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## **COMMISSION STAFF WORKING DOCUMENT**

### **2022 Rule of Law Report Country Chapter on the rule of law situation in Slovenia**

#### *Accompanying the document*

**Communication from the Commission to the European Parliament, the Council, the  
European Economic and Social Committee and the Committee of the Regions**

#### **2022 Rule of Law Report The rule of law situation in the European Union**

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## ABSTRACT

The Slovenian justice system has seen some improvements in quality and efficiency, and regarding issues raised in the 2021 Rule of Law Report, such as the nomination of European Delegated Prosecutors. Improvements to the Judicial Council Act, including on disciplinary framework, are in preparation. However, concerns have been raised over the Minister of Interior's powers to instruct the Police in individual cases, potentially affecting independent work of state prosecutors and the European Public Prosecutor's Office. Rules governing parliamentary inquiries lack safeguards on independence of judges and state prosecutors – as required by Constitutional Court judgments. The Government decreased, without consultation with judicial authorities, the previously agreed budget for courts, the Judicial Council and the State Prosecution. The Judicial Council launched procedures for constitutional review of salaries of judges.

Work started on a new national anti-corruption strategy, but the timeline for adoption is not yet known. The resources of the Commission for the Prevention of Corruption are being increased. The Government aims to strengthen the rules on whistleblower protection. However, the number of prosecutions has decreased to their lowest level in recent years. The State Prosecution Service faced challenges, including on human resources and due to the short statute of limitation. Furthermore, institutions in the fight against corruption are concerned about continuing challenges to the independence of their work. Serious concerns exist regarding the independent work of the anti-corruption police, including the National Bureau of Investigation. The number of Police investigations of corruption has dropped. Several actions have been implemented during the COVID-19 pandemic with the aim to address the risk of corruption, especially in public procurement.

Since the 2021 Rule of Law Report, the situation of media freedom and pluralism has not improved. The independence of the audio-visual media services regulator is ensured by law, however challenges remain regarding the commitment to strengthen its independence, particularly through the proposed amending legislation. The legislation aimed to transpose the Audiovisual Media Services Directive has been adopted. A regulatory gap for addressing high concentration of media raises concerns. After delays in payments which were considered by stakeholders as politically motivated and led to a number of staff leaving, the financial viability for 2021 and 2022 was ensured for the Slovenian Press Agency. Despite legal safeguards providing for the independence of public service media, there are challenges regarding their effectiveness in practice in limiting political influence. A hostile environment, online harassment of and threats against journalists are growing sources of concern, and several lawsuits against journalists with intimidating effect have been reported.

The Constitutional Court reported an increase in cases related to COVID-19 pandemic measures. The law on public finances lacks safeguards on budgetary autonomy of certain independent bodies – as required by a Constitutional Court judgment. The share of laws adopted by urgent procedure in Parliament has decreased. The Human Rights Ombudsperson received an increased number of complaints, including those related to COVID-19 pandemic measures. The civil society faced challenges regarding negative narrative, but funding issues and limitations on freedom of assembly were resolved.

## **RECOMMENDATIONS**

In addition to recalling the commitments made under the National Recovery and Resilience Plan relating to certain aspects of the justice system, it is recommended to Slovenia to:

- Ensure that rules on parliamentary inquiries contain adequate safeguards for independence of judges and state prosecutors, taking into account European standards on judicial independence.
- Remove obstacles to the investigation and prosecution of corruption cases, including by ensuring the operational autonomy of the National Bureau of Investigation, increasing the resources of State Prosecution and revising the statute of limitation.
- Adopt and start implementing without further delay the anti-corruption strategy.
- Strengthen the rules and mechanisms to enhance the independent governance and editorial independence of public service media taking into account European standards on public service media.
- Establish legislative and other safeguards to protect journalists, particularly online, taking into account European standards on the protection of journalists.
- Ensure requisite safeguards for budgetary autonomy of the independent bodies.

## **I. JUSTICE SYSTEM**

The Slovenian justice system has three levels, with Local and District Courts (dealing with civil, commercial and criminal cases) and Labour Courts and an Administrative Court at first instance<sup>1</sup>, five Higher Courts at second instance and the Supreme Court at third instance (dealing with appeals to certain judgments of Higher Courts and of the Administrative Court). The Constitutional Court carries out constitutional review. The Constitution provides for a Judicial Council, a *sui generis* body outside of the three branches of Government, which is tasked with protecting the independence as well as promoting and ensuring the accountability, efficiency and quality of work of the judiciary<sup>2</sup>. Candidate judges are selected by the Judicial Council and then proposed for appointment by the National Assembly (the first chamber of Parliament)<sup>3</sup>. If the Judicial Council selects a candidate who has already been elected to judicial office, the candidate is promoted to the new judicial position by the Council itself. The State Prosecution, while being part of the executive power, is an independent authority, with the main powers regarding the career of state prosecutors and its functioning resting with the State Prosecutorial Council and the Prosecutor General. The State Prosecutorial Council is an independent and autonomous state body that performs the tasks of self-governance of the State Prosecution and participates in ensuring the uniformity of prosecution and safeguarding the independence and autonomy of state prosecutors. Slovenia participates in the European Public Prosecutor's Office (EPPO). The Slovene Bar Association is an autonomous and independent body. It is responsible for supervising the professional activities of lawyers and deciding on disciplinary measures regarding its members<sup>4</sup>.

### **Independence**

**The level of perceived judicial independence in Slovenia continues to be average among both the general public and companies.** Overall, 49% of the general population and 49% of companies perceive the level of independence of courts and judges to be 'fairly or very good' in 2022<sup>5</sup>. According to data in the 2022 EU Justice Scoreboard, the level of perceived judicial independence shows a positive trend for the fourth year in a row. Both figures have increased in comparison to 2021 (47% for the general public and 43% for companies), as well as in comparison to 2016 (47% for the general public and 37% for companies).

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<sup>1</sup> There are in total 60 first instance courts with one Labour Court also dealing with social security cases. The Administrative Court has the status of a higher court.

<sup>2</sup> The primary responsibility of the Judicial Council is the selection of candidate for judicial offices. As guaranteed by the Constitution, the majority of members of the Judicial Council are judges, elected by their peers. The remaining five members are representatives of other legal professions, elected by the National Assembly based on the nomination of the President of the Republic. The Judicial Council manages its own budget.

<sup>3</sup> Since the initial re-election of judges after the independence of Slovenia in 1990s, the Parliament has rejected a candidate judge for first appointment only once. It should be noted a candidate judge, who is not appointed, cannot request judicial review against the decision of the Parliament and the Parliament has no obligation to state reasons for rejecting the appointment.

<sup>4</sup> According to the Constitution, the Bar is part of the judiciary. Disciplinary Commissions of 1<sup>st</sup> and of 2<sup>nd</sup> Instance, each consisting of 16 lawyers elected for 3 years by the assembly of the Bar, decide (in three-member panels) regarding disciplinary sanctions at first instance and at second instance, respectively. The Disciplinary Court, consisting of three lawyers elected for 2 years by the assembly of the Bar and of two Supreme Court judges, decides on violations that could lead to a lawyer being disbarred.

<sup>5</sup> Figures 50 and 52, 2022 EU Justice Scoreboard. The level of perceived judicial independence is categorised as follows: very low (below 30% of respondents perceive judicial independence as fairly good and very good); low (between 30-39%), average (between 40-59%), high (between 60-75%), very high (above 75%).

**The Ministry of Justice is preparing amendments to the Judicial Council Act, including regarding disciplinary framework on judges.** The aim of the draft amendments is to introduce the possibility of a (semi) professionalisation of the function of the President and Vice-President of the Judicial Council<sup>6</sup>, clarify the provisions regarding judicial control over the legality of the election of members of the Judicial Council from among judges, further strengthen the transparency and accountability of the Judicial Council, and address the unconstitutionality of the certain provisions on disciplinary proceedings regarding judges. The 2021 Rule of Law Report found that the judiciary initiated a discussion on improving the framework for disciplinary proceedings regarding judges<sup>7</sup>. Both the Association of Judges and the Judicial Council provided comments on the draft amendments. The objective of the reform of disciplinary proceedings appears to be in line with EU law and takes into account the Council of Europe recommendations<sup>8</sup>.

**The Government nominated the European Delegated Prosecutors, and the subsequent Government appointed most of candidates for state prosecutors.** The 2021 Rule of Law Report set out concerns about the failure of Slovenia to nominate the candidates for the post of European Delegated Prosecutors in time<sup>9</sup>. On 18 November 2021, the then Government eventually nominated the two candidates selected in December 2020 by the State Prosecutorial Council, which were then appointed on 23 November 2021 by the College of the European Public Prosecutor's Office. However, on 24 November 2021, the then Ministry of Justice submitted for discussion by the Government draft amendments to the State Prosecution Service Act that would change the rules for the nomination of the European Delegated Prosecutors and envisaged that the two already appointed European Delegated Prosecutors would be replaced by new candidates selected in accordance with this revised

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<sup>6</sup> The current Act on Judicial Council does not envisage that the Council President or Vice-President would be relieved of any duties (even partly), for example in the judicial function.

<sup>7</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Slovenia, pp. 5-6.

<sup>8</sup> Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, paras. 66 and 69. According to EU law, the requirement of independence means that the disciplinary regime regarding judges must display the necessary guarantees in order to prevent that the regime is used as a system of political control of the content of judicial decisions. E.g. Judgment of the Court of Justice of 24 June 2019, *Commission v. Poland*, C-619/18, EU:C:2019:531, para. 77; judgment of the Court of Justice of 25 July 2018, *LM*, C-216/18 PPU, EU:C:2018:586; judgment of the Court of Justice of 5 July 2016, *Ognyanov*, C-614/14, EU:C:2016:514 and order of the Court of Justice of 12 February 2019, *RH*, C-8/19, EU:C:2019:110.

<sup>9</sup> According to the State Prosecution Service Act, the independent State Prosecutorial Council, following a public vacancy published by the Ministry of Justice, selects candidates for the post of European Delegated Prosecutors and submits them to the Ministry, which then submits the names to the Government; the Government "takes note" of the candidates selected by the Council, and transmits their names to the EPPO, which decides on their appointment. In December 2020, the Council submitted the names of the two candidates to the Minister, but the Government did not put the item on its agenda. In May 2021, the Government declared the selection procedure unsuccessful and instructed the Minister to publish a new vacancy (released in July). (2021 Rule of Law Report, Country Chapter on the rule of law situation in Slovenia, pp. 3-4). In the new call, the same two candidates, whom the Council already proposed for nomination, applied. However, the Council considered that its selection remained valid, thereby rendering the new public call illegal. (State Prosecutorial Council, Conclusions of 1 June 2021 and Statement of 9 July 2021). The European Chief Prosecutor sent a letter to the Minister of Justice highlighting how the Government undermined the effective work of the EPPO. (EPPO, European Chief Prosecutor expresses grave concerns in letter to Slovenian Minister for Justice, 9 July 2021). The European Chief Prosecutor informed the EU Justice Ministers that the persisting obstruction by Slovenia created "a prosecution gap in the EPPO zone". (EPPO, Statement from the European Chief Prosecutor with regard to Slovenia, 8 October 2021).

procedure<sup>10</sup>. The Commission pointed out that the European Delegated Prosecutors were appointed for the five-year term of office provided for in Article 17 of the EPPO Regulation, with all the guarantees required to ensure their independence. As regards the state prosecutors, the 2021 Rule of Law Report found that the appointments of state prosecutors were unjustifiably delayed<sup>11</sup>. On 2 June 2022, the new Government appointed/promoted 13 out of 20 candidate prosecutors who were awaiting a decision of the Government<sup>12</sup>.

**Rules governing parliamentary inquiries lack safeguards on independence of judges and state prosecutors that were required by two Constitutional Court judgments.** In 2019, a Parliamentary Inquiry Committee opened an investigation to look into actions of prosecutors and judges in specific criminal cases<sup>13</sup>. Against this background, the Judicial Council and the State Prosecution challenged the constitutionality of the rules on parliamentary inquiries then in force and the Constitutional Court delivered two judgments. In January 2021, the Constitutional Court found the Parliamentary Inquiries Act and the Rules of Procedure on Parliamentary Inquiry to be unconstitutional, insofar as they lack procedural safeguards for ensuring the independence of judges when establishing a parliamentary inquiry<sup>14</sup>. In August 2021, the Constitutional Court found similar deficiencies in the rules in relation to safeguards for ensuring the independence of state prosecutors<sup>15</sup>. The Constitutional Court gave Parliament one year to remedy the unconstitutional elements from

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<sup>10</sup> The amendments would restrict the role of the State Prosecutorial Council in the selection of candidates for the post of European Delegated Prosecutors and enable the Government to make a selection amongst the proposed candidates. They would allow the Ministry of Justice to propose to the Government ‘other eligible candidates’ for European Delegated Prosecutors (even if they never applied to the vacancy), in case the Council would not submit its proposal. In addition, the amendments envisaged that the list of candidates from which the Government would get to choose should contain three times the number of European Delegated Prosecutors in relation to Slovenia. The then Government did not discuss the amendments, which stayed with the Ministry of Justice for reconsideration. Draft amendments were not submitted into inter-ministerial consultation or into legislative procedure, and due to a change in Government the procedure on their discussion was stopped. However, on 13 May 2022, the opposition deputies in the newly established Parliament submitted the draft amendments to the State Prosecution Service Act, which include the same provisions.

<sup>11</sup> The 2021 Rule of Law Report noted that the Government had not provided clear reasons for not taking decisions on the appointment/promotion of 15 candidate prosecutors, out of 29 proposed by the State Prosecutorial Council from July 2020 until July 2021; see 2021 Rule of Law Report, Country Chapter on the rule of law situation in Slovenia, p. 3.

<sup>12</sup> Out of 37 proposed since July 2020. To be noted that the previous Government did not provide any reasons for the delay. Out of these 13, 6 were appointments of new state prosecutors and 7 promotions/transfer of existing state prosecutors. The procedures for the remaining 7 candidates will continue after the promotions of 2 June become final. Written contribution from the State Prosecutorial Council and the Ministry of Justice following the country visit to Slovenia.

<sup>13</sup> 2020 Rule of Law Report, Country Chapter on the rule of law situation in Slovenia, pp. 2-3.

<sup>14</sup> The Constitutional Court stressed that Parliament may not impede judicial proceedings, or in any way influence judges in concrete proceedings, including through an *ex post* discussion about the legality or adequacy of individual judgments. Judgment of the Constitutional Court of 7 January 2021, *U-I-246/19-41*, see 2021 Rule of Law Report, Country Chapter on the rule of law situation in Slovenia, pp. 4-5.

<sup>15</sup> The Constitutional Court stressed that the Parliament may not impede prosecutorial work, or in any way influence prosecutors in concrete cases, including through an *ex post* discussion about the responsibility of a state prosecutor for deciding to prosecute or not to prosecute in a specific case. Judgment of the Constitutional Court of 8 July 2021, *U-I-214/19*, paras. 79-82.

the Parliamentary Inquiries Act (until January 2022 and July 2022 with regard to judgments on judges and state prosecutors, respectively)<sup>16</sup>. No legislative proposal has been tabled yet.

**Concerns have been raised over the Minister of Interior's powers to instruct the Police in individual cases, potentially affecting independent work of state prosecutors and the EPPO.** On 20 October 2021, the Parliament adopted, on a proposal from the Government, amendments to the Organisation and Work of the Police Act. Further to these amendments<sup>17</sup>, the Minister of the Interior has the power to issue instructions to the Police even when the latter act in the framework of a criminal investigation, until the moment the state prosecutors demand in writing to take the lead of the investigations or issue written guidance to the police. These provisions may also apply to the relations between the Slovenian European Delegated Prosecutors and the Police. Previously, it was deemed that the state prosecutors were in charge of the investigation by default, from the moment the Police informed them of the criminal offence, and Minister/Police hierarchy could not intervene<sup>18</sup>. On 23 June 2022, the new Government amended the Decree and removed the obligation to demand in writing to take the lead of the investigations and the obligation to issue guidance to the Police in writing.

## Quality

**Electronic communication tools in the justice system are being gradually improved, including in criminal justice, where room for improvement remains.** Information and Communication Technologies for case management are advanced, particularly in courts. In 2021, as part of an EU funded project, the Supreme Court launched the *Archeia* system, which enables a centralised, long-term storage of digital content<sup>19</sup>. The 2021 Rule of Law Report found that the COVID-19 pandemic exposed the need to accelerate the necessary improvements to electronic communication tools between courts/prosecution and parties<sup>20</sup>. According to the 2022 EU Justice Scoreboard, in 2021 the digitalisation improved, particularly regarding procedural rules enabling the use of electronic communication in civil/commercial cases and in internal electronic communication of State Prosecution<sup>21</sup>.

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<sup>16</sup> Until the established unconstitutionality is removed, the Judicial Council or the Prosecutor General can request the Constitutional Court to check if a new parliamentary inquiry respects independence of judges or state prosecutors, respectively.

<sup>17</sup> Article 4(8) of that Act, read in combination with Articles 5(2) and 12(4) of the Decree on the cooperation of the state prosecutorial service, Police and other competent state bodies and institutions in the detection and prosecution of perpetrators of criminal offences and operation of specialised and joint investigation teams. In April 2022, a group of 5 000 citizens submitted into legislative procedure a draft 'Act to reduce inequalities and harmful policy interventions and ensure respect for the rule of law' that would amend a number of laws, among them the Police Act, including on the Minister's power to issue instructions.

<sup>18</sup> It should be noted that once the EPPO has decided to exercise its competence, the national authorities on which the EPPO relies for the adoption and execution of investigative measures, notably the Police, should not receive instructions from any national authority. The Commission has enquired with the Slovenian authorities in order to gather further information and examine the amendments from its compliance with EU law, including the EPPO Regulation.

<sup>19</sup> Input from Slovenia for the 2022 Rule of Law Report, p. 12.

<sup>20</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Slovenia, pp. 6-7. As a response to the COVID-19 pandemic, the Supreme Court promoted and implemented (in collaboration with the Ministry of Public Administration) tele-working and enabled work from home for about 3.000 (some 75%) court employees. In addition, necessary IT equipment (notebooks, desktops) was provided to judges and court personnel. Input from Slovenia for the 2022 Rule of Law Report, p. 12.

<sup>21</sup> Figures 42 and 43, 2022 EU Justice Scoreboard. State Prosecution improved conditions for remote work of state prosecutors and staff and use of videoconferencing, in particular.

Room for improvement remains on electronic communication in criminal cases<sup>22</sup> and for communication of external actors with the State Prosecution<sup>23</sup>. In criminal, administrative and civil and commercial cases, accelerated efforts are under way to upgrade already by end 2022 the computerised case management system to allow electronic communication<sup>24</sup>. In 2021, the Ministry of Justice established a working group to coordinate the implementation of electronic operations in criminal matters<sup>25</sup>. Several necessary adjustments in communication between the Police, the State Prosecution and courts have been identified, and the court rules have been amended. A number of projects to upgrade the electronic communication tools have commenced, particular in the criminal area<sup>26</sup>. As regards electronic communication between the Police and the State Prosecution, the channel for criminal notifications which exists since 2017 saw its features extended in 2021. As regards electronic communication between courts and State Prosecution, it is planned to be extended to all types of criminal cases by end of 2023. Online access to published judgments remains limited as regards decisions of first instance courts<sup>27</sup>. Amendments requiring the Supreme Court to publish also first instance court judgments are in preparation<sup>28</sup>.

**The Government decreased the previously agreed budget for courts, State Prosecution and Judicial Council without the customary consultation with judicial authorities.**

According to a well-established practice, the Ministry of Finance (in cooperation with the Ministry of Justice) prepares the draft budget for the justice system based on input from and in consultation with the judiciary, and the Government submits the agreed proposal to Parliament in full transparency. In November 2020, Parliament adopted the 2022 budget<sup>29</sup>. In June 2021, some judicial authorities<sup>30</sup> agreed with the Ministries of Finance and Justice on a higher budget, in view of preparations of amendments to the 2022 budget<sup>31</sup>. However, on 30 September 2021, the Government proposed to Parliament the Amendments to the 2022 budget<sup>32</sup>, which reduced the previously agreed revisions by 17% for the Judicial Council, 4% for the State Prosecution and 1.2% for the courts. The judicial authorities were not informed

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<sup>22</sup> Figures 46 and 47, 2022 EU Justice Scoreboard.

<sup>23</sup> Figure 45, 2022 EU Justice Scoreboard. Electronic communication between courts and State Prosecution is planned to be introduced by the end of 2022. Input from Slovenia for the 2022 Rule of Law Report, p. 12.

<sup>24</sup> Input from Slovenia for the 2022 Rule of Law Report, p. 12.

<sup>25</sup> Input from Slovenia for the 2022 Rule of Law Report, pp. 10-11.

<sup>26</sup> For example: establishment of electronic business processes in criminal case management system; development of the e-File information system; and upgrading the e-Notaries information system. Completion is planned in 2023. Input from Slovenia for the 2022 Rule of Law Report, pp. 9 and 11.

<sup>27</sup> Figure 48, 2022 EU Justice Scoreboard. The Supreme Court publishes court decisions in a machine-readable form. Published court decisions should be pseudonymised by deleting a number of personal data. Every individual has the right to request from the President of the Supreme Court or from the Supreme judge authorised by him the deletion or correction of the publication of a court decision. Input from Slovenia for the 2022 Rule of Law Report, pp. 12-13.

<sup>28</sup> Due to the Supreme Court's concerns about the reasonableness of non-selective publication of all first instance judgments, the Ministry of Justice proposed criteria, focussing on publication of those final judgments of the first instance courts which are important for strengthening legal certainty and ensuring consistent case law, and which have decided on the main proceedings, except for those in which the public has been excluded from court proceedings or if the adjudicating judge or the panel so decides for certain reasons. Input from Slovenia for the 2022 Rule of Law Report, pp. 12-13.

<sup>29</sup> Budget of the Republic of Slovenia for 2022, Official Journal of 27 November 2020, 174/2020.

<sup>30</sup> Such as the Judicial Council, the State Prosecution and the Supreme Court (acting on behalf of the courts).

<sup>31</sup> The Government adopted these agreed amounts in the Proposal to determine the breakdown of budgetary expenditure adopted in the Government session of 24 June 2021.

<sup>32</sup> Parliament adopted this budget on 18 November 2021. Amendments to the Budget of the Republic of Slovenia for 2022, Official Journal of 1 December 2021, 187/2021.



of the revised proposed budget nor invited to parliamentary discussions on it, contrary to the established practice<sup>33</sup>. The European Parliament called on Slovenian Government to ensure sufficient funding for the judicial authorities.<sup>34</sup> Council of Europe recommendations provide that Councils for the Judiciary, the courts themselves and/or judges' professional organisation may be consulted when the judicial system's budget is being prepared<sup>35</sup>. It is to be noted that the overall budget for the justice system has been increasing for several years<sup>36</sup>.

**The Judicial Council launched a procedure for constitutional review of salaries of judges.** In 2021, the Constitutional Court was seized first by the Association of Judges<sup>37</sup> and subsequently by the Judicial Council<sup>38</sup> in relation to the salaries of judges. In particular, the Judicial Council and the Association of Judges consider that the current salary system applicable to judges is unconstitutional due to the imbalance of the salary grades of the judiciary compared to the salary grades of the legislative and the executive branches. They also stated the imbalance is affecting the independence of the judiciary guaranteed by the Constitution. According to the Judges' Association, the current salary system makes it difficult to attract and retain judges in the judiciary<sup>39</sup>. The imbalance between the public sector salary system and the salary system applicable to judges leads to situations where officials working in courts (judicial advisers) sometimes have a higher salary than a judge<sup>40</sup>.

## Efficiency

**There were some improvements in efficiency, but the challenges identified in past Reports persist on length of trials related to money laundering offences.** According to the

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<sup>33</sup> Judicial authorities raised concerns about a 'significant cut' of the previously agreed budget and asked for explanations. Letter from the President of the Judicial Council to Commissioner Reynders, Resources for the Judicial Council and Judiciary of the Republic of Slovenia - 2022 Budget Amendments, 17 November 2021. Supreme Court, Opening of the judicial year 2022, 2 March 2022, p. 3-4. For courts, the budget for 2022 was decreased by EUR 2.4 million, and for State Prosecution by EUR 1.1 million. Information received from the State Prosecution in the context of the country visit to Slovenia.

<sup>34</sup> '[European Parliament] calls on Slovenian Government to ensure sufficient funding for the Judicial Council and State Prosecutorial Council, Constitutional Court and Supreme Court and to respect their financial autonomy so that these self-governance bodies and independent institutions can function independently and effectively'. European Parliament resolution of 16 December 2021 on fundamental rights and the rule of law in Slovenia, in particular the delayed nomination of EPPD prosecutors (2021/2978(RSP)), para. 17.

<sup>35</sup> Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, para. 40.

<sup>36</sup> Figures 34 and 35 in the 2022 EU Justice Scoreboard show that the budget actually spent for the justice system has been growing since 2016 in absolute terms, while in relative terms, as share of GDP, it has grown in 2020, from a previously stable level, and remains among the highest in the EU.

<sup>37</sup> In March 2021, the Judges' Association submitted an initiative to the Constitutional Court to review the constitutionality of several provisions of the Public Sector Salary System Act, Fiscal Balance Act and the Judicial Service Act. The Association considered that the existing legal framework on salaries and other remuneration is contrary to the constitutional provisions ensuring the rule of law, the principle of the separation of powers and the equivalence of the three branches of power, equality, the right to justice and the independence of the judiciary. Judges' Association, Press release of 19 March 2021. The Constitutional Court rejected the initiative due to lack of legal interest. Decision of the Constitutional Court of 21 April 2022, *U-I-70/21-8*.

<sup>38</sup> The Judicial Council lodged a request for the review of constitutionality on 6 October 2021 alleging a breach of the same provisions of the Constitution as those quoted by Judges' Association. Written contribution from the Judicial Council following the country visit to Slovenia. The Constitutional Court decided to treat this request as an absolute priority.

<sup>39</sup> Information received from the Judges' Association in the context of the country visit to Slovenia.

<sup>40</sup> Information received from the Judicial Council and the Judges' Association in the context of the country visit to Slovenia.

2022 EU Justice Scoreboard, the estimated time needed to resolve has increased in 2020, particularly in litigious civil and commercial cases<sup>41</sup>. According to Supreme Court data, in 2021, the courts in total received 8% more cases and resolved 10% more cases than in 2020, with the total backlog of cases at the end of 2021 decreasing by 8%<sup>42</sup>. In 2021, the average length of proceedings mostly increased or stagnated at first instance courts, and decreased at second instance courts.<sup>43</sup> As regards criminal courts, the number of cases in which the statute of limitation was reached has more than halved from 2019 to 2020<sup>44</sup>. Nevertheless, the average length of trials in first instance courts in more complex money laundering offences increased to 925 days in 2020 on average (876 days in 2019) and remains among the highest in the EU<sup>45</sup>. The President of the Supreme Court established a working group consisting of Supreme Court and appeal court judges with the task of analysing the challenges regarding adjudication of cases, including on financial and economic crime, particularly those related to efficiency<sup>46</sup>.

## II. ANTI-CORRUPTION FRAMEWORK

The key law setting up the institutional and legislative framework to prevent and fight corruption in Slovenia is the Integrity and Prevention of Corruption Act (IPCA). The Commission for the Prevention of Corruption is an autonomous and independent state body, responsible for the prevention of corruption through administrative oversight of rules on integrity and conflicts of interests. The Commission continues to cooperate regularly with the police and special prosecutor's office. The National Bureau of Investigation is the specialised criminal investigation unit for the detection and investigation of serious crimes, including corruption. Previously an autonomous body, it was moved in 2021 under the management authority of the General Police Directorate.

**The perception of public sector corruption among experts and business executives is that the level of corruption in the public sector is relatively high<sup>47</sup>.** In the 2021 Corruption Perceptions Index by Transparency International, Slovenia scores 57/100 and ranks 16<sup>th</sup> in the EU and 41<sup>th</sup> globally<sup>48</sup>. This perception has been relatively stable<sup>49</sup> over the past 5 years<sup>50</sup>.

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<sup>41</sup> Figures 6 and 7, 2022 EU Justice Scoreboard.

<sup>42</sup> Written contribution from the Supreme Court following the country visit to Slovenia.

<sup>43</sup> The average length of proceedings at first instance courts increased to around 2 years in large value (21 months in 2020) and to 16 months in small value litigious civil cases (15 months in 2020). and stagnated at 11 months in litigious commercial cases. In criminal cases, the average length increase both in lesser offences (10,7 months, from 10 months in 2020) and in more serious offences (17 months, from 15 months in 2020). In appeal, due to mostly written procedures, these types of cases were resolved more quickly, namely in around 1,8 months in civil (2,4 in 2020) and in 2,7 months in commercial cases (3,4 in 2020), on average. Written contribution from the Supreme Court following the country visit to Slovenia.

<sup>44</sup> In 2020, 55 criminal cases were closed due to the statute of limitation being reached (in 2019, 144 cases were closed for the same reason). In about two thirds of closed cases, the statute of limitation was reached due to procedural reasons, such as the unavailability of the indicted person or the need to postpone hearings. Other reasons included organisational or legal reasons, as well as indictments having been lodged too late. Supreme Court Report on cases with statutes of limitation in 2020 , pp. 1-3.

<sup>45</sup> Figure 24, 2022 EU Justice Scoreboard.

<sup>46</sup> Information received from the Supreme Court in the context of the country visit to Slovenia.

<sup>47</sup> Slovenia went from score 60 (at the bottom of the category relatively low, see below) to score 59 (at the top of the category relatively high). Taking into account also the percentage of 84% who believe corruption in the government is a big problem, the qualification is 'relatively high'.

<sup>48</sup> Transparency International, Corruption Perceptions Index 2020 (2021), pp. 2-3. The level of perceived corruption is categorised as follows: low (the perception among experts and business executives of public

The 2022 Special Eurobarometer on Corruption shows that 87% of respondents consider corruption widespread in their country (EU average 68%) and 31% of respondents feel personally affected by corruption in their daily lives (EU average 24%)<sup>51</sup>. As regards businesses, 78% of companies consider that corruption is widespread (EU average 63%) and 34% consider that that corruption is a problem when doing business (EU average 34%)<sup>52</sup>. Furthermore, 36% of respondents find that there are enough successful prosecutions to deter people from corrupt practices (EU average 34%)<sup>53</sup>, while 17% of companies believe that people and businesses caught for bribing a senior official are appropriately punished (EU average 29%)<sup>54</sup>.

**There is currently no national anti-corruption strategy in place.** A Resolution on the Prevention of Corruption in the Republic of Slovenia was adopted in 2004, which has since not been changed<sup>55</sup>. The previous national anti-corruption strategy covered the period 2017-2019. Since then, no new strategy has been put in place. A working group, composed of representatives of the Ministry of Public Administration, the Ministry of Justice, the Commission for the Prevention of Corruption and other stakeholders, has been established to prepare a new anti-corruption strategy by March 2023. No concrete timeline regarding its adoption has yet been announced<sup>56</sup>.

**The heads of key institutions have voiced their concern about continuous challenges to the independence of institutions in the fight against corruption.** In June 2021, the heads of the Commission for the Prevention of Corruption, the Court of Audit, the Information Commissioner and the Human Rights Ombudsman issued a joint statement denouncing repeated pressure and harassment from politicians through coordinated attacks in media outlets and on social media. The public criticism includes the blanket rejection or non-compliance with decisions, as well as the accusation of political action, which undermines respect for the institutions responsible to fight corruption<sup>57</sup>. This undue interference in the work of the institutions is likely to have a detrimental impact on their overall capacity to perform their key tasks in the prevention and detection of corruption and other irregularities,

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sector corruption scores above 79); relatively low (scores between 79-60), relatively high (scores between 59-50), high (scores below 50).

<sup>49</sup> In 2017, the score was 61. The score significantly increases/decreases when it changes more than five points; improves/deteriorates (changes between 4-5 points); is relatively stable (changes from 1-3 points) in the last 5 years.

<sup>50</sup> The Eurobarometer data on corruption perception and experience of citizens and businesses as reported last year is updated every second year. The latest data set is the Special Eurobarometer 523 (2022) and the Flash Eurobarometer 507 (2022).

<sup>51</sup> Special Eurobarometer 523 (2022). The Eurobarometer data on citizens' corruption perception and experience is updated every second year. The previous data set is the Special Eurobarometer 502 (2020).

<sup>52</sup> Flash Eurobarometer 507 (2022). The Eurobarometer data on business attitudes towards corruption as is updated every second year. The previous data set is the Flash Eurobarometer 482 (2019).

<sup>53</sup> Special Eurobarometer 523 (2022).

<sup>54</sup> Flash Eurobarometer 507 (2022).

<sup>55</sup> Written contribution from the Ministry of Public Administration following the country visit to Slovenia. According to the Ministry of Public Administration, the Resolution is the national umbrella document which sets the policies and acts as the foundation for the adoption of programmes regarding the prevention of corruption based on the assessment of the current state of affairs.

<sup>56</sup> Input from Slovenia for the 2022 Rule of Law Report, p. 15. Information received from the Ministry of Justice in the context of the country visit to Slovenia.

<sup>57</sup> Commission for the Prevention of Corruption, the Court of Audit, the Information Commissioner and the Human Rights Ombudsman, joint statement of the four autonomous and independent state authorities, 11 June 2021. See also Commission for the Prevention of Corruption, 2021 Report, 26 May 2022, section 3.

as well as on the rule of law in general. In April 2022, the Commission for the Prevention of Corruption issued a similar declaration, in response to allegations made by representatives of the previous Government that the Commission had taken political decisions<sup>58</sup>. In the same month, the Supreme State Prosecution rejected in a public statement allegations from some politicians that the State Prosecution had not taken action in relation to criminal threats to the former Prime Minister<sup>59</sup>.

**Serious concerns exist regarding the independence of the specialised anti-corruption police – the National Bureau of Investigation.** The National Bureau of Investigation is responsible to fight serious crime, including corruption. The Bureau enjoyed an absolute autonomy, both regarding investigations and management decisions. However, amendments adopted in October 2021 explicitly limit its autonomy to ‘detection and investigation of criminal offences’<sup>60</sup> and removed the autonomy of the Bureau’s Director to decide which investigations, including on corruption, the Bureau will take over<sup>61</sup>. The subordination of the Bureau within the General Police Directorate placed it under the responsibility of the Director of the General Police who has the final say on its internal acts, management and resources<sup>62</sup>. Moreover, the Minister of the Interior is now competent to prescribe requirements for executive positions (including the Director of the Bureau) and on this basis, in November, the new Director was appointed<sup>63</sup>. The OECD noted ongoing allegations of political interference in the National Bureau of Investigation in the context of its assessment of Slovenia’s enforcement of its foreign bribery laws<sup>64</sup>. The new Government announced amendments to the Organisation and Work of the Police Act.

**Criminal investigations and indictments on alleged corruption have dropped to their lowest level in recent years.** In 2021, the number of criminal reports from the Police to the

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<sup>58</sup> Commission for the Prevention of Corruption, Press release of 19 April 2022, Reply to untrue and misleading statements in pre-election debates.

<sup>59</sup> Supreme State Prosecution, Press release of 14 April 2022, Data of the Supreme State Prosecution on prosecution activities for Article 135 of the Criminal Code in matters where the victim is the Prime Minister.

<sup>60</sup> In October 2021, the Parliament adopted the amendments to the Organisation and Work of the Police Act that removed the management and organisational autonomy of the National Bureau of Investigation. The amendment to Article 21 of the Organisation and Work of the Police Act changed the second sentence of second paragraph from ‘In fulfilling its tasks [the Bureau] is autonomous.’ into ‘[The Bureau] is autonomous in detection and investigation of criminal offences’. Furthermore, the amendments allowed the Minister in a few months to completely change the executive positions in the Police. In November 2021, the Ministry of the Interior notified 126 Police station chiefs and directors of Police of their dismissals. In December 2021, the Constitutional Court suspended the application of some of the amendments, namely those relating to the selection and dismissal of police posts. Judgment of the Constitutional Court of 23 December 2021, *U-I-823/21*. In April 2022, a group of 5 000 citizens submitted into legislative procedure a draft ‘Act to reduce inequalities and harmful political interventions and ensure respect for the rule of law’ that would amend a number of laws, among them the Organisation and Work of the Police Act, including on the status of the Bureau and the appointment and dismissal of the Bureau’s Director.

<sup>61</sup> Amended Article 22. Additionally, the special provisions on the appointment of the Bureau’s Director have been removed and the appointment process to this position was made equivalent to any other senior position in public administration (deleted Article 49 and new Articles 49.a and 49.b).

<sup>62</sup> Explanatory memorandum to the Draft amendments to the Organisation and Work of the Police Act stated that the autonomy of the Bureau is ‘not absolute’ and that the department and its Director are ‘subordinate to the Director of Criminal Police Directorate’, and information received from the National Bureau of Investigation in the context of the country visit to Slovenia.

<sup>63</sup> The Director of the NBI stated in an interview in May 2022 that during her time in charge of the Bureau, she did not experience direct political pressure.

<sup>64</sup> OECD, Working Group on Bribery, Implementing the OECD Anti-Bribery Convention Phase 4 Report: Slovenia, 11 March 2021, pp. 7 and 41-44.

State Prosecution regarding alleged corruption offences decreased (178 cases in 2021, compared to 298 in 2020, and 185 in 2019)<sup>65</sup>. Reasons behind the fluctuations of alleged crimes are complex. Corruption goes unnoticed when the Police is unable to detect it and the general public is reluctant to report it, for example because it lacks confidence that complaints will be effectively followed up. The number of indictments brought by state prosecutors also decreased to the lowest level in recent years (21 indictments in 2021, compared to 23 in 2020 and 123 in 2019)<sup>66</sup>. The data on all corruption offences show that the number of first instance court judgments increased in 2021 (48, compared to 29 in 2020 and 28 in 2019)<sup>67</sup>. In line with these numbers, the number of open corruption cases in courts decreased to 170 (See 199 cases in 2020 and 255 in 2019)<sup>68</sup>. None of the judgments on corruption delivered in 2021 involved cases of high-level corruption<sup>69</sup>.

**The State Prosecution is facing challenges, including on human resources and due to the statute of limitation.** The Specialised State Prosecutor's Office is competent to prosecute criminal offences related to corruption in the public and private sector and functioned, at the end of 2021, with 11 (out of 16 planned) state prosecutors<sup>70</sup>. In total, the prosecution service operated at the end of 2021 with only 203 (out of the 268 planned) state prosecutors<sup>71</sup>. Reportedly, the actual available staff fluctuates between 154 and 180 prosecutors due to a high level of absences<sup>72</sup> and the lack of state prosecutors, according to the Supreme State Prosecution, leads to delays, lower quality of work and cases of burnout, which may exacerbate in future due to an upcoming retirement wave<sup>73</sup>. In addition, the statute of limitation presents an additional challenge for the prosecution of corruption, according to the Government<sup>74</sup> and the State Prosecution<sup>75</sup>. In November 2021, opposition members of the Parliament submitted draft amendments to the Criminal Code, aimed at limiting the time available to start a criminal investigation and to conduct the investigation itself. According to the European Chief Prosecutor, the amendments would have considerably shortened the time span available for the detection, prosecution and trials related to criminal offences falling

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<sup>65</sup> The number of investigations for eight corruption offences under the Criminal Code was: 119 (in 2011), 52 (in 2012), 41 (in 2013), 67 (in 2014), 96 (in 2015), 199 (in 2016), 81 (in 2017), 108 (in 2018), 185 (in 2019), 298 (in 2020) and 178 (in 2021). Slovenian Police, 2021 Report, p. 100. Supreme State Prosecution reported that the Specialised State Prosecutor's Office received a total of 368 criminal notifications from various sources for crimes regarded as corruption offences in 2021, compared to 121 received in 2020 and 222 for such crimes in 2019.

<sup>66</sup> Annex to the Input from Slovenia for the 2022 Rule of Law Report. The Supreme State Prosecution mentions 20 indictments for 2021, with 125 for 2020. Supreme State Prosecution, 2021 Report, p. 138.

<sup>67</sup> Annex to the Input from Slovenia for the 2022 Rule of Law Report. The State Prosecution service reported that the courts handed down 27 convictions for 27 offences, more than in 2020 and 2019, when 21 convictions were handed down. They also issued 27 acquittals, more than the previous 2 reporting years (7 in 2020 and 9 in 2019). Supreme State Prosecution, 2021 Report, p. 138.

<sup>68</sup> Supreme State Prosecution, 2021 Report, p. 138.

<sup>69</sup> Written contribution from the Specialised State Prosecution Office following the country visit to Slovenia. In 2020, there was one such judgment, involving a mayor, and there were none in 2019.

<sup>70</sup> Supreme State Prosecution, 2021 Report, p. 10; According to the Specialised State Prosecution Service, Report 2021, p. 12, it operates with another 12 prosecutors that are seconded temporarily.

<sup>71</sup> Supreme State Prosecution, 2021 Report, pp. 7-8. Whereas the total number of prosecutors under the Ministerial Decree is 268, there are only funds for 236. On 2 June 2022, 6 new state prosecutors were appointed.

<sup>72</sup> Information received from the Specialised State Prosecutor's Office in the context of the country visit.

<sup>73</sup> Supreme State Prosecution, 2021 Report, p. 8-9. Similar concerns are raised by the Specialised State Prosecution Service, Report 2021, p. 12.

<sup>74</sup> Input from Slovenia for the 2021 Rule of Law Report, p. 24.

<sup>75</sup> The statute of limitation is an issue, according to State Prosecution, especially in corruption offences committed in the health sector. Supreme State Prosecution, 2021 Report, p. 139.

within the competence of the European Public Prosecutor's Office and would compromise ongoing investigations<sup>76</sup>. By contrast, there have also been developments that allow the judiciary more time to bring their case to a final decision<sup>77</sup>.

**The resources of the Commission for the Prevention of Corruption are being increased.**

In October 2021, new Rules of Procedure for the Commission for the Prevention of Corruption entered into force, providing clarity on the rights of individuals in the context of procedures before the Commission.<sup>78</sup> In 2021, the Commission received a bit less notifications (629) of corruption and violations of integrity than in 2020 (728). It resolved 646 notifications (compared to 785 in 2020)<sup>79</sup>. The budget of the Commission has been increased substantially each year since 2019, and reached EUR 2.3 million for 2022<sup>80</sup>. As of December 2021, there were 41 officials working in the Commission<sup>81</sup> and procedures to hire 10 additional employees in 2022 are ongoing<sup>82</sup>. However, the Commission lacks sufficient resources to upgrade its IT infrastructure (currently outsourced), including to develop and run the planned asset declaration platform (as well as for integrity and whistleblower procedures)<sup>83</sup>. Nearly 20 000 officials have to declare their assets before taking up duties, and the Commission only has the capacity to check a random selection of declarations<sup>84</sup>.

**The rules on conflict of interest and ethics are being implemented, but incompatibilities sometimes remain unresolved.** The Commission for the Prevention of Corruption can initiate a procedure if it considers that an activity is incompatible with a person's current public office. It was involved in several high-profile cases in 2021<sup>85</sup>, the majority of which

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<sup>76</sup> According to the European Chief Prosecutor, would the amendments be adopted as proposed, for the vast majority of offences under the competence of the EPPO, prosecutors would have drastically less time to investigate, and thus would be unable to do it properly in all cases, while many ongoing cases would need to be closed immediately and definitively. The European Chief Prosecutor also stated that in practice, under the current criminal procedural framework, this would represent a de facto amnesty for many cases of fraud against the EU budget in Slovenia. The European Chief Prosecutor also noted with utmost concern that such an amendment would negatively affect investigations and prosecutions initiated in other Member States participating in the EPPO, under which assisting measures would need to be performed in Slovenia. EPPO, Press release: Slovenia's Prosecutor General visits the EPPO in Luxembourg, 27 January 2022. The amendments became obsolete following the inauguration of the new parliamentary term on 13 May 2022 after the general elections. It is not known whether there are plans to revive them.

<sup>77</sup> Since 15 December 2021, the statute of limitations for corruption offences was extended from 2 to 5 years in cases where a final judgment is reversed in proceedings with an extraordinary legal remedy, see Input from Slovenia for the 2022 Rule of Law Report, p. 19-20. Under the Criminal Procedure Act, evidence as the result of covert investigative measures has to be destroyed if the prosecution is not initiated within 2 years. The Constitutional Court in June 2021 ruled that a literal interpretation of that provision is inconsistent with the Constitution and held that the two-year period should be understood as merely instructive. Judgment of the Constitutional Court of 3 June 2021, U-I-462/18-45.

<sup>78</sup> Input from Slovenia for the 2022 Rule of Law Report, p. 14.

<sup>79</sup> Commission for the Prevention of Corruption (2022), 2021 Report, 26 May 2022, section 3.

<sup>80</sup> Input from Slovenia for the 2022 Rule of Law Report, p. 14.

<sup>81</sup> Input from Slovenia for the 2022 Rule of Law Report, p. 14.

<sup>82</sup> Input from Slovenia for the 2022 Rule of Law Report, p. 14; Information received from the Commission for the Prevention of Corruption in the context of the country visit to Slovenia.

<sup>83</sup> As also noted in the 2021 Rule of Law Report, Country Chapter on Slovenia, p. 13, asset declarations are still not publicly available.

<sup>84</sup> By the end of 2021, 19 893 officials who filed the declarations, and in 2021 altogether 11 952 various submissions were received, see Commission for the Prevention of Corruption (2022), 2021 Report, 26 May 2022, section 3.

<sup>85</sup> For example, on 12 May 2021, the Commission for the Prevention of Corruption finalised the procedure regarding paid external activities by the President of the Court of Audit for the FIFA, which five times exceeded his financial gain from holding office. The Commission for the Prevention of Corruption ruled that

related to local officials. The Commission issued more recommendations (62) in 2021, than in 2020 (40) on issues such as incompatibility of functions and conflicts of interests. However, in most cases the addressees fail to take concrete measures that would best ensure proper management of corruption risks<sup>86</sup>. In May 2022, the Commission adopted new guidelines, with practical examples to facilitate the understanding of the legal provisions on conflict of interests. On the side of Parliament, the Council of the President of the Parliament is responsible to monitor the implementation of the Code of Ethics for members of Parliament<sup>87</sup> and, in case of misconduct, may issue sanctions<sup>88</sup>. In 2021, three proposals of alleged breach of the Code of Ethics<sup>89</sup> were submitted (one by the President and the other two by the Vice-President of the Parliament). They were discussed in closed meeting of the Council of the President<sup>90</sup>. One sanction was approved by the Council of the President<sup>91</sup>.

**Officials and public employees must report contacts with lobbyists, either to their employer or the Commission for the Prevention of Corruption.** The obligation to report contacts with lobbyists applies to officials at both national and local level. In 2021, the Commission received 4 526 reports<sup>92</sup> about lobbying contacts (5 345 in 2020)<sup>93</sup>. These contacts are published on a webpage<sup>94</sup>, and the Commission also publishes on its website a register of professional lobbyists. Whereas legal and authorised representatives of companies or interest groups are exempt from registering as lobbyists, they have to report their lobbying activities to the Commission for the Prevention of Corruption<sup>95</sup>. In 2021, the Commission for

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the side earnings of the Court of Audit President did not constitute profitable activity on his behalf nor was there any conflict of interest. In April 2022, the Commission found that, in voting on the appointment of the non-executive director of the DUTB's Board of Directors, the former Prime Minister found himself in a conflict of interest and acted in contravention of the law. Commission for the Prevention of Corruption, Press release: Final findings about a conflict of interest of the Prime Minister, 4 April 2022.

<sup>86</sup> Commission for the Prevention of Corruption (2022), 2021 Report, 26 May 2022, section 2. At the occasion of the inaugural meeting of the newly elected Parliament on Friday, 13 May 2022, the Commission for the Prevention of Corruption called to respect the provisions on the incompatibility of the functions of the newly elected Members. Commission for the Prevention of Corruption, Press release: Commission calls the newly elected members of Parliament to respect the conflict of interest provisions, 11 May 2022.

<sup>87</sup> Pursuant to Article 24 of the Rules of Procedure of the Parliament, the Council of the President of the National Assembly adopted, at its 71<sup>st</sup> meeting of 12 June 2020, the Code of Ethics for Deputies of the National Assembly of the Republic of Slovenia.

<sup>88</sup> Namely, in the event of a minor violation, a reprimand shall be imposed on the deputy without public announcement; in the event of a serious violation, a reprimand shall be imposed on the deputy with public announcement on the website of the National Assembly; in the event of a repeated serious violation, a reprimand shall be imposed on the deputy with public announcement on the website of the National Assembly and a declaration of the violation at the next session of the National Assembly.

<sup>89</sup> Available here: <https://www.dz-rs.si/wps/portal/en/Home/AboutNA/PoliticalSystem/CodeEthics>.

<sup>90</sup> During discussions on two proposals, some members of the Council proposed a different classification of violation, so the Council (in both cases) first voted on a stricter sanction as the one proposed, i.e., a reprimand publicly disclosed on the website of Parliament. The vote failed, so they moved on to vote on a less severe sanction, i.e. a reprimand without public disclosure. The third proposal was discussed in January 2022, but the proposed sanction was not approved. Written contribution from Parliament following the country visit to Slovenia.

<sup>91</sup> RTV, The first breach of the Parliamentary Code of Ethics, 9 June 2021.

<sup>92</sup> In 2021, 64 contacts with registered lobbyists were sent, as well as 2 808 contacts with non-registered lobbyists, see Commission for the Prevention of Corruption (2022), 2021 Report, 26 May 2022, p. 35.

<sup>93</sup> Input from Slovenia for the 2022 Rule of Law Report, p. 15, and written contribution from the Commission for the Prevention of Corruption following the country visit to Slovenia.

<sup>94</sup> Contact webpage here: <https://erar.si/lobiranje/>.

<sup>95</sup> Written contribution from the Government following the country visit to Slovenia.

the Prevention of Corruption carried out 12 proceedings regarding violations of these rules and concluded they had been breached in five cases (18 in 2020)<sup>96</sup>.

**The respect of rules on political party financing is being monitored by the Court of Audit.** The Court of Audit monitors the regularity of political parties' operations, conducts a mandatory review of their annual reports, and can file criminal notifications in cases of financial misdemeanours. In 2021, the Court of Audit audited small political parties receiving up to EUR 300 000<sup>97</sup>. From a total of 12 audited political parties, the Court of Audit delivered eight unqualified opinions, four qualified opinions (with more comments regarding irregularities), and no negative opinions<sup>98</sup>. Some stakeholders highlighted that in the past, irregularities in financing of political parties occurred right after the Court of Audit conducted its audit, which means that the audits should be made more frequently<sup>99</sup>.

**The Government aims to strengthen the rules on whistleblower protection.** In December 2021, the Ministry of Justice submitted into public consultation a draft proposal to extend the scope of protection provided by Integrity and Prevention of Corruption Act and to transpose the Whistleblowers Directive<sup>100</sup>. In 2021, the Commission for the Prevention of Corruption received one request for whistleblower protection and assisted in establishing a causal link between the initial report and the retaliatory measures suffered by the whistleblower<sup>101</sup>.

**Several actions have been implemented during the COVID-19 pandemic with the aim to address the risk of corruption, especially in public procurement.** In 2021, the Commission for the Prevention of Corruption extended its systemic oversight, started in 2020, of public sector entities that have procured protective equipment, and focused on municipalities and hospitals. Additionally, the Commission for the Prevention of Corruption issued a recommendation to the Ministry of Health regarding the identified risks connected to lack of supervision of quality and quantity of distributed medical supplies and other goods (COVID-19 tests)<sup>102</sup>. The Commission for the Prevention of Corruption concluded in 2022 that established procurement standards were not guaranteed in procedures which, for reasons of urgency, were, according to the Commission, already carried out in a less transparent manner<sup>103</sup>. The National Review Commission received three audit requests in 2021 (like in 2020) related to public procurement procedures for the management of the pandemic<sup>104</sup>. The National Review Commission also opened five misdemeanour cases in 2021 in connection with public procurement procedures to manage the pandemic (compared to 13 in 2020)<sup>105</sup>.

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<sup>96</sup> Input from Slovenia for the 2022 Rule of Law Report, p. 15-16, written contribution from the Commission for the Prevention of Corruption following the country visit to Slovenia; Commission for the Prevention of Corruption (2022), 2021 Report, 26 May 2022, section 3.

<sup>97</sup> The Court of Audit is legally required to audit 1/3 of the parties, the smallest (local) parties came last.

<sup>98</sup> Information received from the Court of Audit in the context of country visit to Slovenia. See also Court of Audit, annual report 2021, section 7.

<sup>99</sup> Information received from Transparency International-Slovenia in the context of the country visit to Slovenia.

<sup>100</sup> Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law.

<sup>101</sup> Input from Slovenia for the 2022 Rule of Law Report. p. 17.

<sup>102</sup> Input from Slovenia for the 2022 Rule of Law Report, pp. 18-19.

<sup>103</sup> Commission for the Prevention of Corruption, Press release: breach of integrity of the minister for economy, 23 February 2022.

<sup>104</sup> Two requests for review were rejected as unfounded and in relation to one request for review, the National Review Commission found that the infringements found could not be remedied in the review procedure.

<sup>105</sup> Three of these were opened upon proposal from the Commission for the Prevention of Corruption, one at the request of the Ministry of the Interior and one of these *ex officio*.



Three misdemeanour proceedings were resolved in 2021, of which one from 2020 and two from 2021, in all of which the misdemeanour procedure was halted<sup>106</sup>. Slovenia amended its public procurement legislation, as set out in its Recovery and Resilience Plan<sup>107</sup>. The resulting new Public Procurement Act, in force since 1 January 2022, aims to increase digitalisation and competition in public procurement procedures<sup>108</sup>. The Court of Audit is conducting two audits relating to COVID-19 pandemic measures<sup>109</sup>.

### III. MEDIA PLURALISM

In Slovenia, the legal framework for freedom of expression and information is established by the Constitution, while media plurality is ensured through specific secondary legislation. The audiovisual-media services regulator, the Agency for Communication Networks and Services (AKOS), is an independent authority, which is legally and functionally distinct from the Government. The rules on transparency of media ownership require companies to declare to the competition authorities the ownership or management influence above a certain threshold. A considerable change in ownership requires also the agreement of the competent ministry. Legislation aimed at transposing the Audiovisual Media Services Directive has been adopted<sup>110</sup>.

**The independence of the audio-visual media services regulator is ensured by the Electronic Communications Act.** The independent status of AKOS is guaranteed by the Electronic Communications Act<sup>111</sup>, and the Agency draws its enforcement powers in the audiovisual media field from the Mass Media Act<sup>112</sup> and the Audiovisual Media Services Act<sup>113</sup>. The updated Audiovisual Media Services Act adopted in December 2021 aimed at transposing the Audiovisual Media Services Directive. A draft law aiming at transposing the Electronic Communications Code is still pending<sup>114</sup>; the law would also include the conditions and procedures for the appointment and dismissal of the head and members of the collegiate body of AKOS. As reported in the 2021 Report, challenges persist concerning the effectiveness of the draft new legal framework in ensuring the independent performance of

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<sup>106</sup> Contribution from the National Review Commission for the 2022 Rule of Law Report.

<sup>107</sup> On proposal from the Commission, the Council adopted the Council Implementing Decision of 16 July 2021 on the approval of the assessment of the recovery and resilience plan for Slovenia, under which the Milestone no. 174 states: ‘The Public Procurement Act shall include, inter alia, simplification of procedures to enable supplementation and clarification of bids when selecting tenderers, and elimination of abnormally low tenders. It shall aim at the digital transformation of public procurement and at increasing competition in public procurement procedures and reduction of the number of single bids.’ The Commission assessment of the fulfilment of this milestone is pending, awaiting the payment request from Slovenia.

<sup>108</sup> Input from Slovenia for the 2021 Rule of Law Report, p. 18.

<sup>109</sup> One regarding subsidies to employees worth EUR 1 billion (looking into implementation of rules in different parts of the public sector), and one regarding subsidies for loans worth EUR 60 million. Information received from the Court of Audit in the context of country visit to Slovenia.

<sup>110</sup> Complete transposition of the Audiovisual Media Services Directive was notified to the Commission on 4 February 2022. Slovenia ranks 56<sup>th</sup> in the 2022 Reporters without Borders World Press Freedom Index compared to 36<sup>th</sup> position in the previous year.

<sup>111</sup> Electronic Communications Act.

<sup>112</sup> On 13 May 2022, the opposition deputies in the newly established Parliament submitted draft amendments to the Mass Media Act.

<sup>113</sup> Audiovisual Media Services Act.

<sup>114</sup> On 13 May 2022, the opposition deputies in the newly established Parliament submitted the new draft Electronic Communications Act.

media regulatory functions of AKOS<sup>115</sup>. The financial independence of the agency continues to be guaranteed by its financing system, based on the collection of fees generated from AKOS activities. The regulator is responsible for a broad variety of tasks<sup>116</sup>. Additional resources were granted to the regulator in the field of audiovisual media services following the new tasks attributed with the transposition of the Audiovisual Media Services Directive<sup>117</sup>. However, fully implementing the extensive competences with the available resources remains a challenge. The lack of safeguards against political interference also remains a concern<sup>118</sup>. The Media Pluralism Monitor 2022 indicates a medium risk for the indicator on the independence and effectiveness of the media authority<sup>119</sup>.

**A regulatory gap for addressing high concentration of media raises concerns.** News media concentration continues to be a concern, as the Slovenian media market is dominated by few players<sup>120</sup>. According to MPM 2022, horizontal concentration is very high in the radio sector, which is followed by the magazine and the audiovisual sector<sup>121</sup>. The Mass Media Act regulates the protection of media pluralism and diversity; it also includes several mechanisms and procedures on restrictions on ownership and concentration<sup>122</sup>. Regarding media concentration, the legislation also prohibits combining radio, television and print medium activities but this legal limitation appears to be often circumvented in practice by using complex ownership structures<sup>123</sup>. According to MPM 2022, the limitations provided by law are not always implemented and there is a lack of data on the market share of specific media outlets. Therefore MPM 2022 reports a high risk for the indicator on news media concentration<sup>124</sup>. As raised by nearly all stakeholders, concerns remain regarding a regulatory gap in addressing the media concentration<sup>125</sup>. The situation regarding media concentration shows a lack of appropriate legal framework and empowered authorities to address the issue.

**Challenges remain in identifying the ultimate ownership structure of certain media.** As reported in the 2021 Report, Slovenia has in place specific provisions on transparency of media ownership<sup>126</sup> which were updated following the adoption of amendments of December 2021 to the Audiovisual Media Services Act. The revised law requires that audio-visual media service providers publish information about individual ownership or management stakes in the company, when they exceed 5%. Several stakeholders indicated there are some persisting challenges concerning the identification of the ultimate ownership in certain media

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<sup>115</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Slovenia, p. 16 and information received from AKOS in the context of the country visit to Slovenia.

<sup>116</sup> The convergent regulator AKOS has tasks in telecommunications, electronic media, postal and railway services, is also responsible for regulation of audiovisual media, radio services and online media.

<sup>117</sup> Information received from AKOS in the context of the country visit to Slovenia.

<sup>118</sup> AKOS is managed by its Director and the Agency's Council. Both are appointed by the Government based on a selection procedure, with the Director being proposed to the Government by the responsible minister. 2021 Rule of Law Report, Country Chapter on the rule of law situation in Slovenia, p. 15.

<sup>119</sup> 2022 Media Pluralism Monitor, country report for Slovenia, p. 13.

<sup>120</sup> Information received from the Ministry of Culture in the context of the country visits to Slovenia.

<sup>121</sup> 2022 Media Pluralism Monitor, country report for Slovenia, p. 14.

<sup>122</sup> Section 9, Mass Media Act.

<sup>123</sup> Information received from the Association of Journalists and Publicists and Transparency International-Slovenia in the context of the country visit to Slovenia.

<sup>124</sup> 2022 Media Pluralism Monitor, country report for Slovenia, p. 14.

<sup>125</sup> Information received from Ministry of Culture, Association of Journalists and Publicists, Union of Journalists and Transparency International-Slovenia in the context of the country visits to Slovenia and Contribution from Liberties (Peace Institute) for the 2022 Rule of Law Report, pp. 4-5.

<sup>126</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Slovenia, p. 16.

outlets<sup>127</sup>. As mentioned in the 2021 Rule of Law Report, a proposed update of the Mass Media Act would have addressed these issues, for example by removing the minimum threshold of 5%<sup>128</sup>, however, the draft law has not progressed toward adoption<sup>129</sup>. The situation regarding the transparency of media ownership shows that the legal framework is insufficient particularly regarding complex ownership structures (including beneficial owners)<sup>130</sup> and that a clarification of the authority designated to address the issues would be necessary. Following these shortcomings, the 2022 MPM reports a medium risk concerning the indicator on transparency of media ownership<sup>131</sup>. The Mass Media Act also regulates the procedures for the granting of operating licences to radio and television broadcasters<sup>132</sup>. The concession of a licence involves double registration: first in the Court Register and subsequently in the Mass Media Register, managed by the Ministry of Culture<sup>133</sup>.

**There was no progress concerning allocation of state advertising.** As reported in the 2021 Rule of Law Report<sup>134</sup>, there are no specific obligations for authorities or media outlets to report on allocation of state advertising. Several sources and reports<sup>135</sup> pointed out that the situation is particularly non-transparent for local media. Furthermore, the distribution of support funds for media pluralism is considered to be transparent. However, in some instances doubts were raised about fairness of allocation of the annual media support scheme for 2021, which provides direct subsidies to media for their projects of content production<sup>136</sup>. The MPM 2022 reports a high risk on the indicator on state regulation of resources and support to media sector<sup>137</sup>.

**Despite some legal safeguards ensuring independence of public service media, there are challenges concerning their effectiveness in limiting political influence.** The general principles relating to editorial independence are established in the Mass Media Act<sup>138</sup>. The Radio Television Slovenia Act provides specific safeguards for the independence of the public service broadcaster RTV Slovenia<sup>139</sup>. The Government has the duty to ensure autonomy and editorial independence of RTV and to provide adequate funding for the

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<sup>127</sup> Information received from Association of Journalists and Publicists and Transparency International-Slovenia in the context of the country visits to Slovenia. Contribution from Liberties (Peace Institute) for the 2022 Rule of Law Report, pp. 6-7, and Memorandum on freedom of expression and media freedom in Slovenia, Commissioner for Human Rights, Council of Europe, p. 13.

<sup>128</sup> 2021 Rule of Law Report, country chapter on the rule of law situation in Slovenia, p. 16.

<sup>129</sup> On 13 May 2022, the opposition deputies in the newly established Parliament submitted draft amendments to the Mass Media Act.

<sup>130</sup> 2022 Media Pluralism Monitor, country report for Slovenia, p. 14.

<sup>131</sup> 2022 Media Pluralism Monitor, country report for Slovenia, p. 14.

<sup>132</sup> Article 10, Mass Media Act.

<sup>133</sup> Article 12, Mass Media Act.

<sup>134</sup> 2021 Rule of Law Report, country chapter on the rule of law situation in Slovenia, p. 17.

<sup>135</sup> 2021 Rule of Law Report, country chapter on the rule of law situation in Slovenia, p. 17.

<sup>136</sup> 2022 Media Pluralism Monitor, country report for Slovenia, p. 19.

<sup>137</sup> 2022 Media Pluralism Monitor, country report for Slovenia, p. 18.

<sup>138</sup> The Mass Media Act stipulates in Article 6 that mass media activities in Slovenia shall be based on the freedom of expression, the inviolability and protection of human personality and dignity, the free flow of information, media openness to different opinions and beliefs and to diverse content, the autonomy of editorial personnel, journalists and other authors in creating programmes in accordance with the programme concepts and professional codes of behaviour, and on the personal responsibility of journalists, other authors/creators of contributions and editorial personnel for the consequences of their work.

<sup>139</sup> On 13 May 2022, the opposition deputies in the newly established Parliament submitted draft amendments to the RTV Slovenia Act, which includes, among others, the abolition of the mandatory broadcasting fee. On 18 May 2022, a proposal for a consultative referendum on this proposal was submitted to Parliament.

provision of public service<sup>140</sup>. The economic independence of RTV is ensured by broadcasting fees directly collected by the broadcaster<sup>141</sup>. The rules allow for a dismissal of the two Directors of Television or Radio in case they do not fulfil the tasks given to them by the Director General, pointing to a need for specific safeguards against overly broad interpretation of those rules<sup>142</sup>. While the legal framework contains fair and transparent provisions on the appointment procedures for the management and board functions of RTV Slovenia, at the same time their practical effectiveness in limiting political influence is questionable, due to the fact that the majority of the Programme Council and the Supervisory Council is appointed by Parliament, political parties, and the Government<sup>143</sup>. The 2022 edition of the MPM, reports a very high risk for the indicator on the independence of public service media governance<sup>144</sup>. MPM 2022 also reports that the operations of RTV Slovenia were affected following delays in the approval of the financial yearly plan<sup>145</sup>. Stakeholders as well as the Council of Europe have pointed to recent cases of intimidation towards public service media journalists and of appointment of managerial positions as signalling possible interference with the editorial independence of the broadcaster<sup>146</sup>. On 1 July 2022, the Government submitted into legislative procedure amendments to the RTV Slovenia Act, which amongst others envisage changes to the managing and supervising bodies of the RTV.

**The issues related to the funding of STA were resolved, allowing for more financial stability of the agency.** The Slovenian Press Agency (STA) has a similar legal status as RTV Slovenia when it comes to institutional and editorial independence<sup>147</sup>. STA is financed from the state budget according to an annual contract with the Government. As reported in the 2021 Rule of Law Report<sup>148</sup>, there were delays in payments to the STA, which were considered by stakeholders as politically motivated and led to a number of staff leaving<sup>149</sup>. The funding for 2021 and 2022 has been now agreed, allowing more stability for the Agency despite some concerns regarding the new provisions which could possibly affect indirectly

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<sup>140</sup> Article 2 of RTV Slovenia Act.

<sup>141</sup> RTV Slovenia is governed by the Director General, Directors of Television and Radio, Programme Council, and the Supervisory Council. The Programme Council and the Supervisory Council are composed of members elected by Parliament, while the Director General is appointed, on the basis of a public vacancy, and may be dismissed by the Programme Council. The Director General is responsible for appointing and dismissing the directors and the editor-in-chief.

<sup>142</sup> Articles 54-55 of the RTV Statute.

<sup>143</sup> 2022 Media Pluralism Monitor, country report for Slovenia, p. 19.

<sup>144</sup> 2022 Media Pluralism Monitor, country report for Slovenia, p. 19.

<sup>145</sup> The yearly financial plan was approved only in March 2021, 2022 Media Pluralism Monitor, country report for Slovenia, p. 19; according to a recently signed coalition agreement, the Slovenian Government is planning to revise several media laws, including those governing STA and RTV Slovenia, Coalition Agreement of 24 May 2022.

<sup>146</sup> Memorandum on freedom of expression and media freedom in Slovenia – Commissioner for Human Rights, Council of Europe, p. 11, and STA, ‘RTV Slovenija staff protest against pressure, demand full editorial autonomy’. According to Article 13 of the Council of Europe’s Recommendation CM/Rec(2012)1 of the Committee of Ministers to member States on public service media governance, it is fundamental to guarantee editorial and operational independence of public service media.

<sup>147</sup> On 13 May 2022, opposition deputies in the newly established Parliament submitted draft amendments to the Law on the STA. According to STA, the proposal appears to be a major step backwards as, for example, it contains provisions that would give power to the Government to appoint the STA supervisory board, a power that currently rests with Parliament.

<sup>148</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Slovenia, p. 17.

<sup>149</sup> See for example MFR partners raise serious concerns over suspension of funding to Slovenian Press Agency, and Ostro, Journalists are leaving STA due to insecure situation, 15 September 2021.

the editorial autonomy of the agency<sup>150</sup>. Due to these challenges, MPM 2022 assesses a high risk on the indicator on political independence of media<sup>151</sup>.

**The right to information is enshrined in the Constitution.** Access to information is regulated by the Access to Public Information Act. No concrete cases were reported during last year concerning journalists facing obstacles accessing public information<sup>152</sup>. However, several stakeholders pointed to some difficulties for journalists to receive information from political authorities<sup>153</sup>.

**The situation of journalists continues to deteriorate**<sup>154</sup>. The freedoms of expression and information are enshrined in the Constitution, and effectively protected through judicial remedies. However, online harassment and threats against journalists continue to be numerous<sup>155</sup>. In practice, different sources and stakeholders<sup>156</sup> have noted that journalists are operating in an increasing hostile environment, which risks undermining their work and in particular public service media. A study has also reported on hate narratives in online media and online communication, in particular towards journalists<sup>157</sup>. The 2022 MPM reports a medium risk concerning the indicator on journalistic profession, standards and protection<sup>158</sup>. Since July 2021, the Council of Europe's Platform to promote the protection of journalism and safety of journalists published twelve alerts<sup>159</sup>, which relates to harassment and intimidation of journalists and have all been replied by the Government. 19 alerts have been published on the Mapping Media Freedom platform<sup>160</sup>, which registered several cases of lawsuits against journalists and media outlets with intimidating effects during the last year.

#### **IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES**

Slovenia has a parliamentary system of government with an imperfect bicameral structure, where only the National Assembly (the first chamber of Parliament), and not the National Council (the second chamber of Parliament), adopts laws<sup>161</sup>. Draft legislation can be tabled by the Government, any member of Parliament (the National Assembly), the National Council or at least 5 000 'voters'. The Constitutional Court carries out *ex post* constitutional review, including in concrete cases on the basis of a constitutional complaint. In addition to

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<sup>150</sup> Contribution from Liberties (Peace institute) for the 2022 Rule of Law Report, p. 8.

<sup>151</sup> 2022 Media Pluralism Monitor, country report for Slovenia, p. 16.

<sup>152</sup> As reported in 2021 Rule of Law Report, the process of obtaining public information is often long, 2021 Rule of Law Report, Country Chapter on the rule of law situation in Slovenia, p. 18.

<sup>153</sup> Information received from Union of Journalists and STA in the context of the country visit to Slovenia; Memorandum on freedom of expression and media freedom in Slovenia – Commissioner for Human Rights, Council of Europe, p. 10.

<sup>154</sup> See 2021 Rule of Law Report, Country Chapter on the rule of law situation in Slovenia, p. 18, and 2020 Rule of Law Report, Country Chapter on the rule of law situation in Slovenia, p. 13.

<sup>155</sup> 2022 Media Pluralism Monitor, country report for Slovenia, p. 12, and as reported by the Slovenian Association of Journalists, during 2021, at least 32 attacks on journalists and media outlets were reported, including verbal and physical attacks.

<sup>156</sup> Contribution from the European Network of National Human Rights Institutions (ENNHRI) for the 2022 Rule of Law Report, p. 512; Franet (2022), Country research - Legal environment and space of civil society organisations in supporting fundamental rights – Slovenia.

<sup>157</sup> Peace Institute study on 'Hostile narrative in online media and environment in Slovenia', 4 December 2020.

<sup>158</sup> 2022 Media Pluralism Monitor, country report for Slovenia, p. 12.

<sup>159</sup> Council of Europe, Platform to promote the protection of journalism and safety of journalists.

<sup>160</sup> Mapping Media Freedom, country profile Slovenia.

<sup>161</sup> Judgment of the Constitutional Court of 22 October 2008, *U-I-295/07*.

the justice system and other bodies, the Human Rights Ombudsperson and the Advocate of the Principle of Equality are also in charge of the protection of the rights of individuals.

**The share of laws adopted by urgent procedure in Parliament has decreased.** Parliament continued to function normally, despite the COVID-19 pandemic, including by organising 11 remote sessions<sup>162</sup>. As an indication of openness, the number of participants that attended the sessions of the parliamentary working bodies increased in 2021 (by about 10% compared to 2020), while the number of submissions of documents to Parliament by civil society decreased<sup>163</sup>. In 2021, the share of laws adopted by urgent procedure decreased (17%, compared to 32% in 2020), which is comparable to the share before the COVID-19 pandemic (20% in 2018, 18% in 2019). As regards the public consultations on draft laws on the side of the Government, their duration mostly continues to be shorter than the recommended 30-day period<sup>164</sup>.

**The Constitutional Court had to deal with an increase in cases related to COVID-19 pandemic measures.** In 2021, the Constitutional Court received 680 cases related to COVID-19 pandemic measures, 675 of which related to initiatives and requests for constitutionality review and 5 constitutional complaints. It delivered 9 judgments<sup>165</sup> resolving 73 initiatives and requests and four constitutional complaints. In total, the Court noted a 3,5% increase in cases in 2021, compared to 2020, when excluding collective cases<sup>166</sup>. This increase in caseload led to a higher backlog (10% more compared to 2020), as the Court resolved 12% fewer cases in 2021. The Constitutional Court highlighted the need to increase the number of legal advisers to tackle the backlog, but a proposal to increase the 2022 budget for this purpose was rejected by the Government – a move that the Court considers as contrary to the financial autonomy of certain independent bodies<sup>167</sup>. Moreover, on 17 June 2021, the Constitutional Court found the Government decrees prohibiting public protests and limiting the total number of participants to 10 persons to severely interfere with the right to freedom of peaceful assembly and annulled them<sup>168</sup>. The Court decided that the measures

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<sup>162</sup> Written contribution from Parliament following the country visit to Slovenia: Slovenian Parliament, Research Paper No. 34/2021.

<sup>163</sup> Input from Slovenia for the 2022 Rule of Law Report, p. 25.

<sup>164</sup> Counter of violations of the 2009 Parliament Resolution on the normative activity, CNVOS: <https://www.cnvos.si/stevec-krsitev/>.

<sup>165</sup> In total, since the beginning of the pandemic in March 2020, the Court received 848 such cases. In 2020 and 2021 combined, the Court delivered 12 judgments on COVID-19 pandemic measures. Written contribution from the Constitutional Court following the country visit to Slovenia.

<sup>166</sup> In 2021, the Court received 1 365 cases, compared to 1 319 in 2020. It also received 555 collective initiatives for constitutionality review. While constitutional complaints slightly decreased (but still made 77% of the cases), the initiatives and requests for constitutionality review grew by 16% compared to 2020 – continuing the trend since 2018, and especially since 2020.

<sup>167</sup> It is to be noted that the 2021 budget for the Constitutional Court increased by 5% (compared to 2020 budget). Written contribution from the Constitutional Court following the country visit to Slovenia. On the judgment of the Constitutional Court of 10 December 2020, *U-I-474/18-17*, see the paragraph in this section on the financial independence of certain independent bodies.

<sup>168</sup> According to the petitioners, the Police fined some of the people who assembled only for carrying bicycles, which was deemed as expressing an opinion, while standing in line at a supermarket was permissible. Judgment of the Constitutional Court of 17 June 2021, *U-I-50/21*, paras. 4 and 31. The Government decrees completely prohibited public protests between 27 February and 17 March and between 1 April and 18 April 2021, and then limited public protests to up to 10 participants between 18 March and 31 March, as well as between 23 April and 14 May 2021.

were not necessary because less intrusive measures exist<sup>169</sup> and that the Government had not ascertained whether such less intrusive measures are sufficient.

**On 1 January 2022, Slovenia had 4 leading judgments of the European Court of Human Rights pending implementation<sup>170</sup>.** At that time, Slovenia's rate of leading judgments from the past 10 years that remained pending was only at 12% and the average time that the judgments had been pending implementation was 1 year and 10 months<sup>171</sup>. The oldest leading judgment, pending implementation for 4 years, concerns the access to justice and the fairness of judicial proceedings in criminal law<sup>172</sup>. On 1 July 2022, the number of leading judgments pending implementation has increased to 5<sup>173</sup>.

**The law on public finances lacks safeguards on budgetary autonomy of certain independent bodies as required by a Constitutional Court judgment.** The 2021 Rule of Law Report noted that, in December 2020, the Constitutional Court found parts of the Public Finance Act to be unconstitutional as they lacked requisite safeguards to define the budget of the National Council (the second chamber of the Parliament), the Constitutional Court, the Human Rights Ombudsperson and the Court of Audit<sup>174</sup>. The Constitutional Court annulled parts of the Public Finance Act and set provisional rules to ensure budgetary autonomy of the independent bodies, until the Public Finance Act would have been amended<sup>175</sup>. The Constitutional Court set the deadline for the implementation of the decision to 23 December 2021, but no amendment has been tabled.

**The Human Rights Ombudsperson received an increased number of complaints, including those related to COVID-19 pandemic measures.** The overall number of complaints to the Ombudsperson, which gained A-status in 2021<sup>176</sup>, considerably increased

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<sup>169</sup> The Court noted that a whole set of measures by which it is possible to prevent the spread of communicable diseases at public protests exists, and which interfere to a lesser extent with the right of peaceful assembly and public meeting. Judgment of the Constitutional Court of 17 June 2021, *U-I-50/21*, para. 40. As the Government decrees had in the meantime ceased to be in force, the Constitutional Court merely established that they were inconsistent with the Constitution in the part prohibiting all public protests or limiting them to a maximum of 10 participants. Contribution from the European Network of National Human Rights Institutions (ENNHRI) for the 2022 Rule of Law Report, p. 502.

<sup>170</sup> The adoption of necessary execution measures for a judgment by the European Court of Human Rights is supervised by the Committee of Ministers of the Council of Europe. It is the Committee's practice to group cases against a State requiring similar execution measures, particularly general measures, and examine them jointly. The first case in the group is designated as the leading case as regards the supervision of the general measures and repetitive cases within the group can be closed when it is assessed that all possible individual measures needed to provide redress to the applicant have been taken.

<sup>171</sup> All figures are calculated by the European Implementation Network and are based on the number of cases that are considered pending at the annual cut-off date of 1 January 2022. See the Contribution from the European Implementation Network for the 2022 Rule of Law Report, p. 71.

<sup>172</sup> Judgment of the European Court of Human Rights of 28 August 2018, *Vizgirda v. Slovenia*, 59868/08, pending implementation since 2018.

<sup>173</sup> Data according to the online database of the Council of Europe (HUDOC).

<sup>174</sup> Previously, these bodies submitted their suggestions for budget to the Ministry of Finance, which was not obliged to follow the proposed amount. 2021 Rule of Law Report, Country Chapter on the rule of law situation in Slovenia, p. 21. Judgment of the Constitutional Court of 10 December 2020, *U-I-474/18-17* paras. 51-52. Contribution from the European Network of National Human Rights Institutions (ENNHRI) for the 2022 Rule of Law Report, p. 496.

<sup>175</sup> According to these rules, the Government is now required to guarantee the budget for these institutions without influencing its amount and send the proposal to Parliament. Judgment of the Constitutional Court of 10 December 2020, *U-I-474/18-17*.

<sup>176</sup> According to the Principles relating to the Status of National Institutions (The Paris Principles).

compared to the start of COVID-19 pandemic<sup>177</sup>. It includes complaints related to COVID-19 measures<sup>178</sup>. The Ombudsperson reiterated its recommendation to the Government to amend the Communicable Diseases Act. This is in line with a judgment of the Constitutional Court establishing the unconstitutionality of several of the Act's provisions, the deadline for the implementation of which passed in August 2021<sup>179</sup>. In September 2021, the Government prepared a joint response report aiming to address the Ombudsperson's recommendations. According to the assessments of individual ministries regarding the latest recommendations, 29 recommendations are being processed, 22 recommendations were fully fulfilled, 31 were partly fulfilled and 23 remain unfulfilled<sup>180</sup>. The Ombudsperson noted that a large number of recommendations still remain partially or non-implemented<sup>181</sup>.

**Civil society faced challenges regarding negative narratives, but funding issues and limitations on freedom of assembly were resolved.** The civic space in Slovenia is considered to be narrowed<sup>182</sup>. The first report on the implementation of the 'Strategy on Development of Non-Governmental Organisations and Volunteering (2018-2020)' was prepared, received a positive opinion from the Government council for non-governmental organisations and volunteering, but was not adopted by the Government<sup>183</sup>. This report would provide an evaluation of the Strategy and how its objectives have been achieved. As regards the financing of civil society organisations (CSOs), the Ministry of Public Administration published two public tenders in 2021: one encouraging CSOs partnerships in international projects<sup>184</sup>, and one encouraging their digital transformation. However, stakeholders reported that the criteria set in another two tenders published in May 2021 introduced *de facto* discriminatory conditions aimed at limiting the participation of CSOs, but were revised prior to closing date<sup>185</sup>. Stakeholders reported an increase of negative narrative addressed to CSOs.

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<sup>177</sup> Number of complaints reached about 7 000 in 2021 (6 852 in 2020, and 4 600 in 2019). Contribution from the European Network of National Human Rights Institutions (ENNHRI) for the 2022 Rule of Law Report, p. 520.

<sup>178</sup> Over 1 400, compared to over 1 000 in 2020. Contribution from the European Network of National Human Rights Institutions (ENNHRI) for the 2022 Rule of Law Report, p. 520.

<sup>179</sup> Judgment of the Constitutional Court of 13 May 2021, *U-I-79/20-24*. Contribution from the European Network of National Human Rights Institutions (ENNHRI) for the 2022 Rule of Law Report, p. 507. While amendments to implement the judgment were proposed by the Government and passed by the National Assembly in July 2021, a veto by the National Council required a re-vote by the National Assembly that was unsuccessful as the higher majority required was not obtained. Input from Slovenia for the 2022 Rule of Law Report, p. 31.

<sup>180</sup> Among the recommendations that Ombudsperson gave in its reports adopted before 2021, the ministries assessed that 25 of them are being dealt with, 34 recommendations were fulfilled, 48 were partly fulfilled, 17 remain unfulfilled and the fulfilment of 14 recommendations was rejected by the ministries due to their disagreement. Input from Slovenia for the 2022 Rule of Law Report, p. 31.

<sup>181</sup> Input from Slovenia for the 2022 Rule of Law Report, p. 31. In 2021, the Ombudsperson sent altogether 223 reminders (urgencies) to various public authorities to implement their recommendations, among which: 49 to the Ministry of Labour, Family, Social Affairs and Equal Opportunities, 45 to the Ministry of Health, 33 to the Ministry of Education, Science and Sport, 15 to the Ministry of Finance, and 11 to the Government. Written contribution from the Human Rights Ombudsperson following the country visit to Slovenia.

<sup>182</sup> Rating given by Civicus, Slovenia; ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed.

<sup>183</sup> Input from Slovenia for the 2022 Rule of Law Report, p. 34.

<sup>184</sup> CSOs project were selected in tenders co-financed either from the EU budget or the EFTA Financial Mechanism Office. Input from Slovenia for the 2022 Rule of Law Report, p. 35.

<sup>185</sup> They also reported that almost no CSO could meet these criteria, and that similar criteria have been suspended by the Constitutional Court. Following criticism, the Ministry of Public Administration revised the criteria in July 2021. The criteria required the CSOs set up as associations to have at least 50 active members and CSOs set up as institutes to have at least three full-time staff educated in the field of



For instance, in February 2021, one of the political parties of the then Government coalition circulated a survey which included a question on the appropriateness of public funds being spent on CSOs, instead of care or student homes<sup>186</sup>. The Constitutional Court found that the certain Government decrees severely interfere with the right to freedom of peaceful assembly and annulled them<sup>187</sup>. Responding to these issues, in early 2021, four CSOs set up the ‘Legal network for the protection of democracy’, which provided legal support to individuals and organisations involved in legal proceedings due to non-violent public action<sup>188</sup>.

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organisation’s activity. No similar criteria, however, were applicable to other entities (e.g. companies). Contribution from the Fundamental Rights Agency for the 2022 Rule of Law Report, pp. 14-15.

<sup>186</sup> The survey asked whether they found it appropriate that “the 20 best-funded so-called ‘non-governmental organisations’, mostly from Metelkova 6 in Ljubljana, received as much as EUR 70 million from the budget, while EUR 31 million were spent on renovating care homes and EUR 35 million was spent on student housing.” Franet (2022), Country research - Legal environment and space of civil society organisations in supporting fundamental rights – Slovenia, pp. 11-12.

<sup>187</sup> Judgment of the Constitutional Court of 17 June 2021, *U-I-50/21*. See paragraph on the Constitutional Court.

<sup>188</sup> Within the network, qualified lawyers and law firms assisted to legally challenge procedures and practices considered illegal (e.g. disproportionate fines for public engagement, criminal investigations and suits for damages intended to limit criticism or pressure the civil society). By November 2021, the lawyers provided support in about one thousand cases. In May 2021, the network set up a mechanism for monitoring protests due to claims that the Police used excessive force and treated the protesters selectively. Franet (2022), Country research - Legal environment and space of civil society organisations in supporting fundamental rights – Slovenia, pp. 11-12.

## **Annex I: List of sources in alphabetical order\***

\* *The list of contributions received in the context of the consultation for the 2022 Rule of Law report can be found at [https://ec.europa.eu/info/publications/2022-rule-law-report-targeted-stakeholder-consultation\\_en](https://ec.europa.eu/info/publications/2022-rule-law-report-targeted-stakeholder-consultation_en).*

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## **Annex II: Country visit to Slovenia**

The Commission services held virtual meetings in March 2022 with:

- Agency for Communication Networks and Services (AKOS)
- Association of Journalists
- Association of Journalists and Publicists (Ms Irena Zagajšek)
- Bar Association
- Chamber of Commerce: Media Chamber
- Commission for the Prevention of Corruption
- Constitutional Court
- Court of Audit
- Faculty of Media (Full prof. Matevž Tomšič)
- General Police Directorate (Economic Crime division), National Bureau of Investigation (NPU) and Ministry of Interior (International Affairs Directorate)
- Human Rights Ombudsperson
- Judges' Association
- Judicial Council
- Ministry of Culture
- Ministry of Justice
- Ministry of Public Administration
- National NGO umbrella network (CNVOS)
- National Review Commission
- Parliament Secretariat
- Peace Institute
- Radio-television Slovenia (RTV): Director of Radio
- Radio-television Slovenia (RTV): Programme Council (President)
- Radio-television Slovenia (RTV): Supervisory Council (President)
- Slovenian Press Agency (STA)
- State Prosecution (State Prosecutor General, Supreme State Prosecution Office, Specialised State Prosecution Office)
- State Prosecutorial Council
- Supreme Court
- Transparency International Slovenia
- Union of Slovenian Journalists

\* The Commission also met the following organisations in a number of horizontal meetings:

- Amnesty International
- Article 19
- Civil Liberties Union for Europe
- Civil Society Europe
- European Centre for Press and Media Freedom
- European Civic Forum
- European Federation of Journalists
- European Partnership for Democracy
- European Youth Forum
- Free Press Unlimited
- Human Rights Watch
- ILGA Europe
- International Federation for Human Rights (FIDH)

- International Press Institute
- Open Society European Policy Institute (OSEPI)
- Osservatorio Balcani e Caucaso Transeuropa
- Philea
- Reporters Without Borders
- Transparency International Europe