



EAJ Working Group *On the Situation of National Member Associations* Spring Meeting of the EAJ in Yerevan, 8th-10th of May 2025

Progress Report October 2024 to May 2025

1 Introduction

The last report of the WG covered the period from May to October 2024. The present report covers the period from October 2024 to May 2025.

During the period under review, the WG dealt with

- Statements/Resolutions at the meeting of Cape Town /SA (October 18th 2024)¹
- Inquiries from judges' associations
- EU-Rule of Law Report 2025

2 Statements, Resolutions made during the meeting of the EAJ in Cape Town (October 18th 2024)²

In its meeting in Cape Town the working party drafted resolutions on Sweden, Bulgaria and Armenia.

In the **Swedish** judiciary the wage system was unchanged since 2005: each judge has an individual set salary decided by a chief judge or the president of the court in which the judge sits. This system threatens judicial independence because judges are reluctant to freely express views which may not accord with those of the chief judge or president in question, or to raise issues of court management. Judges might fear that doing so could adversely impact decisions about their salaries. The WG presented a draft resolution on this salary system in Sweden which was subsequently unanimously approved by the EAJ Assembly

In **Bulgaria**, the serious issues concerning the security and integrity of the electronic voting system for the Supreme Judicial Council - already examined by the EAJ in Athens in 2023- had still not been solved yet. The WG presented a draft resolution on the voting system for the Bulgarian Supreme Judicial Council which the Assembly unanimously approved.

In **Armenia** the misuse of disciplinary procedures against judges continues. The draft amendments to the Judicial Code of Armenia regarding the evaluation of judges - that were also criticized by the Venice Commission – are still provided. The WG presented a draft resolution on the evaluation of judges and disciplinary procedures in Armenia and the Assembly unanimously approved it.

¹ For the EAJ Cape Town meeting see Appendix II (Minutes)

² Cf. Appendix I (Resolutions Cape Town)

3 Inquiries from judges' associations

There are no requires up to now. However, there is a request for adoption of a resolution of former judges of Montenegro under way “addressing the unconstitutional and unlawful dismissal of judges in Montenegro, which has severely undermined judicial independence and the principle of irremovability.” The request will probably be discussed at the Yerevan meeting.

4 Rule of Law Report (European Commission)

As usual the Working Group had to draft the report 2025 to the EU-Commission. This had to be done within an extremely short period of time!

The EAJ asked its members whether the overall situation of **the judiciary had improved, deteriorated, or not changed since the last report**, considering the two aspects of independence and effectiveness.

Of the 18 member associations which responded to this question, eight (Austria, Bulgaria, Estonia, Germany, Hungary, Portugal, Romania, and Spain) saw a deterioration and only three claimed an improvement (Cyprus, Ireland, Poland). The others (Croatia, Denmark, Latvia, Luxembourg, Netherlands, Slovakia, and Slovenia) reported that the overall situation had remained the same.

The differences in the ability, or in most cases the willingness, of governments and other relevant authorities to make improvements can best be seen by examining the extent to which the recommendations made by the Commission in last year's report have been followed. In this context, the EAJ was able to examine the 36 recommendations made to 16 Member States which reported on this issue (Austria, Bulgaria, Croatia, Denmark, Estonia, Germany, Hungary, Ireland, Latvia, Lithuania, Poland, Portugal, Romania, Slovakia, Slovakia, and Spain). Of 36 recommendations concerning the judiciary, only 4 were fully implemented and 6 were implemented partially. 22 were not followed and regarding the other 4 the classification is not possible because drafting is still ongoing without final result, or it is unclear if changes meet the recommendation. This result shows unfortunately that there is still much room for improvement.

The EAJ also asked its members **to indicate what they consider to be the biggest problem** in their countries. The problem most frequently identified as the biggest was the lack of resources (e.g. Austria, Bulgaria, Croatia, Cyprus, Denmark, Estonia, Germany, Ireland, Latvia, Lithuania, Portugal, Romania, Slovakia, Slovenia, Spain). This included:

- lack of personnel and inadequate remuneration for judges (e.g. Estonia, Germany, Estonia, Lithuania, Romania, Slovakia, Slovenia, Spain).
- Also included were insufficient support staff,
- poor building facilities and related inadequate working conditions;
- and increased workload (e.g. Netherlands, Slovenia).

This situation persisted, although there had been some improvements and additional funds had been granted by some of these member states (e.g. Bulgaria, Denmark, Germany, Ireland, Latvia, Lithuania, Slovakia, Slovenia). However, these measures were not sufficient.

On a **positive note**, a three-year plan has been agreed in Denmark between the judiciary and the other branches of government to increase further the judiciary's budget over the next three years.

In Germany the “Pact for the Rule of Law”, in which the federal and state governments promised a few years ago to increase significantly the number of judges in the coming years, is still waiting to be fully implemented even though in the meantime demand has increased due to an additional workload. Similarly delays can be observed in awarding increases in the salaries of German judges thereby

disregarding the fact that salaries in other sectors and professions have increased and that with inflation the purchasing power of money diminishes.

Overall, these basic considerations also make worse the situation which we recorded in our last report namely that in several Member States employment in the justice system, whether as a judge or as a civil servant, is no longer considered sufficiently attractive to avoid a shortage of suitably qualified and capable applicants for these positions (e.g. Austria, Denmark, Latvia, Portugal).

The lack of resources also has an impact on the effectiveness of the justice systems, particularly on the length of time elapsing before the completion of legal proceedings. While some Member States reported some reduction in the duration of proceedings and the backlog of cases (e.g. Cyprus, the Netherlands and Slovenia) and some other member associations mentioned the adoption of legislative changes to rules of procedure which aimed to increase effectiveness (e.g. Denmark, Germany, Ireland, Latvia, Spain), a larger number of responses reported a deteriorating situation for some or all types of cases (e.g. Germany, Hungary, the Netherlands, Poland, Romania, Slovenia).

The primary focus of the responses to the questionnaire was, understandably, on the **independence of the judiciary and threats to it**. In addition to threats to the substantive independence of judges and the judiciary in general, three main areas of potential violations were identified:

- the bodies responsible for the management of the judiciary and the career of judges;
- appointment procedures; and
- disciplinary procedures.

As central self-governing bodies with the primary task of protecting the independence of judges and the judiciary, the **judicial councils** continue to be at the centre of tensions between the powers of the state. The executive and politicians tend to seek control over these councils:

- In Spain, the Parliament ended the blockade on the appointment of members of the Council for the Judiciary, but the selection process for the members of the Council still does not meet European standards. The current Council has been asked by Parliament to come up with a proposal within six months on how best to select the members of the Judicial Council in line with European standards.
- In Estonia, a draft law proposes the creation of a new body to take over court administration from the Minister of Justice but the proposed composition of this body does not meet European standards.
- In Bulgaria, a constitutional amendment which had been adopted and which would have removed the dominance in the judicial council of public prosecutors over judges by dividing the existing unitary council into two councils, was annulled by the Constitutional Court due to procedural shortcomings in its adoption. As a result, the strong dominance of the Attorney General, who is elected by Parliament, remains in place.
- In Italy, the independence of the judiciary is threatened by two reform projects. First, in Italy, judges and public prosecutors are combined in a joint body both branches being treated as magistrates, which guarantees both professional groups an independent position that is protected by a joint judicial council. According to the proposed amendment, this council is to be divided into a council for judges and a council for public prosecutors, which will contribute to a weakening the independence of public prosecutors. Secondly, the judicial members of the Council for the Judiciary are to be selected by lot, which clearly contradicts the European standard that the judicial members of the Council for the Judiciary should be elected by their peers.

Regarding the **appointment of judges**, problems, or the need for reforms, either in law or in practice, were reported from several Member States. (Austria, Bulgaria, Germany, Hungary, Netherlands, Romania)

Disciplinary proceedings are sometimes misused as a device to remove judges from hearing or deciding a particular case or class of cases, from participating in a promotion procedure, or even from continuing membership of the judiciary. The previous Polish government provided several examples of misuse of disciplinary accountability in order to get rid of judges deemed by it to be undesirable and the European courts often had to act against such activities. The current government has commendably found ways to rehabilitate judges who were unjustly politically persecuted. However, despite that government having taken office, it has become difficult to hold judges appointed under the previous regime accountable since the President of the Supreme Court, who was appointed under the previous government, has not set up the necessary disciplinary bodies.

As far as **Poland** is concerned, it is readily acknowledged that the new government is well-intentioned and anxious to bring the legal framework for the judiciary back into line with European standards. A reform commission has been set up, the interim results of which suggest a positive result. However, several steps to reform have been blocked by the President either by vetoing them or by referring the issue to the Constitutional Court for a preliminary ruling.

In addition, there remain the significant challenges of

- finding a solution to the status of judges appointed by a council created in violation of the constitution and of the decisions they have made;
- and dealing with the Constitutional Court, which is composed of judges appointed under political influence by the previous government.

In **Austria and Germany**, the status of the public prosecutor's office, which is still subordinate to the ministry, has not changed.

In **Italy** the changes the government appears to be set on a course of weakening the independence of the office of public prosecutor thereby making it easier in the future to create opportunities for political influence.

Turning to other matters, in all member states, the **use of IT** in court proceedings is being further expanded, which most of the associations responding to the questionnaire naturally see as **positive**. Nevertheless, the **problems of too little support, too little funding, too little training for users, hardware** that is too old and software that is not up to scratch are still far from being solved.

In many countries, the involvement of the judiciary in proposals for making important changes in justice still needs to be greatly improved.

For the whole report see appendix III.

Binningen/Basel (Switzerland), April 11th 2025

Stephan Gass

Chair EAJ-Working Group *On the Situation of National Member Associations*

Appendix I: Resolutions Cape Town

Sweden



EAJ Resolution on
the remuneration of

Bulgaria



EAJ Statement on
Bulgaria.pdf

Armenia



EAJ Resolution on
Armenia.pdf

Appendix II: Minutes EAJ Meeting Cape Town



AEM-EAJ minutes
2024 Cape Town EN.

Appendix III: Rule of Law Report (European Commission)



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