Project name: Litigating change: training lawyers on the EU rule of law acquis

Project short name: LighT

Grant Agreement number: 101046313 — LighT — JUST-2021-JTRA

Consolidated Training Needs Assessment report

Deliverable 2.2

Co-funded by the European Union

Funded by the European Union. Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union. Neither the European Union nor the granting authority can be held responsible for them.

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Project Identification	
Deliverable	D2.2 Consolidated TNA Report
Contractual delivery date	14.07.2023
Actual delivery date	03.10.2023
Lead partner	CECL
Contributing partners	All
Document status	Final

Introduction and methodology

This document is Deliverable 2.2 "Consolidated Training Needs Assessment report" of the project "LighT - Litigating change: training lawyers on the EU rule of law acquis", co-funded by the EU - JUST-2021-JTRA. The aim of this deliverable is to consolidate the findings of the 5 country-specific TNA reports (D2.4) conducted in Bulgaria, Greece, Hungary, Poland and Romania, to identify common themes and training needs, and to make suggestions on the content and methodology of the LighT training offer.

The needs assessment was based on qualitative field research with 94 lawyers and other justice and civil society stakeholders (43 interviews with lawyers and 5 focus groups with a total of 51 participants). Our findings were complemented by desk research on the legal and policy framework in the 5 consortium countries, publicly available data, EU policy documents and grey literature.

Our research focused on the four themes of the LighT project: access to justice, transparency and anti-corruption, media and press freedom, and civic participation. In addition, we sought to assess the overall level of knowledge and experience of the EU rule of law (RoL) acquis among the target group, as well as the extent to which EU law and procedures are used in general. However, other issues of RoL interest emerged during our research.

1. Summary of key findings

The issues identified across the consortium countries reveal a complex web of common challenges to upholding the rule of law and ensuring the effective functioning of democratic institutions. The role of lawyers as guardians of the RoL and their potential to lead change in their jurisdictions has been recognised by the European Commission in its relevant strategies and underlined by the findings of our research. The common themes identified should serve as a basis for the development of a targeted transnational training programme that will enable participants with different levels of knowledge and experience of the rule of law to act as agents of change in their respective jurisdictions and beyond.

Below is a summary of the common themes identified in the country-specific TNA reports.

Overall hostile environment and democratic functioning. The existence of a hostile environment, particularly in the areas of the judiciary, public administration and the media, including social media, is a recurring theme in the countries surveyed. This includes institutional concerns about checks and balances, the separation of powers and the independence of the judiciary, as well as the overall democratic functioning of the state and individual institutions such as independent regulatory authorities. At the same time, the hostile environment is fostered by the general climate of public discourse, often linked to the media landscape. Hate speech against vulnerable groups (notably migrants and the LGBTQ+ community), disseminated through traditional, digital and social media, not only increases the risk of further targeting and marginalisation of these groups, but also contributes by association to general hostility towards lawyers and HRDs working with them.

Access to justice and the independence of the judiciary. Access to justice and the effective administration of justice in accordance with fair trial standards is also an important issue in all Consortium countries. A key issue highlighted in our research is the appointment of the judiciary. This includes the independence and impartiality of the bodies that decide on the appointment and promotion of new judges and prosecutors, as well as the appointment of the most senior members of the judiciary and the involvement of the executive in this process. Corruption, real or perceived, is another important issue that undermines the perception of the independence and impartiality of the judiciary, both among legal professionals and the general public. Misapplication of the European acquis on procedural safeguards is also a recurring theme. The excessive length of proceedings, an issue that is most pronounced in Greece, but also relevant to all consortium countries, is linked to systemic deficiencies in the justice system, which create a range of problems for practicing lawyers, including delays in payment of fees and strained communication with clients, and may ultimately lead to a reduction in legal matter due to concerns about the length and cost of the various procedures. Finally, judicial impartiality and equality before the law are challenged as regards vulnerable and marginalised groups (migrants, Roma, political dissidents or persons belonging to specific political groups). In this respect, deficiencies in the functioning of legal aid schemes, including long delays in the payment of fees and the absence of mechanisms to ensure that legal aid lawyers specialise in the type of cases they are asked to handle, create additional barriers for those in precarious financial situations.

Respect for fundamental rights and equality before the law. Serious systemic violations of fundamental rights, including pushbacks, abortion bans, and LGBTQ+ persecution, were identified by participants in the LighT research as a key rule of law concern, despite not being included as a thematic category in the European Commission's RoL reports.

Legal uncertainty and complexity of the legal framework. Legal uncertainty, multiplicity of laws, inconsistent and frequent amendments to the legal framework, including the Constitution, and

pretextual and ineffective public consultation processes further complicate the work of practitioners and contribute to a general mistrust toward the law.

Disregard and mistrust of EU law. The problem of legal uncertainty at domestic level, identified above, is exacerbated by the lack of knowledge and apprehension toward EU law observed across legal professions. Incorrect or incomplete transposition, combined with a clear preference for national frameworks, often in direct violation of key principles of interpretation such as the primacy of EU law, the principle of subsidiarity and the need to preserve the effectiveness of EU law, leads to an inconsistent implementation of EU law across the Union, a growing disparity between Member States in the application of European standards, the protection of fundamental rights and, ultimately, the rule of law. The limited use of the preliminary ruling procedure, a problem observed in most of the Consortium MS, exacerbates the situation. This creates a situation in which mutual trust, judicial cooperation and the functioning of the area of freedom, security and justice are severely undermined, as illustrated by the relevant case law concerning the application of mutual recognition instruments and the refusal to execute, for example, European arrest warrants issued by certain MS.

It should be noted that distrust of EU law is observed both in the judiciary and in the public administration. The non-enforcement/misinterpretation of judgments of the CJEU and the ECtHR is an important indicator in this respect.

Stifled civil society. Civil society faces excessive restrictions that limit civic space in all Consortium MS. These include administrative barriers such as strict registration requirements and prior authorisation for certain activities, with stiff fines for non-compliance for both CSOs and their members - a situation that ultimately has a chilling effect on the activities of the civil society. The area of asylum and migration is particularly affected. Undue restrictions on the right to public assembly, often culminating in police brutality and arbitrariness, have also been observed in recent years, particularly in relation to specific contentious issues (abortion bans, environmental protests, etc.). Restrictions imposed during the Covid-19 pandemic appear to have been unjustifiably maintained in administrative practice.

Another important issue related to the activities of civil society and individual citizens is Strategic Litigation Against Public Participation (SLAPP), which targets journalists and human rights defenders. Our research has shown that despite recent increased awareness of the issue, lawyers and other legal professionals are still confused about the definition and scope of the relevant terms and lack the expertise to effectively defend their clients against them.

Limited support to lawyers. With the exception of the active Warsaw Bar Associations, participants in the LighT research reported to generally feel unsupported by their Bars, in particular as relates to Rule of Law concerns. They mentioned that they would wish their Bars to be more engaged, including though dynamic interventions in the legislative process (participating in established consultation processes), advocacy, support for their members facing litigation, and public statements on prominent RoL issues.

Below follow the individual country TNA reports.

2. Individual country reports

2.1 Bulgaria

Executive summary

The research examined the rule of law challenges lawyers are facing in Bulgaria and how the project's training program could help overcoming them. The research underscored that the domestication of EU law faces serious difficulties in Bulgaria. One primary factor contributing to this challenge is the lack of familiarity with and utilization of EU law by the judiciaries. This lack of engagement with EU law extends to lawyers, who are discouraged from incorporating EU law into their practice and legal argumentation. Insufficient training on EU law further exacerbates the problem, as there is a dearth of dedicated programs and comprehensive training that incorporates EU law into specific legal subjects.

Additionally, the research identified a key underlying issue rooted in the overall political climate of the country. The political bodies responsible for the justice system (e.g. Ministry of Justice) in Bulgaria do not prioritize EU law, which affects its effective implementation. The inadequate attention given to EU law within the political agenda hampers the development of a conducive environment for its transposition and integration into the national legal framework.

Moreover, the research revealed a lack of uniform understanding among lawyers regarding the core elements of the rule of law in Europe. This lack of consensus on fundamental principles and values leads to inconsistencies in interpretation and implementation, undermining legal certainty and predictability.

The research further highlighted that clients often refrain from pursuing legal action in cases that could have strategic implications due to low trust in the judiciary. This lack of trust erodes the effectiveness and legitimacy of the legal system, hindering access to justice and impeding the enforcement of EU law at the national level.

National context

Key themes

In Bulgaria, the rule of law (RoL) landscape is significantly influenced by the project's thematic areas, particularly pertaining to the access to justice and the independence of the judiciary. This aligns with the findings of the EU Commission Rule of law report[1], which highlights a notable perception of low judicial independence within the country. The interviews conducted during the research project further reinforced these concerns, with a majority of participants identifying violation of access to justice and judicial independence as the primary RoL challenges in Bulgaria.

The prevailing political situation during the research period has magnified these RoL issues, receiving acknowledgement from various national[2], international[3], and supranational[4] bodies. Key concerns revolve around the separation of powers, deficiencies in the independence of the prosecution office,

[1] European Commission, "2022 Rule of Law Report Country Chapter on the rule of law situation in Bulgaria" SWD(2022) 527 final, p. 4.
[2] Anti-corruption Institutions: A Zero Year, Anti-corruption Fund, Sofia 2022.
[3] Liberties Rule of Law Report 2022. Bulgaria, LIBERTIES, 2023.
[4] European Commission, "2022 Rule of Law Report Country Chapter on the rule of law situation in Bulgaria" SWD(2022) 527 final.

and the functioning of the Supreme Judicial Council. These issues critically undermine the credibility of both the state prosecution and the broader justice system.

The challenges to the independence of the justice system primarily stem from the existing legal framework that governs its operation. These challenges persistently impact the work of lawyers, irrespective of whether their cases directly pertain to the project's focus areas.

It is worth noting that the research findings diverge from the assessment provided by the EU Commission, which claims that the administrative justice system remains efficient[5]. The interviews and also the feedback from the focus group participants indicated that the administrative justice system lacks efficiency. Moreover, the majority of the respondents agreed that the Supreme Administrative Court poses the greatest risk to judicial independence. The Supreme Administrative Court is also the final instance court for disciplinary proceedings involving magistrates.

Another noteworthy finding from the research was the significant practical issues identified by many lawyers regarding the connection between access to justice and the digitalization of the judiciary[6].

Bulgaria also faces significant challenges in the areas of transparency and anti-corruption efforts. The lack of robust preventive and sanctioning measures to combat corruption underscores the magnitude of the problem. Corruption within the public sector is widely perceived as pervasive, while convictions in high-level corruption cases remain disappointingly low[7].

The desk research revealed that the deficiency in preventive mechanisms stems from the inefficient functioning of the administrative body responsible for addressing corruption[8]. This body is susceptible to political influence which compromise its effectiveness in combating corruption. Furthermore, there is a concerning presence of corruption within the upper levels of the public administration. The desk research highlighted significant deficiencies in the administration's structure, leading to non-compliance with essential principles of democracy and good governance[9]. Principles such as transparency, citizen awareness, accountability, shared responsibility, and stringent candidate requirements are not consistently upheld.

These deficiencies in the administrative framework create an environment conducive to political influence, corruption, and the misinterpretation (and misapplication) of the law. The lack of proper structuring and adherence to democratic and governance principles provides opportunities for illicit activities, eroding the integrity of the legal system.

The issues related to freedom of expression and information in Bulgaria stem from significant shortcomings in the legal framework ensuring media independence and an informed democracy. The trust in the Council of Electronic Media is relatively low due to political interference and the appointment of individuals without relevant experience.

While Bulgaria guarantees freedom of speech constitutionally, some concerns arise from the presence of legal secret surveillance outlined in the criminal code[10]. The broad scope of permissible surveillance

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[5] European Commission, "2022 Rule of Law Report Country Chapter on the rule of law situation in Bulgaria" SWD(2022) 527 final, p. 13.
[6] Liberties Rule of Law Report 2022. Bulgaria, LIBERTIES, 2023, p.13.
[7] Anti-corruption Institutions: Eyes Wide Closed, Anti-corruption Fund, Sofia 2022, p. 14.
[8] Anti-corruption Institutions: Eyes Wide Closed, Anti-corruption Fund, Sofia 2022, p.32.
[9] High-level Appointments in the Public Administration, Bulgarian Institute for Legal Initiatives, Sofia 2022.
[10] Boyko Rashkov: The Surveillance of the Protesters was Round the Clock and Was Paid Overtime, Bulgarian National Television, 20 June 2021.

cases has raised apprehension regarding potential misuse by authorities, particularly targeting government critics. The European Court of Human Rights has analysed the legal framework regulating surveillance practices in Bulgarian on two occasions[11].

The interplay between freedom of expression and civic participation becomes evident in this context. The misuse of surveillance laws not only hampers individuals' freedom to express their opinion but also might create a chilling effect on civic engagement.

During the research period, proposed amendments to the Access to Public Information Act raised concerns about citizens' right to information[12]. Opposition from 27 NGOs highlighted violations of the principle of proportionality and potential restrictions on access to public information[13]. According to stakeholders, these amendments impede transparency and hinder citizens' active engagement in public affairs.

The presence of Strategic Lawsuits Against Public Participation (SLAPP) cases further compounds the issues surrounding the right to information, freedom of expression, and civic participation[14]. The existing legal framework lacks efficient measures to prevent SLAPP cases, which primarily target journalists. These lawsuits pose a significant threat to freedom of speech and information and impede individuals from participating in the public discourse.

Another notable issue concerns the freedom of speech of the judiciary. The European Court of Human Rights examined a case concerning the rule of law in Bulgaria, highlighting the strategic importance of the matter[15]. The actions taken by magistrates within the prosecutor's office during the political events raised concerns regarding the freedom of expression of prosecutors[16]. The hierarchical structure of the prosecution, closely linked to judicial independence, played a significant role in this situation.

While the issues with civic participation in Bulgaria may not be as alarming as in some other EU countries within the scope of this project, such issues still exist. Apart from the previously mentioned challenges pertaining to the right to information and freedom of expression, the fieldwork research highlighted another significant concern. According to a participant in the research, the chaotic legislation, which was recognized as a barrier to accessing justice, largely resulted from inadequate prior consultation and discussion with the civil society sector. Furthermore, certain groups within the civil sector, particularly those advocating for human rights, face serious problems. Human rights organizations focused on LGBTI rights are frequently subjected to negative public behaviour, making them the most common victims in this regard[17].

Key practical challenges

To examine the practical challenges associated with RoL in litigation, the fieldwork research aimed to determine lawyers' understanding of RoL and, more specifically, their comprehension of the RoL acquis. A majority of participating practitioners acknowledged a lack of clear understanding regarding

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[11] Ekimdzhiev and Others v. Bulgaria, App no 70078/12 (ECtHR, 11 January 2022)., Association for European Integration and Human Rights and Ekimdzhiev v. Bulgaria, App no 62540/00 (ECtHR, 30 January 2008).
[12] Act amending and supplementing the Access to Public Information Act. Available on the following link: https://www.parliament.bg/bg/bills/ID/164712
[13] For more information read the Opinion.
[14] Zheleva, S, Mateeva-Georgieva, L., Price of the Freedom of Speech, Anti-corruption Fund, Sofia 2023.
[15] Miroslava Todorova v. Bulgaria, App no 40072/13 (ECtHR, 19 October 2021).
[16] Prosecutors and Investigators Protested Across the Country in Defense of Geshev, Bulgarian National Television, 2 May 2023
[17] Todorov S., Belgian Movie Fans Nationalist Anti-LGBT Hatred in Bulgaria, Balkan Insight, 15 June 2023.

the concept of the RoL acquis and its constituent elements. Notably, interviews conducted during the research revealed an important observation: many lawyers struggled to identify EU sources of law directly linked to the rule of law, despite being aware of significant judgments rendered by the ECJ, such as the cases of Associação Sindical dos Juízes Portugueses. This suggests a lack of awareness or limited theoretical knowledge among lawyers regarding the status of ECJ's decisions as a source of law. In essence, their limited familiarity with EU legislation pertaining to the rule of law underscored their potential oversight of the broader impact and authority of Luxembourg court rulings as fundamental sources of law.

Furthermore, the interviewed lawyers confirmed that a significant part of their colleagues lacks a clear understanding of how EU law operates and fails to recognize that the European concept of the rule of law encompasses specific elements and criteria. Conversely, focus group discussions revealed that some lawyers who possess educational awareness of the EU acquis intentionally deny its applicability, considering it separate from national legislation and disregarding the principle of subsidiarity. This shows that lawyers' (including magistrates) personal prejudice and biases of EU could also pose a practical challenge.

Additionally, research participants emphasized that the utilization of EU law is not solely a concern for lawyers but, to a greater extent, for magistrates who do not sufficiently incorporate it. For instance, the desk research showed that the number of references to the EU Charter in High Court decisions[18] in Bulgaria for the year of 2022 is alarmingly low – 143 decisions. While there has been an increase in preliminary references originating from Bulgaria19, it is evident that only a select few renowned judges are accustomed to utilizing this mechanism, as they account for the majority of preliminary references posed. Some research participants shared their attempts to utilize preliminary references, only to have their applications rejected by the court. The reasons for rejection, according to the participants in the research. Some of them attributed it to the responsible judge's lack of understanding, while others pointed to inadequacies in their own legal argumentation and preparation on the matter. An important practical challenge highlighted by one interviewee regarding preliminary references is the legal impossibility of submitting such during the adjournment session in criminal proceedings, thus precluding the opportunity to make a preliminary reference at any stage of the proceedings.

The legal framework across various domains, particularly fragmented and chaotic legislation, has been identified as a contributing factor to the practical challenges encountered by lawyers. Three of the interviews emphasized that the fundamental issues related to the rule of law in Bulgaria stem from haphazard and flawed legislative processes through which the legal framework has been established.

The political situation was also recognized as a challenge faced by lawyers and their clients. Notably, during the research period, the main rule of law issues related to the judiciary and political influence, particularly the separation of powers problems in Bulgaria, became evident. This realization emerged following the eventual dismissal of the prosecutor general, a matter that had been pending for an extended period. However, it was the unexpected political statements made by certain executive representatives, who had previously refrained from such declarations, that truly brought this issue to the forefront. Consequently, these statements served as a catalyst for the prosecution service to revive dormant corruption cases, some of which implicated this political figure who had voiced opposition to the Prosecutor General. Although lawyers were not directly involved in this particular

[18] This include Supreme Court of Cassation, Supreme Administrative Court and the Constinutional court. The latter is not part of the judiciary in its core

[19] See: Statistics of the Court of Justice, p. 5.

case, its aftermath significantly influenced their inclination to openly discuss the existing problems within the prosecution system and the challenges they personally encounter in their work. These and similar political situations are disheartening for lawyers (and their clients), leading to a loss of motivation in handling cases involving corruption. According to the majority of the participants in the research, it was evident that the progress of such cases does not solely depend on the competence and efforts of lawyers.

Furthermore, three of the interviewed lawyers specialized in criminal law cases expressed criticism towards the work of the prosecutor's office. Several notable deficiencies were brought to light, highlighting areas of concern within the legal framework. One such concern is the recurring issue of prosecutors potentially "abusing their procedural powers." This refers to instances where prosecutors may exceed the bounds of their authority, potentially compromising the integrity of legal proceedings. Additionally, a "misinterpretation" by magistrates of the principle of ex officio, which is meant to guide the prosecutorial function, was noted. According to the participants in the research, such misinterpretation often leaded to a tolerance of prosecutorial practices that may be inconsistent with the principles of justice and fairness. Two of the lawyers confirmed the need for change in the legal framework regarding the accountability of the prosecution. They also stated that the court's independence is often threatened because the court frequently tolerates procedural violations during the pre-trial proceeding. They attributed this to the fact that both of the parties were magistrates on the one hand, and on the other, that according to law, the pre-trial proceeding is preliminary, meaning it is preparatory20. Another practical challenge noted by both lawyers, with a primary focus on criminal proceedings, was related to the procedural guarantees of defendants, particularly those concerning pre-trial detention. They confirmed that EU secondary legislation providing the main procedural guarantees of the defendant is not properly transposed, regardless of relevant EU commission acts stating the opposite. The poorly transposed EU legislation was echoed by practitioners also during the focus group.

Regarding the administrative justice system, the research indicated that it is considered inefficient among practitioners. While the EU Commission's latest rule of law report acknowledges improvements in the administrative justice system, interviews and focus group discussions revealed practical challenges faced by lawyers in this area. Both inexperienced and experienced (in RoL related cases) lawyers highlighted issues related to administrative justice, alongside technical problems that may not directly relate to the project's scope but still impact access to justice for citizens, such as those related to the digitalization of justice. For example, desk research showed that the allocation of cases in court remains a controversial issue21. Practitioners agreed that the main problems related to the allocation of cases occur in the administrative justice system, particularly in the Supreme Administrative Court which was also a topic of research by the ECtHR in its one and only strategical Bulgarian case concerning directly the rule of law. The Court's determination that the allocation of cases falls within the discretion of the States, was identified as a concern by the lawyers, participating in the research. The findings of the research indicated that experienced lawyers expressed greater criticism of administrative justice, while lawyers who do not work on RoL-related cases were more critical of administrative justice, particularly in relation to the interpretation of the law by administrative bodies issuing administrative acts. The focus group further confirmed that local administrative authorities

[20] Criminal Procedure Code, Art.7 para.2, Available here: https://lex.bg/laws/ldoc/2135512224
[21] Liberties Rule of Law Report 2022. Bulgaria, LIBERTIES, 2023, p.8.

frequently exhibit incorrect interpretations of the law, resulting in the issuance of flawed administrative acts.

The role of Bar Associations and the Supreme Bar Council in promoting the rule of law within the state was not recognized as crucial by the research participants. The focus primarily centred on the organization of training activities by the Bar associations. However, there was a perception that the Bar Council and professional organizations of lawyers, in general, did not prioritize EU law to the extent necessary to foster a culture, within the legal profession, that embraces it as part of national law. The main findings from the focus group discussions highlighted the need for a stronger commitment from the government bodies and improved training programs for magistrates. Currently, the National Institute of Justice, the primary institution responsible for the training of magistrate, faces significant challenges that hinder the effectiveness of these programs.

Regarding legal aid, a significant majority of the participants in the interviews expressed the view that the effectiveness of a public defender heavily relies on their personal qualities and individual sense of responsibility. This sentiment was further reinforced during the focus group discussions. Several lawyers attributed the ineffective defence provided by public defenders to various factors, including a perceived formalistic approach to their role as legal representatives, inadequate remuneration for public defenders, and, importantly, insufficient oversight and supervision of the mandatory training programs that public defenders are required to attend.

Based on the interviews conducted, it was observed that a significant number of legal aid lawyers were facing difficulties in recognizing whether the cases they handle had the potential to become strategic. Additionally, according to participants, the legal aid lawyers lacked the ability to identify Strategic SLAPP cases when assigned to them.

Training needs

In Bulgaria, the organization responsible for the training of lawyers is the Lawyers Training Center "Krustyu Tsonchev"[22]. As a foundation operating under the auspices of the Supreme Bar Council, the Centre maintains close collaborations with various entities in the legal field. These include the Supreme Bar Council, local Bar Councils throughout the country, the Ministry of Justice, the National Institute of Justice, the Supreme Judicial Council, the judiciary, and national and international organizations involved in legal matters. The Center has agreed upon collaborating with the project's consortium on the forthcoming educational programme.

The Centre for Lawyers' Training has some key objectives. One of them, as outlined in its regulations, to equip lawyers with the necessary knowledge and skills to effectively apply EU law, familiarize them with international law, and provide insights into legal systems in other countries[23]. This objective reflects the importance of preparing lawyers to navigate the complexities of EU law and international legal frameworks.

Ordinance No. 4 of 2006[24] serves as the primary regulatory framework governing the qualification of lawyers in Bulgaria. This regulation specifically addresses the maintenance and enhancement of qualifications for both national lawyers and lawyers from the European Union. It designates the Centre

[22] See: The Center's website.
[23] Rules for the Organization and Operation of Training Center for Lawyers "Krustry Tsonchev", Art.7, p.3, Available here: http://advotraining.bg/wp-content/uploads/2019/02/Pravilnik-za-dejnostta-na-COA.pdf
[24] Ordinance No 4 of 2006 on the Maintenance and Upgrading of the Qualifications of Lawyers and European Union Lawyers, Available here: https://lex.bg/laws/ldoc/2135515374

for Lawyers' Training as the principal institution responsible for maintaining and improving lawyers' qualifications.

The Bar Association Act[25] further stipulates that the Supreme Bar Council is entrusted with organizing the Lawyers Training Center to fulfil its role in maintaining and enhancing the qualifications of both domestic lawyers and lawyers from the European Union.

According to the aforementioned regulations, lawyers are required to participate in a minimum of eight hours of training sessions annually, of their own choosing in terms of form and subject, to maintain and enhance their qualifications. However, there is no mandatory training field for regular lawyers or legal aid lawyers. During the conducted focus group, it was highlighted as a practical challenge that there was a lack of control over lawyers' attendance and participation in such education programs.

Training needs at the introductory level

The training needs of lawyers with limited knowledge and/or engagement in rule of law (RoL) cases include the following:

- Combination of theoretical and practical trainings focusing on case law. The participants in the research shared that they would benefit from training programs that integrated theoretical knowledge with practical application, particularly emphasizing case law. This type of training would enable them to better understand how principles, such as the rule of law and effective judicial protection, are applied in concrete cases.
- Emphasis on practical education and application to legal principles. Lawyers expressed the need for practical-oriented training that moved beyond formalism. They required guidance on how to effectively apply legal principles, such as the rule of law and effective judicial protection, in concrete cases. This includes a focus on procedural rights and ensuring they are upheld in practice
- Differentiation between Council of Europe and EU law mechanisms. Most participants agreed that the regular lawyers did not make a difference between the Council of Europe and the EU legal instruments. Lawyers expressed a lack of awareness regarding the differences between these two bodies and their respective legal frameworks among inexperienced practitioners.
- Targeted training for legal aid lawyers. Legal aid lawyers would benefit from specialized and consistent training programs tailored to their specific needs. According to the participants in the research, these programs should be actively disseminated among legal aid practitioners, addressing topics directly relevant to their work. Training sessions aligned with their cases of interest would generate greater engagement.
- Clear communication of training content and benefits. Effective marketing and communication of training programs are essential. Lawyers should receive clear information about the practical skills, benefits, and specific cases covered in the training. The focus group discussion highlighted that this would enable them to recognize the practical relevance and value of the training for their professional development.
- Preference for trainings conducted by magistrates. Lawyers often show a preference for attending training led by magistrates, particularly judges. Such training provides them with insights into how the court interprets the law, enhancing their understanding and certainty.

[25] The Bar Association Act, Art.122, para.1, p.9. Available here: https://lex.bg/laws/ldoc/2135486731

Access to experienced adjudicators in training sessions is valued by lawyers seeking practical guidance.

Training needs at the advanced level

The training needs of lawyers who are already engaged and active in RoI cases include the following:

- Combination of theoretical and practical trainings focusing on case law. The advanced lawyers participating in the research agreed upon the idea that the education should include both theoretical and practical part although some of them (2 lawyers) highlighted the need of case law analyses only.
- Strategic litigation and impact litigation. During the focus group, some practitioners expressed the view that a lawsuit becomes strategic only after it has commenced, suggesting that it may not be advisable to proactively plan for a strategic lawsuit from the outset. However, the discussion highlighted the potential benefits of acquiring techniques and strategies to effectively handle such cases once they are underway.
- Rule of law indicators and assessment tools. Training programs that focus on rule of law indicators and assessment tools can help lawyers evaluate and monitor the state of the rule of law in their respective jurisdictions. This may include learning about methodologies for assessing rule of law, interpreting data, and using assessments to advocate for legal reforms.
- The findings indicated that many lawyers struggle to grasp the intricate relationship between EU legislation and national law. This lack of comprehension poses challenges when it comes to effectively applying and interpreting EU law in the context of Bulgarian legal practice. It became evident that further efforts are needed to enhance awareness and provide training on the nuances and implications of EU legal instruments, as well as the correct procedures to address instances of inadequate transposition into national legislation.
- International collaboration and networking. Training sessions that facilitate international collaboration and networking among experienced rule of law lawyers can foster knowledge sharing, exchange of best practices, and collaboration on cross-border cases. This may include conferences, workshops, or seminars where lawyers can interact with their peers from different jurisdictions.

Training needs of trainers

As no specific trainers were identified during the research phase of the project, the identified training needs were deduced based on the gathered information and observations:

- In-depth knowledge of rule of law principles. Trainers should have a comprehensive understanding of the fundamental principles and concepts related to the rule of law, including its various dimensions and applications in national legal systems. Trainers should be well-versed in the legal frameworks, both at the national and international levels, that govern and promote the rule of law. This includes familiarity with key legal instruments, conventions, treaties, and case law that are relevant to the topic.
- Understanding of practical applications. Trainers should possess practical experience and knowledge of how rule of law principles are applied in real-world scenarios. They should be able to provide practical examples, case studies, and engage participants in discussions and exercises that simulate real-life situations.
- Familiarity with strategic litigation techniques. Trainers should have expertise in strategic litigation methodologies and techniques, including identifying strategic cases, developing legal

strategies, engaging in effective advocacy, and utilizing international and domestic legal mechanisms to advance rule of law objectives.

- Pedagogical skills. Trainers should possess strong teaching and facilitation skills to effectively convey complex concepts and engage participants in an interactive learning environment. They should be able to employ a variety of instructional methods, such as presentations, group discussions, case studies, and role-plays, to enhance participants' understanding and retention of the material.
- Knowledge of current developments. Trainers should stay updated on the latest developments and trends in the field of the rule of law, including emerging challenges, evolving legal principles, and relevant court decisions. This will enable them to provide participants with the most up-to-date information and insights.
- Cultural sensitivity and diversity awareness. Trainers should be sensitive to cultural and contextual differences among participants and be able to create an inclusive learning environment that respects diverse perspectives and experiences related to the rule of law.
- Communication and presentation skills. Trainers should possess strong communication skills, both verbal and written, to effectively articulate complex legal concepts and engage participants. They should be able to deliver clear, concise, and engaging presentations that cater to diverse learning styles.
- Evaluation and feedback. Trainers should have the ability to assess participants' understanding and progress throughout the training program and provide constructive feedback to support their learning and development.
- Continuous professional development. Trainers should demonstrate a commitment to their own professional development by actively seeking opportunities to enhance their knowledge and skills in the field of rule of law through attending relevant conferences, workshops, and trainings.

Conclusions

Regarding inexperienced lawyers, the training program should be designed to address their specific needs comprehensively. Firstly, it should definitely encompass a combination of theoretical and practical training, placing particular emphasis on meticulous case law analysis. This approach will equip lawyers with the necessary tools to comprehend how fundamental legal principles, such as the rule of law and effective judicial protection, are effectively applied in real-life scenarios. Secondly, the training should offer practical education that transcends formalism, providing invaluable guidance on the application of legal principles in concrete cases, including the safeguarding of procedural rights. This could be addressed through for example a short comparative analysis of the implementation of some secondary EU legislation in the different countries. Additionally, it is imperative to underscore the importance of differentiating between the legal frameworks of the Council of Europe and the European Union. This will ensure that lawyers attain a comprehensive understanding of the distinctions and implications pertaining to their practice. This could be addressed with a short introduction explaining to the participants the basic differences between them. Such an introduction could be sent to the lawyers through email even before the beginning of the training programme. Moreover, it is essential to develop specialized training programs tailored explicitly to the needs of legal aid lawyers, actively disseminating them within this professional community. Clear and concise communication of the training content, elucidating practical skills, outlining benefits, and utilizing relevant case examples, is crucial for lawyers to recognize the significant value of the training program for their professional growth. Lastly, integrating training sessions conducted by magistrates, notably

judges, will provide invaluable insights into court interpretations, thereby augmenting lawyers' understanding and bolstering their confidence in handling rule of law–related cases.

Concerning experienced lawyers, the training content should be strategically designed to cater to their advanced requirements. Firstly, it should incorporate a fusion of theoretical and practical elements, with a distinctive focus on incisive case law analysis. The case law presented to experienced lawyers should exhibit a greater quantity and higher level of nuance compared to the case law shared with inexperienced lawyers. This multifaceted approach will not only enhance their ability to navigate intricate cases but also reinforce their practical understanding and application of legal principles. Furthermore, the training should delve into strategic and impact litigation, equipping lawyers with advanced techniques and strategies to deftly handle such cases. This entails comprehending the opportune moments to undertake strategic litigation for maximum impact. Moreover, the training program should encompass comprehensive modules on rule of law indicators and assessment tools, empowering lawyers to adeptly evaluate and monitor the state of the rule of law within their respective jurisdictions. This encompasses acquiring proficiency in methodologies for assessing the rule of law, interpreting relevant data, and leveraging assessments to advocate for necessary legal reforms. To tackle the prevailing challenge of comprehending the intricate relationship between EU legislation and national legal systems, the training should provide in-depth knowledge on EU legal instruments, their nuanced implications, and the correct procedures to rectify instances of inadequate transposition into national legislation. Additionally, fostering international collaboration and networking opportunities among experienced rule of law lawyers, such as through conferences, workshops, or seminars, will foster the exchange of invaluable knowledge, best practices, and facilitate collaborative efforts on cross-border cases.

In addressing the training needs of trainers, it is imperative to incorporate key elements that are pivotal to their professional development. Foremost, trainers should possess an extensive and profound knowledge of rule of law principles, including a comprehensive understanding of their various dimensions and applications within national legal systems. This necessitates an in-depth familiarity with relevant legal frameworks at both national and international levels, encompassing essential legal instruments, conventions, treaties, and case law. In addition to their theoretical awareness, trainers should possess practical expertise, enabling them to provide compelling real-world examples, case studies, and facilitate engaging discussions and exercises that simulate authentic scenarios. Expertise in strategic litigation methodologies is crucial, empowering trainers to guide participants in the development of effective legal strategies, adept advocacy skills, and harnessing domestic and international legal mechanisms to advance rule of law objectives. Strong pedagogical skills are indispensable, ensuring trainers effectively convey intricate concepts, foster an interactive learning environment, and accommodate diverse learning styles through a myriad of instructional methods such as presentations, group discussions, case studies, and role-plays. Staying up to date of the latest developments and trends in the field of rule of law is paramount, encompassing emerging challenges, evolving legal principles, and relevant court decisions. By staying well-informed, trainers can provide participants with the most up-to-date information and invaluable insights. Cultural sensitivity and diversity awareness are imperative, enabling trainers to foster an inclusive learning environment that respects and appreciates diverse perspectives and experiences related to the rule of law, ensuring participants from varying cultural backgrounds feel acknowledged and included throughout the training process. Proficiency in communication and presentation skills, both verbal and written, is essential for trainers to effectively articulate complex legal concepts and engage participants throughout the training program. Moreover, trainers should possess the ability to evaluate participants' progress and understanding, providing constructive feedback that supports their ongoing learning and

development, thereby ensuring the effective application of acquired knowledge. Lastly, trainers should actively demonstrate their commitment to continuous professional development by seeking out opportunities to enhance their knowledge and skills in the field of the rule of law, such as attending relevant conferences, workshops, and additional training programs. By engaging in continuous professional growth, trainers remain at the forefront of the field, equipped with the latest developments and best practices, thereby elevating the quality of their training delivery.

2.2 Greece

Executive summary

Despite concerns that RoL is regressing in the country, lawyers in Greece appear to be inadequately prepared to tackle RoL issues in their daily work. Participants in our research often appeared confused about what qualifies as a RoL issue. Moreover, particularly at the institutional level, there is a noticeable reluctance to acknowledge that Greece has a RoL problem. The response of the Bar Associations to the emergence of relevant concerns is perceived by practitioners as, overall, ineffective.

The strained relationship between the average Greek legal practitioner and European Union (EU) law exacerbates this situation. This problem predates the current RoL concerns. It has prevented Greek lawyers from effectively using the tools provided by the EU RoL acquis. The lawyers we interviewed generally showed limited awareness of EU policy and strategic developments in this area. They also showed a low level of familiarity with primary and secondary EU law. In addition, there is a general lack of knowledge and confidence in EU law within the judiciary. This is less pronounced among younger judges and prosecutors.

Fieldwork research revealed the following key areas of concern:

(a) Access to justice and judicial impartiality.

(b) Fair trial issues, in particular the length of trials and the inconsistent application of procedural safeguards.

(c) Violations of fundamental rights and dissuasive measures in the context of asylum and migration.

(d) Concerns related to freedom of the press and the safety of journalists, in particular in response to the increasing number of SLAPPs, and physical violence against journalists.

National context

Greece has been a member of the European Union (then the European Communities) since 1981. Since the fall of the military junta in 1974, the country has enjoyed a stable parliamentary democracy with regular free elections. The supreme law of the land, the Constitution, was first adopted in 1975 and has since been amended four times (1986, 2001, 2008 and 2019). The Greek Constitution is rigid, with a complex amendment procedure (Article 110), including a minimum waiting period between amendments, as well as interim elections. Chapter II of the Constitution (Art. 4-25) contains a comprehensive Bill of Rights and explicitly guarantees "the rights of persons as individuals and as members of society, the welfare state and the rule of law" (Art. 25). The separation of powers is clearly enshrined in Art. 26, and the powers of the executive, the legislature and the judiciary are set out in separate chapters. Article 87 provides for the functioning of the judiciary as follows:

"1. Justice shall be administered by courts composed of professional judges who shall enjoy functional and personal independence.

2 In the exercise of their functions, judges shall be subject only to the Constitution and the laws and shall in no case be bound to comply with provisions enacted in derogation of the Constitution.

3. The evaluation of ordinary judges shall be carried out by judges of higher rank and by the public prosecutor and the deputy public prosecutors of the Supreme Court, and of public prosecutors by

members of the Supreme Court and public prosecutors of higher rank, in accordance with the provisions of the law."

Despite a long period of political and financial stability, a steady deterioration of democratic values, fundamental rights and the rule of law has been observed in recent decades, starting with the 2008 global financial crisis and the subsequent Greek sovereign debt crisis, and continuing with the increase in migration flows to Europe in 2015-2016. More recently, the Covid-19 pandemic has led to further setbacks, particularly in terms of civic participation, restrictions on the right to peaceful assembly, and a marked increase in police arbitrariness and brutality.

Greece's institutional and legal framework, administrative practices and the overall socio-economic context of the country have created chronic and systemic challenges to the rule of law, in particular with regard to:

a) Equality before the law and the treatment of vulnerable persons and groups;

b) The independence and impartiality of the judiciary, in particular in relation to the appointment of its senior members by the executive;

c) The right to a fair trial, in particular the right to a reasonable length of proceedings;

d) The quality of legislation, including the number of laws, the application of good legislative principles and public participation;

e) The media landscape in terms of ownership, independence and pluralism of (mass) media.

In this context, both the EU and the Council of Europe have provided a stable frame of reference for justice professionals, both as sources of legal obligations and as authoritative interpreters of fundamental rights and RoL norms. The supremacy of both EU law and the ECHR over Greek common law is enshrined in Art. 28 of the Constitution, which provides that 'the generally accepted rules of international law, as well as international conventions, from the time of their ratification by law and their entry into force in accordance with the terms of each of them, constitute an integral part of Greek domestic law and prevail over any other provision to the contrary'. However, despite the proclaimed importance of the European legal order, our research shows that there is a serious lack of familiarity among legal practitioners with core EU principles and norms, primary and secondary EU legislation, as well as case law and procedure before the European courts, leading to an observed under-utilisation of available legal sources and procedural avenues.

This report provides an analysis of the above issues, focusing on the perspective of a key group of legal practitioners, the lawyers who participated in the primary research conducted by the LighT project. The report aims to identify key issues, knowledge gaps and practical challenges. Its findings will feed into the development of the LighT training offer, which aims to strengthen RoL in the participating countries by building the capacity of lawyers to effectively apply the EU RoL acquis and act as agents of change.

Key themes

Equality before the law

Throughout our research, practitioners highlighted equality before the law as a horizontal concern that underpinned the majority of the various RoL-related issues identified. Therefore, although it is not

strictly one of the issues covered by the project, we feel it is important to address it at the beginning of this chapter to provide context for the analysis that follows.

Equality before the law is, on the whole, adequately guaranteed in the Greek legal system, leaving aside individual concerns on specific issues. Art. 4 of the Constitution guarantees equality before the law to all Greek citizens, men and women. At the same time, third-country nationals (TCNs) residing legally in the country are also entitled to a number of individual and social rights. Procedural guarantees are in place to ensure that detained TCNs are able to understand the proceedings against them and to communicate with their consular authorities and lawyers. Racial or discriminatory motivation constitutes an aggravating circumstance for crimes committed on the basis of perceived race, colour, national or ethnic origin, descent, birth, religion, disability, sexual orientation and gender identity. In addition, hate speech and public incitement to violence and hatred on the grounds of perceived race, colour, religion, descent, national or ethnic origin, sexual orientation, gender identity or disability is an *ex officio* prosecuted criminal offence. [26]

The Migration Code provides for the granting of *ad hoc* residence permits on humanitarian grounds to victims and material witnesses of criminal acts, victims of domestic violence, crimes with racist characteristics, human trafficking and smuggling, as well as sufferers of serious health problems, victims of industrial accidents, those attending officially recognised rehabilitation programmes, and TCNs who, *at the risk of their lives* [emphasis added], have performed acts of social virtue, service and solidarity that promote humanitarian values. [27] As regards persons entitled to international protection, the EU asylum acquis is adequately transposed and incorporated into a comprehensive Code on the Reception and International Protection of third-country nationals and stateless persons. The Code expressly obligates public authorities to respect the principle of non-refoulement. [28]

Despite the above comprehensive guarantees, both administrative and judicial practice call into question the application of the principle of equality before the law. As aptly put by the Venice Commission, *"Equality is not merely a formal criterion, but should result in substantively equal treatment"*. [29] It follows that equality in and before the law is not merely a declaratory obligation, but must instead lead to the equal application and consistent implementation of the law in practice. In this respect, our research highlighted a number of practical barriers in relation to the equal treatment of vulnerable persons and groups, in particular those associated with specific ethnic, national or racial characteristics, as well as political opinions. Social class and financial status are also highlighted by the practitioners who participated in the LighT primary research as key factors impeding access to justice.

Setting aside the issues related to the area of justice, which will be addressed in more detail in the following sub-section, well documented violations of the fundamental rights of refugees and migrants have led to international outcry against Greece and have been framed as a major Rule of Law concern. These mainly concern allegations for systematic pushbacks and failure to search and rescue, [30]

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[26] Law 4285/2014, O.G.G. Issue 191/A/10.9.2014.
[27] Migration Code, art. 134-135.
[28] International Protection Code, art. 20.
[29] European Commission for Democracy through Law (Venice Commission), 'Rule of Law Checklist', adopted by the Venice Commission at its 106th Plenary Session (Venice, 11-12 March 2016).
[30] Indicatively, see: https://www.nytimes.com/2020/11/26/world/europe/frontex-migrants-pushback-greece.html; https://www.nytimes.com/2023/05/19/world/europe/greece-migrants-abandoned.html; https://ecre.org/greece-one-month-on-from-pylos-shipwreck-government-deflects-media-investigate-and-frontex-contemplates/; https://www.gcr.gr/en/news/press-releases-announcements/item/1982-european-parliament-s-libe-committee-intervenes-on-the-continued-pushbacks-in-the-evros-region; https://refugeeobservatory.aegean.gr/en/greece-ecthr-condemns-greece-prominent-ruling-new-evidence-pushbacks-renewed-eu-critique-%E2%80%93-same-

reception conditions for refugees and asylum seekers, and access to effective remedies, in particular in relation to the implementation of the EU-Türkiye statement, which precludes the examination of asylum applications on their merits on the basis of the "safe third country" notion. [31]

We would be amiss to view this issue in isolation to the general political climate and public discourse around vulnerable groups, in particular migrants and refugees, which remains racially charged and openly hostile. The vilification of migrants at the highest level is perhaps best exemplified by the link drawn between migration routes and the recent wildfires in the Evros region of Greece, supported at the highest levels of government. [32] Moreover, as will be further shown in the sections that follow, civil society organisations and human rights defenders working in these areas are openly criminalised by members of the press and media, as well as right-wing politicians and groups, including the ruling New Democracy party. Another marginalised group facing criminalisation and stigmatisation are the Roma. In addition to the widespread antigypsyism observed in Greek society, two incidents of police arbitrariness and brutality have resulted in the deaths of Roma youths in recent years. [33]

The systemic nature of the above-mentioned discriminatory practices is also evident in the data on the number of detainees in the country's prisons, with TCNs consistently accounting for more than half of the total prison population over the years. [34] It should be noted that the available data do not indicate the number of Roma prisoners who are Greek nationals. Nevertheless, the disproportionate representation of Roma in the criminal justice system is confirmed by both practitioners who participated in the LighT research, as well as through previous research conducted by CECL.

Access to justice

Access to justice is a major source of concern when it comes to the RoL situation in Greece. Several of the issues identified in the course of the LighT research have been consistently highlighted in the EC RoL reports concerning Greece. However, there are also important points of divergence and issues that have not been identified. The 2023 report is used as a frame of reference for the following analysis.

a) Independence of the judiciary

One of the main chronic problems related to the independence of the judiciary is the appointment of the most senior members of the judiciary by the executive, by virtue of the constitutional provision of art. 90 (5) of the Constitution, which stipulates that promotions to the positions of President and Vice-President of the Council of State, the Supreme Civil and Criminal Court and the Court of Auditors, as well as to the positions of Chief Prosecutor and Commissioner General of the Court of Auditors, are

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old?language_content_entity=und; https://www.gcr.gr/en/news/press-releases-announcements/item/2160-no-monitoring-of-fundamental-rights-violations-in-greece-without-independent-and-effective-mechanisms.

[31] According to the Asylum Information Database (AIDA) managed by the European Council on Refugees and Exiles (ECRE), in 3,601 first instance asylum cases in 2022, the applicants were not granted access to an in merits examination: their applications were examined under the safe third country concept, with Turkey designated as a safe third country for certain applicants, despite the fact that there have been no readmissions since March 2020. In February 2023, the Council of State referred a question on this matter to the CJEU. More information is available at https://ecre.org/2022-update-aida-country-report-greece/#:~:text=In%202022%2C%20the%20Greek%20Asylum,first%20instance%20stood%20at%2057.4%25.

[32] For example, see the Prime Minister's, Kyriakos Mitsotakis, speech before the Parliament, on 31/8/2023, where he stated that "It is almost certain that the cause of the fire in Evros is man-made and it is almost certain that the fire started in corridors through which migratory flows pass".

[33] This concerns the homicides of Nikos Sambanis (https://tvxs.gr/news/ellada/i-dolofonia-toy-nikoy-sampani-mia-trisdiastati-anasynthesi-ton-gegonoton-apo-omniatv-bin/) and Kostas Fragkoulis (https://cyprustimes.com/ellada/dolofonia-kosta-fragkouli-an-den-itan-roma-tha-eiche-profylakistei-o-astynomikos-video/), witch are currently at a pre-trial stage.

[34] https://www.ggap.gov.gr/statistika-stoixeia-kratoumenon/.

made by decision of the Council of Ministers (i.e. the Government). A Law adopted in 2022 [35] provides that the appointment be made from among the ten most senior members of each Court.

The independence of the judicial system was one of the main issues raised by interviewees, pointing to controversies over appointments and actions of those appointed that cast doubt on their independence. Public perception of judicial independence remains relatively low, but close to the EU average, at approximately 46% for the general population and 54% for companies. [36]

b) Length of the proceedings

The length of proceedings is identified as a serious challenge that undermines the efficiency of justice in all areas. It affects all branches of justice and most types of proceedings, with emergency proceedings faring slightly better. The RoL report has highlighted in particular problems in the administrative justice system, which concerns, among others, disputes relating to taxation and social security, the status of TCNs and the use of EU funds. The excessive length of proceedings can be attributed to the low level of digitalisation of the Greek judicial system, the limited support provided to judges by specialised staff, and general gaps in the procedural and substantive legal framework, which leads to an inefficient distribution of cases and ultimately to a serious backlog in the courts' dockets. The large number of violations of Art. 6 ECHR found by the Strasbourg Court in relation to the length of proceedings in Greece is indicative in this respect. [37]

The length of the proceedings is a key issue related to the daily work of all justice professionals. Lawyers report a sense of hopelessness in this regard, as well as concrete challenges and a strain in their relations with clients due to this matter.

c) Application of procedural safeguards in criminal justice

Greece has adequately transposed the EU Roadmap and Victims' Rights Directives, as well as other secondary EU instruments relating to criminal procedure and the rights of victims of specific crimes. A comprehensive legal framework is therefore in place to guarantee the procedural rights of suspects, defendants, victims and witnesses of crime. Nevertheless, bottlenecks in the practical application of the law create barriers to access to justice, especially for vulnerable persons.

A key chronic problem is the availability and quality of translation and interpretation services. Research [38] highlights concerns about the accuracy and comprehensiveness of interpretation services provided by the courts, while the right to translation does not extend to the full case file, creating additional barriers for defendants with limited resources.

Timely access to case file is another issue highlighted by interviewees, particularly in relation to legal aid cases, with legal aid lawyers reporting that they usually have only a few hours to read case files of hundreds of pages. Issues relating to access to justice and legal aid are discussed further in the section on practical barriers.

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[35] Law 4938/2022, O.G.G. Issue 109/A/06-06-2022, art. 59 (3).
[36] Data drawn by the 2023 EU Justice Scoreboard, accessible at https://commission.europa.eu/document/db44e228-db4e-43f5-99ce-17ca3f2f2933_en.
[37] Close to 500 ECtHR cases finding violations of Convention Article on behalf of Greece concern fair trials rights, with most of them concerning the excessive length of the proceedings.
[38] Research conducted by CECL in the frame of past EU-funded actions, e.g., *Breaking the Barriers*, G.A. No 854046, available on request.

The procedural shortcomings described above are usually exacerbated at the pre-trial stage of proceedings, particularly during the police investigation stage. Practitioners consistently report abuses of power and violations of procedural guarantees, including access to a lawyer, the right to communicate and the right not to incriminate oneself.

d) Impartiality of the judiciary

In addition to the above-mentioned structural deficiencies, which primarily affect access to justice for vulnerable defendants, the impartiality of the judiciary is often called into question, particularly in relation to the administration of criminal justice for certain groups. As mentioned above, TCNs are disproportionately represented in the criminal justice system and constitute the majority of the country's prison population. Roma are another category of overrepresented defendants. Previous research [39] involving members of the judiciary has revealed deep-rooted prejudices, compounded by procedural barriers (e.g., lack of known address), which result in unfair treatment of these groups.

Another group of people who face unfavourable procedural and substantive treatment in the criminal justice system are those identified on the basis of their perceived political opinions - particularly those who identify with, or are perceived to identify with, anarchist and extra-parliamentary left political ideologies. Research provides clear evidence of political profiling, particularly by the police, as evidenced by cases of recognised miscarriages of justice due to insufficient evidence, particularly in relation to charges of terrorism and participation in a criminal organisation. In addition, the treatment in prison of people who identify themselves as anarchists has often been demonstrably discriminatory and has led several prisoners to resort to hunger and thirst strikes in order to demand their rights, in particular the right to educational leave. Political interference to prevent the exercise of these rights has been documented. [40]

The above issues have been highlighted by the criminal justice lawyers who participated in the LighT research. By contrast, the majority of participants considered there is sufficient evidence of preferential treatment for members of the political and financial elite.

Transparency and anti-corruption

The research carried out in Greece did not identify corruption as a major problem. This may be due to the specific nature of corruption cases, which are assigned to specific prosecutors and are usually handled by highly specialised lawyers. It may also be explained by the view expressed in the focus group discussion that corruption is not a separate RoL issue. Rather, it is related to the effective functioning of the public administration, the executive and the judiciary, including the application of due process and the principle of legality.

Focus Group participants highlighted that corruption exists at international, European/EU and national levels. However, they seemed to link corruption to the functioning of the judiciary and mixed it with the issues of judicial independence raised in the previous section. However, this is not adequately

[39] Ibid., as well as *EF-PTD*, G.A. No 760347.

[40] Indicatively, see the following examples have been drawn from press coverage of the relevant incidents: https://el.wikipedia.org/wiki/%CE%A5%CF%80%CF%8C%CE%B8%CE%B5%CF%83%CE%B7_%CE%97%CF%81%CE%B9%CE%AC%CE%BD%CE%BD%CE%B1%CF%82_%CE%92.%CE%9B; https://www.iefimerida.gr/news/349068/athoos-o-tasos-theofiloy-gia-ti-listeia-stin-paro-tha-afethei-eleytheros; https://www.alfavita.gr/ekpaideysi/anakoinoseis/418886_elme-dattikis-na-ikanopoiithoyn-amesos-ta-aitimata-toy-apergoy; https://www.ethnos.gr/greece/article/102525/seapergiapeinaskaidipsasokratoymenosfoiththsbasilhsdhmakhs; https://www.ethnos.gr/greece/article/149541/dhmhtrhskoyfontinasekklhshnastamathseithnapergiapeinas

substantiated at this stage and could be attributed to the overall perception of participants regarding judicial independence.

Nevertheless, the RoL report identifies shortcomings in the handling of corruption cases. These include limited progress in achieving a solid track record of prosecutions and final judgments in corruption cases, conflicts of interest within the police force and the integrity of public officials. As regards the protection of whistleblowers, Greece transposed the relevant EU Directive at the end of 2022. However, civil society has criticised the fact that the law only covers breaches of EU law and does not cover breaches of national or international law. The OECD has also called on Greece to implement a new law on whistleblowers in cases of bribery involving foreign companies. [41] Finally, the media landscape also creates implications of corruption, linked to freedom of the press and media pluralism.

Freedom of the media and the press

Although freedom of the press and freedom of information are enshrined in the Constitution and protected by law, the current legal and regulatory framework has proved ineffective in combating threats to media pluralism and independence, as well as to the physical safety of journalists. The worrying backsliding in recent years has been an issue of concern for both domestic and European civil society, as well as EU bodies.

The main issues identified in this regard are:

- Media independence and potential political influence;
- Use of Illegal surveillance technology (the PREDATOR spyware) to target investigative journalists/reporters;
- Targeting of investigative journalists/reporters through SLAPPs;
- Journalists' safety, including incidents of police brutality during mass protests and the ineffective investigation of violent incidents.

a) Media independence and potential political influence

The RoL Report consistently identifies the media ownership landscape in Greece as a threat to pluralistic information. According to the Media Pluralism Monitor (2023), [42]despite some progress in the relevant regulatory framework, media ownership, combined with deficiencies in the functioning of the National Regulatory Authority for Audiovisual Media Services, has created a "medium risk" environment for media pluralism in the country. In this context, Reporters Without Borders highlights the markedly low level of trust in the media among Greek citizens, the high degree of fragmentation of the media landscape, and the close political ties and potential conflicts of interest of large media owners. [43]

The lawyers interviewed echoed this response and identified the perceived political influence on the mass media as a serious concern, with a clear impact on the administration of justice. In particular, they referred to the infamous "Petsas list", a list of media outlets that received financial aid due to losses

[41] Concerning foreign bribery, the Financial Crime Prosecutor has one ongoing case (dating from 2014) and four (two each from 2021 and 2022) are pending the conclusions of a preliminary investigation. Written contribution from the Financial Crime Prosecutor in the context of the country visit to Greece. The OECD Working Group on Bribery considers that Greece needs to strengthen enforcement and the independence of its criminal proceedings on foreign bribery investigations. OECD (2022), Implementing the OECD Anti-Bribery Convention, Phase 4 Report, Greece, pp. 5 and 66.
[42] https://cmpf.eui.eu/media-pluralism-monitor-2023/.
[43] https://rsf.org/en/country/greece.

caused by the Covid-19 pandemic, which has been criticised for its opaque process and dubious motivation. Interviewees believe that coverage of politically sensitive judicial cases is subject to undue influence, with clear implications for the ongoing trials, including, perhaps most importantly, the presumption of innocence.

b) Illegal Surveillance

The illegal surveillance scandal unofficially dubbed 'Predator Gate' has reverberated across Europe, raising serious concerns about freedom of the press and freedom of information. The scandal concerns the use of 'Predator' spyware by the Greek secret service to monitor the activities of journalists investigating, among other things, financial crime and issues related to the management of migration and refugee flows. The scandal has been acknowledged to constitute *"a major violation of the journalists' privacy, journalistic source protection, and press freedom"*. [44] An official investigation on the matter was launched by the European Parliament's PEGA Committee.

c) SLAPPs

Although not a recent phenomenon, Predator Gate has brought to the fore the use of SLAPPs against journalists. The Coalition Against SLAPPs in Europe has dealt with the Greek case extensively and, in 2022, awarded the "SLAPP politician of the year" award to the former secretary general to the Prime Minister and prominent figure of the Predator Gate scandal. [45]

The subject of SLAPPs was discussed at length in the context of the LighT research. What emerged as an interesting finding was the general lack of awareness of the term itself and its defining characteristics among the interviewees. Many had never come across the term or had heard of it but were unsure of its definition. Participants in the focus group discussion recognised the risk that this phenomenon poses to the functioning of a democratic society and the need to regulate it. However, one senior judge raised the issue of access to justice and the need to ensure that claimants have the right to an effective remedy and access to their natural judge. There was therefore a lively discussion on the type of measures that could be adopted to discourage SLAPPs and strike a balance between freedom of the press and freedom of information on the one hand and access to justice on the other. The draft SLAPP Directive may provide useful guidance in this regard.

d) Safety of journalists

In addition to SLAPPs, journalists and reporters in Greece face an increased risk of physical harm. [46] Council of Europe's Platform to promote the protection of journalism and safety of journalists recorded 19 alerts in 2022, related to physical aggressions, verbal insults, arbitrary detainment and use of spyware. [47] The problem is even more acute for reporters who cover protests. The latter are often the victims of police brutality or are illegally detained alongside demonstrators. [48] Finally, Greece

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[44] Media Freedom Rapid Response - Greece, MFRR alarmed by latest revelations of spying on journalists, 20 December 2022.
[45] For more information, see the webpage of the CASE - coalition of non-governmental organisations from across Europe, 'THE EUROPEAN SLAPP CONTEST 2022', 20 October 2022.
[46] 2023 Media Pluralism Monitor, Greece, p.13.
[47] https://fom.coe.int/en/recherche.
[48] For more information, see, indicatively: Alter Thess (2022), 'Targeting of a journalist by thessaloniki security men (video)', 15.01.2022 (in Greek); StoKokkino (2023), 'Thessaloniki / Handcuffs to photojournalist for recording a violent arrest of a woman', Monday, January 16, 2023 (in Greek); news 24/7, (2022), 'Police hit journalists and photojournalists again - NEWS video 24/7', 28 July 2022 (in Greek); efsyn (2022), 'Accusation of beating of an American journalist by riot police in Exarchia', 04.10.2022 (in Greek); The Press Project (2022), 'Exarchia: Arrests, chemicals and police brutality on Friday night', Saturday

is lagging behind in effectively investigating cases of violence against members of the press. The RoL report highlighted in particular the murder of Giorgos Karaivaz, an investigative journalist working on the crime report, in 2021. Both EU bodies and civil society have criticised the Greek authorities for their inaction and called for increased efforts to investigate the case effectively. Progress was made in this regard with the arrest of two suspects in April 2023. However, the arrests were of individuals with an apparently minor role in the case and no significant progress in the investigation has been made public. The issue of safety for journalists was highlighted in our research, particularly by the journalists who participated in the focus group discussion.

Civic participation

Civic participation is a key pillar of RoL and an essential component of a vibrant, pluralistic democracy. It plays a crucial role in law and policy making; in promoting a culture of RoL; in supporting and cooperating with independent authorities and bodies; in contributing to checks and balances through monitoring, advocacy and litigation; in enhancing the participation of vulnerable groups; in promoting good governance and strengthening the transparency and accountability of public authorities; in promoting access to justice; in promoting and safeguarding media freedom and pluralism; in enabling inclusive and balanced democratic debate; and in contributing to the fight against corruption.

In line with the general trend across Europe, Greece is experiencing a shrinking civic space in recent years. [49] Some of the barriers experienced by the civil society which are related to access to justice and freedom of the press have already been addressed in the previous sections. Additional issues, identified in the RoL report and the LighT research include:

- Criminalisation of humanitarian work;
- Surveillance of CSO and NGO members, in particular those working in the field of asylum and migration;
- Increased administrative barriers for CSOs and NGOs, in particular those working in the field of asylum and migration;
- Persisting restrictions to the right to peaceful assembly, imposed in the frame of the Covid-19 pandemic.

a) Criminalisation of humanitarian work

The alarming number of criminal cases against HRDs and CSO/NGO members working in the fields of asylum and migration has drawn the attention of European bodies and the civil society alike. [50] The extremely restrictive legal framework on Search and Rescue missions mandates the prior notification of SAR attempts to the Hellenic Coastguard and often frames persons and organisations performing humanitarian work as migrant smugglers. Financial penalties are imposed in this framework, both to CSOs and NGOs, as well as their members.

In addition, HRDs and civil society in general face an extremely hostile public environment and are often vilified by the media and right-wing politicians and groups for their efforts to support TCNs. Allegations - usually completely unfounded - of misappropriation of funds are used to question the motives and tarnish the reputation of Greek civil society as a whole. In this respect, a general climate

5 November 2022 (in Greek); efsyn (2022), 'Nikos Pilos: I was arrested even though I declared my identity', 23.11.2022 (in Greek).

[49] See, e.g., European Union Agency for Fundamental Rights, Europe's civil society: still under pressure — Update 2022, https://fra.europa.eu/en/publication/2022/civic-space-2022-update.

[50] See, in particular, the ongoing cases against Sara Mardini and Panayote Dimitras.

of mistrust towards civil society has developed in Greece, providing legitimacy for the criminalisation described above.

b) Surveillance

Surveillance of members of civil society, particularly those working in the field of asylum and migration, poses a serious threat to privacy and civic participation and reinforces the chilling effect of the practices described above. In proven cases, the surveillance was not carried out by the Predator spyware, but through lawful surveillance by the National Intelligence Service. Nevertheless, surveillance has been criticised for the lack of procedural safeguards to ensure that the rights of individuals are adequately protected. For example, recent reforms have removed the requirement that the subject of the surveillance be informed that they are being monitored so that they can appeal to the relevant courts.

c) Increased administrative barriers

The RoL report has highlighted the need for the Greek state to create a more enabling environment for its civil society. A major obstacle in this regard is the successive increase in administrative barriers imposed on civil society organisations and NGOs, especially those working in the field of asylum and migration. These are mainly burdensome registration requirements, which target mainly smaller and newly established organisations that (a) do not meet the requirements for registration, in particular those related to their minimum period of activity, and (b) do not have the administrative capacity to cope with the additional burden. Non-registration creates barriers to a number of key activities relevant to an organisation with a mission related to asylum and migration, including access to refugee camps.

(d) Persisting restrictions to the right to peaceful assembly

The Covid-19 pandemic created the conditions for the restriction of a number of fundamental liberties, which unfortunately seem to have persisted in many cases, after the end of the relevant measures. The relevant restrictions to the right to peaceful assembly were enforced through a surge of police brutality, noted with worry by the domestic and international civil society. [51] Despite the adoption of a National Action Plan for the Management of Public Outdoors Gatherings in 2021, which reaffirms the obligation of police to first and foremost respect the fundamental rights of citizens and prioritises a scaled response to conflicts arising during public gatherings and the exceptional and proportional use of force, [52] multiple incidents of police arbitrariness and brutality during protests have been recorded in the years since. These concern, among others, including beatings and arbitrary arrests, against reporters and photojournalists covering protests, [53] violence against students protesting the

[51] In this regard, see *Greece: Authorities abusing power to trample on right to protest*, Amnesty International, available at https://www.amnesty.org/en/latest/press-release/2021/07/greece-authorities-abusing-power-to-trample-on-right-to-protest/.

[52] It should be noted that the Action Plan has been criticised by the civil society of being "over-broad" in terms of its requirements related to the permitted use of force by the police. For more information, see the "Protect the Protest Report" issued by Amnesty International in July 19, 2022 (Index Number: ACT 30/5856/2022).

[53] For more data, see indicatively in the following news/journal articles, such as in Alter Thess (2022), 'Targeting of a journalist by thessaloniki security men (video)', 15.01.2022 (in Greek); StoKokkino (2023), 'Thessaloniki / Handcuffs to photojournalist for recording a violent arrest of a woman', Monday, January 16, 2023 (in Greek); news 24/7, (2022), 'Police hit journalists and photojournalists again - NEWS video 24/7', 28 July 2022 (in Greek); efsyn (2022), 'Accusation of beating of an American journalist by riot police in Exarchia', 04.10.2022 (in Greek); The Press Project (2022), 'Exarchia: Arrests, chemicals and police brutality on Friday night', Saturday 5 November 2022 (in Greek); efsyn (2022), 'Nikos Pilos: I was arrested even though I declared my identity', 23.11.2022 (in Greek).

establishment of a special police force within universities, resulting, among others, in serious injury for a student who was the target of a direct hit in the head with a stun grenade, [54] other incidents of violence against protesters, concerning improper use of police equipment (such as batons, stun grenades, tear gas, service gun), arbitrary arrests, brutality and disproportionate use of force, in general. [55] It is clear that, within this climate, a chilling effect is created, impacting on civic participation.

e) Other issues

Another issue highlighted in the RoL Report is the effectiveness of the public consultation process, an issue which severely impacts on the quality of the legislation. While draft bills are consistently subject to public consultation and follow-up reports address the comments submitted, concerns regarding the lack of effective and timely consultation of stakeholders persists. Civil society organisations (CSOs) have criticised the practice of adopting omnibus legislation and last-minute amendments.

Key practical challenges

A general observation in relation to Greece is that the legal framework is generally adequate and most problems arise from its practical (mis)application or lack thereof. The main practical challenges highlighted by the LighT research relate to:

- the administration of the legal aid system;
- the non-execution of judgments of European courts;
- the very limited use of the preliminary ruling procedure in Greek judicial practice;
- the limited knowledge and application of EU law, including the Charter of Fundamental Rights, by the Greek judiciary;
- the relative inactivity of the Greek Bar Associations on rule of law issues;
- the general hostility towards minorities and human rights defenders, which may culminate in the criminalisation of the latter.

a) Legal aid

Overall, Greece has a well-established legal aid framework that provides access to a lawyer for those with limited financial means. However, as the RoL report acknowledges, the effectiveness of the system is threatened by serious practical obstacles. In particular, the report highlights the issue of compensation for legal aid lawyers and the serious delays in settling fees, which led to the General Assembly of the country's bar associations suspending participation in the system in November 2022

[54] For more data, see indicatively in the following news/journal articles, such as The Press Project (2022), 'Chemicals, wood and violent arrest inside the Aristotle University of Thessaloniki – Information about three students injured', Tuesday 10 May 2022 (in Greek); The Press Project (2022), 'Riot police attack with chemicals at Thanasis Papakonstantinou's big concert at the Aristotle University of Thessaloniki – Thousands at the protest concert', Saturday 17 September 2022 (in Greek); ERT open (2022), 'AUTH: With hearing loss in one ear, stitches in the head and broken teeth the student', 26 May 2022 (in Greek); newsbeast (2022), 'Video of a riot police man hitting a student on the head with his shield', 20/10/2022 (in Greek).

[55] For more data, see indicatively in the following news/journal articles, such as Avgi (2022), 'Savage police attack on solidarity in Evelpidon', 23.11.22 (in Greek); efsyn (2022), 'Police brutality and sexism at the demonstration in Sepolia', 16.10.2022 (in Greek); efsyn (2022) 'Tension and tear gas on the gatherings for energy and high prices', 07.10.2022 (in Greek); Avgi (2022), '"They beat us mercilessly with shields and batons" - Shocking testimony', 05.10.22 (in Greek); The Press Project (2022), 'Propylaea: With a last-minute decision, GADA limits the anti-suppressive course – Chemicals and new violence to deal with it', Saturday 17 September 2022 (in Greek).

[56] until concrete steps are taken to address the issue. In addition to compensation, participants in the LighT research also highlighted the lack of a process to ensure that legal aid lawyers are knowledgeable about the types of cases they are asked to handle. Particularly in relation to RoL cases, all participants agreed that the vast majority of lawyers lack the necessary knowledge and skills to effectively represent their clients.

b) Non-implementation of ECtHR

On 1 January 2023, Greece had 27 leading judgments of the European Court of Human Rights pending implementation, a decrease of seven compared to the previous year. At that time, Greece's rate of leading judgments from the past 10 years that remained pending was at 34% (compared to 35% in 2022) and the average time that the judgments had been pending implementation was 6 years 7 months (compared to 6 years and 5 months in 2022). The oldest leading judgment, pending implementation for 18 years, concerns the access to and the efficient functioning of justice due to the lack and the delayed enforcement of domestic judicial decisions. On 15 June 2023, the number of leading judgments pending implementation has increased to 28243.

c) Limited recourse to the preliminary ruling procedure

Greece consistently ranks in the final places among EU Member States in terms of the number of references for preliminary rulings, averaging approximately 3 references per year. Between 2018 and 2022, Greek courts referred a total of 16 cases to the CJEU with the preliminary ruling procedure. [57] In our research, practitioners highlighted the lack of knowledge of EU law as a key factor in the under-use of the preliminary ruling procedure. They highlighted the low number of references made by lawyers to the courts and the almost complete absence of ex officio references. The reason given for this is that there is a lack of legal training in EU law, especially among older generations, and that both judges and lawyers rely primarily on national law and the ECHR.

d) Limited knowledge and application of EU law

As mentioned above, limited knowledge of EU law is an issue highlighted in relation to the low number of references for preliminary rulings. Nevertheless, it is evident in a number of relevant indicators - including the number of references to both secondary EU law and the Charter of Fundamental Rights in Greek jurisprudence. Both the LighT research and the research conducted by CECL in the context of previous projects, as well as our work as a focal point for FRANET, show that formal legal education tends to deal with EU law in a theoretical way, separate from other subjects. In addition, as will be analysed in the following chapter, training opportunities for legal practitioners tend to focus on the national framework and very few deal exclusively with EU law. This situation has led to limited knowledge and familiarity with EU law in general, including RoL issues, general principles and related jurisprudence, as well as available tools and resources.

e) Inactivity of Bar Associations

The majority of lawyers interviewed for the LighT research reported that they felt little support from their Bar Association in relation to RoL-related issues. They mentioned that the Bars could be more active, both in terms of participating in public consultations on legal and policy decisions, and in

[56] Plenary of the presidents of Bar Associations, decisions of 5 November, 11 December 2022 and 28 January 2023.
[57] Statistics concerning the judicial activity of the Court of Justice, 2022, https://curia.europa.eu/jcms/jcms/Jo2_7032/en/.

supporting individual lawyers and HRDs in RoL-related cases against them. Overall, the LighT research highlighted the relative absence of the country's Bars from the public discourse on RoL in Greece.

f) Hostility toward minorities HRDs

The criminalisation of humanitarian work described above, particularly in the field of asylum and migration, is the culmination of a particularly hostile public discourse towards minorities and HRDs. Racist stereotypes and hate speech, particularly against Roma and TCNs in general, are common in the criminal report. Attempts to directly or indirectly link both migrants and Roma to the devastating forest fires of summer 2023, including by members of the government and the Prime Minister, are indicative of this (see chapter 1). At the same time, there is a toxic discourse that instrumentalises 'national' and foreign policy issues to portray migrants as potential threats to national security. In the social media space, far-right trolls and groups propagate criminalising language referring to all TCNs, including refugees, as 'illegals', as well as cultural and racial displacement theories and fearmongering about crime rates.

In this framework, HRDs who defend vulnerable groups defined by racial or ethnic origin, particularly TCNs, are seen as traitors to the country, carrying out humanitarian work for nefarious and corrupt purposes. Prominent HRDs are targets of online harassment, threats and defamation, which often spills over into the traditional mass media. This environment facilitates the criminalisation of humanitarian work.

Training needs

The above analysis reveals concrete training needs for the project's target groups, as highlighted by the participants in the LighT research. These are addressed below, divided into general, introductory and advanced training needs, as well as the needs of trainers.

Common training needs

Our research revealed a general lack of knowledge of substantive EU law and policy. The concept of the RoL and its constituents is unclear to most of the participants in the LighT research, with some confusion remaining on some issues (most notably SLAPPs) even among the most experienced practitioners. Respondents were generally unable to recall key EU legislation on the issues at hand and reported a general lack of awareness of EU standards.

Thematically, the areas highlighted as most relevant to Greek practitioners were: asylum and migration law and applicable standards, anti-discrimination legislation (including hate speech and hate crime), SLAPPs, the EU Charter of Fundamental Rights and its scope, and the application of criminal procedural safeguards. Of the areas covered by the project, participants appeared to be less knowledgeable about corruption, but did not highlight it as a particularly relevant issue.

Another common theme is the limited knowledge of European procedures and remedies available under the EU and the Council of Europe. Training is needed on the preliminary ruling procedure, including how to argue effectively before national courts to justify the need for a reference. Some training on the application procedure to the ECHR is also needed. Training is also needed on the direct application of EU law and its principles. It should be emphasised that the application of the relevant framework does not only concern the courts, but also administrative authorities and bodies.

Finally, a common theme that emerged from our discussions with the legal practitioners who participated in the research is the need to strengthen non-legal skills, including communication with clients and the media, as well as support for networking and cooperation within the legal community.

Training needs at the introductory level

Although practitioners emphasised their preference for practical training, our research showed that lawyers with an introductory level of knowledge in the areas covered by the project need some theoretical training on the general principles and norms related to the RoL in general, as well as on specific topics. Overall, with the exception of specific topics more related to legal activism and strategic litigation, the differences between introductory and advanced training needs are expected to focus more on the level of analysis of specific topics, as well as training methods that combine theory and practice, with an emphasis on case law and practical litigation techniques. There is also a need to familiarise new lawyers with the tools and resources made available by European bodies, including the FRA's toolkit on the Charter and the resources made available by the Council of Europe, in particular in the context of HELP.

Training needs at the advanced level

The training needs of activist lawyers and HRDs seem to focus more on the need to equip them with the legal and non-legal skills which will enable them to cope within a challenging RoL environment. This includes arguments and procedures which will enable them to circumvent the lack of knowledge and unwillingness of courts and public authorities to apply EU law and procedures, as well as ways to network and self-organise or to motivate their professional bodies to act more decisively on their behalf.

Training needs of trainers

Continuous training for lawyers is not a formal requirement in Greece. As a result, there is no identifiable body of systematically trained legal trainers with the skills and capacity to provide professional training to lawyers. As the above analysis shows, it is all the more difficult to find specialised trainers in the area of the EU RoL acquis. There is a need to equip lawyers specialising in RoL with the necessary skills to provide effective training to their colleagues.

Conclusions

Legal practitioners appear to be ill-prepared to address RoL issues in a systematic and strategic way, despite the perceived backsliding of RoL in Greece. Most participants in our research seemed confused as to what could potentially constitute a RoL issue. They were often surprised to find that issues such as access to justice fall within this ambit. At the same time, there is a noticeable reluctance to acknowledge that Greece has a RoL problem, especially institutionally. The response of the bar associations to the concerns that arise is perceived to be anaemic.

The problem is compounded by the poor relationship of the average legal practitioner in Greece with EU law. This problem largely predates these concerns and has prevented Greek lawyers from making use of the tools provided by the EU RoL acquis. The lawyers interviewed were generally unaware of the strategic and policy developments in the EU in this area. They also had a low level of knowledge of the applicable primary and secondary EU law. Furthermore, the LighT research confirmed previously identified gaps in knowledge of key principles of EU law and the applicability of the relevant framework, including the Charter of Fundamental Rights, as well as European procedures, in particular preliminary rulings. This is compounded by a general lack of knowledge and mistrust of EU law among members of the judiciary. This is less the case among younger generations of judges and prosecutors.

Key themes of concern, as emerged from discussion with participants, are (a) access to justice and impartiality of the judiciary; (b) fair trials, in particular as relates to the length of the proceedings and

the indiscriminate application of procedural safeguards; (c) fundamental rights violations and measures creating a chilling effect in the area of asylum and migration; (d) freedom of the press and the safety of journalists, in particular in response to the increasing number of SLAPPs, and physical violence against journalists.

To address the above, the following elements should be emphasised in the training:

- Added value of the EU RoL Acquis and motivation to utilise it;
- General principles of EU law, scope of application and EU procedures;
- Practical tips and exchange of knowledge and experience for work in a hostile RoL environment;
- Practice-oriented training on the training topics identified, with emphasis on case law.

2.3 Hungary

Executive summary

Hungary has been facing critical rule of law challenges in a number of key areas. The erosion of the rule of law in the country has an evident systemic character. The constitutional, institutional and the legal environment generally has a hostile attitude towards the material enforcement of rule of law requirements and towards the protection of rights vis-à-vis the interests of the state. Although formally the necessary public institutions are in place and they are operating, their practices and their actual impact on public life are largely incompatible with rule of law requirements. Judicial independence, as well as the professional operation of the judiciary and the professional qualities of judges have been flagged up as crucial problems undermining the work of rights defenders and other attorneys, and jeopardizing the availability of effective legal protection in Hungary. The training will need to address the implications of this unfavourable environment for legal work.

The application of EU law, in particular litigation on the basis of EU law is hindered by certain systemic difficulties. EU law remains to be considered as foreign law, although not in every legal area, the knowledge of which is either unnecessary because solutions are available in domestic law to legal problems, or because obtaining that knowledge is costly and does not guarantee a favourable outcome before national courts. Clients may be difficult to convince that reliance on EU law, in particular the inclusion of EU rule of law arguments, is necessary and/or it will not have negative consequences on the assessment of the case by the judge. The preliminary ruling procedure is excessively long and costly, and there is no guarantee that the national judge will follow adequately the interpretation developed by the CJEU. There is also a general hostile attitude of courts towards the application of EU law, which is coupled with considerable gaps in relevant legal knowledge and skills, although not everywhere and at every judicial instance. The general attitudes of and socialisation in the legal professional community will have to be addressed in the training.

Experienced and non-experienced attorneys have distinct training needs. In terms of substantive training content, experienced attorneys do not require general training in fundamental EU law and general EU litigation. Nevertheless, there is an evident training need in the relevant jurisprudence of the CJEU, in particular that on the EUCFR, and also in the practical operation of the preliminary ruling procedure and other avenues of legal redress before the EU institutions, from the perspective of an attorney. Training in specific areas of EU law with a rule of law relevance, such as access to documents, or EU anti-corruption legislation, may also be of interest for this cohort. For non-experienced attorneys, training in the basics of EU law and EU litigation, with a view to enabling them to make successful submissions before national courts based on EU law, as well as training in basic EU legal skills, are of particular necessity. There is an evident gap in the knowledge of attorneys – although not in every legal area – even in matters of fundamental EU law. The training of trainers needs to focus on developing their professional credibility, skills in developing practical, multi-skills training, as well as their presence and impact in the professional community.

Any training provided in the project must be practice-focussed, must also enable the incentivisation of attorneys to take up EU law cases, in particular EU rule of law cases, and must be able to alter the general socialisation and attitude of attorneys. Trainings must place emphasis on demonstrating good practices, showing success stories, and enabling the sharing of failures, difficulties, risks, costs and successes in litigating under EU law. The development of hard lawyering skills in EU law (e.g. legal research, litigation strategy, legal drafting, legal interpretation, working with case law), as well as soft skills (e.g. client interviewing and management) must also form part of the training.

National context

The state of the rule of law in Hungary can be characterised by a significant decline that has taken place gradually since 2010. The situation contrasts rather starkly with that under the conditionality framework of the EU accession process, in which Hungary demonstrated evident commitment to fulfilling the Copenhagen criteria and achieving policy integration and legal harmonisation as fully as possible. The practice of the constitutional rule of law had demonstrated some dysfunctions before 2010 (e.g., in regards the right to peaceful assembly and discrimination against the Roma minority); however, systematic change and systemic decline started only after 2010.

The negative developments started with the adoption of the new Fundamental Law (2011), which was supported by the governing parties only. It was followed by an intensive reshuffling of the public law system, the restriction of the Constitutional Court's review competences, and by the curtailing of parliamentary control (i.e., the rights of opposition). These changes led to the first significant weakening of the rule of law, which was then followed by further waves of decline marked by constitutional amendments of instrumental nature and legislative changes of similar quality.[58]

The courts, the public law protection mechanisms, the prosecution service and the legal profession were unable or unwilling to resist this process.

Legal scholars formulated warnings already in the beginning of the 2010s that the reshaping of constitutional law would undermine the system of checks and balances, threaten judicial independence and weaken the enforcement of EU law and ECtHR rulings.[59] However, this had no impact on government decisions and on the operation of the parliamentary majority (a two-thirds majority since 2010 which is also a constitutional majority).

The most general rule of law issue in Hungary is the instability of the constitution, in other words its constant exposure to the political will of parliamentary majority (practically of the prime minister/the government). The Fundamental Law has been amended 11 times in the 12 years after its introduction. With such unstable constitutional architecture, the authority of the constitutional judiciary and the normativity of the constitution are highly questionable.[60]

As another significant systemic issue, changes in parliamentary law over the past decade, in particular the tightening of parliamentary disciplinary law and the expansion of the powers of the Speaker, have significantly limited the rights of the opposition. In addition, parliamentary publicity and the right of press representatives to question members of parliament have been progressively curtailed, so opposition and civilian control of parliamentary work in Hungary is essentially non-existent.[61]

The addressing of the rule of law situation in Hungary represents a crucial dilemma for the West and Western-type international organisations. The government enjoys broad political legitimation based on the principle of majoritarian democracy. In a formal sense, the relevant legal-constitutional changes were introduced in a legitimate manner. The institutions of a constitutional democracy are in place and

[58] Varju, M. & Chronowski, N. (2016). Two Eras of Hungarian Constitutionalism: From the Rule of Law to Rule by Law. Hague Journal on the Rule Law 8(2) (October) 271–289, doi:10.1007/s40803-016-0037-7.
[59] Ádám, A. (2012). A posztmodernitásról és a posztdemokráciáról. Közjogi Szemle, 5(1), 1-10; Halmai, G. (2011). Alkotmányos alkotmánysértés. Fundamentum, 15(2), 81-98; Chronowski (2012). The new Hungarian Fundamental Law in the light of the European Union's normative values. Revue Est Europa – numéro spéciale 1, 111-142 ;
[60] Chronowski, N. (2020). The post-2010 'Democratic Rule of Law' practice of the Hungarian Constitutional Court under a rule by law governance. Hungarian Journal of Legal Studies, 61(2) 136-158.
[61] Szente, Z. (2021). The Twilight of Parliament - Parliamentary Law and Practice in Hungary in Populist Times. International Journal of Parliamentary Studies, 1(1) 127-145.

are in operation. However, mechanisms of deliberative and egalitarian democracy are practically non-existent, the separation of powers and checks and balances have lost their practical impact, and, as a result of the disproportionality of the parliamentary electoral system and gerrymandering, the political majority faces no threat from the political minority successfully replacing it in a democratic process.

The European responses to the Hungarian changes have been either belated or insufficient. The initial steps by the European Union were not taken within the framework of the rule of law. The first major case, the case of the early retirement of judges was investigated by the European Commission on the basis of age discrimination, and not on the ground of a breach of judicial independence, a requirement inherent in the rule of law.[62] The removal of the Data Protection Ombudsman from his office before the expiry of his term was assessed by the Commission on the basis of technical data protection regulation. Freedom of information, transparency and democracy, or any other concrete provisions of the EUCFR were not considered.

The systemic nature of rule of law decline in Hungary was recognised relatively late. Nevertheless, they now form part of official EU mechanisms, such as the annual rule of law monitoring process and the financial conditionality framework.

Key themes

The key themes are the following:

1. The systemic nature of rule of law backsliding

The erosion of the rule of law in Hungary is systemic, including developments in key areas such as the erosion of checks and balances, the undermining of judicial independence and controls, and the curtailment of fundamental rights.[63] The erosion is driven by the ruling political power, which has used its supermajority in parliament to enact constitutional and legal changes that cemented its power and weakened democratic institutions.[64]

2. The EU's inadequate response

The EU's response to the Hungarian rule of law situation has been largely ineffective. The EU has relied on a "constructive dialogue" approach, which has failed to halt or reverse the backsliding. The EU's enforcement mechanisms, such as the Article 7 TEU procedure, have been hampered by political considerations and the requirement for unanimity among member states. The EU has also struggled to address the issue of "illiberal democracy", where a democratically elected government undermines the rule of law.[65]

3. The negative impact on the EU

Hungary's rule of law backsliding poses a significant challenge to the EU. It undermines the principle of mutual trust, which is a cornerstone of the EU's legal and political order. It also threatens the EU's

[62] Vincze, A. (2013). Der EuGH als Hüter der ungarischen Verfassung – Anmerkung zum Urteil des EuGH v. 6.11.2012, Rs. C-286/12 (Kommission/Ungarn), Europarecht 48(3) 323-333.
[63] Pech, L., & Scheppele, K. L. (2017). Illiberalism Within: Rule of Law Backsliding in the EU. Cambridge Yearbook of European Legal Studies, 19, 3-47.
[64] Scheppele, K. L. (2015). Understanding Hungary's constitutional revolution. In A. Von Bogdandy & P. Sonnevend (Eds.), Constitutional crisis in the European constitutional area: Theory, law and politics in Hungary and Romania. Hart Publishing. 111-123.
[65] Pech, L., & Scheppele, K. L. (2017). Illiberalism Within: Rule of Law Backsliding in the EU. Cambridge Yearbook of European Legal Studies, 19, 3-47.

credibility and legitimacy, particularly in its efforts to promote the rule of law and democracy in its neighbourhood and beyond.[66]

Key practical challenges

Key practical challenges are the following:

1. Constitutional changes and centralization of power

The ruling party has implemented legal-constitutional changes that have led to the centralization of power, undermining the rule of law in Hungary.[67] Among others, the changes have weakened the independence of the judiciary and the system of checks and balances.[68]

2. The suppression of media freedom

Since 2010, the government has systematically expanded its control over the media landscape, limiting pluralism and undermining the freedom of the press.[69]

3. Erosion of judicial independence

The independence of the judiciary has been undermined in multiple steps in a gradual process. The threats arise more from practices than from explicit legislative provisions. The controversial practices include the appointment of judges and senior judicial officials, the internal organisation of courts, the distribution of cases, the threat of disciplinary procedures, and the undermining of the National Judicial Council, which is the body of professional self-government for judges.

4. The diminishing availability of public law protection and other legal protection

Although formally the institutional frameworks are in place and are operating, the obtaining of public law protection and other legal protection against the use of public powers has become restricted. The controversial measures include procedural reforms implemented in order to increase procedural efficiency, but which have diminished access to legal protection and remedies, the hollowing out of institutions, such as the Ombudsman, the control over the operation of the public prosecution service, or the increase of informality in the operation of public authorities.

5. Civil society and academic freedom

Civil society organizations and academic institutions have faced increasing pressure since 2017, including restrictive laws, media and legal attacks, defunding, and controversial structural reforms.

6. Corruption and lack of transparency

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[66] Scheppele, K. L. (2015). Understanding Hungary's constitutional revolution. In A. Von Bogdandy & P. Sonnevend (Eds.), Constitutional crisis in the European constitutional area: Theory, law and politics in Hungary and Romania. Hart Publishing. 111-123.
[67] Scheppele, K. L. (2013). The Rule of Law and the Frankenstate: Why Governance Checklists Do Not Work. Governance, 26(4), 559-562.
[68] Bánkuti, M., Halmai, G., & Scheppele, K. L. (2012). Hungary's Illiberal Turn: Disabling the Constitution. Journal of Democracy, 23(3), 138-146.
[69] Bánkuti, M., Halmai, G., & Scheppele, K. L. (2012). Hungary's Illiberal Turn: Disabling the Constitution. Journal of Democracy, 23(3), 138-146; Nagy, K. & Polyák, G. (2011). Die neuen Mediengesetze in Ungarn: Kritische Betrachtung von Normen und Praxis. Osteuropa-Recht, 57(3) 262-273.

Government and administrative corruption remain a significant issue in Hungary, with concerns about the effectiveness of anti-corruption measures and the transparency of public procurement.

7. Erosion of the authority of EU law

Hungary explicitly rejects the advancing of certain EU values and principles, and there are fundamental disagreements between EU law's demands and what politics and state bodies want in the country. The judgments of the CJEU are not always implemented, and EU mechanisms and procedures have lost their deterrence impact. Compliance with EU legal obligations may be creative and/or partial, even after non-compliance has been established.

There is also a complex and controversial practice of the application of EU law before Hungarian public authorities and courts. In some areas, such as VAT, EU law is regularly applied. There is even evidence of judicial intervention applying the VAT directive to overrule restrictive and/or arbitrary practices by tax authorities. In other areas, EU law may still be regarded as foreign law, the relevance and the applicability of which need to be argued and established first, without a guarantee of success. The growing relevance of informalism in the operation of public administration (i.e., public authorities do not react to submissions or the practice of public authorities departs from the text of legislation) was also flagged up as a general problem, which evidently affects the application of EU law in Hungary.

There is also evidence of a chilling effect as clients expect unfavourable outcomes if EU or domestic rule of law issues are raised by their legal representatives, or want to pursue those issues before domestic higher courts or the constitutional court.

8. Low level of professionalism in public administration and the courts

The professional preparedness and the competence of individual civil servants and judges remain a central question in regards the impact of EU law, in particular any legal submission made on the basis of EU law. The issue is therefore not only the packing of courts or public administration with politically exposed appointees, but also the general low quality of human resources in courts and public administration, and their missing professional skills and legal knowledge.

9. Legal aid

The legal aid system is underdeveloped. Participating lawyers are not incentivised to raise domestic or EU rule of law issues, or to make it clear for clients that they are willing to bring in an extra EU law element into the case. Clients that need to rely on legal aid may not understand the rule of law implications of their cases, and may be reluctant to pursue them.

Training needs

To understand training needs in general, the following need to be considered:

- EU law and its application have remained an issue for a specialist cohort of lawyers. This followed in part from the special character of EU law (e.g. it mainly covers administrative law), and also from its limited internalisation in domestic legal culture. There is considerable amount of litigation, and there is also evidence of a broad practice of judicial practice in certain areas, but both sides (attorneys and judges, as well as public authorities) would – as a reflex – rely on domestic law primarily.
- There is an apparent knowledge and expertise gap in the legal profession, although not in every legal area, and there is also the factor that when attorneys see that courts are not applying EU law or are unprepared to apply it, they will leave EU law outside of their litigation strategy.

Experience shows that neither the parties, nor courts appreciate when legal submissions are supported with references to EU law or international law, as the large majority of cases will be solved – in some way – solely in the basis of national law. Clients may also be unwilling to pursue options under EU law, or to introduce a rule of law element into their case.

- However, with the deterioration of the domestic legal environment, and with increasing unpredictability in judicial decision-making and the unavailability of the other avenues of legal protection, European (mostly ECHR, but to some extent EU) law may offer the only available law to rely on against the government. European courts, instead of the national constitutional court, are becoming attractive forums for the same reasons.

There is no active training programme in the country offered to lawyers on the rule of law, in particular on the EU rule of law. There is no evidence of professional bodies actively supporting lawyers in these areas. However, it is unlikely that professional bodies would object the offering of such a training programme and they would probably allow their members to take part in it. Some human rights defenders specialised in EU rule of law have taken part or are taking part in relevant international training, including training on judicial independence.

Because EU law tend to fall outside the scope of interest of human rights defenders and similar attorneys (and of the legal profession in general), and because it is difficult to keep up with developments before the Luxembourg court (in parallel with the perhaps more relevant developments in Strasbourg), there was a clear interest in training in the relevant areas of EU law (with a focus on the case law), also including the practicalities of the preliminary ruling procedure.

There is a clear need for equipping lawyers with skills that enable them to somehow break down the negative attitude of domestic judges towards EU law and claims brought before them on the basis of EU law. The potential causes of judges' behaviour are multiple: a hostile attitude towards EU law, lack of knowledge and skills, including linguistic skills, their general negative approach towards submissions put forward by the parties. Learning good practices from experienced lawyers may provide a solution for this problem. A detailed training in the law on fair trial rights and judicial independence, as well as their specific manifestation in EU effective legal protection law, may be necessary for attorneys to be able to challenge judicial attitudes.

There is a possibility triggering of a floodgate-effect. This has happened under ECHR law in damages cases. There is previous experience of such developments under EU law as well. Some of the rulings form the CJEU, which had rule of law implications, have enabled litigants to challenge domestic administrative practices systematically (e.g. in asylum law or in VAT law). The latter experiences could be addressed in the training programme, possibly through good practice or other reflective presentations from the legal professionals involved. This could also cover the controversial practices from domestic higher courts internalising the interpretation provided by the CJEU in a restrictive manner.

In general, attorneys may also benefit from knowledge- and skills-focussed training in client management skills, in particular in the context of convincing clients to open a rule of law angle in their cases, introducing EU law arguments in domestic cases, in particular when they are based on legal interpretation available from the CJEU's case law, take the case for interpretation to the CJEU, or to pursue the EU law issue to higher courts (or the rule of law issue to the constitutional court) where better trained and more highly experienced judges may endorse the legal interpretation and the legal solution sought.

Regarding training methods, it has been flagged up that frontal training, as well as purely academic training, or training aiming to convey legal knowledge in a didactic fashion, may be of limited utility. The main obstacles are knowledge, socialisation, acquired or non-acquired personal attitudes, motivation, lack of incentives; therefore, trainings should be complex, diverse and multidisciplinary, in particular for the introductory cohort.

There was an interest in SLAPP training, although with different intensity depending on the status and the political exposure of the attorney/human rights defender concerned.

Training needs at the introductory level

As a key obstacle to the application of any area of EU law, the general socialisation of lawyers in Hungary (starting already at university) and the lack of interest (individual or collective) of the legal profession in EU legal matters were rather clearly indicated by the assessment of needs exercise. As a related matter, it was discussed that – in general – lawyers operate in the Hungarian market as small- or medium-size enterprises that are extremely cost sensitive and therefore tend to avoid risks. The costs and risks include in particular the developing of in-depth knowledge in a new area of law, which may have limited application before domestic public authorities or courts, and which may divert resources away from the areas of professional activity that are normally carried out by lawyers. EU law litigation can be high-risk litigation from the perspective of the business interests of the lawyer, which may not guarantee sufficient returns. For instance, returns are not realised as national courts cannot be convinced to follow an interpretation developed by the CJEU, the case may need to be taken to the supreme court to secure an adequate resolution on the basis of EU law, or the preliminary ruling procedure is costly and lengthy for both client and lawyer.

Therefore, training – especially at the introductory level – need to include elements of incentivisation, possibly reflective success stories from credible, possibly from foreign attorneys that also covers issues, such as costs, return and professional benefits for the lawyer. Besides incentivisation, some kind of a resocialisation of lawyers may also need to be secured (i.e. to make them believe that EU law matters and legal protection under EU law can be achieved, even though the general conditions and also the willingness of national authorities and courts to apply EU law are gradually worsening), for instance through the reflective discussion of relevant career decisions and the sharing of good practices.

It was also flagged up that the knowledge of general EU law (general principles, judicial protection/litigation, procedures) may be relatively limited in this cohort. There may not be a need for an entire introductory course in general EU law. Instead, a practice-oriented training should be offered which would focus on how to make the general legal matters listed in EU law textbooks work. This may also need to cover how EU law works, in particular how the case law of the CJEU needs to be accessed, researched, worked with, interpreted, and used in legal. Legal experts with extensive experience in interpreting judgments of the CJEU may need to be involved offering practice-oriented exercises (e.g. case solving, or interpreting legal texts, summarising the legal interpretation provided in a Luxembourg ruling etc.).

The EUCFR, possibly focusing its core provisions that enable the challenging not only of individual infringements, but also structural problems in national legal systems (e.g. Article 47), may need a separate training module. The training should also focus on convincing attorneys that the EUCFR is a legal instrument, the practice of which is worth studying, taking into account that national courts may not be particularly willing to consider another charter of rights besides the constitution's list of rights and the ECHR. Attorneys may need some convincing that the knowledge of the law under the EUCFR

may actually enhance their case, considering that they might already have invested heavily in supporting their case on the basis of domestic constitutional practice and the case law of the Strasbourg court.

The preliminary ruling procedure was identified as a particular legal area where training may be necessary. However, this training needs to meet the needs of practicing lawyers and their assessment of costs/benefits or investments/returns. The training therefore should not focus on academic matters, but should instead provide a practical roadmap for lawyers in carrying through the procedure covering issues, such as the design of the application, the preparation of submissions to represent in Luxembourg and practical-financial details of the procedure.

The trainer of the component on the preliminary ruling should have extensive experience in the procedure and should be able to highlight good practices and also common mistakes. The trainer should be able to make it clear what needs to be stated and proved before the CJEU, how to present the case law and how to make sure that the CJEU will be convinced that it should endorse the legal interpretation wanted by the applicant. The procedure before the CJEU is very different from regular court procedures before national courts, and attorneys need to be able to understand how differently they need to prepare their input and participation.

Also, training participants will need a clear message that the preliminary ruling procedure is effective, accessible and affordable, because currently the conception is that the procedure is very long, the outcome of the case is unpredictable for untrained lawyers, and the costs are hight. The focussed training on the preliminary ruling procedure could form part of a general training in litigation strategy. This latter may not need to focus on EU law matters only, but could be of general nature aiming to fill a gap in the professional training of attorneys.

This cohort may also benefit from seeing and working with examples of how to make submissions and/or arguments based on EU law work, including substantive issues and issues of procedural nature, such as requesting the initiation of a preliminary ruling procedure or challenging the national court's decision not to refer the case to the CJEU. The drafting style/culture for submissions based on Hungarian law may be rather different. Therefore, it may be useful for participants to work with actual texts and drafting. In addition, participants may also benefit from training – from attorneys with significant experience in EU litigation – focusing on the common and not so common mistakes in drafting submissions and representing cases based on EU law.

Training needs at the advanced level

At this level, training in general EU law and EU litigation may not be necessary. The training in EU legal skills may also not be needed. Attorneys have an active knowledge of legal developments in the EU in their specialist areas (e.g. asylum law). The same holds true for ECHR law in which most of these attorneys have considerable practice. There is certainly no need for an academically focussed training, although some practiced attorneys mentioned that some fundamental, academic training may indeed be necessary to provide a general foundation for the practice-oriented training.

It was identified as a distinct training possibility to organise a separate session for sharing professional good practices and other professional tips, possibly with the inclusion of expert advocates with an extensive practice in EU law litigation from Western Europe. This session could cover in particular the possible ways of convincing national judges and/or authorities of the relevance of an EU legal provision, especially when there is a practice of habitually ignoring EU law or of restrictive interpretation or application of EU law, or when the directly applicable EU legal requirements are

habitually surpassed by informal domestic practice. Drafting and oral advocacy skills may also be included, with a special emphasis on aiming to influence courts that in principle follow an adversarial process, but may in fact draft judgments that pay very little attention to the submissions of the parties.

As a special issue, which may be relevant for both the introductory and the advanced cohort, it may be beneficial to have practice sessions examining – through actual examples – of whether and how non-compliance with EU requirements can be spotted in domestic judicial practice. It was pointed out as a particular problem in legal protection that even though attorneys may convince the national court to ask for an interpretation from the CJEU and the CJEU clarifies the interpretation of the relevant provision of EU law, the domestic implementation of that interpretation in national case law may be incomplete, erroneous or intentionally distorted, undermining the legal protection available under EU law. These exercises can focus on actual rule of law cases sent to the CJEU and then decided before national courts (e.g. fair trial cases or asylum cases with legal protection implications).

Potentially, the training could cover "special" EU procedures, such as procedures that may nudge the Commission to proceed in rule of law matters, for instance in State aid cases with rule of law implications. In addition, any training on the different practical possibilities of legal protection before EU institutions, including their procedural and practical details.

Access to information/freedom of information law could be a potential training area. It is a prerequisite of accountability and the rule of law. National, ECHR and EU practice in the domain are rather restrictive. The EU requirements here is based on legislation, which would need to be covered.

A training on up-to-date developments under the EUCFR may also be necessary, a limited version which could be offered for the introductory cohort as indicated above. ECHR law is more often practiced at this level, the parallel requirements of EU law (the EUCFR and its interpretation) less so. The training on the EUCFR and its interpretation may need to be connected to issues of EU litigation (how to bring a case before national courts and how to initiate and then actively participate in a preliminary ruling procedure). The preliminary ruling procedure is relatively unknown for human rights defenders who tend to focus on ECHR law and the procedure before the ECtHR.

A sharing of experiences among participants in this cohort – in a structured manner, possibly based on self-reflective case studies – may have certain benefits.

Training needs of trainers

There is a critical number of attorneys that have experience in rule of law litigation before domestic courts, the constitutional courts, and European courts, mainly before the Strasbourg court. In terms of substantive legal training, they may need some overview training in EU law to check gaps and inconsistencies in knowledge and experience.

Trainers are expected to be able to convey the message that:

- their example is credible,
- EU/EU rule of law litigation actually matters,
- there is professional and/or commercial success for lawyers in these areas,
- the personal, professional and/or commercial risks are manageable,
- a new, acquired framework of socialisation will benefit participants.

Therefore, the training of trainers in majority needs to cover soft-skills, interpersonal and communications skills, possibly brand-building and social media presence.

Conclusions

The number and the weight of rule of law challenges, as well as the related practices and developments in the legal system affecting the application of EU law, including EU rule of law requirements, make the design of the training content a particularly difficult task. Further complications arise from the complexity of training legal professionals who have their own priorities as self-employed individuals and who are the product of a particular system of legal education, professional socialisation and professional practice. As a related issue, the training will have to address the significant knowledge and skills gap in the non-specialist legal professional community in regards both general and specialist EU law, as well as a degree of scepticism among specialist legal professionals that EU law/EU rule of law will effectively contribute to their work. In our assessment, these complications indicate that we need to find a very careful balance between substantive legal training, hard- and soft-skills training, and the incentivisation and the re-socialisation of lawyers. Although there was a clear interest in doctrinal as well as practical training in the relevant areas of EU law, the training will need to address other, less apparent obstacles to the national application of EU requirements, such as cost and risk calculation, socialisation etc.

As a specific dilemma, the training will have to incorporate introductory training in general EU law and EU litigation, including also the preliminary ruling procedure, without undermining the objective of providing specialist training in the EU rule of law acquis. There are certain synergies as the general EU law training, especially its components concerning legal protection at the national level, can cover the law that enables the operationalisation of the EU rule of law acquis. However, considering that we can organise a limited number of training sessions only, the preparation of separate training modules may not be an option. The integration of this legal knowledge into the other substantive training modules may not be carried out adequately. Also, it may be difficult to balance between the expectations of participants and our understanding of training needs in the project, as participants may feel comfortable with a repetition of their university or bar exam preparation course in EU law. However, such training will not satisfy project objectives and may leave other participants dissatisfied with the training offered. As a possible solution, the training in general EU law could be integrated in training modules on EU legal skills, or in similar modules (e.g. success stories, sharing good and bad practices); however, this requires a careful design of training tasks, case studies etc.

The consortium will have to make a collective decision about whether the overall training design should be more conservative, with a focus on frontal, didactic training, or should aim to guarantee practice-oriented training, possibly by contracting out the development of training materials and the actual delivery of trainings to experienced legal professionals, or should focus instead on making a long-lasting social-psychological impact on legal professionals and offering them only a number of orientation signposts that they can later refer back to when developing significant expertise in the EU rule of law acquis. It is rather clear that the expectations formulated towards the training require training design and delivery which assume the presence of both an extremely high-level of academic and professional knowledge, experience and credibility, superior training and module design and delivery skills, and abilities to convince and engage with a predictably rather sceptical audience. As a potential solution, the consortium could reach out professional leaders, possibly with an academic affiliation, who have significant experience in EU legal protection both before national and European courts, and who are prepared to share openly their practices and experiences with participants. We will also need trainers who can provide a credible account of how it works: how to work with EU law and the CJEU case law, how to make EU law submissions succeed in national courts, and how to work with clients so that they agree to including an EU law element, in particular an EU rule of law element

in their case. These sessions need to be combined with supervised exercises in EU legal interpretation, EU legal drafting, and in preparing cases before the CJEU in the preliminary ruling procedure.

2.4 Poland

Executive summary

The first key finding of the report and the research is a correlation between how the participants of the empirical research speak (about the possible training and their involvement in the rule of law cases) and the so-called rule of law saga before the CJEU and ECtHR. The reforms of the judiciary and persecutor office and attempts to reform media law in Poland dominated the interviews and focus group meetings. Thus, the participants of the empirical research perceived the rule of law challenges and remedies (i.e., training) through the Strasbourg and Luxembourg glasses. They suggested a need to focus the training on the developments in CJEU and ECtHR, including national follow-up cases. The most mentioned topic covered: access to courts or effective remedies, judicial independence, and preliminary rulings. On the one hand, the participants seem to link the preferred training with the tools, which may help them follow and implement CJEU and ECtHR. On the other hand, the participants suggest a need to focus on arguments and strategies, which may help them to utilise the European case law before national courts or convince national courts to participate in the European judicial dialogue. The researcher unveiled that at least some participants linked the desired training and more effective use of European case law with restoring the rule of law within the judiciary in Poland.

It seems that the second biggest challenge, according to most of the participants, is the limited knowledge of lawyers and judges in the country concerning the scope of the application of the Charter and the understanding of substantial convergence between the developments under Article 19 TEU and Article 6 of Convention. The participant suggested a need for developed training in this respect.

The way how participants described their understanding of the rule of law or the problems the national court could have with the efficient enforcement of the rule of law suggested a need to focus the training on the hard law (the Treaties, the Charter, the Convention, the statute and the case law) instead of the soft rule of law mechanisms.

The empirical research showed that there is a need to focus on national peculiarities and cases which could be litigated before the courts in Poland. Only one of the interviewees suggested that it would be interesting to participate in the training concerning the argumentation and strategies the lawyers from other Member States adopt to litigate the rule of law cases. It may also explain why, the problem of corruption within the lawyers and judiciary or the issue of civic participation has not appeared at all during the empirical research.

According to the findings, the rule of law lawyers and defenders who participated suffered different forms of hate speech, threats, or soft public harassment. They admitted that the new disciplinary mechanism for advocated and attorneys at law and the prosecutor's office are used to create a chilling effect and prevent lawyers from litigating the rule of law cases. Nevertheless, the participant suggested that the threshold of the threats or systemic action towards the advocates and attorneys at law has not achieved such an elevated level as it happened in the case of the judges in Poland or some private entities who protested the public authorities. Thus, the participant suggested no need to provide training concerning recognising and dealing with the treats.

Finally, the empirical research proved that lawyers in Poland have limited interest and involvement in the legal aid system. According to most of the participants in the study, the system is ineffective and

unprofitable. Most of the interviewees avoid cases under the framework of legal aid. It should be noted that, according to the majority's opinion, the system is not statutory designed to allow to litigate the rule of law cases. Neither the court, which has the power to decide on the legal aid, nor the client, who is a beneficiary and needs that kind of support, may know which lawyers patriating in the system have a certain rule of law experience.

National context

Key themes

The rule of law challenges in Poland

The research achieved saturation when it comes to the question concerning the key rule of law challenges in the county. All interviewees pointed out that the most important challenge is resolving the legal status of newly appointed judges. Since the judges were appointed after the positive appraisal of the non-independent National Council of Judiciary, partially in non-transparent proceedings and in the context of strong political influence over the proceedings (as well as a decline of legal culture in Poland), the interviewees observed that the judges may do not give an appearance of judicial independence. The interviewees referred to the judgements of the CJEU and ECtHR to support their point of view in this context. Since the judges do not give such an appearance, the interviewees argued, the legal status of the judgements is uncertain.

Thus, the second key challenge is to decide whether the judgements passed by the newly appointed judges are valid or voided and, consequentially, to determine the legal consequences for the parties of the cases ruled by the judicial panels with the newly appointed judges.

Moreover, with just two exceptions, the interviewees pointed out that providing judicial independence of the Constitutional Tribunal and National Council of Judiciary are the most important key challenges. According to the interviewees, without the independent National Council of Judiciary, the system of judicial appointments remains unlawful and non-independent. The interviewees argued that the legal system remains incomplete and uncertain without an independent Constitutional Tribunal.

Other key challenges the interviewees pointed out are: (i) providing impartiality for the prosecutor's office and separating the Prosecutor General office from the Minister of Justice (interviewees 2, 4, 5 and 10); (ii) reform of public media and providing new legal provisions protecting media freedom (interviewees 1-4 and 10); (iii) full implementation of international tribunals judgements (interviewees 4, 6 and 8); (iv) restoration of high standards of protection fundamental rights of women, minorities and LGBTQ+ persons (interviewees 2, 3 and 5). Only interviewee 1 referred to providing a free and fair election as a current challenge. It should be noted that the issue of elections appeared as other interviewees' worries but not directly as a key challenge for Poland.

Understanding of the rule of law-related cases

When answering the questions, some interviewees underlined difficulties with providing or following the universal definition of the rule of law. They were more willing to admit that the rule of law is a contested concept, or the rule of law needs to be contextualised for a particular interview or debate. Moreover, according to interviewee 1, the rule of law as a modern and widely discussed concept appeared in public discourse in Poland due to the constitutional crisis (which started after the illegal appointment to the Constitutional Tribunal in 2016). Interviewee 1 said:

"*Many people were involved in the rule of law cases when it had not been called that way. There were issues concerning judicial independence or fair trial. Since 2016 we started to frame those issues under the rule of law framework. I remember one of the first motions I wrote and submitted before the Constitutional Tribunal in Poland. It concerned the law on the development policy, which excluded access to administrative courts. The law deprived individuals right to judicial review of administrative decisions concerning the distribution of EU funds. The Tribunal's judgement changed the system and resulted in the introduction of judicial review. It was an early warning. One letter from the European Commission was enough for the Government of Poland.*"

The cited observation may be explained by the fact that binding constitutional provisions in Poland do not directly reference the rule of law. The rule of law debate in Poland overlaps with the discussion on a democratic state ruled by law due to the wording of the constitutional provisions and the Constitution-making moment. Moreover, the cited observation also corresponds with other interviewees' answers, which referred to the visible growth of references to the rule of law made by courts in Poland after the beginning of the so-called rule of law saga before the CJEU. Interviewee 6 observed a positive change within the judiciary approach to the EU values. The growing number of Polish courts' preliminary references to the CJEU became an example. According to interviewee 3, lawyers started to refer to the concept of value as a "side effect" of the rule of law crisis within the EU and the constitutional crisis in Poland. Interviewee 3 pointed out that "before the crisis, the courts relatively rarely utilised the rule of law to oppose the transformation of the constitution in Poland".

The observations may also suggest the participant of the interviews and the focus group recognised the dynamic nature of the rule of law concept in terms of its evolution and link to the current state of affairs. According to interviewee 4, nowadays, the ordinary case (with no initial potential for the rule of law litigation) may become the case due to the lack of judicial independence of newly appointed judges in Poland.

Only one of the participants directly referred to the definition provided by the Venice Commission, underlining that the definition is close to the participant's understanding and practice. Most participants did not refer directly to doctrinal definitions. Neither the judicial concept of the rule of law established by the Constitutional Tribunal in Poland nor the concepts used by the CJEU, or the ECtHR became points of reference for the participants. Only one of the interviewees mentioned the definition that the European Commission had applied in the reports concerning the rule of law. However, the definition appeared in the context of whether media freedom shall be a part of the rule of law concept. Interviewee one said: "(...) *I remember a bad choice made by the Commission, which firstly included media freedom as a part of the rule of law, and later gave it up* (...)". The other interviewees have not expressed this or a similar opinion.

The initial problems with the abstract definition did not prevent interviewees from revealing their broad understanding of the concept of the rule of law. It seems clear if we consider their references to the procedural and substantive standards necessary to qualify the case with a rule of law interest. Answering the questions, most interviewees and the focus group members counted human rights protection as part of the rule of law. Interviewee 5 directly distinguished between the procedural and substantial aspects of the rule of law and underlined that the independent judiciary is part of the fundamental procedural precondition of the rule of law. Interviewee 6 distinguished between systemic understanding (it covers the areas of separation of powers and constrained government) and individual understanding of the rule of law (it covers the protection of basic human rights in individual cases). Yet, the interviews revealed differences regarding the first association with the rule of law.

Trying to define the rule of law for their purposes, the interviewees considered the following topics: (i) media freedom (interviewee 1); access to courts and right to a fair trial (interviewees 1-3); (iii) access to legal aid (interviewees 2 and 3); (iv) freedom of assemblies both in the general context of mass protests against the government as well as demonstrations against the restrictive abortion law or protests demanding access to a clean environment (interviewees 2, 3 and 6); (v) abuse of powers by the police during the public assemblies and mass protests against the government (interviewees 2 and 3); (vi) disciplinary cases against independent judges (interviewee 4); (vii) limitation of the freedom of speech of independent judges and prosecutors (interviewee 4); (viii) litigation concerning the muzzle law (interviewee 4); (ix) invalid judicial panel due to the newly appointed judge's lack of appearance of judicial independence (interviewees 4-6).

The lack of judicial independence and reforms appeared directly or indirectly in all interviews and focus group debates as an important part of thinking about the rule of law. Interestingly, most participants referred to the lack of judicial independence in ordinary courts and the Supreme Court. The interviewee's first associations regarding the definition of the rule of law-related topics or cases were supported by local examples or based on Polish peculiarities. None of the interviewees mentioned the other member states' rule of law problems, except interviewee 10, who referred to Hungary as a broader context for Poland's rule of law problems.

Consider interviewee 1, who mentioned judicial independence as the element of the rule of law and additionally said: *"I would add two more important elements. The first is independent prosecutor office. The second guarantees for independent bar associations (...) or ability to offer legal aid independently*". Only interviewee 3 mentioned that they were involved in a very particular Poland rule of law-related topic (a statutory change of retirement rules for former officers, public servants and armed forces members during the undemocratic period in Poland). The recently adopted law lowered the retirements of those officers and public servants. It happened the second time in the last two decades for the same reasons, so interviewee 3 qualified such a case as a rule of law-related topic.

National legal framework and core EU values

When answering the question concerning the legal framework's role in the effective promotion of core EU values, most of the interviewees started with reservations, additional comments and distinctions between (i) the law in books and the law in action; (ii) old and new legal frameworks in Poland; (iii) constitutional and statutory levels; (iv) government and judicial applications of the legal framework; (v) declared and real perception of the framework. Interviewee 2 observed that:

"We are faced with double standards or at least two levels of how the legal framework works nowadays. Some prosecutors and judges still apply legal provisions following EU law and the Constitution, protecting the rule of law. They do it even if their judgements are inconsistent with the wording of the statutes (i.e., muzzle law). Other judges and prosecutors adopt decisions or judgements following the unlawful statutes, being like executors of political orders."

The majority's answers may be summarised as follows: old legal provisions, particularly of the highest constitutional importance, and their judicial application supported the core EU values, whereas newly added statutory provisions and recently appeared governmental practices are inconsistent with the values.

Interviewee 10 said that generally (in most cases), the legal framework in Poland provides access to courts, which "*is essential for the rule of law*". They observed that the real problem with providing EU values starts on the statutory level and practice of executive authorities (i.e., delays or refusals of

implementation of ECtHR judgements). Similarly, interviewee 9 pointed out that the legal framework in Poland follows, in theory, the core EU values; however, the biggest problem is their application. The constitutional court was given as an example in this context. According to interviewee 9, the Tribunal is not responsible for guaranteeing the rule of law nowadays, but it creates violations of the core EU values. Also, consider the opinion of interviewee one, who observed that the answer depends on whether the analysis focuses on the constitutional provisions' scope or the regular statutes' content. They said:

"(...) *on the constitutional level, the system promotes core EU values. It looks worse on the statutory level since the regular statutes either modified or unconstitutionally replaced constitutional regulation. Statutes deregulated constitutional provisions of the separation of powers. Therefore, I would distinguish the analyse and answer depending on the reference point*".

The opinion corresponds with the observation of interviewee 2, who firstly said the Constitution provide high standards for criminal law and later focused on the recent statutory changes within the criminal law. The interviewee pointed out that the changes in criminal proceedings and execution of criminal punishments are openly inconsistent with the core EU values since the powers of the prosecutor's office became strengthened (non-proportional) compared to those of other parties of cases and the judges. In contrast, the prosecutor's office is not an independent authority. The interviewee also observed that the lawmaker does not follow constitutional standards when regulating criminal proceedings. They marked the lawmaker's punitive approach to criminal law and manual control over the judiciary. According to interviewee 2, when the lawmaker recognises the less restrictive approach of independent courts, it changes the law to prevent judges from applying constitutional standards. The challenge for lawyers is dealing with such rapid legal changes before the courts.

Or consider the opinion of interviewee 4, who differentiated between the old legal framework (wording and application of the provisions before the crisis started in Poland), which seemed to promote core EU values, and a newly created legal framework, which "*actively fights with the core EU values*". Interviewee 4 also pointed out that it is essential to consider that the government's legal framework is descriptively presented as perfectly coherent with the core EU values, whereas the reality may look different. The challenge for lawyers is dealing with such narratives. The cases of access to abortion or treatment of members of the LGBTQ+ community were presented as an example of the discrepancy between what is declared and how it works in practice. Similarly, interviewee 6 pointed out that the legal framework may be considered as a set of provisions only, which – according to this interviewee – still supports core EU values. If, however, someone considers legal practices and conventions of government, it would be hard to argue that the legal framework in Poland is still in line with EU values. It again corresponds with the opinion the interviewee 1. They said, "*When we evaluate whether the particular legal system promotes core EU values, we have to also consider the good/bad will of the government as well as well-established legal culture in the evaluated country*".

This opinion also corresponds with the observation made by interviewee 2, which underlined the discrepancy within the criminal proceedings between the bad will of the non-independent prosecutors (which enforce the punitive bad will of the lawmaker) and the goodwill of the independent courts in terms of the rule of law enforcement. Interviewee 2 referred to the application of the statutory provisions on the responsibility of witnesses for false testimony to avoid criminal liability. According to interviewee 2, the prosecutors enforced direct wording of the provisions, which implied witness liability. In contrast, the independent courts nuanced the situation of witnesses to protect them against abusive criminal charges.

It should be noted that some of the interviewees (4, 5, 7 and 8 and 10) said that the legal framework (at the current stage of its development) does not support core EU values. It happens due to the lack of effective national remedies in cases ruled by the newly appointed judges, which do not give an appearance of judicial independence. It should also be noted that interviewee 5 expressed this opinion concerning the current state of affairs and the most common problems of legal practitioners. The same argument was used by interviewee 8, who said:

"*No! It is not my impression and knowledge, but several judgements [of the CJEU and ECtHR] directly pointed out that the legal framework in Poland does not support core EU values but attacks those values. The values in Poland were turned in the opposite direction*."

The part of interviewees observed that an assessment of the current legal framework in Poland should be done with a careful examination of legal narratives produced by the government and part of newly appointed judges. According to interviewees 4, 8 and 10, they abuse constitutional powers to "make lawful and legitimate what is unlawful and non-legitimate". The abuse of the LM (Celmer) case or the CJEU test of the appearance of judicial independence (by newly appointed judges) was given as an example.

Support offered by the bar associations

The research archived high saturation because a qualified majority of the interviewees answered positively to the question concerning the support provided by the bar associations in work related to the rule of law. As examples of the support, the interviewees pointed out (and appraised positively) the following activities: (i) adopting amicus curiae opinions in the cases concerning the rule of law; (ii) open letters calling public authorities to respect the rule of law; (iv) direct involvement in free legal advice or representation for migrants on the east border; (v) ad hoc legal aid for protesters during the human rights mass-manifestations and public assemblies against the government; (vi) training for the lawyers in litigation of abortion law cases (after the strict judgement of the Polish Constitutional Tribunal); (vii) educational programs and classes in schools; (viii) symbolic support for the advocates and protecting them against disciplinary charges.

It should be underlined that positive appraisals refer to the associations the interviewees are members of. The interviewees narrowed their answers in relation to their specific experiences in their professional network.

Only two interviewees declared they did not feel sufficiently supported by the bar associations for varied reasons. Interviewee 3 claimed they did not need that kind of support and changed the topic to the wanted reform of the bar association. Interviewee 5 accused the bar association of "hypocrisy". They said:

"*Regarding my professional self-government, I notice a lot of hypocrisy in its proceeding. On the one hand, it declares its attachment to the rule of law and makes various public appeals and statements. On the other hand, the higher disciplinary court for attorneys at-law cooperates with the Disciplinary Chamber of the Supreme Court. It forwards the files of disciplinary cases, whereas the legality of the Chamber is questioned. Therefore, it seems to me that the promotion and support for core values occurs verbally in my professional self-government*".

The different approach to the support given by the bar associations correlates with the location of the interviewees' legal practice. The interviewees outside the capital made reservations and criticised the bar associations. In contrast, the interviewees from Warsaw underlined the need for harder work for the associations to achieve better results in supporting their members and promoting the rule of law.

For instance, interviewee 3 emphasised that the ad hoc support of the lawyers for the protesters outside the capital was the bottom-up initiative of several advocates instead the organised action of the local bar association.

The observations correspond with the doubts expressed by several other interviewees. They worried whether they were biased and caused by the effectiveness of the bar associations in Warsaw. For instance, interviewee 4 pointed out that the associations in another part of the country could be less willing to support the rule of law since they are internally divided (into those who supported legal changes and those who opposed) as well as they are far away from the central debate and cases concerning the rule of law. Similarly, interviewee 10 expressed doubts regarding the involvement of the local associations in the promotion of the rule of law. It suggests a need to address the training also outside the lawyers from Warsaw.

Another explanation of the different involvement of the bar association in supporting their members and the rule of law was the lack of well-established practices and knowledge. Interviewee 4 pointed out that before the rule of law crisis started in Poland, bar associations did not need to be involved in the public discourse nor offer support for the members involved in the rule of law litigation. Interviewee 1 suggested that the involvement and support might be linked to the actions of the Members of Parliament against the associations before the captured Constitutional Tribunal. The MPs submitted the motion for the unconstitutionality of the statutory provisions, which provides independence for the bar associations (case K 6/22). According to Interviewee 1, the action "opened the associations' eyes" and motivated the direct support for the rule of law. The involvement of the associations was described as "humble" before the rule of law crisis.

The issue of professional training (as an example of the possible support the bar association may offer) has not often appeared in the interviewees' answers. Only three of them underlined a need for new curricula for the applicants. Interviewee 6 pointed out:

"(...) the rule of law is not sufficiently present in the training. It is visible when we have a look at training plans. At least, that is how it is in Warsaw because the bar associations are different. But it seems to me that it is easy to check how much the rule of law appears in training. We achieved that level in the case of the ECHR. In previous years, training was provided; and now? There are fewer and fewer training hours. The same applies to protecting the rule of law in the EU dimension. Little time is provided during the training."

About the professional training as a support for the members of the bar associations, interviewee 9 observed that the support should be addressed to all the members, not only to those who practice their profession, but also to those who suspended or temporarily paused their professional practice maintaining their membership.

Key practical challenges

Litigation of the rule of law cases before the international tribunals

Most interviewees litigated the rule of law cases before international tribunals, including the CJEU (interviewees 1, 4, 6 and 8) and the ECtHR (interviewees 1, 4, 6-8 and 10). Only four interviewees have not had the opportunity to present their arguments before the tribunals yet. However, interviewee 3 has a pending case waiting for an ECtHR's decision on admissibility. They also admit the experience of presenting a case before the CJEU in the past. The case was, however, not regarded as linked to the rule of law topic. The rest of the interviewees (2,5 and 9) either referred to the scale of their professional practice (limited to the national level) or to their full-time employment in one of the highest courts in Poland. Interviewee 5 added two more explanations why not to go to Strasbourg or

Luxembourg. The first is narrowly defined access to the CJEU for individuals. In contrast, access via preliminary ruling is extremely difficult for the attorneys since the courts in Poland are still "less willing to refer to the Court of Justice". This opinion corresponds with the view of other interviewees that the courts in Poland are still relatively humble in their references to the CJEU (except for the cases concerning judicial impedance). The second reason, given by interviewee 5, is the limited efficiency of the international tribunals, namely the ECtHR. According to interviewee 5, the clients sometimes do not want to look for justice before Strasbourg due to the length of the proceedings.

It would be hard to indicate any correlation between litigation/non-litigation and the expertise, professional track, or scale of the legal firm of the interviewees. The interviewees took the litigation from small, medium, and big legal firms in the capital and other parts of the country. Moreover, the length of professional practice does not play any role in litigation. Finally, four interviewees have experience before the two European tribunals.

There is a visible link between the core rule of law problems (indicated by the interviewees) and the litigated cases. Thus, the cases neither concerned transparency and anti-corruption nor civic participation. The cases brought to Strasbourg or Luxemburg by the interviewees concerned: (i) institutional choices of the 2016-2023 reforms of the judiciary in Poland (i.e., lack independence of the Council of Judiciary in Poland and Disciplinary Chamber of the Supreme Court; capturing and curbing the Constitutional Tribunal; lack of appearance of judicial independence by newly appointed judges; lack of impartiality of the Prosecutor Office and politicisation of the prosecutor service); (ii) non-proportionally limitations of human rights (i.e., invigilation, abortion, ban of public assemblies, unlawful arrests and discrimination based on sexual orientation); (iii) disciplinary proceedings against judges in Poland; (iv) muzzle law; (v) freedom of the media and the press; (vi) lack of effective remedy on national level due to the lack of judicial independence provided.

The important part of the litigated cases has already been decided by the Court of Justice (i.e., cases: AK and others, C-585/18; AB and others, C-824/18; W.Ż, C-487/19) and ECtHR (i.e., Igor Tuleya v. Poland; Grzęda v. Poland) following the argumentation or expectation of the interviewees. Other cases are expected to be decided soon (i.e., Pietrzak and others v. Poland) or are pending at various stages of the proceedings. One of the interviewees is engaged in more than sixty cases concerning the reform of the judiciary in Poland.

The interviewees underlined their rule of law litigations have three general purposes. The first is individual justice for the persons whose constitutional or supranational rights were violated by the public authorities in Poland. Interviewee 8 said: "When your client is a judge under the stress and repression of public authorities, you really want to have the judge be compensated and morally rewarded after what he or she suffered". The second purpose was systemic: to indicate, name and judge violations of individual rights in the broader context of the decline of the rule of law. Consider what Interviewee 4 said:

"It is important to emphasise, and it is probably what a litigator or any professional lawyer will say, that the overriding goal (no matter a level of a case) is the ultimate good of your client (to secure their rights). However, the cases concerning the judiciary also have additional goals. The cases are focused not only on the individual rights of the judges but on providing the rule of law in the country. And it was also my goal: to contribute by naming systemic violations of the rule of law in Poland. To push the case to international level."

The third purpose was to "strength the rule of law narrative in the country" (interviewee 8) or to show at the national level that Polish constitutional values (as interpreted before the rule of law crisis) are consistent with the European understanding of the rule of law (interviewee 1). The interviewees

suggest that the international tribunal's judgements in Polish cases may have high importance for a national debate on the rule of law. Consider the following opinion: "We [the litigators] claim that the rule of law order has been destroyed [in Poland], and we gain the opinion of an external and independent tribunal, which confirms our claim" (interviewee 8). Or consider the interviewee's 10 opinions concerning the possible role of expecting ECtHR's judgement in the surveillance case. They said:

"(...) it is a matter of pressure on the Government in Poland, which may force the government to provide surveillance control tools [legal limitation of the surveillance practices]. In a normal scenario, we would have gone to the constitutional court. It should have happened on a national, not international, level. Since such a scenario is impossible (due to the lack of impartiality of the constitutional court), the only way to create pressure is to engage ECtHR".

The interviewees gave distinct reasons explaining why to go to the international tribunals. Nevertheless, the common element for the majority was the lack of effective measures for protecting individuals' rights on the national level. It is either due to the lack of an independent constitutional court or the appearance of judicial independence of newly appointed judges in Poland. Interviewees 4 and 8 pointed out that supranational litigation is the only viable way to prove Poland's lack of the rule of law. According to them, such an "external point of view" is needed for the judiciary in Poland since the panels, including the new judges, may rule cases in Poland. The other reasons were suggested by interviewee 7 that European case law is more progressive in protecting minorities. They said:

"I expect to find that there was discrimination based on sexual orientation. The mother of two children was discriminated against. The result [protection against that kind of discrimination] is impossible to achieve nationally. In such a family law case, the is no way to the Supreme Court. More importantly, the litigation case concerning the discrimination based on sexual orientation before the regular courts in Poland is simply ineffective."

Interviewee 3 suggested that European case law may sometimes provide better public reason balance (or proportionality test results) and protection of the rights of the individuals targeted by the current political majority (i.e., entrepreneurs, judges, or public servants of the previous legal order in Poland). Interviewee 5 observed that the Court of Justice case law may provide a higher standard of protecting consumers' rights in field loan agreements in a foreign currency. According to interviewee 10, the litigation of the case concerning the surveillance and use of spying software before the court in Strasburg was needed because the Government in Poland has not implemented the past Constitutional Tribunal's judgement concerning the limitation of the surveillance.

Since most of the litigated case has a common core (the lack of impartiality of different judicial authorities in Poland and lack of effective remedy), the interviewees based their argumentations on similar provisions (Article 19 of TEU, Article 47 Charter, Articles 8, 10 and 13 of Convention). According to the interviews, the nature of the international court determines the use of the Charter. The interviewees underlined that they do not see that the Charter could play a key role before the ECtHR, so they have not referred to it. Only interviewee 4 expressed the opinion that "(...) before the ECtHR I refer to the Convention, but sometimes I also mention the Charter. The legal orders are approaching each other, and I hope the EU finally will join the Convention." It corresponds with the litigation strategies of interviewees 6 and 8, who referred to the Charter before the ECtHR in cases cornering the reforms of the judiciary. They do it to prove the violation of the EU standards of fair trial as well as the lack of efficiency of the judicial system in Poland. Such opinions or strategies may suggest the interviewees' presupposition of the convergence or at least commonly shared minimum fair trial

standard between the EU and the Council of Europe. Also consider the experience of interviewee 7, who said:

"(….) my argument [before the ECtHR] refers predominantly to the Convention. However, I use the Charter in a supportive way in cases concerning family law and children's rights; I do it when I need to underline the rights to express views by children since the right is better provided in the EU regulations on transnational cooperation".

Most interviewees underlined that the lack of implementation of certain international tribunals' judgements has become one of the biggest problems with litigation nowadays. Consider the following opinion of interviewee 8:

"*None of the cases has been implemented—literally none. Moreover, the government did not want to pay individual compensation in the Ozimek case. It happened for the first time in the history of Poland. For one and half years, the government had not paid. We went to the regular court in Poland and demanded enforcement, which was a precedent. Nobody had done it before. In the meantime, the government decided to pay. (…) The CJEU judgments have not been implemented either. Just consider the W.Ż. case".*

The problems are identified on the three levels. The first is the statutory level (reaction of the Parliament on the CJEU or ECtHR judgements). Interviewees 1, 4, 6 and 8 observed that the Parliament either modified the national law without satisfying the essence of the international tribunal's judgements or did nothing. The case of the Disciplinary Chamber of the Supreme Court and the case Xero Flor v. Poland were given as examples. The second level is the case law. Interviewees 1, 4, 6 and 10 observed that the non-independent Constitutional Tribunal prevents the courts in Poland and the Parliament from fully implementing the CJEU or ECtHR judgements. The interviewees referred to the Constitutional Tribunal judgements on the unconstitutionality of the Treaties and the Convention. According to Interviewee 4:

"*The compensation has been paid, but other problems identified by the ECtHR's rulings (regarding systemic problems with the violation of the rule of law in Poland and the violation of judicial independence) have certainly not been implemented. After the so-called judgment of the so-called Tribunal regarding the unconstitutionality of Article 6 of the Convention (I do not know what to call this body signing as the Tribunal), we are in a state of systemic non-compliance with the Convention*."

The third level of problem is – as interviewee 10 called it – the risk of abusive use of the European case law to justify departure from what the CJEU or ECtHR said. Interviewees 1 and 10 observed that both the non-independent Constitutional Tribunal and some of the newly appointed judges in Poland use European case law either to legitimise themselves or to undermine the independence of judges appointed in Poland before the rule of law crisis started. The national follow-up of BN and others v. Getin Noble Bank case was given as an example.

Litigation of the rule of law cases before the national courts

Most interviewees litigated the rule of law cases before the national courts, referring predominantly to national jurisprudence and national case law. They called the references to the Charter "supportive" or "additional". They suggested that the Charter as a main argument appeared mainly in the cases concerning the judiciary reforms in Poland. The main reasons for such strategies are the court's limited interest in the Charter. According to the opinion of interviewee 5: "The Charter is not a strong argument in the case law of common courts (I am not talking about the Supreme Court right now). Arguments based on the Charter are perceived as an argument of last chance or a simple ornament". It may correspond with the explanation given by interviewee 6:

"(…) If I invoke the Charter on the national level, it is either to strengthen arguments or to prepare the ground for the possible preliminary reference of the national court. It happened to me three times recently. It happened three times without success. The courts did not finally refer the CJEU".

It corresponds with interviewee 8, who said: "You know, in domestic proceedings, it has a rather additional function, but for us, it is important. This is especially important before the Supreme Court because the proceedings aim to finish in Luxembourg." Interviewee 3 said:

"This is also a side effect of the rule of law crisis. Before the crisis, frankly speaking, there was not much room for references to the Convention or the Charter. The judges did not take it seriously. They were more embedded in the national law. Today, this optic has changed. Today, in fact, the courts do not ignore this".

The other reason the interviewees did not often refer to the Charter is the limited nature of the case, which does not demand reference to the Charter (according to the subsidiarity principle.). According to Interviewee 7:

"I strongly rely on national legislation and additionally refer to European jurisprudence, but mainly in terms of the correct interpretation of national law. So here, an argument is often made that Polish law should be interpreted following the European standard. This is the nature of my cases, which are immersed in the national law".

Similarly, interviewee 10 explained their motifs. They said:

"I rely mainly on national legislation. EU legislation has little application in my case. It results from the judgments and interpretations of the CJEU regarding protecting personal data. Because this is a point where the EU does not have much to say, there are general formulas that, even when the law does not cover something. It requires interpellation in accordance with the spirit. Still, the spirit of the law has not been adopted in this country."

Interviewee 10 pointed out that references to the CJEU or ECtHR judgements are compelling arguments on the international level. In contrast, the national strength depends on the court and the type of case. Interviewee 9 said that the past constitutional Tribunal case law could be used convincingly. It corresponds with the interviewee's 1 observation that:

"The question is, after all, whether good European or constitutional jurisprudence can be found for a given national case. So sometimes, European jurisprudence was also invoked when a case was purely domestic. See, for example, the CJEU judgment on Portuguese judges. It was often invoked. In cases concerning anti-LGBTQ+ resolutions in Poland, Strasbourg jurisprudence was often invoked."

According to Interviewee 8

"*I use as much as I can (often) the Strasbourg and Luxembourg jurisprudence. The effect and purpose are to present jurisprudence in domestic proceedings. Polish orchards increasingly often see it in a wider scope. They are based on convention and EU issues. It is obvious to me that as I refer to the Code of Civil Procedure, I also refer to the Convention. It is natural. The effect is visible in the case of CJEU judgments. After all, it was possible to ask preliminary questions in several domestic proceedings."*

Interviewee 7 said:

"In my case, it is primarily about referring to the jurisprudence of the ECtHR. And the case law of the CJEU appears mainly in those cases where EU regulations are relevant (cross-border child abduction). The differences in the approach of Polish courts in cases where there is an EU regulation (e.g., regulations) are

immediately visible. Then the courts are more willing to respect the child's rights, and a better quality of court work and justifications in the areas regulated by EU law can be observed. This better quality is about following procedures. For example, Polish courts treat many Polish terms as instructions, while terms from regulations are treated more seriously. And the determination of the courts to comply with these procedures is greater. This is visible when hearing a child in cases under European law. The courts listen to children, and the courts do not it in cases without a cross-border element".

Interviewee 5 said: "*First of all, I rely on national jurisprudence, but sometimes I refer to the jurisprudence of the CJEU and the ECtHR when it comes to basic standards; but here it is about the interpretation of national standards. To the national one, because it is the one that effectively shapes the way of interpreting court law*."

Threats due to engagement with the rule of law litigation

Most interviewees (2, 4-7 and 9-10) concluded they had not received threats due to their engagement with the rule of law cases. Three interviewees (1, 3, 8) experienced threats or unacceptable comments made by internet users or – relatively rare – by politicians. Those interviewees underlined that they did not respond to these threats or comments. As an argument, interviewee 1 said: "I think about it as part of his profession. There is no reason to reply. Anyway, compared to real defenders of human rights, the threats I encounter are nothing serious. At most, we have such threats from the side political problems end with the loss of a job in the office." Interviewee 3 pointed out that "it's not worth feeding the troll". In contrast, interviewee 8 shared their principle of not engaging in that personal dispute. According to them, it is a cost of being the litigator.

Nevertheless, mentioning two stories (shared by interviewees 2, 4 and 10) is important. Instead of considering the direct threats addressed to the lawyers, they focused on the narrative concerning the rule of law defenders. They referred to the negative narratives on the defenders provided by the politicians or right-wing organisations, who the members of the political majority in the Parliament ideologically support. The narratives may pressure the defenders of the rule of law and have a chilling effect.

Training needs

Most interviewees and members of the focus group answered affirmatively concerning the benefits of training on applying the EU law, SLAPP, or the rule of law litigation. Interviewee No 1 underlined that it would be hard to be a professional lawyer (advocate) without sufficient and actualised knowledge of the EU law. However, the interviews showed that training is not common or popular among interviewees and lawyers, according to the interviewee's best knowledge. Only half of them participated in their professional career in the training concerning applying the EU law. Only one of the interviewees participated "many times" in the training organised by the College of Europe Natolin. Others participated in training organised by the Academy of European Law, NGOs in Poland, bar associations in Poland or Council of Europe units. Those trainings were a single (one day) event or summer school. They were not a part of bigger and systemic training programmes. The training the interviewees attended seemed non-systematic focussed and regarded narrow and particular aspects of the EU law application.

Training needs at the introductory level

The interviewees and focus group members mentioned the following scope of the training: (i) freedom of speech under the EU law and Court of Justice case law; (ii) judicial independence and impartiality standards; (iii) hate speech and strategic lawsuits against public participation; (iv) freedom of media

under the EU law and CJEU case-law; (v) strategies of argumentation before the CJEU; (vi) strategies of governments before the CJEU; (vii) strategies of the European Commission before the CJEU; (viii) strategies how to convince the national courts to preliminary reference to the CJEU; (ix) use of the Charter before the supreme courts in the country concerning the problem of the scope of the application of the Charter; (x) arguments on how to build links between Article 2 or 19 TEU and the Charter; (xi) arguments on how to build links between the different standards before the CJEU and the ECtHR; (x) the basic theory of strategic litigation.

The basic training should discuss facts and arguments in the following ECtHR cases: (i) Xero Flor v. Poland (ECtHR, 7 May 2021, application No 4907/18); (ii) *Grzęda v. Poland* (ECtHR, 15 March 2022, application No 43572/18); (iii) **Dolińska-Ficek and Ozimek v. Poland** (ECtHR, 8 November 2021, application No 49868/19 and 57511/19); (iv) A*dvance Pharma sp. z o.o. v. Poland* (ECtHR, 3 February 2022, application No 1469/20); (v) Igor Tuleya v. Poland.

The basic training should discuss facts and arguments in the following CJEU cases: (i) Commission v. Poland (C-619/18; the retirement of the Supreme Court Judges); (ii) AK and others (C-585/18; Disciplinary Chamber of the Supreme Court); (iii) AB and others (C-824/18; lack of review of decisions of the National Council of Judiciary); (iv) Commission v. Poland (C-791/19; disciplinary system for barristers and judges); (v) W.Ż case (C-487/19; disciplinary system for judges); (vi) BN and others v. Getin Bank case (C-132/20; conditions for the test of appearance); (vii) Commission v. Poland (C-204/21; Muzzle Law in Poland); (viii) Sped-Pro S.A. v Commission (T-791/19).

The basic training should discuss facts and arguments in the judgements of the Constitutional Tribunal in Poland concerning the unconstitutionality of: (i) new provisions on the National Council of Judiciary (Case K 5/17); (ii) impartiality of the Supreme Court (Cases U 2/20 and Kpt 1/20); (iii) Article 4 of the TEU (case P 7/20); (iv) Article 19 of TEU (Case K 3/21); (v) Article 6 of the ECHR (Cases K 7/21 and K 6/21).

Training needs at the advanced level

The advanced training should help the lawyers to answer the following questions: (i) how to recognise and deal with the abusive use of the CJEU or ECtHR judgements on the national level; (ii) how to recognise and deal with the abusive comparativisism of national public authorities in terms of the reforms of the judiciary; (iii) how to recognise and deal with the argument based on national or constitutional identities before the CJEU and national constitutional court; (iv) how to use the three-stage CJEU test of appearance of judicial independence; (v) how to use the Bosphorus doctrine in relation to the CJEU and ECtHR judgements; (vi) how to use the CJEU's Aranyosi and LM tests before the national courts; (vii) how to adequately apply the CJEU's doctrine of appearance of independence to non-judiciary authority (i.e., national administrative bodies or regulators – President of the Office of Personal Data Protection or the President of the Office of Competition and Consumer Protection); (vii) how to effectively build an argument based on mutual trust in judicial cooperation; (viii) how to effectively use CJEU ruling in case Sped-Pro S.A. v Commission on national level; (ix) how to effectively use Guðmundur Andri Ástráðsson v. Iceland on national level; (x) how to recognise Strategic lawsuits against public participation; (x) how to properly interpret the scope of the application of the Charter.

The advanced training should, in particular, help the lawyers to use the following acts in the litigation of the rule of law cases: (i) EU conditionality mechanism; (ii) European Public Prosecutor's Office Regulation; (iii) European Arrest Warrant Framework Decision; (iv) Brussels I Regulation; (iv) ECN+ directive; (v) European Media Freedom Act.

The advanced training should, in particular, allow the lawyers to build analogies between national cases and the CJEU and ECtHR cases mentioned above (para 4.1).

Training needs of trainers

All interviewees and most of the focus group members underlined that the training should be practice-oriented with the maximum possible involvement of the case law, empirical studies and discussion with professional litigators who have previous experience with the rule of law cases. Thus, the trainers should have a minimum of pedagogical and broad litigation experience. Their expertise shall follow the abovementioned topics and cases (paras 4.1.-4.2.).

Since only one of the interviewees and a minority of the focus group members have ever heard of the European Democracy Action Plan, the training should equip the lawyers with sufficient knowledge about the scope and application of the measures, which will be implemented throughout this Commission's mandate.

Conclusions

The empirical research within the project and doctrinal state of the art proved the link between the current rule of law challenges in Poland and the needs of the lawyers interested in the rule of law litigation. The challenges are consequences of Poland's judicial reforms, which took place between 2016 and 2013

The first stage of the reform concerned the Constitutional Tribunal. The key challenges in this respect were: (i) invalidation of the election of legally elected judges (2015); (ii) election of the fake judges/parallel judges (2015 and 2016); (iii) unconstitutional election of the President (2016); (iv) unconstitutional election of the Vice-President (2017); (v) the illegal practices of the President (manual control of the judicial panels); (vi) the self-legitimisation of the illegal composition of the Tribunal. As the empirical research showed, the reform of the Tribunal pushed the lawyers in Poland to look for effective remedies abroad, mainly in the ECtHR jurisprudence. It created an intensified need for knowledge and abilities regarding the litigation of the rule of law before the ECtHR as well as litigation before the courts in a legal system without an effectively working constitutional court.

The second stage of the reform concerned the National Council of Judiciary. The key challenges in this respect were: (i) dissolution of the previously elected Council; (ii) dismission of the Council members before the end of their terms; (iii) the election by judges among judges was replaced by the ultimate power of the Sejm to choose 15 members (violation of the Article 187 of the Constitution); (iv) the non-transparent electoral proceeding for selecting candidates. The reform of the Council created serious doubts about whether the newly elected Council is constitutional and has an appearance of independence. It also led to the question of whether the judges submitted by the Council for a judicial position could be considered independent. As the empirical research and state of the art showed, the reform of the Council pushed the lawyers in Poland to look for effective remedies in CJEU jurisprudence. It intensified the need for knowledge and abilities regarding the litigation of the rule of law before the CJEU.

The third stage of the reform concerned the Supreme Court. The key challenges in this respect were: (i) reduction of the retirement age for Supreme Court judges in 2017; (ii) new judicial appointments in 2018-2019 (almost half of the judges); (iii) adding two new chambers in the Supreme Court (newly appointed judges); (iv) new disciplinary system for judges in the hands of newly appointed judges; (v) change of powers within the chambers of the Supreme Court; (vi) dissolution of the Disciplinary Chamber in 2022 (under EU pressure) and adding the new Professional Liability Chamber (panels

randomly drawn from all judges). The reform of the Supreme Court created serious doubts about whether the panel of the Supreme Court are independent. Moreover, the reform created unprecedented tensions within the disciplinary system, which led to the violation of the rights of judges. As the empirical research and state of the art showed, the reform created new challenges before the lawyers, including: (i) how to litigate disciplinary cases against judges on national and international levels; (ii) how to convince national courts to preliminary refer to CJEU; (ii) how to convince the national court to follow the current EU law and CJEU developments despite the risk of disciplinary proceedings; (iv) how to use the Charter and how to link the scope of the Charter with the Article 19 TEU in the cases of judges as well as other parties.

Last but not least, the reforms resulted in the new case law provided by the new Constitutional Tribunal and new chambers of the Supreme Court. As doctrinal studies and empirical research showed, the recent case law is directly inconsistent with the past case law in Poland and the core EU values. It created a need for lawyers to develop strategies and arguments on applying past case law and litigating the rule of law under such stress.

According to the empirical research, the training shall address all those challenges not only in an abstract or theoretical way. The first and most impart aim of the future training should be a practical and empirical study on the scope, output, and EU replay on those challenges to provide lawyers in Poland with effective remedies and knowledge.

2.5 Romania

Executive summary

There is insufficient training of the Romanian lawyers taking into account the key areas of the rule of law (justice reforms, independence of justice, anti-corruption, media freedom and pluralism, other institutional issues related to checks and balances). In the initial and continuous training of lawyers, there isn't a training module or programme that addresses in an in-depth manner all key areas linked to the rule of law topic. Certain aspects are addressed in a much too general way in the training of junior lawyers, and with regard to senior lawyers there is only a small, sporadic numbers of events that are organised by the bars in cooperation with the National Institute for the Training of Lawyers, civil society organisations and other stakeholders from the legal field.

From the information provided by the bars and the National Institute for the Training of Lawyers, it appears that junior lawyers have in the training programme within the institute, for a period of 2 years, certain subjects in which they study in addition to national legislation also aspects concerning European legislation and jurisprudence. For example, in the European law module, there are 3 disciplines that address aspects such as the principles of the rule of law. At the course European law and human rights are debated topics concerning the access to justice, the right to a fair trial, the freedom of expression. Comparing the data provided by these entities with those of the National Institute of Magistracy, we can conclude that more attention is paid to the training of judges and prosecutors on the rule of law topic. The National Institute of Magistracy constantly organises seminars and other events that are meant to meet the current needs of magistrates, the initial and continuing training addressing in detail a varied range of subjects, in addition to those of judicial practice, aspects related to the field of judicial management, ethics, judgecraft, the use of digital tools, the fight against extremism, violence and harassment of journalists.

National context

In Romania, over 30.000 lawyers are registered in the bars. Currently, a number of 42 legally established bar associations exist, one in each county, the Bucharest Bar having the largest number of lawyers (over 10.000 lawyers).

The National Institute for the Training of Lawyers has competencies in the initial and continuous training in order to ensure the qualified exercise of the professional competences of lawyers. In addition to the central structure in Bucharest, the institute has 6 territorial centers in the cities of Brasov, Cluj-Napoca, Craiova, Galati, Iasi and Timisoara.

The Romanian legislation concerning the profession of lawyer consists of Law no. 51/1995 for the organisation and practice of the lawyer's profession70, the Statute of lawyers [71], the Decision no. 268/17.06.2017, whereby the National Association of the Romanian Bars approved the Code of Ethics of Romanian lawyers[72].

The independence of lawyers is necessary to ensure trust in the justice system. It is the essence of the profession of lawyer, being a fundamental principle linked to the organisation and exercise of this

[70] Law no. 51/1995 for the organization and practice of the lawyer's profession, available on https://www.unbr.ro/law-for-the-organization-and-practice-of-the-lawyers-profession-no-51-1995/
[71] Statute of lawyers, available on https://www.unbr.ro/statutul-profesiei-de-avocat/
[72] Decision no. 268/17.06.2017, available on https://www.unbr.ro/publicam-hotararea-consiliului-unbr-nr-26817-iunie-2017-prin-care-se-aproba-codul-deontologic-al-avocatului-roman-prevazut-in-anexa/

profession. According to the principle of independence, the lawyer must respect the law, the statute and the code of ethics. Lawyers must not be subjected to external pressures and interferences when exercising their profession. However, in practice there have been situations when professionals from the field of justice were subjected to pressure, an aspect that affected the independence of the profession and the justice system as a whole.

Key themes

For Romania, the key areas of the rule of law are: the justice system, the anti-corruption framework, media pluralism and other institutional issues related to checks and balances. Effective justice systems seem to be essential for upholding the rule of law. Independence, quality and efficiency constitute the defined parameters of an effective justice system, independent of the national legal system and tradition in which it is anchored.

Romania has made progress concerning the justice reform and the fight against high-level corruption, but further efforts need be made to ensure the pluralism and independence of the mass media, the need to have effective public consultations before the adoption of laws, according to the latest report on the rule of law in the European Union, published in 2022 by the European Commission[73]. Also, there is only an average level of perception regarding the independence of justice, among the general public.

As such, the fight against corruption is an essential element for ensuring the rule of law functioning in Romania, since corruption undermines the functioning of the state and of its authorities and represents a key enabler of organised crime. Effective anti-corruption frameworks, transparency and integrity in the exercise of state power can strengthen the trust in public authorities. Fighting corruption needs to be supported also by incentives that can be used to prevent, detect and sanction corruption.

It is true that Romania has a comprehensive national anti-corruption strategic framework based on the large participation of national actors, but ongoing uncertainty about amendments of the Criminal Code and Criminal Procedure Code and other laws, often throw the fight against corruption at risk. Institutional checks are at the core of the rule of law. The Criminal Code and Criminal Procedural code suffer changes too often, so the law would be unpredictable and thus not in accordance with ECHR standards and these changes are often in favour of offenders that commit financial crimes, adding difficulties to the fight against corruption.

Consequently, for an effective justice system, checks and balances rely on a transparent, accountable, and democratic process for enacting laws (laws that do not lack predictability or clarity), on the separation of powers, the constitutional and judicial review of laws, a transparent and high-quality public administration as well as effective independent authorities.

For example, through the decision of the Constitutional Court of Romania no. 297/2018[74] published in the Official Gazette of Romania at 25.06.2018 on the exception of unconstitutionality of the provisions of Article 155 paragraph 1 of the Criminal Code, the Court admitted the unconstitutionality exception invoked and found that the legislative solution which provided for interrupting the course

[73] European Commission, 2022 Rule of Law Report Country Chapter on the rule of law situation in Romania, available on https://commission.europa.eu/system/files/2022 07/52_1_194026_coun_chap_romania_en.pdf
[74] Decision no. 297 of 26 April 2018 on the plea of unconstitutionality of the provisions of Article 155(1) of the Penal Code, Of. M. no 518 of 25 June 2018

of the limitation period of criminal liability by performing "any procedural act in question", in the provisions of Art. 155 para. (1) of the Criminal Code, is unconstitutional."

However, on 09.06.2022 the Decision of the Constitutional Court of Romania no.358/2022 on the exception of unconstitutionality of the provisions of art. 155 para.1 of the Criminal Code was published in the Official Gazette of Romania and from that moment has taken effect. Through this decision, the Court admitted the exception of unconstitutionality invoked and interpreted the effect of the Decision of the Constitutional Court of Romania no. 297/2018. According to the text of the CCR decision on the interruption of the statute of limitations for criminal liability, the "special statute of limitations" has ceased to exist since the publication of CCR Decision 297/2018 because "in the absence of active intervention by the legislature, which is mandatory under Article 147 of the Constitution, during the period between the date of publication of that decision and the entry into force of a legislative act clarifying the rule, by expressly regulating the cases capable of interrupting the limitation period for criminal liability, the active substance of the legislation does not contain any case allowing the interruption of the limitation period".

Parliament's failure to legislate in this area has given rise to a non-uniform practice, which has been observed since 2019

As such, through Decision no. 358/2022 of the Constitutional Court[75], it has established that the provisions of Article 155 par. (1) of the Criminal Code are unconstitutional. The Court noted that, due to the legislator's silence, the identification of cases of interruption of the limitation period of criminal liability remained an operation carried out by the judicial body. As such, the lacking of clarity and predictability, has determined the application of the criticized provisions to similar situations in a different manner. Thus, the lack of intervention by the legislator has determined the need for the judicial body to replace it, which represents a violation of the provisions of Article 1 par. (3) and (5) of the Constitution of Romania, which establishes the rule of law nature of the Romanian state, as well as the supremacy of the Constitution.

Following the decision of the Constitutional Court of Romania no.358/2022, the legislator intervened by means of EO no.71/2022[76] published in the Official Gazette on 30.05.2022, by which the Romanian Government amended Article 155 paragraph 1 of the Criminal Code and established the following: the course of the limitation period of criminal liability is interrupted by the performance of any procedural act in the case which, according to the law, must be communicated to the suspect or defendant.

The European Commission, in the Report[77] to the European Parliament and the Council of 22.11.2022 (COM (2022) 664 final), also held that "*the lack of a legislative response to the Constitutional Court ruling on the statute of limitation has had a major impact on ongoing cases. This is particularly true in the case of corruption cases (beyond corruption cases, according to an estimate provided by the specialised prosecution office handling terrorism and organised crime, in the area handled by DIICOT (Directorate for Investigating Organized Crime and Terrorism - note of the referring court) a total of 605 ongoing cases, with a total estimated financial damage of over €1 billion, would be affected. Estimates from the General Prosecutor's office on other crimes were not available)*".

[75] Decision no. 358 of 26 May 2022 on the plea of unconstitutionality of the provisions of Article 155(2) of the Penal Code, Of. M. no 565 of 9 June 2022
[76] EMERGENCY ORDINANCE no 71 of 30 May 2022 for amending Art. 155 para. (1) of Law no. 286/2009 on the Criminal Code, published in the Of. M. no 531 of 30 May 2022
[77] COM (2022) 664 final

In terms of freedom of expression, while it is recognised by the Constitution, and access to the journalistic profession at least in theory unrestricted, most issues stem from the implementation of the legal framework. For example, some of these issues seemed to be more pressing during the COVID-19 pandemic. The state of emergency established in Romania included a series of measures in the field, derived from the general obligation of public institutions and authorities, as well as private operators to contribute to the public information campaign on the measures adopted and the activities carried out at the national level, in connection with the COVID 19 pandemic. Article 54 para. (3), (4) and (5) of Decree no. 195/2020 established the obligation of hosting service providers and content providers that, at the motivated decision of the National Authority for Administration and Regulation in Communications (ANCOM), to immediately interrupt, with informing users, the transmission in an electronic communications network or the storage of content, by its elimination at source, if that content promotes fake news about the evolution of COVID-19 and protection and prevention measures. This provision from para. (3) and (4) concerns only media platforms, not traditional media. However, para. (2) concerns traditional media outlets, but the provision is vague. The power of ANCOM to interrupt the transmission is available only for hosting service and content providers

However, neither this decree, establishing the state of emergency nor the one regarding its extension (Decree no. 240/2020[78]) mentioned the freedom of expression among the rights whose exercise is to be restricted during that period, contrary to the primary regulatory norm (The constitution and GEO 1/1999) according to which the decree establishing the state of siege or the state of emergency must provide for the fundamental rights and freedoms whose exercise is restricted [art. 14 lit. d) of the Government Emergency Ordinance no. 1/1999[79]].

In terms of pressure put on judges, one of the questions concerns the need to misapply the solutions of the national Constitutional and Supreme Court, especially in the specific national context, in which non-compliance with their decisions can trigger the disciplinary liability of the judge of the case. The issue at stake was whether to apply a decision of the CJEU or a decision of the CCR or Supreme Court of Romania by the judges from lower courts and risk a disciplinary sanction.

Consequently, in 2022, Romania changed the legislation on the status of judges, under the pressure of the European Commission and attempting to apply the decisions of the CJEU, among others, expressly repealing the disciplinary offense that concerned the non-compliance with the decisions of the Constitutional Court or the decisions issued by the High Court of Cassation and Justice in the settlement of appeals in the interest of the law. As such, according to the Minister of Justice at that time, "to provide in a law that a judge is liable to disciplinary sanction if he does not apply a (binding) decision of the CCR is equivalent to providing that a judge is liable to disciplinary sanction if he does not apply an (equally binding) legal provision or other binding source of law (a decision of the Court of Justice of the European Union or a decision of the European Court of Human Rights, for example)"[80].

The above is the normative and jurisprudential basis on which the subject was included in both the Rule of Law Report, published on 13 July 2022, which states: In view of the case law of the Constitutional Court and, in particular, the fact that failure to comply with Constitutional Court decisions constitutes a disciplinary offence under national law, a Romanian court referred a request for a preliminary ruling to the CJEU, in the context of which the Court of Justice ruled that national

[78] Decree no 195 of 16 March 2020 on the establishment of a state of emergency on the territory of Romania, Published in the Of. M. no 212 of 16 March 2020
[79] Government Emergency Ordinance no. 1/1999, published in the Of. M. no. 22 of January 21, 1999
[80]

courts must be able to examine the compatibility of national provisions with Union law, regardless of whether or not they have been declared constitutional by a decision of the national Constitutional Court. The Court also stated that European Union law precludes any national rules or practices which would render a national judge liable to disciplinary action for failure to comply with decisions of the Constitutional Court which are contrary to European Union law. In order to respond to these concerns, in the context of the legislative procedure for drafting new laws in the field of justice, it has been proposed to repeal the provision on the disciplinary offence of disregarding a decision of the Constitutional Court (pages 28-29).

Key practical challenges

Analysing the Council of Bars and Law Societies of Europe Contribution for the 2022 and the 2023 Rule of Law Reports[81] written based on the information transmitted by the bars, it results that during this period there were no cases reported which would undermine the independence of the Romanian Bars and independence of lawyers, and there were no major developments in the justice system of Romania influencing the functioning and independence of the Bars and lawyers. However, in 2021 the National Association of the Romanian Bars (NARB) has underlined a series of problems that affected the independence of lawyers in Romania, and these aspects were notified to the Council of Bars and Law Societies of Europe (CCBE). In the CCBE Contribution for the Rule of Law Report 2021[82] it is presented that the Romanian Bars have reported that lawyers have been associated with their clients leading to unjust attacks on lawyers in the performance of their professional duties. Bars informed the CCBE about the challenges concerning professional secrecy which are detrimental for the profession and for ensuring the fundamental rights of citizens. The NARB reported its concerns towards the serious violation of lawyers' rights in Romania. The NARB, through several widely publicised cases[83], has revealed practices within the criminal proceedings which violate the free exercise of the legal profession and the principles of the rule of law. These practices were referring in particular to:

- Identification of lawyers with their clients and, by extension, with the political affiliations of their clients or the crimes they are accused of (usually in the media or more often in the eyes of the prosecutor- they tend to associate the lawyer with the political orientation of the client, especially when the client is a well-known political figure or another influential person).
- Accusing lawyers for "crimes of opinion", for the legal reasoning they took into account in support of their client's interests and for actions performed within the normal exercise of the profession.
- Violation of professional secrecy by summoning lawyers to hearings as witnesses, in cases against their clients and by abusive searches of their professional premises, from where documents are taken whether those documents are related or not to the investigation.
- The violation of the principle of equality of arms using the practice that became systemic of transmitting the case file to the prosecution office in order for it to assess the possibility of formulating and motivating the appeal, in the context in which this right is not equally

[81] Council of Bars and Law Societies of Europe Contribution for the 2022 Rule of Law Report, CCBE Contribution for the 2023 Rule of Law Report, available on https://www.ccbe.eu/actions/rule-of-law/

[82] Council of Bars and Law Societies of Europe Contribution for the Rule of Law Report 2021 available on https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/ROL/RoL_Position_papers/EN_RoL_20210326_CCBE-contribution-for-the-RoL-Report-2021.pdf

[83] National Association of the Romanian Bars, UNBR considers unacceptable the repression of a criminal nature against the lawyer for the consultations and support given as a representative, 20 December 2020, available on https://www.unbr.ro/unbr-considera-inacceptabila-represiunea-de-natura-penala-asupra-avocatului-pentru-consultatiile-si-sustinerile-facute-in-calitate-de-reprezentant-discrepanta-radicala-intre-cele-doua-hotarari-judec/

recognised for the defence; also, there are no guarantees regarding the preservation of the integrity of the evidence in the file.
- Accusing lawyers who have invoked final and irrevocable court decisions in the exercise of their profession before the authorities, decisions with which the prosecutors did not agree.
- The delayed reasoning of court decisions, so that the convicted person cannot exercise the remedies provided by law within a reasonable time and are prevented from appealing in front of international courts.

Legal aid is a vital tool to ensure respect for the fundamental right of access to justice and it is of paramount importance for the protection of citizens' rights in a democratic society. In the cases provided by the law[84], the bar associations provide legal assistance in the following forms:

- In criminal cases, in which defence is mandatory according to the provisions of the Criminal Procedural Code.
- In any cases other than criminal ones, as a way of granting public judicial aid, under the conditions of the law.
- Judicial assistance through a lawyer, granted at the request of local public administration bodies.

In exceptional cases, if the rights of the person without material and financial means would be prejudiced, she/he can benefit from free legal assistance from lawyers.

Within each bar, there is a judicial assistance service department. From the data provided by the bar associations, in Romania there is no exact record of the number of lawyers who provided (free) legal assistance in cases concerning key-areas related to the rule of law. Within the legal assistance service department, there is only a record of lawyers registered according to the criteria provided in the registration form, namely criminal courts, civil and criminal cases, judicial cooperation in criminal matters, military courts.

In practice, another problem lies in the fact that specialisation is not relevant since there aren't many lawyers specialized willing to do legal aid. Furthermore, legal aid beneficiaries cannot request the lawyer of their choice.

Based on discussions, interviews with lawyers, we managed to identify the fact they do not fully know or understand actually what the RoL litigation means or implies, so that they can make use of the available instruments to protect their rights and their client rights.

Training needs

For this research, the Association Pro Refugiu sent requests for information to a total of 34 bars associations. Information was provided by Bucharest Bar, Cluj Bar, Ilfov Bar, Harghita Bar and Sibiu Bar. For the period 2021-2023, the Bucharest, Ilfov and Sibiu bar associations did not organised events dedicated to lawyers on topics related to the rule of law, the judicial system, independence of justice, the fight against corruption, pluralism and freedom of mass-media, the role of lawyers in protecting the rule of law. Between 19-20.11.2022, the Harghita Bar organised in partnership with the Brasov Bar a conference attended by 49 lawyers, the event theme being "From legal controversies to good practices between magistrates and lawyers". The event was mainly focused on aspects of national

[84] Regulation – Framework for the organisation, operation and duties of legal assistance services of bar associations, available on https://www.baroul-bucuresti.ro/stire/regulamentul-cadru-pentru-organizarea-functionarea-si-atributiile-serviciilor-de-asistenta-judiciara-ale-barourilor

legislation, but it also covered European law, with reference to the practice of the Court of Justice of the European Union and the European Court of Human Rights. The Cluj Bar states that although in the period 2021-2023 it did not organised events having as thematic the European Union law and jurisprudence, the rule of law, nevertheless, annually, in October, in partnership with the National Institute for the Training of Lawyers and in coordination with the National Association of the Romanian Bars, the European Lawyers Day is organised under the auspices of the CCBE.

Even if in report on the rule of law in the European Union, published in 2022 by the European Commission, it is underlined that there is an increase in acts of harassment and violence against Romanian journalists compared to previous years[85], there is not a sufficient training for lawyers about how they can protect the rights of journalists and other mass-media representatives, strategic lawsuits against public participation (SLAPP). Over the years there was no constant practice among the bar associations or the National Institute for the Training of Lawyers to organise trainings or other events on this topic for junior and/or senior lawyers. From publicly available information, it appears that in the spring of 2023, the Center for Independent Journalism organised three courses for lawyers who want to defend journalists, NGOs and human rights defenders in SLAPP litigation. At these trainings attended 55 lawyers from Bucharest Bar and other local bars associations. The three trainings were carried out within the PATFox project (Pioneering Anti-SLAPP Training for Freedom of Expression), co-financed by the European Commission. The trainings focused on the legislative framework in Romania and the anti-SLAPP legislative proposal at the European level, legal actions against public participation in Romania, as well as concrete recommendations for lawyers[86]..

Training needs at the introductory level

After analysing and assessing the interviews held with lawyer (from junior lawyers to experienced ones with more than 10 years of experience), we came to the conclusion that most of them do not know what the concept of rule of law is or what this concept even includes. Therefore, the first point to start with to our view, should consist in explaining what RoL is, what implies and how lawyers can contribute, what means and instruments they have to ensure the prevalence of the RoL and how to recognize when there are breaches of the rights protected by the rule of law.

Through the use of case studies, interactive exercises and experience sharing, participants will expand their rule of law knowledge and skills to be better equipped to face the challenges of effective rule of law.

Training needs at the advanced level

In terms of training needs of lawyers already engaged in RoL litigation, after analysing the interviews, the experienced lawyers, although they had knowledge what rule of law means and comprises, apart from invoking before national courts the jurisprudence of the ECHR and CJEU, they did not know how to make use of other available instruments, such as complaints before ECHR or the use of preliminary questions. So, a practical training on how litigation on RoL issues can be made use of also before European Courts, explaining them the procedure step by step.

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[85] European Commission, 2022 Rule of Law Report Country Chapter on the rule of law situation in Romania, page 23, available on https://commission.europa.eu/system/files/2022-07/52_1_194026_coun_chap_romania_en.pdf

[86] Center for Independent Journalism, The PATFox project: 55 lawyers trained to defend the press in SLAPP cases following trainings organized by the CIJ, available on https://cji.ro/patfox-traininguri-organizate-de-cji/

The training of experienced lawyers should go beyond the traditional parameters of rule of law approaches, which prioritize the role of the state, the law and technical solutions and draw upon a multitude of complementary fields of practice to offer examples of creative approaches to promoting the rule of law and effectively litigate on it. It should enable practitioners to develop an effective system for monitoring and evaluating rule of law aspects and to build upon already existing core competencies.

Training needs of trainers

The Romanian trainers must enhance their skills and become more familiar with the innovative training methodologies, E tools and E-Learning. The initial and continuous training programmes that are used by the National Institute for Training of Lawyers and the local bars do not cover the rule of law topic in a comprehensive manner. Training of trainers on EU law is not a constant practice in Romania.

Conclusions

Within the local and national courses, trainings and other events organised by the Bar Associations and the National Institute for the Training of Lawyers, a more detailed approach to the key areas of the rule of law is necessary. The aspects of European law and jurisprudence must be deepened by the Romanian lawyers, because many times the discussions tend to be mostly about national legislation and practice. Apart from events for the training of lawyers, there should be implemented a continuous training of them by the Institute for the preparation and perfecting of lawyers. Although the subject of RoL is tackled tangentially during the classes of European Human Rights and EU law at the Institute, it is done only superficially. It is of utmost importance to be familiar with the European jurisprudence and to use it as an instrument in RoL litigation since national courts ensure that the rights and obligations provided under EU law are enforced effectively. As re-affirmed by the CJEU, the very existence of effective judicial review to ensure compliance with EU law is of the essence for the rule of law. Furthermore, the case-law of the European Court of Human Rights also provides for key standards to be respected to safeguard judicial independence.

It should become a constant practice to organise trainings for lawyers on the subject of strategic lawsuits against public participation (SLAPP). Currently, this is not done by the bar associations or the National Institute for the Training of Lawyers. Initial and continuous training programmes and courses on this topic must be developed at national level, because it is not enough to implement only sporadic events. SLAPP are a growing threat to freedom of expression across the European Union. And Romania is not an exception.

Greater attention should be paid to the training of trainers. All trainers need to be constantly up-to-date with the recent novelties in the field of EU law and the jurisprudence of the European courts. All trainers should be willing to follow training themselves and to constantly share good practices with their peers in terms of planning, delivery and evaluation of judicial training for lawyers.

3. Conclusions and training suggestions

In order to address the identified common problems in an effective and practical way, it is important to focus on the possibilities and opportunities offered by EU law, both substantive and procedural, to help lawyers in the Consortium countries to overcome institutional and practical barriers in their national frameworks. Motivating lawyers to make full use of EU law and strengthening their European identity is expected to have the dual effect of (a) creating a cascade effect for the improvement of the rule of law in the Consortium countries through a critical mass of lawyers acting as change agents; and (b) improving mutual trust and judicial cooperation through a more coherent and effective application of EU norms and standards.

Common training themes

The LighT research identified a number of gaps in knowledge and skills that are common to both less experienced and more experienced lawyers. These should form the core of both induction and training activities. These include

- Procedure before the European Courts (with an emphasis on the preliminary ruling procedure and the relevant arguments before national courts);
- General principles of EU law, in particular the direct effect and effective application of EU law;
- EU primary and secondary legislation relevant to the RoL, in particular the Charter of Fundamental Rights and its scope, as well as substantive provisions relevant to the topics covered;
- Updated European case law;
- SLAPPs, including the draft SLAPP Directive, to clarify key concepts and scope; and
- Procedural rights as set out in the Roadmap Directives;
- Client management and communication.

Advanced training

Training should focus on equipping activist lawyers and HRDs with the necessary skills to pursue their strategic activities in a hostile environment. To this end, in addition to the above, their training should emphasise non-legal skills and provide alternatives for effective action. Possible topics should include

- Inter- and intra-professional networking and collaboration;
- Advocacy and public participation, including consultation in the law-making process;
- Ways of challenging non-enforcement of European judgments;
- Soft law, strategic approaches and RoL assessment tools and indicators;
- Alternative EU procedures that can trigger EU action in relation to a specific MS (e.g., state aid mechanisms);
- Representation - working within and with bars to promote the RoL.

Introductory training

Introductory training should focus on providing lawyers who do not have a particular specialisation in rule of law issues with the knowledge and skills necessary to advocate effectively for their clients. The common themes identified above should be addressed with a level of detail appropriate to the level of knowledge found. Emphasis should be placed on:

- The concept of the rule of law, its relevance to legal practice and its specific components;
- Key lines of argumentation in RoL cases;

- EU law resources, tools and materials (including FRA tools and e-resources, EU portals and relevant resources produced by the Council of Europe, in particular through HELP).

Training of trainers

Our research shows that there is a significant shortage of legal trainers who have been systematically trained to deliver professional training to lawyers on the rule of law as a distinct topic. The train-the-trainer seminars organised under LighT should aim to involve participants with a high level of awareness and sensitivity to the relevant issues, and equip them with the necessary skills to deliver effective training to their peers.

Training methodology

The training methods used should favour practice over theory in a proportion appropriate to the level of knowledge and skills of the participants. Participation of trainees based on the workshop model is considered particularly appropriate for the advanced and ToT workshops in order to promote the exchange of knowledge and experience. Problem-based approaches should lead to solutions, taking advantage of the transnational elements of the project. Interactive, experience-based exercises should be preferred to lectures and overly theoretical presentations. Real case studies based on completed cases have been identified as a particularly interesting method to stimulate discussion while providing useful information on current jurisprudence.

Some examples of how the sharing of experiences can generate solutions and increase the morale and motivation of participants from the LighT research include:

- Hungary - Overcoming the "floodgate effect": Discuss strategies used in Hungary to overcome the "floodgate effect" in the application of EU law, particularly in the area of asylum. Sharing insights into successful arguments based on EU law.
- Poland - Increasing references to preliminary rulings: Explore how Poland achieved an increase in references for preliminary rulings in a challenging judicial environment. Exchange tactics and best practices.
- Poland - Motivating Bar Associations: Discuss approaches to motivate and engage bars in the fight for the rule of law, using the example of the active Warsaw bars. Share successful strategies to encourage active participation.