiciary” and to recommend priorities for the implementation of the plan.

The Working Group has identified four priority areas for action:

- ✓ Balancing the workload of judges in Latvia;
- ✓ Optimal and efficient personnel organization of the court system;
- ✓ Ensuring the quality of judgments;
- ✓ Organization of court work.

The Working Group consists of five delegated representatives of the Judicial Council.

Teisėjų Taryba/The Judicial Council of Lithuania provided the following information:

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

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

After the Judicial Council condemned Russia’s decision to bring charges against the Vilnius Regional Court judges who issued a ruling in the so-called “13 January case” on 27 March 2019, and appealed to the Lithuanian and European institutions, and the highest representatives of the government to take effective measures to ensure the physical safety of judges involved in proceedings, the Judicial Council in cooperation with the Ministry of Foreign Affairs of the Republic of Lithuania, the Ministry of Justice of the Republic of Lithuania, the Prosecutor General’s Office, the State Security Department of Lithuania takes measures to protect judges involved in proceedings.

Also, on 25 January 2021, a remote meeting was held where the Vice-President of the European Commission Vera Jourova along with representatives of the Lithuanian Judicial Council and the European Commission Representation in Lithuania sat down to discuss the January 13 case, the circumstances of its proceedings, and the situation of judges who had been investigating this case. During this meeting, Lithuania received official support from one of the most important EU institutions.

Moreover, on 18 March 2021, a joint meeting of the Foreign Affairs, Civil Liberties, Justice and Home Affairs Committees was held at the European Parliament, where Lithuanian Minister of Justice, Chairman of the Judicial Council and Prosecutor General expressed their views on the persecution of Lithuanian judges and prosecutors investigating the January 13 case. During this meeting members of the European Parliament stated that persecution of Lithuanian judges and prosecutors investigating

⁴ Please, see full press release here: <https://www.at.gov.lv/en/jaunumi/par-tieslietu-padomi/action-plan-is-developed-to-strengthen-the-efficiency-and-quality-of-the-judiciary-10839?year=2021&month=10>

the January 13 case is a politically motivated attack by Russia on the independence of Lithuanian judges.

A special working group composed of the Judicial Council and representatives of the courts, prepared by the Judicial Council, prepared a description of the rules for the allocation of cases to judges and the formation of judicial panel, approved by resolution No. 13P-123-(7.1.2) of the Judicial Council of 25 September 2015 (hereinafter referred to as the “Rules for the Allocation of Cases”), the principal provisions of which were approved at the meeting of the Judicial Council of 30 October 2020.

In 2021, the draft Rules for the Allocation of Cases was coordinated with the Information Technology, Judicial Administration and Legislative Drafting and Evaluation Committees of the Judicial Council. Following a final agreement with the courts, the draft amendment to the rules on the allocation of cases is expected to be approved by 2022 3Q.

During the preparation of the draft Rules for the Allocation of Cases and the development of the Module functionalities, a review of case allocation groups and case weighting factors was commenced, solutions and opportunities for using the same data not only in the case allocation process, but also when calculating the judge’s (court’s) workload were looked for in 2021.

There was also a discussion on the criteria for determining the optimal workload and its calculation in the committees of the Judicial Council in 2021, and ways and means were sought to ensure the workload of the district and regional courts.

It should be noted that one of the strategic directions of the Judicial Council for 2021–2024 approved by resolution No. 13P-27-(7.1.2) of 26 February 2021 of the Judicial Council is increasing the efficiency of court activities. In the implementation of this direction, among other things, it is planned to look for measures to balance the workload of judges in order to equalize the workload and increase the conditions for the administration of justice. In addition to other internal and external administrative measures applied by the judicial administration for workload equalisation among district courts, on the initiative of the Judicial Council, following the resolution adopted at the sitting of 20 December 2021, the Ministry of Justice was approached with a proposal to implement the regulation established in Paragraph 2 of Article 432(1) of the Code of Civil Procedure of the Republic of Lithuania and to establish that cases on the basis of applications for the issuance of a court order which are filed by electronic means are heard by specific district courts, excluding the District Court of Vilnius City. The implementation of this measure would not only solve the problem of greater workload of the District Court of Vilnius City as compared to other district courts, which has existed for a number of years, but would also help to regulate the flow of cases for court orders at the level of all district courts.

In letter No. 36P-114- (7.1.10.) of 13 September 2021, the Judicial Council submitted to the legislator proposals to supplement the Code of Criminal Procedure and the Code of Administrative Offences with provisions allowing the entity exercising administrative supervision of a court (presidents of regional courts or the president of the Lithuanian Court of Appeal) the right to allocate cases not yet assigned to a particular judge (judicial panel) by a ruling, selected randomly, for hearing to judges of another court. Such a right could be used by such entities when discerning the possibility of speeding up proceedings in cases where due to the different flow of cases in individual courts, the workloads of judges and courts differ significantly. In view of the objectives pursued (to address the unequal workload and the related length of court proceedings and the lack of human resources in the courts), the legal framework proposes certain safeguards to ensure the rights of persons involved in court proceedings and the status and independence of judges, i.e. to envisage that upon finding by a

president of a higher court, on the basis of objective data, a significant difference in workload, the judges of the other court could be allocated a group of randomly selected cases (not individual cases) not yet assigned to individual judges and, in the first instance, cases regarding criminal and administrative offenses dealt with by written procedure could be assigned to another court. It should be noted that in principle the analogous provisions are set out in the current Code of Civil Procedure, in practice they are applied and assessed as an effective means of regulating workloads.

By Law No. XIV-509 of 13 July 2021, the Seimas of the Republic of Lithuania amended the Law on the Remuneration of Judges and introduced the possibility of paying bonuses to judges of ordinary and specialised courts for increased workload when there is an increase in workload due to unforeseen reasons as a result of significant increase in the number of cases received per month. For the implementation of these provisions, a Description of the Procedure for Granting and Paying Bonuses for Increased Workload to Judges of Ordinary Courts and Judges of Specialised Courts has been approved by Resolution No. 13P-98-(7.1.2) of the Judicial Council of 23 July 2021. The payment of bonuses for increased workload, which has increased due to unforeseen reasons as a result of significant increase in the number of cases in a certain category received per month, has helped to ensure adequate remuneration of judges for their work, when the number of cases in courts regarding illegal migration at the state border of the Republic of Lithuania has significantly increased.

On 25 November 2021, the Seimas passed the Law No. XIV-708 on the Remuneration of Judges of the Republic of Lithuania amending the Law No. X-1771, which recasts the entire law and changes its title to the “Law on Payment for Work of Judges of the Republic of Lithuania”. Amendments to the law have regulated the procedure for remunerating judges for on-call time and work on rest periods and public holidays, providing for the remuneration of division chairmen and judges substituting for the president of the court, and introducing new provisions regarding the payment of bonuses for increased workload when there is an increase in the amount of work in performing functions of another judge of the same ordinary or specialised court (or the same courthouse) (in the temporary absence of a judge of the same ordinary or specialised court in an ordinary or specialised court (or in the same courthouse). Provisions have also been maintained for increased workload bonuses due to an increase in the volume of work due to unforeseen reasons as a result of significant increase in the number of cases in a given category received per month.

The procedure for the implementation of the given provisions of the law was detailed upon the adoption of Resolution No. 13P-155-(7.1.2) of the Judicial Council of 20 December 2021 approving the description of the procedure for the payment for work and on-call time on rest periods and public holidays and substitution, granting and payment of bonuses for increased workload to judges of ordinary and specialised courts.

In 2021, the Judicial Council approved Communication Strategy of Lithuanian Courts and Plan of Measures for its Implementation for 2021-2024. In this strategy there are aspects that overlap with the strategic directions of the Judicial Council in order to ensure integrity and efficiency of the activities of the entire judiciary and the Judicial Council. The document includes not only means and activities of external communications, but also puts more focus on measures of internal communication suggesting a number of new means of achieving its objectives, and establishes several new means of achieving the goals. During the implementation of the Communication Strategy, the following objectives are set:

- to increase public trust in Lithuanian courts as an institution administering justice;

- to develop coordinated, measured communication in the judicial system, to implement common communication measures;
- to strengthen internal communication and organizational culture in the courts.

The objectives of the Communication Strategy are set to be achieved by using proven measures (e. g. participation in TV and radio programs, organization of legal advice and other successful events, etc.) and entirely new measures (e. g. it is planned to establish a Public Relations Competence Centre for the Judiciary).

Since 2021, meetings of the Judicial Council have been broadcasted to the judiciary and, since 1 January 2022 – to the public. Legal acts governing live broadcasts of the Judicial Council meetings and handling of video recordings of meetings have entered into force (the Judicial Council's Resolution of 26 March 2021, No. 13P-35-(7.1.2) "On the Amendment of the Judicial Council's Resolution No. 13P-30-(7.1.2) of 24 February 2017" and the Order of the Director of the National Court Administration of 30 March 2021, No. 6P-49- (1.1.) "On the Approval of the Description of the Procedure for Broadcasting the Meetings of the Judicial Council").

The **Raad voor de Rechtspraak of the Netherlands**, reported that for the reference period, there have been no significant changes related to the competences, neither to the independence of the Council nor to the functioning and efficiency of the Council. However, the Council is exploring the alteration of the composition of the Council. At the moment the Dutch Council has four members of which two are judges (the president is always a judge and has the deciding vote). In order to meet European standards, the Council is exploring the possibility to go for an odd number of members in which judges are in majority. Furthermore, as regards to the way of nomination of the members, the intention is to increase transparency of the procedure but also to limit the involvement of the Minister of Justice in the procedure and to increase the involvement of judges. Discussions on how to implement this are still ongoing.

During 2021, the **Portuguese Judicial High Council (JHC)**, in the exercise of its powers, adopted new regulations that are related to the general functioning and efficiency of the Council, namely:

- New Regulation on Inspections of the Judicial High Council [[Regulamento \(extrato\) n.º 852/2021](#)]:

The [Law 67/2019, of 27 August](#), which made the sixteenth amendment to the [Statute of Judicial Magistrates](#), approved by Law 21/85 of 30 July, introduced several amendments to that Statute, in relation to the evaluation of the performance of judges and the inspection service. The need for the Judicial High Council to regulate such matters is expressly provided for in that same Statute.

- Regulation on Criteria for the Reassignment of Judges, Assignment of Cases and Accumulation of Duties [[Regulamento \(extrato\) n.º 371/2021](#)]:

This regulation establishes the principles, criteria, requirements and procedures to be followed by the Judicial High Council in determining the measures referred to in Article 45-A of the Statute of Judicial Magistrates and Article 94 (4) (f) and (g), of the Judicial System Organization Act ([Law No. 62/2013, of 26 August](#)).

- Regulation on the Alteration, Reduction or Suspension of the Distribution of Cases (Regulamento n.º 269/2021):

This regulation establishes the principles, criteria, requirements and procedures to be complied with the determination by the Judicial High Council of the measures referred to in Articles 149 (1) (n) and (o), 151 (c) and 152-C (1) (g) and (h) of the [Statute of Judicial Magistrates](#), applicable to the High Courts and to the Courts of First Instance.

The Consiliul Superior al Magistraturii of Romania stressed that no changes occurred in the referred period in any of the above-mentioned topics which are mainly regulated by the Law no. 317/2004 regarding the Superior Council of Magistracy, as modified and subsequently amended; there should be mentioned that the Law no. 317/2004, above mentioned, together with the Law on the statute of judges and prosecutors (Law no. 303/2004 as modified and subsequently amended) and with the Law on the judicial organisation (Law no. 304/2004 as modified and subsequently amended), representing the so-called justice laws, are subject of further amendments to be proposed and discussed in the next period, as already stated in the previous MCV and Rule of Law report. Moreover, a series of legislative amendments were promoted all along this year regarding the secondary legislation regarding the judicial system (not particularly the topics stated above) and given their impact for the general functioning and efficiency of the Judiciary we will present them below⁵.

➤ On July 9th, 2021 the **Law no 192/2021** concerning **some temporary measures regarding the admission to the National Institute of Magistracy (NIM), the initial professional training of judges and prosecutors, the exam for graduating the National Institute of Magistracy, the internship and capacity examination of the judges and prosecutors, as well as the examination for admission to magistracy** was published in the Official Gazette, Part I, nr. 685/2021.

In order to ensure the compliance of the secondary legislation with the primary law (Law no. 192/2021), within a few days of the adoption of the law, hence rapidly, the Regulation for admission to the National Institute of Magistracy was adopted by the Plenum of the Superior Council of Magistracy through Decision no. 119 of 16 July 2021. The Regulation for organizing and carrying out the competition for admission in magistracy was adopted by the Plenum of the Superior Council of Magistracy through Decision no. 120 of 16 July 2021.

➤ On 28.12.2021 the **Law no. 313/2021** was published in the Official Gazette, Part I, nr. 1232, for modifying and completing Law no. 303/2004 on the statute of judges and prosecutors, namely **for repealing the provisions of art. 33¹ of the law, as introduced by the Law no. 242/2018 that provided the possibility for appointing in judge or prosecutor positions, without competition or exam, the following:** "The persons who held the office of judge or prosecutor and assistant-magistrate for minimum 10 years, without being disciplinarily sanctioned, with only "very good" ratings for all the evaluations and who ceased activity because of reasons non imputable, can be appointed, without competition or examination, in the offices vacant of judge or prosecutor, in the courts or prosecutor's offices of the same level as the ones where they worked or at the courts or prosecutor's offices of inferior level."

➤ Under the same law the provisions of the Law no. 303/2004, in the matter of transfer of judges and prosecutors have been modified considering the Decision of the Constitutional Court no. 454/2020.

⁵ These legislative developments are also mentioned in the contribution sent for the Rule of Law Report 2022. ENCJ contribution for the 2022 European Commission Rule of Law report www.encj.eu

➤ Under the same law mentioned above, the provisions of the Law no. 303/2004 in the matter of appointment of judges in prosecutor positions and of prosecutors in judge positions have been modified and completed.

There should be noted that by the decision no. 90/2021 the SCM Plenum has positively endorsed with observations the proposal for modifying and completing Law no. 303/2004 on the statute of judges and prosecutors republished, with subsequent amendments and completions, in the matter of transfer and appointing judges in prosecutor positions and of prosecutors in judge positions.

➤ The **Law nr. 86/2021** has reappealed **as of, January 1st, 2022**, the provisions of art. I pct. 142 of the Law no. 242/2018, referring to art. 82 para. (3) of the Law no. 303/2004, republished, with subsequent amendments and completions, according to **which judges, prosecutors with seniority between 20 and 25 years only in these offices also benefit upon request, before reaching the age of 60, of the service pension**. There should be mentioned that upon the request of the Judicial Commission for appointments, discipline, immunities and validations within the Romanian Senate in the session in March 4th, 2021, the SCM Plenum has analyzed the draft law proposal for reappealing the provisions regulating the possibility of anticipated pension of the judicial personnel within the judiciary (L84/2020) and the legislative proposal for modifying the Emergency Ordinance of the Government no. 92/15.10.2018, for modifying and completing several normative acts in the judiciary (L85/2020), issuing a positive point of view towards the request of the Romanian Senate referring to the reappealing the provisions regarding magistrates' retirement when having a 20-25 seniority and coming back to the previous provisions.

➤ By the decision no. 960/21.07.2021 the Regulation for organizing the **competition for promotion in judge position at the High Court of Cassation and Justice**.

➤ During the referred period **the territorial jurisdiction of the first instance courts was redefined**. Thus, on June 10th 2021, Decision no. 102/2021 of the SCM Plenum on determining the localities assigned to the first instance courts in each county was adopted, in order to redefine the territorial jurisdiction of the first instance courts. The decision was further amended and supplemented by SCM Decision no. 148/21 October 2021. This measure, by re-establishing the territorial jurisdiction of some courts, is intended to balance the workload at the level of first instance courts and to give prevalence to the principle of **bringing justice closer to the citizen**.

Regarding the general functioning and efficiency of the Council, as mentioned in our previous contributions to the CVM and Rule of Law report, among the 9 projects SCM is currently implementing with external non-reimbursable funds, one of them is destined to strengthen the operational capacity of the SCM, as a decision-maker responsible for the proper management of the judiciary, for ensuring the organisation and functioning of the courts and prosecutors' offices, as well as for the correct and balanced career management of judges and prosecutors – the Project on **“Strengthening the organisational and administrative capacity of the Superior Council of Magistracy”**; the relevant developments in terms of this particular project's implementation regard especially the public procurement procedures, according to the project's calendar.

Moreover, in implementing the above-mentioned Project, on October 19th, 2021 the Commission for Human resources and organisation of the SCM has approved the proposal, developed within this project, for developing an IT solution, namely the following.

Within activity A1 of the Project – creating and implementing a digital solution for managing the activity of the technical staff and for relations with other institutions/organisms inside and outside the ENCJ contribution for the 2022 European Commission Rule of Law report

www.encj.eu

Transparency register number: 45444124056-57

judicial system, the development of an application was foreseen, , designed to improving the activities of all the SCM technical specialised compartments and also the relations with other institutions within the Judiciary but also outside the judicial system.

The IT application should be designed to offer a personalised software solution to be able to answer the current needs and to allow strengthening the operational capacity of the Council and improving the communication capacity within the judicial system.

The IT solution will allow an efficient management of aspects/issues in terms of personnel, logistics and operational procedures improving the activities flow, the administrative capacity of the Council to answer to any requests coming from the members of the judicial body and reducing the periods of time dedicated to solving such requests.

The new application called **CSMapp** shall replace the current one – EMAP and when developing it the functions and modules of the current EMAP shall be taken over. Being aware of the current needs of the Council, the application shall be projected and developed from the beginning on a complete architecture and shall benefit from both easier maintenance and development of new modules, being founded on the newest technologies.

Due to its functionalities, CSMapp shall be designed to be widely used within the Council's activities and shall contribute to reaching all requirements in terms of speed and flexibility translated in the dynamics of the activities of the specialised compartments and in improving the flow of procedures with the need to adapt the operational procedures as well to the new functionalities.

The **Council of Slovakia, Sudna Rada** informed that as to the ***structure/composition of the Council***, the Judicial Council has 18 members. They are the President of the Judicial Council and its additional members: 9 judges – elected by their peers and 9 members nominated by other state powers. National Council, President and the Government shall appoint a person as a member of the Judicial Council, that is not a judge. Since January 2021 – function of Vice-president of the Council is full-time job (professionalization of function).

- ***Competences of the Council***

New competence regarding the ensuring public scrutiny of the judiciary: **Judicial Council ensures the participation of its members in the sessions of the plenary of the Supreme Court of the Slovak Republic and the plenary of the Supreme Administrative Court of the Slovak Republic and in the selection commissions pursuant to a special regulation.**

New competence in the context of the examination of the prerequisites for judicial competence and the financial situation of judges:

In exercising its powers under Article 141b of the Constitution, the Judicial Council

- (a) act on matters concerning the written declaration of the judge and the judge's declaration of assets and on matters concerning the judge's assets,
- (b) enforce measures aimed at the permanent fulfilment of the prerequisites of judicial competence which guarantee that the judge will perform their duties properly – “prerequisites of judicial competence”,
- (c) supervise the fulfilment of the prerequisites of judicial competence,
- (d) verify the fulfilment of the prerequisites of judicial fitness by candidates for the office of judge,

ENCJ contribution for the 2022 European Commission Rule of Law report

www.encj.eu

Transparency register number: 45444124056-57

- (e) adopt opinions pursuant to the Act on Judicial Council,
- (f) exercise the power of suggestion in matters of disciplinary responsibility of judges.

Other additional powers (competences of the Council): Judicial Council **decides on the temporary suspension of a judge if special regulation so stipulates and decides on disagreement with the prosecution of a judge for the crime of bending the law.**

- ***Way of nomination of the members***

Changes regarding the election of members – judges by their peers : **sections 10-23 from the Act on Judicial Council** : [available here](#)

- ***Independence of the Council***

In January 2021, a major amendment to the Constitution and the Judicial Council Act came into force, which strengthens the position of the Judicial Council within the judiciary given the more competences (competences mentioned above and competences on general functioning).

Slovak Judicial Council during the first half of year 2021 runs the selection procedure of the judges of the newly created Supreme Administrative Court. On the other hand, Judicial Council lost the competence – election of members of the Disciplinary Boards and Appellate Disciplinary Boards – the disciplinary competence is now entrusted to Supreme Administrative Court.

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

A meeting of the Judicial Council shall be convened and presided over by the President of the Judicial Council. The President of the Judicial Council may, in urgent cases, request the members of the Judicial Council to decide on a draft resolution outside a meeting of the Judicial Council; if at least three members of the Judicial Council comment on or disagree with the draft resolution, the draft resolution must be decided on at a meeting of the Judicial Council. Meetings of the Judicial Council may, in times of emergency or state of emergency, be conducted by means of technical equipment of video and audio transmission; the audio recording of the meeting of the Judicial Council shall be made available to any person after the end of the meeting.

President of the Judicial Council shall be entitled to a salary, an allowance and a flat rate compensation for the performance of their duties pursuant to a special regulation. The President of the Judicial Council shall be entitled to the free use of a suitably furnished apartment during the performance of their duties only if they reside outside the seat of the Judicial Council. He shall be entitled to reimbursement for foreign travel in connection with the performance of his duties at the same rate as a member of the Government. He shall have the right to use an official motor vehicle free of charge during the performance of his duties and the right to the establishment and free use of a subscription telephone service.

A member of the Judicial Council who is not a judge shall be entitled to a monthly remuneration in the amount of 1.5 times the average nominal monthly wage of an employee in the national economy of the Slovak Republic for the preceding calendar year, rounded up to the nearest euro, as from the first day of the month in which they assumed the office of a member of the Judicial Council. A member of the Judicial Council shall not be entitled to remuneration if they are elected President of the Judicial Council or Vice-President of the Judicial Council. A member of the Judicial Council who is a judge shall have a modified judicial workload according to a special regulation.

A member of the Judicial Council shall be entitled to reimbursement of expenses related to their

ENCJ contribution for the 2022 European Commission Rule of Law report
www.ency.eu

Transparency register number: 45444124056-57

activities on the Judicial Council pursuant to a special regulation.

A member of the Judicial Council shall be entitled to technical means necessary for the performance of their duties to the extent and under the conditions laid down by resolution of the Judicial Council; they shall remain with them after the expiry of their term of office.

The costs associated with the performance of the functions of a member of the Judicial Council who is not a judge shall be paid from the budget chapter of the Office of the Judicial Council of the Slovak Republic.

Sodni Svet, the Judicial Council of Slovenia acknowledged that the Slovenian Government has significantly cut financial resources in the 2022 budget amendments proposal for Sodni svet by 16,74 % (EUR 156.250) without providing a reason. National assembly passed the governmental proposal on 18th November 2021 and opposition amendment in favour of Sodni svet has been turned down. Sodni svet has already notified the President of the ENCJ Mr. Filippo Donati, former President of the European Parliament Mr. David Maria Sassoli and Commissioner (EC) for Justice Mr. Didier Reynders about unilateral actions of Slovenian Government, which are in our opinion undemocratic and utterly unacceptable. Budget for 2022 in the amount of EUR 777.268 does not ensure financially sustainable operation of the Council which will not be able to realize current costs - salaries of assigned judges and civil servants as well as necessary material costs for the operational work of the Council. Rule of Law Reports 2020 and 2021 emphasize that providing adequate resources for the Judicial Council is an important condition for the independent and effective functioning of this self-governance body which should have been an imperative for legislative and executive branch. Unfortunately, this was not the case regarding 2022 budget for Sodni svet as well as whole Judiciary.

The Consejo General del Poder Judicial of Spain reported that the Organic Law 4/2021 has regulated the competences of the Council for the Judiciary after its mandate has expired. The Council should have been renewed in December 2018. Since no political agreement has been reached, the Council is since then exercising its functions ad interim. The reform prevents the acting CGPJ from making discretionary appointments (president of the Supreme Court, presidents of Provincial Courts and High Courts of Justice, president of the National High Court, presidents of Chambers, as well as Supreme Court justices and two Constitutional Court justices). Nor may the vice-president of the Supreme Court be appointed. The reform also affects the modification of the structure of the Judicial Documentation Centre (CENDOJ) and the appointment of the Director of the Judicial School, the Promoter of Disciplinary Action, the Head of the Inspectorate Service and the Director of the Legal Service. On the other hand, the reform also restricts the CGPJ's regulatory powers.

B. Relations with the other State Powers

The Greek Administrative Council and the CPGA of Italy reported that there were no special remarks about their relations with other state powers.

Regarding the relation of the **the Conseil Supérieur de la Justice of Belgium (CSJ)** with other State powers, the Council reported that:

ENCJ contribution for the 2022 European Commission Rule of Law report

www.encj.eu

Transparency register number: 45444124056-57

The HCJ is a “sui generis” institution that does not belong to any of the traditional powers (executive, legislative, judiciary). The HCJ's relations with the **executive power** are conducted mainly through the Minister of Justice (and the Federal Public Service Justice). The relations between the HCJ and the current Minister of Justice are good, professional and respectful.

The same can be said of the relationship of the HCJ and the **legislative power**. In general the opinions and reports of the HCJ are taken into account by the minister and parliament and have a significant impact on the decision making. A rationalisation exercise is currently underway regarding the administrative functioning of all institutions that receive an endowment from Parliament, such as the HCJ. This exercise offers opportunities for the HCJ, but also entails certain risks

Relations between the HCJ and **the judiciary** are generally good. Half of the HCJ's members are elected by and among members of the judiciary. The HCJ is responsible for the selection of magistrates and the appointment of heads of courts and prosecution. He is also responsible for external control of the operation of the judicial system. These elements (composition and tasks) to some extent shape the relationship between the HCJ and **the judiciary**.

With a view to the progressive introduction of the auto-management of the judiciary, two new institutions were established in 2014 : The College of Courts and the College of Public Prosecution.

These colleges are, or at least have the vocation of becoming, the main interlocutor of the HCJ with the judiciary. The auto-management of the judiciary has not yet been fully realised and the tasks and the functioning of these colleges are still evolving. The relationship between the HCJ and these two colleges is not yet clearly defined. In general, the relation is good and all three institutions have collaborated efficiently to realise certain projects (for example: development of new complaints procedure-see below).

Regarding the challenges to the independence of the judiciary/judges:

In general concerns about the understaffing of the judiciary still remain. For budgetary reasons, the statutory staffing levels of the courts were deliberately not filled to capacity during a period of several years. The covid crises has complicated this issue even further. The HCJ constantly reminds the executive of its responsibility in this regard. The judicial backlog in civil cases has become very worrisome in some courts (of appeal). In the past, the HCJ has already carried out several audits on the functioning of the Brussels Court of Appeal. In 2021, the HCJ again started an extensive audit on the functioning of this court of appeal. The processing times at this court are very long. The report of the audit will be ready early 2022.

After years of cuts in the budget of Justice, the structural budget was considerably raised in 2021 and will continue to increase till 2024. As part of the European Plan for Recovery and Resilience, 100 million euro will be invested in the digitalisation of justice In the coming years. This increase of the budget allowed the current minister to announce an important amount of new recruitments of judges, prosecutors and personnel, as well as more efforts in the field of digitalisation.

In its opinions on legislative initiatives, the HCJ ensures that the proposed measures respect the independence of the judiciary in general and of individual judges:

- In a recent opinion, the HCJ proposed to change the regulation on delegations and to give a judge who is the subject of a non-consensual delegation the possibility of an appeal.
- In another opinion, the HCJ pointed out that the government's allegation that "the statutory staff formations are less and less of a reference point", invoked as argument to introduce flexible staff formations, cannot be confirmed (or denied) without a workload measurement, a corresponding allocation model and uniform and reliable statistical data. These elements are still not available today.

ENCJ contribution for the 2022 European Commission Rule of Law report

www.encj.eu

Transparency register number: 45444124056-57

Regarding the challenges caused by Covid measure:

- Already in 2020, the HCJ expressed its criticism of certain initiatives taken by the government and the legislator.

On 22 March 2021, the HCJ issued an opinion on the draft "pandemic" law. The HCJ warned the legislator that fighting a pandemic must not be done at the expense of the proper functioning of the judiciary.

The draft law consists of ten articles and contains various administrative measures to deal with an epidemic emergency.

The HCJ was of the opinion that it is up to Parliament and not the King (executive power) to declare a state of emergency. Furthermore, the HCJ also pointed out that, in case of a state of emergency, it is not for the Minister of the Interior to regulate the functioning of the judiciary by ministerial order.

- On 4 June 2020, the HCJ launched a wide-ranging audit of the way in which the courts and prosecutors' offices of first instance managed the COVID-crisis. The audit report was approved on 10 June 2021. In particular, the audit found that the courts of first instance and public prosecutors' offices took prompt action to ensure the continuity of their services. However, they lacked resources and capacity during the crisis. The lack of resources included material, IT and human resources.

In order to improve the functioning of the judiciary, the HCJ made recommendations in its report to the courts of first instance, the public prosecution offices and the two Colleges, but also to the FPS Justice and the legislator. On 29 June 2021, the High Council of Justice organised a discussion in the form of a 'round table' with representatives of the two colleges. The aim was to find out what impact the Covid 19 crisis had on the courts and the public prosecutor's office and to draw lessons for the future.

Državno sudbeno vijeće (DSV) / The State Judicial Council of Republic of Croatia emphasised that the planned changes in legislation which will award the Council greater significance in the procedure of electing judges (as stated under "*A. Changes in the functioning of the Councils*") have been initiated by the Council and have been fully supported by the Ministry of Justice and Public Administration. Regarding the independence of the judiciary, there is a legislative initiative which proposes to implement security checks for all judges on a regular basis, every 5 years. Currently there are security checks performed only at the time of becoming a judge and for all judges which are elected as Supreme court judges. The Council strongly opposes this type of continuous security checks for judges and considers it an impediment to the independence of the judiciary. The legislative initiative is currently under review by the Venice Commission. There have been no significant challenges to the independence of the judiciary regarding the Covid-19 pandemic.

Tuomioistuinvirasto / Domstolsverket / National Courts Administration of Finland (NCA) informed about the good relations of the Council with the other State powers. The institutions closest to the NCA are the Ministry of Justice and the Office of the Prosecutor General. NCA relations with them are good and easy-going.

ENCJ contribution for the 2022 European Commission Rule of Law report

www.encj.eu

Transparency register number: 45444124056-57

When answering the question on relations of the Council with the other State powers in 2021, **the Conseil Supérieur de la Magistrature of France** stressed that in France, a continuous dialogue exists with the executive power, based on the Constitution.

The Council's fundamental purpose is enshrined in Article 64 of the Constitution: "The President of the Republic is the guarantor of the independence of the judicial authority. He is assisted by the Superior Council of the Judiciary". According to the institutional practice, the role of the Council is therefore central to ensuring the independence of the judicial authority.

However, Article 65 of the Constitution provides a framework for its action in this area. The Council's action is subordinated to the referrals of the President of the Republic and the keeper of the seals, Minister of Justice.

In this regard, it is well worth mentioning the fact that the 7th paragraph of Article 65 of the Constitution establishes a plenary which is presided by the President of the Court of Cassation. In its role as guarantor of the independence of the judiciary, this plenary committee has jurisdiction to consider requests emanating from the President of the Republic or the Minister of Justice regarding matters listed in Article 65 of the Constitution.

In 2021, for the second consecutive year, the Council was seized on this basis. On 22 February 2021, the President of the Republic has submitted to the Council a request for an opinion on the accountability of magistrates but also on their protection.

The Council issued its opinion on 24 September 2021, delivered by hand, containing thirty proposals based on four objectives, namely: to place ethics at the heart of the judicial function, to promote the detection of disciplinary breaches, to improve the conduct of disciplinary proceedings and the scale of sanctions, and to strengthen the personal and functional protection of judges.

The report is available online, on the website of the Council, by clicking on the following link: http://www.conseil-superieur-magistrature.fr/publications/avis-et-communiqués/communiqués_du_conseil

Furthermore, deeply concerned by the virulent criticism and unprecedented attacks on the Judiciary during the first half of 2021, the Council requested a meeting with the President of the Republic by letter dated 25 May 2021. This meeting took place on Friday 4 June and provided an opportunity for constructive exchanges. During this meeting, the President of the Republic expressed his concern about the fact that the separation of powers should be respected by each authority and announced the organisation of the "Estates General on Justice", which are currently ongoing and to which the Council will contribute.

The Council has also regular meetings with the services of the Ministry of Justice in order to promote a constructive dialogue and make the appointment process more transparent for the Judiciary as a whole.

As said above, the plenary session of the Council shall also give its opinion on questions relating to the ethics of magistrates and on any question relating to the functioning of justice referred to it by the Minister of Justice⁶. This instance is seldom seized on this basis and the text does not provide that it can issue an opinion on its own initiative.

⁶ 8th paragraph of Article 65 of the Constitution

Nevertheless, the High Council for the Judiciary considers that it is within its competence to draw the attention of the others powers or of public opinion to subjects of major national or international interest for the independence of the Judiciary. These statements, 7 in 2021, are published on the Council's website and on social networks.

Finally, the discussion of the annual finance bill is the occasion of a meeting between the legislative power and the Council. Each summer, during the examination of the future finance law, the Council answers the parliamentary questionnaire drawn up by the rapporteurs, whose objective is to give a qualitative and quantitative overall picture of its action. The two presidents of the Council are also heard by the Law Commission of the Senate on this subject.

As regards the question whether there were any challenges coming from them to the independence of the judiciary/judges, **the Conseil Supérieur de la Magistrature of France provided the following information:**

As mentioned above, in 2021 the Judiciary had to face numerous, virulent and excessive accusations, sometimes emanating from certain members or former members of the political sphere. The Council, which assists the President of the Republic in his role as guarantor of the independence of the judiciary, is extremely vigilant in the exercise of this prerogative and has intervened on several occasions to ensure that the institutional balances, the foundation of our democratic societies, are preserved. Thus, for example, following sharp criticism of two judicial decisions, the High Council for the Judiciary, in April and June 2021, called for restraint, since the judiciary, in the service of the rule of law and of every citizen without distinction, must be able to continue to judge, free from pressure, in complete independence and impartiality.

On another aspect, following the movement of indignation of more than half of French magistrates regarding their material working conditions, the Council indicated, in a press release of December 2021, that these issues raise questions of independence of the judiciary, because there can be no independence as the conditions of professional exercise are in contradiction with ethical and deontological requirements.

Concerning the question whether the independence of the judiciary was challenged because of the Covid-19 pandemic and subsequent measures taken, **the Conseil Supérieur de la Magistrature of France** acknowledged that the independence of the judiciary was not called into question during the Covid-19 crisis.

In 2020, despite the exceptional legislation that came into force, the balance of power and the principles of the rule of law have been maintained and respected (principle of legality, legal certainty, control of proportionality of measures).

Moreover, access to the judge was preserved, especially for urgent litigation. The fundamental principles have been maintained (access to the judge, adversarial principle, rights of defence), under the control of the judge.

Effective remedies have also been guaranteed.

The Supreme Judicial and Administrative Courts as well as the Constitutional Council have been very vigilant about the content of these derogations, many of which have been censured.

In 2021, the courts functioned normally and had the priority objective of clearing stocks.

An tSeirbhís Chúirteanna/The Court Service of Ireland emphasised that the relationship with the other State powers is very good. While Covid-19 presented practical challenges in the administration of the courts, it did not affect the independence of the judiciary.

The Judicial Council of Latvia reported that:

1. 20 October, 2021 Letter from the Chairman of the Judicial Council to the Speaker of the Parliament on a possible constitutional problem denying unvaccinated judges to perform duties⁷
2. 29 October, 2021 Judicial Council notes that the requirement to present a Covid-19 certificate is binding on all officials of the judiciary and persons belonging thereto

At its meeting of October 29, having considered the issue of the operation of the judicial system and persons belonging thereto during the state of emergency declared in the country due to the spread of Covid-19, the Judicial Council stated that the requirement for judges and other judicial officials to be vaccinated is legal and liability for failure to fulfil the specified obligation shall be assessed within the framework of regulatory enactments regulating the relevant profession.⁸

3. Judicial Council provides an opinion on the compliance of judges' remuneration with the principle of judicial independence 4 November, 2021⁹

The Judicial Council has assessed the draft law “Amendments to the Law on Remuneration of Officials and Employees of State and Local Government Authorities” in the part on the judiciary and calls on the legislator for a respectful dialogue, as well as draws attention to the fact that the judiciary has not been heard and has not participated in developing the draft law.

However, the Judicial Council concludes that in view of the model of remuneration of judges proposed in the draft law it is still not possible to verify its compliance with the principle of independence of judges, namely it is impossible to check whether the proposed regulation meets the criteria of remuneration of judges indicated in Constitutional Court judgements, whether the status of a judge and the difference between judge's position from other positions, as well as the requirements and restrictions imposed on a judge by law have been taken into account, including guaranteeing the independence of a judge through financial security and the inadmissibility of allowances.

Teisėjų Taryba/The Judicial Council of Lithuania provided the following information:

In 2021, the President of the Republic submitted a package of draft amendments to the Law on Courts to Seimas. These draft amendments to the Law on Courts seek to address key systemic regulatory issues. One of the issues to be solved is the change of the model of selection of judges which lacks efficiency and creates obstacles to efficient work in courts. Simplification of the selection procedure,

⁷ Please, see full press release here: <https://www.at.gov.lv/en/jaunumi/par-tieslietu-padomi/letter-from-the-chairman-of-the-judicial-council-to-the-speaker-of-the-parliament-on-a-possible-constitutional-problem-denying-unvaccinated-judges-to-perform-duties-10827?year=2021&month=10>

⁸ Please, see full press release here: <https://www.at.gov.lv/en/jaunumi/par-tieslietu-padomi/judicial-council-notes-that-the-requirement-to-present-a-covid-19-certificate-is-binding-on-all-officials-of-the-judiciary-and-persons-belonging-thereto-10849?year=2021&month=10>

⁹ Please, see full press release here: <https://www.at.gov.lv/en/jaunumi/par-tieslietu-padomi/judicial-council-provides-an-opinion-on-the-compliance-of-judges-remuneration-with-the-principle-of-judicial-independence-10867?year=2021&month=11>

allowing for a faster pace, would help to solve the issues of the formation of the judiciary, including the lack of competition between candidates, which sometimes leads to application of lower selection standards for candidates.

Under the current legal regulation, as well as under the proposed new legal regulation, the President of the Republic has an unrestricted discretion not to follow the proposal of the Selection Commission of Candidates to Judicial Office to appoint evaluated and the most suitable candidates for the respective position of judge and, without justifying his decision, to appoint a person to Judicial Office who is in a lower position in the list of the most suitable candidates compiled by the Selection Commission of Candidates to Judicial Office or even to appoint a person not recognized as the most suitable candidate.

Meanwhile, the Judicial Council, participating in the formation of the corps of judges, may speak (advise) only on those candidates who have been selected and nominated for the position of a judge by the President of the Republic of Lithuania.

In this case, according to the proposed provisions of the draft amendment to the Law on Courts, it is not clear what binding force the list of evaluated candidates to Judicial Office will have for the President of the Republic, and according to which principles judges will be selected from this list. In the Judicial Council's opinion, these provisions must be regulated at the level of law not only in terms of transparency of selections and legitimate expectations of candidates to Judicial Office, but also in terms of judicial independence, so that Lithuanian law, regulating the procedure for appointing a judge, would comply with the requirements of the European Union law.

It is considered that the persistence of significant uncertainties at the Law on Courts related to the compilation of the list of evaluated candidates to Judicial Office provided in Article 55, paragraph 3, creates new preconditions not only for experts, assessing the transparency of state proceedings, but also for public doubts that will affect the growth of mistrust in courts.

The Judicial Council has submitted observations on the issues mentioned above to the Committee on Legal Affairs of Seimas.

In 2019, Special Investigation Service of the Republic of Lithuania conducted a corruption risk analysis in the areas of allocation of cases to judges, formation of judicial panels and selection panels in the Supreme Court of Lithuania, and on 31 July 2019 presented the Conclusion on Corruption Risk Analysis in the Areas of Judicial Activities (hereinafter – the Conclusion) with the recommendations to the National Courts Administration, Lithuanian courts and the Judicial Council.

In 2021, the Judicial Council and the National Courts Administration actively implemented the recommendations, and on 6 January 2022 informed the Special Investigation Service about the progress of their implementation.

It should be noted that the recommendations provided in the Conclusion are related to the improvement of the legal regulation and technical measures for the allocation of cases to judges and their implementation takes time. Therefore, the implementation of the recommendations will be continued in 2022.

In addition to that, the National Courts Administration has prepared drafts of the Lithuanian Judicial Corruption Prevention Program and Plan of Measures for its Implementation. The initial versions of the drafts have been submitted to the courts and the Special Investigation Service of the Republic of Lithuania for comments. According to the comments received, the improved drafts will be submitted

ENCJ contribution for the 2022 European Commission Rule of Law report
www.encj.eu

Transparency register number: 45444124056-57

to the committees of the Judicial Council and the public for comments, and after that – to the Judicial Council for consideration.

It is also planned to establish, with the approval of the Judicial Council, a central entity responsible for the development of an anti-corruption environment throughout the judiciary and implementation of the Lithuanian Judicial Corruption Prevention Program.

The Chief Official Ethics Commission is preparing in coordination with the Judicial Council the draft Guidelines on the Management of Conflicts of Interest for Judges and Assistant Judges.

The measures stated in the Interinstitutional Action Plan for 2020-2022 according to the Implementation of National Anti-Corruption Program for 2015–2025 are being implemented.

A discussion “Society, Media, Courts: Do We Speak a Common Language?” took place on 29 March 2021. During the event the concepts of trust in the judge hearing the case and the reliability of the judiciary, as well as the problems of mutual trust between the judiciary and the impact of corruption indicators on the reputation of the judiciary, have been discussed. It has also been said that confidence-building is not just a problem for the courts, and that initiatives to interpret the administration of justice are inseparable from the legal education initiatives in the field of legislation.

A discussion “Judicial independence: reality and ambition” took place on 7 October 2021, with the participation of representatives of the judiciary, legislature, executive and academic community. During the event, issues of an independent judiciary, such as the basis of the rule of law, cooperation between the judiciary and other authorities, and professional standards of judicial conduct have been discussed. In order to ensure this constitutional value, a dialogue with representatives of other state authorities is constantly maintained.

Both of these events were broadcast live by Lithuanian courts on their YouTube channel, and were viewed by more than a thousand visitors to the YouTube platform.

Due to the COVID-19 pandemic, in 2021, 16.4 thousand euros were allocated from the State budget for the reserve of personal protective equipment and other costs related to the control of COVID-19 for which the basic necessary personal protective equipment and disinfectants have been purchased for the courts: 400,000 units of disposable face masks, 34,000 pairs of disposable gloves, 2,000 pieces of disposable overalls, 1,200 litres of hand sanitizer, 1,200 litres of disinfectant for surface disinfection.

Also, in 2021, the State allocated 565 thousand euros target funds for additional measures for the control of COVID-19 in order to purchase laptops and video conferencing equipment for courts. 209 laptops, 111 controlled cameras, 17 sets of mobile video conferencing equipment, 4 conferencing equipment licenses, conference equipment processors, 3 sets of stationary video conferencing equipment, 2 video conferencing recording devices, Children’s interrogation equipment (video camera, wireless headphone system) in District Court of Marijampolė, Chamber of Šakiai were purchased using these funds.

Moreover, in 2021, the State allocated additional 54 thousand euros target funds for the reserve of personal protective equipment and other costs related to the control of COVID-19 (additional measures to control COVID-19) for which personal protective equipment and disinfectants have been purchased for the courts: 40,000 respirators, 300,000 disposable face masks, 3,000 protective face shields, 100,000 pairs of disposable gloves, 900 litres of hand sanitizer, 1,200 litres of disinfectant for surface disinfection. In addition to that, 238 web cameras and 33 TV sets with their holders for the courtrooms were purchased using these funds.

ENCJ contribution for the 2022 European Commission Rule of Law report

www.encj.eu

Transparency register number: 45444124056-57

Law No. XIV-270 on amending the Code of Criminal Procedure with Article 8(2) entered into force on 1 June 2021 and established (legitimized) the wider use of information technology in criminal proceedings. According to amendments to the Code of Criminal Procedure, in exceptional cases where it is not possible to ensure the handling of cases in accordance with the ordinary procedure established in this Code, pre-trial investigation actions, court proceedings and participation in court hearings can be ensured by using electronic communication technologies (via video conferencing).

The Judicial Council also discussed in the meeting of 29 November 2021 the issue of draft laws submitted by the Minister of Justice for approval by the Ministry of Justice of the Republic of Lithuania which amend the provisions of the Description of the Procedure for the Use of Video Conferencing Technology in Criminal Cases and the Description of the Procedure for the Use of Video Conferencing and Teleconferencing in Civil and Administrative Cases. The draft laws were prepared in co-operation with the representatives of the Judicial Council and the National Courts Administration in order to fully implement the provision of Article 117 of the Constitution of the Republic of Lithuania that cases are heard in public in all courts as well as the provision of paragraph 1 of Article 7 of the Law on Courts that cases are heard in public in the courts, except in cases prescribed by law. The draft laws set out the ways in which the publicity of the court hearing is ensured when the court hearing takes place using video conferencing and/or teleconferencing technologies.

By resolution No. 13P-162-(7.1.2.) of the Judicial Council of 20 December 2021 the Resolution No. 13P-46-(7.1.2) of the Judicial Council of 25 May 2018 “On Approval of the Description of the Procedure for the Use of Technical Means during the Announcement of a Judgment” was amended by supplementing it with the provisions detailing the rules on publicity in court proceedings; also, regulations related to ensuring the publicity of court proceedings were established: the procedure for submitting and examining a request to a court by a person willing to observe a public remote court hearing was established, the essential aspects of practical implementation were defined (by supplementing them, inter alia, with more modern solutions), which may be relevant for the uniform organisation of the court activities, enabling individuals to observe public hearings at a distance, and for informing the public.

On 27 August 2021, the Judicial Council approved recommendations for the organisation of remote court hearings. The purpose of these guidelines is to provide useful, practical advice to courts and litigants on how remote litigation should be conducted and how to participate in it. The recommendations are based on a summary of existing legal frameworks, case law (including international case law) and the guidelines of the European Commission on Effective Justice on videoconferencing in court proceedings of 30 June 2021. The recommendations define the main principles for the organisation of remote court hearings and principles of personal participation, the conference (audio-visual) equipment recommended to be used was indicated, important aspects of the preparation of the court and the parties to the proceedings for the hearing were highlighted, as well as the most relevant issues in the course of hearing and other relevant information was established to ensure the smooth running of court hearings.

The initiatives to optimize the operation of courts in 2021 were continued to a slightly different extent proposals for the reform of administrative courts in cooperation with the courts and the National Courts Administration. The President of the Republic of Lithuania submitted to the Seimas for consideration amendments to the Law on Courts of the Republic of Lithuania, the Law on Administrative Proceedings of the Republic of Lithuania, the Law on Establishment of Administrative Courts of the Republic of Lithuania and other related laws which, inter alia, propose to reorganise the

system of regional administrative courts by merging the Vilnius Regional Administrative Court with the Regional Administrative Court of Regions (by establishing one joint Lithuanian Regional Administrative Court). The initiated amendments aim to address the continuation of the judicial reform launched in 2018, one of the main objectives of which was to equalise the workload and conditions of judges and court staff, to create the premises for a wider specialisation of judges and to increase the expeditiousness of court proceedings.

Draft amendments to the laws were discussed in the Seimas committees in 2021 and deliberations continue in 2022.

It should be noted that the Judicial Council constantly evaluates the efficiency of the judicial system and, within the limits of its competence, makes proposals on possible measures to optimise the courts. In addition, it should be noted that one of the measures for the implementation of the strategic direction 2021-2024 "Increasing the efficiency of the judiciary" approved by the Resolution No. 13P-27(7.1.2) of the Judicial Council of 26 February 2021 includes the analysis of proposals for the optimisation of the court network and proposals for the improvement of the organisational/administrative activities of the courts.

In the event of the migrant crisis in the Republic of Lithuania in 2021, representatives of the Judicial Council and the National Courts Administration actively participated both in the legislative processes initiated with the management of this crisis and in the organisation of inter-institutional meetings to find optimal means of work organisation. Despite the increase in the number of cases before the courts, the organisation of the judiciary has been sufficiently smooth in dealing with migrants' requests/complaints and other issues related to the crisis of illegal migration.

For example, the District Court of Vilnius Region, District Court of Utena and District Court of Alytus took into account the situation in the border between the Republic of Lithuania and the Republic of Belarus in 2021 due to the drastic increase in the number of foreigners crossing the border, which significantly increased the number of the proposals for detention or application of other alternative measures received by the District Court of Vilnius Region since June 2021. Furthermore, the amendments to the Law of the Republic of Lithuania on the Legal Status of Foreigners entered into force on 1 January 2022 and established the rule of alternative jurisdiction in cases concerning the legal status of foreigners assessing the predictable increase in this category of cases in the District Court of Vilnius Region in January-February 2022. In order to ensure the smooth judicial activities in hearing such cases, it has been decided to temporarily harmonise the allocation of the flow of cases to these courts in the cases of the state of war and the state of emergency, as well as in the extreme situation due to the increase in the number of foreigners crossing the border

In such a situation in the country, it was agreed that the District Court of Utena and the District Court of Alytus would temporarily hear cases concerning the legal status of foreigners residing in the Medininkai Foreigners Registration Centre according to the established timetable for hearing such cases – two days a week by the District Court of Alytus, three days – by the District Court of Utena. Cases concerning the legal status of foreigners residing in the Pabradė Foreigners Registration Centre are heard by the District Court of Vilnius Region in accordance with the timetable approved by the court.

On the occasion of International Human Rights Day, Lithuanian courts invited representatives of other authorities to discuss the migrant crisis and emerging challenges. Judges, representatives of the Seimas, the Ministry of the Interior, the Ministry of Justice, the State Border Guard Service, the

Migration Department and other institutions took part in the discussion organised on the initiative of the Lithuanian Judicial Council.

Sub-paragraph 8.3.4 of the plan for the implementation of the provisions of the program of the eighteenth Government of the Republic of Lithuania, approved by Resolution No. 155 of the Government of the Republic of Lithuania of 10 March 2021 provides for the action “To adopt a Government decision on enhancing the efficiency of judicial proceedings by reviewing the functions of courts non pertaining to dispute resolution, assessing the possibilities of developing pre-trial dispute resolution in independent collegial institutions, legal and practical possibilities to transfer these functions to other entities authorised by the state”. The Seimas of the Republic of Lithuania has registered draft amendments to the Civil Code of the Republic of Lithuania and other laws (registration No. XIIP-5059 - XIIP-5065), which aim to relinquish certain functions not typical of courts. The Ministry of Justice, after conducting an additional assessment of non-judicial functions of the courts (i.e. functions not typical of courts), submitted additional proposals for the waiver of certain non-judicial functions, regarding the expediency of which the Judicial Council delivered its opinion in its letter No. 36P-116- (7.1. 10.) on 14 September 2021.

A discussion “How to Protect a Child” took place on 1 June 2021, with the participation of representatives of Lithuanian and Norwegian judiciary, police, prosecutor’s office, Lithuanian legislature and executive, international organizations. On the International Children’s Day, questions related to what can be done about children who have experienced violence in their immediate environment and been involved in legal proceedings were discussed.

The Judicial Council, in response to the debate in the national media on the assessment of the individual’s right to privacy and the public’s right to know in case-law, as well as realizing the need to reconcile freedom of expression and information, including journalistic, with the right to the protection of personal data, organized a discussion “Privacy Limits in the Context of the General Data Protection Regulation”. The discussion took place on 2 December 2021, with the participation of European Data Protection Officer, representatives of the judiciary, media, academic community, legislature and executive, institutions formulating and implementing personal data protection policy in the Republic of Lithuania. During the discussion problematic aspects of the application of the General Data Protection Regulation in practice have been discussed, i.e. the provision of personal information to the media representatives, the collection and publication of such information, limits of public person’s right to privacy, the competence of supervisory authorities and courts to protect potentially violated data subjects’ rights. This event was broadcast live by Lithuanian courts on their YouTube channel.

The Raad voor Rechtspraak of the Netherlands reported that the relationship between the Council with the other state powers is generally to be described as good in the Netherlands. An example of this is the cabinet wanting to introduce Covid pass in several sectors including the judiciary. However, after an advice on this new legislation by the Council the current proposal explicitly excludes the judiciary from being obliged to ask workers and visitors for a Covid pass. One of the Council’s tasks is to give legislative advice to the government and the Council is considered as a serious partner in that.

In 2021 no real Covid related challenges took place that had an effect on the independence of the judiciary. Court buildings stayed open and cases went on, unlike at the beginning of the Covid-19 pandemic in March 2020, when all court buildings closed for a while. Judges can -within the boundaries

of the temporary Covid legislation- decide for themselves whether or not to conduct a hearing remotely or in person.

The 2021 was the year of the childcare allowance case. It came out that over the years thousands of parents were unjustly accused of fraud, causing many families to go into debt by ordering them to repay childcare allowances. In this case government, parliament as well as the judiciary were criticized to uphold a system in which laws and judgments were too strict for citizens to achieve justice. The Venice Commissions report on the matter suggests that some interlocutors have mentioned that Dutch courts were generally too deferential to Parliament.

In reaction a working group of Dutch administrative judges has reflected on the affair in [a report \(only in Dutch\)](#). One of the conclusions is that when a judge from second instance interprets the law in a certain way, the judges of lower instances should feel more free to go against this when legal protection is in jeopardy. In order to avoid injustice in the future legal protection of citizens should be more important than unity of law and legal certainty according to the working group.

The High Judicial Council of Portugal held a very high level of institutional cooperation, collaborating, whenever called upon to do so, with the Government and Parliament, in particular by issuing opinions on legal diplomas relating to judicial organization and statutory matters and, in general, on matters relating to the administration of justice. The JHC has been consulted with regard to the measures adopted to combat the pandemic that covered the activity of the courts, which did not result in any limitation to independence of the judiciary.

The Consiliul Superior al Magistraturii of Romania provided the following information:

The Superior Council of Magistracy has constantly underlined the importance to maintain an honest dialogue with all the other institutions and state powers, so that the principle of loyal cooperation would prevail. Therefore, an efficient communication and professional collaboration should be constantly promoted. In this regard the Council has promoted a series of measures designed to enhance the institutional cooperation. There should be mentioned **the project "TAEJ - Transparency, accessibility and legal education by improving the public communication at the level of the Judiciary"**, SIPOCA 454 / MySMIS code 118765 (financed under EU funds and implemented by the Superior Council of Magistracy in partnership with the National School of Clerks, the Judicial Inspection, the Prosecutor's Office attached to the High Court of Cassation and Justice, the National Institute of Magistracy and the Ministry of Justice). The Project responds to the Council's constant concern and involvement towards a better communication within the Judiciary and of the Judiciary with media, civil society and with the other state powers as, among other objectives¹⁰ and foreseen

¹⁰ I) public communication improved and addressed in a unitary manner at the level of the entire judicial system; II) increased level of access to justice through the facilitation of the access to information regarding the judicial system and the services provided to the public and III) obtaining a high level of information and awareness of the public's rights and of the judicial education of the public, with an aim to improve the access to justice and the quality of the services provided by the judicial system.

results, a series of guidelines¹¹ have been elaborated, one of them tackling the relation with the other branches of power. The guideline for good practices in relation with Legislative and Executive powers has been developed in consultation with representatives of these state powers and is currently under evaluation to be bilaterally approved.

As guarantor of the independence of the Judiciary, the Superior Council of Magistracy is entitled to use a legal mechanism for defending both the judicial system as well as the individual judges and prosecutors when the independence, impartiality and professional reputation may be affected, circumstances that may thereof affect even the perception of the general public towards the independence of the Judiciary.

Relevant statistics in this matter, for the referred period, are presented below:

January 1 st 2021 – December 22 nd 2021 (Plenum, Section for Judges, Section for Prosecutors)			
TOTAL decisions	Defending the independence of the judiciary: PLENUM	Defending professional reputation, independence and impartiality: SECTION FOR JUDGES	Defending professional reputation, independence and impartiality: SECTION FOR PROSECUTORS
36 out of which:	7, out of which:	14, out of which:	15, out of which:
Admitted: 23 Dismissed: 10 Withdrawals: 1 Waived: 2	Admitted: 5 Dismissed: 2	Admitted: 7 Dismissed: 5 Withdrawals: 1 Waived: 1	Admitted: 11 Dismissed: 3 Waived: 1

Referring to the exceptional context of the COVID 19 pandemic situation and to its evolution in Romania, the Superior Council of Magistracy has been expressing a constant concern for maintaining in safe parameters the health of the staff within courts and prosecution offices and of the court users as well, as mentioned in our previous report; therefore SCM has adopted a series of decisions in order

¹¹

- *Guideline of good practices on the relationship of the judiciary with the media* - <https://drive.google.com/file/d/1GmukVd2QiznGDG5HzoD0GQWJ7xnxL1pu/view>;
- *Guideline of good practices on the relationship of the judicial system with other legal professions, especially lawyers* - <https://drive.google.com/file/d/10Fkk1Txdw2H4CGgO-HUIqDoOpgZPSA6F/view>;
- *Guideline of good practices on the activity of judges and prosecutors in social media / online platforms* <https://drive.google.com/file/d/1GrA79IUKNShNKq3T95WTimWLLMHlpez6/view>.

to insure a proper unitary implementation of the preventive measures as well as guarantees in this matter for all those accessing the judiciary. The aim of these measures was to ensure both a safe and a proper access to justice. The measures emplaced last year have been applied all along the current year as well in accordance to the evolution of the pandemic.

On April 29th 2021, the **Law no. 114/2021** on several measures for the Judiciary in the context of the COVID 19 pandemic situation, was published in the Official Gazette no. 457.

The normative act regulates temporary measures for the Judiciary, to be enforced during the alert state as well as during a period of 30 days following the alert state, in order to allow, on the one hand, an adequate protection in what concerns the judicial activities in the context of the COVID-19 pandemic, safeguarding the right to health, the right to physical integrity, the right to life, and on the other hand to allow carrying on in optimal circumstances the activity of the Judiciary. There should be mentioned that the initial draft law of the current Law no. 114/2021 has been positively endorsed with observations by the SCM Plenum decision no. 222/2021.

The **Council of Slovakia, Sudna Rada** emphasised that the relations with the other State powers is regulated by the principle of loyal and sincere cooperation according to which the Council collaborates closely and predominantly with the Ministry of Justice.

Sodni Svet, the Judicial Council of Slovenia reported that the financial resources in the 2022 budget have been cut by 1,2 % for Judiciary as well which raises huge concerns and can be deemed as a challenge regarding the independence of the judiciary. It must be explained that amendments for 2022 budget were agreed upon with Ministry for Finance in June 2021. However Slovenian Government made unilateral decision regarding cuts for the funding of the Council and the judiciary in October 2021. With the exception regarding the budget amendments for 2022 the relations of the Council with other State powers have been *comme il faut* according to the Constitution and other legislation. Most procedures and other communication were completed in a democratic way.

The Consejo General del Poder Judicial of Spain noticed that in 2021 important legal reforms affecting the Judiciary have not been submitted for an opinion to the Council for the Judiciary, what is in breach of the European standards (opinion CCJE nº 10, paragraph 87 and opinion nº 24 and ENCJ report 2010-2011 on Councils for the Judiciary). Nevertheless it has to be underlined that the law only foresees that draft laws are bound to search this opinion if the draft is set up by the Government, but not if it comes from the Parliament itself. This was the case, e.g., with the Organic Law 4/2021, regulating the competences of the Council for the Judiciary acting *ad interim* or the Organic Law 6/2021, regulating the new organisations of Civil Registries. On the other hand, other reforms established by royal decree-laws or amendments introduced in the Senate during the legislative procedure are not bound to be consulted with the Council for the Judiciary. During 2021 two important reforms affecting the Judiciary were established in this way: the Royal Decree-Law 8/2021, of 4th May, introducing jurisdictional reforms, and an amendment introduced in the Organic Law 7/2021 that modifies the data protection regime regarding judicial files.

As regards the effects of the Covid-19 pandemic on the Judiciary there has been no challenge to the judicial independence in Spain. Throughout the crisis the Spanish General Council for the Judiciary has cooperated effectively and in coordination with the other State powers in order to take the necessary measures within the framework of their respective competences and the existing remedies in law against excessive powers of Government were not restricted and that the measures taken at all times were aimed at ensuring the rule of law, protecting it in situations of extreme difficulty by organizing the regular functioning of courts.

C. Challenges concerning the Council for the Judiciary identified in the 2021 Rule of Law report – the way forward

In general, a number of Councils for the Judiciary (National Courts Administration of Finland, Greek Administrative Council, The Court Service of Ireland, CPGA Italy) reported that there were no challenges identified concerning the Council for the Judiciary identified in the 2021 Rule of Law report that have been addressed by the other State Powers or by the Council.

The Conseil Supérieur de la Justice of Belgium (CSJ) stated that the availability of sufficient human resources, the need to improve the level of digitalisation and the lack of reliable and detailed statistics, mentioned in the previous Rule of Law report on Belgium, continue to pose a challenge for the justice system.

As mentioned above, the current minister has announced serious efforts to recruit more judges, prosecutors and staff.

Digitalisation also remains one of his priorities and steps have certainly been made, partially in reaction to the Covid crisis (see above mentioned audit report of HCJ on covid crisis) and continue to be made. For example: <https://www.teamjustitie.be/2021/11/25/voor-het-eerst-kunnen-burgers-vonnis-online-raadplegen/>

The auto-management of the judiciary is still in progress. The College of Courts and the College of Public Prosecution will receive more resources. Work of the Colleges on the workload measurement continues, but it seems still far from finished. A decent and accepted workload measurement system is a prerequisite for putting an end to the long lasting discussion on the need of resources for the judiciary and for allowing the Colleges to distribute these resources fairly among the different entities. Together with the Advisory Council of Magistrates, the HCJ has started developing the “general principles of ethics” for which the Greco Law of 23 March 2019 (entry into force 1/1/2020) has created a legal basis.

Висш съдебен съвет / the Supreme Judicial Council of Bulgaria has already received a request for information from the Ministry of Justice and has presented its input on the actions taken, the progress made and the development of the topics covered by the respective country chapters of the Rule of Law Report, as well as on other significant changes that occurred after January 2021.

Državno sudbeno vijeće (DSV) / The State Judicial Council of Republic of Croatia recalled the importance of a legislative initiative to strengthen the role of the Council in selecting judges (see points A and B). Regarding the situation of alleged violations of impartiality and improper gifts to deciding judges the Council has temporarily suspended the judges involved and there is an ongoing disciplinary

procedure in front of the Council against the judges. Criminal proceedings have also been started against the judges.

The Conseil Supérieur de la Magistrature of France stressed that the long-standing constitutional reform to strengthen the Council's competences, mentioned in the 2021 Rule of Law report, has not progressed further in 2021.

The Judicial Council of Latvia pointed that the budget 2022 provides that the Secretariat of the Judicial Council is added by two employees. The vacancy for one of the posts is currently open until February 1, 2022.

The Judicial Council of Lithuania referred to the answers given to the previous questions.

The Raad voor Rechtspraak of the Netherlands acknowledged that the appointment procedure of members of the board of the courts has been altered. Discussions about the appointment procedure of the Members of the Council are still ongoing.

In addition, following the elections in March 2021, after months of negotiations, the new coalition agreement was presented in December 2021. The Council for the judiciary was happy to learn that much attention is paid to strengthening the Rule of Law. The judiciary as a whole will receive more funding. Also, the new cabinet wants to increase access to justice by lowering court fees and improvements within the legal aid system are foreseen. Also more attention for ADR initiatives is foreseen as well as the intention to adopt laws were simplicity, and customization is considered more. Furthermore, the new cabinet wants to invest in digitalisation in all sectors.

The High Judicial Council of Portugal provided the following information:

I - Recruitment of technical advisers for Court Offices.

The Judicial High Council (JHC) opened a competition for 54 technical advisors for the 23 District Courts, published in the Official journal on 28 December 2020.

818 applications were received, of which 361 were admitted to competition, covering undergraduate degrees in the fields of legal sciences, accounting and finance, economics and psychology.

At the end of the interviews and after publication of the final ranking list of the candidates, 23 technical advisors were selected, to fulfil 23 positions. They took up their functions on September 1st, 2021, in the Courts of the Districts of Aveiro, Braga, Castelo Branco, Coimbra, Évora, Faro, Leiria, Lisbon, Lisboa Oeste, Madeira, Porto, Porto Este, Santarém, Setúbal, Viana do Castelo, Viseu and Vila Real, mostly with academic training in the field of legal sciences.

The failure of many candidates to meet the requirements of the competition resulted in the admission of fewer assessors than the number of vacancies available.

On 22 October 2021, the JHC opened of a new tender procedure to fill 30 vacant posts, mainly directed to candidates graduated in Accounting or Finance or Economics, despite the existence of four vacancies for holders of a degree in Psychology and two vacancies for law graduates.

The JHC expects that the ongoing procedure will be completed in the first half of 2022, this time with the filling of all the posts put to tender.

II - Draft Amendment to the Regulation on Declarative Obligations

On 15 March 2021, Regulation (extract) 226/2021 (Regulation on Declarative Obligations) was published after being unanimously approved at the Plenary Session of the Judicial High Council of 12 January 2021.

This law gave effect to the rules applicable to judges resulting from Law 52/2019 of 31 July 2019 (according to the wording introduced by Law 69/2020, of 9 November) which regulates the exercise of duties by political office holders and senior public positions, their declaratory obligations and the respective penalties system.

The Portuguese Judges Trade Union (*Associação Sindical dos Juizes Portugueses*) brought an interim administrative action (case number 15/21.5YFLSB-A) before the Supreme Court of Justice for suspension of the effectiveness of Regulation (extract) 226/2021.

On 14 July 2021, the Supreme Court of Justice delivered judgment upholding the action in part and ordering the JHC to issue rules to remedy the illegalities found (<http://www.dgsi.pt/istj.nsf/954f0ce6ad9dd8b980256b5f003fa814/ebeabdbdef0753f980258717003718d3?OpenDocument>).

Considering the partial merits of the action, the obligation to issue a single declaration by judicial judges has ceased until a new Regulation of Declarative Obligations is issued and published in the official journal.

The JHC reported that all declarations made by judicial judges in the meantime would be devoid of effect and that they would be removed from the JHC databases.

In order to comply with the provisions of the judgment of the Supreme Court of Justice, a Draft Amendment to the Regulation on Declarative Obligations was prepared, which was submitted for public consultation on November 9th, 2021 (https://www.csm.org.pt/wp-content/uploads/2021/11/Div-220_2021-Projeto-de-Alteracao-do-Regulamento-das-Obrigacoes-Declarativas-Consulta-Publica.pdf).

The new Regulation on Declarative Obligations will be subject to discussion and approval on the next Plenary Session of the JHC of February 8th, 2022.

The Consiliul Superior al Magistraturii of Romania reaffirms the constant concern and involvement in strengthening the independence of the judiciary and of the statute of judges and prosecutors, in optimizing the organizing and functioning of the courts and of the prosecutors' offices and in fostering the transparency and the adequate institutional communication, as well offering a substantial professional support for the legislative process regarding the justice laws, as main objectives and challenges for the judiciary, as well considering the findings of the previous Rule of Law Report.

As recent developments in several of the issues underlined in the Report there should be mentioned the legislative amendments taken for unblocking the procedure for recruiting magistrates as well as the positive point of view issued by the Council to the request of the Romanian Senate towards repealing the provisions regarding magistrates' retirement with a seniority between 20-25 years, and

coming back to the previous provisions before the modification (these aspects have been mentioned above at point 1).

There should be mentioned, as well, that a series of laws have been adopted considering the initiatives, the opinions of the Council (for example, as mentioned above the Law no. 192/2021, the Law no. 114/2021 etc.). On the other hand, there should be noted situations where the SCM endorsements have been ignored when the political will was in this regard (for example, the former minister of justice Stelian Ion -when ignoring the negative endorsement of the SCM, with the consequence of resumption the parliamentary procedure due to the fact that the amendments proposed by this minister have been declared unconstitutional - the amendments referred to reducing the needed seniority for access to specialized prosecution units -, with the consequence of maintaining blocked, at that time, the transfers of judges and prosecutors, due to the fact that both provisions are regulated by the same law, the Law no. 303/2004).

Moreover, concerning the amendments of the justice laws, to be promoted through a legislative package by the Ministry of Justice, as mentioned before, the Council believes in an honest and fruitful collaboration in this regard, judges and prosecutors countrywide shall be consulted, as same as always and the points of view shall be analysed within the Council and shall be made available for the decision makers.

Sodni Svet, the Judicial Council of Slovenia stressed that the Council has immediately addressed Issues regarding 2022 budget amendments to the National Assembly, Minister of Justice Mr. Marjan Dikaučič and President of Slovenia Mr. Borut Pahor. Minister of Justice understands and supports the efforts and needs of the Council however it is the Government that decides in the end. The President of Slovenia notified the public and the government about the issue of adequate financial resources for the Council as well. All the efforts until now have been unsuccessful. It must be pointed out that the agreement with Supreme Court of Slovenia has been reached in December 2021 regarding the salaries of assigned judges which will probably resolve a part of the difficult financial situation for the Council. The terms and conditions set forth in this agreement shall take effect and be binding upon prior approval by Slovenian Government. This procedure is expected to be concluded by the end of January 2022.

The Consejo General del Poder Judicial of Spain informed that the most important challenge regarding the Council for the Judiciary identified in the 2021 Rule of Law report, i.e. the lack of renewal of the Council, has not been addressed, since the new members of the Council have not been appointed yet.