



Association of European Administrative Judges/Vereinigung Europäischer Verwaltungsrichter /
Fédération Européenne des Juges Administratifs
Associazione dei Magistrati Amministrativi Europei /
Based at: Europäische Rechtsakademie D-54295 Trier, Metzger Allee 4

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Minutes of the General Assembly of Association of European Administrative Judges, Heraklion, 13 May 2022

1. Representatives of member organizations, board members and observers:

PRESENT

Austria

Michael FUCHS-ROBETIN
Erik HANEL
Elisabeth NUSSBAUMER-HINTERAUER
Markus THOMA
Eva WENDLER
Karin WINTER (Secretary-General)
Edith ZELLER (President)
Erwin ZIERMANN

EAJ (observer)

Mikael SJOBERG

Finland

Marja-Liisa JUDSTRÖM (Auditor)

France

Gabrielle MAUBON
Sylvain MERENNE (Vice-President)
Christine PSILAKIS
Pierre VINCENT
Camille VINET

Germany

Holger BÖHMANN (Vice-President)

Harald DÖRIG

Ralf HÖHNE

Christiane KNOOP

Jutta SCHILD

Greece

Eleni MOTSIU

Danias PANAGIOTIS

Eugenia PAPADOPOULOU (Vice-President)

Lithuania

Jurgita PAUZAITE (Observer)

Rasa RAGULSKYTĖ-MARKOVIENĖ (Vice-President)

ODIHR (Observer)

Carolyn HAMMER

Spain

Evaristo GONZÁLEZ GONZÁLEZ

Sweden

Hanna WERTH

ONLINE**Czech Republic**

Karolína TYLOVÁ

Finland

Iiris LAITINEN

Germany

David RABENSCHLAG (preelected Vice-President)

France

Emmanuel LAFORÊT

Luxembourg

Michele STOFFEL

Serbia

Jelena IVANOVIĆ

Ukraine

Natalie BLAZHIVSKA

USA (Observer)
Mimi TSANKOV
Joan CHURCHILL

Apologies for absence and proxies:

Jurgita PAUZAITĖ was given proxy to represent the Association of Judges of the Republik of LITHUANIA.

Karin WINTER was given proxies to represent the DUTCH member Katy VAN BOEVEN, the Association for LATVIAN Administrative Judges, the Association of BULGARIAN Administrative Judges, the Association of HUNGARIAN Administrative Judges, the SLOVENIAN Association of Administrative Judges, the PORTUGUESE Association of Judges of the Administrative and Tax Jurisdiction, the ITALIAN Association of Administrative Judges, the POLISH members Ewa MICHNA and Dagmara DOMINIK, the member from ROMANIA Ramona Gratiela MILU, and our SWISS member Thomas STADELMANN.

2. Report of President Edith ZELLER

Before giving the report Edith ZELLER states that the necessary quorum of more than half of the member states is met.

She asks the GA to decide that our colleagues from EAJ, ODIHR and ABA/NCALJ (National Chapter Administrative Law Judiciary) can attend as observer according to Art. 4 of our statutes.

The GA approves.

She expresses again her thanks to Danias PANAGIOTIS and Eugenia PAPADOPOULOU for inviting AEAJ to have the annual meeting and the meeting of the working group on “Independence-Efficiency” here in Heraklion.

Edith ZELLER refers to her E-Mails, our website [aeaj.org] and our twitter account [[@AEAJ2000](https://twitter.com/AEAJ2000) / [Twitter](https://twitter.com/AEAJ2000)] and reports especially about the following events since our last GA:

2021+2022

- AEAJ-EJTN seminar and board meeting, in Tallinn on 10 to 11 March 2022.
- Alumni meeting on 1 April 2022 in Luberon.
- Meeting of the WG “Independence-Efficiency” yesterday in Heraklion.
- 22 years of AEAJ celebration this morning in Heraklion.

Finally Edith ZELLER expresses her deep thanks to all WG-chairs, all board members, the treasurer and the Secretary General, all colleagues, who were willing to host AEAJ and last but not least all participants and active members.

3. Reports of the Vice-Presidents

Report of Vice-President Holger BÖHMANN, co-chair of the working group "Asylum and Immigration"

Since the last General Assembly on 15.10.2021 in Lyon/France I represented the Association on 25.01.2022 at the 8. Contact Person and LOT 4 partners meeting of EJTN, which was conducted hybrid online and in presence in Brussels. After a presentation of the work of the EJTN partners, a report of the various cooperation and EJTN planning for 2023, e.g. in the training field, a training needs assessment was conducted. Here I participated at the meeting of the Sub-Working group on administrative law, where I could confirm our availability and interest for future cooperation seminars like on "Conflict of Norms" and "the Role of the Administrative Judge in the State". It was agreed that a Migration Law seminar shall be included in the portfolio, which took place on 08./09. April 2022 in Lisbon and in which I participated as a speaker on labour migration.

During my attendance as speaker in several EJTN seminars, I addressed the cooperation between AEAJ and EJTN. In the EJTN seminar on the "Role of the administrative judge in the State", conducted on 24./25.02.2022 online, I participated as a speaker as well as in the AEAJ-EJTN co-operation seminar on "Conflict of norms" on 10./11.03.2022 in Tallin/Estonia, together with other board members.

On the occasion of the later, a hybrid Board meeting was held in Tallin on 11.03.2022 with a focus on the organisation of the present event, in which I participated in person. The Board also conducted several online-meetings.

The registration of the new board as elected in the GA in Lyon and the adopted amendment of the statutes at the Registry Court (Amtsgericht Wittlich) in charge at the seat of the Association at ERA in Trier/Germany was completed.

Report of Vice-President Rasa RAGULSKYTE-MARKOVIENE, co-chairs of the working group "Independence and Efficiency"

I was one of the co-organizers of the conference of the WG Independence and Efficiency „Disciplinary Proceedings against Judges“ which took place yesterday (on 12 May 2022) here in Heraklion.

Our longtime colleague Carolyn Hammer gave an overview about the OSCE / ODIHR recommendations on disciplinary accountability of judges in the Kyiv Recommendations (2010). Professor Jurgita Paužaitė-Kulvinskienė from the Law Faculty at the Vilnius University

presented the actual issues of the topic “Disciplinary liability of judges: constitutional discourse, rethinking the harmonisation of the national legal framework with international standards”.

President of the Greek Association of Administrative Judges Panagiotis Danias spoke about the disciplinary procedure system and problems in Greece and our colleague Gabrielle Maubon, who is a judge at the Administrative Court of Lyon, presented the actual questions of the disciplinary procedures against administrative judges in France.

Filipe Marques, president of MEDEL and Eva Wendler, AEAJ Rule of Law officer, judge at the Austrian Federal Administrative Court spoke about the disciplinary procedures against judges in Poland.

During the discussion sessions the participants spoke about the actual problems and explained their approach to the disciplinary procedures issues.

Cooperation with ODIHR:

On 10 May 2022 ODIHR organized the online workshop about the freedom of expression and association of judge (Review of the 2010 Kyiv Recommendations). As a representative of the AEAJ I attended the workshop and analyzed the related documentation. The experts of the ODIHR prepared the practical case studies and the review of the Kyiv Recommendations on Judicial Independence for the discussion. These documents give examples from OSCE participating States on the manner in which judges may exercise their freedom of expression, association and assembly in a select number of participating States of the OSCE. The important part of these documents are potential recommendations which are an attempt to provide suggestions to participating States of how judicial independence may be preserved and therefore the right to a fair trial by an independent and impartial tribunal, while observing also the fundamental rights of judges to freedom of expression, assembly and association.

Other activities:

I participated in the AEAJ board’s meeting on 11 March 2022. I participated actively in communication between the board’s members regarding a lot of issues connected with the judiciary in Europe.

Upcoming event – 2023

It is planned to organize the conference of the WG Independence and Efficiency at the same time when the GA 2023 will be organized.

The suggested topic for the conference is “Freedom of expression and association of judge”.

***Report of Vice-President Eugenia PAPAPOULOU, co-chair of the working group
“Taxation”***

YEAR 2020

In the year 2020, the Taxation WG annual seminar got cancelled due to the Pandemic health crisis. This seminar was originally planned to be held in Lyon and should focus on the impact of the pandemic on State Aid.

Due to the above mentioned cancellation, the seminar was decided to take place in Lyon on 14th and 15th October 2021 in combination with the General Assembly of the Association of European Administrative Judges (AEAJ).

YEAR 2021

On 14th and 15th October 2021 the Taxation Working Group seminar was held in Lyon – France.

Venue of the meeting: The premises of the Administrative Court of Appeal – Lyon (Palais des Juridictions Administratives, 184 Duguesclin, 69003, Lyon).

Participations:

Around 30 colleagues have participated. In total, all the participating countries were: Austria, Bulgaria, Finland, France, Greece, Germany, Lithuania, Romania, Slovenia and Sweden.

Three speeches and 6 presentations were held in the field of State Aid.

The presented topics in chronological order were the following:

- A) State Aid Law - considerations and the recent jurisprudence of the ECJ
Speaker: Maria Papadopoulou, Judge at the First Instance Administrative Court of Thessaloniki.
- B) State Aid Temporary Framework
Speaker: Barbara Wisiak, Judge at the Federal Tax Court of Austria.
- C) Covid 19 and fiscal policy issues
Speaker: Georges Cavalier, Associate Professor of Law at the University of Lyon and Academic Director for International Programs.
- D) National perspective
During the seminar, members of the Taxation Working Group presented their respective national systems (Bulgaria, Finland, France, Greece, Lithuania and Slovenia)

General comments: The participants agreed on the fact, that an online seminar cannot substitute a seminar in presence and were glad to get the opportunity for a scientific exchange. From the organizational aspect it was a successful event considering the Covid-19 situation although there were some Covid-19 incidents among the participants. From the scientific aspect it was a very fruitful meeting with a lot of new impacts.

Lastly we want to thank the French colleagues for the organization in place and doing their best especially considering the challenges of the pandemic.

UPCOMING EVENT - 2022

For the year 2022, the next Taxation Working Group meeting will be held in Sofia-Bulgaria on 6th and 7th October 2022.

The official topic of the seminar and the official venue will be announced soon.

Report of Vice-President Sylvain Merenne, co-chair of the working group “Independence and Efficiency”

I joined the ongoing ETJN-AEAJ activities as EJTN trainers. I made the introductory presentation « the New Challenges for the Administrative Judge in the State » for the EJTN seminar on « The Administrative Judge in the State » (online, 24-25 February 2022) and the presentation « Relations between Ordinary Law, Constitutional Law and EU-Law » for the EJTN seminar on « Conflicts of Norms » (Tallinn, 10-11 March 2022)

I co-organized the seminar of the WG Independence and Efficiency before our GA together with the VP Rasa Ragulskyte-Markoviene.

Finally, I joined the Alumni meeting in Lubéron on 1st April 2022, as it was easy to come from nearby Marseille. I met for the first time the previous board members who were present.

CoE activities:

The CCJE and the CEPEJ did not meet since the last GA.

CEPEJ will meet in Malta the 27-28 June 2022 for its 20th birthday. CCJE will meet the 30 November-2 December 2022.

We nominated three experts to the newly established Cyberjustice Network. They assisted to the inaugural conference. The Network did not have further activities.

4. Reports of the working group chairs

Report of the co-chair of the working group “Asylum and Immigration”, Harald DÖRIG

Since the last report at the General Assembly on 15.10.2021 in Lyon/France the co-chairs were involved in the planning for the annual WG meeting 2022 on 8./9. September 2022 at the High Administrative Court of Berlin-Brandenburg in Berlin. A contract was signed for the use of the premises of the court upon the negotiations by our contact person in Berlin, David Rabenschlag.

Concerning potential topics, it is likely that a major topic will be subsequent asylum application. The admissibility of subsequent applications is affected by the most recent jurisprudence of the CJEU. Here CJEU judge Lars Bay Larsen has already confirmed his participation. In addition we will discuss practice related issues on visa procedures.

As usual, a representation of EUAA is envisaged, possibly on the database.

The meeting will address the current developments in Afghanistan with regard to the need for international protection. We will invite an Afghan judge who managed to escape with his family to Germany with support of our association. He will give an insight on the situation in Afghanistan and his personal experience as a judge there. The participants will have the chance to exchange recent jurisprudence and current challenges in the daily work on Afghan cases in their respective Member States.

As for the social program a visit at the seat of the Federal President at Bellevue Palace is planned.

Report about the working group “Environmental Law”

The co-chairs Anders BENGSSON and Matthias KELLER could not join the GA and asked SG Karin WINTER to report the GA there is only one update since the GA 2021: The topic for this year workshop on 13-14 Oct in Lisbon will be: „In dubio pro natura? - Confronting (factual, scientific and legal) uncertainties in environmental court cases“.

The co-chairs collaborate for AEAJ with ELI on „climate change“ project.

5. Treasurer’s Report

The treasurer Ralf HÖHNE reports:

In 2021, nearly all member associations – except for Azerbaijan, Latvia (paid in January 2022) and Ukraine – and several individual members paid their membership fee, some of them also for the previous years. The receipts were 13.840,00 Euro.

Concerning the expenses, it was foreseen in the budget that 4.000 Euro could be spent for each working group meeting, plus 250 Euro for each co-chair. For the meetings in Lyon (Taxation WG) and Marseille (Asylum WG) we did not spend all the money dedicated to these meetings. There were no costs for the meeting of the Environmental Law working group as they had only an online meeting.

For the General Assembly in Lyon, we spent 2889,20 Euro and for the extra board meeting in Athens 2345,57 Euro.

At the end of the year, there were 18.643,90 Euro left on the account, a bit more than at the beginning of the year.

Furthermore Edith ZELLER especially thanks the national court presidents and court administrations, who and which enable AEAJ-members to participate in AEAJ-meetings and even often finances their participations.

6. Auditors' Report

Marja-Liisa JUDSTRÖM reports:

I as an auditor of AEAJ, Marja-Liisa JUDSTRÖM, have with the other auditor Hannele KLEMETTINEN examined the accounts of AEAJ. We have again been given access to account information, payments and receipts.

We can report that there has not been any reason for complaint. All account information, payment transactions and receipts are in good order. We auditors congratulate the treasurer on his great and intensive work.

We noticed that the membership fees of the national associations have been paid well for the year 2021. Almost all the associations have paid the membership fees. One association has paid also for the year 2022.

Not yet all individual members have paid the membership fees for the year 2021.

In the account of the association at the end of the year 2021 there were more funds than previous year.

7. Approval of actions of board, treasurer and auditors for 2021

The GA unanimously decides to approve the actions of the board and the treasurer as well as the auditors.

8. Pre-Election of one board member

Ediths informs the GA that the statutory term of office (maximum 10 years) of Vice-President Holger BÖHMANN will be reached in 2023. According to Art. 5 of the AEAJ-statutes it is possible to have pre-elections for this vacancy.

The German Association (BDVR) informed us, that they propose our colleague David RABENSCHLAG (our AEAJ webmaster) as successor of Holger Böhmann for the period of 2023 onwards.

The GA unanimously decides to elect David RABENSCHLAG.

9. Admission of new members

- Hilka BECKER (Ireland) was unanimously admitted as individual members.

- José Ramón GIMENEZ CABEZON (Spain) was unanimously ceased.

10. Advisory committee of AEAJ

Jasna ŠEGAN could not join th GA and asked SG Karin WINTER to report the following:

Reports on meetings of the “alumni board”, now “Advisory Committee”, have been made to the General Assembly since 2016.

The board of AEAJ deliberated about it already in 2019 and opened the possibility to establish it on the level of a working group of AEAJ.

Based on the board decision in Lyon in October 2021, the Advisory Committee (AC) met on 1. 4. 2022 in Luberon, France. It was chaired by former Vice-President Carlo Schockweiler and former Vice-President Jasna Šegan (co-chairs) with Karin Winter as secretary.

The meeting was devoted to find and decide on clear structures (membership and tasks) of the future Advisory Committee.

Specific proposals have been discussed and decided unanimously.

These proposals on specific structures of the future Advisory Committee have been presented to the board of AEAJ. The exchange and deliberations are not finished yet. If agreed on, the Advisory Committee will start functioning in 2023.

GA delegates take note of it.

11. Report on activities of Council of Europe

See above the report of Vice-President Sylvain MERENNE.

12. Report on equity, diversity, inclusion

Camille VINET reports:

1. Online meeting with Hanna Werth (January 2022) to think about what actions could be taken: a short survey came up, the purpose of which would be to identify colleagues interested in the topic of Equity, Diversity and Inclusion and to take stock of the treatment of these issues in the different countries represented within the AEAJ.

Accordingly, a questionnaire is going to be sent to members of AEAJ, and based on this information we might plan a meeting.

2. Participation in webinars

Launch of the moot court on rights of persons with disabilities organized by the ODIHR (17 March 2022): its objective is to raise awareness of these rights and of the discrimination suffered by people with disabilities, particularly in the field of justice, whether as workers or as litigants. Various personalities intervened in addition to the ODIHR collaborators, in particular professors teaching at the Center for Disability Law and Policy (based in Ireland) and the Bochum Center for Disability Studies (based in Germany).

Participatory conference on the legislative initiative on binding standards for equality bodies (4 April 2022). This conference is part of a study funded by the European Commission (DG JUST). The objective of the study is to provide the European Commission with evidence and analysis to support a possible legislative initiative laying down binding standards for equality bodies. The purpose of the conference was to present the preliminary results of the study and the main policy options for future EU legislation on the topic of binding standards for equality bodies, and to gather participants' feedback in relation to these. The conference gathered representatives from national administrations, equality bodies, EU and international institutions and bodies, academia, and civil society.

3. Collaboration with other institutions

International association of women judges (IAWJ): Edith made contact and had an exchange with the president of the IAWJ, in particular concerning the question of the situation of Ukrainian women judges.

US Federal Bar Association: contact was made with Mimi Tsankov, who is an immigration judge with the U.S. Immigration Court. She serves on the FBA (Federal Bar Association) board of directors and is the president of the National Association of Immigration Judges (NAIJ). She is in charge of Equity, Diversity and Inclusion issues for her association.

13. Report of rule of law officer

Eva WENDLER reports:

Poland:

I would like to start with Poland, which is not only because of the rule of law situation but also due to its geopolitical position and its vicinity to Ukraine in our focus.

Thanks to our good collaboration with the other judges associations and with OSECE-ODIHR we are always updated, for example recently ODIHR held an online meeting regarding the situation in Poland where Malgorzata Szuleka talked about the current developments. And the other day I had the opportunity to hear a lecture of Prof. Adam Bodnar, who was the

former Polish Ombudsman he has described the situation in that way there is not a totally breakdown yet, but rule of system as such is a fight mode.

Within the framework of our working group session yesterday , we already had the opportunity to take a closer look at the rule of law situation in Poland.

So I would like to wrap up the main topics.

Rule of Law back sliding takes place at various venues. I'll pick a few examples to give an insight how wide-ranging the developments are.

In 2015 Law and Justice party (short in Polish PIS) won the 2015 parliamentary election with an outright majority—something no Polish party had done since the fall of communism.

From this point onwards a reconstruction of the rule of law as a whole in Poland began.

Council of the Judiciary:

One of the first venues of this reconstruction process was the Polish Council for the judiciary. Councils for the judiciary are one of the main targets in political efforts to diminish the independence of the judiciary in several countries. This is primarily because they are responsible for the appointment and promotion of judges, disciplinary sanctions against judges and judicial ethics. And the Polish government then started to capture the Council for the judiciary.

Now the National Council of the Judiciary consist of the Chief Justices of the SC and Supreme Administrative Court, Minister of Justice, a representative of the President, 4 MPs elected by the Sejm (lower house of the Polish parliament and of course dominated by PIS) and 2 senators the Judiciary elected by the Senate (upper house of the Polish Parliament) . The remaining 15 members are judges, but elected by the PIS dominated Sejm.

The action of this Council, in particular the exchange of judges, culminated in the expulsion of the Polish National Council of the Judiciary the European Network of Councils for the Judiciary (ENCJ) in October 2021.

Since 2015 new members of the Polish Constitutional Court were appointed. In Xero Flor, the Strasbourg Court was asked to assess the current composition of the Constitutional Tribunal. Based on the case *Guðmundur Andri Ástráðsson* in the case Xero Flor the Court broadened the scope of the right to a tribunal established by law by explicitly stating that the process of appointing judges was an inherent element of the concept “established by law”.

As Prof Bodnar stated recently 2000 Poland has approximately 9000 Polish judges and 2000 of them are newly appointed by the new Council of the Judiciary. Until September 2020 as

many as 130 court presidents have been removed. The Minister of Justice has established over 150 judges as “supervisors” in the courts.

Additionally a new Disciplinary Chamber was established at the Supreme Court. This is a court of second instance and it may be in some cases a court of first instance in disciplinary proceedings against judges from the ordinary courts, e.g. if they are suspected of having committed a crime. This Chamber is a fully autonomous and separate unit and has its own president who appoints the presidents of the disciplinary courts but may also dismiss them during their term in office based on general and unspecific grounds. Poland failed to guarantee the independence and impartiality of the DC.

In July 2021 the Grand Chamber of the European Court of Justice found the new disciplinary regime for Polish judges to be incompatible with EU law. Also in July 2021 the ECtHR ruled that the DC did not meet the standard of a “right to a court established by law” guaranteed under Art 6 of the Convention.

The ECJ has greenlighted the rule of law conditionality mechanism. The said Regulation allows the EU to cut funds awarded to Member States in case of an established violation of the rule of law by those States, if this violation endangers the EU budget. In its judgement, the ECJ held that the Regulation was adopted on an appropriate legal basis and is compatible with the procedure laid down in Article 7 TEU. Moreover, it is consistent with the limits of the EU’s competences and fully in line with the principle of legal certainty.

What is the present situation of the Polish judges?

Prof Bodnar, the former Ombudsman, summarised recently that different kind of formal and informal methods are used to suppress judges and exercise this chilling effect.

Disciplinary proceedings are underway against a large number of judges or their judicial immunity has been lifted seeking to bring charges against them.

They face suspension and salary cuts for applying EU law and judgements of European Court of Justice or attending an event organised by a NGO that has led protests against the government’s judicial policies. Judges have to notify their membership to any kind of association, even to a judicial or social association. Their membership is made public on the internet. And one judge joined a social association in relation to the illness of her child, she revealed her membership, but did not give the name of this association, now she is prosecuted.

More subtle ways to suppress judges are also used, i.e. removing judges to other court divisions or even to other courts several hundreds of kilometres away from their families.

So all in all, there is a lot of bad news, but we must not forget one thing, which Prof. Bodner also emphasised in his lecture, despite all this backsliding developments a huge group of

judges behave in an integral way. And I think, all these brave colleagues deserve our highest respect.

I would like to end my statement with a short remark on Romania

The Romanian Judges Association AFJR asked the European Court of Justice to assess whether the reformed disciplinary, civil and criminal liability of magistrates introduced in Romania during 2017 to 2019 may affect the Romanian judiciary's capacity to adjudicate independently and comply with EU rule of law. The Romanian follows the Polish and Hungarian recipes for quick and widespread actions that undermine judicial independence, including: political capture of the highest positions in the judicial system hierarchy and silencing of judicial criticism with sanctions on judges and prosecutors for engaging in public debate on legislative reforms. For instance, in a six-months-period the judicial accountability regime was substantially amended by 5 Government Emergency Ordinances.

Disciplinary actions against judges and prosecutors are pursued by the Judicial Inspectorate, this body was politically captured by concentrating in the hands of the Chief Inspector increased power of appointment, disciplinary investigations and sanctions.

2018 Parliament decided to create a new special investigation section with exclusive competence to investigate criminal offences committed only by judges and prosecutors. The repeated use of Governmental Emergency Ordinances to establish this new body watered down its the few initial independence guarantees. The first appointed interim chief prosecutor and adjunct chief prosecutor were persons with special connection to the Government at that time. European Commission and Council of Europe reports assessing the justice reform identified a high risk that the establishing and functioning of this body would be perceived as politically motivated, they recommended that the institution be eliminated.

The justice reform affected the entire judicial accountability regime, including the civil liability procedure. The role of the executive increased in starting liability actions and there are no hearing rights of the judge under investigations during the establishment of the judicial error.

Now the European Court of Justice stated in its findings that the national provisions on the new investigative institutions for magistrates will not pass the EU law conformity if following 3 conditions are not cumulatively met: 1) is the creation of this body justified by objective and verifiable reasons 2) is the creation of this body accompanied by specific guarantees preventing any risk that it might be used as an instrument of political control over judges? 3) Are the fair trial and effective remedies in Art 47 of the Charter ensured in the operation of this body. The European court of Justice left the final decision to the referring court to ascertain whether the rules of this institutions fulfil these three crucial points of judicial independence or not.

Concerning the civil liability of judges the European Court of Justice concluded that this personal liability of judges for judicial errors should be limited to exceptional cases and framed with objective verifiable criteria. The court devised a clear list of safeguards that should be in place. The types of behaviour for which judges may be personally liable should be defined in clear and precise terms in order to protect their independence. The liability of judges for damage caused during the exercise of their functions should only be invoked in exceptional circumstances. Adequate guarantees must be established to avoid that such procedures are transformed into instruments of pressure. And the rights provided in Art 47 Charta particularly the right of defence of the judge must be fully complied with and the organ deciding on the personal liability of a judge must be a court.

Going into further details would lead to far, if you need further information just contact me.

First of all we have the let's say "European Dimension" in the last years, namely the jurisprudence of the European Court of Justice and the European Court of Human Rights.

The ECtHR dealt with the irregularities in the personal composition of the Polish Constitutional Court, and the Disciplinary Chamber of the Polish Supreme.

It is the latest in a series of judgements by the Strasbourg court that have found Poland's judicial policies to have violated the right to a fair trial guaranteed under Article 6 of the European Convention on Human Rights (ECHR).

The ECtHR found a violation of "the right to a tribunal established by law" because of the participation of a person in the deciding process of the Polish CC who was unlawfully elected to the position of a judge, these judges were elected by the new National Council of Judiciary (Case Xero Flor an Reczkowicz vs. Poland). A further ruling was issued by the ECtHR in this context regarding the Poland's Supreme Court's Extraordinary Review and Public Affairs Chamber. The main reason for this was the appointment of judges upon the motion of the National Council of the Judiciary (NCJ), which is no longer an independent body after the legislative changes adopted in 2017. In doing so, the Court confirmed its previous rulings.

One of the recent cases of the ECtHR has dealt with judge Grzęda, a judge who sits on Poland's Supreme Administrative Court. From 2016-18, he had also served as a member of the National Council of the Judiciary (KRS), the body responsible for nominating judges as well as for upholding their independence.

In that year, he was one of a number of judges removed from the NCJ before their four-year terms had ended under a law that reconfigured the KRS – a body previously mostly made up of judges – to have a majority of its members appointed by parliament.

Grzęda argued that the fact there was no legal avenue for contesting the decision to prematurely remove him from the KRS had violated his right to a fair trial (under Article 6 of the ECHR) and right to an effective remedy (under Article 13). The Grand Chamber of the

ECtHR sided with Grzęda, finding that his right to a fair trial under Article 6 had been violated.

The European Court of Justice found the new disciplinary regime for Polish judges to be incompatible with EU law (Commission v Poland C-791/19). The ECJ has greenlighted the rule of law conditionality mechanism. The said Regulation allows the EU to cut funds awarded to Member States in case of an established violation of the rule of law by those States, if this violation endangers the EU budget. In its judgement, the ECJ held that the Regulation was adopted on an appropriate legal basis and is compatible with the procedure laid down in Article 7 TEU. Moreover, it is consistent with the limits of the EU's competences and fully in line with the principle of legal certainty.

Additionally we have the Polish, the national dimension: here are the main players the Polish CC, the already mentioned Disciplinary Chamber of the Supreme Court and the National Council of the Judiciary.

In October 2021 the Polish Const Court, which is widely seen as being under the influence of the ruling party, ruled that Art 19 of the EU Treaty is on the contrary to the Polish Constitution on the organisation of the judiciary. In another decision the Polish CC found that ART 6 of the ECHR is incompatible with the Polish Constitution regarding the right to a fair trial in proceedings before the same CC.

The situation of judges.

There are about 9000 judges in Poland, 2000 of them are appointed by the neo politically dominated National Council of the Judiciary. Former Ombudsman Bodnar stated that different formal and informal methods are used to repress judges and to exercise this chilling effect.

For each judge a so called green file exists, this is a compilation of files of the respective judge, it is half secret, but crucial for the promotion of the judge.

Judges are facing disciplinary proceedings because of applying EU law, because of not recognising decisions issued by neo judges or refusing to adjudicate in a bench with a judge promoted by the new NCJ. These examples show how steadfast many Polish judges are. Prof Bodnar underlined that a huge group of judges behaving in an integral way.

They have to notify if they are member of a judicial association or even another association, for example of a social association. If not they face disciplinary proceedings.

14. Report on other external relations

EJTN:

Eugenia Papadopoulou reports on the forum of EJTN (judges@europe):

a) Introduction

The event took place in Syracuse – Sicily in the premises of the Siracusa International Institute for Criminal Justice and Human Rights on the days 5th-6th and 7th of May 2022.

This initiative of EJTN was something entirely new in the field of Judicial Training and it didn't have the ordinary format of any of the EJTN seminars and webinars (1 day and a half event) of the past.

The main topic of the event was the Rule of Law.

The goals of the project were:

The Participants of the judges@europe forum were provided with European jurisprudence and a compared analysis of the rule of law.

Participants were provided with the possibility to identify, discuss, and compare the impact on the integrity and independence of their judiciary in a secure, confidential forum.

According to the written aims of the project: When the forum is complete, participants will be able to:

- Define the characteristics of the Rule of Law using authentic judicial contexts, scenarios, and experiences.
- Apply the rule of law to their judicial practice.
- Apply resilience strategies to promote and protect judges from the potential negative effects of stressors.
- Build Judicial network with peers across Member States for ongoing support, dialogue, and sharing beyond this forum.

As a total assessment of the first event of the forum, it was a very successful event from the scientific aspect although several organizational problems did occur especially on the DAY 1, due to the insufficient preparation from the hosting institution.

I believe the EJTN will improve the organizational weakness in the following respective events.

b) About the participation and the promotion of AEAJ

My participation concerning the representation of AEAJ was mainly placed in the DAY 1 and the DAY 2

On the Day 1, after the dinner, round tables were formulated in the exterior area of the restaurant where the dinner took place. In those tables, judges from different EU countries exchanged their views with a cocktail or a glass of wine. They talked freely and openly about the situation of the judiciary in their countries, about their problems and their complaints concerning the national judicial system.

This is the concept of Fireside chat with guests (participants that was adopted for first time by EJTN).

I was moderating a table with guests (judges) from Germany, Austria, France, Spain and Poland.

I had prepared a list of questions concerning the rule of law and some specific parameters of the notion (like the use of social media in their country, the degree of judicial independence, their right of the freedom of expression etc.).

On the Day 2 there was the joint event with MEDEL on the topic: “What can the individual judge do to protect the Rule of Law”

Filipe Marques and I were the panellists representing MEDEL and AEAJ.

The panel was moderated by Markus Brückner and João Manuel da Silva Miguel.

The central theme was: The role of the judge in the society - opportunities and limits.

Both moderators addressed us a set of questions from the following areas:

- how to make use of the freedom of expression
- how to make use of media and social media
- how to act in the political sphere, preserving the dignity and impartiality of the judiciary
- how to act towards the hierarchy and other state powers
- code of ethics
- how to build a network between judges to ensure

judges on the political.

As a general remark it was a successful event and the representation of AEAJ was very fruitful since many participants expressed their wish to be members of the Association or expressed their wish to become administrative judges.

EUAA:

Harald DÖRIG reports:

I have the honor to represent AEAJ at the EU Agency for Asylum (EuAA) since July 2021. In January 2022 the former European Asylum Support Office (EASO) has gained this new name

and a new legal status as EU agency. We had a general meeting (online) of all National Contact Points (NCP) in January 2022 and will have a face to face meeting in Bruxelles on 2 and 3 June 2022. On behalf of AEAJ I pleaded for an enlarged and reliable EuAA-database of the most important asylum judgments of CJEU, ECtHR and national courts in asylum decisions. In the upcoming meeting we will discuss on the training program and on the future development of judicial training materials. The International Association of Refugee and Migration Judges has indicated that it will no longer develop and update such material as it has done in the past. So another solution has to be found.

OSCE/ODIHR:

Carolyn Hammer reports:

AEAJ representatives have participated in the following events organized by ODIHR during the reporting period:

- 1) 13 December 2021 and 12 April 2022 – online meetings on judicial independence and the rule of law in Poland. These meetings were organized to take stock of recent developments with regard to judicial independence and the rule of law in Poland, and brought together a range of Polish and international participants, including representatives of the Polish judiciary, civil society and academia, representatives of regional and international organizations including judicial associations, and representatives of the diplomatic community in Warsaw.
- 2) 17 December 2021 – online expert consultation meeting as part of the process of ODIHR review of the Kyiv Recommendations (2010).
- 3) 17 March 2022 – online launch event of the inaugural OSCE/ODIHR and Centre for Disability Rights and Policy at the National University of Ireland – Galway moot court on the rights of persons with disabilities.
- 4) 10 May 2022 – online workshop on freedom of expression and association of judges, organized as part of the process of ODIHR review of the Kyiv Recommendations (2010).
- 5) 17 May 2022 – side event on the functioning of courts in times of crisis, organized in the margins of the OSCE Supplementary Human Dimension Meeting The Functioning of Democratic Institutions in Times of Crisis.

ODIHR welcomes the opportunity to continue similar collaboration with AEAJ in the future, and to continue our fruitful exchanges on an ongoing basis.

University of Trento and EUI:

Markus THOMA, AEAJ-contact person to EUI, reports on the projects TRIIAL and FriCoRe, where AEAJ is/was involved as a partner institution: both projects dealt with topics of EU-law, the application of it and judicial independence in member states and offered a lot of seminars where also administrative judges were invited. Due to the pandemic situation most of them were organized online and the participation of judges did not meet the expectations.

Both projects had started before the pandemic and terminated in spring 2022; Markus Thoma emphasized in both final conferences of these projects the importance of projects like these in the future, also towards representatives of the EU (esp. in the present situation of challenges of rule of law in Europe and the ‚geopolitical situation’ at its borders), and the hope of further involvement of AEAJ.

15. Reports concerning the actual situation of administrative judiciary in certain countries

Afghanistan

Edith ZELLER refers to her E-Mails, our website and twitter account.

Austria

Markus Thoma reports on the undue and unacceptable influence of politics on the appointments of heads of judiciary: according to media, governmental parties have fixed so called side-letters (hidden agreements to the official coalition agreements of the parties) dividing supreme posts between the parties and giving each political party the right to suggest applicants for posts allocated to it.

Aside that chats between a former high ranking public prosecutor, now deputy president of the Supreme Court, Marek, and then minister of Justice Brandtetter were leaked, where Marek demanded support by the minister for her application for the post of deputy president.

For the posts of president and deputy presidents of the Supreme Court no proposals of judicial boards exist in Austria as there are no proposals for heads of administrative courts.

Greece

Danias PANAGIOTIS reports the Council of State accepted the objections of the Greek association against the new Greece laws concerning the evaluations of new judges. There is still the open issue of the qualification of cases.

Finland

Iiris LAITINEN reports that remuneration is now an issue, too in Finland.

Lithuania

Rasa RAGULSKYTĖ-MARKOVIENĖ reports that since 2008 there is still no increase of the salary (was due to the economic crises reduced to 30 %).

Poland

See above (13.) the report of Eva WENDLER

Turkey

Edith ZELLER refers to her E-Mails, our website and twitter account.

Ukraine

Edith ZELLER refers to her E-Mails, our website and twitter account.

Natalie BLAZHIVSKA reports that the moral support of AEAJ is very important and helpful.

16. Work program AEAJ for 2022 and 2023

Edith ZELLER reports about the future events:

- WG Tax meeting Oct 2022 in Sofia
- Asylum WG meeting Sept 2022 in Berlin
- Env WG meeting Oct 2022 in Lisbon
- 11 May 2023 and 12 May 2023: WG Independence meeting and GA in Versaille

17. MOU ABA-AEAJ

Edith ZELLER reports:

Thanks to the initiative of Ed FELTER we had exchange of information and increasing co-operation with our US colleagues since 2015.

I remember well that the first phase to intensify our joint efforts was when the crises for Turkish judges started, in 2016. SG Karin WINTER met Ed FELTER in Vienna to discuss the crises for Turkish judges. I could participate once as panel speaker in a specific conference organized by ABA on issues of Turkish judiciary in 2017.

Catherine KOUTSOPOULOU could represent AEAJ at the GA meeting of ABA in August 2016 in San Francisco.

You have specific fruitful exchange with our AEAJ representative on equity, diversity and inclusion.

We had intensified contact during the Afghan crises in order to sort out ways how to help Afghan colleagues.

These were only some highlights and today we can finalize the codification process of our co-operation and collaboration. I have received the signed memorandum of understanding which will be signed today by AEAJ.

Edith ZELLER signs the MOU.

18. Miscellaneous

Edith ZELLER stresses again that the contact persons of national member associations of AEAJ have a key role – not only to disseminate information, but also to actively promote and support AEAJ by ensuring that each member receives the information on upcoming meetings and by reporting national needs to AEAJ. This might also support an increase in further active participation of members.