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Contribution du CCBE au rapport de 2025 sur l'état de droit

27/02/2025

RÉSUMÉ

Le Conseil des barreaux européens (CCBE) représente les barreaux de 46 pays, soit plus d'un million d'avocats européens.

Le CCBE se félicite que le rapport de 2024 sur l'état de droit reconnaisse explicitement le rôle clé que jouent les avocats et les barreaux dans la garantie de l'accès à la justice en assurant la protection des droits fondamentaux, y compris le droit à un procès équitable. Dans son rapport, la Commission européenne a également mis en évidence le fait qu'un système de justice efficace nécessite que les avocats exercent librement leurs activités de conseil et de représentation.

À cet égard, le CCBE a préparé sa contribution au rapport de la Commission européenne sur l'état de droit par l'intermédiaire de son réseau de points de contact nationaux chargés de suivre les questions nationales liées à l'état de droit et d'en rendre compte, ainsi que de faciliter et de renforcer la participation des barreaux nationaux à la contribution du CCBE au rapport sur l'état de droit.

Dans sa contribution au rapport de 2025 sur l'état de droit, le CCBE dresse la liste de ses actions, activités et documents politiques relatifs à différents aspects liés à l'état de droit. Cette contribution est accompagnée d'informations reçues des barreaux nationaux des 27 États membres de l'UE et de quatre pays candidats à l'adhésion à l'UE figurant dans le rapport de 2024 sur l'état de droit (Albanie, Macédoine du Nord, Monténégro et Serbie) et énumère différentes évolutions en matière d'état de droit au niveau national, en particulier celles qui posent un risque et pourraient porter atteinte à l'indépendance des avocats et des barreaux ainsi qu'à l'accès à la justice.

De nombreux barreaux nationaux ont signalé des évolutions et indiqué certaines tendances qui constituent un risque envers l'indépendance de la profession d'avocat et le fonctionnement du système de justice dans un pays donné. Ils ont également donné, dans le cadre de cette évaluation, des exemples positifs ainsi que des bonnes pratiques. Des cas précis, des exemples concrets et des tendances sont énumérés et expliqués en détail dans les rapports des barreaux nationaux figurant dans les annexes 1 et 2 de la présente contribution. Dans la conclusion du document, seuls quelques exemples et évolutions des systèmes de justice de pays concrets sont brièvement évoqués.

Par exemple, les membres du CCBE ont fait part des préoccupations et des tendances présentant un risque pour l'indépendance de la profession d'avocat et le fonctionnement du système de justice dans les domaines suivants :

- la confidentialité des communications entre l'avocat et son client ;
- les menaces ou le harcèlement physiques, en ligne ou judiciaires à l'encontre des avocats ;
- les dispositions juridiques et les politiques qui pourraient avoir une influence négative sur l'indépendance du barreau et des avocats ;
- la coopération entre le barreau national, le pouvoir exécutif et les autorités de contrôle ;
- la mise en œuvre de la jurisprudence des tribunaux nationaux, européens et internationaux ;
- la perception du système judiciaire par le grand public ;
- l'aide juridique ;
- la numérisation de la justice ;
- d'autres évolutions nationales importantes dans divers domaines.

Des informations plus complètes et détaillées sont disponibles dans l'annexe de la contribution du CCBE au rapport de 2025 sur l'état de droit.

Introduction

Le Conseil des barreaux européens (CCBE) représente les barreaux de 46 pays, soit plus d'un million d'avocats européens.
La régulation de la profession, la défense de l'état de droit, des droits humains et des valeurs démocratiques sont les missions essentielles du CCBE. Les domaines de préoccupation principaux comprennent le droit d'accès à la justice, le développement de l'état de droit, le respect des droits de la défense et l'efficacité du système judiciaire, qui sont des valeurs fondamentales de la profession.
Grâce à ces informations, le CCBE soumet sa contribution au rapport de 2025 sur l'état de droit de la Commission européenne.

Présentation du rapport de 2024 sur l'état de droit aux membres du CCBE

La Commission européenne a présenté le Rapport 2024 sur l'état de droit lors de la réunion du comité permanent du CCBE en octobre 2024. Les membres du CCBE ont eu la possibilité de poser des questions et d'exprimer leurs remarques concernant le rapport sur l'état de droit et les recommandations aux États membres.

Le CCBE se félicite de la reconnaissance explicite dans le rapport sur l'état de droit que « les avocats et les barreaux jouent un rôle essentiel pour garantir l'accès à la justice et veiller à la protection des droits fondamentaux, notamment le droit à un procès équitable »[1]. Le rapport sur l'état de droit indique également : « Un système de justice efficace exige que les avocats soient libres de poursuivre leurs activités de conseil et de représentation de leurs clients ».

En outre, des exemples concrets sur les évolutions dans certains pays en matière d'assistance juridique, y compris l'aide juridique, ainsi que des cas liés à la confidentialité entre le client et l'avocat ont été répertoriés dans ce rapport. Les rapports par pays fournissent par ailleurs une analyse et une explication plus détaillées des évolutions liées à la profession d'avocat et aux barreaux nationaux dans différents pays.

Actions pertinentes du CCBE en 2024

Le comité permanent du CCBE a adopté la Contribution du CCBE au rapport de 2024 sur l'état de droit en février 2024 en réponse à l'invitation et à la consultation publique lancées par la Commission européenne. Dans sa contribution, le CCBE a mis en évidence les évolutions et préoccupations les plus importantes en matière d'état de droit concernant les professionnels du droit, ainsi que certaines tendances susceptibles de présenter un risque pour l'indépendance des avocats et des barreaux, telles qu'identifiées par ses membres concernant des États membres particuliers.

En outre, le CCBE a suivi les évolutions en la matière dans différents pays, y compris en marge des travaux d'un réseau de points de contact du CCBE sur l'état de droit qui a été créé en 2023 pour suivre et rapporter au CCBE les questions nationales pertinentes liées à l'état de droit au cours de l'année, ainsi que pour faciliter et renforcer la contribution des barreaux nationaux au projet de contribution du CCBE au rapport sur l'état de droit de la Commission européenne.

Les actions spécifiques du CCBE entreprises en 2024 concernant divers domaines du droit sont décrites ci-dessous. Des informations supplémentaires sur les activités et les documents stratégiques du CCBE sont disponibles sur le site du CCBE et, plus particulièrement, dans le rapport annuel de 2024 du CCBE.

[1] Au chapitre 3.1. sur les systèmes de justice du rapport de 2024 sur l'état de droit (voir page 16).

Manifeste du CCBE

Le CCBE a lancé en mars 2024 son Manifeste avant les élections européennes de 2024 et à la lumière de la Commission européenne à venir. Dans son manifeste, le CCBE a exhorté les institutions de l'UE à défendre un système judiciaire équitable et efficace qui respecte les principes de la justice, les droits fondamentaux et l'état de droit. À cette fin, le CCBE a exhorté les décideurs politiques de l'UE à donner la priorité aux cinq points clés suivants dans leurs agendas politiques :

1. une Europe qui défend l'état de droit, les droits fondamentaux et la démocratie, et qui préserve le rôle d'une profession d'avocat indépendante dans la défense de ces valeurs ;
2. le besoin de garantir que le processus législatif européen est guidé par des normes qui ont une incidence positive sur l'administration de la justice ;
3. des ressources adéquates pour le système judiciaire et un système d'aide juridique efficace et doté de ressources suffisantes ;
4. une formation complète pour les praticiens de la justice ;
5. la mise en œuvre adéquate des garanties procédurales en matière pénale.

Evénement du CCBE « Maintenir la justice dans une Europe en mutation »

Le 22 novembre 2024, le CCBE a organisé un événement au Parlement européen sur le thème Maintenir la justice dans une Europe en mutation qui a permis de communiquer le soutien du CCBE au nouveau Parlement européen et aux institutions de l'UE au cours de leur future législature. L'événement s'est concentré sur la nécessité pour les institutions européennes de maintenir la justice et la bonne administration de la justice dans une époque de mutation.

Le CCBE a été ravi d'accueillir des représentants de haut niveau de toutes les institutions européennes, ce qui a donné lieu à des discussions fructueuses sur des questions importantes, utiles et de grande portée telles que « la justice en tant qu'infrastructure essentielle : garantir un investissement à long terme dans les tribunaux et les systèmes judiciaires » et « le rôle des institutions européennes et des professionnels du droit dans la lutte contre le recul démocratique et la défense des droits fondamentaux ».

Convention sur la protection de la profession d'avocat

En 2024, le CCBE a continué, en tant qu'observateur, à contribuer activement aux travaux du Comité d'experts sur la protection des avocats (CJ-AV) du Conseil de l'Europe qui a été chargé de préparer la future Convention sur la protection de la profession d'avocat. Le CCBE soutient fermement l'adoption de cet instrument juridique contraignant qu'il considère comme essentiel pour répondre aux attaques et défis croissants auxquels la profession d'avocat est confrontée et qui ont pour conséquence d'entraver directement le respect de l'état de droit et l'accès à la justice des justiciables.

Le 19 novembre 2024, une étape cruciale a été franchie en vue de son adoption. Le Comité européen de coopération juridique (CDCJ) du Conseil de l'Europe a adopté le texte de la Convention européenne sur la protection de la profession d'avocat. Le 30 janvier 2025, l'Assemblée parlementaire du Conseil de l'Europe a officiellement approuvé l'avis soutenant l'adoption de la Convention par le Comité des ministres. L'adoption de la Convention par le Comité des ministres est actuellement prévue pendant le premier semestre de 2025 et devrait ensuite être ouverte à la signature. Plus de détails sur la Convention sont disponibles ici et ici.

Rapport du CCBE sur les comportements menaçants et les agressions envers les avocats

Le 10 décembre 2024, à l'occasion de la Journée internationale des droits de l'homme, le CCBE a publié son premier rapport sur les comportements menaçants et les agressions envers les avocats en Europe.

Au total, près de 15 000 avocats de 18 pays ont répondu à une enquête du CCBE qui a servi de base au rapport. En n'abordant qu'un nombre sélectionné de questions dans son rapport de synthèse, le CCBE a voulu donner un aperçu analytique de certains résultats de l'enquête et illustrer les effets de ces menaces et agressions sur la profession d'avocat.

Les conclusions de l'enquête du CCBE offrent des informations importantes sur les expériences des avocats à travers l'Europe en matière d'agression, de harcèlement et de comportements menaçants. Les données indiquent que ces incidents constituent une préoccupation importante, affectant à la fois la vie professionnelle et personnelle des avocats. Les agressions verbales, le harcèlement et les menaces sont les formes de comportements agressifs les plus fréquemment signalées à l'égard des avocats, même si des agressions physiques, bien que moins fréquentes, ont également été signalées. Un exemple récent de ces menaces alarmantes peut être vu en **France**, où les avocats spécialisés en droit de l'immigration ont été confrontés à de graves intimidations et à du harcèlement. À cet égard, le CCBE a fait part de ses préoccupations dans une lettre adressée aux autorités françaises.

Par conséquent, il est urgent de prendre des mesures pour protéger les avocats et garantir leur rôle fondamental dans la défense de la justice, des droits fondamentaux et de l'état de droit. Dans ce contexte, le CCBE réitère son appel à soutenir l'adoption à venir de la Convention européenne sur la protection de la profession d'avocat (voir ci-dessus).

Rapport de la rapporteuse spéciale des Nations Unies sur l'indépendance des juges et des avocats

Le 5 novembre 2024, le CCBE a publié la réponse au rapport de la rapporteuse spéciale des Nations Unies (UNSR) sur l'indépendance des juges et des avocats « Préserver l'indépendance des systèmes judiciaires face aux menaces actuelles à la démocratie ».

Dans sa réponse, le CCBE a salué le rapport de la rapporteuse spéciale des Nations Unies sur la préservation de l'indépendance des systèmes judiciaires et son insistance sur le rôle essentiel des avocats et des barreaux dans la défense de l'état de droit et des droits individuels. Tout en reconnaissant la valeur des *Community Justice Workers* (CJW) dans l'amélioration de l'accès à la justice, le CCBE a souligné la nécessité de distinguer clairement leur travail de celui des avocats afin de préserver l'indépendance, la qualité des services et les valeurs fondamentales de la profession d'avocat, telles que le secret professionnel. La réponse souligne l'importance d'un financement adéquat de l'aide juridique et met en garde contre le détournement des ressources vers les travailleurs sociaux au détriment de systèmes d'aide juridique solides. Le CCBE a également rappelé la nécessité de respecter la diversité des systèmes juridiques, notamment en ce qui concerne l'indépendance des barreaux dans les États fédéraux, et a appelé à un soutien universel envers la Convention sur la protection de la profession d'avocat.

Lutte contre le blanchiment de capitaux

Depuis 2021, le CCBE suit l'évolution du paquet anti-blanchiment. Au début de l'année 2024, le CCBE a été en contact avec les décideurs de l'UE afin de souligner que l'instauration d'une obligation de supervision au niveau de l'UE en vertu de la nouvelle directive anti-blanchiment devrait être accompagnée de dispositions qui préserveront l'indépendance des barreaux et des avocats. Dans les dernières étapes du processus d'adoption, le CCBE s'est prononcé en faveur de dispositions empêchant l'autorité de supervision des organismes d'autorégulation des avocats d'effectuer des tâches de supervision vis-à-vis des entités obligées ou de décider d'actions de surveillance uniques de ces organismes d'autorégulation vis-à-vis des entités assujetties. En outre, cette autorité doit exercer ses fonctions sans subir d'influence ni d'ingérence politique, gouvernementale ou sectorielle. Depuis l'adoption du paquet, le CCBE analyse les textes finaux et leurs effets sur les barreaux et les avocats, suit les initiatives relatives à leur mise en œuvre et s'est engagé dans des actions visant à sensibiliser les avocats aux nouvelles règles (par l'intermédiaire de webinaires par exemple).

En mai 2024, le CCBE a adopté un document concernant la supervision et les pratiques des barreaux en matière de lutte contre le blanchiment de capitaux, qui vise à présenter les résultats les plus importants qui découlent d'une collecte de données menée par le CCBE auprès de ses membres de 2022 à 2024. Les résultats démontrent que les barreaux s'engagent sérieusement et assument leurs obligations de contrôle dans le cadre de la lutte contre le blanchiment de capitaux. En outre, le présent document formule des recommandations sur les

questions pour lesquelles une marge d'amélioration a été identifiée. Le CCBE espère que ce document facilitera l'échange d'informations entre les barreaux et incitera les membres du CCBE à apprendre les uns des autres.

À plusieurs reprises, le CCBE a observé l'usage du terme « facilitateurs » (*enablers*) en référence aux avocats tombant sous le coup des règles de lutte contre le blanchiment de capitaux ou travaillant dans le domaine de la fiscalité. Le CCBE réitère son avis selon lequel ce terme, qui a une connotation négative, ne devrait pas être utilisé pour décrire l'ensemble de la profession étant donné qu'il risque d'en donner une image fausse et que, s'il est utilisé, il doit être limité à ceux qui commettent des délits.

Stratégie pour le marché unique en 2025

En janvier 2025, le CCBE a répondu à l'appel à propositions de la Commission européenne sur la stratégie pour le marché unique en 2025. Dans sa réponse, le CCBE a indiqué qu'il réaffirmait son engagement à soutenir les initiatives fondées sur des garanties clés qui tiennent compte du rôle essentiel joué par les avocats dans la société. Le CCBE considère les directives avocats comme un cadre adéquat permettant aux avocats de servir facilement leurs clients, y compris les entreprises, de manière transfrontalière ou de s'établir sans bureaucratie inutile dans n'importe quel État membre s'ils le souhaitent. Les directives avocats sont un exemple de législation européenne adéquate servant des objectifs d'intérêt public au sens large, efficace et favorable aux PME, offrant un bon équilibre entre les besoins du marché unique et la protection des citoyens, des entreprises et de l'administration de la justice. Le cadre réglementaire spécifique actuel des directives avocats est efficace, non bureaucratique,fonctionne efficacement et ne devrait donc pas faire l'objet de modifications inutiles.

Fiscalité

En 2024, le CCBE a continué à suivre l'adoption de la proposition de directive de la Commission en ce qui concerne les règles de TVA pour l'ère numérique et ses effets possibles sur le secret professionnel. Le CCBE a dialogué avec la Commission pour exposer les problèmes éventuels que l'introduction de la déclaration et de la facturation électroniques pourrait créer pour les avocats et pour obtenir des éclaircissements sur les implications de cette proposition. Le point le plus important est qu'en principe, l'identité du client et de l'avocat et l'existence de leur relation relèvent du secret professionnel et que les avocats ne peuvent pas divulguer en détail le type de services qu'ils fournissent à leurs clients.

En juillet 2024, le CCBE a également soumis sa **réponse à la consultation publique concernant l'évaluation de la directive relative à la coopération administrative (DAC)**. Il a plaidé pour que la disposition relative à la déclaration par les intermédiaires (article 8 bis ter, paragraphe 5) soit revue afin de comporter une obligation pour les États membres de prévoir une dérogation à l'obligation de déclaration pour les personnes soumises au secret professionnel. En outre, les législateurs de l'UE devraient tenir compte de la jurisprudence récente de la Cour de justice concernant la DAC.

Le CCBE a également continué à surveiller la mise en œuvre de la DAC 6 dans divers États membres et après la modification de la DAC à la suite de l'arrêt de la CJUE du 8 décembre 2023 (affaire C-694/20) par lequel la Cour a déclaré que l'obligation de l'avocat d'informer les autres intermédiaires impliqués n'est pas nécessaire et enfreint le droit au respect des communications avec son client.

En ce qui concerne la DAC 6, le CCBE a également suivi le prononcé de l'arrêt dans l'affaire C-623/22 le 29 juillet 2024, étant donné que le CCBE est intervenu dans la procédure au niveau national à l'origine de l'affaire. De manière cruciale, la CJUE a confirmé que « *la confidentialité de la relation entre l'avocat et son client bénéficie d'une protection tout à fait spécifique, qui tient à la position singulière qu'occupe l'avocat au sein de l'organisation judiciaire des États membres ainsi qu'à la mission fondamentale qui lui est confiée et qui est reconnue par tous les États membres » (...) « Une telle conception répond aux traditions juridiques communes aux États membres et se retrouve également dans l'ordre juridique de l'Union ».*

Enfin, le CCBE a pris note du prononcé de l'arrêt dans l'affaire C-432/23, dans lequel il a soutenu le barreau de Luxembourg. Il est important de souligner que l'arrêt a confirmé que les conseils juridiques fournis par un avocat

en matière de droit des sociétés entrent dans le champ d'application de la protection renforcée des échanges entre les avocats et leurs clients. La consultation juridique d'un avocat est concernée, quel que soit le domaine du droit qu'elle concerne, par la protection renforcée de ces informations prévue par l'article 7 de la Charte.

Numérisation de la justice

En 2024, le CCBE a apporté sa contribution au projet de l'Agence des droits fondamentaux de l'Union européenne (FRA) sur la numérisation de la justice et les droits fondamentaux.

Le CCBE a également soumis sa contribution à la sensibilisation informelle des parties prenantes concernant la future feuille de route pour la numérisation de la justice en octobre 2024. Il a notamment souligné que :

- les efforts en matière de justice en ligne doivent respecter et garantir les droits et principes fondamentaux tels qu'ils sont reconnus par la Charte des droits fondamentaux de l'Union européenne et la Convention européenne des droits de l'homme ;
- les systèmes de justice en ligne doivent tenir compte des obligations déontologiques et légales des avocats, qui servent les intérêts de leurs clients et l'état de droit en général ; et
- les systèmes de justice en ligne doivent garantir l'égalité des armes et l'accès à la justice par voie électronique.

Garanties procédurales

En 2024, le CCBE a soumis une réponse à « l'appel à contributions » de la Commission européenne sur la mise en œuvre et l'impact du règlement sur le Parquet européen et sur l'efficacité et l'efficience des pratiques professionnelles du Parquet européen. Dans sa réponse, le CCBE a invité la Commission à prendre en compte les questions relatives à l'accès aux dossiers, les questions relatives aux preuves, l'application uniforme des droits de la défense, les services d'interprétation et de traduction, ainsi que les questions de juridiction compétente.

Aspects déontologiques

En 2024, le CCBE a soumis ses commentaires écrits liés à certains aspects déontologiques dans l'affaire Lutgen c. Luxembourg de la Cour européenne des droits de l'homme (CEDH). Dans sa décision, la Cour a jugé que la condamnation pénale de M. Lutgen pour outrage à magistrat constituait une violation de l'article 10. La Cour a également estimé que le constat de violation constitue en lui-même une satisfaction équitable suffisante pour tout dommage moral subi par le requérant. La protection de la liberté d'expression des avocats a été renforcée sans avoir pour autant été étendue de manière significative par cet arrêt.

Accès aux données pour le maintien de l'ordre et les futurs travaux législatifs

Le CCBE a déjà exprimé ses préoccupations concernant les recommandations et le rapport présentés par le « Groupe de haut niveau (GHN) sur l'accès aux données aux fins d'une répression efficace ». À la lumière de l'objectif général du GHN d'accorder aux autorités répressives un accès maximal aux données à caractère personnel, le CCBE a souligné, avec d'autres parties prenantes, dans une lettre conjointe, les risques importants de surveillance de masse ainsi que les menaces importantes pour la sécurité et la vie privée si ces recommandations servaient de base pour les futures politiques et législations de l'UE. En outre, le CCBE rappelle que plusieurs des mesures envisagées, telles que la conservation étendue des données, « l'accès légitime par défaut », etc. pourraient porter gravement atteinte à la confidentialité des communications entre l'avocat et son client. La protection juridique accordée à ces communications est une garantie importante pour l'exercice effectif d'autres droits fondamentaux, dont le droit à un procès équitable et le droit à la défense.

Migration

En 2024, le CCBE a continué à suivre de près l'adoption du nouveau pacte sur la migration et l'asile et les actions liées à sa mise en œuvre. Dans ses contacts avec la Commission et sa déclaration, le CCBE a exhorté la Commission à s'assurer que les États membres mettent en œuvre le nouveau pacte tout en mettant en place toutes les garanties qu'il contient, y compris l'accès effectif à des avis juridiques gratuits et de haute qualité et à une assistance et une représentation juridiques assurées par des avocats. En ce qui concerne ces droits en particulier, le CCBE a également interpellé les États membres pour qu'ils consultent les barreaux lors de la préparation des plans de mise en œuvre. En outre, le CCBE a souligné que des ressources matérielles et humaines adéquates doivent être fournies afin de garantir l'application effective des garanties procédurales et des droits fondamentaux auxquels toute personne arrivant aux frontières peut prétendre, y compris le droit d'accès à un avocat et à l'aide juridique en cas de besoin.

Le CCBE a également adopté une position sur la proposition de directive établissant des règles minimales pour prévenir et combattre l'aide à l'entrée, au transit et au séjour non autorisés dans l'Union. La proposition risque d'avoir des répercussions sur les avocats fournissant une assistance aux migrants en ayant, par exemple, un effet dissuasif sur eux, ou sur la société civile agissant pour des raisons humanitaires. Par conséquent, les législateurs européens devraient adopter une formulation plus claire dans les dispositions clés de la proposition et inclure une clause de solidarité obligatoire, explicite, sans ambiguïté et de large portée comprenant les avocats.

De manière plus générale, dans la déclaration précitée adoptée en novembre 2024, le CCBE a exprimé sa préoccupation quant aux évolutions récentes et aux actions annoncées de l'UE en matière d'asile. Le CCBE est notamment préoccupé par les « nouvelles voies » ou « solutions innovantes » envisagées (telles que les « centres de retour ») en matière d'asile qui ont fait l'objet de discussions et d'annonces récentes au niveau de l'UE.

Le CCBE souhaite rappeler que dans l'arrêt de principe M.S.S. c. Belgique et Grèce, la Cour européenne des droits de l'homme a considéré que le manque d'informations pour accéder à des organisations proposant des conseils et une orientation juridiques, associé à la pénurie d'avocats inscrits sur la liste établie dans le cadre du système d'aide juridique, peut être un obstacle de nature à entraver l'accès au recours et relève de l'article 13 de la CEDH, en particulier dans le cas des demandeurs d'asile. Compte tenu de ce qui précède, le CCBE craint que l'organisation de centres fermés en dehors des frontières des États membres ne prive en fait les demandeurs d'asile d'un accès effectif à l'information, aux conseils et à la représentation juridique.

En outre, à la lumière des rapports récents, le CCBE juge inacceptable que les avocats qui assistent les migrants et les réfugiés dans le respect de la loi subissent une pression accrue et reçoivent des menaces émanant principalement de groupes d'extrême droite (voir ci-dessus).

Programme de formation des avocats en droit de l’Union

En 2024, le CCBE et la Fondation des avocats européens ont produit et publié un programme de formation des avocats en droit de l’Union dans le cadre du projet BREULAW, cofinancé par l'Union européenne. Ce programme de formation est destiné à être utilisé dans le cadre de la formation initiale ou diplômante des avocats, bien qu'il puisse également être adapté à la formation juridique continue et à l'auto-apprentissage.

Assurance

Les principes clés du CCBE et bonnes pratiques dans la relation entre avocats et assureurs de protection juridique, adoptés en 2024, ont souligné l'importance du principe du libre choix de l'avocat. Ce document visait à garantir que les clients puissent choisir leurs représentants en justice sans influence indue de la part des assureurs afin de préserver l'indépendance et l'intégrité des conseils juridiques et une assistance juridique adéquate. En promouvant ces principes, le CCBE cherche à renforcer la transparence et la confiance dans les relations entre avocats et assureurs, ce qui bénéficie en fin de compte aux clients assurés qui ont demandé une assistance juridique.

Principales conclusions basées sur les contributions des membres du CCBE

Selon les réponses reçues par le CCBE, tous les barreaux nationaux sont indépendants de l'exécutif ou d'autres autorités étatiques dans les États membres de l'UE.

Toutefois, comme indiqué ci-dessous, le CCBE a été informé de quelques cas dans certains pays qui peuvent présenter un risque pour l'indépendance de la profession d'avocat et le fonctionnement du système de justice. L'annexe du présent document comprend les contributions reçues des barreaux nationaux de 27 États membres, ainsi que de barreaux de quatre pays candidats à l'adhésion à l'UE figurant dans le rapport de 2024 de la Commission sur l'état de droit (Albanie, Monténégro, Macédoine du Nord et Serbie). Cette annexe comprend les contributions sur les évolutions pertinentes de l'état de droit dans des pays concrets, avec un accent particulier sur les évolutions qui risquent de porter atteinte à l'indépendance des avocats et des barreaux, à l'accès à la justice, à la qualité de la justice, aux libertés fondamentales, à la démocratie et à l'état de droit. Plusieurs barreaux nationaux ont également fourni des informations et des exemples se référant à des éléments plus larges.

Étant donné que les cas spécifiques, les exemples concrets et les tendances sont énumérés et expliqués en détail dans les rapports des barreaux nationaux figurant dans l'annexe de cette contribution, la conclusion du document ne mentionne brièvement que quelques questions, exemples et évolutions liés à l'indépendance des avocats et des barreaux, ainsi qu'aux systèmes de justice de pays concrets. Il convient donc de consulter les parties concernées de l'annexe pour obtenir des informations plus détaillées et plus complètes.

Confidentialité des communications entre l'avocat et son client

L'obligation de confidentialité de l'avocat sert l'intérêt de l'administration de la justice ainsi que l'intérêt du client. Cette obligation a donc droit à une protection spéciale de la part de l'État. Malheureusement, d'après les rapports reçus de différents barreaux, cette protection n'est pas toujours assurée dans la pratique. Plus de la moitié des barreaux n'ont pas signalé de cas de violation ou de non-respect de la confidentialité des communications entre l'avocat et son client, et n'ont pas non plus noté d'évolution politique ou législative violant ce principe en 2024. Cependant, plusieurs barreaux (par exemple l'Allemagne, l'Autriche, la Belgique, Chypre, la Finlande, la France, la Lituanie, les Pays-Bas, la Pologne et la Tchéquie) ont fourni des exemples explicites ou partagé des propositions d'améliorations nécessaires dans leur pays respectif concernant les garanties de confidentialité des communications entre l'avocat et son client.

Les barreaux belges ont fait part de leurs préoccupations quant au fait que les juges d'instruction ont le pouvoir de décider si et dans quelle mesure les communications entre un avocat et son client doivent rester confidentielles, parfois sans que le bâtonnier local ne soit impliqué dans l'évaluation. En outre, le même juge d'instruction est souvent responsable du traitement de l'affaire en question.

Le barreau chypriote a exprimé ses préoccupations quant aux risques potentiels pour son indépendance en raison des efforts législatifs en cours pour établir une autorité nationale de lutte contre le blanchiment de capitaux. Des préoccupations similaires concernant la loi sur le blanchiment de capitaux ont également été exprimées par des membres belges.

Le barreau allemand a signalé l'absence d'un ensemble cohérent et précis de règles nationales et des incohérences dans les protections contre la saisie de preuves pour les avocats qui n'agissent pas en tant qu'avocats de la défense. En outre, il a signalé des risques pour la confidentialité des relations entre l'avocat et son client au niveau de l'UE en raison de la législation sur le blanchiment de capitaux et de la mise en œuvre par l'Allemagne de la sixième directive sur la coopération administrative (DAC 6). Le barreau slovène a également fait part de ses préoccupations quant au rôle de l'autorité nationale de lutte contre le blanchiment de capitaux à l'égard des avocats.

Le barreau français a mis en garde contre les effets juridiques négatifs d'une loi initialement instaurée pour protéger le secret professionnel mais qui a plutôt créé de la confusion et de l'insécurité juridique. Il a également souligné les pressions administratives croissantes qui pèsent sur la profession.

Le barreau lituanien a signalé des problèmes liés à la protection inadéquate des copies numériques des ordinateurs et autres appareils de communication des avocats. Ils ont également fait part de leurs préoccupations concernant les enregistrements des interactions des avocats avec leurs clients dans les centres de détention et les perquisitions d'avocats (ou de membres de leur famille) fondées sur des justifications vagues.

Parmi les autres évolutions, le barreau tchèque a mis en avant un amendement à la loi sur la profession d'avocat qui est en phase finale de procédure législative et comprend une clause renforçant la confidentialité des informations dans la pratique juridique. Un champ d'application plus large du secret professionnel est instauré pour protéger la confidentialité des informations. Par conséquent, le client pourra invoquer la confidentialité même si l'information ne relève pas du secret professionnel en vertu de sa portée en droit continental (par exemple, si l'information est divulguée à un tiers). Toute personne qui obtient des informations marquées comme confidentielles a le devoir de les traiter comme telles.

Le barreau néerlandais a exprimé ses préoccupations concernant les amendements proposés à la loi sur les principes pénitentiaires qui introduiraient une surveillance visuelle lors des visites des avocats à leurs clients dans l’établissement pénitentiaire Vught et dans des unités de petite taille sous surveillance intensive. D'autres propositions d'interpellations prévoient de contraindre le nombre d'avocats autorisés dans ces établissements de haute sécurité à un maximum de deux et, dans certains cas, de limiter les appels téléphoniques des avocats en fonction de leur localisation.

Le barreau polonais a souligné les problèmes de confidentialité auxquels sont confrontés les avocats qui postulent à des postes judiciaires étant donné que la procédure des concours exige qu'ils soumettent des exemples d'affaires passées et des avis juridiques non anonymisés, qui contiennent des informations confidentielles.

Malheureusement, il n'y a pas eu d'évolution positive concernant les problèmes précédemment identifiés par le barreau finlandais en rapport avec la loi nationale sur le registre de transparence. Cette loi impose également des obligations de déclaration aux avocats, les obligeant à divulguer l'existence de relations avec leurs clients sans le consentement de ces derniers dans certains cas.

En Autriche, selon le barreau, il est encore nécessaire d'agir en ce qui concerne la nouvelle réglementation relative à la saisie des données/le support de données et à leur analyse. Il y a eu un premier amendement de la loi existante, mais les exigences d'un arrêt de la Cour constitutionnelle n'ont pas été suffisamment prises en compte par la réforme. Plus particulièrement, une séparation claire en termes de personnel et d'organisation entre le traitement et l'évaluation des données saisies est nécessaire. Cette lacune pourrait également affecter le travail des avocats.

Plusieurs barreaux ont fait état de décisions de justice pertinentes renforçant la confidentialité entre l'avocat et son client. Ce fut le cas pour le barreau de Chypre.

Le barreau danois a évoqué une affaire d'enregistrements injustifiés de conversations téléphoniques entre des avocats et des détenus. Le barreau français a cité un arrêt national inquiétant dans lequel la condamnation d'un justiciable a été confirmée sur le principe d'écoutes téléphoniques de ses conversations avec son avocat.

Le barreau estonien a souligné une décision de justice reconnaissant une grave atteinte à la vie privée dans le cadre de la surveillance et de la collecte de données sur un avocat. Le tribunal a également reconnu que les lois estoniennes sur le secret professionnel des avocats étaient insuffisantes. À ce sujet, le barreau estonien a également exprimé l’avis que la loi doit être amendée de toute urgence afin de renforcer les garanties dont disposent les avocats.

Le barreau luxembourgeois a fait référence à des décisions de tribunaux nationaux affirmant que les avocats peuvent valablement refuser des demandes d'information de la part des autorités fiscales afin de préserver la confidentialité.

Des membres belges ont cité une référence à la décision de la Cour de justice concernant la DAC 6, une décision qui était en partie basée sur les appels des barreaux belges. La Cour de justice a reconnu le rôle unique des avocats et a souligné que leur secret professionnel nécessitait des protections plus fortes que celles accordées à d'autres professions, telles que les comptables, les notaires ou les conseillers fiscaux.

Le barreau néerlandais a fait état d'un arrêt récent de la Cour suprême nationale sur le secret professionnel. En réponse, le barreau s'engage avec diverses parties prenantes et le pouvoir judiciaire pour sauvegarder ce privilège. Il a également partagé les résultats d'une étude sur l'utilisation d'outils de communication extra-sécurisés par les avocats. Un examen plus approfondi des implications techniques et juridiques de ces outils est prévu.

En ce qui concerne les informations reçues des barreaux des quatre pays candidats à l'adhésion à l'UE, le barreau albanais a signalé diverses violations du principe de confidentialité, telles que la présence de caméras équipées de micros dans les espaces où les avocats rencontrent leurs clients. En outre, les barreaux serbe et monténégrin ont fait part de leurs préoccupations concernant la surveillance téléphonique non autorisée visant les avocats.

Menaces ou harcèlement à l'encontre d'avocats dans l'exercice de leurs fonctions, y compris les mesures préventives prises par le barreau

La grande majorité des barreaux a fait référence aux résultats d'une enquête menée par le CCBE (voir la partie principale à la page 3).

En outre, quelques barreaux ont rapporté des cas extraordinaires d'attaques contre des avocats. Par exemple, le barreau lituanien a fait part d'une affaire choquante dans laquelle un avocat a été tué alors qu'il assistait à une procédure d'expulsion autorisée par le tribunal. La *Law Society of Ireland* a fait état d'une augmentation des menaces à l'encontre des avocats, ainsi que de cas spécifiques d'attaques contre des avocats. Le barreau suédois a souligné l'agression récente d'une avocate à son domicile en raison de ses activités professionnelles.

Par ailleurs, le barreau néerlandais a fait part de ses inquiétudes quant à l'augmentation des crimes numériques ciblant les avocats, notamment les attaques d'hameçonnage, de logiciels malveillants et de rançongiciels. Il a également fait référence aux résultats d'une enquête menée sur ce sujet.

Entre autres préoccupations, le barreau portugais a fait état de restrictions imposées aux avocats qui exercent dans des lieux spécifiques, tels que les services frontaliers nationaux, les bureaux d'enregistrement et les autorités fiscales.

Le barreau luxembourgeois a fourni des informations sur l'affaire Lutgen c. Luxembourg devant la Cour européenne des droits de l'homme (CEDH). La CEDH a jugé que le Luxembourg avait violé l'article 10 de la Convention européenne des droits de l'homme, qui protège la liberté d'expression. Dans ce cas particulier, l'arrêt a confirmé le droit d'un avocat à la liberté d'expression. De plus amples détails sur cette affaire figurent dans le chapitre sur les activités du CCBE.

Le barreau italien a fait état de problèmes persistants liés au fait que les avocats sont assimilés à tort à leurs clients et à leurs crimes présumés. Il a donné des exemples d'affaires dans lesquelles des procédures judiciaires ont porté atteinte à la réputation professionnelle des avocats. Des cas similaires et très préoccupants ont été signalés par le barreau français, en particulier en ce qui concerne les déclarations publiques faites par certains membres de la magistrature.

Enfin, le barreau chypriote a noté que l'absence d'incidents signalés ne signifie pas nécessairement que de telles menaces n'existent pas, ce qui peut également être le cas dans plusieurs autres pays.

En ce qui concerne les informations reçues des barreaux de quatre pays candidats à l'adhésion à l'UE, les barreaux albanais, serbe et monténégrin ont signalé des agressions et des menaces à l'encontre d'avocats.

Plusieurs barreaux ont informé le CCBE de leurs efforts pour soutenir et protéger leurs membres. Ces initiatives sont les suivantes :

- Irlande : mise en place d'un système en ligne pour faciliter le signalement des menaces et des attaques.
- Belgique, Pays-Bas, Estonie et Suède : formations d'avocats sur la gestion des conflits, la résilience et la manière de contrer les menaces.
- Pays-Bas : signature d'accords avec les autorités publiques (telles que le registre foncier) pour renforcer la sécurité des données des avocats.
- Portugal : emploi d'une équipe d'avocats au sein du barreau pour soutenir les membres dans les procédures judiciaires.
- Espagne : élaboration d'une procédure interne de demande d'assistance pour les avocats.
- Suède : accès à des experts en sécurité pour obtenir des orientations et un soutien.

Dispositions légales et politiques spécifiques qui pourraient influencer l'indépendance du barreau et des avocats

Selon les rapports reçus de la part des barreaux nationaux, environ deux tiers des barreaux des États membres de l'UE ont mis en évidence des dispositions légales déjà mises en place ou en cours de processus législatif qui ont des répercussions sur l'indépendance du barreau et de la profession d'avocat.

Le barreau slovaque s'est inquiété de l'affaiblissement des critères d'accès à la profession, notamment en facilitant l'accès des titulaires d'un doctorat par le remplacement des examens d'entrée. Cette disposition a été proposée par le gouvernement sans consultation adéquate ni discussion objective avec l'organisation professionnelle. De même, le barreau slovène a signalé des cas d'ingérence judiciaire dans l'autonomie des procédures disciplinaires menées par le barreau.

Au Portugal, des changements législatifs concernant la structure et la durée de la formation juridique, ainsi que la création d'un Conseil de surveillance, comportant des membres non avocats, dans le cadre gouvernemental des associations publiques, sont entrés en vigueur. Le barreau portugais a averti que ces changements représentent des défis importants pour le milieu juridique et l'avenir de la pratique juridique.

En Estonie, les tribunaux ont remis en question certains aspects de la formation et de la méthodologie des examens des avocats. Toutefois, la Cour suprême a confirmé l'autorité du barreau estonien à prendre des décisions indépendantes sur ces questions.

Le barreau danois a reconnu que, bien qu'il ne soit pas actuellement confronté à des difficultés concrètes, il est préoccupé par la structure et les procédures existantes en matière de formation des avocats et d'accès à la profession. Il a fait remarquer que l'implication et le rôle important de l'agence nationale des affaires civiles pourraient ne pas être totalement conformes au principe de l'indépendance du barreau.

Le barreau polonais a signalé que les défis institutionnels affectent également la stabilité de la profession. Il a appelé à l'élargissement des obligations pour professionnaliser la protection des droits individuels, ainsi que les initiatives législatives pour une réglementation complète de certains aspects de l'aide juridique.

Le barreau néerlandais a exprimé son soutien au projet du gouvernement d'instaurer une supervision nationale au sein de la profession d'avocat. Afin d'élaborer une position détaillée, le barreau néerlandais a commandé une vaste étude scientifique sur les droits de plainte et la supervision, qui devrait être achevée au printemps 2025.

Le barreau lituanien a informé le CCBE de tentatives d'introduction d'une proposition législative dans le cadre de la mise en œuvre de la directive européenne sur les services. Cette proposition (qui a depuis été arrêtée)

visait à établir une nouvelle réglementation horizontale des activités soumises à autorisation, qui se serait appliquée à la profession d'avocat et aurait constitué une menace importante pour l'indépendance du barreau.

Le barreau irlandais s'est inquiété du fait que l'instauration récente des partenariats juridiques pourrait créer des conflits d'intérêts pour les praticiens qui choisissent d'opérer dans le cadre de cette structure.

Le barreau italien a fait part de ses préoccupations concernant les changements législatifs adoptés en décembre 2024. Les législateurs nationaux n'ont pas pris en compte les objections du barreau, notamment en ce qui concerne l'applicabilité du code des marchés publics aux barreaux locaux.

Dans le cadre de la modernisation de la loi sur les avocats, le barreau chypriote a souligné la nécessité de veiller à ce que le processus d'inscription des avocats, y compris le registre des avocats stagiaires, relève de la compétence du barreau national et non de la Cour suprême, comme c'est le cas actuellement.

Le barreau tchèque a fait part des efforts en cours pour amender la loi sur la profession d'avocat en République tchèque. Les amendements proposés sont les suivants :

- permettre au barreau d'accéder aux données de toutes les banques concernant les comptes de garantie bloqués des avocats ;
- introduire des dispositions permettant aux avocats stagiaires d'exercer à temps partiel dans des circonstances particulières ; et
- renforcer les sanctions en cas de prestation non autorisée de services juridiques.

Le barreau slovaque a réitéré sa proposition de 2023 visant à inscrire la protection de l'indépendance des avocats dans la Constitution de la République slovaque. L'année dernière, le barreau a poursuivi ses efforts pour obtenir le soutien des institutions judiciaires suprêmes et du ministère de la justice en faveur de cet amendement crucial.

Si de nombreuses préoccupations ont été soulevées, certains barreaux ont également fait état d'évolutions législatives positives. Par exemple, le barreau espagnol a rapporté l'entrée en vigueur de la Loi organique sur les droits de la défense, qui renforce l'indépendance de la profession d'avocat et consolide un droit constitutionnel et marque une étape historique dans le système juridique espagnol en prévoyant une réglementation complète et systématique du droit de la défense.

Le barreau italien a souligné le fait que malgré certaines évolutions positives en 2024, les barreaux ne doivent pas être assimilés à une simple administration publique afin de préserver leur indépendance.

Le barreau allemand a accueilli positivement la décision de la Cour de justice, qui a confirmé l'importance de l'indépendance des avocats en tant que garants de l'état de droit dans l'affaire Halmer (C-295/23). Dans cet arrêt, la Cour de justice a confirmé l'interdiction allemande que des cabinets d'avocats soient détenus par des tiers.

Coopération entre les barreaux et le pouvoir exécutif

Le barreau lituanien a fortement souligné et énuméré certains aspects et procédures actuellement en vigueur qui pourraient être considérés comme limitant l'autonomie du barreau en raison du rôle important et influent du ministre de la justice. Ces préoccupations concernent divers domaines, notamment l'accès à la profession, les procédures disciplinaires et la détermination de la rémunération des services d'aide juridique fournis par les avocats.

En outre, le barreau maltais a fait part de ses préoccupations concernant les discussions en cours sur la loi sur les avocats qui vise à rationaliser le cadre réglementaire existant pour la profession d'avocat à Malte. En conséquence, Malte reste l'un des rares pays à ne pas disposer d'un acte juridique spécifique régissant la profession d'avocat.

Comme expliqué également ci-dessus, plusieurs barreaux ont aussi souligné les défis et les risques pour l'indépendance des avocats et des barreaux découlant de la mise en œuvre nationale des réglementations anti-blanchiment, y compris sur la supervision anti-blanchiment. Outre les évolutions ci-dessus, il convient de mentionner que le barreau français a fait état de ses efforts pour s'opposer à l'exigence de certification proposée par le service de renseignement financier français pour les avocats, qui serait totalement incompatible avec le principe de l'indépendance professionnelle.

Le barreau hongrois a informé le CCBE de la tentative de l'Office national de protection de la souveraineté d'établir une coopération avec le barreau afin d'obtenir des informations pour ses enquêtes. Cependant, le barreau a refusé cette coopération, reconnaissant qu'elle serait en conflit avec la Loi sur les activités des avocats.

Le barreau espagnol a fait état de mesures administratives, telles que l'imposition de vignettes d'identification dans les tribunaux spécialisés dans les affaires de violence sexiste dans une région spécifique, auxquelles le barreau s'est opposé avec succès.

Parmi les barreaux des pays candidats à l'UE, les barreaux serbe et albanais ont fait part des difficultés de coopération avec leur pouvoir exécutif.

Mise en œuvre de la jurisprudence des tribunaux nationaux, européens et internationaux

La grande majorité des barreaux nationaux n'ont pas signalé de problèmes ou de difficultés dans leur pays respectif concernant la mise en œuvre de la jurisprudence des tribunaux nationaux, européens et internationaux en raison de questions juridiques, administratives ou procédurales.
Cependant, quelques barreaux ont mis en évidence des préoccupations concernant la non-application des décisions.

Les barreaux belges ont fait état de difficultés importantes dans l'exécution de milliers de décisions rendues à l'encontre de l'État belge pour non-respect des lois sur l'accueil des demandeurs d'asile. En outre, des inquiétudes ont été exprimées quant à la mise en œuvre des décisions relatives à la surpopulation carcérale, aux mauvaises conditions de vie et au traitement inadéquat des détenus en Belgique.

Le barreau estonien a fait état de difficultés et de retards dans la mise en œuvre de la décision de la Cour européenne des droits de l'homme dans l'affaire Särgava c. Estonie, selon laquelle le secret professionnel de l'avocat n'est pas suffisamment garanti en Estonie. Le barreau a soumis un projet de loi proposant des modifications au code de procédure pénale il y a plus de trois ans, mais la loi n'a toujours pas été modifiée. En outre, l'Estonie n'a pas transposé la directive ECN+ (UE) 2019/1 en raison de l'absence d'accord politique sur la mise en œuvre de certains aspects.

Selon le barreau finlandais, les tribunaux nationaux n'ont pas correctement mis en œuvre la décision de la CJUE dans l'affaire C-694/20 lorsqu'ils ont statué sur une affaire au niveau national. La Cour administrative suprême a rendu une décision préliminaire évaluant la portée du secret professionnel de l'avocat, mais elle ne s'est pas alignée sur la décision de la Cour de justice.

Dans son rapport, le barreau français souligne que le gouvernement français s'est opposé à l'exécution d'une ordonnance provisoire de la Cour européenne des droits de l'homme empêchant l'expulsion d'un ressortissant étranger vers l'Ouzbékistan, malgré le risque de traitements inhumains et dégradants.

En ce qui concerne les informations reçues des quatre pays candidats à l'UE figurant dans le rapport de 2024 de la Commission sur l'état de droit (Albanie, Macédoine du Nord, Monténégro et Serbie), ceux-ci ont tous indiqué certaines difficultés dans la mise en œuvre de la jurisprudence dans leur pays.

Perception du public de l'indépendance du pouvoir judiciaire et des avocats

La grande majorité des barreaux nationaux n'a pas signalé d'évolution significative affectant la perception du public de l'indépendance du pouvoir judiciaire et des avocats. Cependant, certains barreaux ont souligné des préoccupations spécifiques liées à cette question.

Le barreau français a fait état d'un sentiment croissant de méfiance à l'égard du pouvoir judiciaire, tandis que le barreau grec a constaté une baisse significative de la confiance du public, seulement 40 % des citoyens ayant une opinion positive de l'indépendance judiciaire.

Le barreau slovaque a présenté les résultats d'une étude approfondie sur la crédibilité, la réputation et l'éthique de la profession d'avocat. L'étude a évalué la perception de la fiabilité des différentes professions juridiques, plaçant les avocats au deuxième rang des professions les plus fiables, juste après les notaires. Selon l'étude, seuls 25 à 30 % des justiciables slovaques font confiance au pouvoir judiciaire. Cependant, plus de 80 % des personnes interrogées reconnaissent que la profession d'avocat joue un rôle social essentiel dans le renforcement de la justice dans la société. Des informations plus détaillées et une analyse des résultats sont disponibles en annexe, dans le chapitre consacré à la Slovaquie.

Dans le cadre de ses efforts pour améliorer la perception des défenseurs publics de la part du public, le barreau suédois a introduit de nouvelles exigences de qualification obligatoire pour les défenseurs publics. En outre, une unité de supervision a été créée au sein du barreau pour surveiller les défenseurs publics, et des réglementations ont été introduites pour interdire aux avocats radiés du barreau d'être employés par des cabinets d'avocats.

Le barreau lituanien a initié des modifications de la loi sur le barreau, introduisant des exigences plus strictes et des règles plus claires pour évaluer l'honorabilité des avocats et garantir des normes éthiques professionnelles élevées.

Évolution de la formation des avocats

Peu de barreaux ont fourni des informations sur les évolutions récentes dans le domaine de la formation des professionnels du droit. Par exemple, le barreau tchèque a fait état d'un nouveau cadre de formation des avocats stagiaires, qui devrait être instauré en 2025. Ce cadre comprendra un programme de formation en résidence de plusieurs jours pour les nouveaux stagiaires. En outre, le barreau tchèque a créé un nouvel organe consultatif, la section des avocats stagiaires.

En Irlande, le projet de programme du gouvernement a annoncé des plans visant à introduire une surveillance indépendante de l'enseignement juridique professionnel, à soutenir l'évolution d'un programme national d'apprentissage pour la formation des avocats et à supprimer les obstacles à l'obtention d'un poste d'avocat. En conséquence, le barreau irlandais prévoit des changements significatifs dans ce domaine.

Le barreau slovaque a fait état d'une coopération renforcée avec les facultés de droit de diverses universités nationales. Pendant ce temps, le barreau français a annoncé qu'un décret interne, réformant de manière significative à la fois la formation professionnelle initiale et permanente des avocats, entrera en vigueur en septembre 2025. Le barreau chypriote a également réaffirmé son engagement à mettre à niveau et à moderniser la formation professionnelle de ses membres en 2025.

Évolutions liées à l'accès aux tribunaux (frais de justice, système d'aide juridique, etc.)

De nombreux barreaux, dans leurs contributions et commentaires sur la qualité de la justice dans leur pays, ont signalé des problèmes tels que l'accès à l'aide juridique, en particulier la nécessité d'honoraires adéquats pour les avocats agissant en tant que prestataires d'aide juridique. Il semble s'agir encore d'un problème important dans plusieurs pays.

Cependant, des évolutions légèrement positives se font sentir là où les montants de l'aide juridique ont été récemment augmentés, même si ce n’est pas toujours dans la mesure attendue par les barreaux. Les exemples incluent la Belgique, la Hongrie, la Lettonie et la Lituanie. Par ailleurs, le barreau slovène a fait état de retards inquiétants dans la rémunération des avocats en tant que prestataires d'aide juridique.

En outre, certains barreaux, comme ceux d'Allemagne, d'Autriche, de France, de Lettonie et de Slovaquie, ont soulevé des préoccupations concernant le montant des frais de justice.

En 2024, l'accès à l'aide juridique a été élargi au Luxembourg par l'instauration du concept d'aide juridique partielle, ce qui signifie que plus de personnes auraient la possibilité d'accéder à la justice par l’intermédiaire du système d’aide juridique.

Évolution dans le domaine de la numérisation de la justice

La numérisation de la justice a toujours été un sujet important pour la plupart des barreaux. Par conséquent, le CCBE a reçu de nombreux rapports sur les évolutions en la matière dans différents pays, notamment concernant les aspects numériques du système judiciaire. Ces rapports soulignent à la fois les bénéfices et les risques potentiels pour les professionnels du droit, y compris les préoccupations relatives à la création d'un déséquilibre des pouvoirs au sein du système de justice, en particulier pour les avocats. Des exemples concrets sont présentés en détail dans le présent document.

Annex 1

AUSTRIA

Measures taken to follow-up on the recommendations of the European Commission received in the 2024 Report

No improvement in the area of court fees (access to justice), see below for more details.

There is still a need for action with regard to the new regulation of the seizure of data/data carriers and their analysis, which was introduced with the *Strafprozessrechtsänderungsgesetz* 2024, as the requirements of the Constitutional Court were not sufficiently taken into account by the reform. In particular, a clear separation in terms of personnel and organisation between the processing and evaluation of the seized data is required.

Significant developments related to appointment and selection of judges, prosecutors and court presidents

The Austrian Bar calls for a reform of the job profile of administrative judges, taking into account the greatest possible permeability between the legal professions and the administrative courts with the aim of harmonising administrative courts with ordinary courts in this regard. Lawyers must continue to have access to the profession of judges at administrative courts.

In addition, measures must be taken to avoid the impression that appointments could be based on mere political considerations in order to increase confidence in the rule of law.

Specific legal provisions and policies in your country which could influence the independence of the Bar and lawyers

Defending the independence of Bars and lawyers is an ongoing mission for the Austrian Bar.

The Austrian Bar sees its position on the role of lawyers as cornerstone for the rule of law confirmed by the recent judgment by the ECJ in the preliminary proceedings C-295/23, Halmer. The Austrian Bar would like to repeat that there is sufficient case law and common legal tradition in the Member States on the role of lawyers to support infringement procedures in case it was necessary.

Concerning upcoming European legislative proposals, the Austrian Bar underlines the need to protect fundamental rights in the area of justice. Especially the issues of retention and access to data, including encrypted information, will pose a direct threat to the confidentiality of lawyer-client-communication in Austria.

Significant developments related to accessibility of courts

Court fees have become a real barrier to access to justice. Many citizens can no longer afford to go to court due to the high fees, and commercial disputes are increasingly being dealt with in neighbouring countries (e.g. in Germany, in Bavaria). Austria is the only European country whose income from court fees exceeds the actual costs of the courts.
The following measures are therefore recommended:
• reform of the court fee structure in Austria, the judiciary shall no more be managed like a large company,
• levelling the curve of the progressive tariff for court fees,
• capping of court fees for high amounts in disputes, reduction of court fees for each settlement,
• reduction of the flat fee in appeal proceedings in the event of a rejection of the appeal by the Supreme Court,
• reduction of the flat fee in the event of withdrawal of an action even after service on the opponent and also in the event of a perpetual suspension of the proceedings,
• exemption from fees with regard to a general settlement clause in a settlement.

The Austrian Bar continues to call for the abolition of legal transaction fees without replacement. They place an excessive burden on citizens and companies and have a negative impact on legal certainty.
It cannot be in the interests of a state governed by the rule of law that written agreements are not made simply because citizens are anxious to avoid high legal transaction fees.

Examples:
Entrepreneurs who rent commercial space to set up a business and sign an 18-year lease must pay 1% of 18 times the annual value. So, if renting a commercial space costs €7,000 per month, this results in a fee of €15,120.

Legal transaction fees also have a negative impact on the competitiveness of companies and Austria as a business location. If a dispute is settled out of court and a written agreement is concluded for evidence purposes, a 2% settlement fee is charged.

Spouses who wish to settle any divorce consequences by means of a prenuptial agreement must pay 1% of the value of the assets for the prenuptial agreement - those who do not conclude such an agreement are very often confronted with several court proceedings in the event of divorce, for which they have to pay high court fees.

Significant developments related to digitalisation

All final-instance decisions of the regional and higher regional courts as appellate courts, insofar as a referral to the Supreme Court is no longer permissible or is permitted, should be published in anonymised form in the federal legal information system (“RIS”) in order to make them accessible to legal scholars and legal practitioners.

In addition to decisions of the Supreme Court, decisions of the higher regional courts, the regional courts and the district courts are also available in the federal legal information system (RIS). However, research by the ÖRAK has shown that the option of anonymised publication is very rarely used. The ÖRAK took this as an opportunity to draw up a corresponding resolution on the publication of final-instance decisions in the RIS, which was unanimously adopted by the Austrian Bar’s assembly of representatives.

With the *Strafprozessrechtsänderungsgesetz* 2024 passed by parliament on 11 December 2024, a first step in the right direction has now been taken. Accordingly (§ 48a GOG new), § 15 para. 1 no. 1, paras. 2 to 4 and 6, § 15a para. 1 OGHG are now to be applied mutatis mutandis to decisions of the Higher Regional Courts that have become final, unless they have been amended by a decision of the Supreme Court. This means that since 1 January 2025, all final decisions of the Higher Regional Courts must be published in the RIS. This new regulation is to be welcomed as a first step, but does not go far enough. Apart from the fact that there are restrictions in criminal investigation proceedings, the law in particular does not provide for an obligation to provide the decisions to be published including the so-called "Rechtssätze". The publication obligation also does not include other courts of first and second instance. The provisions of Section 48a (1) GOG now apply to the latter if they are of general interest that goes beyond the individual case. This assessment is the responsibility of the court. However, it is precisely the provincial courts that act as courts of last instance in many matters (e.g. actions for interference with possession); in the area of claims for part-time employment, even the labour and social courts are courts of last instance pursuant to Section 15k (6) MSchG and Section 8c (6) VKG.

The publication of all final-instance decisions is of crucial importance in order to ensure uniform case law throughout Austria, to make legal representation and legal advice more efficient and comprehensible for the general public and to make such final-instance decisions more accessible than before for critical analysis by academics. The aim is to make case law even more transparent and more widely accepted by the public.

This should also render the provision of Section 48a (5) GOG obsolete, according to which parties to proceedings are entitled to receive a pseudonymised copy or a pseudonymised printout of the unpublished final decision referred to by a court or public prosecutor's office free of charge.

In principle, a court should not have access to an unpublished final judgment and should not base its decision on it. Only when all final decisions are published in the RIS will it be ensured that all persons involved in ongoing or future (related or unrelated) proceedings - parties, party representatives, judges, public prosecutors - have the same access to knowledge and information and meet on an equal footing.

The Austrian Bar is of the opinion that all citizens and legal persons have a right to decision-making by a human judge.

Significant developments related to geographical distribution and number of courts/jurisdictions

Another decisive factor in enabling citizens to utilise the services of the justice system is local proximity. Although increasing mobility means that travelling further distances to the courts is reasonable, the hurdles for the population must not become too great. In addition, against the background of a climate impact assessment, good local accessibility to the courts of first instance seems important. The Austrian Bar demands as minimum threshold to keep one district court (Bezirksgericht) per district.

Other issues and significant developments impacting access to justice

The Austrian Bar calls for the reintroduction of the former period without court proceedings (“verhandlungsfreie Zeit”) in the sense of the regulation prior to the WGN 2002 and is also in favour of extending this to non-contentious proceedings (in particular to inheritance disputes).

Even several years after the abolition of this former practice, no savings effect is evident. On the contrary, hearings are repeatedly adjourned when they are scheduled during periods that used to be free of hearings.

Experience has shown that during the summer and Christmas holidays, both parties and witnesses, experts, lawyers and judges are on holidays. The former period without court proceedings, which was based on the school holidays until it was abolished, was (therefore) not associated with any delays. In contrast, its abolition led to delays in the handling of proceedings after the holiday period and the precautionary lodging of appeals. This actually increased the workload for all parties involved.

Numerous colleagues are struggling with massive problems due to the abolition of the period without court proceedings: for many lawyers in Austria, especially those who run their law firms alone (around two thirds of lawyers), holidays are hardly possible anymore.

The existing compulsory obligations for lawyers to take on the representation of vulnerable adults must also be removed. The ÖRAK calls for the introduction of a nationwide functioning and binding 'traffic light system' to ensure appropriate and fair utilisation of individual lawyers. The current regime allows to surcharge lawyers with the representation of too many vulnerable adults. Such representation can involve just any parts of daily, non-legal activities such as organisation of medical appointments, transport, sometimes food and cash withdrawals for the daily needs of the adults. The representation usually only terminates with the death of the respective persons. Lawyers' services however must stay generally available for clients as well.

Information on horizontal developments

The independence of Bars and lawyers must be defended continuously.

Unfortunately, there were legislative initiatives even on the European level which contained elements which endanger the work of lawyers and Bars. Regarding the Anti-Money Laundering Package after long discussions improvements were possible, but it was very concerning that a European Commission initiative initially foresaw elements that would have directly undermined the independence of Bars from the state and infringed the fundamental right to confidential lawyer-client communications.

Concerning upcoming European legislative proposals, the Austrian Bar underlines the need to protect fundamental rights in the area of justice. Especially the issues of retention and access to data, including encrypted information, will pose a direct threat to the confidentiality of lawyer-client-communication in Austria.

The Austrian Bar sees its position on the role of lawyers as a cornerstone for the rule of law confirmed by the recent judgment by the ECJ in the preliminary proceedings C-295/23, Halmer. The Austrian Bar would like to repeat that there is sufficient case law and common legal tradition in the Member States on the role of lawyers to support infringement procedures in case that this was necessary.

Framework, policy and use of impact assessments and evidence based policy-making

The quality of legislation needs improvement. If lawmakers were respecting minimum standards (e.g. sufficient review periods, "*Begutachtungsfristen*"), this could sustainably improve the quality of laws and increase public acceptance.

In addition, laws should be regularly evaluated a few years after their introduction to review the consequences of their implementation.

Unfortunately, during the last legislative period, for the first time more laws were passed on the basis of motions proposed by members of Parliament than on the basis of government bills. This has resulted in a reduction in consultation time, a lack of information and a lack of opportunities to evaluate laws.
(See also here: https://www.wahrnehmungsbericht.at/beitrag/mindeststandards-fuer-gesetzgebungsverfahren and here: https://www.parlament.gv.at/fachinfos/rlw/Wie-haben-sich-Gesetzesinitiativen-in-der-XXVII.-GPveraendert)

Any other developments related to the system of checks and balances

At national level, a trend is emerging whereby the unconstitutionality of some new laws appears to be accepted when political decisions are made. With this, unconstitutional laws are accepted and/or it is expected that the assessment by the Constitutional Court will be made too late and thus irreversible facts will be created through the previous application of the laws. Measures should be taken to ensure that fundamental rights and constitutional conformity are structurally taken into account in the legislative process.

Other points related to the single market dimension in the context of the Rule of Law Report

The independence of lawyers is an important part for the trust of economic operators in a market. The independence of lawyers means their own individual independence, but also the independence of their Bars from the state. The respect for confidential lawyer-client communication constitutes another important part for the possibility for economic operators to receive meaningful advice to act in accordance with the laws (this dimension of lawyers' professional secrecy is also regularly underlined in ECJ and ECHR jurisprudence).

Belgium

Measures taken to follow-up on the recommendations of the European Commission received in the 2024 Report

- Considerable resource deficiencies are still present in the justice system and further investments are under threat
- Compliance with final rulings of the national courts and the European Court of Human Rights is still very much problematic

Significant developments related to appointment and selection of judges, prosecutors and court presidents

The nomination policy, examinations and assessment of candidatures by the High Council of Justice (HRJ/CSJ), who are in charge of the appointment and promotion of judges and prosecutors, are under scrutiny as the criteria used may not always be entirely satisfactory. In 2024, a big fraud scandal was revealed in which four magistrates, including an advocate-general and member of the HRJ, were caught leaking exam questions to certain befriended candidates. Disciplinary and criminal procedures are on-going.

Significant developments related to accountability of judges and prosecutors

Based on a report by the High Council of Justice (HRJ), very few disciplinary cases are lodged against judges and prosecutors. The complainant and the public receive only very limited insight in the handling of these cases.

At the same time, a new law has abolished the privilege of jurisdiction for lawyers performing as substitute judges, whilst it remains in place for full-time judges and for retired judges who continue to act as substitute judges following retirement. This privilege entails that a complaint with civil action against judges is not possible, that they cannot be prosecuted directly by an aggrieved party and that prosecution must take place before a higher court. Considering the efforts and engagement of many lawyers to provide assistance to the Justice system and remedy the shortage of judges by performing as a substitute (largely for free or for a low salary), this is a development that is regretted by many, especially because of the unequal treatment.

Significant developments related to remuneration for judges and prosecutors

A new Law of 12 May 2024 concerning the social statute of magistrates aims to strengthen the independence of the judiciary and the life-work balance of judges. It includes, amongst other things, a new and improved vacation arrangement and allows for part-time jobs in the judiciary.

Significant developments related to independence of the prosecution service

Last year, we criticised the threefold role of the prosecution department concerning the practice consisting of sending out orders of payment to defendants in criminal cases as a settlement in lieu of actual court proceedings. The problem we see is that the prosecution department (1) set the prosecution policy, (2)

operate as a ‘first judge’ because they decide that there is an offence and (3) impose the penalty and enforce their decision by creating the executory ‘title’ themselves. No positive developments have been noted, the situation has remained unchanged.

Cases/examples undermining confidentiality of lawyer-client communications

Investigating judges decide if and to what extent lawyer-client communications are confidential, i.e. after having examined them. Sometimes the test is carried out by the “bâtonnier” (president of the local bar), which is positive, but sometimes the judges will proceed without the assistance of the “bâtonnier”. The same investigating judge will then continue to be responsible for the case handling. We believe that if a judge decides on whether or not lawyer-client communication is confidential, another judge should handle the case.

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

We hear echoes from the field that a certain pressure from the public prosecution or investigating judges on lawyers is still an issue in 2024, although we must admit that we have received little concrete and tangible information, possibly for reasons of confidentiality. Lawyers are sometimes identified with their clients and their clients’ criminal activities, they are put under pressure and sometimes even investigated as possible suspects, as judges hope to neutralise their professional secrecy by treating them as suspects and, in this way, obtain access to otherwise confidential information. Of course, this impacts the preparation of the defence and, in the course of such an investigation, information can be gathered that could be confidential in nature. Furthermore, in such a case, the continuity of the defence is in jeopardy, as an indicted lawyer will usually have to withdraw from the case. The argument that the retrieved data cannot be used in court if eventually the lawyer is not prosecuted is compromised since meanwhile the information is known and may have been used.

All of this fits an inherent distrust on the part of the judiciary in relation to lawyers, e.g.: lawyers receive questions on how and by whom they are remunerated; an investigating judge appoints an ad hoc trustee for a company even though both the company and the managing director are represented by lawyers.

Specific legal provisions and policies in your country which could influence the independence of the Bar and lawyers

The legislation on anti-money laundering and DAC6 remains the most visible threat for confidentiality and the independence of the legal profession.

In 2024, the new EU AML-regulation has expanded the obligation to file suspicious transaction reports by providing member states with possibilities to create exceptions to the professional secrecy of lawyers.

Besides the creation of the coordinating European AML authority (AMLA), the new AML Directive obliges member states to create or designate a national public authority to supervise the self-regulating bodies. The Belgian Bar associations criticised a draft text prepared by the Belgian General Administration of the Treasury during a meeting in December 2023. The draft text was meant to transpose the still non-approved proposal of the Commission for a new AML Directive prematurely. At that point in time, however, the proposal of the Commission did not provide a legal basis to attribute sanctioning powers to the public authorities, a critique which was raised by the Bar associations and other self-regulating bodies. Surprisingly, at the beginning of 2024 during the Belgian presidency of the Council of the EU, the proposal

of the Commission was amended during the trialogue discussions so as to provide such an explicit legal basis. Despite this legal basis in the approved version of the AML Directive, the far-reaching (sanctioning) powers attributed to public authorities overseeing self-regulating bodies stand at odds with the independence of the Bar and the lawyers.

There is however also positive news coming from the European Court of Justice in the context of the DAC6-directive, in part on the basis of appeals that the Belgian Bar associations have lodged. The Court of Justice acknowledges the special position and fundamental role of lawyers and argues that their professional secrecy and confidentiality requires a very specific protection, stronger than that of other professions such as accountants, notaries or tax advisors.

Problems and difficulties implementing the case law of national, European, and international courts

In February 2024 it was reported that in 8,800 matters judgment had been given against the Belgian State for failure to comply with the law on the reception of asylum seekers. Penalty payments for not carrying out these judgments are systematically overdue. This has triggered at least one lawyer's office to proceed with the seizure of assets of the Belgian state for an amount of €400.000.

The same applies to the numerous convictions for the overpopulation and poor living conditions in prisons and the inadequate treatment of inmates (see question 17). By May 2024, penalties for not addressing the overpopulation and treatment of prisoners in Lantin following a judgment against the Belgian state half a year earlier, had reached 24 million euro. In May 2024, Avocats.be made the symbolic move of seizing, as a conservatory measure, the unexploited prison of Forest/Vorst. That prison was closed in November 2022 precisely because of the overpopulation and the unacceptable detention conditions. The seizing has been substantially covered by the media.

In cases concerning the inmates suffering from mental illness ("personnes internées") in regular prisons, the Belgian government does no longer contest its responsibility, only the amount of the fine. After all, since not all these inmates are financially strong enough or prepared to start proceedings against the state, it is cheaper to pay individuals than structurally solve the problem. In order to assist lawyers who take on these cases, the OVB has shared free model templates for court summons and notices of default via its website.

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

In 2024, some politicians have once again used their platform to criticise the judiciary and lawyers, undermining their fundamental role in upholding the rule of law.

For example: when a popular YouTuber was sentenced to a suspended prison sentence and a considerable financial compensation for publicising personal data of the men responsible for the death of a colleague-student during a student hazing, several politicians from different parties took to TikTok and Instagram to voice their displeasure with the judgment, speaking of a witch hunt and class justice.

Significant developments related to accessibility of courts

There has been no tangible progress concerning the length of proceedings (see question 22), which can still put people off to actually try and enforce their rights before the court, consequently affecting the accessibility of justice.

Due to considerable efforts by the Belgian Bar associations, the renumeration of lawyers in the context of the legal aid system has improved in 2024. The value of a point received for pro Deo performances is now fixed by law (and subject to yearly indexation) and a second yearly payment was agreed upon. The situation is still far from ideal though. Renumeration of legal aid lawyers is still significantly slower than in neighbouring countries or compared to other actors in the Belgian judicial system (12 to 18 months waiting period).

In light of the new European migration pact, suggestions are made at the national level to abolish the possibility of free legal aid by lawyers to asylum seekers in the first investigation phase / administrative procedure. Considering the importance of the first stage of refugee applications, this would be a significant decline of the current protection level.

The French-speaking section of the Brussels Bar Association took a resolution inviting the public authorities to add victims of sexual or domestic violence to the list of persons presumed not to have sufficient means of subsistence. Such would give those persons the right to obtain up to a maximum of four free hours of lawyer's services for the assessment of their legal situation and initial advice on the judicial or extra-judicial steps to be taken.

Significant developments related to resources of the judiciary

Human resources

An assessment of the workload of magistrates has claimed that 43% more judges (700 in total) are required to have courts operate normally. The heavy workload (52,8 hours/week on average) is claimed to adversely affect the efficiency of the justice system, the judicial backlog and the quality of the proceedings and judgments. It also negatively impacts the attractiveness of a career in the judiciary or the prosecution. Combined with the negative image of the justice system, it is not easy to find sufficient candidates. This creates a vicious circle.

The consequences of the shortage of judges has recently been a hot topic. The Belgian state was held liable in the case of Julie Van Espen. She was raped and murdered by a convicted sex offender who was allowed to await his appeal outside of prison. That trial was then delayed significantly because the president of the court of appeal had to shut down the relevant court chamber due to a shortage of magistrates.

Financial resources

Despite considerable investments by the previous minister of justice in comparison to earlier governments, the justice system remains severely underfunded. According to the previous Justice Scoreboard and the latest CEPEJ report, the judicial budget is below the European average. The number of judges per 100,000 citizens is relatively low in comparison with certain other European countries. Meanwhile, Bart De Wever, the politician who has been mandated to set up the next federal government has requested government departments to reduce government expenditure by 27 billion euro. In response, the Constitutional Court, the Court of Cassation, the Council of State and a several other courts, judges and experts have sounded the alarm bell: democracy and the rule of law is under threat if justice

is underfunded. The Federal Public Justice Service has stated that a budget augmentation of 250 million per year is necessary. They refer to the increase in cases and prisoners, the need for more personnel (supra), further digitalisation and the rising costs of the outdated court houses and prisons.

The underfunding of justice has also manifested itself this year in significant payment arrears for judicial translators.

<u>Material resources</u>
A grave problem caused by the historic lack of resources for justice in general is the overpopulation of prisons. This situation has completely escalated in 2024:
- 12,719 prisoners for 11,020 places, forcing approximately 180 persons to sleep on a mattress on the ground. The new prison in Haren has already reached its maximum capacity
- The conditions of some of the older prisons required to stay open due to overpopulation are subpar (e.g. Saint-Gilles/Sint-Gillis) and in dire need of (further) renovation
- Repeated strikes by prison personnel on different locations. During the obligated minimal level of service in the prison of Antwerp, a prisoner was tortured by his cellmates. The Minister of Justice pointed to the strike as an enabling circumstance, the unions to the more structural problem
- Increased aggression amongst inmates and towards personnel due to the stressful situation
- Several prisons refused to admit new prisoners over a period of time in the course of 2024
- The Council of Europe has (once again) urged Belgium to take urgent measures against the structural overpopulation and the bad prison conditions
- The decision by the minister of justice in 2023 to carry out prison sentences lower than three years has aggravated the situation of overpopulation
- In May, Avocats.be seized the former prison of Forest/Vorst because of the inertia by the Belgian authorities to solve the problem of overpopulation.
- In order to relieve the pressure on the prisons and to improve reintegration of persons with shorter sentences, 15 smaller detention houses were planned at the start of the previous government. Only two were realised.
- Different actors (politicians, magistrates, director-general of prisons, …) disagree on the way forward. The minister of justice has also placed the judiciary in the line of fire, pointing to the many decisions on pre-trial detention as an important factor.
- From reopening old prisons and repeatedly expanding conditions for penitentiary leave to current proposals to use boats, send people to prisons abroad or having quota or waiting lists for prisons, they are all either questionable short-term solutions for more structural problems or extremely problematic from a human rights perspective.

At the request of OVB and Avocats.be, a visitation right to prisons for presidents of the local Bars was added to the Law of 12 January 2005 concerning the penitentiary administration and the judicial statute of detainees. Member of parliament already had this right. This adds another instrument to monitor the human rights situation. On 10 December 2024 all presidents visited a prison in their working area. Unsurprisingly, their observations were in line with the findings set out above.

Finally, more than a thousand inmates suffering from mental illness (“personnes internées”) are housed in the inadequately equipped overcrowded prisons waiting for a place in forensic psychiatric centres (FPC) where they can receive appropriate care. The situation is still worsening. In 2024, they comprised 8% of the total prison population. The total number in prisons has doubled over the past six years. In August, the European Court of Human Rights once again convicted the Belgian state for the treatment of these inmates in prison. In response to complaints by the Federal Institute for Human Rights, the Central Prison Monitoring Council and Unia, the Committee of Ministers of the Council of Europe has also shared its serious concerns about the problematic situation.

A positive development is that three new FPC's are planned, with a total capacity of more than 600. The construction is however due for 2027 at the earliest, and even for current numbers the capacity is still more than 300 places short.

Significant developments related to digitalisation

Digitalisation of justice and technological resources has been a recurring topic under the previous minister of justice, but a report by the Court of Audit has uncovered some serious deficiencies in the digitalisation strategy of the department of justice: a lack of an overarching, coherent approach, inefficient governance processes and structures, unclear responsibilities, budgetary and administrative shortcomings with a lack of transparency and control, excessive use of external consultants, risk for fraud and a lack of prioritisation and evaluation.

On a more concrete level, we refer to the launch of the central database of judgments and decisions, which will provide access to all decisions of civil and criminal courts, should have been finished in 2023, but is recently postponed again to the end of 2025. The legal framework is also problematic: it makes a distinction in access levels to the database between lawyers and citizens on the one hand and magistrates, including the prosecution, on the other. This creates a structural inequality of arms. This case is still pending before the Constitutional Court.

Another example is the necessary modification of the Central Register for the protection of persons (CRBP) in accordance with changes in the legal framework. This is important to correctly calculate the renumeration of administrator of a protected person. The changes to the digital platform have however not yet been adopted due to a lack of resources.

In 2024, a new law on the use of videoconferencing in civil and criminal cases was adopted. We have voiced our concerns about several possible problems with its application, one of them being the confidentiality of conversations between lawyer and client. A survey conducted amongst lawyers and judges in juvenile delinquency cases (where videoconferencing was already applied) shows that 86% of the participants did not consider the communication to be confidential. While we have recently been reassured by the justice department that this concern will be taken aboard in further preparing and fine-tuning the videoconferencing software, it is still unclear how this will be improved in comparison with the current problematic practice in juvenile cases.

Significant developments related to efficiency of justice system

The Federal Institute for Human Rights has stated that the long and slow proceedings are a violation of human rights. The situation remains particularly problematic in the Court of Appeal (on average 1061 days) and the Family Court of Brussels. In some instances, cases can take up to ten years of longer.

The attorney-general of Gent has also warned for possible violations of the right to an effective remedy within a reasonable period of time. In East Flanders, the judicial backlog for some criminal courts and in the context of the appeal procedures against decisions of the police courts has increased, ranging from 11 months to almost two years.

Other issues and significant developments impacting access to justice

Last year, we mentioned complaints regarding the transportation of prisoners to court in some districts. The situation has not improved in 2024 leading to an open letter by 208 lawyers and judges denouncing

the system in the new prison of Haren. Since its opening, hardly any detainees have been transported to their hearing (in time), leading to further delays and judicial backlog. It has been claimed that it is part of a rotting strategy, aiming to organise the hearings in the prison itself, which is a problem in itself for the presumption of innocence.

The same problem of detainee transportation from prison to court was documented in Mechelen. It was said to jeopardise the functioning of the court and the fundamental rights of the detainees, once again creating significant delays.

A positive development comes from the prison in Dendermonde. It was decided to stop the pilot project to organise hearings of the “chambre de conseil” of the correctional court in the prison itself. justice should be spoken in a courtroom, not a prison.

Finally, there is an additional threat in the alternative ways that governments try to solve or work around the structural deficiencies of the justice system as set out in this questionnaire: increasing the possibilities for and execution of administrative sanctions, expanding competences of mayors / local government, introducing fast law / summary judgments, the immediate amicable settlement with direct collection of fines by police. They all have in common that they provide fewer procedural guarantees, try to limit the right to appeal and/or bypass the judge. They are present and potential risks that indirectly stem from the underfunding of justice and are a threat to the separation of the branches of power and the rule of law. The Federal Institute for Human Rights has also criticised several of these measures.

BULGARIA

Measures taken to follow-up on the recommendations of the European Commission received in the 2024 Report

The main development was that most of the newly adopted amendments in the Constitution the biggest part of which was related to the judiciary were declared unconstitutional by the Constitutional Court.

A new draft of Judiciary Act was elaborated and discussed in the Ministry of Justice (MJ) in January – April 2024. However, due to the resignation of the Government in April 2024, it was not further advanced and was in fact abandoned. In September 2024, the Ministry of Justice formed a new working group with the task to amend the current Judiciary Act. However, the biggest judges' professional organisation, the Association of Judges, was not included and was denied access to the draft and working group members statements and opinions, which it requested under the Access to Public Information Act.

In the period January – April 2024, a concept of legislating on lobbyism was developed by a working group under the frame of the MJ. The concept was however changed later without consultation with the interested NGOs and in autumn 2024 a new working group was formed to work on drafting a law on lobbyism. The approach is harshly criticised by the civil society as the main focus of the legislation is intended to be the NGOs and media criticising the government and its policies while businesses are generally excluded from the scope of the law.

The Commission on combatting corruption and the forfeiture of the illegally obtained property was theoretically split in two commissions after amendments in the law. However, in fact the same members perform the function of both as due to the political crisis there is no parliamentary majority to agree on the amendment of new members of all the regulatory bodies, including the new commission of combating corruption.

Significant developments related to appointment and selection of judges, prosecutors and court presidents

Actually, the crisis is deepening. Due to the political crisis there is no parliamentary majority to agree upon the amendment of new members at all the regulatory bodies, including the Supreme Judicial Council (SJC), whose mandate expired yet in 2022. The Prosecutor General position is temporarily taken by Mr. Borislav Sarafov, who was previously close to the former Prosecutor General Mr. Ivan Geshev absolved from the office before the end of the mandate on the ground of violations which affect the reputation of the judiciary. The mandate of the Supreme Administrative Court President expired, but the General Assembly of the Court voted for his persisting performance as a temporary President, which appears to be contrary to the Constitution. The Inspectorate at the SJC, the body dealing with disciplinary investigations of magistrates has also expired.

Some hopes are imposed on the newly established special prosecutor in charge of investigations on the Prosecutor General. However, she does not seem to be very efficient so far, while a number of information requests about her findings in her work filed under the Access to Public Information Act were denied. In December 2024, the temporarily performing Prosecutor General Mr. Sarafov requested an interpretative decision by the Supreme Administrative Court aiming to exempt from availability and public scrutiny entirely the criminal investigations and all other check-ups performed by public prosecution authorities.

As relates to appointment competitions, e.g. of public prosecutors, there is a practice of cancelling them after they are already finished and starting the procedure from the beginning.

Significant developments related to independence and powers of the body tasked with safeguarding the independence of the judiciary

The 2022 elections for Supreme Judicial Council members from the judicial quota (elected by judges) turned to be suspectedly corrupted by the use of inadequate e-voting system. The findings and collected documents under the Access to Public Information Act showed that e.g. in the Supreme Administrative Court premises there were about 200 votes in view of the fact that there were only 28 magistrates for the two voting days. The 2022 elections were cancelled by a legislative amendment, but the SJC is still performing the functions after its term has expired a long ago.

Cases/examples undermining confidentiality of lawyer-client communications

The 2022 judgment of the European Court of Human Rights (ECtHR) in the case Ekimdzhiev and Others v. Bulgaria has not been implemented and not even started to be executed. The case addressed the lack of guarantees in the operation of the system of secret surveillance (by both wire-tapping and e-traffic data retention). The applicants are two lawyers (Bar members) and two NGOs. The ECtHR outlines a number of issues including lack of public accountability, procedures, checks and balances etc.

Another case is pending before the Supreme Administrative Court, where the Supreme Bar Council internal regulations applying the anti-laundry law were challenged. The argument of the applicants (several lawyers) is that the Bar members are on duty to keep record on clients without clear norms on how to handle and keep them, to whom to disclose them and on what grounds. This amounts to unwarranted interference with the lawyer-client privilege.

Specific legal provisions and policies in your country which could influence the independence of the Bar and lawyers

There was a legal initiative supported by the well-known oligarch and politician (today – a head of political formation) Mr. Delyan Peevski to amend provisions in the Lawyers' Act by empowering the local Bars to determine the lawyers' fees in the cases of so-called "special representation" (e.g. in cases where one of the parties cannot be found to be summoned and the proceedings are handled after an ex officio appointment to defend the rights and interests of the missing person.). The proposal aimed to change the existing system of courts determination of these fees. Thus the lawyers would be posed to a dependence by local Bars. The majority of the Supreme Bar Council surprisingly supported the proposed amendments, while the Association of Judges harshly criticised it and named it "lobbyist". The amendments were not passed after some lawyers and other protested.

Problems and difficulties implementing the case law of national, European, and international courts

There is still room for improvement concerning the quality of judges applying European law (especially the European Convention of Human Rights) and improve education and qualifications.

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

The general public trust in the judiciary is not particularly high. The stopped reforms in 2024 contribute to this (e.g. the Constitutional Court decision to declare most 2023 Constitutional amendments unconstitutional, the lack of a new Judicial Act, the untransparent legislation drafting process). Another concern is the ongoing performance of functions by high officials with expired term such as the members of the Supreme Judicial Council, the Inspectorate of SJC, the President of the Supreme Administrative Court.

Significant developments related to accessibility of courts

The attempt to legislate on the fees of the “special representatives” would impair the accessibility of courts in terms that a practice of defining excessive fees might be created thus becoming a burden to the petitioners in pending cases. The draft amendments were vetoed by the President of the country.

Significant developments related to resources of the judiciary

For a number of years there is a growing trend of concentration of the civil, criminal and administrative lawsuits in Sofia courts. This leads to imbalanced burden on courts and judges in the capital and in the country, as well as to much delayed cases in some courts in comparison with other. The problem is not well addressed yet partly due to non-efficient bodies with expired mandates. Another reason is the ongoing political crisis with short mandates in the last five years, which prevents the development of long-term solutions.

Significant developments related to digitalisation

Digitalisation is developing. But inconsistent, sometimes new solutions are less user friendly than older ones, still on the way to really adopt digital justice.

Significant developments related to use of assessment tools and standards

The court data bases are yet not well organised and searchable, so ICT systems do not contribute much to accessible court practice.

CROATIA

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

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

Significant developments related to accessibility of courts

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

Significant developments if any, related to resources of the judiciary

Salary increase and other material rights in the judiciary represent a contribution to the construction of a modern, efficient and responsible judiciary.

Significant developments related to training of justice professionals

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

Significant developments related to digitalisation

Positive development in the area of digitalisation of justice is noticed. Special emphasis should be placed on the project "Paperless commercial courts in Croatia". With this project process of digitalisation of commercial courts continues in line with European green and digital policies. Representatives of the Croatian Bar Association also participated in meetings within the project "Paperless commercial courts in Croatia."

Significant developments related to use of assessment tools and standards

From 1 January 2025, the portal "Tražilica odluka sudova Republike Hrvatske" (Portal Search for decisions of courts of the Republic of Croatia) for decisions of the courts of the Republic of Croatia is available, which enables an advanced search of anonymised court decisions that complete court proceedings, while respecting the rules on the protection of personal data. The goal is to make the judiciary faster, more efficient and more transparent, increasing legal certainty and unifying judicial practice.

CYPRUS

Measures taken to follow-up on the recommendations of the European Commission received in the 2024 Report

The government is drafting a legislation aiming to separate the advisory and prosecutorial role of the Law Office. There is consideration towards establishing a Director of Public Prosecutions office that would operate independently from the Attorney General's office.

Plans have also been announced to introduce the possibility of a review of the decisions of the Attorney General not to prosecute or to discontinue proceedings.

Significant developments related to appointment and selection of judges, prosecutors and court presidents

Commencing on 1 July 2023, the Supreme Council of the Judiciary (SCJ) became operational, exclusively entrusted with responsibilities that encompass the appointment, promotion, transfer, termination of service, dismissal, and disciplinary actions concerning judges of the Court of Appeal and judges of the courts of first instance. The SCJ consists of the members of the Supreme Court. The Attorney General, the President of the Cyprus Bar Association and two lawyers of recognised standing may participate without the right to vote.

To be eligible for the position of District Judge, one must be a registered advocate with six years of practice in the legal profession and must demonstrate high moral standing. For an appointment to the post of President of the District Court, a candidate must be an advocate with a minimum of ten years of practice, including service in any judicial post, and must uphold a high moral standard.

Review of Decisions: Upon receiving a complaint from any affected party, the decisions of the SCJ are subject to review by the Supreme Constitutional Court. In such instances, the Supreme Constitutional Court serves as an appellate body for judiciary matters, reviewing decisions made by the SCJ. It is essential to note that, until the Supreme Constitutional Court issues a decision, the rulings of the Supreme Council of the Judiciary are suspended.

Procedural Regulation by the Supreme Court: On 15 November 2023, the Supreme Court of Cyprus issued the Procedural Regulation outlining the procedure and criteria for the appointment of judges by the SCJ.

Stage A: Announcement of Vacancies
The Supreme Judicial Council announces vacant positions for filling in the Judicial Service according to the needs of the Courts at any given time. The announcement is made by the Supreme Judicial Council, which specifies the number of vacancies and the Courts where vacancies exist and invites interested parties to submit applications within a specified time, in the manner and form outlined in the announcement. The announcement is published in the Official Gazette of the Republic and posted on the website of the Supreme Court and the local boards of the District Courts. It is also sent in electronic form to the Cyprus Bar Association and the relevant local Bar Associations.

Stage B: Submission of Applications

Each candidate submits an application to the Administrative President of the District Court where the candidate practises as a lawyer. The application must be accompanied by:

A Curriculum Vitae (CV).
A responsible declaration regarding any previous or pending cases, whether criminal, disciplinary, or civil, in which the candidate is personally involved.
A brief separate description of the candidate's personality, provided by the candidate themselves.
The most significant judicial decisions in cases where the candidate had substantial involvement in handling them.
Any application that does not include items (1) through (3) above will not be accepted.

Stage C: Recommendations
The Administrative President of the relevant District Court prepares a list of candidates in alphabetical order, which is sent to the Secretariat of the Supreme Judicial Council. The Secretariat sends this list to the President of the Court of Appeal and to all the Administrative Presidents of the District Courts and Special Jurisdiction Courts across the country for their opinions. The Presidents, after receiving the written opinions of the judges of their courts, prepare and send a report to the Secretariat of the Supreme Judicial Council, summarising both their own views and the views of the judges of their court. The opinions are attached in their entirety to the report.
The Secretariat also sends the alphabetical list of candidates to the Presidents of the local Bar Associations for the preparation of reports with the opinions of each Bar Association's committee regarding its members.
In cases where candidates come from the Legal Service, a relevant alphabetical list with their names is sent to the Attorney General for the submission of the Legal Service's views.
The Supreme Judicial Council may request additional or clarifying opinions from the above.

Stage D: Preliminary Examination by the Supreme Judicial Council
If it appears from the content of the application that the candidate may not meet the requirements of the law, the candidate is notified and asked to submit their views in writing to the Secretariat of the Supreme Judicial Council. The Supreme Judicial Council examines the information and decides on the matter.
A candidate may be excluded at this stage or at any subsequent stage if information, either written or oral, comes to the attention of the Supreme Judicial Council that justifies exclusion or re-examination of the candidacy. Before any exclusion is considered based on this provision, the Supreme Judicial Council informs the candidate and invites them to submit their views within a specified time. After hearing the candidate and any other person, the Supreme Judicial Council decides on the matter.
Disciplinary offences or behaviour that is inconsistent with professional standards are taken into account, depending on their seriousness, during the final stage of candidate evaluation.
The Supreme Judicial Council keeps a record of all the above, which is submitted to its Secretariat.

Stage E: Invitation to First Interview
The Supreme Judicial Council invites candidates, excluding those who have been excluded during the preliminary examination, to a first interview.
During the interview, each candidate answers questions posed by the Supreme Judicial Council. In its discretion, the Supreme Judicial Council may also require candidates to undergo a written examination in combination with oral questions.
The oral questions and/or written examination aim to assess:
(i) The personality of the candidate
(ii) The candidate's legal knowledge
(iii) The ability to assimilate and analyse information
(iv) The breadth of the candidate's thinking and general knowledge

(v) The ability to work under demanding conditions, effectively and quickly
Each member of the Supreme Judicial Council evaluates each candidate according to the above criteria.
Candidates who receive an absolute majority of votes from the attending members of the Supreme Judicial Council are placed on the List of Leading Candidates, so they may be invited for a second interview. A record is kept for this process, including the relevant reasoning.

Stage F: Invitation to Second Interview
The Supreme Judicial Council invites candidates on the List of Leading Candidates to a second interview.
During the interview, each candidate answers questions posed by the Supreme Judicial Council. In its discretion, the Supreme Judicial Council may require candidates to undergo a written examination in combination with oral questions.
The oral questions and/or written examination aim to assess:
(i) The depth of the candidate's analytical legal thinking
(ii) The depth of knowledge regarding case law and developments in this area
(iii) The ability to have an open mind and independence of thought
(iv) The ability to communicate verbally and, in the case of a written examination, in writing
(v) The ability to organise work
(vi) The ability to cooperate
(vii) The ability to listen well and respect differing opinions
(viii) Technological skills
Each member of the Supreme Judicial Council evaluates each candidate according to the above criteria.
For the vacant positions, the candidate(s) who have received the absolute majority of votes in a vote by the attending members of the Supreme Judicial Council— i.e., more than half of the votes — are selected.
The vote of each member is based on the evaluation of each candidate during the second interview, taking into account the reports from the President of the Court of Appeal, the Administrative Presidents of the District Courts, the Special Jurisdiction Courts, the Attorney General, and the Bar Associations, as well as the candidate's academic qualifications, years of legal practice, personality, and overall CV.
The Supreme Judicial Council keeps a record of the entire interview and selection process, which includes the relevant reasoning. This record is submitted to the Secretariat of the Supreme Judicial Council.
If the candidates who received the absolute majority are fewer than the vacant positions, they are appointed.
If there are more candidates who received the absolute majority than the vacant positions, the candidates with the most votes are appointed.
In case of a tie for a position or positions fewer than the tied candidates, a re-vote is held among the tied candidates, and the candidate(s) with the most votes are appointed.

Stage G: Announcement of Results and Appointment
The Supreme Judicial Council, having decided on the suitable candidates for appointment, prepares a list with rankings, announces the results publicly on its website in alphabetical order, and sends a letter of appointment offer to each selected candidate through the Secretariat.
If the appointment offer is not accepted, the Supreme Judicial Council proceeds to offer the appointment to the next suitable candidate on the list who received the absolute majority, according to the ranking.

Stage H: General Provisions
For any matter not explicitly addressed in the above, the Supreme Judicial Council may make appropriate adjustments to the process and take necessary decisions to facilitate the appointment process in a fair manner.

A significant development was the issuance of the first two judgments of the Supreme Constitutional Court of Cyprus on 4 September 2024, with regard to the appointment of the judiciary in Cyprus. The

judgments were issued in the context of appeals pursued by candidates for appointment against the respective decisions of the Supreme Judicial Council, which has exclusive jurisdiction for the appointment of judges in Cyprus. They are novel as the Supreme Constitutional Court exercised its powers conferred as of the recent judicial reform to act as a second-instance Judicial Council for the annulment of decisions of the Supreme Judicial Council for the first time.

In the first case the Court upheld the decision of the Supreme Judicial Council, reiterating the established procedure and making specific reference to the minutes kept to substantiate the decision not to proceed with a second interview for the candidate in issue, whereas in the second case the Court accepted the appeal and set aside the decision of the Supreme Judicial Council, having found that a negative recommendation for the appellant should had been further investigated, thus leading to a finding that the process shall be repeated. The judgments provide an insight of the particulars of the process followed, thus enhancing transparency and public awareness.
http://www.supremecourt.gov.cy/judicial/sc.nsf/DMLprint3_gr/DMLprint3_gr?OpenDocument

Significant developments related to irremovability of judges

The Supreme Council of Judicature (SCJ) is exclusively competent for all matters related to the judiciary, encompassing the appointment, mobility, transfers, dismissal, and retirement of judges. Judges may be dismissed from office for violating their professional code or failing to adhere to appropriate standards. However, such power is very rarely exercised by the SCJ.

District Court Judges are assigned to one of the six (6) District Courts of Cyprus, with the Kyrenia District Court, affected by the 1974 Turkish invasion, being replaced by the Nicosia District Court. Their jurisdiction includes civil cases originating within the district's limits or where the defendant resides or conducts business, as well as criminal cases subject to summary trial with penalties not exceeding five (5) years of imprisonment or a €85,000 fine, or both.

Additionally, District Court Judges may serve in Assize Courts, responsible for hearing criminal offenses, and their assignments rotate among different District Courts or Assize Courts within various districts, as determined by the SCJ for a specified term. Administrative Court Judges, situated in Nicosia without regional counterparts, hold permanent positions equivalent to District Court Presidents and Senior District Judges. Transfers between these roles are subject to completion of at least five (5) years in the Administrative Court.

The Appeal Court consists of 16 judges who are appointed by the SCJ and are dealing with appeal cases.

Supreme Court Judges, and Supreme Constitutional Court Judges serve until reaching the age of sixty-eight (68), while lower court judges serve until reaching the age of 65.

In 2022, the President of Cyprus sought the Supreme Court's opinion on a 2022 Amendment to Law 114(1)/2007, titled "Control of the Take-Up of Employment in the Private Sector by Former State Officials and Certain Former Officials of the Public Sector." The core issue was whether the inclusion of judges within the scope of this 2022 Amendment violated a constitutional provision shielding judges from adverse changes in their remuneration and service conditions following their appointments. The Supreme Court highlighted that the legislative amendment does not alter the fundamental terms of judicial service, including independence, impartiality, and irremovability.

On the contrary, the contested legislative amendment introduced an additional safeguard to further uphold judicial integrity, an inherent value of the judicial function. This measure was deemed consistent with judicial ethics, extending its validity to retired judges as well. Specifically, the constitutional Article, along with the rest of the Treaty and the Charter, in conjunction with the firmly embedded doctrine of the separation of powers, establishes a prohibition against adverse changes in the terms of service for judges following their appointment. This provision aimed to secure the independence of judges from any interference by either the executive or legislative branches of government. The same rationale applied to the inclusion of the Attorney General and Deputy Attorney General in the relevant provisions. Furthermore, it was contended that the term "retired" inherently implied departure from active service, thus distinguishing it from considerations related to pensions and associated benefits. The entitlement to pensions and benefits was progressively structured throughout the period of service, and beneficiaries exercised these rights upon retirement. In this context, the matter at hand pertained to an "employment condition" safeguarded by the prohibition in Article 158.3. It was further noted that there was already an obligation concerning retired judges, which was derived from the Legislation. Specifically, section 12 of the Advocates Law, Chapter 2, contained provisions that prevented individuals holding a judicial office from appearing before any court for a one-year period after retiring from that office. Considering all these factors, the Plenary of the Supreme Court has rendered the opinion that the contested Law does not contravene the Constitution, the Treaty, the Charter, or the doctrine of the separation of powers.

Significant developments if any, related to promotion of judges and prosecutors

On 15 November 2023 the Supreme Court of Cyprus issued the Procedural Regulation outlining the procedure and criteria for the promotion or filling a judicial position (President of the District Court, Senior District Court Judge and President of a Special Jurisdiction Court).

Stage A: Announcement
The Supreme Judicial Council announces the vacant positions of President of the District Court, Senior District Judge, and President of the Court of Special Jurisdiction in the Judicial Service, depending on the current needs of the Courts. The announcement is made through a publication by the Supreme Judicial Council, specifying the number of vacant positions and the Courts where these positions are available, and calling candidates to act within the specified time as outlined in Stage B below, Preliminary Stage.

The announcement is published in the Official Gazette of the Republic and posted on the website of the Supreme Court and on the local bulletin boards of the District Courts. It is also sent electronically to the President of the Court of Appeal, the Presidents of the District Courts, and the Cyprus Bar Association.

Stage B: Preliminary Stage
A judge interested in a vacant position sends the following to the Secretariat of the Supreme Judicial Council:

Curriculum Vitae.
A summary of their judicial work.
The ten most important decisions they have issued.

A lawyer interested in a vacant position sends the following to the Secretariat of the Supreme Judicial Council:

Curriculum Vitae.

A declaration regarding any previous or pending cases, whether criminal, disciplinary, or civil, in which they are personally involved as a party.
A brief description of their personality, written by themselves.
A summary of their legal work.
The ten most important judicial decisions in cases in which they were substantively involved in handling them.
Applications that do not include the above will not be accepted.

Stage C: Recommendations – Opinions from the President of the Court of Appeal, Administrative Presidents of District Courts, Presidents of Special Jurisdiction Courts, Attorney General, and Bar Associations
The Secretariat of the Supreme Judicial Council transmits the list of candidates, ranked by seniority, to the President and members of the Court of Appeal and to all Administrative Presidents of the District Courts, and depending on the position, to the Presidents of the Special Jurisdiction Courts, for them to provide their views on each candidate. The Secretariat also transmits the list to the Attorney General for the views of the service they head, and to the President of the Cyprus Bar Association for the views of the Cyprus Bar Association's Committee. The opinions provided by the Attorney General and the President of the Cyprus Bar Association are advisory only.

The recommendations are formed based on the following factors for each candidate: (a) Their character and integrity. (b) Their legal knowledge and ability to apply it. (c) Their effectiveness and organisational skills. (d) Their communication and collaboration skills in their work environment. (e) Their ability to utilise their working time effectively. (f) Their conduct while performing judicial or legal duties, depending on the case.

Stage D: Preliminary Examination by the Supreme Judicial Council
If, from the contents of the application, it appears that the candidate may not meet the requirements of the law, this is communicated to the candidate, who is invited to submit written comments to the Secretariat of the Supreme Judicial Council. The Supreme Judicial Council reviews the available information and makes a decision on the matter.

A candidate may be excluded at this or any subsequent stage if information is received by the Supreme Judicial Council, either in writing or verbally, that justifies the exclusion or reconsideration of the candidacy. Before examining an exclusion issue based on this provision, the Supreme Judicial Council informs the candidate in writing and invites them to submit their position within a specified time. The Supreme Judicial Council, after hearing the candidate and any other person, makes a decision on the matter.

Disciplinary offences by candidates, as well as conduct that does not align with professional standards, may be taken into account, depending on the severity, at the final stage of evaluating the candidates. The Supreme Judicial Council keeps a record of all the above and submits it to the Secretariat.

Stage E: Candidate Interview
The Supreme Judicial Council invites the candidates, except those who have been excluded during the preliminary examination, for an interview.

During the interview, each candidate answers questions posed by the Supreme Judicial Council, which aim to assess: i. Their personality ii. The breadth and independence of their thinking iii. The depth of their analytical legal thinking iv. Their knowledge of jurisprudence and developments in it v. Their ability to keep an open mind and independent thinking vi. Their ability in verbal and written communication vii. Their

organisational skills viii. Their ability to collaborate ix. Their listening skills and respect for differing opinions x. Their skills in technology xi. Their effectiveness and ability to meet the duties of the position, considering both the qualitative and quantitative aspects of their work.

Each member of the Supreme Judicial Council evaluates each candidate according to the above criteria.

Stage F: Selection of the Most Suitable Candidates
For the vacant position(s), the candidate(s) who receive the absolute majority in a vote by the members of the Supreme Judicial Council (i.e., more than half of the votes) will be selected. The vote of each member of the Supreme Judicial Council is based on the evaluation of the candidate(s), and takes into account, in addition to the outcome of the interview in Stage E, the views of the President of the Court of Appeal, the Presidents of the District Courts and the Special Jurisdiction Courts, the Attorney General, and the Cyprus Bar Association, as well as seniority and the overall curriculum vitae.

If the candidates who received the absolute majority are fewer than the vacant positions, they will be appointed or promoted, as appropriate. If the candidates who received the absolute majority are more than the vacant positions, those with the most votes will be appointed or promoted. In case of a tie for a position or positions, a re-vote is held among the members for the tied candidates, and the one(s) with the most votes will be appointed or promoted.

The Supreme Judicial Council keeps a relevant record of the entire interview and selection process, which includes the justification for the decision. This record is submitted to the Secretariat of the Supreme Judicial Council.

Stage G: Announcement of Results and Appointments or Promotions
After deciding on the most suitable candidates for appointment or promotion, the Supreme Judicial Council prepares a list in order of seniority, publicly announces the results on its website, and sends a letter to each selected candidate via the Secretariat.

In case of non-acceptance of the appointment or promotion, the Supreme Judicial Council will proceed to offer the appointment or promotion to the next most suitable candidate who has received the absolute majority, according to the ranking.

Stage H: General
In cases where, due to the short time elapsed since the immediately previous appointments or promotions or due to no substantial change in the relevant data, the Supreme Judicial Council deems it unnecessary to repeat the entire process of appointments or promotions for new positions, it proceeds with the appointment or promotion based on the previous process.

In this case, any candidate may present any new evidence they believe supports their candidacy to the Supreme Judicial Council. Furthermore, the Supreme Judicial Council may, if deemed necessary, request new opinions from the President of the Court of Appeal, the relevant Administrative Presidents, the Attorney General, and the President of the Cyprus Bar Association.

For any issue not specifically addressed above, the Supreme Judicial Council may regulate the process and make necessary decisions to facilitate the fair appointment or promotion of judges.
There are no developments related to promotion of judges and prosecutors in 2024.
http://www.supremecourt.gov.cy/judicial/sc.nsf/DMLprint3_gr/DMLprint3_gr?OpenDocument

Significant developments related to allocation of cases in courts

Allocation of cases in courts
The Cypriot courts employ a scale allocation system wherein cases are assigned based on the value of the claim.

District Courts hold jurisdiction to hear civil cases at first instance, where the cause of action has arisen wholly or in part within the district's limits, or where the defendant resides or conducts business within that district. The president of the District Court can preside over any case, a senior District Court Judge can adjudicate a case with a claim not exceeding (€500,000.00), and a district court judge can try a case where the subject matter of the claim does not exceed (€100,000).

However, a senior district judge has jurisdiction to hear and decide on cases involving accidents or damages resulting from a requisition order, or if the case pertains to a bond obtained between 2008 and March 2013, irrespective of the amount of the claim. District Court judges also have jurisdiction to handle summarily, at first instance, offences punishable with imprisonment for a term not exceeding five years or with a fine not exceeding €85,000, or both. The Assize Courts possess unlimited jurisdiction to adjudicate, at first instance, all criminal offences punishable under the Criminal Code or any other law, with the authority to impose the maximum sentence stipulated by the relevant law.

The allocation of cases is carried out by the registrars on a rotational basis. However, this rotation may vary across different District Courts due to necessity arising from the implementation of the Recovery and Resilience Plan. Under this Plan, Cyprus has committed to resolving 20% of civil cases and appeals that had been pending for more than two years as of 31 December 2020, by the end of the first half of 2024, and 40% by the end of the first half of 2026.

To achieve this objective, the Supreme Court has developed an Action Plan, under which a task force has been entrusted with analysing issues related to case backlogs in each jurisdiction. Consequently, in certain districts, some judges adjudicate cases within their respective subject-matter jurisdiction, as previously outlined, but all pertaining to a specific filing year.

As part of the Action Plan, a comprehensive physical inventory of pending cases was conducted. The results of the Action Plan's implementation, as of 30 June 2024, are as follows:

(a) Cases pending for more than two years as of 31 December 2020, have been reduced by 55% as of 30 June 2024.
(b) Cases pending for more than two years as of 30 June 2022, have been reduced by 40% as of 30 June 2024.

As a result of the re-establishment of the Supreme Court and the Supreme Constitutional Court, Appeals submitted after 2017 have been directed to the new Court of Appeal, while those filed between 2013 and 2017 will be adjudicated by the new Supreme Court for civil and criminal appeals, and by the Supreme Constitutional.

Significant developments related to independence and powers of the body tasked with safeguarding the independence of the judiciary

From 1 July 2023, the operation of the Supreme Judicial Council began, to which exclusively falls the responsibility for the appointment, promotion, transfer, termination of service, dismissal, and disciplinary authority over the Judges of the Court of Appeals and the Judges of the first-instance courts. The Supreme Judicial Council is composed of the President of the Supreme Court as the President and the other Judges of the Supreme Court as its members. In each session of the Supreme Judicial Council that concerns the appointment or promotion of a Judge of the Court of Appeals or a first-instance court, the following may participate without the right to vote: (i) The Attorney General of the Republic and, in the event of their absence or temporary incapacity, the Deputy Attorney General of the Republic (ii) The President of the Cyprus Bar Association and, in the event of their absence or temporary incapacity, the Vice President of the Cyprus Bar Association; and (iii) Two (2) legally recognised and highly esteemed legal professionals of the highest professional level, possessing the qualifications for appointment as Judges of the Supreme Court, who are appointed following a proposal by the Cyprus Bar Association and approval by the Supreme Court. It is understood that, in the case where the session of the Supreme Judicial Council concerns the transfer or the exercise of disciplinary authority over a Judge of the Court of Appeals or a first-instance court, neither the Attorney General of the Republic nor the President of the Cyprus Bar Association, nor the appointed legal professionals will be present.

Under the recent amendments, a new Court structure is established including separate Supreme Constitutional Court and a Supreme Court for civil and criminal cases. Members of each Court will check each other for disciplinary matters. This constitutes a substantial improvement. For lower Courts (First Instance Courts and Court of Appeals) discipline will be enforced by the new Disciplinary Council consisting of judges of the Supreme Court as mentioned above.

(https://www.cylaw.org/nomoi/enop/non-ind/1964_1_33/full.html)

Significant developments related to accountability of judges and prosecutors

There have been no significant developments since 2023 related to the accountability of judges and prosecutors including disciplinary regime and bodies and ethical rules, judicial immunity and criminal/civil (where applicable) liability of judges.

Significant developments related to remuneration for judges and prosecutors

The relevant figures are being published on an annual basis by the Office of the Accountant General of the Republic of Cyprus. The latest concerning data as on 1 January 2025 can be found in the following link: https://www.treasury.gov.cy/treasury/treasurynew.nsf/All/F7835E8AB3F64613C225893C0044781D?OpenDocument

This is a breakdown of the net monthly salaries of certain of the highest paid government officials (non – judiciary positions included for comparison purposes):
- Attorney General €9,082
- Deputy Attorney General €9,082
- President of the Supreme Court €9,082
- President of the Constitutional Supreme Court €9,082
- Court of Appeal €8,208

- President of the Republic of Cyprus €9,016
- President of the House of Representatives €7,333
- President of the District Court €7,333
- Senior District Judge €6,138
- President of another court €6,138

Data for previous years are also published online by the Office of the Accountant General of the Republic of Cyprus:
https://www.treasury.gov.cy/Treasury/treasurynew.nsf/All/D9A05727E0431CA2C225893C004458BB?OpenDocument

Significant developments related to independence of the prosecution service

The Office of the Attorney-General is considered expressly under Article 112 of the Constitution to be independent. Further, pursuant to Article 113 of the Constitution, the Attorney-General is the Legal Advisor and Lawyer of the Government representing the latter in Courts. The President of the Republic of Cyprus appoints the Attorney General and the Deputy Attorney General who hold their respective offices until the age of 68 and are not removed from office except on similar grounds and in the same manner as for the Judge of the Supreme Court. There is no independent Director of the Public Prosecution Service. This may be considered as desirable in the future. Additionally, a draft Bill is pending for discussion regarding the independence and complete autonomy of the Office of the Attorney General as mentioned above.
(https://www.cylaw.org/nomoi/enop/non-ind/syntagma/full.html)

Cases/examples undermining confidentiality of lawyer-client communications

The Supreme Court of Cyprus has set clear guidelines in judgments, such as the judgment in civil appeal no. 337/2021 dated 1 March 2023 in line with the jurisprudence of the European Court of Human Rights as to warrants of criminal nature which could be issued against lawyers and law firms. Further, by virtue of Article 1A of the Constitution of the Republic of Cyprus, the EU Charter of Fundamental Rights as part of the EU Treaties' System, and the Court of Justice of the European Union Judgements are directly enforceable.
https://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_1/2023/1-202303-337-21PolEf.htm&qstring=certiorari%20and%20%E4%E7%EC%E7%F4%F1%E9%E1%E4%2A

In the petition for the issuance of a certiorari warrant no. 175/2023 (issued on 13 March 2024), the Supreme Court decided that the investigation authorised by the warrant under review was generalised, unchecked, and could extend to material protected by legal professional privilege. Therefore, if the authorisation had been extended beyond what was absolutely necessary, it was not, to the extent granted, necessary and thus not proportionate.
https://www.cylaw.org/cgi-bin/open.pl?file=supreme/2024/202403-175-23Ait.html&qstring=%E4%E9%EA%E7%E3%EF%F1%2A%20%E1%F0%EF%F1%F1%E7%F4%2A

There are no cases undermining or not respecting confidentiality of lawyer-client communications in 2024 in Cyprus. As shown by the citation of the above judicial decisions, courts are strict in protecting the legal professional privilege. However, we regret to note that this is not the case also with the executive branch

of the government. In particular, the Cyprus Bar Association is the Supervisory Authority of its members offering administrative services, as such are related to AML purposes, and this further enhances the independence of the CBA. A bill is currently being drafted regarding the establishment of a Republic of Cyprus National Overall Independent Supervisory Authority for Anti-Money Laundering and Sanctions' Supervision Purposes, by the government, monitoring the organisations offering administrative services, including lawyers, as such are related to AML purposes. The Cyprus Bar Association strongly disagreed with the plans of the Government, stating that the independence of the Bar is crucial, and the legal professional privilege is a principle that cannot be bypassed.

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

There is a lack of specific, documented cases of physical, online, or legal threats or harassment directed at lawyers in Cyprus during 2024. This absence of reported incidents does not necessarily indicate that such threats do not occur. Establishing clear reporting mechanisms and support systems within the legal community can aid in mitigating such incidents. In conclusion, while specific cases from 2024 in Cyprus are not readily available, the broader context suggests a need for continued awareness and protective measures to ensure the safety and integrity of legal practitioners.

Specific legal provisions and policies in your country which could influence the independence of the Bar and lawyers

A significant point noted by the Cyprus Bar Association in the context of the modernisation of the Advocates Law, Cap. 2 is the need for the registry of lawyers, and the registry of trainee lawyers to be removed from the Supreme Court and to be transferred to the CBA, completely separating the legal profession from the judiciary. The independence of the CBA ensures that lawyers can perform their duties without interference which is essential for the impartial functioning of the legal system. The following points support the independence of the Bar:

•The Cyprus Bar Association is an independent and non-political body established by the Advocates Law Cap.2. Its independence is critical to ensuring the proper administration of justice, safeguarding the rule of law, and upholding the ethical standards of the legal profession. The CBA represents the interests of lawyers in Cyprus and advocates for reforms or changes to legal practices.

•The authority of the Cyprus Bar Association as an autonomous body derives from the Advocates Law, Cap.2 which determines that the Council of the CBA is elected every three years by all the lawyers-registered and licensed members of the Bar.

•While the CBA may engage in discussions with governmental bodies and participate in legislative processes, it maintains its independence from direct political influence. The legislative, executive and judicial authorities of the State have no power or control over its Council election.

•The CBA adopts its own code of conduct. The respective body handling violation of this code of conduct is the Disciplinary Council of the CBA which is appointed by the Council of the Bar. There is no right of interference by the State. The decisions of the Disciplinary Council are subject to appeal to the Court of Appeal. The Cyprus Bar Association is the Supervisory Authority of its members offering administrative services, as such are related to AML purposes, and this further enhances the independence of the CBA. Steps have been taken to enhance the AML and KYC mechanisms with the addition of new personnel

enhancing the relevant department(s). Investigations have become more efficient because of the amendment of Advocates Law Cap. 2 and the disciplinary proceedings strengthened.

→A bill is currently being drafted regarding the establishment of a Republic of Cyprus National Overall Independent Supervisory Authority for Anti-Money Laundering and Sanctions' Supervision Purposes, by the government, monitoring the organisations offering administrative services, as such are related to AML purposes.

→The Cyprus Bar Association strongly disagreed with the plans of the Government, stating that the independence of the Bar is crucial, and legal professional privilege is a principle that cannot be bypassed. There is no objection of the CBA if the Coordinating Authority will be of advisory/coordinating nature for the individual supervisory authorities.

•The Attorney General, in accordance with the Cyprus Advocates Law, Cap. 2, is the Honorary President of the Cyprus Bar Association. The role of the Honorary president is mostly formal, as the decisions of the Bar are taken by the Council. The Attorney General has rarely exercised his right to participate in the meetings of the Council.

•Additionally, the Attorney General is a member of the Disciplinary Council pursuant to Article 16 of Cap. 2. However, he has never participated in any procedures or decision taking, as the Disciplinary Council hears cases in three-members panels of the disciplinary board and the Attorney General has never invoked his right to participate in such panels. Occasionally, the Attorney General attends the meetings of the Disciplinary Board for informational purposes only, to receive an update on procedural matters and to remain informed of any issues concerning the conduct of the proceedings.

•The Cyprus Bar Association regulates its members, oversees their professional conduct, and ensures that ethical standards are upheld. The Cyprus Bar Association is funded by its own members, specifically from the annual license which expires on the 31 day of December of the year of its issuance, the annual subscription fee by non-practising lawyers and the annual fee of the registered companies. Furthermore, the Bar collects a fee for the issuance of a newsletter, certificates, lawyer identification cards, diaries, insolvency practitioner licences and for the organisation of seminars for lawyers.

•The Cyprus Bar Association adheres to international standards and norms for the independence of the legal profession, including those set by the Council of Bars and Law Societies of Europe and the International Bar Association (IBA) and other global legal organisations.
(https://www.cylaw.org/nomoi/enop/non-ind/0_2/full.html)

Specific examples in relation to the cooperation between your Bar and the executive branch or supervisory authorities

The Bar Association is represented in the Committees of the House of Representatives and in the Ministries within the framework of the consultation of the bills that concern its members. The Bar Association actively presents its views and submits its comments/suggestions on the bills, which are sent to the relevant Subcommittees of the CBA for further processing. There are no issues with the cooperation between the CBA Association and the executive branch.

Please also see above on Executive's efforts to establish a National Overall Independent Supervisory Authority, which will undermine the independence of the Bar and its members.

Problems and difficulties implementing the case law of national, European, and international courts

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

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

A significant development was the issuance of the first two judgments of the Supreme Constitutional Court of Cyprus on 4 September 2024, with regard to the appointment of the judiciary in Cyprus. The judgments were issued in the context of appeals pursued by candidates for appointment against the respective decisions of the Supreme Judicial Council, which has exclusive jurisdiction for the appointment of judges in Cyprus. They are novel as the Supreme Constitutional Court exercised its powers conferred as of the recent judicial reform to act as a second-instance Judicial Council for the annulment of decisions of the Supreme Judicial Council for the first time. In the first case the Court upheld the decision of the Supreme Judicial Council, reiterating the established procedure and making specific reference to the minutes kept to substantiate the decision not to proceed with a second interview for the candidate in issue, whereas in the second case the Court accepted the appeal and set aside the decision of the Supreme Judicial Council, having found that a negative recommendation for the appellant should had been further investigated, thus leading to a finding that the process shall be repeated. The judgments provide an insight of the particulars of the process followed, thus enhancing transparency and public awareness.

In September 2024, the Supreme Constitutional Court unanimously ruled to dismiss Auditor-General Odysseas Michaelides, following an application filed by the Attorney General. The public perception of the Auditor-General was positive. However, the Supreme Constitutional Court was not influenced by this fact and, after conducting a thorough and detailed analysis of the relevant facts, and the legal principles applied internationally on the matter, concluded that due to his repeated and highly inappropriate behaviour, which included unfounded accusations against other officials, the Auditor-General's dismissal was justified.

On 20 November 2024, the Supreme Constitutional Court rejected a referral by the President of the Republic, along with the positions of the Attorney General and Deputy Attorney General, arguing that the law passed by the House of Representatives requiring them to submit capital statements was unconstitutional. The Court dismissed the claim that the Attorney General and Deputy Attorney General are equivalent to judges and entitled to the same treatment. It clarified that while they are members of the independent legal service and not subordinate to any ministry, they do not possess judicial authority, and their roles and responsibilities differ fundamentally from those of judicial officials. The Court further underscored that its decision aims to promote transparency and accountability, and to strengthen the necessary trust in Cyprus' governmental institutions.

Significant developments related to accessibility of courts

With the recent amendment to the Law, free legal aid is provided to a person who is a victim of a crime of violence against women or domestic violence: (a) in proceedings before the District Court for a claim for compensation under the provisions of the Law on the Prevention and Combating of Violence against Women and Domestic Violence and Related Matters, and in any other proceedings before the District Court that are directly or indirectly related to this; (b) for any request made before the competent court regarding the issuance of any order. https://www.cylaw.org/nomoi/arith/2024_1_128.pdf

With another recent amendment of the Law, it was determined that the Cyprus Bar Association compiles a list with the names of lawyers who are interested in offering services with legal aid, based on the alphabetical order of the names of the lawyers who wish to offer services, categorised by district and field of law. https://www.cylaw.org/nomoi/arith/2024_1_170.pdf

There are no developments related to legal fees or language. The legal fees are defined in the procedural regulation of the Supreme Court in 2017.

Significant developments related to resources of the judiciary

It is important to be noted that the Report of the year 2024 fails to adequately address and make specific recommendations in relation to the following:

a. The need to introduce without further delay digitalisation and extensive use of technology in the justice system. The CBA committee has suggested various improvements, such as the integration of technology and the facilitation of court appearances via telephone or online video platforms like Zoom. However, there is noticeable reluctance among judges to adopt these changes, and CBA is striving to encourage a shift in this attitude.
b. The delay in the operation of the Commercial Court and the Admiralty Court.
c. Inadequate resources to the justice system in infrastructure (in particular the capital, Nicosia, suffers from a lack of suitable infrastructure) and staff.

There are no significant developments related to resources of the judiciary (human/financial/material) in 2024.

Significant developments related to training of justice professionals

The official operation of the Cyprus Judicial Training School began on 14 August 2020, following the passage of Law 101(I)/2020 by the House of Representatives, which provides for its establishment and operation. However, the first organised programmes, coordinated by the Cyprus Judicial Training School with Cypriot trainers, were held in early October 2018. Lawyers, upon completing their training and passing the exams of the Legal Council, must, upon registering with the Bar Association, undergo annual professional development of 12 hours (four certified points, eight non-certified points).

There are no developments related to the training of justice professionals in 2024. The CBA will proceed with the modernisation and upgrading of the professional training of its members in 2025.

More training is needed for both lawyers and judges on European Union law.
(https://www.cylaw.org/nomoi/enop/non-ind/2020_1_101/full.html)

Significant developments related to digitalisation

The use of technology is very limited, and unfortunately, there is a noticeable reluctance by the Supreme Court to adopt and implement innovative solutions and technological tools for handling cases, particularly at the first instance court level. Apart from the introduction of new civil procedure rules, which, based on indications so far, have not been particularly effective in optimising case adjudication times, no other substantial changes have been made.

Moreover, following the collapse of Cyprus's e-Justice system, it was announced that the Deputy Ministry of Innovation and the Judicial Service will initiate an immediate upgrade of the existing i-Justice platform, which serves and pertains only to matters of filing legal documents, applications, and other paperwork in Court, while it provides very limited assistance for case processing. The e-Justice project faced challenges during testing, leading to the contract's cancellation and subsequent legal disputes.

Additionally, a proposed bill seeks to amend the law to permit digital recording of criminal court proceedings, aligning with the introduction of an EU-funded audio recording system in Cypriot courts. However, in civil cases, we have been waiting for many years for a similar system to be implemented.
(https://www.nomoplatform.cy/bills/o-peri-poinikis-dikonomias-tropopoiitikos-nomos-toy-2020/)

Significant developments related to use of assessment tools and standards

There are no official surveys conducted among court users or legal professionals. There are only surveys by the EU and CoE initiatives such as the EU Justice Scoreboard and CEPEJ as well as by universities. Also, statistics regarding the filing of cases, the progress of the backlog project etc, are very hard to find and on this basis, there is lack of transparency regarding case management. The Minister of Justice announced some statistics in a podcast and that he requested them by the Supreme Court before the interview. This is indicative of the fact that statistics are not publicly available. Regarding the backlog project, the only announcement regarding its progress was a comment by the President of the Supreme Court before the Parliament.

Significant developments related to geographical distribution and number of courts/jurisdictions

Courts in Cyprus are strategically distributed across various regions to ensure accessibility for the public. This distribution considers population density, geographical factors, and the demand for judicial services in specific areas.
The judicial map in Cyprus comprises:

• Supreme Court and Supreme Constitutional Court: Located in the capital to serve as the third-tier highest courts. Until 30 June 2023, the Supreme Court also functioned as the Supreme Constitutional Court. Following recent reforms, as of 1 July 2023, the Supreme Court has been divided into the new Supreme Constitutional Court and the new Supreme Court.
• Court of Appeal: Established on 1 July 2023, as an appellate court with jurisdiction to hear and decide on appeals from first-instance courts. Appeals from the Court of Appeal will be directed either to the new Supreme Court or the new Supreme Constitutional Court, depending on the nature of the matter,

especially if it involves public interest, importance, or conflicting case law. The work of the Appeal Court is conducted in Nicosia.
• District Courts: Positioned in various districts to address a wide range of civil and criminal cases at the trial level. Purpose: Serving as the trial-level court, handling diverse civil and criminal cases. Function: Conducting trials, examining evidence, and delivering judgments in both civil and criminal matters.
• Specialised Courts: Including family courts, and other specialised courts, distributed based on the nature of cases they handle. Purpose: Addressing specific types of cases that demand specialised knowledge or procedures. Other specialised courts include the Labour Court, the Rent Control Court, the Military Court, the Administrative Court, which serve as the Administrative and Tax Courts and the Administrative Court for International Protection.
• Commercial and Admiralty Courts: Enacted through Law 69(I)/22. These two new specialised courts, namely the Commercial Court and the Admiralty Court, focus on resolving commercial and maritime law disputes, respectively. The date of the operation of the Commercial and Admiralty Courts is yet to be announced.

Significant developments related to efficiency of justice system

As mentioned in question 19 above, the use of technology is very limited, and unfortunately, there is a noticeable reluctance by the Supreme Court to adopt and implement innovative solutions and technological tools for handling cases, particularly at the first instance court level. Apart from the introduction of new civil procedure rules, which, based on indications so far, have not been particularly effective in optimising case adjudication times, no other substantial changes have been made.

Moreover, following the collapse of Cyprus's e-Justice system, it was announced that the Deputy Ministry of Innovation and the Judicial Service will initiate an immediate upgrade of the existing i-Justice platform, which serves and pertains only to matters of filing legal documents, applications, and other paperwork in Court, while it provides very limited assistance for case processing. The e-Justice project faced challenges during testing, leading to the contract's cancellation and subsequent legal disputes.

Additionally, a proposed bill seeks to amend the law to permit digital recording of criminal court proceedings, aligning with the introduction of an EU-funded audio recording system in Cypriot courts.

However, in civil cases, we have been waiting for many years for a similar system to be implemented.

Another bill is currently being drafted by the Ministry of Justice for the modernisation and the promotion of arbitration in Cyprus in the context of the broaden promotion of the alternative dispute resolution methods. In this context, the CBA promotes the Cyprus Arbitration & Mediation Centre which offers services of alternative dispute resolution.

One of the biggest problems we face in the judicial system is the lack of enforcement measures for court decisions. Not only do citizens and businesses wait for many years to obtain a decision, but even when that time comes, they cannot enforce it due to difficulties or restrictions imposed by various legislations (e.g., inability to access the bank accounts of debtors by court order, limitations on seizing movable property, inability to sell real estate).

Other issues and significant developments impacting access to justice

The Cyprus Bar Association actively participates in consultations on judicial reforms, including modernizing court procedures and digitalisation.

CZECHIA

Measures taken to follow-up on the recommendations of the European Commission received in the 2024 Report

On 1 July 2024, the amendment to the Act No. 283/1993 Coll., on the Public Prosecutor's Office, as amended, Act No. 201/1997 Coll., on the Salary and Certain Other Remuneration of Public Prosecutors, as amended, and Act No. 7/2002 Coll., on Proceedings in the Matters of Judges, Public Prosecutors and Bailiffs, as amended, entered into force, with the exception of some of its provisions. It was published in the Collection of Laws and International Treaties under No 83/2024 Coll.

It introduces a 7-year term of office for the Prosecutor General without the possibility of reappointment, clearly sets out the rules for the appointment and dismissal of chief prosecutors. Newly, district, regional and chief prosecutors will only be removable in disciplinary proceedings. The government will still be able to dismiss the chief prosecutor, but the law sets out clear and specific grounds. In addition, the chief prosecutor can defend himself against them before the Supreme Administrative Court.

The follow up summary of the recommendations received in the 2024 Rule of Law Report was published by the Office of the Government here, we refer to some follow-up measures related to the legal profession further in the contribution.

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

Significant developments related to appointment and selection of judges, prosecutors and court presidents

On 1 January 2025, the Act amending Act No. 6/2002 Coll., on Courts, Judges, Judges and the State Administration of Courts and on Amendments to Certain Other Acts (the Courts and Judges Act), as amended, and other related acts entered into force.

It was published in the Collection of Laws and International Treaties under No 319/2024 Coll. It primarily concerns the regulation of lay judges, which is part of the Courts and Judges Act and laws on proceedings before courts such as the Civil Procedure Code and the Criminal Procedure Code. The stated aim of the amendment is to make judicial decision-making, in which lay judges are currently involved, more efficient and to reduce the administrative burden.

In regional courts, lay judges will continue to sit only in first-instance criminal proceedings for particularly serious crimes with a maximum sentence of at least ten years - for example, murder or more serious cases of robbery, but not property and economic crimes. In other cases, the existing three-judge panels will be abolished in regional courts and cases will be decided by a single judge.

In the district courts, lay judges will no longer serve in the new cases at all - they will no longer co-judge labour disputes and will also cease to serve on criminal panels. Cases will be decided by a single judge. However, the exodus of judges will be gradual - the cases in which they sat before the amendment came into force will still be completed and their functions will cease only after the final conclusion of all "their" proceedings.

President of the Czech Republic, Petr Pavel, vetoed the government's draft on the grounds that the abolition of lay judges on such a large scale should have been preceded by a more thorough analysis. He recommended a debate on whether the system of lay judges should be improved rather than severely curtailed. A broader retention of the lay element was also called for by some prosecutors and courts, arguing that judges could be detached from the realities of everyday life. The Presidential veto was outvoted by the Chamber of Deputies.

Significant developments related to irremovability of judges

In December 2024, the amendment which regulates the length of experience required for appointment to the positions of presidents and vice-presidents of courts was approved by the Senate. Currently, the requirement was identically five years of practice. According to the amendment the five years of experience will be a prerequisite only for the office of President of the Supreme Court, the Supreme Administrative Court and the High Courts. A judge with at least four years of experience could become the president of a regional court and at least two years of experience to become a president of a District court. For vice-presidents of courts, the experience requirement would always be half that of what is required to become president.

Significant developments related to accountability of judges and prosecutors

On 20 December 2024, the Act amending Act No. 7/2002 Coll., on proceedings in the cases of judges, prosecutors and bailiffs, as amended, and other related acts was published in the Collection of Laws and International Treaties.

The Act is restoring the two-instance nature of disciplinary proceedings in the cases of judges, prosecutors and bailiffs. Currently, the only disciplinary court is the Supreme Administrative Court, and the decision of its disciplinary chamber can only be overturned by a motion for a retrial or a constitutional complaint. According to the amendment, the High Courts in Prague and Olomouc would conduct disciplinary proceedings in the first instance. In addition to the Supreme Administrative Court, the Supreme Court would also be the appellate disciplinary court.

The amendment also introduces the possibility of an agreement on guilt and disciplinary measures. The person against whom the petition is filed will have to declare in the agreement that he or she committed the act that is the subject of the agreement. The Disciplinary Chamber will not approve the plea bargain if it considers it to be incorrect or unreasonable. The Chamber of Deputies also added the possibility of an appeal due to a serious violation of the rights of the disciplinary defendant in the negotiation of the plea agreement or in the procedure for its approval. The draft also limits the range of cases in which judges and prosecutors temporarily suspended from office are retroactively paid a portion of their salary.

Judges and prosecutors would face reprimand, reduction of salary or the most severe removal from office for disciplinary offences, while judges additionally would face removal from the office of president of the chamber. A bailiff can be punished for a disciplinary offence by a warning, a fine or removal from the bailiff's office.

Significant developments related to remuneration

From 1 January 2025, a new law on court experts, expert institutes and interpreters supposed to enter into force, which was to soften the conditions of the existing one. Only 309 out of 6,000 currently registered experts have applied for relicensing so far. However, the amendment is still in its second reading in the Chamber of Deputies, and MPs are postponing its discussion without specific reason.

On 27 November 2024, the Constitutional Court issued ruling Pl. ÚS 16/24, addressing the constitutionality of Section 31(5) of Act No. 236/1995 Coll., which excluded periods of maternity and parental leave from the required three years of judicial service needed to advance to the third salary coefficient. This provision, applicable to judges with 6–8 years of legal experience, particularly affected women (mothers) judges, as those who became judges after eight years of legal practice were unaffected by this exclusion.

The appellant, the District Court for Prague 10, challenged the provision as discriminatory, arguing it lacked rational justification. The Constitutional Court, in a ruling delivered by Judge-Rapporteur Veronika Křesťanová, repealed the contested section, citing its inconsistency with the prohibition of discrimination under Article 3(1) of the Charter of Fundamental Rights and Freedoms. The Court held that the differential treatment based on gender (including parenthood) and age infringed the right to fair remuneration under Article 28 of the Charter.

The provision originated at a time when judges were appointed at a younger age (25 years). However, with the current age limit of 30 and common lateral appointments, the original rationale no longer applies. Women judges who follow a typical career path—becoming judges shortly after law school and taking maternity leave before age 30—are disproportionately disadvantaged. The Court emphasised that statutory inequalities must serve a legitimate aim and pass the proportionality test, which the contested provision failed to do. The ruling also criticised the legislature and government for not updating the law to reflect changes in judicial appointments. The Court rejected concerns about the financial impact of backpay, noting that relatively few individuals are affected, and prioritised protecting fundamental rights over legal certainty.

The ruling of the Constitutional Court in Case No. Pl. ÚS 16/24 is available here.

On 28 May 2024, the Constitutional Court published three rulings - Pl. ÚS 4/23, Pl. ÚS 15/22 and Pl. ÚS 5/24 - concerning judges' salaries. The reasons for freezing judges' salaries were found by the full Constitutional Court to be constitutionally compliant only in the first case, i.e. in the period from 2021 to 31 January 2022. In the other two cases of salary restrictions (in 2022 and 2024), the Constitutional Court reproached the Government and the Parliament for adopting unconstitutional regulations. However, in 2022, according to the Constitutional Court, the serious economic situation of the society caused by the war conflict, exceptionally high energy prices and unprecedented inflation rates outweighed the demand of the judges to pay the difference in salaries and the Court concluded that the retroactive payment of salaries to the judges would not take place. However, these reasons for further, this time permanent, restrictions on judges' salaries are not given in the regulation in force for 2024 and subsequent years, which is why the Constitutional Court annulled the regulation adopted here in relation to judges' salaries for unconstitutionality. Thus, in the last case, judges are entitled to additional payments to their salaries, which were withdrawn from them by the repealed regulation as of 1 January 2024.

In 2024, the Czech justice system faced significant unrest due to wage disputes involving judges and court personnel. The Czech Judges Union demanded an immediate increase in salaries for court employees and

the establishment of a separate salary structure to reflect the unique nature of their work. They expressed support for various forms of protest, including strikes, if their wage demands were not met.

In October 2024, judicial staff initiated a three-day strike to protest low wages. While most court buildings remained operational, services such as filing offices and information centres were limited, and some hearings were postponed due to the absence of essential personnel. Judges, though legally unable to strike, supported the protesting staff.

Amid these tensions, the Czech government approved a 6.9% salary increase for top politicians, judges, and prosecutors. The additional funds initially allocated for a higher pay increase were redirected to raise the salaries of judicial administrative staff, who had been underpaid. This decision aimed to address the disparities and alleviate the discontent among court employees.

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

Amendment to the Act on the Legal Profession – we refer to our previous contributions for further details.

The adoption of an amendment to the Act on the Legal Profession, initially expected in 2024, has been delayed due to the preparation of a new amendment addressing a recent case of embezzlement involving a lawyer's escrow account. The proposed amendment establishes a new guarantee fund under the Czech Bar Association to compensate clients harmed by potential embezzlement by lawyers in the administration of escrow accounts. Additionally, the Czech Bar Association will gain authority to access data on escrow accounts from all banks, enabling more effective oversight of escrow accounts.

On 22 January 2025, the Chamber of Deputies approved the draft amendment which will now be discussed by Senate. According to a draft amendment, the guarantee fund would be established by 2026. Compensation could amount to CZK 2.5 million per escrow, or up to CZK 5 million in the case of the purchase price from the sale of a residential property. The Bar would pay compensation once a year, becoming a creditor of the attorney who caused the damage. The rules for the administration of the fund, including the amount of the contributions, would be determined by the Bar General Assembly, according to the amendment.

Under the amendment, each escrow account would have to be designated by the bank as a "lawyers escrow account". A lawyer would not be allowed to deposit or withdraw cash into such an account and would have limited options for handling the money. The bank would have to notify the clients of the movements in the accounts before the actual transfer. Thus, according to the rationale, the client could prevent the withdrawal of money from escrow if it contravened the escrow agreement. The Bar Association would gain greater control over escrows, including by breaking bank secrecy.

Other key changes introduced by the Amendment:
Lawyer-client privilege
The primary objective of the proposed regulation on the protection of confidentiality of information in the practice of law is the protection of the rights and legitimate interests of the client, not the protection of the lawyer. The lawyer is an instrument of professional, statutory protection or enforcement of the rights and legitimate interests of the client, which the legislator provides with an increased level of protection, as it is based on the assumption that the client discloses to the attorney facts that have (or may have) an immediate impact on his/her rights and obligations, legal position, etc. The protection of the client therefore follows from the constitutional principles of the right to legal aid and access to justice, which is at the same time inseparably linked to the protection of confidentiality of information concerning

the provision of legal services in a particular legal case by a given lawyer. The obligation of confidentiality of the lawyer and other persons under Section 21 of the Advocacy Act is in this respect only a manifestation (consequence) of the protection of confidentiality of information, directed precisely to the person of the lawyer and persons with whom he or she jointly provides legal services. However, the core of the protection is the information as such, by virtue of its confidentiality. This interpretation is also in line with the jurisprudence of the CJEU and ECtHR.

Lawyer's Declaration on the Authenticity of Electronic Signatures

The draft amendment proposes a legislative solution for lawyers to issue declarations of authenticity for electronic signatures. In collaboration with the Ministry of Justice, the Ministry of the Interior, and the Agency for Digital Information, a mechanism will be established to allow lawyers to provide such declarations under conditions comparable to official verifications conducted by public authorities.

Part-Time Practice for Trainee Lawyers
The amendment introduces provisions for part-time practice by trainee lawyers in special circumstances. Currently, trainee lawyers must adhere to a full-time weekly working schedule of 40 hours. The proposed change allows exceptions, permitting part-time practice with a proportionate extension of the total required training period. This provision aims to accommodate trainees with specific needs, such as those caring for minor children.
Stricter Penalties for Unauthorised Legal Practice by Non-Lawyers
Existing legislation addressing offenses related to unauthorised legal services provided by non-lawyers has proven insufficient, as enforcement often required proof of corrupt intent. The amendment seeks to address these gaps by further expanding the penalties for unauthorised provision of legal services, ensuring more robust protection of the profession.
The amendment to Decree No. 177/1996 Coll, governing lawyers' fees and remuneration for the provision of legal services (hereinafter referred to as the "Lawyer's Tariff"), came into effect on 1 January 2025.
This amendment is the result of considerable efforts by the Bar, following extensive consultations and negotiations to address long-standing issues concerning the adequacy of lawyers' remuneration. It was also mentioned in the 2024 Commissions Rule of Law Report (both the Country chapter and the Chapeau Communication) which helped substantially. Detailed explanations of the amendment are available here**,** and the text with tracked changes can be accessed here.

A key component of the amendment is the adjustment of the tariff value, which determines the rate of a lawyer's non-contractual fee for one act of legal service. This change was implemented to reflect current economic conditions, including inflation, and to align lawyers' fees more closely with the increasing complexity and demands of legal work.

Additionally, Section 11(1) of the Lawyer's Tariff has been amended to expand the list of legal acts for which an advocate is entitled to a fee under the regulation of non-contractual fees. The following two legal acts have been added:
A complaint against a decision to initiate criminal prosecution (Article 11(1)(n)): Lawyers are now entitled to remuneration for the preparation and filing of such complaints, which serve an important function in protecting the rights of individuals at the initial stage of criminal proceedings.

A complaint against a decision on detention (Article 11(1)(o)): This addition ensures that lawyers are compensated for their work in addressing decisions concerning detention, a matter of fundamental importance to individual freedoms.

These revisions represent a substantive improvement to the regulatory framework governing lawyers' fees. They aim to ensure more equitable compensation for legal services while recognising the significance of legal representation in critical areas of the justice system.

Delays and reductions of fees of ex officio lawyers/authorised representatives
In addition to the amendment to the Lawyer's Tariff mentioned above, the problem of ex officio lawyers and authorised representatives, whose fees are paid by the state, is also the refusal to provide advances (even in proceedings lasting several years) and the reduction of fees for acts that the court finds to be superfluous or ineffective. The Czech Bar Association is monitoring these problems very closely and negotiates on their solution.
In this respect, the Bar fully agrees with the ruling of the Constitutional Court III ÚS 49/24 from 24 July 2024.
In this ruling, The Constitutional Court sided with a lawyer who received a significantly lower fee than requested for her work in a complex criminal case. The Court emphasised that rules for compensating court-appointed lawyers (ex officio) not only their financial interests but also the justice system in the Czech Republic. Since the state determines fees in such cases, ensuring adequate compensation is essential to uphold constitutionally guaranteed rights to legal assistance and defence, which must not be adversely affected.
The Constitutional Court annulled a higher court's decision that reduced the lawyer's fee from the originally awarded 126,656 CZK to 37,585 CZK. The higher court argued that fee increases for extraordinary difficulty should apply only to specific legal acts and found no justification for a blanket tripling of fees. It also stated that foreign law or language usage must be integral, not incidental, to justify higher compensation.

The Constitutional Court found that the higher court erred by completely rejecting increased fees, violating the lawyer´s rights under Article 26(1) and (3) of the Charter of Fundamental Rights and Freedoms. This also indirectly impacted the accused's right to legal assistance under Article 37(2) of the Charter.

Rules for compensating court-appointed lawyers affect not only their financial interests but also their role as protectors of fundamental rights within the justice system. Since the state, not the client, determines fees, adequate compensation ensures the constitutional right to legal assistance and defence. Fee-setting must not negatively impact these rights.

In conclusion, this approach of the courts violates fundamental constitutional rights, namely the right to obtain the means of subsistence through work (Article 26(3) of the Constitutional Act No. 2/1993 Coll. as amended by Constitutional Act No. 162/1998 Coll. Constitutional Act No. 295/2021 Coll. Charter of fundamental rights), the violation of the right to run a business (Article 26(1) of the Charter) and the violation of the right to fair remuneration for work done (Article 28 of the Charter). At the same time, we consider that the interpretation applied by the courts in their decisions also infringes the rights of the accused himself, namely his right to legal aid (Article 37(2) of the Charter).
Counselling body of the Czech Bar Association on infringement cases.

The Committee for Professional Assistance and Protection of Interests of Lawyers was constituted by the decision of the Board of Directors of the Czech Bar Association on 13 December 2005. The Committee follows cases of individual lawyers on systemic risks, individual excesses in the proceedings or cases endangering lawyers´ integrity. The committee always reports on the cases from the previous year in spring. The report includes also recommendations. The Board of Directors of the Bar Association then adopts necessary measures. The reported cases from 2023 – 2024 (spring) included, for example: cases

regarding the authority of a lawyer to search for, verify, present, and propose evidence in criminal proceedings which is under apparent continuous pressure, with a noticeable tendency by law enforcement authorities to limit these rights. In March 2023, in response to a case addressed by the Committee, members of the Committee published an article in the Bulletin of Advocacy No. 3/2023, pages 57-59, titled "The Lawyer's Authority to Search for, Verify, Present, and Propose Evidence in Criminal Proceedings Revisited – Current Contexts".

The persistent issues in the remuneration of lawyers pose a significant threat to the practice of law and, consequently, to ensuring the right to defence and a fair trial. Key unresolved problems include:

Lack of Advance Payments for Public Interest Legal Services (Lawyers appointed ex officio (e.g., for defence, representing victims, or serving as guardians in civil matters) often work for months or even years without compensation. Unlike other justice professionals, lawyers must cover their operational expenses entirely, which consume two-thirds to three-quarters of their income).

Systematic Reduction of Lawyer Fees by Courts (Courts frequently reduce lawyer fees arbitrarily, failing to adequately apply existing provisions of the Lawyer's Tariff).

No Increased Fees for Work During Non-Standard Hours (Lawyers do not receive increased compensation for providing legal services during weekends, holidays, or nighttime hours, unlike judges and prosecutors who receive additional remuneration for such work).

Systemically unaddressed low percentage of substantive consideration and granting of remedies, especially at the Supreme and Constitutional Courts (only between 4-6%). The Committee is of opinion that the formal requirements for remedies are too strict in comparison with the legitimate expectation do deliver justice. This issue is long-standing, evident in a number of Committee cases throughout the period, and its urgency is growing.

Significant developments related to accessibility of courts

From 1 January 2025, a new law on court experts, expert institutes and interpreters supposed to enter into force, which was to soften the conditions of the existing one. Only 309 out of 6,000 currently registered experts have applied for relicensing so far. However, the amendment is still in its second reading in the Chamber of Deputies, and MPs are postponing its discussion without specific reason.

On 27 November 2024, the Constitutional Court issued ruling Pl. ÚS 16/24, addressing the constitutionality of Section 31(5) of Act No. 236/1995 Coll., which excluded periods of maternity and parental leave from the required three years of judicial service needed to advance to the third salary coefficient. This provision, applicable to judges with 6–8 years of legal experience, particularly affected women (mothers) judges, as those who became judges after eight years of legal practice were unaffected by this exclusion. The appellant, the District Court for Prague 10, challenged the provision as discriminatory, arguing it lacked rational justification. The Constitutional Court, in a ruling delivered by Judge-Rapporteur Veronika Křesťanová, repealed the contested section, citing its inconsistency with the prohibition of discrimination under Article 3(1) of the Charter of Fundamental Rights and Freedoms. The Court held that the differential treatment based on gender (including parenthood) and age infringed the right to fair remuneration under Article 28 of the Charter.

The provision originated at a time when judges were appointed at a younger age (25 years). However, with the current age limit of 30 and common lateral appointments, the original rationale no longer applies. Women judges who follow a typical career path—becoming judges shortly after law school and taking maternity leave before age 30—are disproportionately disadvantaged. The Court emphasised that statutory inequalities must serve a legitimate aim and pass the proportionality test, which the contested provision failed to do. The ruling also criticised the legislature and government for not updating the law to reflect changes in judicial appointments. The Court rejected concerns about the financial impact of backpay, noting that relatively few individuals are affected, and prioritised protecting fundamental rights over legal certainty.

The ruling of the Constitutional Court in Case No. Pl. ÚS 16/24 is available here**.**

On 28 May 2024, the Constitutional Court published three rulings - Pl. ÚS 4/23, Pl. ÚS 15/22 and Pl. ÚS 5/24 - concerning judges' salaries. The reasons for freezing judges' salaries were found by the full Constitutional Court to be constitutionally compliant only in the first case, i.e. in the period from 2021 to 31 January 2022. In the other two cases of salary restrictions (in 2022 and 2024), the Constitutional Court reproached the Government and the Parliament for adopting unconstitutional regulations. However, in 2022, according to the Constitutional Court, the serious economic situation of the society caused by the war conflict, exceptionally high energy prices and unprecedented inflation rates outweighed the demand of the judges to pay the difference in salaries and the Court concluded that the retroactive payment of salaries to the judges would not take place. However, these reasons for further, this time permanent, restrictions on judges' salaries are not given in the regulation in force for 2024 and subsequent years, which is why the Constitutional Court annulled the regulation adopted here in relation to judges' salaries for unconstitutionality. Thus, in the last case, judges are entitled to additional payments to their salaries, which were withdrawn from them by the repealed regulation as of 1 January 2024.

In 2024, the Czech justice system faced significant unrest due to wage disputes involving judges and court personnel. The Czech Judges Union demanded an immediate increase in salaries for court employees and the establishment of a separate salary structure to reflect the unique nature of their work. They expressed support for various forms of protest, including strikes, if their wage demands were not met.

In October 2024, judicial staff initiated a three-day strike to protest low wages. While most court buildings remained operational, services such as filing offices and information centres were limited, and some hearings were postponed due to the absence of essential personnel. Judges, though legally unable to strike, supported the protesting staff.

Amid these tensions, the Czech government approved a 6.9% salary increase for top politicians, judges, and prosecutors. The additional funds initially allocated for a higher pay increase were redirected to raise the salaries of judicial administrative staff, who had been underpaid. This decision aimed to address the disparities and alleviate the discontent among court employees.

Significant developments related to resources of the judiciary

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Significant developments related to training of justice professionals

There is no mandatory training for lawyers in the Czech Republic (unlike for trainee lawyers). Nevertheless, the Czech Bar Association has been offering an optional three-year educational programme for lawyers, known as Continuing Lawyers' Education, since 2019. A lawyer who earns at least 36 credits in the fields of law, legal or related disciplines, lawyering skills, or other areas over three years is eligible to receive a certificate of completion of the Continuing Lawyers' Education programme from the Czech Bar Association. A lawyer who successfully completes this programme and obtains the certificate is entitled to inform clients and the public of this achievement and may benefit from advantages, discounts, and other perks provided or arranged by the Czech Bar Association during the subsequent three-year cycle of the continuing education programme.

In 2024, the Czech Bar Association issued 42 certificates as part of the above-mentioned Continuing Legal Education.

The Bar offers most of its educational activities to trainee lawyers and qualified lawyers, both online and offline. The Czech Bar Association has also been continuously involved in EU projects, in cooperation with

the CCBE, the European Lawyers Foundation and French law school.

The Czech Bar Association actively participates in the Council of Europe's HELP network, which focuses on human rights education for legal professionals. The Czech Bar Association cooperates closely with the European Court of Justice and organises webinars for lawyers.

Trainee lawyers:

The Czech Bar Association is developing a new concept for the training of trainee lawyers, which will include the multi-day boarding entry training for new trainee lawyers. This concept is expected to be finalised in 2025.

Additionally, the Czech Bar Association has established a new advisory body to the Board, known as the Trainee Lawyers Section. This Section is chaired by the vice-presidents of the Czech Bar Association and consists of 33 trainee lawyers. Through this platform, trainee lawyers can submit proposals to the Board aimed at improving the conditions for their practice and mandatory training.

The Czech Bar Association continues to pursue other initiatives, such as “Lawyers to Schools” and “Lawyers to Childcare Facilities.” More information is available here**.**

Significant developments related to digitalisation

We refer to our previous contributions in this regard. The development in general is very slow and would gain from more involvement of stakeholders. The Czech Bar Association is actively involved in the digitalisation process whenever it is possible.

The work in the judiciary on the computerisation of court files (eSpis) is still ongoing. The project is divided into several parts - one concerns the internal digitisation of processes such as work schedules, allocation of files, etc., while the second part concerns remote access to the case file, which should enable online viewing by parties and their lawyers. According to the Ministry of Justice, the base of the remote access with insolvency proceedings module should be implemented towards the end of 2025, with lawyers to be included in the trial phase. Issues such as substitution authorisation for accessing files, etc. need to be addressed. An update of other agendas is seemingly also planned.

We also informed in our previous contributions regarding the project Skype defence used in prisons, initiated by the Bar. The project successfully continues. Currently, approximately 300 lawyers have monthly consultations with clients in this way. The Prison Service is planning to move from the Skype platform to the Webex platform, which will also offer new functionalities such as document sharing. The Prison Service is also ready to use the identification of lawyers when entering and leaving the prison by eID. The possibility for lawyers to use laptops while visiting clients in prisons has been raised with the General Directorate of the Prison Service. Currently, lawyers can use laptops in the prison premises only with the prior approval of the relevant prison director, and approaches in this regard are not unified.

Significant developments related to efficiency of justice system

Length of Proceedings

The annual statistical reports containing data on the duration of court proceedings are always prepared retrospectively after the end of the reporting period. These reports include selected statistical data for Czech District, Regional, and High Courts, as well as the Supreme Court and the Supreme Administrative Court. The annual report is compiled based on data received by 31 January. Therefore, statistics for 2024 are not yet available.

Civil Agenda

The median duration of proceedings in 2023 was 162 days for traditional civil cases and only 12 days for electronic proceedings. This is primarily due to the significantly lower complexity of the e-payment order agenda already mentioned.

Criminal Agenda

There was a slight increase in the length of proceedings between 2020 and 2021. However, this change was minimal and does not indicate a deterioration in the criminal docket. The COVID-19 pandemic does not appear to have had a significant impact on the reported length of proceedings. In 2022, for the first time in many years, a noticeable decrease in the length of proceedings was observed, and this trend continued in 2023.

The annual report by the Ministry of Justice of the Czech Republic highlights ongoing efforts to modernise, accelerate processes, and manage agendas more efficiently. The system is marked by shorter processing times, which contribute to higher trust among the public and businesses. Despite these positives, there are areas that require further improvement, particularly regional disparities and the overload of certain courts. Positive trends include improvements in case duration, particularly in administrative judiciary and contentious civil matters, where the number of unresolved cases has significantly decreased. In custody cases, 84% were resolved within the statutory time limit, and 75% of child custody disputes ended with parental agreements. The decline in case inflow in certain areas, such as administrative judiciary, has also improved. The Czech judiciary faces challenges such as a shortage of judges, with the actual number at district courts reaching only 87.78% of the planned capacity, contributing to the overload of some courts. Regional disparities in efficiency and decision-making speed persist. Significant challenges remain in the unpredictability of case inflow in incidental disputes and long-standing issues in administrative agendas, which, despite improvements, are not yet fully stabilised.

The statistical information from the Czech judiciary is available here**.**

Other issues and significant developments impacting access to justice

In 2024, the Czech judiciary experienced several significant developments that had a considerable impact

on its structure and functioning. Among these was a salary increase for judicial employees, introduced in response to calls for better financial compensation within the justice sector. Major amendments to criminal law were also introduced, aimed at modernising the legal framework. These included the partial decriminalisation and depenalisation of certain offenses to reduce the caseload on courts and the introduction of new criminal offenses. The amendments to the Czech Criminal Code were adopted by the Government and will be discussed at the Chamber of Deputies within the legislative procedure.

The Constitutional Court underwent a substantial reshuffle, with new appointments of judges made to address important constitutional issues, including safeguarding fundamental rights and maintaining the balance of power. Furthermore, the judiciary was strengthened by the appointment of 60 new judges, addressing staffing shortages and increasing judicial capacity. The largest number of new appointments was allocated to the Municipal Court in Prague, reflecting the high workload in the capital.

In 2024, significant changes in insolvency law and an increase in the number of insolvency filings were observed in the Czech Republic. On 1 October 2024, an amendment to the Insolvency Act came into effect, reducing the duration of debt relief from five to three years and eliminating the requirement to repay at least 30% of the total debt. These changes aimed to facilitate the debt relief process for debtors but sparked discussions about a potential decrease in creditor satisfaction rates and the financial sustainability of the system, particularly concerning the remuneration of insolvency administrators, which had not been adjusted since 2008. A steady increase in the number of insolvency filings was also recorded.

As of 1 January 2024, a new Criminal Policy Department was created in the organisational structure of the Ministry of Justice. The new department is in charge of not only compensation for victims of crime but also the prison agenda. As of 1 January, the compensation agenda was divided into two separate parts. The current one is dealing with the delays in court proceedings and subsequent compensation, compensation for excessive time of court proceedings, etc. The new Criminal Policy Department is dealing with the state's criminal policy, victims of crime, financial assistance from property penalties and the prison agenda.

Also in 2024, the Ministry of Justice has established an ombudsman in order to strengthen the protection of the rights of prisoners and employees.

In 2024, an amendment to the Act on the Enforcement of Imprisonment was approved and has come into force 1 January 2025. The amendment unifies the rules for the disposal of prisoners' income and simplifies the procedure for execution deductions from prisoners' money. The creation of financial reserve is intended to ease the transition to freedom for prisoners, as the period just after release is the riskiest for the possible commission of further crimes.

Amendments to Act No.40/2009 Coll., the Criminal Code, and Act No.141/1961 Coll., the Code of Criminal Procedure, were supported by the Chamber of Deputies in the first reading. The amendments should contribute to reducing the number of prisoners, reducing recidivism and saving the state budget. The amendment gives greater priority to alternative punishments, including fines, and partially decriminalises certain offences. It relaxes the rules on cultivation and possession of cannabis to a limited extent. The draft will now be examined by the Constitutional Law Committee, which will have an extended three-month deadline. It is expected that the draft will undergo some substantial changes.

DENMARK

Measures taken to follow-up on the recommendations of the European Commission received in the 2024 Report

In 2024, it was assessed that sufficient human and financial resources had been allocated to the judicial system. However, there are still significant problems with long case handling times, but of course this could be because we have not yet seen the full consequences of the recent increase in recourses. A survey by the Danish Bar and Law Society shows that 75% of lawyers believe that long processing times at courts have deteriorated the legal security of businesses and citizens. Furthermore, only 18 percent of citizens feel confident that their case can be resolved within a reasonable time. More on lawyers' and citizens' perception of the state of the rule of law can be found here.

In 2024, the Rule of Law Report recommended that Denmark complete the review of the legal aid system, which has been ongoing since 2020. In December 2024, the Ministry of Justice announced that the task of reviewing the current arrangements for legal aid and free legal proceedings, as well as the interaction of these arrangements with private legal aid insurance, and providing recommendations for changes to these arrangements, will be transferred from the preparatory legislative committee established in 2020 to the Standing Committee on Procedural Law (Retsplejerådet), which has been a standing committee under the Ministry of Justice since 1961.

The Ministry of Justice has also prepared a mandate for the Council of Legal Procedure on this matter, and reporting is to be completed by the summer of 2026. Given the comments previously made by the Danish Bar and Law Society regarding the lack of progress in the committee's work, it is positive that the work is being resumed.

However, it should be noted that in 2012, the Council of Legal Procedure issued a report on legal aid by lawyers, etc., in which a minority opinion stated that the council's report highlighted several relevant issues, but that a comprehensive and more fundamental analysis of the legal aid area should be conducted as soon as possible. This was only done with the establishment of the committee in 2020, which has now been disbanded, and with the return to the Standing Committee on Procedural Law (Retsplejerådet), there is a concern that the progress made by the preparatory legislative committee in terms of understanding and addressing the issues with the current legal aid system will to a large extent be lost and that the important issue of improving access to justice through a comprehensive legal aid system may now be going in circles.

Read more (in Danish) here: https://www.advokatsamfundet.dk/nyheder-medier/tidligere-artikler/2024/advokaten-3/2024-advokaten-3-tema-retshjaelp-retshjaelp-i-stampe/

In 2024, the Rule of Law Report requested that The Public Access to Information Act be further reformed to strengthen the right to access documents. The Danish Bar and Law Society has participated in a hearing facilitated by the committee on the reformation of The Public Access to Information Act. The Danish Bar and Law Society supports the work towards securing a better access to documents and the legislative process. On a general note, we argue it would be sensible to clarify that a denial of access to information must be necessary to protect the internal political decision-making process. It could also be considered

whether the provisions in the Public Access to Information Act § 24 and 27, no. 2, could be amended to balancing rules for the exemption of information. This would require a concrete assessment of the strength of the applicant's interest in accessing the information versus the strength of the interest in protecting potentially significant internal political decision-making processes, including internal government discussions. Finally, it is important to ensure that also professional (non-political) assessments are subject to public access, even if they are included in documents containing internal political evaluations.

Significant developments related to allocation of cases in courts

In 2024, the court was enabled, at the request of a party or on its own initiative and in agreement with the president of the relevant court, to refer a criminal case to another city court. The purpose of this provision was to achieve a more flexible use of the courts' resources and a shorter case processing time for the parties involved. If the special nature of the case or an extraordinary situation in the prosecution makes it particularly difficult for the prosecution to handle a referral of the case, the public prosecutor's office can explain this to the court, which the court can include in its overall assessment. This new provision has, for example, caused the Court of Glostrup (with a significant number of court cases and extraordinarily long case processing times) to enter into an agreement with the Court in Nykøbing Falster (with a lower number of court cases and very short case processing times) for the referral of 200 judge cases from the Court of Glostrup to the Court in Nykøbing Falster in the period from October 2024 to the end of March 2025.

Significant developments related to independence and powers of the body tasked with safeguarding the independence of the judiciary

In the 2024-report, we mentioned the case the Danish Decence Intelligence Service vs Hjort Frederisken/Findsen, which was dropped by the public prosecutors due to state secrecy issues. This case has led to a renewed debate in Denmark about special counsels (in Danish “tys-tys advokater”). We are following this matter with interest.
(Kritik af tys-tys-ordning: Advokaterne er hemmelige, og ingen kender de regler, de arbejder under)

The critique of the special counsel system is, that the lawyers are secret and that the rules under which they operate are not publicly known.

Cases/examples undermining confidentiality of lawyer-client communications

On 21 August 2024, the Supreme Court ruled that a Danish prison's recording of telephone conversations between a lawyer and an inmate was unjustified and contrary to Article 8 of the European Convention on Human Rights. The inmate was awarded compensation.

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

This year the Danish Bar and Law Society has had a special focus on threats against lawyers. As earlier mentioned, the CCBE also published a report in 2024 showing an increase in the threats against lawyers at a European scale. In Denmark, one out of five lawyers are affected by threats, harassment or violence. This number is even higher for family- and criminal law lawyers, among which three out of five lawyers are affected. There has been an increase in the number of anonymous threats directed at lawyers who take on cases with high media coverage. More can be found here and here.

The Danish Bar and Law Society argues that lawyers going to court should be protected by section 119 of the penal code, which provides a special basis for harder penalties against anyone who threatens or commits acts of violence against public officials. All other parties present in court are protected by this section. Unfortunately, the Danish Government has rejected the request by arguing that lawyers are not public servants. In the opinion of the Danish Bar and Law Society, lawyers, just like other actors in a legal process, fulfil a central task for the public. Increased threats, violence, and harassment against lawyers in the long run risk leading to reduced opportunities for access to justice and a fair trial for individuals if lawyers do not dare or are unable to carry out their duties for their clients. There is no reason to believe that lawyers would be a less vulnerable professional category than others. In addition to their clients, lawyers frequently have contacts with both the counterparty and relatives, which means a potentially increased exposure to threats.

A related aspect is that a lawyer, unlike a judge or prosecutor, rarely can hand over a case to someone else. In practice, the only option left is to renounce the assignment, which in turn risks putting the client in a difficult position. Emphasising in the law that it is also an aggravating circumstance to threaten a lawyer would mark its equal status and make it clear that an attack on a lawyer, just like when other legal actors become targets, is an attack on the rule of law in general. Increased protection can also contribute to increased public understanding of the lawyer's mission. It would also make it possible for the authorities to intervene at an earlier state, thus decreasing the risk of escalation.

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

As the Bar and Law Society in Denmark, we in general experience a high degree of independence. We would however like to draw attention to two issues, one regarding training of lawyers and one regarding appointment of lawyers / admission to the bar.

Training of lawyers, which we have also informed about later in this questionnaire, is conducted by the Danish Bar and Law Society in collaboration with the Civil Affairs Agency under the Ministry of Justice through a joint committee, led by the Danish Bar and Law Society.

The appointment of lawyers and subsequently admission to the Bar is done by the Civil Affairs Agency under the Ministry of Justice according to some objective criteria.

It is important to note, that in practice we do not experience any issues with this, but structurally, this is not completely in line with the principles of an independent Bar.

Significant developments related to accessibility of courts

Equality of arms

The Danish Bar and Law Society has expressed concerns about inequalities in the Danish legal system in cases between the Danish state and citizens/companies, particularly regarding the disparity in remuneration between lawyers representing the state and those representing the citizen. When legal aid is granted, it is the court that sets the fee for the citizen's lawyer. This fee is often based on very strict principles, which are determined by the value of the case, i.e., the amount involved in the specific case. This means that the citizen's lawyer often has a limited number of hours available, which we fear may affect the quality of legal representation.

In contrast, the opposing lawyer, representing the state, has their actual costs covered. We have seen examples where the difference can be quite significant, with 16,000 DKK awarded to the citizen's lawyer compared to 300,000 DKK for the state's lawyer.

We fear that this can lead to decisions being made based on financial strength rather than justice, undermining equality before the law in cases between the Danish state and citizens/companies. The Danish Bar and Law Society suggests that judges should set the fees for both the citizen's and the state's lawyers to ensure fairer conditions.

Read more (in Danish) here: https://www.berlingske.dk/virksomheder/advokatraadet-frygter-forkerte-domme-i-retsopgoer-mellem-stat-og

Significant developments related to training of justice professionals

Initial training: The Danish Bar and Law Society offers the initial training of new lawyers. The programme is defined by the Ministry of Justice and The Danish Bar and Law Society together, through a joint Education Committee. The programme is increasingly popular. The initiatives we took in 2023 (an extra class and an introduction of reserved places for assistant attorneys/lawyers) are considered to have had a positive effect on the increased demand. In 2024 our classes continue to be fully booked. The interest in the programme is, we find, a positive development, and we consider the current offering to be appropriate for the time being.

Significant developments related to digitalisation

1. The Danish Court Administration (da: Domstolsttyrelsen) has published a Digitalisation Strategy for Danish Courts 2024-2027 setting out the agenda, framework and goals for digitalisation. Among other things, the Digital Strategy paper calls for upgrading and implementing new digital systems as well as a review of how artificial intelligence can support the courts and what governance etc. needs to be in place.

2. The Danish Court Administration is also working on an AI Strategy for the Danish Courts which is expected to be published in 2025 and which is linked with the mentioned Digital Strategy.

Other issues and significant developments impacting access to justice

Pre-trial detention

Denmark continues to remand far more than comparable countries. According to statistics from the Council of Europe's annual report on the prison population, 38 percent of all inmates in Denmark are held in pre-trial detention. Many end up serving their full sentence or even longer in pre-trial detention. Many detainees are in de facto isolation. In terms of legal certainty this is a challenge, because these people have not yet been sentenced and therefore should be considered innocent; yet they are held under far more restricted conditions than post-conviction inmates. The Danish Bar and Law Society believes that this is a serious rule of law problem in Denmark, that has endured far too long with no noticeable action taken.

In many cases the alleged reason for pre-trial detention is to prevent suspects from manipulating the investigation. However, we see examples where no or very little progress has been made in the investigations since the last court hearing. We see examples where pre-trial detention is being upheld, even when the investigative steps it was based on, has been concluded. It is stated in the Administration of Justice Act that pre-trial detention cannot be used 'if the deprivation of liberty will be disproportionate to the resulting disruption to the accused's relationship, the importance of the case and the legal consequences that can be expected if the accused is found guilty'. The increasingly long waiting times in the Danish courts and lengthy investigations, should lead to the courts paying more attention to how intrusive custody is for charged persons, even though we acknowledge, that such cases are given priority. Even though the Danish Criminal Act (straffeloven) section 765 makes it possible to use less intrusive measures than detention, it is not used often.

Single Market Dimension

Various experts and practitioners inform the Danish Bar and Law Society that the growing number of regulations and increasing complexity of EU legislation put pressure on the rule of law regarding companies. Every third lawyer assesses that the rule of law for companies has deteriorated over the past three years. Among companies, 63 percent point to EU compliance requirements in areas such as data management, ESG, and cybersecurity as the main cause of the deterioration, while 60 percent highlight the increasing complexity of the legislation as a significant challenge. The increased complexity of EU legislation can also lead to delayed legal implementation and more infringement proceedings. Companies are requesting longer timeframes for implementing the rules so that they have a better opportunity to meet the requirements.

ESTONIA

Measures taken to follow-up on the recommendations of the European Commission received in the 2024 Report

There were no specific recommendations for the Bar/lawyers, but we would like to bring out two other recommendations.

Recommendation for Estonia was: Continue the efforts to reform the Council for the Administration of Courts, considering European Standards on councils for the judiciary.

In December 2024, the Ministry of Justice and Digital Affairs introduced a draft bill, which purpose is to reform the court administration model for first and second instance courts. According to the bill, the competencies related to court administration are largely transferred from the ministry to the judiciary, meaning court administration will shift from the executive branch to the judicial branch. First and second-instance courts will be regarded as constitutional institutions, including in the state budget drafting process. To organise court administration and development in the judicial system, a new Court Administration and Development Council will be established by transforming the current Court Administration Council. The current advisory and coordinating body will become a strategic-level decision making body for court administration. It will be the highest body for court administration management, which directs the development and management of courts and makes the most important decisions regarding court administration. This will significantly increase the decision-making power of judges over the development of courts and the organisation of support services. Also, a Court Administration Service will be established, which will provide support services to courts and support to Court Administration and Development Council in the development of courts. The draft bill has not been enforced yet.

Recommendation for Estonia was: A*dvance with the efforts to ensure consistent and effective implementation of the right of access to information taking into account European standards on access to official documents.*

In the Rule of Law report 2024 we indicated that Estonian ministries submitted a number of proposals to amend the Public Information Act, in order to limit public access to information and expand the possibilities to close documents (https://www.err.ee/1609165687/ministeeriumid-tahaksid-paljud-dokumendid-avalikkusele-ligipaasmatuks-muuta). The Ministry of Justice has confirmed that these proposals will not be directly included in the intention document to develop the draft of the new Public Information Act and further actions will be revealed in spring 2024 (https://www.err.ee/1609178425/ministeerium-suurema-salastamise-soovitused-ei-joua-otse-eelnousse).

There have been no further actions in 2024, but the Bar continuously wishes to mark that the tendency to close even more documents for internal use is worrisome, because it affects lawyers' work and the protection of the rights of their clients, when information is not easily available.

Significant developments related to independence and powers of the body tasked with safeguarding the independence of the judiciary

In 2024, a draft bill has been launched, with the aim of further ensuring the independence of the judiciary from the executive power. The bill also includes the appointment of chief judges, as well as making it easier to apply for part-time work for judges and raising the upper limit on the seniority of judges. This draft bill is in early procedural stage though.

We would also mention that the leader of one of the parliamentary parties has made a statement that there should be a thorough change in judges at the Supreme Court. That party is in the minority now, but they have also been in government, and in any case such statements are a cause for caution.

https://advokatuur.ee/et/paevakajalist/uudised/advokatuur-kohtute-kaadripuhastuse-jutud-rundavad-oigusriiki

https://www.postimees.ee/8003826/martin-helme-riigikohtus-on-vaja-teha-pohjalik-kaadripuhastus

Significant developments related to remuneration for judges and prosecutors

The procedure for indexation of the salaries of judges was changed to the detriment of judges: the Act supplementing the Act on the Salaries of Higher State Servants Act and other Acts, which entered into force on 15 March 2024, introduced a derogation from the indexation of the highest salary rate for senior civil servants from 01 April 2024 to 31 March 2028. During this period, the salary rate will be indexed by a provisional index calculated by dividing the result of the index calculated under the current law by two.

The Association of Estonian Judges considered that the above Act is not in line with the Constitution of Estonia for several reasons. Since the amendment will lead to a violation of the subjective rights of judges when it enters into force, judges were considering taking a legal action (a group of judges have reportedly challenged this new indexation system before the Administrative Court, but there has been no decision yet).

https://www.ekou.ee/doc/2024-02-19_EKoY-OK-KRAPS-PSJV.pdf

Significant developments related to independence of the prosecution service

There was a confrontation between the former Minister of Justice and the Prosecutor General, which raised the issue of independence of the Prosecutor's Office. The Prosecutor General claimed that the minister had pressured him to resign from his position and had systematically discredited the Prosecutor's Office with his actions. The minister initiated an administrative supervision against the Prosecutor General, which purpose was to determine whether there were grounds for disciplinary proceedings (the Ministry did not identify any noteworthy deviations from the requirements of legality and expediency in the conduct of office of the Public Prosecutor).

https://www.err.ee/1609274814/ministri-ja-riigi-peaprokurori-tuli-laanet-survestab-parmast-ametist-lahkuma

https://www.justdigi.ee/sites/default/files/documents/2024-04/Teenistusliku%20j%c3%a4relevalve%20aruanne_18.04.2024.pdf

Cases/examples undermining confidentiality of lawyer-client communications

In 2024 there were fortunately no searches in law offices.

Recently there was a case where the Bar was informed of violation of client-lawyer confidentiality.

In September 2024, attorneys filed a complaint to the Office of the Prosecutor General, requesting (i) to identify a violation of their rights in connection with the failure to notify them of the collection of data through surveillance activities, (ii) to identify a violation of their rights in connection with the violation of client confidentiality, and (iii) to oblige the Police and Border Guard Board to delete the collected information and information to be collected in the future through surveillance activities where there is no reasonable suspicion of a crime against them.

Office of the Prosecutor General did not satisfy the complaint, as they were of an opinion that the collected information did not significantly infringe the family or private life of the lawyers and therefore there is no violation. They also dismissed the request to oblige the intelligence agency to partially delete the information collected through surveillance activities, explaining that none of the guarantees provided by the legislator for the protection of circumstances that become known to an attorney in the course of his professional activities are absolute and do not allow the intelligence agency to delete information collected during procedural activities (otherwise, the official could be held liable under the Penal Code).

Attorneys filed a new complaint to Chief state prosecutor, based on arguments:

- The Constitution of the Republic of Estonia must be interpreted in a manner that ensures compliance with the European Convention on Human Rights and the practice of the European Court of Human Rights,
- Working life is also protected by the Constitution,
- The European Convention on Human Rights and the practice of the European Court of Human Rights take precedence over Estonian law pursuant to the Constitution,
- An intercepted conversation between a client and an attorney may be preserved only if there is a justified suspicion that a lawyer has committed a crime.

The Chief state prosecutor also did not satisfy lawyers' complaint, and they turned to the court.

In January 2025, the court ruled that based on the case law of European Court of Human Rights, it must be considered that a lawyer is under a special protection and when he/she has come within the sphere of influence of surveillance activities (exceptions apply according to Code of Criminal Procedure) and data has been collected then this constitutes a very intense invasion of privacy. Therefore, a lawyer must always be informed of the collection of data through surveillance activities, and this must be done without delay from the moment when it no longer threatens the purpose of the surveillance activities.

The court also stated that Estonian regulation for the protection of lawyer's professional secrecy is insufficient and regarding the case it must be proceeded from EU Directive 2013/48/EU and the case law of the European Court of Human Rights and therefore, the information collected through surveillance operations must be deleted. This court order (which has not yet entered into force) is exceptionally important and the Bar continues monitoring the situation and spreads this information among its

members so they can use it as guidelines in their work. The Bar is also of the opinion that the law must be amended urgently to strengthen the professional guarantees of lawyers. However, the Prosecutor`s office decided to challenge this court order.

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

In 2023 the Bar got the information where a state legal aid lawyer was threatened by the detainee. The Bar also conducted the CCBE survey regarding threatening or harassment of lawyers and the responses showed that verbal violence/harassment is very present.

In 2024, to provide support to its members, the Bar organised a training with the help of experts, which purpose was to provide knowledge on how to communicate in conflict situations of varying intensity in a way that would stop the escalation of the situation and direct the situation towards calming. The lecturers also compiled a short guide to conflict management in verbally aggressive situations to lawyers. Since the training was very popular, the Bar is considering of repeating it in the future.

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

In 2023, the Bar had a case where the Circuit Court decided that the Bar itself cannot determine the evaluation methodology of the Bar exam and cancelled the examination procedure which had been valid for ten years. The Bar filed a cassation to the Supreme Court.

The Bar informs that on 20 February 2024, the Supreme Court granted the cassation of the Bar, which assured the Bar’s position for the right for independent decision-making capacity.

Specific examples in relation to the cooperation between your Bar and the executive branch or supervisory authorities

Overall, relations with the ministries are good, but the involvement of the Bar in law-making process still tends to be inconsistent (e.g., the Bar is not involved in the legislative process of all relevant draft bills, legislation is not thoroughly analysed, law making process driven by political priorities).

There are unclear questions between the Bar and the Insolvency Division of the Competition Authority who supervises over the activities of the debtor and persons connected with it/him/her in connection with bankruptcy of the debtor. It is also responsible for administrative supervision of the bankruptcy trustees in Estonia. There is no mutual understanding between the Insolvency Division and the Bar regarding the capacity and boundaries of surveillance carried out over bankruptcy trustees who are also lawyers. The Supreme Court is now proceeding Insolvency Divisions cassation concerning their right to contest the decisions of the Bar’s Ethics Tribunal and the issues of competence of the two institutions. Hopefully some kind of clarification will arise from this court case. Meanwhile, the Supreme Court has made its decision, but there were no really useful guidelines/analysis regarding the boundaries of surveillance over bankruptcy trustees who are also lawyers. But the court analysed the Bar Association Act in the sense of the competence of the Bar regarding our surveillance over lawyers who act also as reorganisation adviser - and this may be useful for the Bar in the future.

Problems and difficulties implementing the case law of national, European, and international courts

There has been a decision of the European Court of Human Rights in the case of Särgava v. Estonia in 16 November 2021 (https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-213208%22]}) which found that lawyer-client confidentiality is not sufficiently guaranteed in Estonia. Even though the Bar has submitted a relevant draft bill introducing amendments to the Code of Criminal Procedure to the Ministry of Justice and Digital Affairs already three years ago, the law has not been amended yet. In December 2024 the Ministry had finalised the draft bill in a large extent, but different obstacles (mainly other more relevant, often politically driven draft bills) have occurred, and the draft bill has not been sent to official coordination process (takes place before presenting the draft bill to the government).

Estonia also has failed to take over the so-called ECN+ Directive (Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market). The main obstacle is to reach a political agreement on whether to take over the directive through misdemeanour or special administrative proceedings.

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

In 2024, there have not been such important events that would significantly change the public perception of the independence of attorneys.

Significant developments related to accessibility of courts

State legal aid fees have not risen after 6 February 2023, which continuously raises concerns over the sustainability of the system, as it does not attract new attorneys (especially younger ones) to enter the system. As a result, individuals' fundamental rights may not be adequately protected. There is also no promise from the state to increase the state legal aid fees, although the Bar regularly draws attention to the necessity of it. On the contrary, there have been different thoughts regarding changing the system in the direction where the Bar should take over certain state legal aid proceedings from the state (and courts), but these plans have no adequate analyse and funding plan.

Significant developments related to resources of the judiciary

The Ministry of Justice and Digital Affairs had a plan to make judges position more flexible and attractive (for example there would be a possibility for a judge to work part-time for a longer period, to allow a judge to engage in business and to more easily apply for an extension of the upper limit of a service age) and to enforce the draft bill in the middle of 2024, but unfortunately this plan has not been realised. The Bar has no information on the causes.

The poor state of the national budget has also led to cuts in the judiciary and very large cuts are still to come in the coming years. Two courthouses will be closed in Estonia in 2025. The budget cut for first and

second instance courts will be 2 million euros in 2025, 1.7 million euros the following year and 0.7 million in 2027. In total 4.4 million euros.

https://www.delfi.ee/artikkel/120343730/kohtud-on-karmide-karbete-parast-pahased-villu-kove-meid-suruti-sisuliselt-nurka

Significant developments related to training of justice professionals

No significant developments. The Bar organises only continuous training. In 2024 two new training topics were switched to the training plan - artificial intelligence which is imminent nowadays and training regarding managing conflict situation (please also see above).

Significant developments related to digitalisation

Overall, the level of digitalisation in Estonia as well as digitalisation of justice is very good, but there is still room for improvement.

The biggest concern has been the lag in the digitalisation of criminal proceedings compared to civil and administrative cases. In spring 2024, the police and the prosecutor's office began fully digitalised processing of the first criminal cases as a pilot project. In 2025, it is hoped that the digital case file will be implemented in all criminal cases.

As digitalisation also brings information security problems/challenges, the attorneys and the Bar must raise the level of information security. The Bar carried out necessary actions in 2024 to get recognised with ISO27001 (international standard to manage information security), and through its implementation the Bar is better prepared to ensure the confidentiality, integrity and security of the organisation's information (which also includes very sensitive data regarding lawyers and their clients).

In 2023, the Bar developed an IT security guide to law firms, but the implementation level could be better. The risk of cyber incidents is increasing and many law firms are not really prepared for it. The Bar offers relevant trainings to its members.

Regarding the developments of E-file, the central online information system which allows parties to legal proceedings and their representatives to electronically submit documents to courts and to observe the progress of the proceedings related to them, lawyers also themselves turn to the developer and make proposals for amending the system functionality. These proposals are evaluated and considered.

Significant developments related to use of assessment tools and standards

The Bar is not aware of any new statistics tools besides the existing ones for all court instances, which are accessible https://www.kohus.ee/en/node/48501

Significant developments related to geographical distribution and number of courts/jurisdictions

The Ministry of Justice and Digital Affairs has given the courts an assignment to cut their expenses by nearly 10 million euros over the next three years.

After many complex discussions, in December 2024 the Court Administration Council gave the Ministry the consent to merge the Võru and Põlva court buildings of Tartu County Court as of 1 January 2025 and the two courthouses of Pärnu County Court as of 30 February 2025, which results in the physical closure of two courthouses.

The Court Administration Council also sent an appeal to the Government and the Finance Committee of the Parliament, pointing out that the expectation to cut the budget of courts as constitutional institutions without being supported by amendments to laws that would reduce the workload of the courts to an equivalent extent should be abandoned.

Significant developments related to efficiency of justice system

Overall, the effectiveness in proceedings in Estonia has been quite high, though there are some long general proceedings, but taken account that many judges are retiring and the number of newly recruited judges is not enough (due to the financial decisions of the state and the fact that the profession may not be so attractive because of the restrictions), there is a risk of prolongation of proceedings and consequently, the protection of individual's rights.

FINLAND

Measures taken to follow-up on the recommendations of the European Commission received in the 2024 Report

The working group "Rule of Law Guarantees and Development of Judicial System" has continued its work with a view to strengthen the independence of justice system and increase the quality of legal protection. However, there was a setback during the spring of 2024, when the "working order" of the group was changed from drafting a legislative proposal to a report/memorandum. That will mean the parliamentary handling of the proposed amendments will be postponed to the next parliamentary season by adding those to the programmeof the next government.

Specific legal provisions and policies in your country which could influence the independence of the Bar and lawyers

In 2023 we reported that the Finnish Act on Transparency Register which entered into force on 1 January 2024. This Act includes paragraphs which obligate also lawyers to report their activities partially – Lawyers are obliged to report any/all activity which may be considered lobbying. We noted, that taking into account the case CJEU C-694/20 (Orde van Vlaamse Balies & others), the reporting requirements threatened the legal professional secrecy as lawyers are required to reveal existence of their client relationships without consent from the client. We stated that according to the understanding of the Bar Association this is contradictory to the judgment of CJEU in the above referred case (paragraph 79).

However, we do not see any positive development regarding the issue and therefore we report the issue as still existing in 2024.

Problems and difficulties implementing the case law of national, European, and international courts

The Supreme Administrative Court made a preliminary ruling on 8 May 2024 (KHO:2024:72, 1656/2023, ECLI:FI:KHO:2024:72) in which the Court evaluated the scope of lawyer-client privilege. In its decision the Court stated that the fact that a lawyer had acted as counsel for a person or company on a specific matter could only be under the protection of the client-lawyer privilege in a special situation. In the view of the Administrative Court, that was not the case, and as the lawyer in question had not invoked client confidentiality in that regard, despite the opportunity given to him, the information regarding the client-relationship was not deemed to be protected under the professional privilege.

We refer to the decision on CJEU C-694/20 (Orde van Vlaamse Balies & others), where it is clearly stated that *"Professional secrecy also covers legal advice, both as regards its content and its existence. Clients must, save in exceptional circumstances, have a legitimate expectation that their lawyer will not, without their consent, disclose to anyone the fact that they have asked him for advice (Case C-694/20 | Orde van Vlaamse Balies and others, paragraphs 27 and 28).*
Therefore, we see that the Finnish supreme administrative court has failed to follow & implement the case law of the CJEU. We also state that if the problem would be caused by insufficient definition and scope of lawyer-client privilege, according to which the existence of legal advice would not be protected under the

scope of attorney-client privilege according to the Finnish national legislation, this national legislation is against EU-case law.

Significant developments related to accessibility of courts

In late 2024 from the Finnish Supreme Court gave a preliminary ruling concerning the level of legal aid fee paid to private practitioners for legal aid cases. In its ruling the Supreme Court stated that the Article 6 of the Government regulation on the basis of which legal aid fees are to be paid, which provides for an hourly fee of EUR 110, could not be applied on the basis of Article 107 of the Constitution. The Court found that because the fee paid to the defender on the basis of the provision of the Decree would not have been reasonable as required by Article 17 of the Legal Aid Act, the regulation cannot be applied. In the same case, the court ruled that the fee of 130 EUR/hour, which the attorney in question had demanded from the court, was reasonable for the case and ordered this amount to be compensated to the private practitioner.

Unfortunately, soon after this the Supreme Administrative Court gave a contrary ruling (although in administrative case and involving a licensed trial counsel, not an attorney). In this judgment the Supreme Administrative Court held that there were no grounds for not applying the hourly rate of legal aid provided for in the Council of State Decree on the basis of Article 107 of the Constitution.

This situation has led to a chaotic legal system, where the level of remuneration for legal aid cases is not uniform but varies from court to court and even from judge to judge. The ongoing case-by-case legal reasoning on the correct level of the legal aid fee also strains resources in already overburdened courts and does not serve the best interests of the people whose important matters are decided in the courts of law. Due to the legal uncertainty, the Finnish Ministry of Justice has now proposed a new regulation, which is completely insufficient, as it only proposes to raise the legal aid fee to EUR 120 per hour for budgetary reasons (the current level is EUR 110 as of 2014). The proposal has been heavily criticised by the Bar Association, as well as by the majority of the courts, including both supreme courts and other judicial actors, as it fails to comply with the legal framework set by the Supreme Court in its judgment. Therefore, it is highly likely that the proposed regulation will not resolve the chaotic and inconsistent level of legal aid fees paid to private practitioners in Finland.

Significant developments related to digitalisation

Regretfully the Bar association has to repeat its former position: No major positive development regarding the availability of e-services and digital tools available to parties in judicial proceedings has been made at least before the end of 2024.

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

It is still not possible for lawyers to gain the same access and visibility to a case via e-services as it is for the prosecutors. The Bar association still sees this as a problem for the realisation of the principle of equality of arms as, especially in criminal procedure, the defence should have the same access and visibility than prosecution.

From a citizen's perspective, the digitalisation of judicial services is underwhelming. While the Bar Association suggests that oikeus.fi should be the platform for electronic legal transactions, only

uncontested debt suits can be initiated online. Other processes, like divorce filings, still require printing, scanning, signing, and mailing forms. Once submitted, citizens cannot track their case's progress or view decisions, and legal advisers also lack access, with communication done via email.

Beyond human resources, funding is needed to digitise systems and reduce unnecessary paperwork. Manual processes, such as storing documents in court systems and sending them to litigants, are slow. Citizens and their lawyers cannot access these systems and must contact the courts for updates. The Ministry of Justice has emphasised the need for more resources to support the digitalisation of the justice system, and the Office for the Judiciary has previously proposed additional funding for this purpose.

Significant developments related to efficiency of justice system

In the beginning of 2024, more resources and funding allocated to the Courts and prosecutor services in order to address the length of proceedings. However, it is still unclear whether actual progress has been made in shortening the courts' handling times.

Other issues and significant developments impacting access to justice

The Bar association would like to draw attention to the massive criminal justice reform and reforms in the field of asylum and immigration legislation in Finland. During 2024 the current Orpo's government continued to push through multiple legislative proposals and initiatives in the field criminal law with the general direction leading towards harder and longer sentences, quicker and easier processes and putting more processual responsibility towards the parties themselves in also criminal cases. There has even been a memorandum on the possibility of introducing preclusion to criminal proceedings.

In the field of migration and asylum the government has made multiple simultaneous legislative projects which aim to make the Finnish "asylum" process "faster and more efficient" as well as to tighten the requirements for gaining the Finnish citizenship and resident permits.

Generally, it can be stated that the legislative proposals in these fields lack proper impact assessments and may lead to unexpected circumstances. Simultaneously in many cases they do not properly consider basic and fundamental rights of the accused or detained persons nor immigrants/asylum seekers. It is also very clear, that the legislator is unwilling to hear what various experts, NGO's and other interest groups state, if what is stated is against their political goals.

For example, on 12 July, the Finnish Parliament adopted the so-called legislation on temporary measures to combat instrumentalised migration (the so-called pushback legislation). In this case it was deemed extremely worrying, that despite the legislation being in clear contradiction with Finland's fundamental and human rights obligations, such as the absolute ban on refoulement, the proposal was passed in Parliament.

According to media information, the legislation is currently being reviewed by the Commission. The temporary legislation also reaches the end of its validity in the summer of 2025 and therefore there is a new debate and legislative proposal to be expected during the spring.

FRANCE

Significant developments related to irremovability of judges

The recruitment and career advancement of magistrates has been modified.

The organic law of 20 November 2023 on the opening up, modernisation and accountability of the judiciary amends various texts, and in particular the 1958 ordinance on the status of the judiciary, to:

- Open up and simplify access to the judiciary to attract more candidates. Recruitment on the basis of qualifications, direct entry into the judiciary at the first two grades and supplementary competitive examinations have been abolished. A professional competitive examination, aimed at professionals, in particular lawyers wishing to become judges, was created. In addition, a special competitive examination for the recruitment of judicial auditors for students of the « Prépas Talents » classes will be tested until the end of 2026, in order to open up the judiciary to different profiles. The Constitutional Council has expressed reservations about the interpretation of these two competitive examinations;

- Modernise the careers of magistrates by introducing new conditions for recruitment, assessment, promotion, representation and social dialogue. In particular, a third grade, subject to a quota, has been introduced, as well as priority assignment for magistrates who have worked for a certain length of time in positions that are less attractive;

- Make greater use of temporary and honorary magistrates to recruit more judges from civil society.

Significant developments related to allocation of cases in courts

Criminal cases are being diverted from the courts, to the detriment of the rights of the defence. In particular, the "fixed penalty notice" has been extended.

The procedure of “fixed penalty notice” (“FPN”) was created by Law no. 2016-1547 of November 18, 2016 on the modernisation of justice in the 21st century to deal with mass litigation, road traffic offences.

On 4 September 2021, the Minister of the Interior and the Minister of Justice announced the launch of the experimentation of the FPN for "illegal installation on the land of others", made an offence by Article 322-4-1 of the Penal Code, this article having been amended since 2018 by the law of 7 November relating to the reception of travellers and the fight against illegal installations. As the operational implementation of this mechanism was hampered by the implementation of the FPN for other matters (road traffic and then drug use), this experiment began on 19 October 2021 in the jurisdiction of the Créteil, Rennes, Foix, Lille, Reims and Marseille courts.
Codified in articles 495-17 of the French Code of Criminal Procedure, the "fixed penalty notice" procedure enables the public prosecution to be extinguished by payment of a fixed fine within 45 days of the offence being recorded or receipt of the notice of the fixed penalty. The amount of the fine may be reduced if it is paid directly into the hands of the ticketing officer or within 15 days of the offence being recorded or the

notice being received. When contesting a fixed-rate fine or an increased fixed-rate fine, a specific reason must be given and a deposit equal to the amount of the contested fine must be paid in advance.

Lump-sum fines call into question, to a greater or lesser extent, at least four established principles of criminal law and procedure:

- Equality before the criminal justice system (preliminary article of the code of criminal procedure, art. 6 of human and civic rights ("DDHC")) by primarily impacting the most vulnerable and leaving the power to decide whether or not to use the fixed fine procedure to the discretion of the ticketing officer, without any legal criteria.

- The dual role of judicial police officers means that prosecution and conviction functions do not overlap. The lump-sum fine procedure gives the judicial police officer 1) the power to establish the facts, 2) to choose whether or not to use this procedure, 3) to characterise the infringement of criminal law and 4) to convict the offender by imposing a lump-sum fine. Thus, despite article 16 of the DDHC, the judicial police officer combines the functions of prosecuting and sentencing.

- The exercise of the right of defence. Firstly, the official statement of offence is drawn up on a "PVe" terminal, which does not allow either the ticketing officer or the person ticketed to read the official statement drawn up automatically by the terminal. This means that the offender cannot reread the report before signing it. It can only be consulted in the event of a dispute or referral to a criminal court. Secondly, access to a court is made particularly complex by the existence of two locks linked to the obligation to state reasons and the obligation to give a deposit. The requirement for a deposit is not guaranteed to be conventional.

- Individualised sentencing. The principle of individualisation of penalties, which derives from article 8 of the declaration of human and civic rights, is the principle of criminal law most clearly challenged by the procedure for fixed fines.

In conclusion, the "fixed penalty notice", a new form of penalty for misdemeanours, is a correctional sentence handed down by the police against a person considered guilty, without any adversarial debate, without a judge and without a lawyer. Its significant extension is unacceptable, and would unquestionably constitute a step backwards in terms of the rights and guarantees of those subject to trial, particularly the most precarious among them.

Departmental criminal courts have been generalised.

Introduced on an experimental basis by article 63 of the justice programming law of March 23, 2019, the departmental criminal court (« DCC ») is competent to judge adults accused of a crime punishable by 15 or 20 years' imprisonment when the state of legal recidivism is not retained. It is made up of five professional magistrates, two of whom may be honorary magistrates, honorary attorneys or perform their duties on a temporary basis. The crimes concerned include rape, fatal blows, armed robbery, aggravated procuring and slavery. In fact, it was almost exclusively rape cases that the experimental DCCs had to deal with during the course of the experiment.

The departmental criminal courts have finally been extended to the whole of France as of 1 January 2023, by Law no. 2021-1729 of December 22, 2021 on confidence in the judicial system.

In this respect, the system of departmental criminal courts:

- provides no real time savings or reduction in hearing times, and complicates the material organisation of the courts,
- creates additional workload for judges and court registry staff, and generate numerous additional costs due to the effects of their implementation,
- introduces confusion in the minds of litigants,
- has no decisive effect on the correctionalisation of criminal cases,
- is struggling to absorb the backlog of cases awaiting trial,
- increases call rates,
- continues to undermine the principle of oral debates.

The Ministry of Justice has launched a number of initiatives to further extend the scope of its diversion and acceleration measures.

Significant developments related to independence and powers of the body tasked with safeguarding the independence of the judiciary

A reform of the Conseil Supérieur de la Magistrature remains necessary.

Since 2011, the Conseil Supérieur de la Magistrature (CSM) has been open to all individuals who believe that a member of the judiciary may have committed a disciplinary offence in the performance of his or her duties. In practice, however, despite this reform, not enough cases are referred to the Conseil Supérieur de la Magistrature, which illustrates the need for further reform.

Significant developments related to accountability of judges and prosecutors

The magistrates' disciplinary control body receives very few complaints.

Since the constitutional reform of 2008, any member of the public may lodge a complaint with the “Conseil supérieur de la magistrature” (“CSM”) if he or she believes that a member of the judiciary may have committed a disciplinary offence in the performance of his or her duties. However, the number of complaints deemed admissible each year is very low.

Thus, in 2021, of the 377 complaints registered, only 11 were declared admissible, of which 3 were dismissed as unfounded.

The number of disciplinary cases referred to the Council has risen from 6 in 2020 to 17 in 2021. The vast majority of these concern disciplinary proceedings involving judges. In addition, of these 17 disciplinary referrals, the Minister of Justice initiated 12, the Prime Minister 3 and the first presidents of the appeal courts 2.

The organic law of 20 November 2023 on the openness, modernisation and accountability of the judiciary reforms the accountability, ethics and protection of judicial magistrates.

- The conditions governing the admissibility of complaints lodged by individuals with the "Conseil supérieur de la magistrature" ("CSM") have been simplified.

- The investigative powers of its Applications Admissions Committee ("AAC"), responsible for examining such complaints, have been strengthened. In addition, the complainant may be assisted by his or her counsel at any hearing held by the AAC, and the complainant's counsel will receive the AAC's decision.

- At the same time, the scale of sanctions applicable to judicial magistrates has been reviewed.

- In addition, the law:

  - Specifies the definition of disciplinary misconduct: "*Any breach by a magistrate of independence, impartiality, integrity, probity, loyalty, professional conscience, honor, dignity, delicacy, reserve and discretion or the duties of his or her position constitutes disciplinary misconduct*"
  - Creation of a code of ethics for judges, to be drawn up and published by the CSM to replace the current "compendium of ethical obligations";
  - Introduces the possibility of ethical review by the CSM in the event of a magistrate resigning to join the private sector or pursue a liberal profession;
  - Article 10 of the 1958 Ordinance, which prohibits magistrates from expressing any hostility to the form of government of the Republic or any political bias incompatible with their duty of reserve, states that "*The public expression of magistrates may not be prejudicial to the impartial exercise of their functions or undermine the independence of the judiciary"*.

- Lastly, existing protection measures in the civil service relating to the prevention of health and quality of life at work, the prevention of psycho-social risks, the fight against sexual and moral harassment and sexist harassment, as well as the whistle-blowing system, are made applicable to magistrates.

Significant developments related to independence of the prosecution service

French public prosecutors are still not structurally independent.

- It is the President of the Republic who appoints public prosecutors, on the recommendation of the Minister of Justice and after consulting the "Conseil supérieur de la magistrature" ("CSM"). In practice, the Ministry of Justice has always followed the advice of the CSM. However, they are not obliged to do so, and may overrule them in the future.

- The current appointment system therefore undermines the perception of prosecutors' impartiality, and entails a risk of politicisation in their appointment. Yet the independence of the judiciary, and the public's perception of its independence, is a requirement of the rule of law, a founding value of the EU enshrined in Article 2 of the Treaty on European Union. The status of the public prosecutor's office needs to be reformed, even though it cannot be considered an independent judicial authority.

- Such reform is all the more urgent in view of the arrival of the European Public Prosecutor's Office, which is creating potential competition between the European Public Prosecutor's Office, who are not

subject to the hierarchical authority of the Public Prosecutor's Office and the Minister of Justice, and the French Public Prosecutors.

However, there is no mention of this prospect in the short or medium term, despite the recommendations of the report on the "États généraux de la justice", which calls for the 1999 constitutional reform to be completed and for the CSM to be given the power of assent on proposals for the appointment of public prosecutors, as well as assent in disciplinary matters.

- The issue of the independence of the public prosecutor's office raises a number of questions concerning the conformity of French procedural provisions with European regulations as interpreted by the CJEU (Case C-746/18). In particular, the provisions of the Code of Criminal Procedure concerning the storage of and access to connection data do not comply with the Court's requirements, which make access by the competent national authorities to stored data subject to prior control by either a court or an independent administrative body acting as a "third party" in relation to the party requesting access to the data.

There is an inequality of arms in preliminary investigations led by the public prosecutor's office.

The French Bar notes that the public prosecutor's office is increasingly reluctant to open judicial inquiries (entrusted to an investigating judge, an independent magistrate). As a result, investigations are handled by the public prosecutor's office, which cannot be considered an independent judicial authority. This investigative framework poses a number of difficulties.

- The legal framework of the preliminary investigation is not contradictory. Neither the suspect nor his lawyer have access to the file, except at the end of the investigation and just before the direction of legal proceedings (contradictory window).

- The duration of preliminary investigations is not regulated and, in practice, is far too long, with no sanction for excessive duration. A time limit of 2 years from the first act of investigation had indeed been introduced by the law of 22/12/2021 for confidence in the judiciary [article 2, codified in article 75-3 of the code of criminal procedure] but this has just been gutted before it could even be implemented [cf. law n°2023-1059 of 20 November 2023 on the orientation and programming of the Ministry of Justice 2023-2027, cf. article 6, 7°]. From now on, the 2-year period (or 3 years in the event of a decision to extend) will be counted from the time of the first act of investigation, rather than from the time of the unrestrained hearing, police custody or search of the accused. The investigators and the public prosecutor therefore retain control over the moment when they decide to activate the starting point of the legal time limit, with a "floating" starting point. What's more, the time limit will not be assessed globally for the investigation, but on a case-by-case basis for each respondent.

Cases/examples undermining confidentiality of lawyer-client communications

In 2024, the principle of the independence of the French Bar remains at the heart of concerns in a context marked by legislative changes, technological challenges and growing expectations in terms of justice.

Interception of communications and searches of lawyers are on the increase.

Anti-terrorism laws and digital surveillance measures, such as communications interception, have raised concerns about the confidentiality of exchanges between lawyers and clients.

As a reminder, lawyer-client privilege is justified by the fact that lawyers are entrusted with a fundamental mission in a democratic society: the defence of litigants and their rights.

Law no. 2021-1729 of 22 December 2021 on confidence in the justice amended the rules governing searches of lawyers' offices and the seizure of documents and exchanges, codifying the new provisions in articles 56-1 to 56-2 of the Code of Criminal Procedure.

These provisions are intended to represent "special procedural safeguards" within the meaning of the ECHR.

Even though this law was presented as protecting lawyer-client privilege, it actually introduced more confusion and legal insecurity (very clumsy and confusing wording). It has therefore been interpreted by the judiciary as meaning that only professional secrecy relating to the exercise of the rights of the (criminal) defence is enforceable against them, and not lawyer-client secrecy relating to his or her advisory activities (or even, in some cases, defence activities outside the criminal sphere).

What's more, while searches of lawyers' homes or offices are strictly authorised when the lawyer himself is implicated ("*it may only be authorised if there are plausible grounds for suspecting him of having committed or attempted to commit, as perpetrator or accomplice, the offence which is the subject of the proceedings*" 56-1 CCP), they are widely authorised and practised with regard to lawyers who are officially not implicated.

The circular issued to implement these provisions refers to specific examples that seem logical and acceptable (for example, when the respondent is a member of the lawyer's family circle), but in practice, this system is applied directly against lawyers, without implicating them. As a result, we have seen orders from liberty and custody judges authorising searches of the offices or homes of unindicted lawyers, on the sole grounds of being "necessary for the determination of the truth" or "useful to the investigation".

With regard to the interception of communications, we should mention the very recent ruling by the Criminal Division of the French Supreme Court (Cour de cassation) in the so-called “Bismuth or Sarkozy case”.

On 28 December 2024, the French Supreme Court's Criminal Division rejected the appeals lodged by former French President Nicolas Sarkozy, his lawyer Thierry Herzog and Gilbert Azibert in the so-called "wiretapping" affair. All three were found guilty of bribery and influence peddling, and sentenced to three years' imprisonment, including one year under electronic surveillance, in addition to the additional penalties of ineligibility for the former and disqualification for the latter.

This ruling dismissed the appeal and upheld the conviction of a litigant on the basis of wiretaps of his conversations with his lawyer.

It has already been announced that Nicolas Sarkozy will appeal to the European Court of Human Rights. In a press release, Nicolas Sarkozy's lawyer, Patrice Spinosi, denounced the fact that "for the first time in France, a person has been criminally convicted solely on the basis of remarks that were overheard while he was talking to his lawyer".

Administrative pressure on the profession is also increasing.

Alerted to a number of attempts by state authorities to intimidate lawyers and interfere with their independence in the exercise of their profession, the French Bar urges the authorities to respect the independence of lawyers and invites lawyers to report cases of intimidation or interference.

Public authorities may have made requests or exerted pressure that could hinder the independent exercise of the legal profession, in particular by requesting documents covered by professional secrecy and criticising the conduct or expressions of lawyers in the course of their work, as well as the conduct of a female lawyer.

These examples, which are by no means exhaustive, highlight a worrying tendency on the part of government bodies to interfere in the independent exercise of the profession, through unacceptable pressure, to the detriment of professional secrecy, the free exercise of the legal profession and its freedom of expression. In a resolution adopted in September 2024, the Conseil national des barreaux reiterated that these principles are not mere privileges, but essential guarantees for litigants and the proper functioning of justice. Any attempt to violate these principles constitutes an attack on the rule of law and the defence of freedoms.

Specific examples in relation to the cooperation between your Bar and the executive branch or supervisory authorities

The lawyer's role in the fight against drug trafficking in France is singled out.

For several months now, the authorities have made the fight against drug trafficking a political priority in France. Lawyers are well aware of the serious impact of drug trafficking on public health, security, social peace and the justice system. But in recent months, there has been a proliferation of public statements equating lawyers with their clients, and portraying them as their accomplices. They even tend to designate them as a danger to proceedings, which are said to be faltering under the weight of petitions for nullity.

Comments of this nature were made against the profession at the official openings of the AIX-EN-PROVENCE Courts of Appeal and GRENOBLE on 14 January 2025 on 13 January 2025 respectively, insinuating that lawyers are obstacles to the efficiency of justice:

Public prosecutor Franck Rastoul lamented that "drug money sometimes corrupts the professional practices" of certain players in the judicial world, with in particular "a minority of lawyers who make organised crime their preserve (...) and turn hearings into a judicial boxing ring".

The first president of the Court of Appeal, Renaud Le Breton de Vannoise, for his part deplored the "real arm wrestling" imposed on magistrates by the multiplication of procedural incidents, "whatever their relevance", in order to obtain postponements of hearings.

To make the restriction of nullities the priority in the fight against drug trafficking, and to single out lawyers as the main culprits, is to fight the wrong battle. Any excesses on the part of a few are systematically sanctioned by the Bar Associations, and must not lead to an unacceptable rollback of defence rights for all.

In 2024, the French Bar Association reminded us of this at a hearing before the Senate investigation commission.

The French Bar also worked on the tabling of amendments to a draft law at getting France out of the narcotrafficking trap.

This draft law follows on from the commission of inquiry into the impact of drug trafficking in France and the measures to be taken to remedy the situation. A number of amendments have been tabled, including one aimed at eliminating the creation of a mechanism known as the “chest file”, enabling certain elements of the investigation to be removed from the contradictory debate. This would restrict lawyers' access to investigative evidence and undermine the adversarial principle, the cornerstone of a fair trial. Another proposed amendment is aimed at not requiring a lawyer from the relevant Bar association to be involved in requests for the release of persons under investigation for drug trafficking. The French Bar considers that this restricts the free choice of a lawyer. The French Bar is concerned about the spirit of this law, which tends to equate lawyers with their clients as accomplices or instigators of "manoeuvres" or "negligence".

The draft law on drug trafficking also includes provisions to combat money laundering and the financing of terrorism (LCB-FT). In particular, the text provides for TRACFIN (the French financial intelligence services) certification of lawyers' minimum knowledge in this area. The French Bar is strongly opposed to this measure, which it considers incompatible with the independence of the profession. Lawyers are already subject to strict LCB-FT obligations, and this certification is perceived as a further infringement of their freedom to practise.

The French Bar reminds us that lawyers are not facilitators of criminal activity, as the spirit of this bill seems to imply. On the contrary, they are the guarantors of individual freedoms and the rights of the defence, a central role that is threatened here. The French Bar Association asks to be heard by the law's rapporteurs to defend the principles underpinning the practice of the legal profession when they are appointed.

Problems and difficulties implementing the case law of national, European, and international courts

The political debate in 2024 focused on the enforcement of ECHR rulings on the expulsion of foreign criminals, against the backdrop of the terrorist attacks in France last October.

The Minister of the Interior ordered the deportation of an Uzbek national despite an interim order from the ECHR not to deport him in view of the risk of inhuman and degrading treatment.

In an order dated 7 December 2023, the Conseil d'État enjoined the French government to do everything in its power to bring him back, which the government initially refused to do. By refusing to comply with the injunctions of the European judge and then those of the French judge, the government is calling into question the principle of res judicata, a pillar of the rule of law.

It was the first time that the French government had opposed the execution of a court decision so head-on.

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

There is a growing sense of mistrust in the judiciary.

The relationship between the police and the judiciary is leading to a growing public distrust of the judiciary. In fact, police officers who have committed an offence are rarely actually punished. Claire Hédon, the French Human Rights Ombudsman, has highlighted the reluctance of the Ministry of the Interior to initiate disciplinary proceedings against police officers responsible for misconduct.

Furthermore, the French Bar fears that the general public's perception of the independence of the judiciary will be undermined by the increasing remoteness and disembodiment of the justice system (see the developments concerning the extension of the fixed fine for misdemeanours).

Finally, a growing number of statements by political leaders tend to undermine the work of the justice system, denouncing a "government of judges", a "coup d'état by judges", criticising the prosecutor's office or downplaying the importance of the rule of law in a democracy. While such statements are nothing new, their proliferation in recent months has tended to undermine the credibility of the judiciary.

Significant developments related to accessibility of courts

The context of severe budget constraints poses a threat to court accessibility in the context of ongoing budget negotiations:

- The principle of free public service of justice is called into question by the proposal of a compulsory contribution of €50 payable by the claimant to the judicial or administrative proceedings (stamp duty)
- Budgets earmarked for legal aid and access to the law are likely to be impacted by cost-cutting measures, to the detriment of the most vulnerable litigants.
- As things stand, the French Bar has no guarantee that the funds allocated to justice will be maintained in the 2025 budget - and no visibility as to how these funds will be distributed (recruitment / access to law and justice).

The amount of legal aid is still very low.

The value unit ("UV"), currently set at €36, and the number of UVs, capped by type of procedure, do not cover the operating costs of a law firm.

The French Bar Association (through the Paris Bar Association) has taken steps to ensure that legal aid beneficiaries receive a high-quality defence, by setting up duty sessions staffed by lawyers specifically trained in criminal law, immigration law, juvenile law, the law governing persons under psychiatric care without consent, educational assistance and residential leases. This agreement was signed at the end of 2022 for a period of three years. At the end of 2024, a rider was signed with the Judicial Court, concerning correctional proceedings, due to the creation of new hearings by the court.

On an experimental basis, economic activity tribunals (formerly known as “commercial tribunals”) will be able to request a financial contribution from the claimant to the proceedings.

On 1 January 2025, twelve commercial tribunals became “economic activity tribunals” on an experimental basis, in application of Law no. 2023-1059 of November 20, 2023 on the programming of the justice system.

Parties initiating proceedings before a economic activity tribunals are liable to pay the “contribution to economic justice” introduced on an experimental basis by decree no. 2024-1225 of 30 December 2024. This contribution may amount to up to 5% of the total amount of claims at the time the proceedings are initiated, but may not exceed €100,000.

The French Bar Association contests such an attack on the principle of free justice. In a state governed by the rule of law, all litigants, including legal entities, must have unimpeded access to their judges. There is also the question of the risk of *forum* shopping, i.e. the risk of inserting jurisdiction clauses in the new contracts in order to exclude the courts taking part in the experiment.

The Conseil National des Barreaux has mandated its board "to lodge all necessary appeals" against the experiment, while the Paris Bar has already voted to lodge an appeal against the decree before the Conseil d'Etat.

Significant developments related to resources of the judiciary

A list of 60 measures was announced on 5 January 2023 by the ministry of justice, following the “États généraux de la justice” launched at the end of 2021, which enabled consultation with the entire judicial world: magistrates, lawyers, professional justice unions, internal security forces and citizens.

Among the measures announced to meet the expectations of professionals and citizens:
- an annual budget of 11 billion euros by 2027;
- 10,000 additional jobs, including 1,500 magistrates and the same number of court clerks by 2027;
- a digital transformation leading to "paperless" justice;
- rewriting the Code of Criminal Procedure to make it simpler and more readable;
- the development of an out-of-court settlement policy to ensure that justice is swifter and closer to the people;
- familiarising citizens with the law and justice from secondary school onwards.

The profession welcomes this budgetary effort to modernise the judicial system.

The recommendations took concrete form in November 2023 with the Ministry of Justice's Orientation and Programming Act 2023-2027. The French Bar remains particularly attentive to ensuring that the justice budget is preserved in a context of severe budget constraints.

Significant developments related to training of justice professionals

Decree no. 2023-1125 of 1 December 2023 on the professional training of lawyers was published in the Journal Officiel on Saturday 2 December 2023. The decree significantly modifies the initial and continuing

professional training of lawyers, implementing proposals put forward by the French Bar Association and reforming some fifty articles of decree no. 91-1197 of 27 November 1991.

This decree establishes a unified set of internal regulations applicable to all Bar schools from 1 September 2025.

It adds conditions to the exemption from the entrance exam granted to doctors of law who have defended their thesis after 31 December 2024. In addition, all those eligible for a gateway to the legal profession on the basis of their previous activities are now subject to a knowledge test in professional ethics and regulations.

The text also sets out the procedures for implementing the individual educational project and the articling period for student lawyers. A referral lawyer will be appointed to ensure that the trainee lawyer's internship runs smoothly and a referral lawyer will be appointed from 1 January 2025 to support young lawyers during their first two years of professional practice.

Disciplinary sanctions for lawyers and procedures for obtaining and withdrawing a certificate of specialisation are also specified.

Lastly, the text makes continuing training a condition for practising the profession by introducing the possibility of omission for lawyers who fail to meet their continuing training obligation, starting in 2024.

Significant developments related to digitalisation

Deployment of the Portalis project continues.

Work continues on the Portalis project. Portalis is one of a series of projects designed to modernise the justice system for the 21st century. This project has gradually become the vehicle for reforming the organisation of the judiciary, and simplifying procedures for both litigants and lawyers. Its aim is to set up a new, fully dematerialised civil chain, facilitating the exchange of data between the different jurisdictions involved in a case, and enhancing communication possibilities with court officers. Portalis aims to provide modern technology, secure remote access and short development cycles to keep pace with frequent legislative and regulatory changes.

The French Bar Association is involved in the project through the prism of electronic communication between lawyers and courts.

Deployment of the legal aid information system (« LAIS ») continues.

Set to be implemented in 2023, LAIS is part of the Ministry of Justice's digital transformation project, and aims to simplify legal aid applications and their processing by legal aid offices via dematerialisation.

Although the French Bar Association was involved in the roll-out, some of its requests have not been taken into account. In particular, the Bar regrets that lawyers still do not have access to the platform. They are therefore unable to help their clients fill in legal aid applications correctly, and to check that the data provided by the client is accurate before accepting the assignment.

While discussions are continuing with the Ministry of Justice, the French Bar faces budgetary uncertainties, since even if the Ministry were to agree, it is not certain that funds would be allocated to IT developments.

The dematerialisation of many public services is leading to breaks in the law.

In terms of access to the law, the dematerialisation of many public services, without satisfactory alternative means of access, leads to a breakdown in rights for many people subject to the law, who do not have the necessary resources to carry out these online procedures on their own. As a result, new administrative litigation is created, which is particularly time-consuming for the administrative courts, and very unprofitable for lawyers, leaving a certain number of litigants with no real means of redress, and in any case costing the public purse.

The profession is developing numerous initiatives in the fields of artificial intelligence, cybersecurity and electronic communication.

<u>In artificial intelligence</u>

AI raises a number of issues, including training (it is essential to offer lawyers training in generative AI - how to feed an AI, how to ask questions, the obligation to verify the information communicated by the AI and the sources communicated) and public information (we need to inform litigants about the limits of AI; this is a task led by the French bar, which has already pursued several applications).

- Training: training lawyers and future lawyers in the use of Artificial Intelligence (AI) within an ethical framework that respects fundamental rights.

1. Drafting best practices for AI use by student lawyers
2. Obtained funding for the European LITEL 2 project, aimed on the one hand at identifying the challenges of AI for a training centre for lawyers in Europe, and on the other hand at designing a complete training module in the use of AI enabling them to exploit opportunities within a deontological and ethical framework (confidentiality - non-discrimination - taking into account a possible violation of the EU Charter on Human Rights - ethical issues).
3. Implementation of an interactive training methodology using digital tools: organisation of role-playing games with student interaction.
4. Publication of a practical guide to AI, providing advice and best practice to enable lawyers to use it responsibly, but also shedding light on the opportunities it offers the profession.

- Fighting the digital divide: combating differences in access to AI between law firms

The French Bar (through the Paris Bar) launched a landmark plan last October: 14,000 Parisian lawyers practising alone or in twos will benefit from free, unlimited access to GenIA-L, Lefebvre-Dalloz's AI-based legal research tool, until 31 December 2025. Other partnerships with a number of legaltechs are gradually being set up.

- Working groups: development of working groups and steering committees dedicated to AI

Through the Conseil National des Barreaux, the French Bar Association has set up a steering committee dedicated to artificial intelligence. This working group's mission is to supervise, support and coordinate the reflections and initiatives carried out by the various Commissions. The working group's method is based on transversality, integrating all the institution's expertise for a global and coherent approach. The working group's action plan is structured around the main issues raised by AI (fundamental rights and freedoms, the environment, training, etc.).

In cybersecurity

The digitisation of the legal profession is accompanied by ever-increasing cyber risks. Regardless of its size, a law firm needs to be aware that it could be faced with a cyber-attack at any time. Digital risk is a business risk that requires a holistic approach to ensure that the protection implemented is adequate and remains so over time. As part of its action plan, the French Bar Association has published the second volume of its cyber guide. These guides are designed to help lawyers ask themselves the right questions to make their offices a safe digital place where their clients can entrust them with information in complete confidence.

Electronic communication

In February 2024, the French Bar introduced two new services designed to modernise and secure professional communications: E-Mail and E-Drive. These two new tools are designed to meet the demands of the legal profession and the standards of our time. More in line with the profession's commitments, these new solutions represent a major step forward in modernising and securing communications. They provide enhanced protection for the data processed by lawyers.

In addition, the French Bar (through the Conseil national des barreaux), the National Council of clerks before the commercial tribunals and the GIE infogreffe, are continuing their work to interconnect the new e-Barreau, an electronic communication platform operated under the responsibility of the Conseil national des barreaux, with the Tribunal Digital, an electronic communication platform operated by the GIE Infogreffe under the responsibility of the National Council of clerks before the commercial tribunals.

Significant developments related to geographical distribution and number of courts/jurisdictions

The distribution of cases in France, traditionally territorialised, is undergoing a twofold concentration trend.

Creation of national public prosecutor's offices, based in Paris, with national or even international jurisdiction.

- The National Financial Prosecutor's Office was set up in March 2014 and deals with cases involving the most serious economic offences
- The National Anti-Terrorism Prosecutor's Office was created in 2019. Its areas of jurisdiction include crimes against humanity and war crimes, terrorism, proliferation of weapons of mass destruction and their means of delivery, torture within the meaning of the Convention of December 10, 1984, and enforced disappearance.

- A national anti-narcotics prosecutor's office is envisaged in the draft law to combat drug trafficking. The French Bar denounces the centralisation of drug trafficking cases in Paris. By taking people and their lawyers away from local jurisdictions, this measure weakens the principle of local justice, which is essential to guarantee equality before the law. By also requiring a lawyer from the relevant Bar to handle requests for the release of people under investigation for drug trafficking, the reform restricts the free choice of lawyer, a constitutionally protected right.

These national prosecutors' offices centralise cases to the detriment of traditional territorial jurisdictions. The excesses currently observed within the National Financial Public Prosecutor's Office, particularly with regard to professional secrecy, suggest that this centralisation is sometimes excessive and detrimental to the quality of investigations.

What's more, these national hubs require considerable financial resources, to the detriment of local courts and complicating access to the law.

Court specialisation

The 2018-2022 Justice Programming Act of March 23, 2019 organises the specialisation of jurisdictions at departmental level. It is now possible for one of the department's courts to hear technical disputes in civil or criminal matters. These disputes are defined by decree. This specialisation distances litigation and undermines the fundamental principle of citizens' access to law and justice.

These developments are still relevant in 2024.

Significant developments related to efficiency of justice system

Over the past twenty years, the time taken to bring a case to trial has steadily increased. In 2019, civil cases took 13.9 months at first instance and 15.8 months on appeal, while industrial tribunals took over 16 months. In criminal matters, while by definition, trial times for immediate appearance hearings are reduced, the conditions under which these hearings are organised, which are often held well into the night, do not allow for quality justice and contribute to an increase in the number of short prison sentences handed down. Apart from immediate appearances, delays are high and worsening.

In response to these challenges, the government has put in place a proactive policy for the development of out-of-court settlements. In January 2023, the Minister of Justice launched an out-of-court settlement policy as part of the Justice Action Plan.

- The amicable settlement hearing and the ceasura of civil proceedings

Decree no. 2023-686 of 29 July 2023 on measures to promote the amicable settlement of disputes before the judicial courts has introduced two new tools into the Code of Civil Procedure: the amicable settlement hearing (ASH) and the caesura of civil proceedings. These provisions apply to proceedings commenced on or after 1 November 2023.

This reform was discussed with court clerks and judges at a symposium organised by various legal professional organisations on 17 October 2023. The circular outlining the implementation, in civil legal proceedings, of the amicable settlement policy decided by the Minister of Justice was published on 17 October 2023.

In concrete terms, the amicable settlement hearing is introduced within the framework of ordinary written proceedings and summary proceedings before the court, and aims to achieve an amicable resolution of the dispute between the parties, through a balanced confrontation of their points of view, an assessment of their respective needs, positions and interests, and an understanding of the legal principles applicable to the dispute.

The judge hearing a case involving rights that are freely available to the parties (this may be the president of the orientation hearing, the pre-trial judge, the judge hearing the merits of the case or the interim relief judge) may decide, at the request of one of the parties or on his or her own initiative after obtaining their opinion, by a measure of judicial administration, that they will be summoned to a settlement hearing held by a judge who does not sit on the panel of judges.

With the ceasura of civil proceedings, introduced as part of the ordinary written procedure before the judicial court, the court may initially decide on only some of the claims before it, thus rendering a so-called "partial" judgment.

Other issues and significant developments impacting access to justice

The situation of the prison system is particularly worrying due to overcrowding.

At the end of 2024, a new record was set for the number of inmates. According to numbers from the Ministry of Justice, there were 80,792 inmates for just 62,404 operational places. The prison population density reached 129.5% for the prison estate as a whole, and 156.8% for remand prisons. This figure regularly exceeds 200% in some prisons.

This situation, described as critical by the Minister of Justice in his latest circular on general penal policy, is of long-term concern to lawyers and all the unions, associations, independent administrative authorities and international organisations concerned with the prison environment. In its press release accompanying the J.M.B. v. France judgment of 30 January 2020, the European Court of Human Rights stated that the occupancy rates in the prisons concerned by the appeal "reveal the existence of a structural problem".

This structural situation raises numerous questions in terms of respect for the fundamental rights of detainees and, more generally, the public's perception of the justice system. This situation is also likely to jeopardise the European area of freedom, security and justice, by hampering the execution of European arrest warrants in France.

The French Bar Association takes due note of the government's wish to increase the prison estate by 15,000 additional places, as reiterated by the Minister of Justice on 5 January 2023.

Unfortunately, this programme will not meet France's European and international obligations in terms of the dignity of prison conditions. The French Bar Association is calling for the implementation of a binding prison regulation mechanism to effectively resolve a situation that is no longer tenable.

The rights of foreigners are under attack.

The law to control immigration, improve integration adopted on 19 December 2023 and implemented throughout 2024 seriously undermines the right to an effective judicial remedy and profoundly reforms the asylum procedure, to the detriment of applicants' rights.

What's more, irrespective of legislation, the French Bar is increasingly identifying illegal obstacles restricting foreigners' access to the law in France. The French Bar (through the Conseil National des Barreaux) will shortly be presenting a report on this issue.

GERMANY

Measures taken to follow-up on the recommendations of the European Commission received in the 2024 Report

We took note of the European Commission Recommendations for Germany in the 2024 Rule of Law Report according to which some progress has been made "on stepping up efforts to ensure adequate resources for the justice system".

We welcome that at least in the framework of the digital pact ("Digitalpakt") the outgoing federal government is providing a total of up to 200 million euros for the years 2023 to 2026 and that the federal government committed itself to concrete goals in its digital strategy ("Digitalstrategie"). We call upon the future federal government to be elected in February 2025 to uphold this funding. Nevertheless, it has to be pointed out that also the German Länder will have to provide adequate resources for the justice system.

Some legislative initiatives have been finalised with regard to the digitalisation, as the "law for the further digitalisation of the judiciary" (see below, question 19). With regard to the initiative on the digital documentation of criminal court proceedings, no progress has been made, as the draft law is "blocked" in the conciliation committee between the two parliamentary chambers ("Bundestag" and "Bundesrat"). After the dissolution of the Bundestag, the draft law is subject to discontinuity and a significant deficit with regard to the rule of law in criminal proceedings will persist.

Significant developments related to appointment and selection of judges, prosecutors and court presidents

Constitutionalisation of structural elements of the Federal Constitutional Court

In December 2024, the German constitution ("Grundgesetz", basic law) was amended in order to constitutionalise several structural aspects of the Federal Constitutional Court, concerning for instance the number of judges and the limits of their term. The aim of this initiative is to prevent a political takeover of the Constitutional Court and to shield it from political influence.

Both BRAK and DAV warmly welcomed the adoption of the law, see the respective statements of 19 December 2024 of the DAV (and a detailed Position Paper by the DAV in preparation of an expert hearing) and of the BRAK.

In detail, the aspects that were formerly laid down in an ordinary statute (Act on the Federal Constitutional Court - Bundesverfassungsgerichtsgesetz) and which now are regulated in the Constitution itself are the following:

- the status of the Federal Constitutional Court as constitutional body
- the direct binding force of the decisions of the Federal Constitutional Court for public authorities
- the number of two senates and their composition of eight judges each
- the term of office of 12 years without the possibility of re-election
- and the determination of the age limit for constitutional judges.

From now on, these provisions can only be amended if a two-thirds majority in each the Bundestag and the Bundesrat agrees.

In the months leading to this constitutional amendment, it was discussed whether or not the requirement of a two-thirds majority for the election of the judges should be enshrined in the constitution as well. However, the constitutional amendment's final form does not include such a provision, meaning that the majority required for the election of the Federal Constitutional Court's judges is still subject to change by a mere majority of votes cast in the Bundestag.

Significant developments related to independence of the prosecution service

The German government presented a draft bill in 2024 according to which the right of the Ministers of Justice to issue instructions to the public prosecutor's offices should be maintained in principle, but regulated more precisely. BRAK and DAV welcomed the fact that according to this draft law the right to issue instructions would be retained in principle, as under the German constitution the public prosecutor's office is part of the executive power rather than the independent judiciary, see the Position Papers of the BRAK 32/2024 and 39/2024 as well as the Position Paper 34/2024 of the DAV.

It is positive that the draft law aimed to make the instructions more transparent and that instructions to the public prosecutor's office would need to be recorded and justified in writing. This enables concerned public prosecutors to raise objections. However, it would have been desirable to have additional safeguards, such as the obligation to document any instruction within the file of the concerned criminal proceedings, in place. It is important that non-judicial considerations must not have any influence on instructions given to public prosecutors.

Cases/examples undermining confidentiality of lawyer-client communications

Lack in the protection of the professional secrecy in criminal investigations in Germany

The independence of lawyers requires a high level of protection of lawyer-client confidentiality. German law contains several provisions to protect lawyers' professional secrecy. However, these provisions do not constitute a coherent and precise set of rules, rather a patchwork spread across a number of statutes that is contradictory in parts. In particular, there is a discrepancy in the protection against the seizure of evidence for lawyers who are not acting as defence counsel (see Section 160 para. 5 in conjunction with Section 97 para 1 no. 3 Code of Criminal Procedure, "Strafprozessordnung"). This is i.a. demonstrated by an increasingly widespread practice of ordering the inspection of lawyer's correspondence by Public prosecutor's offices.

In addition, lawyer-client confidentiality is severely called into question at EU level in the context of anti-money laundering legislation as well as the DAC Directives.

Similar threats to confidendiality may arise in tax matters, notably with regard to the German implementation of the DAC 6 Directive. All such developments are to be strongly criticised. It is crucial to maintain the independence of the profession as a cornerstone of the guarantee of access to justice for everyone and the preservation of the rule of law.

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

More and more lawyers become victims of threatening behaviour or aggression. A survey prepared by the CCBE and carried out in Germany by the German Federal Bar (BRAK) in 2024 shows that in the last two years 55.1 % of the German lawyers who participated in the survey experienced such a behaviour.

One reason for this phenomenon is that lawyers are often identified with their clients and/or their clients' behaviour, which clearly contradicts one of the core tasks of lawyers: granting access to justice. In Germany there has been a widely mediatised case of a migration lawyer who had given legal advice to the later assassin of Solingen and who has even been threatened by right wing extremists in front of her house, cf. the statement by the DAV as well as a statement by the BRAK in solidarity of the lawyer concerned.

The German delegation to the CCBE is optimistic that the future Council of Europe Convention on the Protection of the profession of lawyer will also play an important role with regard to protecting lawyers and preventing threats against them.

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

Prohibition of third-party ownership maintained

BRAK and DAV both welcomed that the ECJ has confirmed the importance of the independence of lawyers as guardians of the rule of law in the Halmer case (C-295/23 – in this judgment the ECJ uphold the prohibition of third-party ownership of law firms).

Significant developments related to accessibility of courts

In Germany, court fees in civil and commercial matters are determined with reference to the value of the claim in dispute. If the value is high, the court fees can be so expensive that they may deter claimants from filing court proceedings in some cases, especially if the respective claimant is too wealthy to be eligible for legal aid and has no insurance that covers legal expenses.

Adoption of the Initiative to raise the statutory lawyers' fees:

On Friday 31 January 2025 the Federal Parliament (Bundestag) adopted a reform (see the Parliamentary document 20/14768, which has been adopted without changes) which includes a linear raise of the statutory lawyers' fees and some structural improvements of the remuneration of lawyers. BRAK and DAV warmly welcome the adoption of the reform by the Bundestag, see the respective statements by DAV and BRAK. The fixed fees as well as the framework fees will be raised by 9 percent, the fees which are determined according to the value of the claim shall be raised by 6 percent. It is now up to the Second Chamber (Bundesrat) to agree to the adoption of the reform, before it can enter into force.

BRAK and DAV have argued in favour of the reform for a long time as the vital role of lawyers in the legal system by facilitating access to justice requires an adequate remuneration. In this regard, the statutory fees set out by the Act on the Renumeration of Lawyers (Rechtsanwaltsvergütungsgesetz, RVG) are of high importance, especially as they also determine lawyers' remuneration for providing legal aid services. BRAK

and DAV have called for an adequate rise of the statutory fees in a joint position paper, asking for a linear rise of the statutory fees and some structural amendments of the Act on the Remuneration of Lawyers. If formally adopted by the Bundesrat, the reform will mark an important step towards ensuring adequate remuneration of lawyers and thus guaranteeing access to justice. However, it is clear that future adjustments will also be necessary.

Unified cloud infrastructure for the justice system

The Federal Ministry of Justice is currently assessing the viability of a unified cloud infrastructure for the justice system. The cloud could be used for instance to upload documents, providing better accessibility for everyone involved in court proceedings.

Significant developments related to resources of the judiciary

There are remaining challenges as the high number of retirements that are to be expected in the coming years and the need to recruit personnel in the judicial and prosecution services. The same is true for lawyers: Access to justice, notably outside of big cities in more rural areas, requires a strong and present legal profession. Therefore, the merging of court locations should be avoided. The judiciary and the legal profession have to remain present also in rural areas.

The challenges that had to be met in the past years have impressively demonstrated that the ability of the rule of law to function depends to a large extent on the judiciary's ability to work - also digitally. In order to be able to meet current and future challenges it is necessary to provide the judiciary with all the material and financial resources it needs to reliably ensure access to justice.

The German delegation welcomes that in the framework of the digital pact ("Digitalpakt") the federal government has started to provide a total of up to 200 million Euros for the years 2023 to 2026 and has committed itself to concrete goals in its digital strategy (cf. Digitalstrategie). We call upon the new legislator to maintain this funding. However, also the German Laender will have to raise their contributions to the justice system.

Significant developments related to training of justice professionals

Relatively new is § 43f of the Federal Lawyers' Act ("Bundesrechtsanwaltsordnung"), which obliges lawyers to acquire knowledge of professional law (the provision entered into force in August 2022). In detail, lawyers must pursue training of at least ten hours of professional law by the end of the first year of their admission at the latest.

"Deutsches Anwaltsinstitut", "Deutsche Anwaltsakademie", "Deutsche Richterakademie" and others provide training for justice professionals. To prepare law students in addition to their mandatory education at universities for the legal profession as well as professional law issues, The BRAK, the Hans Soldan Foundation, the DAV as well as the Deutsche Juristen-Fakultätentag are jointly supporting the Soldan Moot Court for already twelve years - a student competition on legal professional law, which is organized by the Institute for Procedural Law and Legal Profession at the University of Hanover.

Furthermore, the BRAK is working together with schools in Berlin to familiarise schoolchildren with the legal profession, its importance for the Rule of Law and the system of self-administration at an early stage. The DAV is also engaged in several projects such as "Lawyers in schools" which is aimed at strengthening

the understanding of the law, democratic values and the role of lawyers therein. Finally, both BRAK and DAV contribute to the qualification of future lawyers by offering traineeships within their respective organisations.

Significant developments related to digitalisation

E-File /Video hearings and Planned unified justice cloud

In July 2024, a law has been adopted, mandating that all new files in the justice system will have to be kept electronically (e-file, E-Akte) from 1 January 2026 onwards ("Law on the further digitalisation of the justice system").
The federal and state justice ministers met in Berlin on 28 November 2024 for their fifth federal-state digital summit. The meeting focused on the plan to jointly develop a standardised nationwide justice cloud, i.e. a joint cloud infrastructure for justice-related IT applications at federal and state level.

Video hearings will be easier to conduct in civil and specialist courts in the future. The Act to Promote the use of video conferencing technology in Civil and Specialised Courts ("*Gesetz zur Förderung des Einsatzes von Videokonferenztechnik in der Zivilgerichtsbarkeit und den Fachgerichtsbarkeiten"*) was published in the Federal Law Gazette (*Bundesgesetzblatt*) on 18 July 2024. This is an important step towards digitalisation of the judiciary.

Use of AI in the judiciary

The use of AI in the judiciary is being tested for a variety of tasks, such as:
- automated anonymisation of judgments (e.g. https://www.baden-wuerttemberg.de/de/service/presse/pressemitteilung/pid/gemeinsames-ki-projekt-zur-anonymisierung-von-urteilen)
- analysis of large volumes of documents (e.g. "FraUKe" in particular to process mass proceedings such as air passenger rights cases, "OLGA", and Codefy)
- preparation of judgments or other documents (e.g. "FraUKe, OLGA, and FRIDA)

A working group has been formed on the level of the higher regional courts.

As a more general remark on the use of AI in the judiciary: The supportive use of AI might be acceptable in particular circumstances, as far as the judicial decision-making as such is guaranteed and not replaced by AI (principle of judicial reservation and of the statutory judge). This fundamental exclusion of the replacement of the decision of the judge, including by an automation-bias, applies in particular to criminal proceedings and law enforcement proceedings.

Digital documentation of main hearings in criminal proceedings

In Germany, the digital documentation of main hearings in criminal proceedings is a lacking detail. The BRAK and the DAV have advocated repeatedly for the overdue introduction of a digital documentation, see the statement of the BRAK from 4 March 2024 and the statement of the DAV from 20 February 2024. So far, there are no official minutes taken during witness statements. To address this inadequacy, the Federal Ministry of Justice has drafted a proposal in 2022 that would mandate an audio documentation of the main hearing should it be passed. However, after resistance from the federal States (Länder) in particular the draft law has been blocked in the conciliation committee between Bundestag and

Bundesrat. DAV and BRAK stress the necessity to reopen the legislative process during the next legislative term.

Significant developments related to geographical distribution and number of courts/jurisdictions

In 2024 a law was adopted in order to introduce Commercial Courts before which the proceedings can be held in English. ("Act to strengthen Germany as a centre of justice by introducing commercial courts and English as the court language in civil jurisdiction", see the published law in the Federal Official Journal – Bundesgesetzblatt). It remains to be seen to what extend the law will actually fulfil its aims and lead to more cases held in English.

Other issues and significant developments impacting access to justice

Need for a fundamental rights compliant data retention model ("Quick Freeze"):

In 2024, two proposals were discussed as means to replace the German laws that allowed for general and indiscriminate retention of data, which had been declared incompatible with EU law by the ECJ in 2022. The first proposal intended to introduce a "quick freeze" mechanism, see in this regard also BRAK position paper 52/2022 as well as a statement by the DAV from April 2024 and the Position Paper 24/18. The second proposal entailed the introduction of a minimum storage period of one month for IP-addresses and cell phone queries ("Funkzellenabfragen"), for the purpose of combating serious crime – leading to the indiscriminate collection of millions of citizens' traffic data. It is unlikely that either proposal will become law before the current legislative term ends, and it remains to be seen, if one of the proposals will be taken up again in the next term.

Reform of the Act on Mutual Assistance in Criminal Matters

BRAK and DAV both commented on the draft law which was published in order to reform the Act on International Mutual Assistance in Criminal Matters (IRG). BRAK and DAV both called for the introduction notably of effective legal remedies against admissibility decisions in extradition law (see the statement and Position Paper No. 83/2024 of the BRAK as well as the Position paper 80/2024 of the DAV).

GREECE

Significant developments related to appointment and selection of judges, prosecutors and court presidents

Senior judicial appointments (President and Vice-Presidents of the Council of State, President, Vice-Presidents, and Prosecutor of the Supreme Court) remain under executive control through Presidential decree issued on Cabinet proposal (Article 90.4 of Constitution).

The government's latest plan for judiciary advisory participation in high-level appointments only partially addresses independence concerns.

The executive branch's proposal for appointments remains beyond judicial review.

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

Significant decline in public trust, with only 40% of the population viewing judicial independence positively. Major concerns about political and economic interference in the judicial system.

Significant developments related to accessibility of courts

Significant delays in criminal, civil, commercial, and administrative cases.
Some trials being scheduled beyond a 10-year timeframe.

Significant developments related to digitalisation

Progress in digitalisation but implementation remains inconsistent and limited to certain courts.
Electronic filing system still pending full implementation.

Significant developments related to use of assessment tools and standards

Improvements in the judicial statistics collection system, though still incomplete.

Significant developments related to efficiency of justice system

Significant delays across all types of cases (criminal, civil, commercial, administrative).
Excessive use of pre-trial detention contributing to prison overcrowding.
Systemic failures in prison conditions noted by the European Committee for the Prevention of Torture.

Other issues and significant developments impacting access to justice

- Major surveillance scandal involving Predator spyware targeting politicians, journalists, lawyers, and armed forces. Supreme Court Prosecutor's report from 30 July 2024, concluded only four private software company representatives were responsible.
- Criticism of insufficient investigation into broader implications and potential state involvement.
- Concerns about oversight of intelligence services and surveillance justification.
- Issues with the legislative process, including insufficient public consultation and transparency.

Criminal Code Reform Concerns

Procedural Issues:

- The legislation was enacted without establishing the necessary legislative preparatory committee.
- Lack of effective consultation with relevant stakeholders, including Bar Associations and Judges' and Prosecutors' Unions.
- Insufficient transparency in the legislative process.

Substantive Issues:

- Implementation of disproportionately harsh penalties.
- Evidence suggests these increased penalties do not contribute to crime prevention or control.
- Results in excessive punishment and imprisonment even for minor offences.
- Reduction in defence rights.
- Limitations on intermediate procedures before trial that traditionally helped ensure fair judgment and minimise unjust decisions and pre-trial detentions.

Speed of Justice Administration

- Significant delays persist across all court systems:
    - **Civil Courts:** Extensive case backlogs and procedural delays.
    - **Criminal Courts:** Extended waiting periods for trials and hearings.
    - **Administrative Courts:** Substantial delays in case resolution.
- Impact on access to justice and legal rights protection.

European Court of Human Rights (ECHR) Decisions

- Notable rulings against Greek judicial formalism:
    - **Tsiolis Case:** Highlighted excessive procedural formalism.
    - **Zoumpoulidis Case:** Criticised rigid application of procedural rules.
    - **Georgiou Case:** Addressed barriers to effective access to justice.
- These decisions demonstrate systematic issues with procedural rigidity in Greek supreme courts.

Rule of Law Concerns

- Significant setback following Council of State decision:
    - Ruled Bar Associations lack standing (legitimate interest) to challenge appointments to Independent Authorities.
    - Impact on oversight of Independent Authorities.
    - Weakening of checks and balances system.
    - Reduced ability of professional bodies to challenge potentially improper appointments.

Nationwide Lawyers' Strike

- The Greek legal community, through the coordinated action of Greek Bar Associations, has organized a nationwide lawyers' strike for January 23-24, 2025, in response to the controversial gender violence bill.
- This unified opposition is significant as it represents the collective stance of the country's legal professionals.

Procedural Issues:

- Rushed public consultation during the holiday season.
- Exclusion of legal professionals from the drafting process.
- Lack of proper stakeholder consultation.

Substantive Legal Concerns:

- Constitutional and ECHR compliance issues.
- Problems with the presumption of innocence.
- Separation of powers concerns.
- Proportionality principle violations.
- Risks of measure misuse.
- Inadequate transposition of EU Directive 2024/1385.

While opposing the bill, the Bar Associations maintain their strong commitment to combating gender-based and domestic violence, suggesting their opposition is based on legal and constitutional grounds rather than opposition to the bill's fundamental aims.

Legal Aid System Issues

- Significant delays in payments to legal aid attorneys throughout 2024, raising concerns about the effective functioning of the legal aid system.
- While the Ministry has announced measures for the gradual settlement of these payments, the situation continues to be closely monitored by the country's Bar Associations.
- The review of the Lawyers' Code has become imperative, as several of its provisions have proven ineffective and hinder both the work of legal professionals and the broader administration of justice.

HUNGARY

Measures taken to follow-up on the recommendations of the European Commission received in the 2024 Report

Last year, the Hungarian government and parliament completed the recommended judicial reform, the main elements of which were to strengthen the role of the National Council for the Judiciary and strengthened the powers of control of the judiciary over the President of the Kúria (Supreme Court).

As regards specific new recommendations in the area of justice:
- To improve the transparency of case allocation systems in lower-instance courts, taking into account European standards on case allocation. As it said in the report, the political influence remained in the courts, which could influence the way individual cases were handled. Judges' freedom of expression is still under pressure and smear campaigns against judges in the press continue.

This recommendation is still to be fulfilled, the transparency of case allocation systems in lower-instance courts should be improved. The chilling effect at courts is still there.
- The report specifically highlights that the salaries of judges and judicial workers have continued to deteriorate, that is why it recommends taking structural measures to increase the remuneration of judges, prosecutors, and judicial and prosecutorial staff, taking into account European standards on remuneration for the justice system.

The increase of the remuneration of judges has been completed, but not equally, tension is caused by different levels of pay rises. The judges at the Kúria have received much higher pay rises. The judicial staff have not even received a pay rise, leading to further serious wage tension and job displacement. However, the efficiency of the judicial system remains high.

As regards further recommendations (independence of media, investigation of the corruption cases, the fair and transparent distribution of advertising expenditure, governance of the public service media, hampered civil society organisations, etc.) the government has not sufficiently addressed deficiencies in these areas.

No legislative steps have been taken to restore legal certainty as pointed out by the EC's 2023 and 2024 Rule of Law Report, even the state of danger declared with a reference to the war in Ukraine is currently extended from 4 November 2024 with an additional 180 days until 18 May 2025, it means the laws can still be regularly amended by lower-level legislation and government decrees. The Hungarian government extended the state emergency since 2020 continuously, which causes unpredictable regulatory environment and the extensive and prolonged use of the Government's emergency powers.

Significant developments related to appointment and selection of judges, prosecutors and court presidents

The 14th Amendment to the Constitution raised the minimum age for appointment as a judge from 30 to 35 and empowers the National Assembly to choose the Prosecutor General not only from among the prosecutors (which has been the practice until now).

Significant developments related to irremovability of judges

The above-mentioned 14th Amendment to the Constitution introduces a new rule, upper age limit of judges could be 70 in certain cases (concerning the general rule which is 65 years now).

Significant developments if any, related to promotion of judges and prosecutors

As we mentioned last year, the internal evaluation work of judges and prosecutors is not public, we have no concrete information about it.

Significant developments related to allocation of cases in courts

As of 1 January 2024, a new case allocation system has entered into force at Kúria, which was one of the recommended issues of the requested justice reform.

However, this new system has significantly changed the composition of the electoral councils as well, in contrast to the international recommendation to avoid changes to the electoral procedure in the year before elections. Several questions remain to be clarified regarding this councils.

Significant developments related to independence and powers of the body tasked with safeguarding the independence of the judiciary

As result of recommendation of 2023 Report, the role of the National Judicial Council (OBT), was strengthened last year, the same time the powers of control of the judiciary over the President of the Kúria was strengthened.

The new members of the National Judicial Council were elected on 30 January 2024.

At the end of November with a short deadline the OBT received a highly controversial proposal by the Ministry of Justice that would provide more than 130 billion forints for a pay rise for judges and judicial staff, provided that judicial leaders agree to certain organisational changes in return. Such changes would include allowing judges to remain in their posts until the age of 70 while raising the minimum age for appointing judges to 35. According to the government's plans, it would be easier for outsiders to apply for judgeships because experience in other areas of law would be taken into account more emphatically in appointments. They could also be seconded to another court under certain conditions.

The agreement was concluded between the Ministry of Justice, and the three actors of the judicial system, the National Office for the Judiciary (OBH), the Kúria and the National Judicial Council (OBT).

The Hungarian Association of Judges (Mabie), an NGO representing the interests of judges and judicial staff, sharply criticised the deal already on the day of its adoption, because they believe it threatens the independence of judges. On their website, they published more than a hundred protest statements, in which judges, lawyers and court secretaries explained their opposition to the agreement, stating their names and titles as well. The protesting judges argue that a pay settlement to ensure the independence

of the judiciary is non-negotiable and cannot be made subject to any conditions, they assumed blackmail and political pressure. In response the OBT said, without agreement would have been no pay rise.[1]

As a result of the protest, five judges initiated the vote of confidence against their president, who finally resigned. After the election of the new president, the OBT cancelled the controversial agreement.

Significant developments related to accountability of judges and prosecutors

We do not see major problems in this regard.

Significant developments related to remuneration for judges and prosecutors

As regards the pay rise of judges, the necessary legislative steps were taken to fulfil the above-mentioned recommendation. However, the increase of the remuneration of judges has been completed, but not equally, tension is caused by different levels of pay rises. The judges at the Kúria have received much higher pay rises, at the same time the judicial staff have not even received any, which is leading to further serious wage tension and job displacement.

Specific examples in relation to the cooperation between your Bar and the executive branch or supervisory authorities

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

In December 2023, the Hungarian Parliament adopted the Act on the Protection of National Sovereignty. The Act consists of two main pillars: establishing a new Sovereignty Protection Office to carry out investigations and amending the Criminal Code to sanction electoral candidates and representatives of nominating organisations using prohibited foreign funds for campaigning purposes with up to three years of imprisonment.

The Office for Sovereignty Protection can produce reports but lacks the authority to investigate or penalise individuals directly. The importance of its role is underlined by the fact that the office has the power of access to the data of the entities under investigation. Critics, including independent press and government-targeted NGOs, warned about the law's potential to silence dissenting voices and infringe on civil liberties. The new law also amended the political party and campaign finance rules without public consultation.

[1] https://telex.hu/english/2024/12/04/the-president-of-the-national-judicial-council-resigns-after-a-deal-with-the-government

In June 2024, the new office launched investigations into the activities and funding of Transparency International Hungary and investigative journalism nonprofit Átlátszó.[2]
The European Commission launched infringement proceedings against Hungary in February over the Sovereignty Protection Act, which the Commission says violates several provisions of primary and secondary EU law.

In April 2024, the President of the Office for the Protection of Sovereignty wrote a letter to the President of the Hungarian Bar Association with a view to concluding an agreement between the Office and the Hungarian Bar Association for the provision of information necessary for the performance of the Office's tasks.

In his letter, the President of the Office specified the expected forms of cooperation. He referred to the fact that the legal profession must represent its clients, first and foremost, in compliance with the Constitution and the legislation deriving from it, and in defence of the institutions enshrined therein.

Based on the letter, the President of the Hungarian Bar Association stated that the provisions and forms of cooperation outlined therein are incompatible with the provisions of the Law on the Activities of Lawyers, in particular the provision that only the Law on the Activities of Lawyers may exempt certain provisions of the Law on the Activities of Lawyers. The President of the Hungarian Bar Association thus refused to cooperate with the Office.

Significant developments related to accessibility of courts

Legal aid fees mentioned in the Report

According to the report in Hungary, concerns remain as regards the effectiveness of the legal aid scheme in both civil and criminal cases. The eligibility threshold for legal aid in civil procedure is high leading, in general, to concerns as regards the inclusiveness of the legal aid scheme. Fees for defence lawyers under the legal aid scheme are regarded as critically low, impacting access to justice and the right to a fair trial. Also, as reported last year, access to justice could be improved through specific arrangements for persons at risk of discrimination, for elderly persons and for women victims of violence.

We can share this concern, the fees under the legal aid system are extremely low in view of the inflation and depreciation in the value of wages, even if there was a minimal increase in 2024.
Legal aid fees – compromise

In early December a new proposal of the Justice Ministry was published, which was very criticised by the Hungarian Bar Association. According to the draft amendment, lawyers who do not accept the task of providing secondment will finance legal aid instead of the state. The proposed introduction of a mandatory secondment fee for those who do not wish to do so would be a taxable public liability. At present, lawyers are appointed on a voluntary basis.

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[2] https://telex.hu/english/2024/06/25/transparency-international-hungary-and-investigative-news-portal-atlatszo-become-first-targets-of-sovereignty-protection-office

It was the conviction of the Hungarian Bar Association, expressed in several forums and submitted in writing to the Ministry, that the new system to be introduced would create an obstacle to the requirement of legal certainty arising from the rule of law, the right of defence and the fundamental right to a fair trial.

Having heard the concerns of the legal profession, the Ministry, on the basis of the self-governance of the Bar Association, has put forward a compromise proposal to double the amount available in the current budget for the financing of the public task of secondment, to transfer the provision and financing of secondments to the Hungarian Bar Association under a public service contract and to confer on the Bar Association, by means of a statutory enabling provision, the power to make all the rules. The new system would enter into force in 2025, once the details have been worked out.

Thanks to the Hungarian Bar's lobby activities a realistic compromise has been reached between the Hungarian Bar Association and the Ministry of Justice on the rules guaranteeing the financial background for the activities of public defenders in the future.

Significant developments related to resources of the judiciary

Contrary to the judicial pay rise, the salaries of staff in courts are deteriorated, they have not even received a pay rise since years, leading to further serious wage tension and job displacement. In many courts, the day-to-day work is hampered by a shortage of court clerks, who leave for other jobs.

Significant developments related to training of justice professionals

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

Significant developments related to digitalisation

The digitalisation of the justice system in Hungary is overall high. During 2024 the Bar has prepared for the introduction of the new, electronic property register system (E-ING) and started training lawyers.
The provisions of the Act on E-ING entered into force on 15 January 2025, fully digitising traditional paper-based record-keeping. The aim is to speed up and make more transparent the property registration process, where ownership is registered, modified and deleted electronically.
In the E-ING system, all land registration matters are handled electronically, including the submission of applications and decision-making. The system requires exclusive legal representation, which can only be provided by qualified lawyers, notaries and legal advisers.

To use the E-ING system, it is recommended a lawyer specialised in real estate law who is authorised to use the new system and has completed the mandatory training.

The practical application of the IT system is being introduced gradually and is not yet operational.

Other issues and significant developments impacting access to justice

Hungarian Digital Citizenship - DÁP – Citizens are encouraged to use the new system.

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

IRELAND

Measures taken to follow-up on the recommendations of the European Commission received in the 2024 Report

The Council of The Bar of Ireland ("the Council") and the Law Society of Ireland welcome the recent publication of the European Commission's 2024 Annual report on the Rule of Law in Summer 2024. The published report provides the opportunity to identify necessary reforms of the justice system, ultimately safeguarding and promoting an equal right of access to justice for all Irish citizens. The Council makes the following observations on the report's recommendations:

Digitalisation: Whilst the Government have continuously invested in the further digitalisation of the Courts Services across the last annual budgets, there are still significant disparities around the country; whilst some are video-equipped and allow for greater digitalisation of court cases, others still do not have sufficient technological equipment. Further, the administrative system of the courts is not yet digitised which should be urgently addressed. Especially a case management system urgently needs to be introduced.

Excessive Costs of Litigation: The Irish government has taken steps to address the excessive cost of litigation and is continuing to do so.

The Council welcomed the Commission's acknowledgement in its 2024 Country Chapter that there has been progress on the reduction litigation costs. It further appreciates the recognition that high levels of litigation costs can be explained by the unique aspects of Ireland as a common law jurisdiction, which provides additional context and consideration.

In 2022, The Bar of Ireland in conjunction with the Law Society made a detailed submission in response to a number of bodies ascertaining that legal costs in Ireland are high. Our submission undertook a detailed analysis of the various reports published over the past 20 years and demonstrated that the evidential basis for claims that Ireland is a high legal cost jurisdiction is very limited and that there are considerable questions to be raised on the assertion that Ireland is a high legal cost jurisdiction.

The Bar of Ireland and the Law Society also commissioned an independent report to conduct an economic evaluation of options to control litigation costs and this report was also submitted to Indecon and the Department of Justice. This report provided further in-depth analysis of legal costs in Ireland.

On 7 February 2024, the Department of Justice published a report titled the Multi-Criteria Impact Evaluation of Options for the Control of Litigation Costs. The report, prepared by Indecon, represents an independent examination of possible models to control litigation costs in Ireland. Specifically, it recognises that the majority of the Review Group were in favour of creating non-binding guidelines in relation to cost levels to assist parties and their representatives. The report includes a proposed requirement for all clients to be informed in advance of guideline costs and of any factors that could lead to a divergence. It is noted that the draft Programme for Government published on 15 January 2025 states that the new Government will '*continue work to develop new guidelines to set clear rates and scales of fees for all forms of civil litigation, promoting transparency, competitiveness and fairness in legal costs*'.

To reiterate the view of The Bar of Ireland, the most optimal manner to positively impact on legal costs is through a combination of four measures:

-Increased investment in the justice system, in particular the number of judges and support staff, better case management and adoption of technology.
-Investment in effective civil legal aid to ensure access to justice for all regardless of means.
-The introduction of non-binding guidelines in respect of legal costs.
-A reduction in state-imposed revenue on a Bill of Costs.

Reform of the Defamation Act: Whilst there has been legislative development with the drafting of the 2024 Defamation Amendment Bill, there has been little impactful development. In addition, whilst the Bill addresses some of the concerns aired by the Commission, it is insufficient to appropriately address the rising issue of SLAPPs in Ireland and does not holistically address all potential risks of defamation, especially in an online setting. As the Law Society have argued in a 2023 submission to the Council of Europe, the definition of SLAPPs in the Bill, confined to 'issues of concern' is not broad enough and will therefore not effectively protect potential victims of SLAPPs. In 2024, none of the recommendations regarding the reform of the Defamation Act have been implemented. In light of the incoming new Government, this is unlikely to be remedied in 2025.

The Bar Council's key concern with the Bill surrounds the role of juries in defamation actions, and the primary argument for their removal, relates to their role in assessing damages. Historically, there have been instances where jury-awarded damages were more modest than what might have been awarded by a judge and it is now possible to guide juries with bands indicating appropriate damages in defamation cases. The Council emphasises the crucial role that juries play in society, providing a necessary balance to the judicial arm of the State. The provisions in the Bill as drafted, contradicts long-established jurisprudence that underscores the importance of public involvement in determining matters related to damage to reputation and free speech. While the bill completed First Stage in the Dáil in August 2024 and the legislation has since lapsed upon the dissolution of the 33rd Dáil, the draft Programme for Government states the intention of the new Government to '*restore the Defamation Bill to the order paper and make passing the legislation a priority*'. The Council will continue to engage with Government on the Bill.

Implementation of the Electoral Reform Act 2022: The Law Society strongly supports the Electoral Act and acknowledges the positive impact the new Electoral Commission has had on the evaluation of recent elections. Whilst we support the ambitions of the Electoral Act, specifically in regards to the monitoring of online election interference, we note that the implementation of the Act's election reporting mechanisms and online monitoring tools has been too slow with the Local and European Elections in June and the General Election in November of 2024 both not falling under the mechanisms. At the same time, increased instances of the spreading of mis-and disinformation have been recorded across both elections. It is crucial that the Electoral Act gets implemented in its entirety as soon as possible.

Significant developments related to appointment and selection of judges, prosecutors and court presidents

On 1 January 2025, the Judicial Appointments Commission was established. This marks the most substantial reform in the judicial appointment process in almost thirty years in Ireland. The Council has emphasised in previous reports to the EU Commission its concerns with the structure of the commission and maintains the Act goes against European standards in that it does not include a requirement for a judicial majority to sit on the commission. A number of reforms to the appointments process for judges, including the elevation of serving judges, was addressed with the passage of the Judicial Appointments Commission Act 2023. These provisions include the requirement for all serving judges to participate in the same selection process for elevation to a higher court as other candidates. This ensures that all candidates are assessed based on merit and suitability for the role.

Significant developments if any, related to promotion of judges and prosecutors

As mentioned in the answer to question two above, the statutory basis for the Judicial Appointments Commission has now commenced, and the Commission is now operational since 1st January 2025; representing a new basis on the appointment and advancement of the judiciary - https://www.gov.ie/en/press-release/790fa-minister-mcentee-announces-establishment-of-the-judicial-appointments-commission/

Significant developments related to allocation of cases in courts

There have not been significant changes to the allocation of cases in the courts in 2024. Whilst the significant case backlog could slightly be reduced through the employment of additional judges, a significant delay in most civil and criminal law cases remains. In addition, the absence of a case management system significantly influences the case processing times. Accordingly, increased digitalisation could alleviate some of the heavy delays in Irish courts.

The Law Society of Ireland and The Bar of Ireland have submitted their concerns regarding the case allocation resulting from the implementation of the 2024 Family Courts Act which will see the reallocation of divorce and judicial separation cases from the Circuit Courts to the lower District Courts, allocating less time to complicated cases with often belligerent parties. In addition, this will add a case load of thousands of cases to the already over-burdened District Courts without providing funding for adequate staffing and courts infrastructure. The implementation of the Act simultaneously will provide for a more child-focussed approach to family law cases but will need to be monitored.

Significant developments related to independence of the prosecution service

In February 2024, the Government approved the publication of the final report by the High-Level Review Group on the role of An Garda Síochána in public prosecutions. The report recommended that An Garda Síochána continue to prosecute low-level but high-volume offences, with enhanced quality assurance and monitoring by the Office of the Director of Public Prosecutions (ODPP). The new Garda Operating Model aims to bring greater internal oversight and consistency in prosecution practices. This includes enhanced monitoring and training from the ODPP to ensure the quality and consistency of prosecution. You can see the full report here https://www.gov.ie/pdf/?file=https://assets.gov.ie/283202/7944926b-4ca0-4523-b0d1-55767574c7c4.pdf#page=null

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

From the perspective of the Law Society of Ireland, there has been an increase in threats against solicitors. A stark example of that is the threat against one immigration lawyer in Ireland this summer. Mr Khurshid, a partner at Dublin firm Daly Khurshid Solicitors LLP, told The Irish Times that he had seen social media posts calling for his office to be “burned down” and for him to be “burnt out and chased out of Ireland”. The Law Society of Ireland firmly stood behind this solicitor and the IILA, the Irish International Lawyers Association, which had similarly been threatened on anti-immigration platforms. The Law Society have raised concerns about these emerging threats with the Garda Commissioner, in charge of the Police Forces in Ireland, in order to encourage additional protection of solicitors.

The Law Society of Ireland have lodged an online log for solicitors to register any threats and attacks against their person in order to gain a better understanding of the development of threats, whilst supporting them in their safety and mental health.

Specific legal provisions and policies in your country which could influence the independence of the Bar and lawyers

From the view of The Bar of Ireland, the recent introduction of Legal Partnerships introduced by the LSRA in late 2024 could lead to conflicts of interest for practitioners who decide to practice under this new structure. Independent referral barristers traditionally operate independently, providing unbiased legal opinions and advocacy. Barristers who choose to practice under a Legal Partnership structure risk this independence, because of influences that may arise from the interests of the partnership. The independence of barristers is a cornerstone of the legal system in Ireland, ensuring that barristers can act without external pressures. It is noted that to date, there has only been one Legal Partnership registered with the LSRA.

Problems and difficulties implementing the case law of national, European, and international courts

A recent concern that has captured the attention of both The Law Society of Ireland and The Bar of Ireland is potential negative implications regarding the EU's Pact on Asylum and Migration (the “Pact”). The law was adopted at EU level in May 2024. The Pact is required to be implemented by the Member States in early 2026. On 27 June 2024, Ireland notified the Commission of its wish to be bound by seven legal acts including the Asylum Procedures Regulation (EU). The Government has decided to repeal the International Protection Act and enact new legislation presumably in early-mid 2025 to give effect to the various legal measures in the Pact.

Under the supervision of the European Commission, the Member States must publish their plans for the implementation of the New Pact by 12 December 2024 (the “Implementation Plan”). The issue raised by the Council relates to the possibility of the Government proposing legislation to establish a cohort of “legal counsellors” who will be entitled to provide legal advice to international protection applicants and who will not be practising barristers or solicitors within the meaning of the Legal Services Regulation Act, 2015. The origin of the concept of legal counselling contained in the Asylum Procedures Regulation is unclear and has caused concern to a number of European Bars.

It is not clear whether the Government intends to maintain the current approach of legal assistance before the International Protection Office that is provided by independent legal practitioners via the Civil Legal Aid Scheme when it implements the Pact. The new provisions which provide inter alia for legal counselling apply to first instance procedures and it appears that in some countries, NGOs or private organisations may be licenced to provide these services with no clear role for the relevant Bar.

If this concept is introduced in Ireland, it will not be possible for a "person entrusted with providing legal counselling" who is not a practising barrister or practising solicitors to be supervised in terms of ethics, knowledge and experience by the Bar of Ireland or by the Law Society. As matters stand at present such persons would not fall within the terms of the LSRA 2015 either.

The practical concern is that given the exponential increase in numbers of IP applicants (from circa 3,000 to 20,000+ per annum between 2019 to 2023) and the challenge this poses in terms of the relatively small number of immigration law practitioners in Ireland, the temptation will be for the State to establish a panel of persons other than practising barristers and practising solicitors to counsel IP applicants from 2026 onwards. Experience across Europe shows that advice provided by non-lawyers and decisions made on foot thereof at first instance is very difficult to overcome at appeal stage in the international protection process. The Bar of Ireland has sought to meet with the Department of Justice officials to discuss these concerns.

Significant developments related to accessibility of courts

From the perspective of The Bar of Ireland:
Access to justice and a sustainable criminal Bar remains a key concern for The Bar of Ireland. In November 2024, The Bar of Ireland published its Manifesto for Government in the lead up to the 2024 General Election. In the manifesto, The Council emphasises its priorities and concerns regarding access to courts, particularly focuses on legal fees and legal aid. You can read the manifesto in its entirety here: https://www.lawlibrary.ie/app/uploads/2024/11/GE-Manifesto-2024-FINAL-FBC.pdf

Civil Legal Aid & Criminal Legal Aid
There is significant need for a comprehensive review of the civil legal aid system. The Council continues to highlight concerns about the scope and adequacy of the current system, noting that it is under-resourced and unable to meet the growing demand. Regarding professional fees for barristers under the civil legal aid scheme, a thorough review and update of the outdated 2012 terms and conditions is required in addition to the removal of cuts to barristers' civil fees applied during the FEMPI era.

Criminal barristers, on the recommendation of Council of The Bar of Ireland, participated in a nationwide withdrawal of service in October 2023, and again in July 2024, with the aim of seeking an independent, meaningful, time-limited and binding mechanism to determine the fees paid to criminal barristers by the Director of Public Prosecutions and under the Criminal Justice (Legal Aid) Scheme. An 18% restoration of fees has now been implemented arising from Budget 2024 and Budget 2025 and is a welcome and necessary step. However, even after this 18% cut was restored, there are outstanding FEMPI-era cuts that continue to apply to the profession and barristers continue to endure cuts of 10.5% to their professional fees.

Now, more than ever, it is crucial that the Department of Justice and the Office of the Director of Public Prosecutions ensure appropriate fee payment structures, unravel the remaining cuts, and restore the link to public pay agreements in order to promote fairness in the Irish legal system and sustainable access to justice.

Contribution from The Law Society:
There have been little changes regarding legal aid provision in Ireland across 2024 despite active working groups on the reform of civil legal aid and an increase in rates for solicitors in criminal legal aid. Both measures do not fully restore legal aid payments to solicitors to levels before 2008. In addition, the real demand for legal aid is much higher than the one currently registered as income levels qualifying for legal aid have not been re-evaluated since 2006. Applicants must have an annual disposable income of less than €18,000 (less than 50% of the industrial wage). These outdated thresholds mean that legal advice is out of reach for even more people. This has the danger of reducing the access to justice for those who are financially capped out of legal aid. In addition, there is evidence that there are increasing numbers of

unrepresented litigants in the courts. This may be for a variety of reasons including cost and inability to access legal aid.

Increasingly more solicitors have had to stop offering their services for legal aid, not being able to sustainably provide the service anymore. The Legal Aid Board are struggling to recruit talented solicitors due to uncompetitive salaries. This means that some counties in Ireland have waiting times of up to seven months for people to access legal aid solicitors. Without much change, there are fears that a legal aid desert will develop.

The accessibility of courts will however be positively affected by the Technical Support Instrument (TSI) Project on People-Centred Access to Justice, organised by the European Commission and carried out by the OECD. Including an unmet legal needs survey, it will effectively outline how justiciable problems can be more effectively addressed. The Law Society of Ireland and The Bar of Ireland are actively engaging with this project.

Significant developments related to resources of the judiciary

The Bar of Ireland Manifesto for Justice addresses the need for better resourcing of the courts to reduce delays and improve access. Ireland has the lowest number of judges per capita amongst the Council of Europe member states, which contributes to long waiting times for cases to be heard.

The Bar of Ireland welcomed the publication of the Report of the Judicial Planning Working Group, together with OECD Research in February 2023. The report emphasised the need for a substantial increase in judicial numbers and recommended appointing 44 additional judges in two phases; with 24 judges appointed in the first phase completed in 2023 and 20 judges appointed in the second phase in October 2024. Unfortunately, to date, the second phase of judicial appointments has not yet been implemented. The draft Programme for Government (published on 15 January 2025) states that the new Government will 'appoint 20 additional judges within 12 months and plan for further increases to meet growing demands and timely access to justice'. This is a welcome commitment.

The report of the Judicial Planning Working Group also recommended that a review take place in 2025 to assess judicial needs up to 2028. This review should determine if further increases in judicial numbers are necessary.

There is much to commend in the Report in respect of judicial workforce planning, as well as advancing a number of Courts Service strategic supports. However, it is the Council's position that there remains a number of issues will need to be carefully considered in order to evaluate their impact on access to justice and how our system continues to have the trust of the public:

• Changes of Circuit or District Court Areas (specifically in the area of family and childcare) need to be viewed from a range of perspectives.
• The importance of publicly accessible, in-person judicial services should not be underestimated. While the focus on efficiencies is important to the administration of justice, they should not arise at the cost of access to a vital public service.
• Thirdly, the reforms underway through the implementation of the Kelly Report on the Review of the Administration of Civil Justice, Justice Plan 2022 as well as the important body of work in respect of a new Family Law System and the Review of the Civil Legal Aid System mean that dialogue between those groups, and practitioners operating at the coal face, is all the more important. It is noteworthy that the issue of legal aid, and the efficient operation the administration of justice is inextricably linked.

The proper resourcing of the Family Courts Act will dictate its success in the coming months and years. Although the increase in the number of judges is a positive development in resource expansion, the District Court is a Court of summary jurisdiction and is not set up to process complex cases such as financial relief applications in the context of judicial separation/divorce and cohabitation/civil partnership breakdown. The Council will be urging the next Government to delay the implementation of many aspects of the Act until a uniform and modern Courts infrastructure is established nationwide. This infrastructure should fully and properly meet the needs of litigants, their children, professional advisors, and the judiciary.

It is noted that the draft Programme for Government published on 15 January 2025 states that the new Government will 'publish an implementation plan for a new Family Court system within 12 months.

Significant developments related to training of justice professionals

The Legal Service Regulatory Authority (LSRA) published its implementation plan arising from the 'Breaking Down Barriers Reports' published in late 2024. The Report includes 32 recommendations to address economic and other barriers facing aspiring and early career legal professionals and to increase diversity in the legal professions. The Bar of Ireland and the Law Society of Ireland are engaging with the LSRA on the implementation plan.

The Law Society of Ireland have long established programmes that address many of the recommendations and continue to develop not only additional routes into the solicitors' profession but are increasing funding for small practices supporting a legal trainee and are constantly reforming their curriculum.

The draft Programme for Government published on 15 January 2025 states that the new Government will '*Introduce independent oversight of professional legal education, support the development of a national apprenticeship programme for solicitor training, and remove barriers to becoming a solicitor or barrister'*.

Separate from the recommendations of the LSRA, The Bar of Ireland continues to provide education and training opportunities for members under its Competency Framework for Continuing Professional Development (CPD) launched in October of 2021. The framework guides members in the identification and selection of CPD activities that are relevant to their professional learning needs.

The Judicial Studies Committee (https://judicialcouncil.ie/judicial-studies-committee/), established on 10 February 2020 pursuant to the Judicial Council Act 2019, continues to oversee a modernised programme of judicial training and education on topics such as Judicial Conduct and Ethics, Avoiding Re-traumatisation, Unconscious Bias and Vulnerable Witnesses, Induction, Mentoring, Assisted Decision-Making and Training of Judicial Trainers. The Committee is committed to maintaining public trust in the judiciary and the administration of justice by delivering appropriate, effective, and timely training. The training is based on the core values and principles set out in the Guidelines for the Judiciary on Conduct and Ethics, including independence, impartiality, integrity, propriety, equality, competence, and diligence.

The draft Programme for Government notes that the new Government intends to *'establish a Judicial Training Institute under the Judicial Council to support ongoing training and continuous professional development for judges and prospective judges'*.

Significant developments related to digitalisation

The Courts Service has made progress in technology and digitalisation as part of its Modernisation Programme which aims to create a court system that is efficient, user-friendly, and fit for purpose. The development of the Unified Case Management System (UCMS) is a significant milestone. This system replaces outdated systems with a unified platform, allowing for better case tracking and court documentation management. All Courts Service staff and members of the judiciary have now been moved to a modern and reliable technology platform.

Whilst the government are committing to a further digitalisation of the court system, many courts are still inadequately equipped to deal with digital hearings in court. Further, despite legislating for a change, legal aid payments are still not administered digitally. Whilst the Courts Services have increasingly provided their data online and have digitalised some of their tools to increase transparency, these are only available up to 2022.

In short, despite significant investment into the digitalisation of the justice system, we are far from seeing the effects of the investments.

As of 2024, the number of courtrooms equipped with video technology increased significantly. There are now 136 video-enabled courtrooms across the country. The Courts Service has reported a substantial increase in the use of video technology for courtroom appearances. In 2024, there were over 50,000 remote appearances, including litigants, legal professionals, expert witnesses, and prisoners.

Significant developments related to use of assessment tools and standards

As mentioned above, the Courts Service details that the legacy case management systems are in the process of being replaced through virtual software (Microsoft Power Platform) with a single modern platform capable of offering online services. The Courts Service received the Civil Service Excellence Award for their new family law information initiative on November 26, 2024. This award recognizes their innovative approach to designing and piloting family law information to the case management system with input from users, staff, and members of the judiciary.

Significant developments related to geographical distribution and number of courts/jurisdictions

The planned Family Courts Building in Dublin Hammond Lane has been further delayed in 2024. The physical conditions of courts, particularly in family cases, have been identified as an area with room for improvement, with facilities that could better accommodate privacy and create environments more suitable for children, especially in regions outside Dublin. These challenges are now prolonged. As was recently noted in a report of the Child Law Project, entitled 'Falling Through the Cracks', childcare cases outside of the cities are often "squeezed into overloaded case lists and heard alongside family, licensing and criminal matters, despite a legal requirement that they be heard separately". This is an unacceptable situation where location in the country affects the quality of justice experienced by vulnerable children.

On 11 December 2023, a new division of the High Court dedicated to Planning and Environment cases was formally established under the Planning and Development Act. The new division of the High Court aims to improve the delivery of housing by reducing planning delays and will allow for greater efficiency and

specialism in the handling of litigation relating to planning and environmental matters, particularly judicial reviews. The Planning and Development Act 2024 was signed into law in October 2024.

The Act's comprehensive planning framework is expected to increase the complexity and volume of planning-related cases, necessitating legal professionals to familiarize themselves with the new provisions and prepare for more intricate litigation. In terms of geographical distribution and the number of courts, the Act includes provisions for regional spatial and economic strategies, which may result in the establishment of specialized planning courts or tribunals in different regions to handle disputes more efficiently. There may also be a need for creating specialized courts or divisions within existing courts to manage the increased volume and complexity of planning and development cases. Council has encouraged members of The Bar who practice in the area in conjunction with the Council and Specialist Bar Association to monitor developments in the months ahead.

The draft Programme for Government published on 15 January 2025 provides for *'a dedicated division of the High Court to handle all immigration cases'* and will also *'consider the establishment of a dedicated medical negligence court'.*

Significant developments related to efficiency of justice system

Inefficiencies in the court process, such as frequent case listings and insufficient focus on early resolution continue to be frequent in Ireland. Despite initiatives aiming to tackle these problems, including the Department of Justice Statement of Strategy (2024 – 2026), the Family Justice Strategy (2022 – 2025), the Courts Service Modernisation Programme (2019 – 2030), and the forthcoming Civil Legal Aid Review, delays remain frequent with anecdotal evidence reporting family court cases taking up to three years.

The length of proceedings is currently not sufficiently reported upon as it is not recorded in first- and second instance courts. The 2023 court services report supplies some of the duration of proceedings data, but importantly does not collect or provide data about the length of proceedings in first- or second-instance civil law courts. That means that not only an international comparison is impossible, but it is also difficult to evaluate the workload and number of cases that judges, solicitors, barristers, and other legal workers are faced with on a daily basis. Without a case management system, it is impossible for those involved in cases to know how long they will have to stay involved with the courts system. The data that is supplied shows that any case averages at over a year and a half being treated in any one court, showing that case clearance rates alone give an inaccurate evaluation of the efficiency of the justice system.

The average length of proceedings across various courts using data from 2023 provided by the Court Service Annual Report 2024 are set out below:

- District Court: Criminal proceedings, from issue to disposal, averaged 350 days, a slight improvement from 369 days in 2023.
- Circuit Court: Criminal proceedings averaged 540 days, down from 569 days in 2023. The average length of civil proceedings is still not reported.
- High Court: The average length of civil proceedings, from issue to disposal, decreased to 820 days, compared to 871 days in 2023. Personal injury cases remain the lengthiest, averaging 1,280 days.
- Central Criminal Court: The average length of proceedings, from receipt of return for trial to final order, was 710 days, down from 738 days in 2023. From receipt of charge sheet to final order, the average was 450 days, a slight improvement from 464 days in 2023.
- Court of Appeal: Civil proceedings averaged 510 days, from issue to disposal, a reduction from 527 days in 2023. Criminal proceedings averaged 450 days, down from 461 days in 2023.

- Supreme Court: The average length of time for an Application for Leave Determined (issue to determination date) was 17 days in 2024, down from 18 days in 2023. The average time for an Application for Leave Determined (from papers being ready to determination) remained at 5 days. The average length of appeals was 60 days, a slight decrease from 63 days in 2023.

ITALY

Measures taken to follow-up on the recommendations of the European Commission received in the 2024 Report

The Consiglio Nazionale Forense (CNF) considers that the recommendations of the European Commission for Italy in the Rule of Law Report have only been partially accomplished, also due to the delay in publication of that report (July 2024).

In particular on the subject of digital criminal proceedings (*Continue efforts to further improve the level of digitalisation in criminal courts and prosecutors' offices*), although Italian lawyers express general scepticism regarding the digitalisation of criminal proceedings, the CNF (National Bar Council) wishes to point out, without commentary, that some measures were adopted in Italy during 2024 concerning the telematic criminal procedure (PPT), aimed at improving the efficiency and digitalisation of the judicial system. For example: Ministerial Decree No. 206 of December 27, 2024, which introduces amendments that will come into force on 1 January 2025, making it mandatory to file acts, documents, requests, and memoranda electronically in various criminal judicial offices; on 7 August 2024, the Ministry of Justice published the "Technical Specifications" related to the maximum size of electronic filings and the number of accepted document formats, confirmed by the Ministry of Justice Circular dated 6 September 2024.

On other matters, the CNF does not comment, although according to the available information, Italy has made limited progress on the adoption of the legislative proposals on conflicts of interest and lobbying, donations through political foundations and associations, the legislative proposal on defamation and the protection of journalistic sources.
The CNF also supports the establishment of a national human rights body in accordance with the UN Paris Principles, which has not yet been fully realised.

Significant developments related to appointment and selection of judges, prosecutors and court presidents

On 13 June 2024, government bill C. 1917 was presented. This Bill provides the amendment of Article 87 and Title IV of Part II of the Constitution on the separation of the judiciary's judicial and prosecutorial careers and the establishment of the Disciplinary Court.

1) Although previous proposals provided for appointments and selection of judges and prosecutors through separate competitions, the government bill maintains the current modality of access through a single competition (see Article 106, paragraph 1 of the Constitution, which in the government bill remains identical in wording to that in force today).

The CNF believes that a mere post-court separation is not sufficient to achieve this goal. It is necessary to consider having two separate competitions for the prosecutor's office and the judiciary. This is a salient point to truly realise two distinct careers, guaranteeing a fair trial with three parties who are truly unrelated: the judge, the prosecutor and the lawyer.

2) Like the other bills already commented in the past, the 2024 Bill provides for two separate self-governing bodies: the Superior Council of the Judiciary (Consiglio Superiore della Magistratura) and the Superior Council of the Judicial Magistracy (Consiglio Superiore della Magistratura requirente). It being

understood that the presidency of both organs is attributed to the President of the Republic, while the ex officio members of the High Council of the Judiciary and of the High Council of the Judiciary are, respectively, the First President of the Court of Cassation and the Prosecutor General of the Court of Cassation, the other members of each of the High Councils are drawn by lot, for one third from a list of professors and lawyers compiled by the Parliament in common session and, for the remaining two thirds, respectively from among the judges and the judges in charge. It is further provided that the vice-presidents of each of the bodies shall be elected from among the members drawn by lot from the list compiled by Parliament. No comment from the CNF.

3) Concerning the establishment of the High Disciplinary Court, of course this is a novelty on appointment of judges, no Comments by the CNF.

Significant developments related to irremovability of judges

On 13 June 2024, government bill C. 1917 was presented. This Bill provides the amendment of Article 87 and Title IV of Part II of the Constitution on the separation of the judiciary's judicial and prosecutorial careers and the establishment of the Disciplinary Court. The Bill, in the part that provides for the separation of careers, entails a change in the mobility of judges, making the transition from prosecutor to judge and vice versa more complex. The CNF considers this aspect functional to the reform.

Significant developments if any, related to promotion of judges and prosecutors

On 13 June 2024, government bill C. 1917 was presented. This Bill provides the amendment of Article 87 and Title IV of Part II of the Constitution on the separation of the judiciary's judicial and prosecutorial careers and the establishment of the Disciplinary Court. The Bill, in the part that provides for the separation of careers, entails a change on progression in the new separate careers, without significant changes. The CNF considers this aspect functional to the reform.

Significant developments related to independence and powers of the body tasked with safeguarding the independence of the judiciary

1) Some comments have been provided regarding the potential impact on the independence of the Judiciary of the cited **government bill C. 1917 of 13 June 2024** in the part that provides for the separation of careers.
The CNF considers this aspect an improvement for the independence of the Judiciary. A status of the public prosecutor separate from that of the court, in addition to rendering concrete the constitutional value of the equality of arms between the prosecution and defence, can also contribute to enhancing the judge's impartiality, placing the prosecution and defence in a position that is now clearly distant from the judge, thus triggering a virtuous circle. A necessary precondition is the judge's independence of judgment, guaranteed by constitutional, judicial and procedural rules. The issue of the separation of careers calls for reflection so that the judge is not only not assimilated to the public prosecutor in the trial (separation of prosecution and decision-making functions), but also in the judicial system (separation of the respective organisations). The uniqueness of organisation in the judicial system is in fact inspired by an authoritarian conception of criminal justice, because it considers the magistrate to be identical, whether assigned to prosecution or decision-making functions, thereby compromising the function of the judge as configured by a dialectical trial structure. The autonomy and independence of the judiciary, in all its functions, must be maintained and according the CNF the separation of careers certainly cannot invalidate these

principles, but a model criminal trial requires a strong prosecutor, a strong lawyer, and an equally strong third judge. The idea of a ‘culture of jurisdiction’, which must inform the decision-making function, is often invoked in support of the unity of the organisation of magistrates and the interchangeability of functions; however, this is an authoritarian conception of the administration of justice. The basis common to all parties to the trial - not restricted to the public, judge and public prosecutor - and therefore also to the defendant is the ‘culture of legality’.

2) When the government presented the **draft DDL on artificial intelligence (DDL IA No. 1146 OF 2024)**, one of the CNF's major concerns was to ensure the independence of the judge in judicial decisions in the use of AI systems, in line with the principles of, for example, the CEPEJ and the EU AI Act. In this sense, the CNF expresses cautious satisfaction that these concerns have been taken on board.
In fact, the CNF had proposed the following alternative version of the text of Article 15 (now Article 14) of the DDK IA No 1146: (informal translation) *‘l. Artificial intelligence systems may be used exclusively for the organisation and simplification of judicial work, for jurisprudential and doctrinal research also aimed at identifying interpretative guidelines. Under penalty of nullity, the magistrate shall indicate in the judicial order the specific activities referred to in paragraph 1 in which artificial intelligence systems provided for in paragraph 4 have been used. In this case, the parties' defence counsel must be granted access to those systems. 3. The use by the magistrate of artificial intelligence systems for the adoption and motivation of orders with reference to the interpretation of the law, the reconstruction of facts, the assessment of admissibility, relevance and evaluation of evidence is not allowed. 4. The artificial intelligence systems that may be used pursuant to paragraph 1 shall be exclusively those made available to judicial offices by the Ministry of Justice following the validation and certification of the data and their processing by authorities set up for this purpose in agreement with the Superior Council of the Judiciary and the National Bar Council. 5. The Ministry of Justice guarantees access to the artificial intelligence systems referred to in paragraph 4 on equal terms to lawyers and magistrates’.”*

In this context, the DDL IA approved by the government also incorporated some remarks made by the CNF by providing for a limited use of artificial intelligence in judicial activity. Article 14 of the DDL as approved, provides now: ‘*Use of artificial intelligence in judicial activity": ’1. Artificial intelligence systems are used exclusively for the organisation and simplification of judicial work, as well as for jurisprudential and doctrinal research. The Ministry of Justice regulates the use of artificial intelligence systems by ordinary judicial offices. For other courts, the use is regulated in accordance with their respective regulations. The decision on the interpretation of the law, the assessment of facts and evidence and the adoption of any measure shall always be reserved to the magistrate*'.

Significant developments related to accountability of judges and prosecutors

One of the major novelties of the **government bill C. 1917 of 13 June 2024** is the establishment of the High Disciplinary Court. The High Court is vested with disciplinary jurisdiction over ordinary magistrates, both judges and prosecutors.
This body is composed of fifteen judges selected as follows:
- 3 members appointed by the President of the Republic;
- 3 members drawn by lot from a list drawn up by the Parliament in common session;
- 6 members drawn by lot from among the judicial magistrates who possess specific requirements;
- 3 members drawn by lot from among the prosecuting magistrates with specific requirements. It is provided that the president of the High Court must be chosen from among the members appointed by the President of the Republic and those drawn by lot from the list compiled by Parliament.
The draft law provides, therefore, for the possibility of appealing against High Court rulings before the High Court itself, which judges in a different composition than the court of first instance.

<u>The CNF does not comment on this part of the reform.</u>

Significant developments related to independence of the prosecution service

As already pointed out, the major development of the government **bill No C1917 of 13 June 2024, is the separation of the career of judiciaries and prosecutors magistrates**. This Bill provides the amendment of Article 87 and Title IV of Part II of the Constitution.

The Consiglio Nazionale Forense (CNF) has been expressed several times its support to this reform, also in the past (for instance, in the occasion of the hearings on 10 April 2019, bill A.C. 14 of the XVIII Legislature; on 29 March 2023, bills C. 23 const. Enrico Costa, C. 434 const. Giachetti, C. 806 const. Calderone and C. 824 const. Morrone). In summary, according to the CNF, the issue of career separation has often been instrumentalised for general political purposes and has often not been tackled with reference to the technical point of view, i.e. the concrete problems of the judicial system underlying it. On the contrary, from the point of view of the lawyers, this issue is primarily posed from a legal point of view, without ideological reflections.

The ‘problem’ for lawyers is the full and concrete implementation of Article 111 of the Constitution, which lays down the principle of parity between the prosecution and defence in the trial context. The logical-legal derivative of this principle of equidistance of the judge from the parties is represented by a conformity also from the point of view of the organisation of the justice personnel.

It must, in essence, be ensured that - in the context of judging functions - the magistrate-person is also independent of the parties, not just the ‘mask’ he assumes in court. It is quite understandable that the magistrate may find himself, even unconsciously, in difficulty when faced with a possible conflict with his colleague in charge of the public prosecution, if it is a person who has travelled the same career steps, whom he meets every day in an adjoining office, who tomorrow may perform the same functions as him or have performed them in the past.

For this reason, the Bar as a whole has long supported the call for rules separating careers by functions, because it has recognised that a solution of this sign is capable of guaranteeing Article 111 of the Constitution an effective implementation, a ‘cooling’ of relations between the parties, who derive a guarantee of regularity from the greater distance.

A status of the public prosecutor separate from that of the court, in addition to rendering concrete the constitutional value of the equality of arms between the prosecution and defence, can also contribute to enhancing the judge's impartiality, placing the prosecution and defence in a position that is now clearly distant from the judge, thus triggering a virtuous circle. It should be recalled that the rules underpinning the order of the judiciary aim at the realisation of a final value, the impartiality of the decision, understood as a decision taken in accordance with the facts ascertained in the trial and the rules, without bowing to demands and interests of the most varied nature. A necessary precondition is the judge's independence of judgement, guaranteed by constitutional, judicial and procedural rules. The issue of the separation of careers calls for reflection so that the judge is not only not assimilated to the public prosecutor in the trial (separation of prosecution and decision-making functions), but also in the judicial system (separation of the respective organisations). The uniqueness of organisation in the judicial system is in fact inspired by an authoritarian conception of criminal justice, because it considers the magistrate to be identical, whether assigned to prosecution or decision-making functions, thereby compromising the function of the judge as configured by a dialectical trial structure.

The autonomy and independence of the judiciary, in all its functions, must be maintained.
The separation of careers certainly cannot invalidate these principles, but a model criminal trial requires a strong prosecutor, a strong lawyer, and an equally strong third judge. The idea of a 'culture of jurisdiction', which must inform the decision-making function, is often invoked in support of the unity of the organisation of magistrates and the interchangeability of functions; however, this is an authoritarian conception of the administration of justice. The basis common to all parties to the trial - not restricted to the public, judge and public prosecutor - and therefore also to the defendant is the 'culture of legality'.

Specific legal provisions and policies in your country which could influence the independence of the Bar and lawyers

1) Draft legislative decree bearing 'Supplementary and corrective provisions to the Public Contracts Code referred to in **Legislative Decree No. 36 of 31 March 2023' (so-called 'Correttivo del Codice Appalti' or 'Correttivo') - Government Act No. 226 of 2024 submitted for parliamentary opinion. - Legislative Decree No. 209 of 2024.**

The Consiglio Nazionale Forense (CNF) has expressed criticisms regarding the applicability of the Public Contracts Code to professional orders. On 13 December 2024, the CNF brought to the attention of the competent parliamentary committees the critical issues related to the current uncertainty as to whether or not the Professional Associations/Orders are subject to the regime of public contracts, with the consequent appropriateness of a clarifying regulatory intervention, possibly to be proposed in the text of the legislative decree outline containing supplementary and corrective provisions to the Public Contracts Code referred to in Legislative Decree no. 36 of 31 March 2023, which would definitively clarify that the professional associations are not subject to the regime of public contracts. As a preliminary remark, the CNF recalled that the provision of the current Public Contracts Code (Legislative Decree No. 36 of 31 March 2023) that is the subject of the observations provides, in Annex I.1 (Definitions of Subjects, Contracts, Procedures and Instruments) the following notion of contracting authorities (Article 1.1(q)): 'the administrations of the State; territorial public bodies; other non-economic public bodies; bodies governed by public law; associations, unions, consortia, however named, established by the aforementioned subjects'.

In this context, the CNF received several reports in which the local Bars pointed out the highly critical nature of the possible application to them of the public contracts code. In particular, in a note received on 27 February 2024, the Regional Union of the Councils of the Bars and Law Societies of Emilia Romagna (URCOFER) pointed out that, should the public procurement code be deemed applicable, the obligations for the Bars and Law Societies would be unsustainable: in fact, they are entities with very little staff (generally 'a couple', see the attached URCOFER note), and few economic resources, which derive from the fees paid by the members and do not burden the State accounts. It would be particularly burdensome to adopt and subscribe to the 'certified digital procurement platforms' which, according to ANAC Resolution No. 261 of 20 June 2023, must be used to send the mandatory information to the National Database of Public Contracts (BDNCP).

On this point, the answer to the question of whether or not professional orders are subject to the code must be sought on the basis of the various references of relevant positive law, as well as on the basis of general principles, within the framework of a constitutionally oriented and Euro-unifying reading of the conferring norms, both of domestic law and of European law. The Italian legislation on public contracts is in fact borrowed from a number of European directives, of which it constitutes an act of transposition.

The sectoral authority (ANAC) considers that the procurement code is applicable to professional orders. Already in Resolution No. 687 approved by the ANAC Council in the Meeting of 28 June 2017, the ANAC considered professional orders to be subject to the Procurement Code (Legislative Decree No. 50 of 2016) essentially for two reasons:
(a) because the orders would fall within the notion of non-economic public bodies mentioned in Article 3 lett. a of the code itself and
(b) because the orders themselves would qualify as bodies governed by public law within the meaning of European law.

Both of these justifications do not seem supportable. In a nutshell, professional associations are not bodies governed by public law within the meaning of European law: they are not because, in order for a body to qualify as such, it would be necessary - alternatively - for it to be financed 'for the most part by the State, regional or local authorities or other bodies governed by public law'; for its management to be 'placed under the supervision of those authorities or bodies'; for its administrative, management or supervisory body to be 'made up of members more than half of whom are appointed by the State, regional or local authorities or other bodies governed by public law' (so Art. 2(4) of Directive 2014/24/EU as well as Art. 3, c.1, (d) of the Public Contracts Code). None of these three elements recur in the legal conformation of a professional order; in fact, it is no coincidence that the Court of Justice expressly excluded that a German Medical Association could be qualified as a body governed by public law, in a celebrated precedent that consequently expressed itself for the non-subjection of the body to the procurement directives (Court of Justice, judgment of 12 September 2013, C-526/11).

Nor can the reference made by the procurement code to non-economic public bodies be understood as covering professional associations. In fact, when it refers, as contracting authorities, to 'non-economic public bodies', the Procurement Code must be interpreted to mean that it refers to non-economic public bodies which also have, at the same time, the substantive nature of 'bodies governed by public law', inasmuch as they are public bodies other than the central State and the regional and local government authorities, but nevertheless linked to them by a close relationship of dependence. Otherwise, there would be a direct infringement of the conferring European discipline, namely the European Public Procurement Directive 2014/24/EU of 26 February 2014, which 'establishes rules on procedures for contracts awarded by contracting authorities' (Art. 1. Par. 1), and defines ''contracting authorities': the State, regional and local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law' (Art. 2. Par. 1, no. 1).

If they do not constitute 'contracting authorities' within the meaning of Union law, neither can they be qualified as 'contracting authorities' within the meaning of national law.

The first legislative delegation for the implementation of the European directives on public procurement was in fact conferred by the Parliament with Law no. 11 of 28 January 2016, whose art. 1, precisely authorising the government 'to adopt (...) a legislative decree for the implementation of Directives 2014/23/EU, 2014/24/EU and 2014/25/EU of the European Parliament and of the Council,' and laid down a specific and punctual directive criterion having as its object the 'prohibition of introducing or maintaining levels of regulation higher than the minimum levels required by the directives, as defined by Article 14, paragraphs 24-ter and 24-quater, of the Law of 28 November 2005, no. 246'(art.1, c.1, lett. a), l.11/2016).

A similar directive criterion was also provided for by Article 1, paragraph 2, letter a) of Law no. 78 of 21 June 2022, on the basis of which the current Public Contracts Code (Legislative Decree no. 36 of 31 March 2023) was adopted.

Well, if we look at the content of the regulation to which the directive criterion refers, we find that the prohibition of the introduction or even the mere maintenance of a level of regulation higher than the minimum level of the directive is specifically specified precisely with regard to the subjective scope of application.

In fact, the aforementioned Article 14, paragraph 24-ter of Law No. 246 of 2005 establishes that, among other parameters, 'the extension of the subjective or objective scope of application of the rules with respect to what is provided for by the directives, where it entails greater administrative burdens for the addressees' (letter b), constitutes levels of regulation higher than the minimum required by the Community directives.

This is therefore precisely the case of professional orders, to which, according to the case law of the Court of Justice, the procurement directives do not apply, and to which, consequently, under the express guiding principle of the delegation of powers, the application can neither be extended nor maintained when transposing the directives, such an extension would entail all the greater and indeed unsustainable administrative burdens associated with the application of a discipline designed essentially for public administrations, whose endowment of manpower and resources is not even remotely comparable with that available to ordinary organisations, which live exclusively on the contributions of their members and, for this reason, are positively recognised by the legislature as bodies 'not burdening public expenditure' (Art. 2, c. 2-bis, d. l. 31 August 2013, no. 101).

If, therefore, the non-economic public entities of Article 3 are also the professional orders, the Italian legislature has transposed the European sources by violating the so-called prohibition of gold plating, i.e. by violating the prohibition of not 'burdening' the discipline by extending its subjective scope of application. This violation can only be ruled out if, by way of interpretation, we consider the reference to non-economic public entities as a reference to those public entities that are also bodies governed by public law within the meaning of European law.

In this context, further uncertainty was generated by the ruling of the administrative judge, rendered following the appeal against the 2017 ANAC note mentioned above. Although the above-mentioned arguments, and indeed many others, were used extensively in the judgment to refute the thesis of the applicability of the procurement code to professional orders, the Lazio Regional Administrative Court, in its judgment no. 7455 of 16 April 2024, affirmed the subjection of professional orders to the procurement code because 'the overriding general interest of protecting the competition of operators in the sector, ensured by the more stringent rules of public evidence, prevails'.

Indeed, it appears to be hasty and incurs in more than one motivational flaw, especially where it misrepresents the prohibition of gold plating, holding that with it the European source constitutes 'only a mandatory minimum for the Member States, which retain a margin of appreciation with respect to the minimum principles, since they are permitted to adopt a discipline that provides for competition rules of broader application than that required by Community law'. The misrepresentation is blatant: the prohibition of gold plating means, on the contrary, that the Italian legislator may not introduce a discipline that is more burdensome than the European one, which therefore constitutes the maximum of public regulation that can be applied and certainly not a minimum.

The judgment concludes a case that began in 2017 and obviously refers to the former procurement code (legislative decree no. 50 of 2016). Pending the settlement of the case, the new Procurement Code (Legislative Decree no. 36 of 31 March 2023) has, as is well known, taken over, and yet the new rules do not appear to be innovative on the point of interest, i.e. the extension of its scope of application also to 'Non-Economic Public Entities'.

In light of the foregoing, the CNF has pointed out the urgent need for a regulatory intervention that clarifies that professional orders, inasmuch as they are entities that do not burden the public purse by express provision of law (Article 2, paragraph 2 bis, of Decree-Law No. 101 of 31 August 2013), are not subject to the public contracts code, without prejudice to the free faculty, in the specific case, to use public evidence procedures commensurate with the organisational and economic resources of such entities, when they must choose a contractor.

In the Official Gazette of 31 December 2024, Legislative Decree No. 209 of 2024 was published, containing the 'Supplementary and Corrective Provisions to the Public Contracts Code set forth in Legislative Decree No. 36 of 31 March 2023'. Despite the observations submitted by the CNF on the advisability of excluding the professions from the application of the Public Contracts Code, did not introduce any novelties on this point.

2) The Consiglio Nazionale Forense (CNF) wishes to point out some positive developments related to the assimilation of the Bars/Professional Orders to the Public Administration in some matters.
In particular the CNF presented some observations on the Amendments introduced by the **Conversion Law of the so-called "Decree PA 2" (Law No. 112 of 10 August 2023).**

a) During the conversion of the so-called "Decree PA 2", the Italian Parliament introduced a key provision that definitively prevents the improper assimilation of professional orders to state administrations. The amendment to Article 2, paragraph 2-bis, of Legislative Decree No. 101/2013 clarifies that the provisions aimed at public administrations (as defined by Article 1, paragraph 2 of Legislative Decree No. 165/2001) do not apply to professional orders, associations, or their national bodies, as long as they are financially self-sustaining and operate as associative entities, unless explicitly specified by law.

The amended text clarifies that these bodies must adapt to general principles of rationalisation and public spending containment, but they are exempt from most specific public administration regulations unless the law explicitly applies them. This reform addresses a long-standing interpretative issue and simplifies the compliance requirements for professional orders.

Historically, professional orders were considered public non-economic entities with associative nature, funded by members' contributions, and not dependent on public finances. However, they often faced obligations imposed by public administration regulations that were not suited to their specific nature. For instance, professional orders were mistakenly subjected to requirements designed for state bodies, such as audits and censuses of public holdings or personnel cost reporting, which are irrelevant given their limited staff and financial structures.

The new law resolves this problem by emphasising that professional orders are exempt from regulations intended for public bodies, unless explicitly stated. For example, requirements such as the periodic review of public holdings (Article 20 of Legislative Decree No. 175/2016) are not applicable to professional orders because the law refers to public administrations as defined by Article 1, paragraph 2 of Legislative Decree No. 165/2001.

b) Exceptions and the Personnel Cost Communication Requirement: An important exception to this rule is the requirement for professional orders to report personnel costs, as outlined in Article 60, paragraph 2, of Legislative Decree No. 165/2001. This provision mandates communication of personnel costs to the State General Accounting Department and the Court of Auditors. While this requirement was previously contested, particularly through legal challenges to a 2019 Ministry of Economy circular, the new amendment clarifies that this obligation applies to professional orders, overcoming the earlier court ruling that had excluded them from such obligations.

In conclusion, while most public administration regulations no longer apply to professional orders unless explicitly stated, the new law affirms the need for them to comply with personnel cost reporting, thus ensuring clarity and reducing potential litigation.

Specific examples in relation to the cooperation between your Bar and the executive branch or supervisory authorities

The Consiglio Nazionale Forense wishes to presents some cases published in the newspaper "Il Dubbio":
1) Francesco Perli, an administrative lawyer and former legal representative for Ilva, was implicated in the 'Ambiente Svenduto' trial concerning environmental damages in Taranto. In 2014, he was arrested and later sentenced to 5 years and 6 months for alleged involvement in a criminal association and extortion. The prosecution's case relied heavily on intercepted phone conversations between Perli and his clients. However, these transcripts contained significant errors; notably, the term "impugnato" (appealed) was misrepresented as "inquinato" (polluted), altering the context of the discussions. Despite presenting the original recordings in court to highlight these discrepancies, the prosecution maintained their stance, leading to Perli's conviction. This situation has raised concerns about the potential criminalisation of legal defence activities and the accuracy of evidence used in legal proceedings. https://www.ildubbio.news/giustizia/io-ex-legale-dellilva-spiato-al-telefono-con-i-miei-assisti-jda3oa6s;

2) Federica Tartara, a lawyer from Genoa who was eight months pregnant, requested a postponement of a hearing at the Venice Tribunal, invoking legitimate impediment under Article 420-ter, paragraph 5-bis, of the Italian Code of Criminal Procedure. This provision allows pregnant lawyers to request a postponement during the two months prior to and three months following childbirth. Despite providing a medical certificate confirming her pregnancy and due date, Judge Ilaria Sichirollo denied the request, arguing that there had already been too many delays in the case and that a lawyer aware of their inability to follow a case should not take it on. As a result, the hearing proceeded without Tartara, who had to delegate a colleague from the Padua Bar to represent her clients. The substitute lawyer had only 30 minutes to review the case file, leading to a conviction for Tartara's clients. In response, Tartara filed a complaint with the High Council of the Judiciary (CSM), claiming that the judge's decision violated the rights of female lawyers and maternity protections. However, the president of the Venice Tribunal, Salvatore Laganà, stated that the decision was consistent with case law from the Italian Court of Cassation, which holds that legitimate impediment does not apply if the impediment was known when the lawyer accepted the case. The case has sparked a broader debate about legal protections for professionals during pregnancy and the interpretation of legitimate impediment provisions. https://www.ildubbio.news/giustizia/incinta-a-tre-settimane-dal-parto-ma-il-giudice-nega-allavvocata-il-legittimo-impedimento-xw008ig8; https://www.ildubbio.news/interviste/la-maternita-non-puo-e-non-deve-essere-considerata-un-limite-imy10wxl;

3) Francesco D'Agata, a lawyer from Lecce, was acquitted by the Italian Supreme Court after an eight-year legal battle. He had been accused of misappropriating part of a €636,000 compensation intended for a client involved in a serious car accident, presenting her with only €300,000. Initially arrested in 2016, D'Agata faced a prison sentence of over three years after being convicted in lower courts. However, the Supreme Court annulled the conviction, ending the case. Despite the acquittal, the prolonged proceedings caused significant damage to his professional reputation. https://www.ildubbio.news/giustizia/fu-accusato-di-aver-derubato-il-cliente-avvocato-assolto-dopo-8-anni-qw1skhno;

4) After a decade-long legal battle, lawyer Antonio Galati has been acquitted by the Court of Appeal in Catanzaro. In 2014, Galati was arrested and accused of participating in the Mancuso mafia clan. Initially,

he received a 4-year and 8-month prison sentence in 2018. However, the appellate court overturned this conviction, ruling that the alleged crime did not occur. This decision brings closure to a protracted legal ordeal that significantly impacted Galati's professional and personal life. https://www.ildubbio.news/avvocatura/lavvocato-galati-assolto-in-appello-dopo-dieci-anni-di-battaglie-legali-ktzyu0pc;

5) In 2021, during a trial at the Bergamo Court, lawyer Alessandro Brustia was defending a man accused of child solicitation. While conducting a cross-examination, Brustia held the microphone by its base due to its short stand. The presiding judge interrupted, saying, "Could you please put down the microphone? We're not at Sanremo." Brustia perceived this remark as disrespectful and reported the incident to the President of the Bergamo Court and the Superior Council of the Judiciary (CSM). However, he received no substantial response. Reflecting on the experience, Brustia emphasised the importance of addressing such behaviours, stating that while defence lawyers are resilient, they should not tolerate actions that undermine the dignity of their profession. https://www.ildubbio.news/giustizia/e-il-giudice-disse-avvocato-non-siamo-a-sanremo-l73x94th;

6) The following case show the challenges faced by lawyers in Italy who defend individuals accused of serious crimes. Despite the constitutional guarantee of the right to defence, these lawyers often face public vilification, death threats, and personal attacks, both online and offline. The issue is the confusion between the lawyer and the client, or between the lawyer and the crime. Examples include:
a. Rimini Case: Lawyers defending four immigrants accused of a violent crime received threats and were accused of lacking dignity.
b. Ciontoli Family Case: After defending the family in a high-profile trial, a lawyer received death threats accompanied by a bullet.
c. Willy Monteiro Duarte Case: Lawyers for the accused received threats of violence and death.
d. Brescia Lawyers: Two female lawyers faced severe online harassment after securing an acquittal in a sexual violence case.
The article argues that this hostility undermines the justice system, emphasising that the right to defence is fundamental in a democracy. Without it, the justice process would devolve into mob rule and summary punishment. (Il Dubbio, 22/1/2024) https://ristretti.org/avocati-vilipesi-sui-social-insultati-fuori-dai-tribunali-minacciati-di-morte-perche-assimilati-agli-imputati-che-difendono;

Significant developments related to accessibility of courts

1) The Consiglio nazionale Forense (CNF) wishes to comment positively on certain innovations introduced by **Legislative Decree No. 164 of 31 October 2024**, setting out '*Supplementary and corrective provisions to Legislative Decree No. 149 of 10 October 2022, implementing Law No. 206, concerning the delegation to the Government for the efficiency of the civil trial and the revision of the discipline of the instruments of alternative dispute resolution and urgent measures for the rationalisation of the proceedings concerning the rights of persons and families as well as' in the matter of forced execution*', which have accepted some amendatory proposals formulated by the CNF both with reference to legislative decree no. 149/2022 and with reference to the corrective decree here under comment:
- Amendment of Article 38 of the Code of Civil Procedure.
Anticipation of the moment in which the lack of jurisdiction of the court seized in ordinary proceedings of cognitive jurisdiction can be detected with the decree issued at the outcome of the preliminary verifications, with confirmation of the relief no later than the first hearing in other cases.
- Amendment of Article 47 of the Code of Civil Procedure.
Increasing to 40 days the term for filing the defendant's defence.
- Amendments to the form of holding hearings.

Although not entirely satisfactory, the amendments made to arts. 127-ter and 128 of the Code of Civil Procedure appear to be ameliorative, since the substitution of the hearing for the form of discussion, although not excluded by law, must be revoked in the event of opposition by the parties.
- Amendments to Art. 163-bis of the Code of Civil Procedure: Defendant's request to anticipate the hearing
The provision has been amended so that the clerk's notification of the new hearing date takes place in sufficient time to allow the plaintiff and any further parties to comply with the provisions of Article 171.
- Replacement of Article 171-bis of the Code of Civil Procedure on preliminary verifications.
Although the solution proposed by the CNF concerning the reinforcement of the principle of cross-examination with the fixing of a hearing has not been adopted, the Corrective Act accepts the observations aimed at completing the list of verifications and measures that can be adopted at this stage, with reference both to the default, at the same time amending Article 290, and to the verification of the conditions of procedural admissibility, and finally to the conversion into the simplified procedure.
- Amendments to Article 342 of the Code of Civil Procedure on the content requirements of the notice of appeal.
The provision was reworded so as to exclude that the consequence of inadmissibility may arise from the violation of principles of clarity and simplicity.
- Amendment of Article 350 of the Code of Civil Procedure
In the sense of specifying precisely the competences of the examining magistrate in relation to the College.
- Amendments to measures relating to the provisional enforceability of the appealed judgment
Provision has been made for the possibility of revocation of the decree of suspension of enforceability with reference to both the first instance judgment and the appeal judgment (arts. 351 and 373 Code of Civil Procedure).
- Modification of Art. 391 quater c.p.c., Revocation on the grounds of contrary to the European Convention on Human Rights.
The time limit for the appeal in question has been extended to 90 days in order to bring it into line with the rules on res judicata of judgments of the ECHR.
- Amendment to Article 380-bis of the Code of Civil Procedure
Repeal of the provision that, as part of the procedure for the accelerated decision of inadmissible, inadmissible or manifestly unfounded cassation appeals, required the appellant's lawyer to obtain a new special power of attorney to request the decision (Article 380-bis, Code of Civil Procedure).

2) The CNF wishes to express partial satisfaction on the principles related to access costs to justice, in particular on the formulation of **Article 105 of the Draft Law "State Budget for the Year 2025" and amendments introduced by the 2025 Budget Law (Law No. 207 of December 30, 2024)**:
Article 105 of the Draft Law introduced a new article into the civil procedure code, which stipulated the extinction of civil proceedings due to failure or partial payment of the unified contribution, if not paid within 30 days from the first hearing. The National Bar Council (CNF) expressed strong criticisms, considering this rule unconstitutional as it conditions the right to legal action on the payment of a tax, violating the right to defence guaranteed by Article 24 of the Constitution. The CNF requested the abolition of this provision, suggesting alternative solutions to ensure payment without compromising access to justice, such as reducing the amounts and introducing instalment options.

The 2025 Budget Law partially accepted the CNF’s observations by adding a new provision to Article 14 of the Presidential Decree of 30 May 2002, which prevents the registration of a civil case if the unified contribution has not been paid, with some exceptions for legal exemptions. A case cannot be registered unless at least the amount of 43 euros is paid, or the full amount if it exceeds 43 euros.

In summary, the CNF raised concerns about the impact of this rule on access to justice, proposing modifications that would not restrict the rights of economically disadvantaged citizens, while the budget

law introduced measures to ensure payment of the unified contribution without hindering the registration of civil cases.

Significant developments related to resources of the judiciary

Other issues / comments of the Consiglio Nazionale Forense relates to these general/peculiar topics:

1) A "**trial without a trial". Need of the oral phase to complete the written procedure**
The recent reforms of civil procedure – that is, those concerning private, economic, commercial, cultural, and social matters – have, in effect, closed the doors of the Courts of Justice to lawyers and, therefore, to citizens, creating the paradox of a "trial without a trial". Initiated during the long-lasting COVID emergency and justified by the need to avoid paralysing judicial activity, the trend towards the "paper-based process", and thus the avoidance of holding hearings, is now the rule. The civil sections of Italian courts are empty, and citizens have lost awareness of how justice is administered. The sacrifice of oral proceedings is not without consequences; it is not irrelevant that the judge decides a case solely by reading the documents, without ever having met, seen, or heard the parties, nor their lawyers. The abuse of the written procedure in civil trials directly affects the adversarial process and the right to defence.

In criminal trials, some reforms have severely undermined the principle of defence, as "…an inviolable right at every stage and level of the proceedings". The reform introduced by Legislative Decree No. 150 of 10 October 2022, introduced paragraph 1-bis of Article 581 of the Criminal Procedure Code, which states: In the case of a defendant who has been tried in absentia, the defence's appeal must be accompanied by a specific mandate to appeal, issued after the verdict and containing the defendant's declaration or election of domicile.

It is the opinion of the CNF that the legislator has grossly underestimated the consequences of this rule, which effectively prevents the less affluent, the most marginalised, and the weakest citizens from being able to appeal a first-instance conviction. These are almost always people who, in the first trial, did not appear before the judge because they were unable to afford a trusted lawyer and were assigned one ex officio, who, despite every effort and diligence, rarely manages to even communicate with them.

Therefore, it is illusory to believe that the "absent" individuals in the first trial, unable to secure an effective defence during the long period of investigations and trial, will be in a position to appoint, within the brief period required to file an appeal, a regular and specific mandate to a lawyer for the appeal.

We must, therefore, regretfully note that all these individuals will be left with only one level of judgment and will be denied any possibility of reviewing an unjust conviction.

2) **Need of more judges** –
The data from the latest report published by CEPEJ, the European Commission for the Efficiency of Justice of the Council of Europe, shows Italy at the bottom of the European rankings. In Italy, we have 11.86 professional judges per 100,000 inhabitants, compared to the European average (not just from the EU-27 countries), where the number is almost double, 22.2 professional judges per 100,000 inhabitants.
In our country, also per 100,000 inhabitants, we have 35.76 judicial assistants, compared to 56.13 in European countries, and 3.83 public prosecutors in Italy for every 100,000 inhabitants, compared to 11.10 in the European average.

All of this inevitably affects the average time taken to resolve cases: in Italy, the average duration of a civil trial in the first instance is 675 days, while the average for a criminal trial is 498 days. In the European average, the figures are 237 days for civil cases and 149 days for criminal cases.
In appeals and cassation, the gap becomes even larger. In civil cases, the average duration of an appeal trial is 1,026 days, and 1,526 days in cassation; the European average is 177 days in appeal and 172 in cassation.

In criminal trials, the average duration is 1,167 days in an appeal case and 237 days in cassation, while in Europe, it is 121 days in appeal and 120 days in cassation.

These differences between Italy and the European average are no longer tolerable, and the CNF has a duty to highlight them.

It is now well-established that the slowness of justice costs the national economy two percentage points of GDP, for well-known reasons. Therefore, it is time to "invest" 0.50% of that 2% GDP loss into recruiting judges, filling judicial positions, and even revising the staffing plans based on actual needs, reducing the number of judges who no longer perform judicial functions: I am not only referring to those on leave, but also to many judges who, though not on leave, are exempt from judicial duties. The CSM circulars, which authorise reductions of workload by up to 50% for judges sitting on judicial councils or engaged in decentralised training, should be abolished.

Italian judges are among the best in all of Europe, as shown by the percentage of cases disposed of, which is much higher than the European average. However, the current conditions in which they work nullify every sacrifice and prevent justice from living up to the rule of law.

The CNF is ready to do its part, both in the Courts of Justice, where we want to fully participate physically, and more broadly in Italian society, where we want and must play the noble role of defending rights as mandated by the Constitution of the democratic Republic.

Significant developments related to digitalisation

With regard to the already mentioned **draft DDL on artificial intelligence (DDL IA No. 1146 OF 2024),** the Consiglio Nazionale Forense wishes to point out the following additional comments:
a) OBLIGATION TO STATE REASONS AND THE RIGHT TO AN EFFECTIVE REMEDY. It is well known that the motivation of decisions, especially in the criminal sphere, is an indispensable requirement for exercising the right to an effective remedy. Indeed, the anticipated 'black box' effect prevents the reconstruction of the inner workings of AI systems, which adopt decisions on the basis of complex statistical calculations arising from the analysis of correlations in the data examined and which, therefore, are sometimes not comprehensible either to the programmer or to a possible judge.

In this context, it would be extremely complex, if not impossible, to prove a posteriori any errors that the system may have fallen into, the choice of which was then followed by the judge.

If the analysis and decisions made by machines often enjoy an undeserved assumption of fairness or objectivity, The design and implementation of automated decision-making systems are exposed to critical issues that can lead to systematically erroneous and biased decisions, as well as potentially discriminatory ones. These problems are often the result of defects placed upstream of the system construction process, either in the programming phase, or (as is more frequently the case) in the training phase due to an erroneous or incomplete construction of the data sample examined, reason, in particular: (i) the use of a

dataset containing data that reflect errors or bias (or bias) implicit, already present in the decisions on which the system is trained (for example, decisions which unreasonably prejudice the substance of certain groups being treated more severely are examined); and (ii) the use of a dataset containing data that provides a statistically distorted picture of certain groups in relation to the total population (e.g., selection of cases of crimes committed predominantly by foreigners, without considering the percentage of the same ones related to the crimes in the population as a whole) (iii) to the use of a dataset that does not consider the divergence between perceived crimes (but statistically infrequent, such as homicides) and crimes that remain submerged because they are often not reported (such as tax evasion) but statistically much more frequent.

The placement upstream of the construction process of the IA system of any criticalities, makes it difficult to envisage a posteriori recourse in which such criticalities can be ascertained, also in the light of intellectual property rights protecting the content and operation of algorithms.

b) PRINCIPLE OF THE ADVERSARIAL PROCESS AND EQUALITY OF THE PARTIES It is well known that Art. 6 of the ECHR implies the principle of equality of arms, according to which each party must be given the opportunity to defend its arguments on an equal footing, the prerequisite for which is the principle of cross-examination, expressly provided for under Art. 111(2) of the Constitution, whereby the parties have the right to be aware of the evidence and documents submitted in court in order to be able to make counter-arguments in relation to them and influence the judge's decision in their favour.

In this respect, it has been emphasised in doctrine that artificial intelligence systems are by definition 'deaf' to the parties' submissions, as they arrive at their determinations regardless of the arguments put forward by the parties at the hearing, but rather on the basis of the analysis of case law consolidated over time on a specific type of dispute. Indeed, the ability to establish causal links between facts and the inability to process data in a logical function, combined with the opaque nature of self-learning systems (which do not even allow one to check the procedure by which they arrived at a certain result), prevent one from challenging the result obtained with rational arguments, thus affecting the right of defence and the adversarial process in the formation of evidence, as well as the judge's ability to understand the reliability of the data he should base his judgment on and consequently be able to adequately motivate.

On the other hand, it has again been observed that the machine is not 'present' in the hearing and therefore cannot grasp, especially in a trial such as the criminal trial marked by orality, the various elements that emerge in the cross-examination of the parties . In this context, the right of the parties to intervene upstream on the data available to the machine has even been hypothesised, but appears impracticable, so that each of them can enter the case law favourable to the theses upheld, thus increasing the knowledge on which the learning of the instrument will be based and guaranteeing not only the principle of cross-examination, but also the equality of the parties. Indeed, a fact that has been overlooked up to this point, but which turns out to be central, is the fact that the most modern artificial intelligence systems are owned by (a few) private entities, as their development requires high economic and technical capacities, within the reach of only a few large operators (Google, Microsoft, etc.) as demonstrated by the enormous amount of data needed to complete the training phases of machine learning systems.

In this context, a question necessarily arises of access to the technology in question, in general, and specifically, of equality of arms, if, for example, the Ministry of Justice were to develop (or obtain access through recourse to the market) artificial intelligence applications to be made available to magistrates and not also to lawyers.

c) RESPECT FOR THE PRINCIPLE OF PERSONAL RESPONSIBILITY IN CRIMINAL MATTERS. A further profile emerges which joins the previous ones in the assessment of the appropriateness of the use of AI systems

in a decisional function in the judicial sphere and, specifically, in criminal matters, relating to the logic inherent in such systems of a statistical-correlational nature which does not lend itself to the individualised and personal assessment imposed by Article 27 of the Constitution, according to which criminal liability is personal.

The reasoning logic of AI systems is of a statistical nature based on the analysis of past facts in order to assess the possibility of a given fact occurring in the future. For instance, in the criminal sphere, the use of predictive algorithms has been envisaged to assess subjective dangerousness and the capacity to reoffend. In short, these are algorithms that use numerous factors such as socio-economic status, family background, neighbourhood criminality, employment status and other elements of a large number of subjects, belonging to the considered sample, in order to estimate the so-called 'criminal risk' of a given individual who, possibly, has elements in common with the situations assessed in the training phase (the same socio-economic condition, family, etc.). In other words, the algorithm carries out an assessment on the basis of the individual's membership of a particular social group, thus making the outcome of the assessment of his dangerousness descend from immutable elements that are independent of the subject's will. It has been observed that this circumstance is incompatible with the right to be held responsible only for a specific and personal fact, which excludes the possibility of taking into account for the purpose of a conviction or an aggravation of penal treatment the 'type' of perpetrator or any facts or circumstances solely attributable to third parties.

In a similar vein, the CEPEJ noted that predictive systems should never independently determine the judicial decision but that a strong accountability of the judge should always be ensured, observing that 'The inclusion of algorithmic variables such as criminal history and family background means that the past behaviour of a certain group can decide the fate of an individual who is, of course, a unique human being with a social background, education, skills, degree of guilt and distinctive motivations for committing an offence. It has also been observed that human decisions may be based on values and considerations (e.g. social) that would not be taken into account by the machine.'

On this point, it seems opportune to recall the recent remark by A. Balsamo (Deputy Cassation Prosecutor) that Calamandrei's reflection, who said: 'we no longer know what to make of Montesquieu's judges, "êtres inanimés" made of pure logic. We want judges with souls'.

LATVIA

Significant developments related to accessibility of courts

Starting from 1 January 2024, the Legal Aid Administration was merged with the Court Administration, and until that time, the services provided by the Legal Aid Administration – state-provided legal aid and state compensation for victims – will continue to be provided by the Court Administration.

As of 1 September 2024, the remuneration rates for state-provided legal aid have been increased - a very small increase of 5-10 EUR for some items.

As amendments to the Civil Procedure Law (effective from 4 July 2024) introduce a new type of application for appealing the verdict of arbitration court, a new state fee had to be determined. Specifically, the state fee for an application to appeal the verdict of arbitration court is set at 1% of the debt amount, but no more than 285 euros. These amendments also establish the right of a private legal entity to request an exemption from the payment of court expenses and security deposit.

Significant developments related to resources of the judiciary

The E-CASE development project continues.
Training is provided to lawyers on the use of the E-CASE and the working environment

Significant developments related to training of justice professionals

1) On 24 October 2024, the Law of the Academy of Justice[3] was adopted, and it entered into force on 1 November 2024. The Academy of Justice will begin its work on 1 January 2025, ensuring a continuous training process for judges, court employees, prosecutors, and prosecutor assistants (not sworn advocates). The Academy of Justice will be a training and development centre that will implement professional development for justice professionals, promoting the rule of law, high-quality implementation of judicial functions, and helping to ensure high professional and ethical standards.

2) As already explained by the Council in its contribution to the 2024 Rule of Law Report, namely, section III. a. and b., under the Advocacy Law sworn advocates are obliged to continuous training, while assistants to sworn advocates are under obligation to participate in all events organised by the Council for the raising of qualifications in accordance with the Rules for training and examination of assistants to sworn advocates. In 2024 the Council actively continued to ensure communication exchange in its constant attempts to ensure the organisation of the trainings in the field of protection of the rights of the children which unfortunately occurred in 2024 only in a very limited amount. While the applicable law requires advocates to be appropriately trained in the field of protection of the rights of the children, in practice the competent authorities cannot ensure the organisation of such trainings.

[3] https://likumi.lv/ta/id/356029-tieslietu-akademijas-likums

Significant developments related to digitalisation

For several years now, Latvia has implemented an online portal for everyone involved in pre-trial, trial and enforcement processes – www.elieta.lv. However, lawyers still face several practical problems in using this system, such as courts sometimes not taking into account lawyers' workload calendars when assigning cases, which can result in court hearings overlapping and lawyers unable to provide their own representation. Training is provided to lawyers on the use of the (E-lieta) e-file and the working environment

Significant developments related to efficiency of justice system

The performance indicators of the courts of Latvia show that the average term for handling cases has increased. In 2024, it was 7.7 months per court instance, but in 2023 – 6.53 months.[4]

Other issues and significant developments impacting access to justice

A significant number of vacancies for judges, judicial assistants, and court session secretaries remain unfilled promptly, leading to a backlog of cases in courts, which slows down the case processing time. The lack of judges and court employees significantly affects the efficiency of the judicial system.

It should be noted that there are currently 70 vacant judicial positions, as well as approximately 66 judges who are currently eligible for retirement or service retirement.[5]

[4] https://www.tieslietupadome.lv/lv/jaunums/2024-gada-tiesu-darbibas-raditaji-liecina-par-slodzes-pieaugumu-tiesu-sistema

[5] https://www.tieslietupadome.lv/lv/jaunums/2024-gada-tiesu-darbibas-raditaji-liecina-par-slodzes-pieaugumu-tiesu-sistema

LITHUANIA

Cases/examples undermining confidentiality of lawyer-client communications

Although responses from previous years have noted this information, we need to reiterate and continue highlighting the most common ways law enforcement agencies breach client confidentiality.

First, they make "digital copies" of lawyers' computers, phones, or other devices. The content of the devices seized in the course of proceedings is simply copied and then analysed using special software. As the "digital copies" are stored on law enforcement servers, there are no adequate guarantees that the "inspection" of such data can be carried out outside the official proceedings by reviewing any documents that have nothing to do with the investigation. There are also no actual and adequate safeguards to ensure that such "digital copies" or fragments thereof are not retained by law enforcement authorities or individual officers.

The second is making video (possibly when a special interest arises, also audio) recordings of the lawyer's interaction with the client in all Police Department detention facilities. The Lithuanian Bar Association started a dialogue with the Commissioner General of the Police Department as early as spring 2024. Following the change of the Commissioner General, the discussion on this issue is still ongoing. To this end, information has been gathered on the practice of some neighbouring countries. This information revealed that in the Nordic countries, there is an absolute ban on video recording of the meeting between a lawyer and a client in custody. In contrast, in closer neighbours, the situation is similar to that in Lithuania. Despite assurances from the Police Department that the meeting between lawyer and client in detention facilities is monitored only to ensure personal security and control the transfer of property, the Lithuanian Bar Association has consistently taken the position that such monitoring cannot in any way guarantee the safety of lawyers (it just can record an alleged attack but in that case, other measures could be implemented) and openly violates the confidentiality of the meeting. Finally, the doubts about the use of audio recordings of such meetings have not been dispelled by any convincing arguments.

Thirdly, cases of breach of the Law on the Bar, and thus of client confidentiality, arise because a search is carried out by order of a pre-trial judge, and in urgent cases by order of a public prosecutor or a pre-trial investigation officer, using abstract formulations to define the mandate of a search. For example, the court's decision to search contains the following wording: "to inspect, examine or seize any documents or media relating to the lawyer's activities; working notes, contracts concluded with clients, computers and digital media in use and other objects and documents". This means that law enforcement officials can inspect and seize virtually anything of interest to them, including things that constitute client confidentiality and are not remotely related to the suspicion. Moreover, in the specific case of the search of the lawyer's spouse, the law enforcement officials seized and searched the lawyer's electronic devices, as they stated, "to make sure that the lawyer is not keeping (hiding) documents belonging to her spouse".

In 2024, a completely new (albeit individual) situation arose in which a suspect in a criminal case contracted a defence lawyer and then two other lawyers. Initially, two other defence lawyers were not allowed to meet with the defendant on the grounds that the suspect's rights of defence were nevertheless guaranteed (i.e., the first lawyer was sufficient).

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

On 10 October 2024, lawyer L. Pchelintsev, who was involved in the process of eviction of a person from an apartment (as part of a court decision), was killed (shot dead) in the centre of Vilnius in the course of his professional duties. He was shot by a person to be evicted. The Lithuanian Bar Association takes the preliminary position that the police officers who guaranteed the safety may not have been appropriately prepared for the eviction procedure and that the Police Department's top management is not interested in revealing the truth.

This is despite the Lithuanian Bar Association's public request for answers to key questions. For example, on the very day of the murder, the Bar Association publicly and later officially asked whether the police officers who were also involved in the murders had video recorders. The Lithuanian Bar Association learned the answer to this question only from the media more than a month and a half later.

In a number of high-profile pre-trial investigations, law enforcement press conferences take place or investigative material systematically "accidentally" (it is obvious that there could not be any other source that law enforcement agencies themselves) appears in the media (e.g., footage of a search in the Foxpay case is shown to the media). Meanwhile, the circumstances of the lawyer's death continue to be shrouded in complete secrecy and silence, which raises many questions about attempts to cover up or distort the events or some parts of them.

Another story, which has been going on for five years now, concerns a disciplinary case brought against a lawyer by the Minister of Justice five years ago (as allowed by the Law on the Bar Association). This case was brought in 2019 based on a prosecutor's submission because of the lawyer's speech (a few phrases criticising the prosecutor's work) at a criminal court hearing. The court filed no complaint or report regarding the lawyer's conduct. The Court of Honour of Lawyers did not find any violation of the lawyer's ethics, but the prosecutor's office attempted to reverse this decision by any means possible. At the end of January 2025, the Prosecutor's Office filed a cassation appeal to the Supreme Court of Lithuania. On 22 January 2025, the Supreme Court of Lithuania acknowledged that in the 2009 criminal investigation proceedings, the lawyer was not fed for 3 days while in custody (paragraph 129 of the judgment). However, the Court found that this was not torture by starvation but degrading treatment (paragraph 128 of the judgment). It should be noted that the prosecution of this lawyer was carried out by the same public prosecutor who applied to the Minister of Justice for the above-mentioned disciplinary proceedings in 2019.

Specific legal provisions and policies in your country which could influence the independence of the Bar and lawyers

The draft Law on Public Administration was registered on 21 June 2024. It sought to introduce new horizontal regulation of licensable activities, including the legal profession.

The adoption of such a draft contrary to the Law on the Bar would significantly restrict the Bar Association's autonomy in recognising persons as advocates, assistant advocates, EU lawyers, and third-country lawyers, as the lex specialis would not be the Law on the Bar Association but the Law on Public Administration thereof.

The draft law sought to place the licensing of lawyers in one of four categories of licences. The Bar Association opposed this initiative and took the firm position that the proposed regulation could not align

with the nature of an advocate's activity and the legal regulation provided for in the Law on the Bar. The draft law would even seek to equate the professional activity of a lawyer with a commercial activity, contrary to national and international law. The Bar Association has vehemently argued that none of the four proposed models can be compatible with regulating the Law on the Bar and that, therefore, exemptions should be made for associations operating under special laws.

It should be noted that this initiative was based on the implementation of the EU Services Directive. No amount of reasoning could change the opinion of the Ministry of Economy and Innovation, and the Minister of Justice, although fully aware of the danger of this initiative, did not dare to contradict the leader of the same party that is the Minister of Economy and Innovation. The Bar Association saw this legislative initiative as nothing other than a further interference by the executive in the independence and autonomy of the Bar Association and an attempt to control the Lithuanian Bar Association through the Law on Public Administration. The Lithuanian Bar Association managed to stop this project only in the Parliament and only because of the forthcoming parliamentary elections.

It should be noted that this was a severe threat to the autonomy of the Lithuanian Bar Association, close to the events of 2019 when the initiatives of the executive authorities (in particular the Minister of Justice) against the autonomy of the Lithuanian Bar Association could only be stopped thanks to the active efforts of the CCBE.

Specific examples in relation to the cooperation between your Bar and the executive branch or supervisory authorities

On 1 January 2025, Article 8 of the Law on the Bar entered into force in a new wording to ensure the reputation assessment by differentiating the situations and time limits for restoring good repute. For example, the time limit has been extended to 12 years for very serious offences, 10 years for serious offences, 8 years for minor offences and 5 years for minor offences. For corruption offences, the period of good repute is additionally extended by one third. These changes provide stricter requirements and more precise regulations for assessing good repute, ensuring high standards of professional ethics.

These amendments were adopted on the initiative of the Lithuanian Bar Association, primarily to ensure the good name and impeccable reputation of advocates and to prevent persons who have committed criminal offences (usually former officials or civil servants) from soon becoming equal members of the professional community of advocates. The Ministry of Justice was initially reluctant to endorse this initiative, but the Lithuanian Bar Association succeeded in demonstrating and convincing the need for such changes. Another argument used was that the Bar would declare that the Ministry was not willing to tackle the problem of corruption.

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

The limitation of the autonomy of the Lithuanian Bar Association and the professional community, in particular regarding the dependence on the Minister of Justice, has not changed. There are 11 cases of such dependence:

1. The Minister of Justice takes the oath of each lawyer.
2. The Minister of Justice has the right to initiate the revocation of the decision to recognise a person as an advocate. Suppose the Lithuanian Bar Association refuses to comply with the Minister of Justice's

request or fails to decide within 45 days. In that case, the Minister of Justice has the right to apply to the Vilnius Regional Court within 30 days, requesting the Lithuanian Bar Association to annul the decision to recognise a person as an advocate.
3. The Minister of Justice shall also draw up the syllabus for the qualifying examination and the examination on the organisation of lawyers' activities and shall lay down the procedure for taking and paying for the examinations of lawyers.
4. The Minister of Justice shall approve the Lawyers' Examination Board and its chairperson for a period of three years on the recommendation of the Lithuanian Bar Association.
5. The members of the Commission for the Determination of Unfairness of Standard Terms of the Lawyer-Client Agreement, established by the Council of Advocates of the Lithuanian Bar Association, shall be appointed by the Council of Advocates of the Lithuanian Bar Association, three members of which shall be appointed by the Council of Advocates of the Lithuanian Bar Association, and two by the Minister of Justice.
6. The Lithuanian Bar Association or the Minister of Justice shall decide to initiate disciplinary proceedings.
7. The General Meeting of Advocates shall adopt the Code of Ethics of Lithuanian Advocates, which the Minister of Justice shall publish in the Register of Legal Acts; however, the Minister of Justice may refuse to publish the Code of Ethics of Lithuanian Advocates if it is contrary to legal acts.
8. The Minister of Justice appoints two of the Court of the Honour of Lawyers members from among lawyers.
9. The Lithuanian Bar Association shall establish the procedure for handling advocates' disciplinary cases. The Minister of Justice shall publish the procedure for hearing advocates' disciplinary cases in the Register of Legal Acts. The Minister of Justice may refuse to publish the procedure if it contradicts this Law or other legal acts. The Minister of Justice's refusal to publish the procedure may be appealed to the court by the procedure laid down in the Law on Administrative Proceedings.
10. Together with the Bar Association, the Minister of Justice approves the Recommendations on the maximum amount of the fee for legal aid (services) provided by a lawyer or an advocate's assistant in civil cases.
11. The Minister of Justice shall adopt all by-laws on the provision, organisation, and payment of state-guaranteed assistance.
No progress was made despite the dialogue with the former Justice Minister.

Lawyers have informed the Lithuanian Bar Association that there are often cases when sickness certificates issued by medical institutions (such certificates are issued to all persons, including judges and prosecutors) are treated differently by courts in criminal cases and are insufficient to justify a lawyer's legitimate absence from the proceedings. Therefore, special certificates are required, and medical experts additionally assess whether a lawyer's illness may be regarded as an obstacle to his/her participation in court proceedings. This situation must be considered as discrimination between the parties to the proceedings.

Significant developments related to accessibility of courts

The Lithuanian Bar Association consistently raises issues related to the reform of the legal aid system. The changes that have been implemented cannot be considered as reforms. Although the remuneration has been increased, it remains inadequate. The European Commission 2024 report clearly shows that Lithuania is, unfortunately, an obvious outsider in the EU in this field.

Despite rising price levels, the VAT threshold in Lithuania has remained unchanged at €45,000 a year. This means that lawyers providing state legal aid with such an annual income (before other taxes) are forced to pay VAT on top of it. However, lawyers are charged an hourly fee of EUR 25, and under the current rules,

this cannot be increased by the VAT rate, i.e. lawyers cannot bill 25+VAT but must bill 25-VAT. This is seen as further reducing the incentives for lawyers to participate in providing legal aid.

Significant developments related to training of justice professionals

The Lithuanian Bar Association organises training for lawyers, and participates as a partner in projects with the ERA and the CCBE.

Significant developments related to digitalisation

In Lithuania, lawyer assistants who have become lawyers can no longer access the files they had in the courts as lawyers assistants in the courts' electronic system.

The Courts Administration promised to resolve this situation as early as 2021, but at the end of 2024, it responded that it does not have sufficient funds for this IT solution. So, each Assistant Advocate who becomes an advocate has to obtain a certificate from the Advocates' Chambers about the change of his/her status, and then the Courts Administration grants such access manually.

LUXEMBOURG

Cases/examples undermining confidentiality of lawyer-client communications

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

The law firm refused to comply with the request, invoking the professional secrecy rules which led to the issuance of an administrative fine in a substantial amount against the law firm.
The law firm decided to challenge this decision of the Luxembourg tax authorities in front of the Luxembourg administrative court, and the Bar Association decided to intervene in these proceedings in order to support the position of the law firm.

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

The European Court of Justice delivered its decision on 26 September 2024.

The Court decided that:
1) Article 7 of the Charter of Fundamental Rights of the European Union must be interpreted in the sense that:

a legal consultation from a lawyer in matters of company law falls within the scope of the reinforced protection of exchanges between a lawyer and his client, guaranteed by this article, so that a decision ordering a lawyer to provide the administration of the requested Member State, for the purposes of an exchange of information on request provided for by Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing the Directive 77/799/EEC, all the documentation and information relating to his relations with his client, relating to such a consultation, constitutes an interference with the right to respect communications between a lawyer and his client, guaranteed by said article.

2) Examination of the aspects covered by the third and fourth questions has not revealed any element likely to affect the validity of Directive 2011/16 with regard to Article 7 and Article 52 of the Charter of fundamental rights.

3) Article 7 and Article 52(1) of the Charter of Fundamental Rights must be interpreted as meaning that they preclude an injunction such as that described in point 1 of this operative part, based on a national regulation under which advice and representation by a lawyer in the tax field do not benefit, except in cases of risk of criminal prosecution for the client, from the reinforced protection of communications between a lawyer and his client, guaranteed by this article 7.

By two decisions of 12 December 2024, the Cour Administrative applied the ruling of the European Court of Justice by deciding that a lawyer can validly oppose to the information request of the tax authorities his professional secrecy. The Cour Administrative decided hence to annul the injunction delivered by the director of the tax authority as well as the administrative fine issued against the law firm.

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

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

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

"Ladies and Gentlemen,
Please find below an email I have just sent to the examining magistrate [...].
It's not the first time I've had an incident with him.
Needless to say, this is totally unacceptable.
I've just tried at 3.20pm to call him on his direct line, then on the generic line for the examining magistrates' chambers, but no answer.
At 4pm I had a clerk on the line who told me he'd be there in a quarter of an hour. I've just called his direct line again, as well as the general line for the examining magistrate's chambers, but there's no answer.
I'll leave it to you to guess the conclusions I draw.
Kind regards."

The same facts were brought to the attention of the President of the Luxembourg Bar Association under her disciplinary powers. After investigating the facts, she closed the disciplinary case without imposing a sanction.

This case has been referred to the European Court of Human Rights. The Luxembourg Bar Association was a third-party intervener in the proceedings.

On 16 May 2024, the European Court of Human Rights delivered its judgment in this case.

The Court (5th section) unanimously held that there had been a violation of Article 10 of the European Convention on Human Rights, which protects freedom of expression. The Court considered that in this case, the criminal sanctions could not be justified and that the Luxembourg criminal courts had “[…] not struck a fair balance between the need to guarantee the authority of the judicial power and that of to protect the applicant's freedom of expression in his capacity as a lawyer”.

A reviewal trial is currently pending before the Cour de Cassation.

Significant developments related to accessibility of courts

Since 1 February 2024, the legal aid system has been "extended". From now on, it will be possible to apply for partial legal aid which opens up the possibility of applying for legal aid to more people.

Significant developments related to resources of the judiciary

Since September 2024, the family court has moved to another building. Separate from the Luxembourg Cité judiciaire. The building's interior and exterior layout should be further improved in the interests of the professionals (particularly lawyers) and litigants who use it (e.g. access for people with reduced mobility, better layout of courtrooms and waiting rooms).

Law of 24 July 2024 creating judicial officer positions with a view to adopting a multi-annual recruitment programme in the judiciary for the judicial years 2024/2025, 2025/2026 and 2026/2027: the new law provides for a multi-year recruitment programme for the judiciary and the creation of additional "attaché de justice" positions, constituting a first substantial reinforcement of the staff of the various courts and public prosecutor's offices. Thus, 94 magistrate positions and 20 justice attaché positions will be created for the judicial periods from 2024/2025 to 2026/2027. There is also a new bill no. 8299B, currently under discussion in the Justice Commission, which provides for the creation of a reserve pool of 100 magistrate positions. This pool, managed by the National Council of Justice, can be used to meet the specific needs of judicial and administrative services.
In total, it is therefore planned to create around 200 new magistrate positions.

Significant developments related to training of justice professionals

The Conseil de l'Ordre has set up, in collaboration with the French Bar association at the Council of State and the Court of Cassation, training in cassation techniques and procedure.

The training offered aims to respond to the complexity of the subject and the problems of inadmissibility of appeals/means of cassation encountered by its members.

It will cover the function and functioning of the Court of Cassation, the cases of initiation and the means of cassation, as well as the legal means and the extent of the control of the Court of Cassation.

The Bar will establish a list of people who have completed this training, a list which will be made available to litigants looking for a lawyer specialising in the matter, in particular via the Bar website.

Significant developments related to digitalisation

While there is still no "paperless justice" in place, administrative courts (the court of first instance) are currently requiring lawyers to file submissions and documents both on paper and in electronic format, meaning more work for the lawyers and no benefit of digitalisation.

At the level of the administrative court, there is no progress. But in terms of Conditional Payment Order (simplified debt recovery procedure) a procedure has been put in place via Myguichet, authentificated via the Luxembourg Bar association.

If traders, artisans or companies in difficulty encounter payment difficulties in the context of their activity, they can request the opening of a judicial reorganisation procedure by collective agreement. This procedure involves the filing of a reorganisation plan via MyGuichet.
In criminal matters, the investigating office now sends a link to the lawyers to be able to access the repressive file.

Significant developments related to efficiency of justice system

The length of proceedings is a problem in certain branches of the judiciary; some chambers of the administrative court of first instance (tribunal administratif) are currently setting hearings (for cases already pending) in two years' time, meaning the total length of the first instance procedure is expected to be between 2,5 and 3 years.
There are also delays for appeals in commercial matters where the procedures easily take 2 years. The district court chamber regularly sets the date for pleadings after closure of the investigation at 8 to 12 months.

Other issues and significant developments impacting access to justice

In a public conference (held in December 2024) the president of the Constitutional Court mentioned that only very few questions on the constitutionality of laws are referred to the Constitutional Court.

The judicial practice of referring cases to the CJEU for preliminary rulings is also limited and not very consistent. Administrative courts account for about half of the cases sent to the CJEU in the last decade, but they refer cases on certain topics such as tax law, free movement of workers/EU citizens, and environmental law. In other subjects, notably asylum and migration (which is almost all EU law and accounts for half of the workload of the administrative courts), they almost systematically refuse to refer cases to the CJEU (1 exception in 10 years).

Malta

Significant developments related to irremovability of judges

None – although rumours have it that the government is considering increasing the optional retirement age of members of the judiciary to 70 years– the Chamber of Advocates has no official information on this alleged ongoing consideration.

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

A bill which has raised controversy and which the Chamber has criticised was presented in 2025.

Significant developments related to accessibility of courts

The Country remains without an act of law regulating the legal profession.
Furthermore the Chamber has made no progress regarding the increase of legal fees which in turn are effecting both the legal process and also successful clients' recovery of legal expenses incurred in obtaining justice.

Significant developments related to resources of the judiciary

No development to our knowledge- resources (human and financial) remain limited and are badly needed, increasing the number of members of the judiciary solves only part of the problem.

Significant developments related to training of justice professionals

Without a law regulating the legal profession there can be no implementation of continuous training, therefore we have a serious lacuna here.

Significant developments related to digitalisation

Although not officially informed, the Chamber is aware that in September of 2024, a call for tender bids was issued for the digitalisation of the court information and filing system. This closed in November, and we have no further information on this at present.

THE NETHERLANDS

Measures taken to follow-up on the recommendations of the European Commission received in the 2024 Report

The Netherlands has been recommended in the 2024 Rule of Law report 'to ensure an adequate follow-up to the recommendations of the State Commission on the Rule of Law, strengthening the legal protection of citizens. The Netherlands Bar supports the proposals made by the State Commission on the Rule of Law in the recently published advisory report 'The Broken Promise of the Rule of Law – Ten Proposals for Improvement with a Focus on the Citizen'.[6] It states that a separate budget chapter for the justice system, including funded legal aid, should be established. The Netherlands Bar repeatedly points out the need for structural improvement, because a structural solution prevents ad-hoc funding and ensures that necessary maintenance of the rule of law can take place more effectively without the need for continuous political discussions.

A separate budget chapter for the justice system was also the essence of the adopted motion Sneller II in October 2023, which urges the government to improve the financing system. According to the Netherlands Bar, it is important that the fees for legal aid lawyers remain up-to-date and adapt to the constantly changing tasks. This prevents the need to negotiate emergency investments every year.

Cases/examples undermining confidentiality of lawyer-client communications

On 6 March 2024, a plenary debate took place in the House of Representatives on the proposed legislation aimed at amending the Penitentiary Principles Act.

In this proposed legislation, the Minister of Justice proposed visual supervision during the visit of a lawyer to the Vught Penal Institution and to all small-scale units with Intensive Supervision. In addition, the proposed legislation also introduced a maximum of two lawyers for this group and, in some cases, location-bound phone calls for the lawyer.

[6] The broken promise of the rule of law | Rapport | Staatscommissie rechtsstaat
The Commission put forward the following recommendations:
Show leadership on the rule of law and actively promote it. Strengthen the rule of law culture also with an office for the rule of law and an create an independent budget section for the rule of law; reinforce the rule of law compass within all parts of Government; give executive agencies the opportunity to show a red card; improve contact with citizens through understandable communication and adequate information; abolish the prohibition to review legislation against the Constitution; give long-term political priority to simplifying social welfare schemes; establish a legal basis for data sharing among government organisations to enable proactive government action in the citizen's interest; invest significantly in strengthening legal protection; organise administrative decision-making and the appeals procedure in such a way that citizens feel that they are heard and seen; ensure a review against legal principles by administrative courts. An official reaction of the new Government is awaited.

During the consultation phase, the Netherlands Bar emphasised towards the Minister and later also towards the House of Representatives, that this proposed legislation constitutes an infringement on the free and confidential communication between detainees and their lawyer. It is also relevant that the conversations are recorded and can be stored, inspected and requisitioned by the Public Prosecution Service. The Netherlands Bar has also provided advice on this further elaboration of the proposed legislation (November 2023). Whether those materials are allowed to be stored, inspected and requisitioned, should at least be examined on an individual basis, with accompanying legal guarantees, rather than generically applying to a (ever-increasing) group, according to the Netherlands Bar. This is not specifically regulated in the proposal. The Netherlands Bar believes that the elaboration of the proposal is therefore even more serious than it turns out from the proposal itself. Several amendments have been submitted by the House of Representatives, including an amendment (from the political parties) Democrats 66 and the Green Left-Labour Party aimed at including such an individual assessment in the proposed legislation. On 12 March 2024 a vote was taken on all amendments and motions; the individual assessment was rejected and amendments that also allow for auditory supervision were adopted.

On 24 April 2024 the Advisory Division of the Council of State confirmed in an urgent advisory opinion that the amended bill to amend the Penitentiary Principles Act is incompatible with the Constitution, the European Convention on Human Rights (ECHR), and Union law. This aligns with the position that the Netherlands Bar expressed in a letter to the Permanent Committee on Justice and Security in March 2024. In that letter, the Netherlands Bar stated that the bill, as it stands, is legally untenable.

On 24 May 2024 the Minister for Legal Protection responded to the urgent advisory opinion of the Council of State following two amendments that were submitted during the consideration of the Penitentiary Principles Act. The Netherlands Bar appreciated that the Minister for Legal Protection is following the advice of the Advisory Division of the Council of State and intends to introduce an amendment bill to reverse both amendments. The Netherlands Bar supports the Minister's call to the House of Representatives to postpone the final vote on the bill until the amendment bill has been discussed by the House of Representatives.

In his letter, the Minister emphasised the importance of customisation. The Netherlands Bar endorses this importance and advised the Minister to include an individual assessment in his amendment bill regarding the proposed measures affecting the legal profession. This concerns the visual monitoring of conversations between lawyer and client and the maximum number of two legal aid providers. The Netherlands Bar had previously urged this when the initial bill was submitted. The circumstances at that time offered the Minister a new opportunity to provide tailored solutions. The Advisory Division of the Council of State also reiterated that there is no room for generic measures that restrict the right to confidential communication.

On 12 March 2024, the Dutch Supreme Court ruled in the preliminary case on legal professional privilege, in which (among others) the Netherlands Bar had submitted written comments. The Supreme Court considers in its ruling that the delegated judge may be supported by others (including law enforcement officers) in such a way that legal professional privilege is not compromised in the context of an investigation that concerns privileged information. According to the Supreme Court, further regulations are necessary for this. The Supreme Court does not provide further substantive information on the practical and organisational aspects related to this. The Supreme Court does pay attention in the ruling to the individual responsibility of the person entitled to legal professional privilege and to the question of whether appropriate measures have been taken to organise their information management in such a way that the risk of infringements on legal professional privilege is kept as minimal as possible (especially with regard to the choice of communication means). The Netherlands Bar has been holding talks with, among

others, the Public Prosecution Service and the judiciary for some time on safeguarding legal professional privilege. These discussions will continue with this ruling in mind.

In 2024 the Netherlands Bar and the Dutch Public Prosecution Service have held talks to better safeguard the legal professional privilege with an email recognition system. On the one hand, law enforcement agencies must be enabled to conduct thorough investigations, while on the other hand, the communication between lawyer and client must remain confidential. This joint mandate is also highlighted in a study conducted by Leiden University on behalf of the Netherlands Bar regarding the use of extra secure and/or identity-obscuring communication tools by lawyers. An important recommendation from the report is that legal chain partners, in collaboration with the legislator, should consider more effective safeguards for legal professional privilege in communication through means other than phone contact via the confidentiality phone. Communication between client and lawyer, such as email correspondence, must remain confidential. A system that can pre-recognise and filter email correspondence between lawyer and client is seen by both the Public Prosecution Service and the legal profession as a desirable (first) step to better safeguard confidentiality. Such a system does not yet exist. Therefore, the Netherlands Bar will conduct further research into the technical and legal consequences and the practical implementation of such a system. In this context, discussions are also being held with other parties from the criminal justice chain, such as law enforcement, the Public Prosecution Service, and the judiciary.

Leiden University, during its research, also examined the use of other extra-secure and/or identity-obscuring communication tools by lawyers, such as chat apps and encrypted phones. The nature and extent of the use of such tools by lawyers, their motivations, and the potential risks for lawyers have been mapped out. The primary reason for lawyers to use extra-secure communication tools is to maintain the confidentiality of lawyer-client communication. According to the researchers, this is largely linked to the distrust lawyers have in the adherence to the rules surrounding legal professional privilege by the (criminal law) authorities. Therefore, one of the recommendations to the Netherlands Bar and the Public Prosecution Service is to actively work on countering and reducing the current polarisation and distrust surrounding the debate on safeguarding confidentiality.

The preference or wish of the client is also an important factor for many lawyers in the choice of a specific communication tool. As the research shows, lawyers can often meet these wishes, provided the client's wish can be reconciled with their own views and obligations.

However, the researchers identify risks associated with the use of extra-secure communication tools, which may relate to core values such as independence and integrity. The risks are not determined by the tool itself, but by how the lawyer handles it. Additionally, the researchers signal that the use of extra-secure communication tools can introduce risks for confidentiality, despite this being the main reason for their use. Law enforcement agencies and the Public Prosecution Service may not be able to (directly) recognise the communication between lawyer and client when such tools are used, and therefore may (unintentionally) gain knowledge of it.

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

The Netherlands Bar commissioned a survey in 2022 on aggression, threats and harassment among lawyers in the Netherlands. The insights obtained were confronting: 50% of all lawyers (more than 18.000) faced aggression, threatening behaviour or harassment at least once in the past year. Four in ten experienced multiple incidents. 37% rated the incident they experienced as serious or very serious. This

survey[7] was repeated early in 2024 to see the developments. New research showed that more and more lawyers are confronted with aggression, threats and/or intimidation while practicing their profession. In 2024, the percentage of lawyers who participated in the study and experienced aggression, threats and/or intimidation increased to 55%. For 43.6% of the lawyers, there were even multiple incidents in the year prior to the survey.

The most common forms of aggression are verbal aggression (46%), intimidation (38%), and threats (24%). In 4% of cases, there was also physical aggression. 47% considered the incident to be serious to very serious, compared to 37% in 2022.

Female lawyers encountered more aggression than male lawyers. 26% of women considered the most recent incident to be discriminatory, compared to 4% of men. This primarily involved discrimination based on gender.

The likelihood of experiencing an incident is highest for lawyers working in areas such as tenancy law, family law, general practice, criminal law, and immigration law. In 53% of incidents, the aggression comes from the lawyer's own (former or current) client. In 33% of incidents, the aggression comes from the opposing party. The impact of these incidents is significant: 67% of participating lawyers reported negative effects following an incident, such as decreased job satisfaction, changes in behaviour at work, and impact on mental health. A quarter is even considering quitting their legal careers.

Together with the Ministry of Justice and Security and the National Coordinator for Counterterrorism and Security (NCTV), the Netherlands Bar is working to enhance the safety and resilience of the legal profession. The Netherlands Bar already offers various initiatives to strengthen the resilience of lawyers: resilience training, the confidant for lawyers, the Netherlands Bar-emergency hotline, the emergency button, LawCare, and the office security scan. Since December 2023, all these initiatives have been brought to the attention of the legal profession through a campaign. According to the Ipsos I&O study on aggression, threats, and intimidation among lawyers, awareness of these resources has increased. 70% of lawyers are now familiar with the resilience training offered by the Netherlands Bar, compared to 47% two years ago. 46% is aware of the emergency hotline, up from just 18% in 2022. The confidant for lawyers, launched in December 2023, is already known to nearly half of the lawyers.

Lawyers who have real estate registered in their name in the Land Registry and are facing a concrete or expected (threat) can have their personal data shielded. The Land Registry and the Netherlands Bar signed an agreement on this matter on 6 May 2024. This makes lawyers who are professionally threatened less easy to locate, which prevents 'doxing' and contributes to their safety. Only government authorities, notaries, and bailiffs will still be able to view this information, insofar as it is necessary for them to carry out their legal duties. To this end, the Land Registry Decree will be amended retroactively.[8]

New in 2024 was the inquiry into digital crime. Digital crime also plays a role in the legal profession: 69% of lawyers encountered phishing, 25% dealt with malware, 7% with ransomware, and 5% with a DDoS attack. The role of the law firm itself was also examined. 58% of lawyers believe their firm responds adequately to threats, intimidation, and aggression. However, training and information provided by the

[7] Aantal advocaten dat te maken krijgt met agressie, bedreiging en/of intimidatie toegenomen | Nederlandse orde van advocaten
[8] The entry into force of the amendment to the Land Registry Decree is now scheduled for mid-2025.

firm could be improved. 23% finds this insufficient, while 38% is neutral. According to 37%, enough attention has been given to this issue. The Netherlands Bar is investigating whether law firms require support in this area.

The research is repeated every two years to monitor developments. This allows the Netherlands Bar to have up-to-date data, which can be used to take measures and undertake activities.

Specific legal provisions and policies in your country which could influence the independence of the Bar and lawyers

The legislative proposal to establish a single national supervisor (OTA[9]) was discussed in the Dutch Parliament in April 2024. The original proposal for the OTA already included the submission of ex officio complaints by the supervisor[10], and the receipt of all complaints with a selection process, after which complaints would be referred to the local Bars for handling. The complaints would then be handled by the 11 local Bar presidents, as is currently the case.

However, in June 2024, the parliament passed a motion indicating its wish to fully transfer the responsibility of handling complaints about lawyers to the OTA. As a result, the legislative proposal is facing significant delays, as it deviates from the proposal in which only supervision would be transferred to the OTA, while complaint handling would remain with the local Bar presidents. The Netherlands Bar is now commissioning a broad scientific study on the (theoretical) foundation of complaint law and supervision, in order to present the perspective of the general council on this matter to the state secretary towards the end of spring of 2025.

Specific examples in relation to the cooperation between your Bar and the executive branch or supervisory authorities

An exploratory study by the Netherlands Bar among legal aid lawyers and first-line referrers[11] shows that there is a shortage of legal aid lawyers in several regions and areas of law in the Netherlands.[12]

In the past five years, 900 legal aid lawyers have stopped practicing, which represents 13% of the total number. 51% of the disbarments involve lawyers between the ages of 20 and 35, and in the coming years, 2,500 legal aid lawyers will retire. Additionally, there has been a significant increase in requests from justice seekers who are unable to find a legal aid lawyer on their own and have to ask the local Bar president to appoint one.

The number of legal aid lawyers has been steadily declining since 2014, while the number of assignments is growing, meaning more work must be done with fewer people. As there is less legal aid available now compared to a few years ago, and the expectation is that the number of legal aid lawyers will decline

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[9] In Dutch: Onafhankelijke Toezichthouder Advocatuur

[10] Currently, the Bar presidents' objections when there is no underlying complaint by a client (in Dutch: dekenbezwaren, see art. 46F Act on Advocates)

[11] I.e. first-line legal aid, such as provided by the Legal Service Counter.

[12] Exploratory study of the shortages in legal aid (2024) The Netherlands Bar | Nederlandse orde van advocaten

rapidly in the coming years, the likelihood of legal problems escalating has increased. Furthermore, the slow handling of cases, the low fees, and the lack of new recruits and training opportunities are putting increasing pressure on the legal aid system. Figures from the Knowledge Centre of the Legal Aid Board confirm these trends.[13]

The low fees have put the viability of legal aid firms at risk, leading to ongoing budget cuts within the social law sector. The failure to adjust the fees accordingly has long-term effects on the sustainability of legal aid services. The lack of adequate compensation for legal aid lawyers continues to exacerbate the problem. Access to justice is the cornerstone of the rule of law, but due to the decline in the number of legal aid lawyers, the low fees, and the lack of new recruits and training opportunities, access to justice for those dependent on funded legal aid has been under significant pressure for more than a decade.

To increase access to justice and thereby boost trust in the rule of law, a significant increase in fees is necessary. The government must take action to address these issues and ensure the sustainability of legal aid services.

Together with various chain partners, the Netherlands Bar is doing everything it can to promote and retain (young) talent. A selection of these initiatives includes:

- Developing the Legal Aid Law Firm of the Future;
- Generating attention for (the importance of) social law in education in various ways;
- A more differentiated and, as a result, more proportional distribution of the annual financial contribution to the Netherlands Bar;
- Advancing the recommendations from the successful Pilot Collaboration in the First Line;
- Promoting collaboration within the entire Bar through the efforts of the Praktizijns Society.[14]

However, it remains clear that many initiatives depend on reasonable compensation for legal aid lawyers. Without the necessary investments and measures to stop the decline of legal aid lawyers, the government is taking a deliberate risk that vulnerable justice seekers will not be able to receive the required legal assistance, thereby no longer guaranteeing access to justice for a large number of people. According to Article 18 of the Dutch Constitution,[15] the government is responsible for maintaining a well-functioning system of funded legal aid. Therefore, the Netherlands Bar is urging the Secretary of State for Legal Protection to take immediate action in providing perspective to legal aid lawyers, both in the short and long term, as well as establishing a robust and future-proof system to prepare a new generation for the profession.[16] The first step is to reserve funds to implement the expected recommendations from the Van der Meer II Committee. Furthermore, it is important to ensure that the periodic reassessment of compensation for the funded legal aid system is made possible to prevent new large-scale investigations. In this regard, it is crucial that the national budget continuously takes adjustments into account. The Netherlands Bar advocates for a (more) apolitical budgetary policy, a matter that the former Minister for Legal Protection initiated a study on, but has yet to propose specific steps for implementation.

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[13] Cijfers en trends - raadvoorrechtsbijstand.org
[14] Kennismaken met de Praktizijns sociëteit - rvr.org
[15] Artikel 18: Rechtsbijstand - Nederlandse Grondwet
[16] Tekort aan sociaal advocaten dreigt, NOvA dringt aan op structurele verbetering | Nederlandse orde van advocaten

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

In 2024 the Netherlands Bar examined the clarity of regulations regarding different roles of lawyers.
A lawyer can perform work in a capacity other than that of a lawyer, such as that of a trustee, mediator, or corporate investigator, compliance or forensic investigator. A lawyer is expected to be clear about the role he is acting in. However, in practice, this is not always entirely clear, as evidenced by disciplinary case law. In the interest of role clarity and legal professional privilege, the Netherlands Bar therefore amended the explanatory note to code of conduct rule 9. This revised explanation came into effect on 1 January 2025.
The lawyer must ensure, both to his client and to third parties, that there is no misunderstanding regarding the capacity in which he is acting. This requires an active approach from the lawyer. The capacity in which the lawyer is acting can be clarified, for example, in a letter of agreement.

The same applies to the lawyer's role as a corporate investigator, compliance or forensic investigator. The revised explanation includes a specific section dedicated to this investigative role performed by lawyers. For this purpose, the Netherlands Bar developed a model to inform third parties about the (meaning of the) role of the lawyer. Lawyers can use this model in their practice. Discussions have been held within the profession regarding the development of this model.

Significant developments related to digitalisation

In 2024 the Council for the Judiciary digitised several case flows, and as of 1 January 2025, lawyers will also be required to litigate digitally. In addition to the web portal 'Mijn Rechtspraak', the Council for the Judiciary has developed a system integration for lawyers. This integration makes it easier to litigate digitally, as all relevant documents are directly available in the lawyers' own work environment. However, there are costs associated with this for lawyers. This integration will be made available mid-2025.

Online hearings
Over the past year, the Judiciary developed a framework and rules for online hearings. This framework outlines principles and factors that may be relevant when deciding whether to hold a hearing online. Furthermore, the Judiciary took several steps towards creating a platform for conducting online hearings, including issuing a tender for this platform. This tender resulted in an award, which means the platform can be introduced in 2025. Legislation for this must come from the Ministry of Justice and Security. It is hoped that this legislation will be enacted in 2025.

Council of State
Over the past year, the Council of State has been working on the transition to a completely new case management system. Part of this is the replacement of the old lawyers' portal – where the parties involved in a case could view the case file, exchange documents, and communicate with the Administrative Law Division – with a new portal for lawyers. For now, this will apply to immigration cases. This will take place in 2025.

Centraal Justitieel Incassobureau (CJIB)
Since 2024, it has been possible for lawyers to request an overview of their clients' outstanding cases digitally at the CJIB. Lawyers can also request and download the necessary documents via the 'Information Request for Conversion of Community Service' form in a web portal.

Immigration and Naturalisation Service
The Immigration and Naturalisation Service (IND) will fully transition to digital communication in asylum cases via the Lawyers' Portal starting from the end of November 2024. This marks a significant improvement in the speed and efficiency of information exchange. All case documents will henceforth be made available directly through the Lawyers' Portal. Written mail and fax communication will no longer be used in asylum cases. The Lawyers' Portal will serve as the central platform for viewing and uploading case documents and tracking the status of an application.

Significant developments related to efficiency of justice system

The integration of AI into the daily practice of a lawyer is inevitable. Lawyers can already use generative AI for tasks such as drafting documents, analysing files, searching and analysing case law, converting speech to text, and providing administrative support. This offers opportunities to increase efficiency within law firms, allowing lawyers to focus on more complex tasks. Despite the rapid development of AI, the Netherlands Bar believes that the lawyer will remain indispensable in the legal system. The unique human qualities and core values of the legal profession form an irreplaceable foundation of the legal profession. While AI can excel and assist in data processing and pattern recognition, the lawyer remains essential for the nuance, empathy, and ethical judgment that are crucial in legal practice. The core values of the legal profession – independence, impartiality, competence, integrity, and confidentiality – are fundamentally timeless and technology-neutral. However, the Netherlands Bar thinks it is important to examine how the use of AI relates to these core values. AI has been part of the Digital Skills component since the start in 2021 of the new curriculum of the vocational training for lawyers. In 2024, Beroepsopleiding Advocaten[17] introduced guidelines for the use of AI in completing assignments.

Within its statutory tasks, the Netherlands Bar now plays an advisory role towards the legal profession, with attention to the quality and ethical standards that define the legal profession. The digitalisation & AI project group supports the general council in this regard.

Other issues and significant developments impacting access to justice

The Netherlands Bar commissioned an external committee to independently draft a report on the rule of law quality of the Dutch government programme in 2024.[18] The committee gave nine parts of the government programme a 'red' rating, deeming them in conflict with the principles of the rule of law.

Additionally, twenty-eight proposals received a 'yellow' rating, indicating a risk to the rule of law, and six proposals were given a 'green' rating, suggesting they could strengthen the rule of law.
The government programme reflects an administration that categorically wants to deny certain people effective access to justice and a fair trial. There is even foreseeable abuse of power in the proposed use of emergency state law in asylum and migration matters. This undermines the foundations of the rule of law. Despite all the fine declarations, the government cannot pretend to be a full-fledged rule of law state.

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[17] The implementing organisation of the vocational training for lawyers, Over de BA - Beroepsopleiding Advocaten
[18] Negen onderdelen van het regeerprogramma in strijd met de beginselen van rechtsstatelijkheid | Nederlandse orde van advocaten

The assessment was conducted through a 'quick scan,' with the committee limiting itself to a basic legal review using three main criteria: reliable government, fundamental rights, and effective legal protection. Based on this framework, the plans were classified as green for those that could improve the rule of law, yellow for those posing a risk to the rule of law, and red for those conflicting with the principles of the rule of law.

The committee sees nine parts of the government programme as conflicting with the principles of the rule of law. Activating the exception clause of the Aliens Act 2000 is deemed unacceptable from a democratic rule of law perspective. The cabinet does not justify the legitimacy of such emergency state law in any way. The announced 'asylum decision stop' and further reduction of reception facilities are also classified by the committee as conflicting with the rule of law. The government has recognised that such measures cannot be implemented through emergency measures, but must instead be carried out within a democratically safeguarded process, in which both parliament and the Council of State have the opportunity to carefully assess legislation in the field of migration and asylum, while also respecting the fundamental principles of the rule of law and human rights.

The committee also rates the lack of concrete measures to address the decline in legal aid lawyers as red. Adequate access to justice, especially for economically vulnerable individuals, is crucial in a rule of law state. Where action is needed to maintain the rule of law, government inaction leads to its deterioration.

The committee is positive about the plans of the cabinet to introduce ‘the right to make mistakes’, seeing this as a potential strengthening of the rule of law. The proposals to reduce inequality between European and Caribbean Netherlands by offering the same social provisions are also seen as strengthening the legal position of Caribbean Netherlands’ residents.

The committee is cautiously positive about the proposal to lift the prohibition on constitutional review, allowing judges to review laws against classical fundamental rights in the Constitution. This proposal has support, but there are concerns about the lack of further elaboration, especially regarding the introduction of a constitutional court. The committee also rates the independence of the Administrative Jurisdiction Division as green, believing that further separation of the judicial and advisory functions of the Council of State strengthens the rule of law.

Twenty-eight points in the government programme are rated yellow, posing a risk to the rule of law. These include the intention to repeal the Dispersal Act[19] and prohibit priority for status holders in housing, which is expected to increase the existing pressure on asylum reception. The pursuit of an opt-out clause for European asylum and migration policy also affects the principles of supranational cooperation and community loyalty. Proposed plans to limit the access of interest groups to the courts are considered risky for the rule of law, as is any potential restriction of the right to demonstrate.

In addition to the report on the government programme, the Netherlands Bar has concerns about political influence on the judiciary. These concerns are shared by the chairman of the Board of the Judiciary and Dutch scholars. They have stated that politics can exert too much influence on the judiciary and that “malicious ministers have all the levers to pull”. They see circumstances in the Netherlands that previously occurred in Poland and Hungary, which involve anti-institutional sentiment.

[19] In Dutch: Spreidingswet

Furthermore, the Netherlands Bar expresses concerns about the limited space for participation and advice in the making of laws. This is illustrated by the way in which the Minister of Asylum and Migration is trying to accelerate important legislative proposals without sufficient consultation. The Netherlands Bar is alarmed by the way the minister wants to fast-track and implement several important legislative proposals outside the normal legislative process. These proposals have far-reaching consequences for asylum seekers, the asylum chain, and ultimately the rule of law in the Netherlands. Due to the speed, limited legislative consultation, and confidentiality of the proposals, the quality of legislation is seriously compromised. The undermining of the Dutch democratic rule of law is looming.

POLAND

Measures taken to follow-up on the recommendations of the European Commission received in the 2024 Report

As regards the recommendation concerning the continuation of efforts aimed at separating the function of the Minister of Justice from the function of the Prosecutor General and ensuring the functional independence of the prosecution system from the government, the Ministry of Justice has prepared a draft law which separates the function of the Minister of Justice and the Prosecutor General in order to guarantee, on the assumption, a full independence of the prosecution system from political authorities. The draft regulation includes proposals of institutional mechanisms which have the chance to meet the intended purpose and make the prosecution system independent, apolitical and autonomous.

As part of actions aimed at strengthening the existing principles of fairness in public life, including the enforcement of relevant lobbing principles and a uniform online system for declarations of assets to be filed by public officers and MPs, it is necessary to point out that the law of 25 September 2024 on amendments to the law on lobbying in the legislative process has come into force. The new law supplements the existing lobbying regulations with a new legal institution in legislative procedures, i.e. public consultations on draft laws. The new institution in Polish legislation implements one of milestones, i.e. conditions which must be fulfilled to obtain funds from the Recovery and Resilience Plan (NRP) of Poland. However, the uniform system of Polish public officers' declarations of assets is still missing.

As regards the recommendation to ensure independent and effective investigation and prosecution, the establishment of the Codification Commission for Criminal Law by Minister of Justice Adam Bodnar in 2024, which is made of independent experts in the field, deserves a positive response. The Commission establishes real chances for the enforcement of necessary changes aimed at the complete implementation of the recommendation in the near future.

As regards the continuation of efforts aimed at ensuring effective legal frames for the independent management and editorial independence of public media, the government has declared that comprehensive legislative amendments in this field will be made and new legal rules will be developed. As declared, the new rules will be based on the European Media Freedom Act, which came into force as of 7 May 2024.

The National Bar of Attorneys-at-Law has not recorded any significant actions of public authorities aimed at narrowing the scope of immunity for top management staff or actions regarding previously enforced impunity clauses in Polish legislation. It has not recorded any significant actions related to the continuation of processes aimed at improving the legal frameworks of the civil society, either.

Significant developments related to appointment and selection of judges, prosecutors and court presidents

In 2024, the most serious political and government problem related to the independence of the judicial system and independence still consisted in the unsolved constitutional differences in the status of certain people holding judicial office in common courts, administrative courts, the Supreme Court, and the Constitutional Tribunal. Such a situation resulted from actions taken by the previous government, which

were non-compliant with the EU law, European Convention on Human Rights and constitutional standards. Those actions included, in particular, the defective establishment of the National Council of the Judiciary, which then resulted in defective judicial nomination procedures. The nomination of three judges for already occupied positions in the Constitutional Tribunal was also questioned and contributed to the defectiveness of judgments made by the Polish constitutional court in 2024. At present, the majority in the Parliament, which took power over in 2023, made an attempt to repair the situation in 2024 by, among others, adopting corrective laws concerning the National Council of the Judiciary and the Constitutional Tribunal, but those laws have not been signed by the incumbent President. What is important, the legislative process concerning such necessary legislative amendments included wide public consultations, which were actively attended by the National Bar of Attorneys-at-Law, which, as a rule, supported the proposed legislative solutions. The President's objection must be considered as completely unreasonable, because it causes that the situation contrary to constitutional and European standards, including fundamental legal doubts about the status of people nominated for judge's positions by the incorrectly established National Council of the Judiciary, is maintained. In consequence, this questions the stability of court judgments and infringes the subjective right to a fair trial. By analogy, the dysfunctionality of the Constitutional Tribunal also brings about negative consequences, which, in practice, "excludes" this institution from the Polish government system. The National Bar of Attorneys-at-Law finds its absolutely necessary to adapt the National Council of the Judiciary to constitutional standards, which is a condition sine qua non for recovering the lawfulness of judicial nomination procedures. It is also necessary to solve the problem of defective court judgments. The full independence of the Constitutional Tribunal must be recovered. In both cases referred hereinabove, it is necessary to implement relevant judgments of the European tribunals, i.e. CJEU and ECHR.

Significant developments related to irremovability of judges

As a result of the aforementioned institutional shortcomings in the existing National Council of the Judiciary and, in consequence, the defective judicial nomination procedures, in 2024 at Polish courts there were over 3,000 people at judge's positions whose status did not comply with the constitutional and European standards. Some of those persons were also nominated as presidents of courts or vice-presidents of courts' divisions. The present Minister of Justice, Mr Adam Bodnar, took corrective actions in the latter field, which should be viewed in a positive light. The first group of those corrective actions has not been, however, completed because of the President's objection. In effect, it is extremely difficult to resolve this unfavourable institutional problem.

In November 2024, there ended the term of three judges of the Constitutional Tribunal who, based on the President's illegitimate refusal to receive their oath in 2015, did not take, however, their judicial functions. In December 2024, there ended the period in which people who were nominated in 2015 for already occupied positions of judges of the Constitutional Tribunal and acted as judges of the Constitutional Tribunal. The present Parliament has not nominated new judges of the Constitutional Tribunal. At present the Polish constitutional court is made of 12 members, which is against the constitutional standards, which provide for 15 members. In addition, some members of the Constitutional Tribunal occupy the positions of judges of the Constitutional Tribunal based on a non-constitutional nomination. Despite of these irregularities, in December 2024 the President appointed a new president of the Constitutional Tribunal.

In 2024, the State Prosecutor was changed, which is unjustly questioned mainly by the present parliamentary opposition, which, while ruling in the years 2015-2023, caused institutional problems in the structure of the prosecution system. During that period, there were many incidents of an extremely politicised control of the operation of prosecutors, which, in fact, contributed to the loss of their

independence and political neutrality. In the opinion of the National Bar of Attorneys-at-Law, it is necessary to repair the situation in a systematic way and review, in detail, the prosecution system model, including its full independence from political authorities.

Significant developments if any, related to promotion of judges and prosecutors

As a result of the systemic problem concerning the defective National Council of the Judiciary, the judge promotion procedures were still constitutionally defective in 2024. In consequence, similarly to people that were nominated for judges for the first time, people that were promoted to the judge's position at courts of higher instances also took part in the defective procedure. This generates a fundamental problem concerning the legality of rulings made by those people, including, in particular, negative legal consequences of rulings made by people defectively nominated or promoted to the Supreme Court, which applies to the whole Chamber of Supreme Control and Public Affairs, as well as other chambers of the Supreme Court, including the Chamber of Professional Liability. Such a negative system also causes that the position of the First President of the Supreme Court is occupied by a person appointed as a Supreme Court judge in the procedure contrary to the European and constitutional standards. In 2024, no necessary corrective actions were taken in that area, probably owing to the expected objection of the incumbent President, who fundamentally contributed to the aforementioned irregularities.

Significant developments related to allocation of cases in courts

The Regulation of the Minister of Justice of 6 February 2024 amended the Rules for the operation of the common courts by adding an article that stipulates that cases concerning requests for excluding a judge, which are based, among others, on the judge's nomination circumstances, are not allocated to judges who took their position as a result of a judge nomination request presented to the President of the Republic of Poland and the National Council of the Judiciary established under Art. 9a of the Law of 12 May 2011 on the National Council of the Judiciary, and those judges are not taken into account for the purpose of such cases in the existing random allocation of court cases.

This amendment is a positive change as it is a necessary element of counteracting the crisis of judicial authorities in Poland. The change does not constitute a complete remedy for the crisis in the judiciary, but, given the existing political circumstances and related legal capacities, it should be appreciated. The mechanism lets exclude people whose judge status raises constitutional reservations from the related decision-making process, which would obviously violate the nemo *iudex in causa sua* principle.

Significant developments related to independence and powers of the body tasked with safeguarding the independence of the judiciary

The existing National Council of the Judiciary, which also operated in 2024, was established on the basis of the aforementioned law of 2017, which violates, however, the standards of the Polish constitutional standards, in particular by authorising the Parliament, and not representatives of the judicial environment, to nominate judges being members of the National Council of the Judiciary. As a result of that the impartial character of the judge nominations procedures is questioned. The corrective actions taken in 2024 in that area by the present authorities were, however, completely illegitimately, as indicated above, blocked by the incumbent President. In addition, the existing National Council of the Judiciary also takes actions aimed at blocking the necessary institutional changes related to the establishment of the Council, like attempts to question the binding force of judgments made by the CJEU and ECHR. Actions taken by the

present National Council of the Judiciary are completely contrary to its obligations defined in the constitution, and, in particular, do not aim at protecting the independence of courts and judges.

Significant developments related to accountability of judges and prosecutors

The problem related to the disciplinary liability of judges and prosecutors, which existed in Poland in 2024, covers changes made in that area by the previous authorities. There were still incidents where disciplinary prosecutors of common court judges, who were dependent on the previous Minister of Justice, made disciplinary charges. In the past, those disciplinary prosecutors conducted proceedings mainly against judges who objected to the changes made in the judiciary system by the previous government.

The present Minister of Justice, Mr Adam Bodnar, notices the problem. However, given the risk that amendments to relevant laws will not be signed by the incumbent President, he points out that it is necessary to refrain from dismissing the disciplinary prosecutors till the end of their term because the existing law does not set forth any legal opportunity for the dismissal. The Minister of Justice has nominated, however, ad hoc disciplinary prosecutors, who may not institute a disciplinary procedure against a judge on their own, but may investigate whether there are premises for instituting disciplinary procedures or take the judge's disciplinary case. Such ad hoc disciplinary prosecutors take actions aimed at formally ending illegitimately instituted disciplinary procedures, which is absolutely positive.

It is necessary to point out, however, that given the above institutional problems, the disciplinary liability of judges and prosecutors is not certain, which, additionally, strengthens the issues related to the lengthiness of disciplinary proceedings before courts of appeal, as well as serious constitutional reservations concerning the Professional Liability Chamber of the Supreme Court. That Chamber replaced the liquidated Disciplinary Chamber, whose legality was questioned by the ECHR and CJEU, but it was fully established on the basis of the President's decision, which is against the political neutrality requirement. Most of members of the Professional Liability Chamber are people whose judge's status is inconsistent with constitutional and European standards.

Significant developments related to remuneration for judges and prosecutors

In 2024 the remuneration of judges and prosecutors was defined in accordance with the Law on the system of common courts and the Law on the prosecution system, and not on the basis of the budget-related act like since 2021. This means that the remuneration was calculated on the basis of an average pay in the second quarter of the previous year, as published in the Official Journal of the Republic of Poland entitled "Monitor Polski" by the President of the Polish Statistical Office, and on a fixed amount defined in the budget-related law. The change should be viewed in a positive light because it lets adjust the remuneration payable to judges and prosecutors to the increasing amount of an average pay. The irregularities of previous years, in particular the years 2021-2022, in this area should be, however systematically corrected.

Significant developments related to independence of the prosecution service

Apart from the aforementioned government draft regulation concerning the separation of functions of the Prosecutor General and the Minister of Justice, the drafts of other amendments to the law on the prosecution system are also being prepared by the Codification Commission for Judicial and Prosecution Systems, which operated in 2024. The amendments are, in particular, to contribute to the reform of the structure of the prosecution system, including the liquidation of regional prosecutor's offices and the

implementation of a uniform prosecutor's status, as well as to strengthening the independence of the prosecutor's status, developing a professional promotion model, and reducing financial disproportions among prosecutors. The draft law is to be ready in the middle of 2025.

Cases/examples undermining confidentiality of lawyer-client communications

The real chance that the confidentiality of communication between an attorney-at-law or other legal professions and a client may be violated if an attorney-at-law applies for the judge's position forms a special confidentiality problem which was not fully solved in 2024. In that case, the attorney-at-law is obliged, among others, to present, as part of competition documentation, examples of files of cases they handled and legal opinions they prepared, which include information that is subject to the confidentiality rules, and, what is important, the files and opinions are not anonymised. The Polish Ombudsman mentioned that issue in his correspondence to the present Minister of Justice and rightly pointed out that, in consequence, an attorney-at-law is forced to submit, without special legal basis, the information to court presidents, judge inspectors and members of the National Council of the Judiciary, which is an unproportional interference in the right to privacy. In September 2024, the Ministry of Justice decided to initiate legislative work to enable lawyers and attorneys-at-law to submit anonymised copies of their legal opinions. In the opinion of the Minister of Justice, the problem does not refer, however, to the absence of anonymisation in court files, but the National Bar of Attorneys-at-Law does not agree with that and fully supports the Ombudsman's position.

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

In 2024, the National Bar of Attorneys-at-Law analysed the results of the survey of December 2023, which was held by the Council of Bars and Law Societies of Europe (CCBE), **whose purpose was to examine threats and aggression against lawyers. The survey indicates that** 92.8% of attorneys-at-law have never encountered physical violence, and 5.3% of attorneys-at-law have experienced it once. However, over a half of attorneys-at-law encountered verbal aggression, mainly by clients (around 47%) and an opposite party in the trial (around 33%) and the present clients (11.4%). Given the above data, the National Bar of Attorneys-at-Law intends to take additional actions to support individual attorneys-at-law and counteract such phenomena in general. This also applies to counteracting incidents of discrimination in the profession of an attorney-at-law.

Specific legal provisions and policies in your country which could influence the independence of the Bar and lawyers

The main institutional problem that also influences the stability of the profession of an attorney-at-law involves the circumstances related to the establishment of most of Polish judicial authorities contrary to the European and constitutional standards of the judicial independence. The National Bar of Attorneys-at-law, as a self-governing body of a profession of public trust, has taken, takes and will take actions to recovery the constitutional order and the rule of law in Poland, in particular in the context of ensuring a relevant level of the protection of human and citizens' rights and freedoms. The authorities and agenda of the National Bar have also taken permanent comprehensive actions in favour of the independence of the profession, the inviolability of the confidentiality rules, as well as the respect for the autonomy of the National Bar in developing the principles for the profession and professional ethics of an attorney-at-law. For that purpose, it is mainly necessary to eliminate specific discrepancies in regulations concerning the profession of an attorney-at-law and, ultimately, ensure that representatives of the National Bar are more

involved in the development of a new law on attorneys-at-law. In the opinion of the National Bar of Attorneys-at-Law, it is necessary to increase, in general, the involvement of representatives of the National Bar and establish new forms of participation at all stages of the development of normative acts in Poland, in particular the acts concerning the administration of justice and the protection of citizens' rights. As regards specific issues, the National Bar of Attorneys-at-Law calls for expanding the scope of compulsory obligations of attorneys-at-law and lawyers in order to professionalise the protection of subjective rights, as well as for taking and supporting legislative initiatives concerning the comprehensive regulation of legal ex officio aid and royalty-free legal aid, including in particular the rationalisation of principles applicable to such aid, and making the remuneration and the reimbursement of expenses more realistic.

Specific examples in relation to the cooperation between your Bar and the executive branch or supervisory authorities

In 2024 in that field, the situation related to widely understood consultation with the National Bar of Attorneys-at-law on necessary legal changes initiated by the government, including, in particular the present Ministry of Justice, as well as to parliamentary procedures, has improved. The National Bar is open to the dialogue with public authorities on necessary corrective actions in Poland, but expects, in particular, that its position will be taken into consideration in the work on the new law on attorneys-at-law.

Problems and difficulties implementing the case law of national, European, and international courts

In 2024 the judgments of the CJEU and ECHR, including in particular, institutional defects related to the present National Council of the Judiciary and a part of the Supreme Court and the Constitutional Tribunal, were not fully implemented, which constitutes a special institutional problem. In 2024 the defectively established National Council of the Judiciary took actions to question the binding force of judgments made by the CJEU and ECHR, which paradoxically is to be "resolved" by the defectively established Constitutional Tribunal. This is an example of actions that are absolutely forbidden, given the constitutional principle of respect to international obligations, and deepen the existing constitutional crisis in Poland.

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

In 2024 in the Polish public space there were two basic clashing positions on the existing institutional situation. One of them supported the idea that the constitutional crisis in Poland was caused by the party that governed in the years 2015-2023 and the present government take possible corrective actions in this area. The other position assumes that the present government initiated the crisis upon taking over the power in December 2023. What is important, the latter is pushed through by the parliamentary opposition, i.e. the party that ruled in the years 2015-2023.

The National Bar of Attorneys-at-law has decidedly and consistently supported the former, both now and in the years 2015-2023. As part of necessary corrective actions, in 2024 representatives of the National Bar of Attorneys-at-law took part, in particular, in public consultations on drafts of relevant legal acts, public hearings during parliamentary procedures, and took information actions mainly by publishing legal opinions and positions on the National Bar's websites. The National Bar of Attorneys-at-law intends to continue those actions in the following years, as well.

Significant developments related to accessibility of courts

By the law of 24 July 2024 on amendments to the law on pursuing claims in group proceedings and to some other laws, which implemented the Directive of the European Parliament and of the Council (EU) 2020/1828 of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC (OJ EU L409 of 4 December 2020 p. 1, as amended) in the Polish legal system, the protection of the collective interests of consumers was strengthened in Poland. The law enforces a model for actions instituted against entrepreneurs before common courts (regional courts) under domestic group proceedings or cross-border group proceedings to confirm the application of practices violating the collective interests of consumers or to pursue claims related to those practices.

Significant developments related to resources of the judiciary

In the budget law being in force in 2024, the amount allocated to the Minister of Justice was PLN 9,718,900,000, and expenses in the "justice" item of the budget amounted PLN 6,035,801,000. The budget of the Ministry of Justice planned in 2024 for 2025 provides for PLN 27 billion, including around 17 billion for common courts, excluding administrative courts. Key planned expenses include digitalisation and an increase in the number of FTEs for judge assistants. Given the aforementioned institutional problems concerning the bodies of the judiciary, during the parliamentary work on the 2025 budget law, it was anticipated that people whose judge status in the Constitutional Tribunal, the Supreme Court and the National Council of the Judiciary is contrary to the Polish Basic Law will not receive any remuneration. In addition, the 2025 budget law is to include relevant amounts for rises for administrative personnel of courts and prosecutor's offices.

Significant developments related to training of justice professionals

In 2024 training courses for candidates for judges (judge training period) and candidates for prosecutors (prosecutor training period) were conducted by the National School of Judiciary and Public Prosecution, which was established on the basis of the law of 23 January 2009 on the National School of Judiciary and Public Prosecution. The School also provides various courses and service training for judges, trainee judges, prosecutors and trainee prosecutors in order to improve their specialised knowledge and professional skills; various courses and service training for court clerks, judge assistants, prosecutor assistants, professional probation officer, and clerks of courts and prosecutor's offices to improve their professional qualifications. In 2024, the post of the Headmaster of the National School of Judiciary and Public Prosecution was taken up by Professor Piotr Girdwoyń, who hitherto practised as an advocate.

At the National Bar of Attorneys-at-law, to fulfil their professional improvement obligation, attorneys-at-law take part, in particular, in training courses held by national and regional bodies of the National Bar, including e-training. On 1 January 2024, the 6th Training Cycle commenced. It will end on 31 December 2026.

Significant developments related to digitalisation

In 2024, in Poland there were the following digital systems in place: Court Registers Portal, Electronic Proceedings by Writ of Payment, Electronic Mortgage and Land Registers, and the Court Information Portal where court registers services are made available to citizens and their attorneys-in-fact. The communication of the Minister of Digitalisation of 12 July 2024 amending the communication on the

deadline for implementing technical measures necessary to deliver correspondence by use of public registered electronic delivery service or public hybrid service and on the provision of a point of access to registered electronic delivery services in the cross-border system in the ICT system provides for 1 January 2025 as the effective date of the obligation to deliver official letters to attorneys-at-law via the e-service system. As a rule, the obligation will, however, not apply to correspondence between attorneys-at-law and courts (the Court Information Portal will be used) and solely to correspondence with public administration offices.

Significant developments related to geographical distribution and number of courts/jurisdictions

In Poland, there are 11 courts of appeal (the number did not change compared to 2023), 47 regional courts (the number did not change compared to 2023), 319 district courts (1 new district court was established). There are no separate courts to review fraud and corruption cases.

Significant developments related to efficiency of justice system

Given the data presented on 1 October 2024 by the Supreme Audit Chamber Office, an average duration of proceedings for selected categories of validly concluded cases at the first instance courts increased in general in the years 2013-2023 by around two months: from 4.1 month in 2013 to 5.9 months in 2023 (growth by 44%). In particular, the situation related to the cases which were important from the point of view of the protection of citizens' rights and were heard before the first instance (district) courts was even worse: an average duration of civil proceedings increased from 9.2 to 16.5 months (i.e. by 79%) and commercial proceedings from 11 to 17.7 months (i.e. by 61%). The duration of court proceedings was not significantly extended solely in criminal cases.

In November 2024, Minister of Justice Adam Bodnar presented "10 pillars" of the Ministry's programme entitled "Efficient courts", which is to constitute a remedy for the above situation. The programme provides for: (1) court digitalisation, which will gradually include regular paper files scanning, as well as access to digital documents; (2) one judge assistant per two judges; (3) inspecting judges being able to take on adjudication responsibilities; (4) widening opportunities for filing complaints about court delays in the case of, among others, proceedings concerning a conditional early release from imprisonment, disciplinary cases of judges and prosecutors, lifting of the immunity of a judge or a prosecutor; (5) improving the quality of mediation by professionalising court mediators and implementing a national register of court mediators; as well as implementing obligatory mediation in certain categories of cases; (6) implementing the digtalisation of court experts and a central register of court experts; (7) addressing backlogs in proceedings in Swiss franc cases by supporting the judges with new assistant FTEs, as well as enforcing regulations based on which evidence requirements could be reduced and opportunities for settlements in those cases could be expanded; (8) expanding the functionality of the court information portal by enabling a function for the submission of pleadings in civil and criminal proceedings via that portal; (9) holding management training for presidents of courts to strengthen effective work organisation at courts; (10) enforcing regulations on family law which will accelerate proceeding concerning, among others, (i) supervision over the performance of obligations and the exercise of rights resulting from parental responsibility, (ii) taking a child away or giving a child to an authorised person, (iii) the participation of a court-appointed guardian in contacts with a child, (iv) custody, and (v) supervision over care, guardianship and representation. The programme is to be implemented in the years 2025-2026.

Other issues and significant developments impacting access to justice

In the opinion of the National Bar, the aforementioned institutional defectiveness of the Polish judiciary was in 2024 the main issue that would result in the further violation of constitutional and international rules concerning full and fair protection of subjective rights in Poland. At the same time, it is necessary to call for relevant and urgent changes in this area.

PORTUGAL

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

The Ordem dos Advogados (OA) has a critical responsibility to defend lawyers who face harassment from various parties, including clients, courts, judges, investigators, and opposing parties. To fulfil this duty, the General Council employs a team of in-house lawyers who support Bar members in legal proceedings and provide representation in cases involving allegations against legal professionals. Notably, some criminal cases are directed against the OA itself.

Currently, a dedicated team of three in-house lawyers is managing over 30 criminal cases. These cases encompass a range of serious allegations, including arson, hijacking, attempted murder, slander, defamation, physical assault, forgery, offenses against legal entities, violence-related harm, usurpation of functions (illegal representation), and intimidation.

The in-house lawyers actively represent Bar members in court, and in certain instances, they assist the State Attorney Officer in prosecuting cases.

Additionally, there have been reports of limitations regarding the practice of lawyers in specific locations, including the Border Service (AIMA), various Registry Office (IRN) locations, and the Tax Authority (AT) offices. These challenges underscore the complexities faced by legal professionals in their efforts to uphold the standards of the profession while navigating an increasingly challenging legal landscape.

Specific legal provisions and policies in your country which could influence the independence of the Bar and lawyers

On 19 January 2024, the enactment of Law 10/2024 concerning the Legal Acts Regime and Law 6/2024 pertaining to the Statute of the Bar Association marked a significant shift in the regulatory framework governing the legal profession. These amendments came into force on 1 April 2024, and have since prompted ongoing negotiations regarding the Bar Association's demands for enhanced self-regulation.

One of the most notable changes is the reduction of the mandatory training period for new lawyers from 18 months to 12 months, coupled with the elimination of any examination requirement upon completion. Additionally, the training has been made compulsory and remunerated, imposing a financial obligation of approximately €900 per trainee on each mentor. This alteration has created a barrier to entry for many aspiring legal professionals, resulting in a noticeable decline in the number of young applicants entering the field.

Moreover, the establishment of the Supervisory Council within the governance structure of the public association introduces non-lawyer members into oversight roles. This development raises questions about the implications for professional standards and the autonomy of the legal profession.

These changes collectively present significant challenges for the legal community, necessitating a critical examination of their impact on the future landscape of legal practice and professional development.

In 2023 and 2024, there has been notable unity and public support across various legal organisations against the recent law amendments proposed by the Conseil National des Barreaux (France), the Ordre

des Avocats de Paris (France), the Warsaw Bar Association (Poland), the La Plata Bar Association (Argentina), the Fédération des Barreaux d'Europe, the Council of Bars and Law Societies of Europe (CCBE), and the Unión Iberoamericana de Colegios y Agrupaciones de Abogados (UIBA). This collective response highlights significant concerns regarding the implications of these amendments on the legal profession.

In light of the new professional legislation that revises the Law on Professional Public Associations, the Ordem dos Advogados is preparing for elections for all governing bodies, scheduled for 18-19 March 2025. These elections will be conducted electronically, reflecting a modern approach to governance and participation in the legal community.

As the legal profession navigates these changes, the collective efforts of legal associations underscore the importance of safeguarding the integrity and independence of the profession while ensuring that the voices of legal practitioners are heard and represented.

Specific examples in relation to the cooperation between your Bar and the executive branch or supervisory authorities

In 2024, significant challenges have emerged concerning the cooperation between the Bar and the executive branch of the government, as well as supervisory authorities. One notable issue revolves around political pressure and interference that affects the role of the Bar and the independence of lawyers in our country.

A pressing concern for the Bar has been the need to update the low fees established for "Advogados," which are based on a remuneration table created over 20 years ago and annexed to Law 34/2004 governing access to courts and the legal aid system exclusively managed by the Ordem dos Advogados. Despite the Bar's efforts to advocate for fair compensation, the Ministry of Justice (MJ) has resisted these changes.

In a controversial move, the MJ issued a regulatory ordinance (Portaria 235A/2024, dated 26 September 2024) that undermines the provisions of Law 34/2004. This ordinance permits courts, prosecution services, and police authorities to appoint any lawyer of their choosing in cases where the legal aid system of the Ordem dos Advogados cannot provide representation. This regulatory shift not only threatens the autonomy of the Bar but also raises concerns about the quality and consistency of legal representation afforded to individuals.

In response to these pressures, the Bar has actively sought to resist and counteract such interference by advocating for the integrity of the legal aid system and the rights of lawyers. Efforts include public awareness campaigns, consultations with legal experts, and discussions with stakeholders to emphasise the importance of maintaining a fair and independent legal framework.

These developments highlight the ongoing challenges faced by the Bar in safeguarding the independence of the legal profession and ensuring that legal practitioners can operate free from undue political influence.

Problems and difficulties implementing the case law of national, European, and international courts

The Ordem dos Advogados (OA) considers the amendments to the Statute and Legal Acts Regime to be a clear violation of Directive (EU) 2018/958, issued on 28 June 2018, regarding regulated professions. The violation is due to the failure to adopt a proportionality test in the amendments to the regulated professions statutes, governing bylaws. No development within the national parliament (competent body) and laws entered into force as of 1 April.

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

Ordem dos Advogados (OA) has shown its commitment to improving the social rights of lawyers, specifically of female lawyers – no developments in this urgent case.
Furthermore, ongoing negotiations focused on providential rights for lawyers.
An Assessment Committee was created by the government to evaluate and report any eventual changes to the current regime, which is managed by the Caixa de Previdência dos Advogados e Solicitadores (Private Pension System for Lawyers and Solicitors).

Significant developments related to accessibility of courts

The Ordem dos Advogados (OA) considers the amendments to the Statute and Legal Acts Regime to be a clear violation of Directive (EU) 2018/958, issued on 28 June 2018, regarding regulated professions. This violation stems from the failure to adopt a proportionality test in the amendments to the statutes and governing bylaws of regulated professions. As of 1 April, there has been no progress within the national parliament, the competent body for such matters, and the laws have entered into force.

Significant developments related to resources of the judiciary

The Ordem dos Advogados (OA) has demonstrated its commitment to enhancing the social rights of lawyers, with a particular focus on female lawyers; however, there have been no developments in this urgent matter. Additionally, ongoing negotiations are centred on improving the pension rights for lawyers.

To facilitate these efforts, the government has established an Assessment Committee tasked with evaluating and reporting on potential changes to the existing regime, which is managed by the Caixa de Previdência dos Advogados e Solicitadores (Private Pension System for Lawyers and Solicitors).

Significant developments related to training of justice professionals

The Ordem dos Advogados (OA) continues to negotiate updates to legal aid fees and has received a proposal from the Ministry of Justice (MJ) for comment. However, it is important to note that the OA is not included in the working group responsible for updating the legal aid system, which encompasses the fees for lawyers who are registered in the system.

Significant developments related to digitalisation

New developments in IT within the Ordem dos Advogados include a possible platform access for members use of AI (still under study) and there were some positive steps in E-courts for the legal practice such as criminal procedural cases available on CITIUS (only the investigation phase) and recorded court auditions available on CITIUS as well.
In 2024, significant developments regarding the resources of the judiciary—both human and material—have been observed, although challenges persist. Court facilities continue to be in a state of disrepair, with reports of water infiltrations and broken ceilings in locations such as Sintra and Coimbra. These inadequate conditions hinder the effective functioning of the judicial system.

Moreover, issues extend to the prison system, where facilities like the one in Ponta Delgada are facing serious challenges. Here, four female inmates are subjected to over 22 hours a day in closed confinement, highlighting the urgent need for reform and improved conditions.

Despite these pressing issues, efforts are underway by both the government and judiciary to address these challenges. Initiatives aimed at upgrading court infrastructure and enhancing the working conditions for judicial staff are critical to ensuring the effective delivery of justice and upholding the rights of all individuals involved in the judicial process.

Significant developments related to use of assessment tools and standards

The amendments previously mentioned, effective on 1 April, introduced a new training programme that eliminates the examination requirement and reduces the duration to just one year. This change, coupled with the compulsory remuneration of trainees at a minimum salary of approximately 900 euros, has effectively ended sole practice mentoring, limiting opportunities for new entrants to the profession primarily to large law firms.

While the mandatory remuneration for trainees can be viewed as a positive development, the Ordem dos Advogados has been actively negotiating with public funding authorities (IEFP) to explore potential solutions for training allowances. These discussions aim to enhance training opportunities and support for aspiring legal professionals.

Recent developments in information technology within the Ordem dos Advogados include the exploration of a potential platform to provide members with access to artificial intelligence tools, which is still under study. Additionally, there have been positive advancements in electronic courts (E-courts) that enhance legal practice. Notably, criminal procedural cases are now accessible on the CITIUS platform, albeit limited to the investigation phase. Furthermore, recorded court hearings are also available on CITIUS, contributing to greater transparency and efficiency in the legal process.

ROMANIA

Cases/examples undermining confidentiality of lawyer-client communications

A significant example is the legislative proposal B662/2024 on the amendment of Law No. 129/2019 on combating money laundering, which eliminates the protection of professional secrecy of lawyers. The National Union of Romanian Bars (UNBR) warns that such a legislative measure represents a direct attack on the fundamental right to defence, by undermining essential principles in a State of Law, as well as the confidentiality of lawyer-client relations and the guarantees of the independence of the lawyer. Thus, citizens will lose the guarantee of communication with their lawyers and expose themselves to the risk that information will be used against their rights. In this sense, the UNBR has requested the Parliament to reject the legislative proposal, maintaining the protection of professional secrecy and respecting Romania's international commitments.

Significant developments related to training of justice professionals

In terms of professional training in European Union law, within the framework of the Council of Bars and Law Societies of Europe (CCBE), the UNBR, together with other professional authorities at national level, is making efforts to find a mechanism that will allow Bars to benefit from a certain European support.

SLOVAKIA

Significant developments related to irremovability of judges

The new court map raised issues related to transfer of judges.

Significant developments related to allocation of cases in courts

The reform of the court map in Slovakia resulted in greater court delays, lower competence, organisational and technical complications, reduction in the quality of decision-making, increased burden on judges. The effectiveness of the justice system was reduced by interference into allocation of cases to judges. Often long-term specialised judges decide cases from other areas of expertise due to the moving of the court building and different structure of courts.

Cases/examples undermining confidentiality of lawyer-client communications

Since the adoption of an amendment to the Criminal Procedure Code related to the searches of law offices, we have not been informed of any issues in this respect.

The Slovak Bar Association received a complaint from its member that allegedly all phone calls of convicted persons, including phone calls with their lawyers, are being recorded. The aforementioned monitoring and recording are carried out on the basis of Act No. 475/2005 Coll. on the execution of the sentence of imprisonment and on the amendment of certain laws and not on the basis of a court order for wiretapping. The conditions are regulated by Order No. 8/2016 of the Minister of Justice of the Slovak Republic. In the provisions of §27 par. 3 of the Act on the Execution of Punishment, it is stated that the records are kept for 12 months, but it does not further specify how the said records are subsequently disposed of, whether they are to be destroyed, who destroys them, and whether a confirmation is drawn up and when the destruction is to occur. The ECtHR found an application filed by a lawyer in this respect admissible.

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

The Slovak Bar Association considers it of crucial importance that all legal professionals are free of attacks, harassment and threats. In the press release of 4 April 2024, the Bar expressed it long-term position: "The Slovak Bar Association is consistently critical of a so-called media justice, when the guilt or innocence, or other forms of failures are addressed through press conferences. When a judicial power failure occurs, it can, and it should be followed by legal implications in the form and scope provided by the law. In political struggle, the reflection on these matters can and should be accompanied by substantial criticism, even a harsh one. However, in a democratic society verbal attacks of executive power directed against judicial power should not occur. It is a serious interference in the independence of the judicial power and impeachment of one of the most important pillars of the rule of law. Therefore, the Bar denounced such acts in the past and we feel the urge to speak again today. We appreciate the reflection of the Minister of the Interior, who in the past publicly apologised for similar political statements on the judicial power."
Available at: https://www.sak.sk/web/sk/cms/news/form/list/form/row/2202688/_event

Specific legal provisions and policies in your country which could influence the independence of the Bar and lawyers

In relation to the adequate preparation of trainee lawyers for the profession of a licensed lawyer, the Slovak Bar appealed to the Parliament not to accept the MPs proposal to recognise the PhD title for lawyer´s exam in the presented wording due to being substantively incorrect. The Bar exam is an important element of the regulation of the legal profession and one of the components of the system ensuring the level of standards of legal services provided. This is the initial and basic quality guarantee of the legal service provider in relation to clients. A legal profession that meets regulatory requirements contributes to the correct application of the legal system and more effectively ensures independent access to justice. On the contrary, the weakening of the internal standard of the legal profession is not beneficial for the beneficiaries of legal services, whose right to legal aid is guaranteed in Art. 47 par. 2 of the Constitution of the Slovak Republic. At the same time, we point out that the submission of such a proposal without a professional and objective discussion is not justified. A detailed public statement is available at: https://www.sak.sk/web/sk/cms/news/form/list/form/row/2397419/_event

Problems and difficulties implementing the case law of national, European, and international courts

In June 2024, the Slovak Bar Association conducted a survey among its members on the methodology for calculating alimony prepared by the Ministry of Justice. The purpose of the survey was to obtain first-hand information on practical experience with the methodology used in court proceedings. The answers showed some positive aspects, mainly simplification of alimony calculation. However, there were many comments which pointed out that the methodology is used in a too formal way and does not reflect children's real needs or the financial situation of their parents. Recommendations resulting from the survey suggest the elimination of a too formalistic application of the methodology. Judges should pay more attention to individual circumstances and adjust decisions accordingly. The methodology should be applied only as a directive and not a binding measure. Otherwise, a risk of unjust decision is imminent. The Slovak Bar Association therefore recommended to the Ministry of Justice that a clear statement should be issued to the courts explaining the advisory character of the methodology.

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

In November 2024, the DEKK Institute carried out a survey among lawyers in cooperation with the Slovak Bar on the credibility, repute and ethics of the legal profession. The study was inter alia based on the results of a public opinion research which was carried out by the FOCUS agency for the DEKK Institute in September 2024. The results of this research showed the following order of trustworthiness/credibility of legal professions among citizens: 1. notary, 2. lawyer, 3. prosecutor, 4. judge, 5. police officer (investigator), 6. bailiff. In recent years, on average, 25-30% of citizens trust the courts. Lawyers who responded to the survey were more sceptical when perceiving the credibility of the courts by citizens and estimated that only 9% of Slovaks actually trust in them. It is therefore interesting that although lawyers trust Slovak courts (69.4% trust them completely or to some extent), they do not think that citizens do. More than 80% of respondents confirmed that the profession of lawyer is a profession with a higher social mission, which should contribute to the strengthening of justice in the society. Lawyers agreed that the higher the social responsibility of the profession is, the more important it is to act in conformity with ethical rules. Therefore, it should be a standard in the legal profession to consider that it is important to act ethically,

even if this may lead to a more difficult path in order to achieve one´s goals. Ethical action is therefore a source of prestige and honour in the profession. The results of the survey showed that more than one third of respondents consider this attitude to be common. However, almost 60% said they encounter this approach only at times. The survey also focused on what lawyers expect from the Bar. The majority of respondents (66.7%) prefer that the Slovak Bar Association does not enter into political and ethical disputes in public outside the field of the legal profession.

The Slovak Bar Association is an independent and apolitical organisation. It aims to contribute to the improvement of the legal environment, respect for the law and effective protection of the rule of law in all circumstances. In order to meet these goals, the Bar strives to hold a professional dialogue with representatives of all relevant institutions with an impact on the rule of law (Ministry of Justice, Ministry of Interior, National Council of the Slovak Republic Constitutional and Legal Committee of the National Council, Supreme Court, Supreme Administrative Court, Constitutional Court, Prosecutor General, Ombudsman, etc.). In the past year, the Bar entered into a bilateral agreement on mutual cooperation with the Association of Judges in Slovakia and Union of in-house lawyers.

The Slovak Bar Association initiated a proposal presented to the supreme judicial institutions and the Ministry of Justice aiming at unequivocal anchoring of the protection of independence of lawyers in the Constitution of the Slovak Republic in 2023. In 2024 the Bar continued in these efforts.

Significant developments related to accessibility of courts

In February 2024, the Bar conducted an anonymous survey on the so-called new court map, i.e. reform of the organisation and jurisdiction of courts in Slovakia. The evaluation of the reform was carried out in a relatively short time after its effectiveness (less than a year). Nevertheless, the answers confirmed the assumption that the adopted change of the judicial system would worsen the access to courts. Most of the lawyers stated that the court map reform did not bring faster and better decision-making, nor did they perceive an increase in transparency, which was one of the main goals of the reform. However, the expectations that the court map reform would have a significant impact on the daily practice of lawyers were confirmed to a lesser extent than expected.

In January 2023 the Slovak Bar Association submitted to the Ministry of Justice a proposal to amend Regulation no. 655/2004 Coll. on the Remuneration and Compensation of Lawyers for the Provision of Legal Services ("Lawyers` Tariff"). The aim of the proposed amendment was (among other issues) to achieve that compensations for ex officio defence and remuneration within the legal aid system more closely correspond to the real costs and to improve the recoverability of compensations awarded to successful parties in court proceedings. We expected to hold a meeting with the Ministry to discuss the comments provided in the official legislative procedure. However, at the agreed meeting, we were informed that the amendment to the Regulation had already been signed and would be published in the Collection of Laws. As a result, despite many clear positives amendments, the regulation does not adequately reflect the inflation and the real increase in the costs of legal representation. The parties who successfully claim their rights will still not have the real costs of legal representation sufficiently covered. Continuation of negotiations on important aspects of the rights protection system was thus not possible. The issue of the lawyer's tariff determined in the Regulation is not a question of lawyers' benefits, but it is in the interest of the citizens themselves, whose rights were violated and had to claim them. We resumed discussions on the legal aid and ex officio fees in 2024. The two most significant points are: the legal aid fees have not changed since 2009 and fees for legal representation in ex officio criminal cases is calculated from the calculation basis applicable to three years preceding the current year.

In order to improve the system of allocation of cases of legal aid representation, the Legal Aid Centre and the Bar created a bilateral working group in 2024 to analyse the issues both sides consider relevant.

The reform of Criminal Codes resulted in widening of the scope of ex officio representation by lawyer cases due to the wider scope of mandatory defence.

As for the court fees and costs related to the court proceedings, the Bar pointed out that the newly adopted transaction tax applied to all business transactions will directly increase the amounts of fees and costs as most of the clients pay and receive these amounts via their lawyer. These amounts either free from tax or decided on by court will change their value after their transfer.

Significant developments related to training of justice professionals

The SBA appreciates its recently enhanced cooperation with law faculties in Slovakia. The SBA signed memoranda of cooperation with Deans of all law faculties. The SBA aims to contribute to fulfilling ideas expressed in memoranda and during the past year the Bar organised interactive discussions of Bar leaders with the law students on the academic grounds of law faculties. Many students used the opportunity to ask questions regarding the state of justice and democracy, issues of professional ethics but also more practical questions regarding current challenges of the modern legal profession, the impact of AI on legal services, the market of legal services, etc.

In cooperation with the Faculty of Law, the SBA lately introduced a new internship programme for law students putting together legal practitioners and law firms wishing to provide an opportunity to students who appreciate a chance to gain practical experience in a law firm. The pilot project started in autumn 2024 with 50 students.

In order to raise awareness about rule of law issues among younger people, the Bar initiated a project of pro bono lectures at primary and secondary schools. The call for volunteers was published in December 2024 and 60 lawyers signed for this activity. The SBA provides training to its members on voluntary (qualified lawyers) and mandatory basis (trainee lawyers). Lawyers can undertake additional training choosing from among private providers depending on their area of expertise. In 2024 the SBA organised more than 90 training events for 4,429 participants (excluding the event organised with external and foreign partners). The Slovak Bar Association organises regular weekly hybrid training events for lawyers, two annual two-day seminars, ad hoc seminars and several seminars initiated by regional representatives in regional towns. Trainee lawyers must undertake four mandatory two-day seminars a year – theory and practice, plus mandatory seminar in ethics. Moreover, the mandatory training of trainees has undergone a reform in 2018. The previous training system was oriented towards an informative way of describing the current legal situation. The new concept of training expands this basis with practical seminars, where trainees in small groups can practice their ability to solve a legal problem on the basis of a case study under the supervision of a lecturer and by preparing proposals for submissions. The purpose is to point out frequent issues in the application of legal regulations and to teach trainees to express themselves, argue their problems objectively and find solutions, manage the situation within the limits of lawyer ethics. The Slovak Bar Association has been involved in several training projects with European dimension co-organised by its partners:

• Cooperation with Council of Europe HELP (Human Rights Education for Legal Practitioners) Programme – on top of the following courses - Ethics for judges, prosecutors and lawyers, Procedural safeguards for suspects and accused and victims' rights, Data protection and privacy rights, Combatting trafficking of human beings, Human Rights in Sport, Asylum and Migration e-desk, Access to Justice for Women,

Domestic Violence and Violence against Women, Cybersecurity and Electronic Evidence – implementation of the course on AI and Human Rights was agreed on;

• Cooperation with ERA in organising and implementing projects Young European Lawyers Contest (EU law and networking-oriented contest) and Young European Lawyers Academy (intensive training in EU law coordinated by ERA and focusing on trainee lawyers). The Bar hosted one of the YELC semi-finals in Bratislava and nominates participants every year;

• Cooperation with ELF in implementing project on internships of young lawyers - LAWYEREX II - project on a short-term exchange of young lawyers in law offices within the EU countries. Slovak Bar promoted ELF webinars for Slovak lawyers on CJ EU preliminary reference proceeding, the impact of AI on European lawyers´ practices, AML for lawyers;

• In cooperation with the CCBE, the SBA participated in the BREULAW project that enabled the Bar to send its member to study visit in EU institutions and adopt lawyers´ training curriculum in EU law. Available here:
https://ccbe.eu/fileadmin/speciality_distribution/public/documents/TRAINING/TR_Guides_Recommendations/EN_2024_CCBE-ELF_Lawyers-training-curriculum-in-EU-Law.pdf.

Significant developments related to digitalisation

The Slovak Bar has conducted a survey on the use of AI tools and proposed to organise a roundtable at the beginning of 2025 for supreme judicial institutions, the ministry of justice, judicial academy and faculty of law to discuss the best approach to use for AI in the justice sector.

Significant developments related to geographical distribution and number of courts/jurisdictions

The justice system currently faces the consequences of the new court map. The publicly presented idea behind the new court map was to tackle the issue of corruption in courts. However, legal professionals considered it incorrect to justify the reform of the judicial map by the goal of breaking the existing corruption ties. The causes and effects in this respect were misidentified. The reform of the court map resulted in greater court delays, lower competence, organisational and technical complications, a reduction in the quality of decision-making, and an increased burden on judges. The effectiveness of the justice system was reduced by changing the statutory judge, long-term specialised judges decide cases from other areas of expertise due to the moving of the court building.

Slovenia

Measures taken to follow-up on the recommendations of the European Commission received in the 2024 Report

One of the main recommendations for Slovenia in the 2024 report was to finalise the measures to increase the remuneration of judges and state prosecutors. This issue has been resolved.

Significant developments related to independence of the prosecution service

Regarding the supervisory bodies of the prosecution, the Slovenian Bar noted a strong opposition from the members of the association of prosecutors towards the involvement of lawyers in their self-governance body. Namely, a Slovenian lawyer (member of the Bar) was proposed by the President of the Republic (based on the recommendation of the Slovenian Bar) as a candidate to assume the position of member of the State Prosecutorial Council, a body with a similar position as the Council for the Judiciary, that performs the tasks of state prosecution self-governance and administrative tasks as determined by the State Prosecutor's Office Act, and participates in ensuring the uniformity of prosecution and safeguarding the independence of state prosecutors. The law requires membership of outside legal professionals, but lawyers have never been admitted to the Council. The association of prosecutors voiced strong opposition to the candidacy of a lawyer, which lead to the rejection of the candidate in the parliament. It is a concern for the Slovenian Bar as outside membership of lawyers would ensure more transparency in the self-governance and autonomy of the prosecution service.

Cases/examples undermining confidentiality of lawyer-client communications

Most issues found in 2024 concern activities of the Slovenian AML Authority (UPPDFT - Office for Money Laundering Prevention of the Republic of Slovenia) and their inspections of lawyers.

The selection of the investigated subjects is made on the basis of suspicious transactions, in particular notifications from other stakeholders (banks). This is particularly the case for transactions through the lawyer's fiduciary account. The scope of supervision is not specifically explained to the investigated person before and during the investigation, the lawyer's clients are dependent on the activities of the representative of the Slovenian Bar.

The role of the Bar is crucial to protect the client in a conflict of interest. Only through the active role of the Bar representative can the protection of clients and their privacy be ensured and, secondarily, the legitimacy of proceedings and thus the usefulness of investigations and inspections.

Specific legal provisions and policies in your country which could influence the independence of the Bar and lawyers

The Bar Association of Slovenia has encountered interference by the courts in the autonomy of disciplinary proceedings carried out by the Bar bodies against lawyers, namely the court adopted the position that the validity of a final disciplinary decision can be (re)assessed in civil procedures.

In 2024, the Bar Association of Slovenia encountered a case where a disciplinary decision became the subject of an administrative dispute before the Administrative Court. In the case at hand, the judge in the ruling assessed whether the competent body had decided the disciplinary matter in accordance with the provisions of the Attorneys Act and the Statute of the Bar Association of Slovenia. The judge concluded that in cases of serious disciplinary violations, the disciplinary court for attorneys at the Supreme Court should decide, regardless of whether the proposed disciplinary measure was of a warning nature or involved the revocation of the right to practise law. According to the provisions of the Act and the Statute, the disciplinary court for attorneys decides only in cases where the proposal seeks the imposition of a disciplinary measure involving the revocation of the right to practise law. The Bar Association of Slovenia pointed out that disciplinary proceedings are not administrative proceedings and therefore cannot be the subject of an administrative dispute.

The Bar does not agree with the court's position that disciplinary decisions of Disciplinary Commissions of first and of second Instance can be reviewed (again) in any court proceedings, as the composition of the disciplinary bodies ensures external control by representatives of the Ministry of Justice and a two-stage procedure. Such review undermines the independence of the Bar as its allows the possibility that final decisions on disciplinary issues are invalidated by the regular courts.

Specific examples in relation to the cooperation between your Bar and the executive branch or supervisory authorities

The Bar Association of Slovenia is the supervisory authority for its members under the AML law (ZPPDFT-2). The conflict between the dual jurisdiction of the Slovenian Bar (OZS) and the AML Authority (UPPDFT - Office for Money Laundering Prevention of the Republic of Slovenia) is highlighted, which is constitutionally controversial.

In 2024 they carried out ten supervisions about AML of the largest law firms in Slovenia and found that all of them were aware of their obligations and are implementing their obligations under the Money Laundering Act.

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

In case of supervision (AML), it is important that reporting does not violate client-lawyer relationship (privilege).

Significant developments related to accessibility of courts

In 2024, the Bar Association of Slovenia was informed by its members about payment delays of the renumeration of lawyers in legal aid (BPP) and EX-OFFICIO procedures by certain courts in Slovenia.

The Bar Association of Slovenia informed the Supreme Court and the Ministry of Justice about the problem of renumeration of lawyers in legal aid (BPP) and EX-OFFICIO procedures.

Significant developments related to resources of the judiciary

Regarding the material resources for the judiciary the main issue has been resolved.

Significant developments related to training of justice professionals

The Bar Association of Slovenia through the Law Academia offers different programmes and training of lawyers. In 2024 training of defence attorneys and also training on AML regulation and other trainings (SLAPP, etc.) were organised.

The Bar also informed its members about updates in different legal topics through the website and its gazette "Odvetnik".

Significant developments related to digitalisation

The Bar Association of Slovenia is disappointed about the missing consultations and involvement of the Bar by governmental authorities. In addition, the digitalisation is falling behind compared to the adopted and promised plans.

Significant developments related to efficiency of justice system

The length of proceeding in Slovenia varies significantly between courts and procedures, in certain cases also between similar procedures at the same court (for example serious delays lasting many years for a hearing in a regular civil procedure, while a procedure at the same court in commercial matters is handled within one year). It remains a serious concern that such inconsistencies are not dealt with through better judicial management and seem to be getting worse.

SPAIN

Measures taken to follow-up on the recommendations of the European Commission received in the 2024 Report

In the 2024 Rule of Law Report for Spain, the European Commission noted, among other issues, the need for renewal of the General Council of the Judiciary (CGPJ). Following the agreement in July 2024 for its renewal, the CGAE expressed its opposition to the absence of (independent) lawyers among the non-judicial members of the CGPJ, as mandated by the Spanish Constitution.

Significant developments related to allocation of cases in courts

The enactment of Organic Law 1/2025 on 2 January introduced a transformative reform of Spain's judicial system.

The main developments include the creation of *Tribunales de Instancia*, consolidating individual courts into 431 tribunals, organised by civil and criminal sections, to improve resource allocation and ensure consistency. Also, the establishment of Municipal Justice Offices to enhance citizens' access to justice through telematic services in local areas.

Significant developments related to independence and powers of the body tasked with safeguarding the independence of the judiciary

See above. The CGAE issued a formal declaration criticising the exclusion of lawyers in the newly constituted CGPJ. This omission is considered by the CGAE in discordance with the constitutional provisions (which specifically cite lawyers -in plural- as a professional category for selection) and potentially hinders the diversity and consensual capabilities of the organ.

Significant developments related to accountability of judges and prosecutors

The existing regulatory framework for judicial accountability is being applied effectively. In March 2024, the CGAE reaffirmed the need to respect confidentiality in the judicial process, particularly concerning protocols for plea bargaining agreements.

Significant developments related to remuneration for judges and prosecutors

The CGAE noted discrepancies in remuneration practices, particularly highlighting the lack of updates to legal aid compensation rates, despite recent increases for judges and court staff. Some of the consequences of delays of payment and updated compensation scales for legal aid lawyers include deregistration and public demonstrations. The XI report of the observatory of legal aid is available here: https://www.abogacia.es/wp-content/uploads/2016/07/XI-OBSERVATORIO-JUSTICIA-GRATUITA-COMPLETO.pdf

Cases/examples undermining confidentiality of lawyer-client communications

The CGAE defended the confidentiality of lawyer-client communications in multiple contexts, including the publication of institutional statements addressing procedural guarantees in high-profile cases. Notably, institutional declarations were issued to address procedural concerns in high-profile cases, where safeguarding confidentiality is critical to ensuring fair trials.

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

The CGAE has documented instances of threats and harassment against lawyers and initiated measures to safeguard their independence and security. A procedure to request assistance ("*procedimiento de amparo*") will be submitted for approval to address these challenges.

Specific legal provisions and policies in your country which could influence the independence of the Bar and lawyers

In Spain, the Law on the Right of Defence marks a historic milestone in the Spanish legal system. This long-demanded reform is a major achievement of the *Consejo General de la Abogacía Española* (CGAE), providing a comprehensive and systematic regulation of the right of defence. As an Organic Law, it holds the highest legal status in Spain, reinforcing essential guarantees for both citizens and legal professionals. Moreover, it is a pioneering law in Europe, setting an unprecedented standard for the regulation of the right in its wider conception, into a single law.

In force from 4 December 2024, this law strengthens the constitutional protection of effective judicial protection (Article 24 of the Spanish Constitution), ensures legal defence guarantees, and highlights the social purpose of the law—a law for the people.

Its main effects include stronger safeguards against unauthorised legal practice, ethical and professional improvements in legal practice, enhanced institutional protection for lawyers and greater transparency in legal costs for clients. This new legislation, with the highest legislative rank (*ley orgánica*) and developing a constitutional right, represents a firm step forward in consolidating the rule of law and reinforcing the fundamental right of defence in Spain.

Examples of political pressure or interference impacting the Bar or lawyers in 2024

The CGAE opposed administrative measures that could compromise lawyers' independence. For example, the imposition of identification stickers in Gender Violence Courts in Bilbao was criticised as inappropriate and a breach of professional dignity and independence. It has been withdrawn.

Implementation challenges of national, European, or international case law in 2024

No significant challenges were identified regarding the implementation of case law. Spain maintains a high compliance rate with decisions from the European Court of Human Rights.

Developments affecting public perception of judicial and lawyer independence in 2024

The CGAE expressed unanimous support for judicial independence as a pillar of the rule of law, emphasising this in its December 2024 institutional statement. Efforts to improve public awareness of legal aid services and promote transparency also contributed positively.

Significant developments related to accessibility of courts

The main developments in 2024 on accessibility of Courts in Spain include:

- A 3.5% increase in cases handled through legal aid, demonstrating the growing demand for accessible justice services. However, persistent challenges related to low remuneration for legal aid lawyers have led to a decline in the number of practitioners willing to participate in these programmes.
- Advocacy for updated compensation for legal aid lawyers, with the CGAE emphasising the disparity between Spain and other EU countries in this regard. The General Council called for urgent reforms to ensure fair remuneration and sustainability of the legal aid system.
- Expansion of Municipal Justice Offices to enhance access for vulnerable populations, particularly in remote areas. These offices offer telematic services and simplify procedural requirements, reducing barriers to justice for marginalised communities.

The CGAE has also proposed legislative amendments to address gaps in the current legal aid framework, including provisions for victims of gender-based violence and trafficking. These proposals aim to ensure comprehensive support for vulnerable groups and enhance the overall effectiveness of the justice system.

Significant developments related to resources of the judiciary

The CGAE has called for updated legal aid compensation rates and improved collaboration between judicial authorities and the Bar. Efforts are ongoing to ensure adequate resources for the implementation of the new Judicial Efficiency Law.

Significant developments related to training of justice professionals

The CGAE implemented four European training projects in 2024, focusing on multidisciplinary education and continuous professional development. Training provisions under the Organic Law on the Right of Defence were also expanded.

Significant developments related to digitalisation

The CGAE organised the VI Conference on Digitalisation, addressing topics such as cybersecurity, AI tools, and electronic certification systems. Key advancements include:

- Upgrades to the ACA Plus digital signature system, providing enhanced security and flexibility for legal professionals. This tool has streamlined processes and improved efficiency in interactions with judicial institutions.
- Promotion for including the CGAE in the State Technical Committee for Electronic Justice Administration to ensure that digital reforms reflect the needs of the legal profession.

While progress has been made, the CGAE continues to call for greater investments in digital infrastructure to bridge regional disparities and ensure equitable access to technological tools.

Significant developments related to use of assessment tools and standards

The updated ACA Plus digital e-signature system improves the efficiency and reliability of lawyer's services, Bar services and judicial file management. The CGAE continues to advocate for active Bar involvement in the digital transformation of the judiciary.

Developments in 2024 related to the judicial map and court specialization

Organic Law 1/2025 introduced new organisational structures, including specialised chambers to handle complex cases such as fraud and corruption.

Significant developments related to efficiency of justice system

The implementation of the Judicial Efficiency Law aims to reduce delays and improve case management through measures like mandatory alternative dispute resolution mechanisms. These reforms are expected to significantly decrease court backlogs and promote timely resolution of disputes. The CGAE has played an active role in training lawyers on these new mechanisms with online course counting hundreds of participants.

SWEDEN

Measures taken to follow-up on the recommendations of the European Commission received in the 2024 Report

None of the recommendations from the Commission in the Rule of Law Report from 2024 included or applied to the legal profession (lawyers), but the Swedish Bar Association supports the recommendations of the European Commission for Sweden.

Cases/examples undermining confidentiality of lawyer-client communications

There have been no specific court cases during 2024 which directly undermined the independence of the Swedish Bar or the legal profession as such. However, there is some legislation (national as well as EU legislation) that forces lawyers in different ways to provide state authorities with information of different kind, which should be protected by professional secrecy. Such information obligations to state authorities also infringes upon the principle of independence of the legal profession and the principle of client loyalty. Furthermore, there has been some public discussions suggesting more State influence of the supervision of Swedish advocates. Although these public discussions have not resulted in any concrete measures, it is a matter which the Bar Association is following closely.

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

During 2024, threats or harassment against lawyers has continued to be a rule of law focus issue of the Swedish Bar Association. The survey on threatening behaviour and aggression towards lawyers, produced by the CCBE, shows that 20,7 percent of lawyers have been subjected to harassment, 16,2 percent have been subjected to threats and 4,5 percent have been exposed to some form of physical violence. During the year lawyers have been physically assaulted, including a female lawyer who was recently attacked in her home due to her role in a legal case, leaving her with life-lasting injuries.

Because of the increasing threats against lawyers, the Bar Association has started a cooperation with a security expert who can provide support and advice to lawyers exposed to threats and harassment. In addition, the Swedish Bar Association has taken the initiative to organise a free course for lawyers to help them identify and counteract threats and various forms of attempted influence.

Specific examples in relation to the cooperation between your Bar and the executive branch or supervisory authorities

One focus for the Bar Association has been, and remains, independence – both for the Bar Association itself and for its members in their daily work. The core values of the legal profession (namely independence, confidentiality/legal privilege and client loyalty) must be respected. Unfortunately, the last couple of years a number of legislations and political suggestions threatening these core values have been introduced, which is of great concern.

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

It has been challenging to maintain public confidence in the independence of lawyers, largely due to some individual cases related to organised crime that have received media attention. Lawyers in general have been portrayed as unscrupulous, although the Swedish National Council for Crime Prevention has stated in a report that so-called enablers, who misuse their employment in favour of criminal networks, are everywhere in the society, including throughout the justice system.

In line with the Bar Association's efforts of improving the public's opinion of public defenders in particular and adapting to a new reality in terms of the level and type of crime Sweden is currently experiencing, the Board of the Swedish Bar Association has decided to adopt mandatory qualification requirements for public defenders. As of 1 January 2025, it is required that lawyers have at least five years of experience as public defenders and have completed 18 hours of criminal case training specifically focused on cases involving serious crime in order to be considered for appointments as public defenders in cases where the minimum penalty for the crime is four years in prison. All new Bar members who wish to be public defenders also need to complete a basic criminal case training, regardless of the range of punishment. A supervisory unit within the Bar Association has also been established, which is working exclusively with proactive ethical supervision.

Furthermore, The Board of the Bar Association has decided to introduce a new regulation stating that law firms are no longer allowed to employ former lawyers that have been disbarred from the Bar Association to provide legal advice. Nor may disbarred lawyers be contracted otherwise to provide legal advice within the framework of the law firm.

Significant developments related to accessibility of courts

Shortcomings regarding state funding of legal counsels remain, as do the far too low remuneration levels for lawyers in their roles as legal aid counsels. Furthermore, regulations limiting the right to legal counsel in court proceedings, such as no right to counsel for an aggrieved party in courts of appeal unless special circumstances are at hand, remain in place. Both these shortcomings affect access to justice.

During the year, the government set up an inquiry to review the regulations governing the remuneration of legal counsel. The aim is, among other things, based on the right to a fair trial, to maintain confidence in public defenders and strengthen individuals' opportunities to exercise their rights. The closing date for the inquiry is 1 August 2025.

Significant developments related to resources of the judiciary

The grant to Sweden's Courts increased by almost one billion Swedish kronor 2022–2024 (from 6.7 billion to 7.6 billion).

Significant developments related to digitalisation

The Bar Association is aware of state initiatives to increase the digitalisation of the legal system further. It is essential for lawyers to be involved in such initiatives, but unfortunately, they have not always been included.

ANNEX 2

ALBANIA

Cases/examples undermining confidentiality of lawyer-client communications

The Albanian Bar reported about the following issues:

1. In cases of arrests in flagrante delicto, attempts are observed by the proceeding body (police, prosecutor) that lead to the denial of the right to a client-lawyer meeting before the questioning of the person being escorted. The person escorted to the police, who is caught in the act of committing a crime, who is apparently the sole suspected perpetrator of the crime that occurred, is kept for up to 10 hours escorted within the police premises, and during this time segment he is denied the right to have a meeting with the lawyer of his own choosing, and is also questioned by each police officer (with/without the attribute of judicial police officer) under the guise that he is not yet a person under investigation but is a person who is aware of the circumstances of the investigation.

2) The prohibition imposed on the lawyer to have with him at the moment of the meeting with the client (when he is in the IEVP in detention) his personal work tool, audio recorder (what a journalist is allowed when entering to interview a convict).

3) The possibility of having access to intercept client (detainee) - lawyer phone calls, but also of monitoring the client-lawyer meeting via audio-visual cameras inside the meeting room.

4) The inability to make contact only for client-lawyer in the Court premises, for cases of speedy trials (validation of arrest and imposition of measures), especially in cases where the lawyer is primarily assigned by the Court to conduct the defence (there is no specifically designated place for the preliminary client-lawyer meeting, but the lawyer is invited to conduct the meeting in the presence of all those present in the courtroom, police, prosecutor, judge).

5) At the local police directorate in Berat, there are no facilities (special room) for the arrested/detained/accompanied person to communicate with his/her defence lawyer according to the rules set forth in the Code of Criminal Procedure. They do not take into consideration the request of the arrested/detained/accompanied person to call a lawyer by phone. Lawyers are mainly assigned abusively without respecting the request of the Code of Criminal Procedure. We have had indications that near the police premises, with the knowledge of the proceeding body, conversations between the lawyer and the client were intercepted, which served the police officers to make referrals even without evidence. These interceptions were hidden and were not documented by the OPGJ. This occurs as a result of the lack of a safe environment for lawyer/client conversations.

6) In some investigative processes, we have been faced with the involvement of the lawyer in the response with his client or his family, violating the confidentiality of lawyer-client communications. We can illustrate this with examples, we are talking about criminal proceedings no. 433 of 2022 at the Korca Judicial District Prosecutor's Office, with which we became acquainted in 2024.

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

During 2024, there have been several cases of threats to lawyers by the opposing party or the lawyers' clients themselves, such as the case against the president of the Vlora Bar Association, in Korca,

Saranda, etc. Most lawyers have filed criminal complaints. The most flagrant case of the exercise of very serious physical and psychological violence against a lawyer during 2024 is that against Av. Sokol Mengjezi, who due to major injuries has remained in a coma for several months. Regarding this case, the Albanian Bar Association has undertaken a series of steps, including the preparation of several press statements, official letters to law enforcement institutions, extraordinary meetings of the highest governing bodies of the Bar, with the decision of which all judicial processes at the national level have been boycotted by lawyers for a period of 10 days.

The persecution of the lawyer by journalists (so-called investigative), without the consent of the lawyer, by following him on the street with video cameras and asking questions directly related to the exercise of the lawyer's profession to the client he represents, can be considered disturbing.

The encouragement given to the parties in the process by the prosecutor/judge, by giving opinions on how a certain issue can be resolved, by taking it out of the context (object) of the written request (claim) that is before the Court for legal resolution. This method directly affects the violation of the trust of the lawyer-client relationship created between them until that moment, because the client mistakenly perceives that his interests are being better protected by the prosecutor/judge since they also have the power to decide.

At the local chamber of advocates in Berat, there have been cases when they have been blackmailed by the opposing party, there have been telephone harassments but the cases have not been reported by the advocates.

Regarding the procedural authority which includes the prosecutors' offices and the courts, there is a tacit agreement between them for unjustified attacks on the role of advocates in implementing the function of the law by seeing the advocate as not equal to the function they have in providing justice. These attacks on the advocate are defended by the Supreme Court of Justice, which despite having found these cases by interpreting them in an illogical way has protected judges and prosecutors. Even through the media, the prosecutors and the courts have continued the attacks by serving the media with distorted information (intellectually falsified) with the sole purpose of discouraging the role of the advocates in the eyes of the public.

Specific legal provisions and policies in your country which could influence the independence of the Bar and lawyers

Fines for lawyers in cases of appeals by the Supreme Court. Currently, it has been repealed by the Constitutional Court.

On the other hand, there are numerous cases of lawyers being fined in cases of their non-appearance in court sessions, although they had justified reasons related to planning and participation in other court sessions.

In our assessment, the criminal offence “Exercise of illegal influence”, provided for by Article 245/1 of the Penal Code, should also be reformatted, excluding the lawyer as the subject of this criminal offence since this provision negatively affects the independence of the lawyer and the exercise of his profession, since the lawyer can easily be penalised by this provision. We have concrete examples, in the Special Court of First Instance for Corruption and Organised Crime, the case of lawyers Arben Lena and Dajana Kodra.

Specific examples in relation to the cooperation between your Bar and the executive branch or supervisory authorities

The specific case is the problem of the new judicial map of 2022, whereby decision of the DHASH, a two-month boycott of the processes was organised as well as a protest in front of the Supreme Court of Justice, but which was not taken into account by the government. The focus on a single appeal court results in the conclusion of a final case being reached after 10 years, and consequently the citizen's access to the court to conclude the problem as soon as possible has lost its purpose. This has also led to a decrease in the number of cases where citizens go to court, directly affecting the economic income of lawyers as well as increasing the costs of serving citizens.

Also, the creation of administrative courts has essentially led to the delay of administrative trials and not an expedited trial as provided for by law. This fact is easily proven, if we analyse the registry of administrative cases at the former sections of the district courts, it will be found that the completion of these trials up to the court of appeal, (final form) their maximum delay has been up to 2 years, while currently with the creation of these courts by law, citizens are being violated the principle of legality of the state of justice for a fairer resolution of their cases in relation to the administrative sections that were at the district courts.

Problems and difficulties implementing the case law of national, European, and international courts

We can mention, for example, the position taken by the judicial system, starting from the Supreme Court to the lower courts, which do not recognise and apply the practice of the ECHR, for example in the case of applying the law of time. The Scopola v. Italy decision, which is a decision from 2009, is still not being implemented in Albania. In the case where the criminal offence was committed at a time when the law recognised the summary trial or the statute of limitations for criminal prosecution was shorter, the courts apply the law of the time of the trial of the case, which is more aggravating for the defendant and is not the law of the time when the criminal offence occurred.

A tendency is observed by the new magistrates to use and interpret the decisions of the Supreme Court (not decisions of unification), but treating these as unifying decisions, in reasoning their decision-making that goes against the judicial practice consolidated by the decision-making of the highest Courts in the hierarchy (Appeal/High).

A new tendency is observed by the new magistrates in their individual interpretation, even of the decisions of unification, and not as a unified judicial body in decision-making, coming up with decisions (majority opinion, parallel, contrary) that in fact make the decision completely unclear and to some extent absolutely invalid. A pronounced individuality of the judges in thinking and decision-making, within the judicial body.

The difficulties consist in the failure to respect the legal deadlines for the trial of cases beyond the deadlines provided for by the relevant codes.

From the part of the courts, we face delays in legal, administrative/civil/family and criminal processes. Regarding the rights of lawyers in criminal processes, we emphasise the fact that the proceeding body does not carry out any legal procedure regarding the requests submitted by lawyers during the investigative process. The prosecution body has become an inquisitorial body. The same situation occurs with the courts, where all requests of the proceeding body are approved and all requests of the defence are rejected. There are different positions by the judges on the same issues, although it is the

duty of the Supreme Court. Even this court in very few cases does not provide a unifying solution, which makes the process difficult. The decisions of the European courts are only cited but not implemented. Judges and prosecutors disguised as uncorrupted persons do not implement the decisions of the Strasbourg court, the Constitutional Court and the Supreme Court, openly making interpretations contrary to these decisions. For this fact, the judicial system has many practices of which the Supreme Court of Justice is aware and has not acted against these judges and has not initiated disciplinary proceedings.

Significant developments related to accessibility of courts

The year 2024 brought regression in the field of access to justice. The overload of the courts as an objective factor but also the irrational use of this factor by the judiciary itself has led to unjustified prolongation of judicial processes in the first instance and also in the Court of Appeal, taking a case a total of about 10 years, not including the High Court.

No improvement in 2024 in terms of freer accessibility of the Courts. On the contrary, deterioration has occurred because there has been an increase in the volume of work, court administration and judges due to the new judicial map after the Tropoja District Court was merged with the Kukës District Court.

Deterioration of the situation in terms of public accessibility directly to the Court, to search for documents from the file or Decisions, as a result of the lack of necessary spaces for the staff to be able to carry out their work.

The fees of lawyers appointed on a first-come, first-served basis, are absolutely unworthy to the point of ignoring the profession of lawyer (the maximum fee for a criminal case, without any connection to the importance of the charge and even less to the duration of the representation, continues to be only 3000 lek/case).

The fees of lawyers who provide Free Secondary Legal Defence managed by the Ministry of Justice (in my opinion not at all legal and fair, because it is the Court that allows this defence and the Chamber of Lawyers that appoints the lawyer who will perform the service), are so late in time that their liquidation after two years completely defeats the purpose of providing this defence.

Court fees, when it comes to obtaining copies of documents from the court file, whether directly by the party or by the lawyer, are unfair, because this violates accessibility to the Court due to the financial difficulties of the party. All the more so since during the trial, copies of the documents in the file should be provided to the lawyer and the party, free of charge, in order to enjoy the most effective and freest possible protection.

Lawyers' fee rates should be carefully considered in terms of security measures and substantive trials, since the existing rates were approved 20 years ago and due to economic growth, these rates or fees should also be changed. The Criminal Procedure Code has clearly defined when there are cases for choosing a lawyer in the first place, this also applies to the court. The courts, in flagrant violation of the Criminal Procedure Code in all decisions (take any practice as an example), violate the judicial economy by choosing a lawyer primarily for each category of persons, where at one time the choice of the lawyer primarily was clearly defined. This is done with the aim of violating the role of the lawyer chosen by the client by replacing him with a lawyer primarily and issuing a decision according to the prosecutor/court agreement (the prosecutor cuts the suit and the court sews it).

Lawyers are not paid for the services they mainly provide in the initial stages of the investigation, in the police departments and police commissariats, in addition to the fact that even when they are paid by the prosecutor's office or the court, the fees are extremely small. Similarly, many problems are evident with foreign citizens, regarding the lack of translators for those foreign citizens involved in criminal proceedings.

Significant developments related to resources of the judiciary

No such effort has been made in 2024. The situation of the courts is very bad, not only physically or visually, but also due to the lack of facilities for courtrooms, waiting rooms for citizens or rooms for studying cases by lawyers.

1) There is a marked lack of minimum space for the working areas for the judges themselves, starting from the trial rooms, which are only 4 for 7 judges, and they are in a condition that is not at all worthy of having the proper solemnity of the trial.

2) There is a complete lack of a separate space for the lawyer where he can study the file

3) There is a lack of the minimum necessary space that the parties need to wait for the start of the court session.

4) The failure of the judges to coordinate with each other in scheduling the sessions individually has led to a total lack of coordination in holding and conducting them at the designated time. Also, the setting by the judges of a minimum time limit of only 15 minutes for each session, when its progress always lasts longer, brings even more anomalies in this regard.

5) The unjustified delay by the Court in justifying the decisions and submitting them to the Registry greatly affects the timely accessibility of the parties to the process, and also brings essential consequences in the acquisition of the right [benefited from the final decision of the court].

Significant developments related to training of justice professionals

1) Initial training of assistant lawyers: 600 students enrolled at the School of Lawyers in the academic year 2023 -2024;
2) Continuous training of lawyers organised by the Albanian Chamber of Advocacy during 2024:
a) Five face-to-face two-day seminars, nationwide on: ”Amendments on Criminal, Civil and Administrative Procedure Codes and their case law’’ and specific training including: Prevention of Money Loundering and lawyers’ role, child friendly justice, victims’ rights etc;
b) A one-day seminar on Freedom of Expression and Media, in the framework of the Council of Europe project in cooperation with the School of Magistrates;
c) Online training: Three online HELP courses on: i) “Ethics of Judges, Prosecutors and Lawyers”, “Child Friendly Justice” and “Course against domestic violence and violence against women”;
d) ERA online trainings: 40 places;
In total 430 lawyers have received training in 2024.

The remaining challenge is the organisation of joint seminars: lawyers together with judges and prosecutors. Lawyers are very much in favour of organising but judges and prosecutors are reluctant yet.

Significant developments related to digitalisation

The courts of first instance do not implement at all or very little notification of the parties or the lawyer via email when it is made available. There are attempts by the Administrative Court of First Instance of Lushnje to use social networks or even professional ones such as FB and LinkedIn for notifications related to judicial processes.

Every lawyer who practises the profession according to the rules should have digital access to the archives of court decisions not only for judicial practice but also as a form of control over the judiciary. The time has come to establish certified email for lawyers in cooperation with the AKSHI, as all member countries of the European Union have.

1) No noticeable improvement in this regard, except for the Court of First Instance of General Jurisdiction of Tirana.
2) There is a lack of desire and positive will on the part of the Court to provide services to lawyers through electronic communication, regarding notifications, access to files, access to archived acts.

3) There is a lack of a digital device at the entrance to the Court where each lawyer has the opportunity to access information regarding the cases. The same goes for the parties in the process themselves.

From judicial practice in the Court of First Instance of General Jurisdiction in Berat, we have had cases where sessions have been conducted online with the litigants and this has brought results as the sessions have not been postponed and the process has been completed within the legal deadlines. Also, digitalisation for the notification of each procedural act would facilitate judicial processes, this being done with the relevant legal amendments.

There are a number of problems, with the websites of various Courts, to obtain electronic information regarding the electronic lottery, scheduling of sessions and judicial decisions. Also, in the Courts of First Instance and Appeals, there is a lack of application of electronic notifications for scheduling hearings and for any other notifications.

Significant developments related to use of assessment tools and standards

Up to now, there has been no significant development in the evolution of these tools. The electronic lottery has been achieved and their management by court staff. In many cases, the central server does not work, preventing access to the court websites to obtain information about cases, session times, the subject of the lawsuit, etc. So far, no survey has been conducted by anyone on these issues or to identify problems with the case management system or the transparency of the system itself.

Significant developments related to geographical distribution and number of courts/jurisdictions

The new judicial map has had a very negative impact on access to justice. The cost of a court case has increased significantly due to the removal of many first instance courts and their irrational concentration. This has increased the time for handling a case and of course its cost, and has substantially prevented many individuals from going to court due to costs, distances from the centres of residence of the courts and the long time for handling a case. A vivid example is the First Administrative Court of Lushnje. If the minutes of the sessions are to be seen, about 90% of them are in the absence of all parties, whether plaintiffs or state institutions. This is due to the rather inconvenient distance from the cities it covers. It is a fact that trials are held on schedule, not because

of the correctness of the court in its forecasts but because of the fact that most trials are held in the absence of the parties and the judicial debate, as we said above.

The judicial map has weakened access to justice for the parties but also for lawyers, especially in administrative matters, it has led to a decrease in the interest of people to oppose administrative acts due to the high costs and duration of the trial, as well as the distance (to the districts). Also, the Court of Appeals has a poor organisation, from delays in sessions, delays in trial dates, cases that have not been considered for several years.

Significant developments related to efficiency of justice system

The new judicial map is a foretold failure. In 2024, this failure was clearly seen. Not only because of the lack of judges, but also because the courts were maximally distanced from citizens, increasing costs to an extreme extent and also causing a loss of time that is actually an irrecoverable cost. The distribution of courts itself is unstudied and done mechanically, influenced more by non-professional interests and influenced by the interests of the moment of the factors of the judiciary and the executive power.

The concentration of many courts in a geographical location selected more by the executive power is also a factor that affects the control of the judicial power by the executive power.

As a result of the development of a trial within an unreasonable capacity, the parties in most cases have lost the rights for which they have sought to realise by judicial decision. Access to justice is not only related to the possibility that the state guarantees to an individual to submit requests to the proceeding bodies but also to the fact of receiving a response within the legal deadlines in order to realise the right for which they have submitted their request.

We are faced with unjustified delays in investigations, often the maximum 3-year deadline has passed and despite the opposition of lawyers, the courts continue to pass cases for trial beyond the deadlines. Similarly, the courts do not respect the 30-day deadline for reviewing the request for referral to trial or dismissal, and the deadline for reasoning for decisions is not respected, whether for measures or for substantive trials, reasoning for decisions that have passed 1 or 2 years.

During 2024, it has resulted that the justice reform has brought about changes in the efficiency of the justice system, which are not positive changes, since the margin and duration of procedures such as criminal proceedings, judicial, administrative/civil/criminal/commercial and family procedures have not been efficient since the right to realisation that was sought to be realised through a judicial decision has been lost. We have had the case in a civil matter that lasted for 10 years, and the plaintiff never learned his decision. The change in the judicial map has essentially violated the principle of providing justice in a timely manner.

Other issues and significant developments impacting access to justice

A worrying phenomenon for the practice of the legal profession is the refusal or creation of artificial obstacles to the provision of documents of the respective file within a reasonable time for the realisation of effective defence.

Issues of concern related to the independence on the exercise of the lawyers' profession

1. During 2024, there have been several cases of threats to lawyers by the opposing party or the lawyers' clients themselves, such as the case against the president of the Vlora Bar Association, in

Korca, Saranda, etc. Most lawyers have filed criminal complaints. The most flagrant case of the exercise of very serious physical and psychological violence against a lawyer during 2024 is that against Av. Sokol Mengjezi, who due to major injuries has remained in a coma for several months. Regarding this case, the Albanian Bar Association has undertaken a series of steps, including the preparation of several press statements, official letters to law enforcement institutions, extraordinary meetings of the highest governing bodies of the Bar, with the decision of which all judicial processes at the national level have been boycotted by lawyers for a period of 10 days;

2. The judicial map has had a very negative impact on access to justice. The cost of a court case has increased significantly due to the removal of many first instance courts and their irrational concentration. This has increased the time for handling a case and of course its cost, and has substantially prevented many individuals from going to court due to costs, distances from the centres of residence of the courts and the long time for handling a case. An example is the First Administrative Court of Lushnje. If we refer to the minutes of the sessions, about 90% of them are in the absence of all parties, whether plaintiffs or state institutions. This is due to the distance rather than the inconvenient distance from the cities it covers. It is a fact that trials are held on schedule, this is not due to the correctness of the court in its forecasts but due to the fact that most trials are held in the absence of the parties and the judicial debate.

3. From the courts, there are delays in legal, administrative/civil/family and criminal processes. Regarding the rights of lawyers in criminal processes, the procuring body does not carry out any legal procedure regarding the requests submitted by lawyers during the investigative process. The same situation occurs with the courts, where all requests of the procuring body are approved and all requests of the defence are rejected. There are different positions by the judges on the same issues. The Supreme Court does not provide a unifying solution, which makes the process difficult. The decisions of the European courts are only cited but not implemented.

4. The year 2024 brought regression in the field of access to justice. The overload of the courts as an objective factor but also the irrational use of this factor by the judiciary itself has led to unjustified prolongation of judicial processes in the first instance and likewise in the Court of Appeal, taking a case a total of about 10 years, not including the High Court. Court fees, when it comes to obtaining copies of acts from the court file, whether directly by the party or by the lawyer, are unfair, because this violates accessibility to the Court due to the financial difficulties of the party. All the more so since during the trial, copies of the acts of the file should be provided to the lawyer and the party, free of charge, in order to enjoy the most effective and freest protection.

5. Fines for lawyers in cases of appeals by the Supreme Court, which was currently abolished by the Constitutional Court at the end of 2024. Also, in quite a few cases, lawyers are fined in cases of their non-appearance in court hearings, even though they had justified reasons related to planning and participation in other court hearings.

6. Regarding the non-application of the ECHR or national judicial practice, starting from the Supreme Court to the lower courts, they do not recognise and apply the ECHR practice, for example in the case of applying the law of the time. The Scopola v. Italy decision, which is a decision from 2009, is still not being implemented in Albania. In the case where the criminal offence was committed at a time when the law recognised the summary trial or the statute of limitations for criminal prosecution was shorter, the courts apply the law of the time of the trial of the case, which is more aggravating for the defendant and is not the law of the time when the criminal offence occurred.

7. At the police directorates in some districts there are no facilities (special room) for the arrested/detained/accompanied person to communicate according to the rules set forth in the Code of Criminal Procedure with their defence attorney, in order to respect the principle of

confidentiality of the lawyer-client relationship. There are cases of non-respect of this principle, where near the police premises, with the knowledge of the proceeding body, conversations between the lawyer and the client were intercepted, which served the police officers to make referrals even without evidence. To illustrate with a concrete example: criminal proceeding no. 433 of 2022 at the Korca Judicial District Prosecutor's Office, of which the lawyer became aware in 2024.

8. Lawyers are not paid for the services they provide mainly in the initial stages of the investigation, in the police directorates and police commissariats, in addition to the fact that even when paid by the prosecution or the court, the fees are extremely small. The payments of lawyers who provide Free Secondary Legal Protection managed by the Ministry of Justice are so delayed in time that their liquidation after two years completely defeats the purpose of providing this protection.

9. Lawyers encounter a series of problems in obtaining information electronically regarding the electronic lottery, scheduling of hearings and judicial decisions. Also, in the Courts of First Instance and Appeal, there is a lack of application of electronic notifications for scheduling of hearings and for any other notification.

MONTENEGRO

Significant developments related to appointment and selection of judges, prosecutors and court presidents

There were two very important changes in 2024. The Parliament of Montenegro elected the new Supreme State Prosecutor in January, Mr Milorad Markovic. This was a huge step forward considering that it took almost 5 years to appoint a new State prosecutor, and for all those years we had couple of prosecutors only acting as a Supreme State prosecutor. https://sudovi.me/vrdt/sadrzaj/ON7O

The President of the Supreme Court of Montenegro, Mrs Valentina Pavlicic, was elected in December 2024 by the Judicial Council. This was also a huge step forward considering that it took more than 4 years to elect a new President and for all those 4 years we had a judge of the Supreme Court who was also only acting as a president. https://sudovi.me/vrhs/sadrzaj/GaYa
On the other hand, there are issues regarding Constitutional Court judges. Two of the judges were retired in a questionable procedure, and two more are eligible for retirement. This means that the Constitutional Court will soon have only 3 judges instead of 7, which brings out the question of its integrity and efficiency. The functionality of the Constitutional Court can be looked at through the judgments of the European Court of Human Rights. In 2024, in several decisions from the European Court of Human Rights the violation of Article 6 and the right to a fair trial in reasonable time in front of the Constitutional Court was found. https://www.gov.me/clanak/tri-nove-odluke-evropskog-suda-za-ljudska-prava-u-vezi-prekomjerne-duzine-trajanja-postupaka-pred-ustavnim-sudom-crne-gore

Significant developments related to irremovability of judges

As mentioned in paragraph 2, there are issues with the retirement regime of Constitutional Court Judges, which led to the Parliament being blocked (the opposition is boycotting the sessions of the Parliament so the Budget of the State cannot be adopted, and no new laws can be voted for) on the date of submitting this questionnaire.

Significant developments related to accountability of judges and prosecutors

No, but we do expect improvements in 2025 since we finally have a Supreme State Prosecutor and President of the Supreme Court who have been elected in 2024.

Significant developments related to remuneration for judges and prosecutors

Negotiations on increasing payments for judges and prosecutors are ongoing.

Cases/examples undermining confidentiality of lawyer-client communications

There are no cases that we officially know, but we do suspect that some of the lawyers are under surveillance for quite some time. There is no effective way to investigate and prove these claims, but whenever a lawyer asks to be informed weather he was under surveillance or not, he never receives a reply. By law in Montenegro, there is an obligation to inform someone who was under surveillance about the results of the surveillance if no criminal procedure is to be initiated, but it never happens in practice.

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

There was one physical attack on a colleague in the court in front of the courtroom by the opposing party from a civil case. He suffered serious bodily injuries, and was attacked solely for being a lawyer and representing his clients in the hallway of the Basic Court in Berane. The Bar Association protested because of this, since this is not the first time in Montenegro that a lawyer was under physical attack just because he was representing someone in a certain case. You can find the official statement of the Bar Association regarding this case on this link:
https://www.advokatskakomora.me/Obavjestenje%20za%20javnost%2013.05.2024.%20pdf.pdf .
The Bar Association of Montenegro proposed the law to be changed and a new criminal offence to be added / attack on lawyer, notary or public bailiff, but there has been no response by the government regarding this issue.
Not much has been done regarding this situation. On a daily basis you can hear lawyers being insulted by government representatives just because they are representing certain clients, and it is a common situation that a lawyer is identified with his client.

We are attaching two statements from the Bar regarding those issues when the Minister of Justice and other public officials attacked lawyers for various reasons.

Problems and difficulties implementing the case law of national, European, and international courts

It is almost impossible to execute judgments from the European Court of Human Rights in Strasbourg when it comes to individual measures regarding applicants (unless the only measure is to pay a certain amount regarding pecuniary or non-pecuniary damages). https://rm.coe.int/mi-montenegro-eng/1680a23c9c

Detention cases are repetitive cases and there is a specific case that has not been executed since 2019 (Bigovic v. Montenegro)
https://hudoc.exec.coe.int/eng#{%22execidentifier%22:[%22004-52527%22]}

You can find all the details of what is happening with the case on HUDOC. It seems that the national judges simply cannot accept that lawyers succeeded before an international Court and they just disregard the judgment and reasons in it.

Significant developments related to training of justice professionals

The Bar Association of Montenegro has a good cooperation with the judicial training institution for judges, prosecutors and lawyers in Montenegro, and there are many joint trainings organised with the Bar.
The Bar Association also organised many specialised trainings on key subjects that were identified as needed by the members of the Bar.

Significant developments related to digitalisation

No developments, but unfortunately we will still have issues with computers and electronic devices in courtrooms. It is actually forbidden to use them in courtrooms.

https://sudovi.me/static/vrhs/doc/Kucni_red.pdf This is the link to the website of the Supreme Court and to a certain bylaw of the Supreme Court called "Kucni red" or "House order" in which it is specified how one should act in the court building and courtrooms. In Article 28 it is forbidden to use any electronic device. There is a possibility to ask for an ad hoc permit of judge deciding to allow you to use an electronic device for a certain part of the proceedings and to hand it back to the security officer when you finish using it. This makes no sense since most of the evidence are electronic evidence and there are no court computers that we can use during trials. We hope that the new President of the Supreme Court of Montenegro will change this bylaw and allow computers to be used in courtrooms because the President of the Bar had a meeting with her on 24 January 2025 and this was discussed.

Other issues and significant developments impacting access to justice

Access to justice has become very questionable regarding detention cases. There is a systematic problem with duration of detention and with detention being used as a rule and not as an exception. This was recognised many years before by the CPT, and recommendations were given, but nothing changed. In 2024 there was even a significant increase in the number of detentions. It is impossible for a person deprived of liberty to effectively challenge the reasons for detention.

The practice of the Special Prosecutor Department is to not allow defence lawyers to access the case files and see the evidence while the investigation is ongoing. By the law this should be exception, in certain justified cases, but in Montenegro it is a general rule that is applied in every investigation. This means that the first time a lawyer or defendant sees any document or evidence comes after six months of detention when the indictment has been submitted to the court. It is a common situation that the lawyer or the accused appeals the decision of detention or extension of detention without knowing about any piece of evidence from the case. There is no access to justice in these cases. Usually after 7 or 8 months of detention a lawyer can finally see the case files, because it takes time also for the court to allow it.

Another issue is that in Montenegro there are no specialised judges by the law, but there is specialisation in practice. There are civil case judges and criminal case judges according to the annual work schedule. This means that in practice always the same judges with experience in criminal cases are assigned to criminal cases, and judges with experience in civil cases are assigned to civil cases. The situation in the Appellate court in 2024 was that the panel of judges dealing with appeals on detention cases and other criminal procedure issues as second instance court was composed of only civil case judges. This led to proceedings being inefficient meaning that now it takes a couple of months to decide on the appeal on detention, the deadline by law being 3 days. For allegedly procedural reasons, this panel of civil case judges in most cases returned those detention case files to the first instance court asking for powers of attorney for lawyers, proof of decisions being delivered to the lawyers who appealed, and things like that. This led to procedures being prolonged and there is no effective remedy against this situation. When this was publicly stated, the Appellate court denied saying that they do act in 3 days deadline and that this deadline is counted from the day the complete file (by their standards) reaches the Appellate court. Most of the time this is more than a month or even two. This is also a systematic issue.

There is also a problem with uneven or inconsistent judicial practice in both criminal and civil cases. This is well established in the case Bagoje v. Montenegro from the European Court of Human Rights, which shows that there is no efficient remedy against inconsistent judicial practice in similar case laws.

https://hudoc.echr.coe.int/#{%22fulltext%22:[%22bagoje%20v%20montenegro%22],%22documentcollectionid2%22:[%22JUDGMENTS%22],%22itemid%22:[%22001-230889%22]}

North Macedonia

Significant developments related to appointment and selection of judges, prosecutors and court presidents

According to the Judicial Council assessment, there is a need for 162 new judges (434 total judges would be needed, while currently only 272 are appointed; with 40 retirements upcoming in the next 3 years). There are difficulties to fill vacancies in the judiciary, for example, from seven vacancies for presidents of basic courts, several were repeated, as no candidates applied or fulfilled the eligibility criteria. Additionally, according to the Council of Public Prosecutors, there are currently 179 prosecutors working in the country, which falls short of the estimated need for 279 prosecutors to adequately fill all necessary positions. At the beginning of 2025, the Academy of Judges and Public Prosecutors awarded certificates to 97 candidates who successfully completed the final exam (50 judges and 47 public prosecutors). It is expected for them to be soon appointed where relevant.

Significant developments if any, related to promotion of judges and prosecutors

On 1 March 2014, the Judicial Council adopted an action plan for implementing the recommendations of the 2023 peer review mission, within the competencies of the Council. In line with the plan, the Council approved on 29 May 2024 amendments to its rules of procedure and to the Rulebook on the manner of ranking candidates for the promotion of judges to higher courts, among others, requiring Council members to explain their decisions.

Significant developments related to allocation of cases in courts

The automated court case management information system (ACCMIS) needs to be updated in line with changes in procedural laws and the software needs to be adapted to the new measures for complex cases. The Commission for the supervision of the functionality of ACCMIS completed eight of the 19 supervisions planned for 2023. It was determined that all supervised courts use ACCMIS and that no cases are allocated manually.

Significant developments related to independence and powers of the body tasked with safeguarding the independence of the judiciary.

In January 2024, the Judicial Council swiftly implemented the decision of the Administrative Court to reinstate its unlawfully demoted President. On 1 March 2014, the Judicial Council adopted an action plan for implementing the recommendations of the 2023 peer review mission, within the competencies of the Council. The new communication strategy for 2024-2028, adopted in June 2024, focuses on strengthening public trust in the judiciary. The Judicial Council has taken steps to increase transparency, such as publishing session schedules, meeting minutes, decisions, reports, and other relevant documents on its website, and has started to web stream its sessions. The practice of regular bi-monthly media briefings started in April 2024.

Significant developments related to accountability of judges and prosecutors

A Supreme Court judge and a member of the Council for Public Prosecutors were involved in a case of accepting a reward for unlawful influence. The Judicial Council held two urgent sessions on 20 May and 16 August 2024 where it decided to lift the immunity of the Supreme Court Judge, allowing his detention. Both the former Supreme Court judge and the CPP member entered into plea bargain agreements. The former was sentenced to a 3-year prison sentence; the latter received a one-year suspended sentence. In September 2024, the Parliament took note of the resignation of the CPP member.

Significant developments related to remuneration for judges and prosecutors

On 15 May 2024, the Constitutional Court found the claims of the Judicial Council and of the Association of Judges that the amendments to the laws on salaries of judges and of the Members of the Judicial Council, of February 2024, jeopardise the independence of the judiciary to be inadmissible. The Court assessed that the minimal increase in the salaries will match the status of the judges and prosecutors, as they would be among the public officials with the highest income in the country.

Problems and difficulties implementing the case law of national, European, and international courts

There are several cases of the European Court of Human Rights v. North Macedonia, whose execution is still pending, due to various legal, administrative, procedural and other issues that need to be undertaken by the respondent state concerning, for example, ill-treatment at the hands of the police and lack of an effective investigation in this respect; non-enforcement of the social care centres' decisions on contacts with the applicants' children and granddaughter and lack of an effective remedy in this respect; violations of right to liberty on account of the lack of concrete and sufficient grounds for their detention, non-observance of the principle of equality of arms, and the lack of a speedy review of the applicants' detention, etc.

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

According to the new Law on the Bar/Advocacy adopted in September 2023, in order to strengthen the integrity of the profession, access to registration in the Register of Lawyers has been restricted for persons whose function has been terminated by a final decision establishing responsibility for the performance of the function or service until five years have passed since the finality of the decision.

Significant developments related to accessibility of courts

It is necessary to improve the appointment of lawyers in cases of mandatory defence and free legal aid in order to guarantee transparency of the process and access to quality representation, for which the Bar Association has already taken measures to establish the system (mainly through development of an adequate software for the appointment of lawyers in this regard and relevant training). The problem with the difficulties concerning payment of the award to lawyers who were summoned ex officio in procedures remains. The legal profession and the Bar Association must be included in all processes relevant to the development of the judiciary as well as in the EU accession process. The North Macedonia Bar Association took part in the process of drafting the Strategy for Judicial Reform 2024-

2028 and the accompanying action plan adopted by the government in December 2023. As a result, the Strategy, among others, foresees improvement of the institutional framework for practising the legal profession through designating lawyers from the list of lawyers as temporary representatives and holders of power of attorney in special procedures (before the Ministry of Interior, Social Security, Public Prosecutor's Office, enforcement agents and in other procedures), whereby each of the institutions where a lawyers is called has the duty to cover the lawyer's fees for the procedure before the institution; designing a software solution for the allocation of cases for free legal aid and for mandatory representation in ex officio cases and in accordance with the Law on Free Legal Aid, etc.

Significant developments related to training of justice professionals

One of the main novelties in the new Law on the Bar/Advocacy adopted in September 2023 is foreseeing an obligation for continuous education for lawyers, as well as initial training for candidate lawyers, whose implementation is the responsibility of an Education Centre of the Bar Association, which needs to be established. Since then, including during 2024, the North Macedonia Bar Association has been working intensively on establishing, for the first time, an Education Centre of the Bar Association, in order to provide a systemic solution for education of the members of the Bar Association. Part of the premises/headquarters of the Bar Association is intended to be used exclusively for the purpose of functioning of the Education Centre, which can potentially host trainings for up to 100 participants. In the meantime, the Education Centre of the Bar was fully equipped. Also, the process of drafting relevant legal acts concerning the functioning of the Education Centre as well as developing training programmes is ongoing and approaching towards its completion. In addition, the development of a sustainable learning management system (LMS) to deliver, monitor, and evaluate continuing legal education courses and registrants is also onging. Unfortunately, the initial plan to start with the implementation of the obligation for candidate lawyers to have completed initial training within the Education Centre of the Bar in the first half of 2025 will have to be postponed, due to a fire that occurred in the premises of the Bar Association recently. Namely, the Bar premises are heavily destroyed and the renovation will take some time.

Significant developments related to digitalisation

In addition to the need of the automated court case management information system (ACCMIS) to be updated in line with changes in procedural laws and the software to be adapted to the new measures for complex cases, more efforts are necessary to digitalise the justice system, in particular in relation to communication with courts and the use of videoconferencing for court hearings. In the practice of the legal profession, lawyers face challenges arising from the inconsistent, and in certain procedures and areas non-existent electronic submission of documents. As mentioned before, the North Macedonia Bar Association took part in the process of drafting the Strategy for Judicial Reform 2024-2028 and the accompanying action plan adopted by the government in December 2023. As a result, the Strategy, among others, foresees relevant measures in this regard, such as enabling lawyers to perform electronic service (delivery of documents) to courts, prosecutors' offices and other competent institutions.

Significant developments related to use of assessment tools and standards

In December 2023, the Ministry of Justice adopted the new Rulebook on the composition and working methods of the Council for coordinating information and communication technology in the judiciary (ICT Council). The ICT Council is tasked with drafting the new ICT Strategy for the judiciary.

Significant developments related to efficiency of justice system

The budget allocated to the judiciary in 2024 is 0.29% of the GDP, which is low considering that the legally provided amount is 0.8% of the GDP. Sufficient financial resources should be provided to improve the efficiency of the justice system and ensure its financial autonomy.

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Cases/examples undermining confidentiality of lawyer-client communications

According to the information available to the BAS, there were no cases of unlawful violation or breach of lawyer-client communication confidentiality in 2024.

However, as in previous years, there is suspicion that certain lawyers were subjected to unauthorised telephone surveillance by police officers and the Security Intelligence Agency, for which no official data is available.

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

During 2024, a total of 4 individual attacks on lawyers were reported, about which the BAS informed the Permanent Body of the Ministry of Justice for monitoring cases of attacks on lawyers and improving the criminal legal protection of lawyers. This body includes representatives of the legal profession and has requested immediate action to establish accountability for the attackers and protect the physical and psychological integrity of lawyers and the legal profession.

Regarding attacks on the legal profession in public, we note that during 2024, there were also public attacks on the legal profession by state bodies – the Republic Geodetic Authority and the President of the Republic of Serbia.

In the first quarter of 2024, the Republic Geodetic Authority published statistical data for March 2024 on its official website, as well as on the social media and other public information channels. These included lists of professional users, including lawyers, with the highest number of resolved cases, submitted and rejected requests, referencing the Law on Free Access to Information of Public Importance. It was noted that each published piece of information was for informational purposes and that this would be a regular monthly practice in the future. The BAS, considering this action by the Republic Geodetic Authority as absolutely illegal and extremely harmful to the legal profession, which is defined by the Constitution of the Republic of Serbia as an independent service for providing legal aid, and whose performance is exclusively within the competence of the BAS and its regional chambers, informed the Office of the Prime Minister of Serbia, the relevant minister, and the Commissioner, requesting urgent measures within their authority to immediately stop this illegal and harmful practice of the Republic Geodetic Authority. In response, the Ministry of Transport, Construction, and Infrastructure initiated an extraordinary inspection of the Republic Geodetic Authority’s operations, calling on all lawyers, through the BAS, to inform the Ministry's working group about the illegalities in the actions of the authority.

Link to the BAS Statement: https://aks.org.rs/sr_lat/saopstenje-za-javnost-advokatske-komore-srbije-povodom-postupanja-republickog-geodetskog-zavoda/

Link to the Announcement of the Ministry of Transport, Construction, and Infrastructure: https://aks.org.rs/sr_lat/dopis-ministarstva-saobracaja-gradevinarstva-i-infrastrukture/

Specific legal provisions and policies in your country which could influence the independence of the Bar and lawyers

In 2024, no new legal provisions or policies were adopted, nor were existing ones amended, that could negatively affect the independence of the legal profession or lawyers.

Specific examples in relation to the cooperation between your Bar and the executive branch or supervisory authorities

Despite the planned significant amendments to the Criminal Code in 2024, the Ministry of Justice did not invite representatives of the legal profession, appointed by the BAS, to the meetings of the working group tasked with drafting the Draft Law on Amendments and Supplements to the Criminal Code.

Additionally, a very brief public debate on significant amendments to the Criminal Procedure Code and the Criminal Code was planned and held from 1 October 2024 to 1 November 2024. Only after numerous objections from the professional public—including the BAS, several non-governmental organisations (such as the National Convention on the European Union), as well as certain judges and public prosecutors—regarding both the quality of the proposed amendments and the duration of the public debate, did the Ministry of Justice announce that it would abandon some of the proposed provisions that had proven problematic and extend the public debate into 2025.

Link to the proposal of the BAS to the Ministry of Justice to extend the public debate on the Draft Laws on Amendments and Supplements to the Criminal Procedure Code and Criminal Code until 31 December 2024: https://aks.org.rs/sr_lat/dopis-ministarstvu-pravde/

Link to the starting platform of the BAS for participating in the public debate on the Draft Laws on Amendments and Supplements to the Criminal Procedure Code and the Criminal Code: https://aks.org.rs/sr_lat/polazna-platforma-aks-za-ucestvovanje-u-javnim-raspravama-o-nacrtu-zakona-o-izmenama-i-dopunama-zkp-i-kz/

Problems and difficulties implementing the case law of national, European, and international courts

Despite the publicly available case law databases of the Supreme Court, the Constitutional Court, and the European Court of Human Rights, inconsistencies in the case law of domestic courts persist.

In 2024, a case law database of the Administrative Court was established and integrated into the Supreme Court's case law. This database is publicly accessible to all interested parties, public administration, state authorities, and lawyers, which should contribute to legal certainty and the predictability of court decisions.

Article 194 of the Constitution of the Republic of Serbia prescribes the sources of law: the Constitution, laws, other general acts, ratified international treaties, and generally accepted rules of international law. While the Constitution, as the supreme legal act of the Republic of Serbia, does not recognise case law as a formal source of law, in current judicial practice, it is used as an informal (supplementary) source, providing examples of the application and interpretation of legal norms. However, it does not hold the same formal significance as in the common law system, where case law creates law. This is further confirmed by Article 144 of the Constitution, which stipulates that a judge shall be independent

and shall perform their duties in accordance with the Constitution, ratified international treaties, laws, generally accepted rules of international law, and other general acts.

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

The BAS, along with the Bar associations within its structure, made several decisions in December 2024 to suspend lawyers' work both in the territories of the Bar associations and across the Republic of Serbia. This action was taken due to the systematic and prolonged interference of the executive branch in the judiciary and the violation of the principle of separation of powers in a democratic society. These decisions were supported and welcomed by the Bar associations of different countries in the region, demonstrating that, through the suspension of lawyers' work in the Republic of Serbia, both the lay and professional public were made aware of the issues concerning judicial independence and the pressures on the judiciary from the executive authorities.

Links to the BAS decision and the decisions of the Bar associations within its structure on the suspension of lawyers’ work and letters of support of the Bar associations of countries in the region:

https://aks.org.rs/sr_lat/odluka-uo-aks-o-obustavi-rada-advokata/

https://akbgd.org.rs/%D1%81%D0%B0%D0%BE%D0%BF%D1%88%D1%82%D0%B5%D1%9A%D0%B5-%D0%BE-%D0%BE%D0%B1%D1%83%D1%81%D1%82%D0%B0%D0%B2%D0%B8-%D1%80%D0%B0%D0%B4%D0%B0-%D0%B0%D0%B4%D0%B2%D0%BE%D0%BA%D0%B0%D1%82%D0%B0-%D1%87%D0%BB/

https://www.akn.rs/odluka-o-obustavi-rad-advokata-clanova-advokatske-komore-nisa-03-i-04-decembra-2024-godine/

https://advkomza.rs/odluka-o-obustavi-rada-advokata-ak-zajecar/

https://www.akn.rs/odluka-o-obustavi-rad-advokata-clanova-advokatske-komore-nisa-03-i-04-decembra-2024-godine/

https://akpozarevca.rs/wp-content/uploads/2024/12/Odluka-o-oibustavi-rada-asdvokata.pdf

https://akv.org.rs/wp-content/uploads/2024/11/Odluka-UO-AKV-od-22.11.2024.-godine-o-obustavi-rada.pdf

https://aks.org.rs/sr_lat/pismo-podrske/

https://aks.org.rs/sr_lat/pismo-podrske-ak-crne-gore/

https://aks.org.rs/sr_lat/pismo-podrske-advokatskeodvjetnicke-komore-fbih/

https://aks.org.rs/sr_lat/pismo-podrske-odvetniske-zbornice-slovenije/

Significant developments related to accessibility of courts

The BAS, through its representatives, has dedicated significant attention to raising public awareness about free legal aid in order to help citizens understand better their right to this form of assistance. At the same time, the legal profession strongly advocates for free legal aid to remain exclusively within the jurisdiction of lawyers, in accordance with Article 67 of the Constitution of the Republic of Serbia, which designates lawyers and local governments as the providers of legal aid. The BAS opposes the provision of free legal aid by unauthorised entities. While the Law on Free Legal Aid aligns with this constitutional provision, challenges persist in its implementation, particularly due to insufficient

services and funding from local governments. The BAS continuously invests resources to ensure full implementation of the law and establish a control system through its call centre, in order to maintain the quality of the assistance provided.

Significant developments related to resources of the judiciary

The BAS does not have relevant data, but the general impression is that there has been no progress or significant change in 2024 regarding judicial resources (human, financial, material).

Significant developments related to training of justice professionals

The provisions of the Law on the Legal Profession and the Statute of the BAS stipulate that a lawyer is obliged to continuously acquire and improve the knowledge and skills necessary for the professional, independent, autonomous, effective, and ethical practice of the legal profession, in accordance with the professional training programme adopted by the BAS.

Within its competencies, the BAS, through the Bar Academy as its integral part, organised several seminars, training sessions, and round tables in 2024 related to the professional development of lawyers, covering both national legislation and the monitoring and application of European laws. Additionally, international cooperation with European Bar associations was established.
Link to the Bar Academy website: https://aksakademija.edu.rs/

Significant developments related to digitalisation

According to the information available to the BAS, there were no significant improvements in the digitalisation of the judiciary in 2024.

The percentage of electronic submissions used by parties and lawyers to communicate with courts and public prosecutor's offices remains modest.

Despite the legal profession’s years-long insistence on the need to digitalise court case files to enable lawyers to access scanned case documents, this has not yet been implemented. As a result, lawyers are still required to physically review and examine case files at the relevant institutions instead of accessing them online.

Significant developments related to use of assessment tools and standards

According to the information available to the BAS, there were no significant improvements in 2024 regarding the use of tools and standards for assessment.

In the Republic of Serbia, a unified and centralised ICT system for case management in all courts and public prosecutor's offices still does not exist, and the various systems in use are not interoperable.

Significant developments related to geographical distribution and number of courts/jurisdictions.

According to the information available to the BAS, there were no significant improvements in this area during 2024.

Significant developments related to efficiency of justice system

There were no significant improvements in the efficiency of the judiciary in 2024.

A significant disproportion in the workload of courts and public prosecutor's offices persists, depending on their jurisdiction, as well as the slow decision-making of certain courts, particularly those handling a large number of old cases.