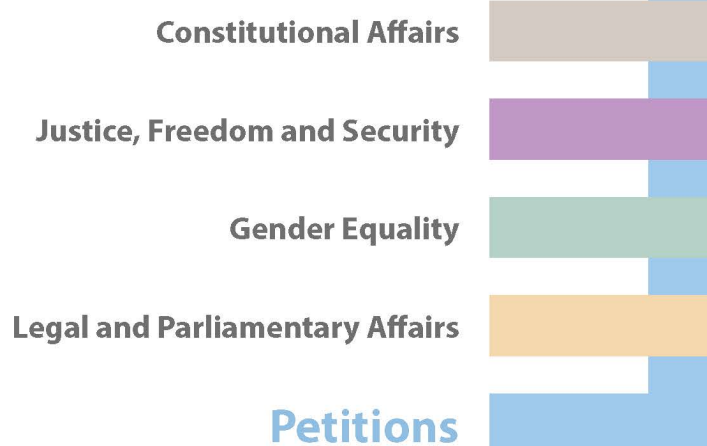


DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT **C**

CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS



EFFECTIVE ACCESS TO JUSTICE

STUDY FOR THE PETI COMMITTEE



DIRECTORATE GENERAL FOR INTERNAL POLICIES
POLICY DEPARTMENT C: CITIZENS' RIGHTS AND
CONSTITUTIONAL AFFAIRS

EFFECTIVE ACCESS TO JUSTICE

STUDY

Abstract

This study, commissioned by the European Parliament Policy Department for Citizens' Rights and Constitutional Affairs upon request by PETI Committee, aims to identify and understand the issues affecting effective access to justice raised by the EU citizens and residents in some Member States with the main aim to frame the analysis and obtain a fair representation of recurring issues pertaining to access to justice across the EU.

It seeks to understand why citizens have turned to the EU institutions to seek access to justice, and looks at a large range of factors, including legal and procedural issues as well as practical, social, historical and political factors that underpin the issues raised in these petitions.

More broadly, the study intends to assess the relevance of the petitions system to address access to justice issues experienced by citizens at national level.

This study was requested by the European Parliament's Committee on Petitions and was commissioned, overseen and published by the Policy Department for Citizens' Rights and Constitutional Affairs.

Policy departments provide independent expertise, both in-house and externally, to support European Parliament committees and other parliamentary bodies in shaping legislation and exercising democratic scrutiny over EU external and internal policies.

To contact the Policy Department for Citizens' Rights and Constitutional Affairs, or to subscribe to its newsletter, please write to: poldep-citizens@europarl.europa.eu

AUTHORS

Ms Nathy Rass-Masson (Milieu)
Ms Virginie Rouas (Milieu)

RESPONSIBLE ADMINISTRATOR

Martina Schonard
Policy Department C: Citizens' Rights and Constitutional Affairs
European Parliament
B-1047 Brussels
E-mail: poldep-citizens@europarl.europa.eu

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LIST OF ABBREVIATIONS

ACA-Europe	Association of the Councils of State and Supreme Administrative Jurisdictions of the EU
ADR	Alternative Dispute Resolution
CCBE	Council of Bars and Law Societies of Europe
CEPEJ	Commission Européenne pour l'Efficacité de la Justice/ European Commission for the Efficiency of Justice
CGAE	Consejo General de la Abogacía Española
CJEU	Court of Justice of the European Union
CVM	Cooperation and Verification Mechanism
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EFTA	European Free Trade Association
EJTN	European Judicial Training Network
ENCJ	European Network of Councils for the Judiciary
EP	European Parliament
ESIF	European Structural and Investment Funds
EU	European Union
EUR	Euro
FRA	Fundamental Rights Agency
ICT	Information and Communication Technologies
NGO	Non-Governmental Organisation
NPSJC	Network of the Presidents of the Supreme Judicial Courts of the EU
ODR	Online Dispute Resolution

PETI	European Parliament Committee on Petitions
SRSP	Structural Reform Support Programme
TFEU	Treaty on the Functioning of the European Union
US	United States
VAT	Value Added Tax

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EXECUTIVE SUMMARY

Pursuant to Article 227 of the Treaty on the Functioning of the European Union (TFEU), every citizen and resident of the European Union (EU) has the right to submit a petition to the European Parliament (EP), in the form of a complaint or request on any issue that falls within the European Union's fields of activity.

In recent years, a large number of citizens have turned to the European Parliament Committee on Petitions (PETI) on matters relating to justice and fundamental rights. This research paper analyses the issues affecting effective access to justice where such issues have been raised by petitioners with a focus on case studies in Croatia, Greece, Italy, Latvia, Poland, Romania, Spain and Slovakia.

The Study aims to identify and understand the issues affecting effective access to justice raised by the EU citizens and residents in some Member States with the aim to frame the analysis and obtain a fair representation of recurring issues pertaining to access to justice across the EU.

It seeks to understand why citizens have turned to the EU institutions to seek access to justice, and looks at a large range of factors, including legal and procedural issues as well as practical, social, historical and political factors that underpin the issues raised in these petitions.

More broadly, the study intends to assess the relevance of the petitions system to address access to justice issues experienced by citizens at national level. On several occasions, petitioners have raised systemic challenges affecting access to justice in their country. This paper aims to assess the use of petitions in the context of access to justice, and to identify the other mechanisms and tools available to the EU institutions to improve access to justice for EU citizens.

Objectives

The research has two main objectives:

- To understand why citizens have turned to the EU institutions to seek access to justice. The study looks at a large range of issues and factors, including legal and procedural issues, together with the practical, social, historical and political factors underlying the issues raised in the petitions from these Member States.
- More broadly, it aims to assess the use of petitions in the context of access to justice, and to identify the other mechanisms and tools available to the EU institutions to improve access to justice for EU citizens.

Methodology

The research paper is based on an analysis carried out in three main phases:

- **Phase 1** consisted of defining the scope of the research, leading to the identification and categorisation of issues relevant to the analysis, and the selection of petitions for in-depth research.
- **Phase 2** consisted of conducting research at both national and EU level to analyse the issues raised in petitions and the factors underpinning those issues in each of the countries studied, as well as the tools available to EU institutions in the field of justice.

- In **Phase 3**, the data were analysed and the research paper drafted.

Results of the analysis of petitions in the Member States studied

Three key components of the concept of access to justice were included in the petitions covered under this study: effective access to justice, costs of justice and legal assistance, and access to a fair trial and enforcement of judgments.

Effective access to court

Effective access to court requires that litigants should be able to institute proceedings before a dispute resolution body. Based on the petitions analysed for this research paper, three main issues impeded effective access to court:

- organisation of the national judicial system;
- legal and procedural obstacles; and
- practical obstacles.

The way in which the **national judicial system** is organised may have direct and indirect repercussions for access to justice. In some petitions, certain aspects of the organisation of the judiciary raised concerns about the ability of citizens to access the courts. For instance, judges on temporary employment contracts in Italy and Spain have used petitions to complain that their employment conditions are precarious. Similarly, several petitioners complained about their inability to appeal first instance judgments or rulings in criminal proceedings in Croatia and Greece.

The number of petitions referring to **legal and procedural obstacles** impeding access to court was relatively small compared with other issues. One petitioner complained about the requirement for a Polish postal address in order to be served court documents in Poland. In Spain, specific national rules on mortgage law limited the ability of homeowners to object to the enforcement of mortgage-related evictions in the context of the economic crisis.

Several petitions raised concerns about the existence of **practical obstacles impeding access to court**. Obstacles may include the lack of availability of courts in some isolated regions (e.g. Italy), or access to proper translation and interpretation in civil and family law proceedings (e.g. Spain). In several petitions, citizens complained about the court's refusal to allow the use of qualified electronic signatures in correspondence with the judiciary in Poland.

Costs of justice and legal assistance

High or disproportionate legal costs, or the absence of legal aid mechanisms, may discourage citizens from bringing a claim before a court, thus impeding effective access to justice. The availability and quality of legal assistance at national level are also likely to affect effective access to justice. Based on the petitions analysed here, three main issues impede effective access to justice:

- Costs of justice;
- Rules governing legal aid; and
- Other issues affecting access to proper legal assistance.

Petitioners were concerned with the **costs of justice** in most of the Member States studied. In Spain, they complained about the reintroduction of court fees to lodge a complaint in civil and administrative proceedings. Petitioners in Greece pointed to excessively high stamp duty for small claims. Costs of justice, coupled with inadequate access to legal aid mechanisms, may impede citizens' ability to gain access to justice, particularly disadvantaged people, in view of the recent economic crisis.

Access to legal aid mechanisms remains a major concern in most of EU citizens in the Member States studied. For example, petitioners complained about the lack of compliance with Directive 2002/8/EC on legal aid in cross-border disputes in Greece, while, in Spain, rules governing access to court-appointed lawyers have also been challenged.

Effective access to justice implies access to proper **legal assistance**. However, the working conditions of lawyers may impede the quality of the services they provide to citizens. In Greece, the recent adoption of new tax legislation in the context of austerity measures has led to a nine-month lawyer strike during which plaintiffs and citizens had limited access to legal representation and counsel. In Spain, the implementation of Directive 2006/123/EC on services in the internal market has raised concerns about its impact on the justice sector and the financial security of legal professionals.

Access to fair trial and enforcement of judgments

Access to fair trial is a key component guaranteeing effective access to justice. Everyone should be entitled to a fair and public hearing by an independent and impartial tribunal established by law. Justice should be administered without delay, as it may otherwise jeopardise its effectiveness and credibility. Failure to enforce judgments, or their delay, also constitutes an obstacle to access to justice. Based on the petitions analysed here, the following issues are likely to have an impact on effective access to justice:

- Procedural guarantees;
- Length of proceedings; and
- Enforcement of judgments.

Petitioners complained about violations of **procedural guarantees** and the lack of independence and impartiality of judges in most of the Member States studied. Corruption in the judiciary remains an important concern for many citizens. A considerable number of petitions in Romania related to alleged corruption in the judiciary and the lack of independence and impartiality of judges. However, on several occasions, petitioners alleged irregularities in the conduct of judicial proceedings and the unfairness of the justice system in respect of complaints about the outcomes of specific court rulings. The validity of these alleged violations of procedural guarantees was therefore uncertain.

'Justice delayed is justice denied' applies in many of the Member States studied. Citizens have complained about **lengthy proceedings** in a high number of petitions. In Croatia, Italy, Romania and Spain, the issue of excessive duration of legal proceedings is well-known. In Slovakia, too, petitioners complained about lengthy duration of proceedings in international child custody disputes.

Despite the existence of EU rules on the matter, **enforcement of judgments** remains a key concern for citizens in more than half of the Member States studied here. Petitioners complained about the lack of enforcement, or delayed enforcement, of judgments from national courts, the CJEU and the ECtHR.

General assessment of the issues raised in the countries

Overall, analysis of the issues raised in the petitions shows that the problems raised by petitioners are usually an accurate reflection of key issues more widely acknowledged as impeding access to justice in those countries. These issues also reflect how access to justice has been affected by the wider historical, social, economic or political context specific to these countries.

For instance, post-communist countries have undergone constant reforms of their justice systems in the past 30 years, not least on accession to the EU. These changes have required many adaptations of the judiciary, including cultural, which have in some cases created difficulties in the application of key principles of access to justice. Historically, these countries have been particularly affected by corruption of the judiciary, resulting in the denial of procedural guarantees in many cases.

Older Member States especially, have seen their judiciary affected by the economic crisis. This may explain the higher number of petitions in these countries. The financial crisis had two significant consequences for access to justice: firstly, Member States have adopted reforms to cut expenditure in the judiciary. This resulted in cuts in budgets, personnel and numbers of courts, increasing the backlog of cases; secondly, citizens have been directly affected by the crisis, in contradictory ways. On the one hand, it increased the difficulties associated with affording costs of justice (sometimes also increased as a result of reforms), increasing reluctance to bring cases to court. On the other hand, the crisis itself increased the numbers of cases brought, e.g. foreclosure cases in Spain, thereby increasing the backlog.

EU tools available to improve access to justice in the Member States

Several tools based on the TFEU are available to the European institutions to address issues experienced in relation to access to justice in the Member States. These tools either allow national stakeholders (citizens, through petitions, or courts, through references to preliminary rulings) to trigger the intervention of the EU institutions so as to improve access to justice, or are used directly by the EU institutions, on their own initiative (adoption of legislation, initiation of programmes and other mechanisms).

Petitions

Petitions are one of the tools available to the EU institutions (in this case, the EP) to intervene at national level to improve access to justice for EU citizens.

In the context of access to justice, petitions analysed here were used in two main circumstances: as a complementary tool to the domestic means of obtaining justice; and to seek enforcement of EU rules at national level.

In some of the countries with high numbers of petitions relating to justice, citizens resorted to petitions as an **alternative mechanism** to seek redress, bypassing the national judiciary, either because of excessive barriers to accessing national courts, or because of lack of trust in the national judiciary system. Another explanation for the high number of petitions was the lack of understanding and knowledge of the level at which cases could be resolved, i.e. whether national or European level. In other countries, petitions were mainly used as a **complementary tool**, in combination with judicial proceedings before the national courts or before the European courts (CJEU and ECtHR).

In many cases, petitions were used as a means of **enforcing rights granted by EU rules**, and ensuring compliance with EU legislation and jurisprudence. The petitions analysed show that petitioners used this mechanism to inform the EP of the lack of compliance with EU law pertaining to justice by national administrations and courts. It is in this latter situation that the EP plays the most meaningful role, with petitions being largely admissible and actionable, either by requesting information from the Commission, or by contacting the Member State's competent authorities directly.

References for a preliminary ruling

Another tool available to the EU institutions (here, the CJEU) to improve access to justice for EU citizens at national level is the reference for a preliminary ruling. Pursuant to Article 267 of the TFEU, the reference for a preliminary ruling procedure enables national courts to question the CJEU on the interpretation and validity of EU law. The reference for a preliminary ruling therefore creates a dialogue between national courts and the CJEU.

References for a preliminary ruling are a useful tool available to national judicial systems to ensure that EU legislation is properly implemented in Member States. Preliminary rulings ensure the **uniform interpretation of EU law** throughout the Union, while their binding nature safeguards the **effective application** of EU law. In addition, preliminary rulings encourage **national legal reforms** to comply with EU law. Concrete examples of such reforms are presented in Section 5.2.2 of the report.

By being able to request references for a preliminary ruling before their national courts, citizens may be able to **draw the CJEU's attention to national application or judicial interpretation of EU law in the field of justice** which they believe impedes effective access to justice.

Despite increasing acceptance and support from national courts, this procedure is **infrequently used** by some Member States. There is also considerable variation among the Member States as to the number of times their courts have used references for a preliminary ruling. Data show that this discrepancy cannot be explained by the size of the country or the number of courts in each Member State. Other reasons can nevertheless explain why some national courts do not use the reference for preliminary ruling mechanism:

- A **lack of knowledge and understanding** of the functioning of the reference for preliminary ruling (and for instance of the admissibility criteria) may explain the reluctance of certain judges to resort to the mechanism.
- The length of the procedure of preliminary ruling **has an impact on the length of national proceedings**. The excessive length of proceedings has been identified by several actors, including the CJEU itself, as a recurring issue in recent years. Petitions have also revealed the impact of references for a preliminary ruling on the duration of national proceedings. References for preliminary ruling also imply a greater time investment from national judges (e.g. for the formulation of the question). This may act as a deterrent to use the mechanism for national judges, who often have to deal with an important backlog of cases.
- The use of reference for preliminary ruling can also vary greatly depending on each **jurisdiction**, and each **courts' practice**.

Other instruments

In addition to the mechanisms provided by the TFEU enabling citizens to trigger the involvement of EU institutions in case of difficulties accessing justice in their country, the EU institutions can act on their own initiative. Such actions are based on the **shared competence** between the Union and the Member States in the area of freedom, security and justice provided by Article 4(2)(j) of the TFEU.

On that basis, the EU has adopted certain **legal instruments**. In the area of **civil law**, on the basis of Article 81(2) TFEU, the EU has already enacted a number of legal measures to improve access to civil justice for citizens, such as; Directive 2002/8/EC on minimum common rules relating to legal aid; Regulation No (EC) 861/2007 on the creation of the European small claims procedure; Directive 2008/52/EC on mediation in civil and commercial matters; and Directive 2013/11/EU on alternative dispute resolution for consumer disputes. In the area of **criminal law**, on the basis of Article 82(2) TFEU, the EU has also enacted a number of directives to guarantee the rights of individuals in criminal proceedings and victims of crime, or governing specific aspects of criminal proceedings: Directive 2010/64/EU on interpretation and translation in criminal proceedings; Directive 2012/29/EU on the rights of victims; Directive 2012/13/EU on the right to information; Directive 2013/48/EU on access to a lawyer; and Directive 2016/34 on the presumption of innocence.

EU institutions also implement **programmes and other initiatives** that impact access to justice.

Structural reforms may improve access to justice in the long-term, especially in countries where the administration is inefficient, corruption seems to be a recurring problem, or in countries going through an economic or political crisis. The EU institutions have been active in promoting and supporting structural reforms through various mechanisms such as the **Structural Reform Support Programme**, the **Cooperation and Verification Mechanism**, the **European Structural and Investment Funds** and the **European Semester**.

Other initiatives based on the competences provided in the Treaty are:

- Initiatives in training and capacity building, including support for **networks** of courts and legal practitioners. This is in line with the EU objective to ensure that half of all national legal practitioners will have participated in training on EU law by 2020 (e.g. the European Judicial Training Network, EJTN).
- **Websites and portals** to raise awareness of legal rights and access to justice (e.g. Europe Direct, Your Europe, Your Europe Advice, or the European eJustice Portal).
- Provision of **ad-hoc funding** (e.g. Justice Programme).
- Development of various **platforms** to promote the resolution of disputes through alternative dispute resolution (ADR) mechanisms (e.g. ODR Platform, SOLVIT).

1. INTRODUCTION

1.1. Context and objective of the study

Pursuant to Article 227 of the Treaty on the Functioning of the European Union (TFEU), every citizen and resident of the European Union (EU) has the right to submit a petition to the European Parliament (EP), in the form of a complaint or a request on an issue that falls within the EU's fields of activity¹. The right of petition has been described by the European Court of Justice (CJEU) as 'an instrument of citizen participation in the democratic life of the European Union. It is one of the means of ensuring direct dialogue between citizens of the European Union and their representatives'². Petitions are examined by the EP's Committee on Petitions (PETI Committee), which decides on their admissibility and takes action to deal with them, where appropriate³.

In recent years, a large number of citizens have turned to the PETI Committee on matters relating to justice and fundamental rights. In 2014, justice was the subject most frequently raised by petitioners, representing 8.3% of the petitions submitted⁴. Similarly, in 2015, justice represented 7.5% of petitions and was the second highest area of petitioners' concern⁵. Petitions may testify to certain issues in the national judicial systems, even more so in countries where the number of petitions in relation to access to justice is higher than average⁶.

This research paper aims to identify and understand the issues affecting effective access to justice raised by petitioners in specific Member States. The study focuses on eight Member States serving as case studies: Croatia, Greece, Italy, Latvia, Poland, Romania, Spain and Slovakia. These countries were selected by the EP for several reasons⁷, but with the main aim to frame the analysis and obtain a fair representation of recurring issues pertaining to access to justice across the EU. This research paper seeks to understand why citizens have turned to the EU institutions to seek access to justice, and looks at a large range of factors, including legal and procedural issues as well as practical, social, historical and political factors that underpin the issues raised in these petitions.

More broadly, the study intends to assess the relevance of the petitions system to address access to justice issues experienced by citizens at national level. This study takes into account closed, admissible and inadmissible petitions. It shows the number of petitions complaining about access to justice which do not meet the admissibility criteria and are subsequently declared inadmissible by the PETI Committee. As this paper demonstrated, petitions are often declared inadmissible on procedural grounds. Inadmissible petitioners may nonetheless raise legitimate issues pertaining to access to justice, which deserve to be considered. On several

¹ See also Article 20 of the TFEU and Article 44 of the EU Charter, which provide that any EU citizen or resident has the right to petition the EP.

² C-261/13 P *Schönberger v Parliament*, Judgment of the Court (Grand Chamber), 9 December 2014 ECLI:EU:C:2014:2423 § 17.

³ The right of petition, http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU_2.1.4.html

⁴ Report on the activities of the Committee on Petitions 2014 (2014/2218(INI), p. 20, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A8-2015-0361+0+DOC+PDF+V0//EN>

⁵ Report on the activities of the Committee on Petitions 2015 (2016/2146 (INI), p. 18 <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A8-2016-0366+0+DOC+XML+V0//EN>

⁶ For example, in the context of this study it was observed that citizens from Romania and Spain submitted an increasing number of petitions dealing with justice issues in recent years.

⁷ First, a pattern of complaints concerning access to justice was identified in some of these countries over the last years. Therefore, it appeared necessary to identify and analyse the reasons leading to these complaints. Second, countries were selected in a manner aimed to ensure a balanced geographical representation. Third, the study focuses on countries in which access to justice issues exist which have not been necessarily addressed by the EP.

occasions, petitioners have also raised systemic challenges affecting access to justice in their country. This paper aims to assess the use of petitions in the context of access to justice, and to identify the other mechanisms and tools available to the EU institutions to improve access to justice for EU citizens.

1.2. Content of the paper

Section 2 of this paper presents the **methodology** used to carry out the analysis. It includes an explanation of the different phases of research, as well as the sources of information, and describes the challenges faced in the execution of the project.

Section 3 presents the **scope** of the analysis, i.e. the definition of effective access to justice, and the identification of the key components of that concept, as well as the resulting categorisation of issues affecting access to justice on which the analysis is structured.

Section 4 provides the **core analysis of the petitions** relevant for this research. It assesses the situation in the eight Member States on the basis of the issues identified in the petitions. The analysis is organised according to the key components and categories of issues determined in Section 3.

Section 5 analyses the **tools** provided in the Treaties that are available to the EU institutions to improve access to justice in the Member States. This includes tools available to national stakeholders (citizens or courts) to trigger the intervention of the EU institutions so as to improve access to justice, but also instruments that can be used directly by the EU institutions on their own initiative.

Finally, **Section 6** presents the **conclusions**, including recommendations on possible improvements, both at national level and on the part of the EU, to improve access to justice in the countries studied, as well as the next steps for the project.

2. METHODOLOGY AND CHALLENGES

This research paper is based on a three-phase analysis:

- **Phase 1** defined the scope of the research and resulted in the identification and categorisation of issues relevant for the analysis, and in the selection of petitions for in-depth research.
- **Phase 2** consisted of conducting research at both national and EU level to analyse the issues raised in petitions and the factors underlying those issues in each of the countries studied, together with the tools available to EU institutions in the area of justice.
- In **Phase 3**, the data were analysed and the research paper drafted.

Each phase is described in more detail below, together with the challenges experienced in completing this interim stage.

2.1. Phase 1: Defining the scope of research

Phase 1 defined the scope of this research by identifying and analysing petitions where citizens had raised issues in respect of access to justice in the eight Member States studied.

Step 1: Identification of petitions

Petitions received by the EP are published, in summary form, on the European Parliament Petitions Portal⁸. Under the guidance of the project management team, national experts in each of the eight Member States identified petitions relevant to access to justice at national level. The portal permits search of petitions⁹, and national experts therefore searched for relevant petitions, filtered by keyword, year, theme, admissibility status and Member State. Petitions can also be found by entering their reference numbers as the keyword. Petitions were all submitted since from 2013, as earlier petitions are not available on the PETI database. Key words searched included 'justice', 'court proceedings' and 'remedy'. The search was conducted for all available themes of EU competence and all petition statuses.

Moreover, the project management team identified petitions relevant to access to justice registered in the 'List 3' which is described in more detail in the section 5.1.2.1. The research was done based on documents provided by the EP to the project management team. These documents contained the List 3 of petitions which are considered to be potentially non-compliant with the provisions of Article 227 of the TFEU. The documents dated from November 2014 until September 2017. The project management team searched for relevant petitions based on keywords, including 'court proceedings', 'dispute' or 'justice'. The search was conducted for all available themes of EU competence.

Inadmissible petitions were included in the scope of the research, since, in the context of this study, the authors found that inadmissible petitions often highlighted legitimate concerns of citizens regarding access to justice in their countries. On several occasions, it was found that these issues led to systemic challenges pertaining to access to justice. Since this paper focuses on effective access to justice, these petitions were therefore included, as they provide information valuable for this study. The status and the process of declaring petitions admissible or inadmissible is elaborated more extensively in the section 5.1.2.1.

⁸ European Parliament, Petitions, <https://petiport.secure.europarl.europa.eu/petitions/en/show-petitions>

⁹ <https://petiport.secure.europarl.europa.eu/petitions/en/show-petitions>

Step 2: Inventory and categorisation of petitions identified

All petitions identified were inventoried in an Excel document¹⁰, and categorised. To ensure consistency and comparability between the countries studied, the project management team produced an initial list of generic issues and/or aspects potentially impacting the ability of citizens to access justice, and this was used to categorise the petitions identified.

One challenge was to ensure that the identification and categorisation process did not neglect the particularities of each country, in particular the historical, legal, social, political and economic factors which may have influenced the state of justice. The initial list of issues was drafted broadly, to give flexibility to the national experts and ensure that individual relevant issues were not omitted. National experts were also asked to pay attention to country-specific problems which may not exist in other countries.

Another challenge was related to the nature of the issue at stake. Involvement in judicial proceedings often affects people's personal lives and it is sometimes difficult for persons seeking redress to distinguish personal issues from legal issues. In many cases, petitions referred to personal difficulties (or even distress) experienced with the national justice system, but did not sufficiently explain the concrete issues they experienced, nor did they express a specific grievance (other than their discontent with a judgment not in their favour). It was difficult to identify petitions in which citizens' personal issues indirectly raised problems affecting access justice at national level. Where such petitions appeared to mask an underlying issue relevant to this analysis, they were taken into account in the inventory. National experts thus paid attention to both visible and subtle justice-specific issues raised in the petitions.

Step 3: Selection of petitions for in-depth analysis

Having identified an initial list of potentially relevant petitions, these were then systematically reviewed by the project management team. This allowed the project management team to refine the categories and corresponding issues relevant to access to justice across all eight Member States studied, as well as to select petitions for further analysis.

Petitions were selected for in-depth analysis where they raised issues pertaining to any of three main categories corresponding to the concept of 'effective access to justice' (as defined in Section 3.1 below), i.e. effective access to court, costs of justice and legal assistance, and access to fair trial and enforcement of judgments (Section 3.2). A fourth category on the application of EU law relevant to the field of justice was also added to understand how petitions were used as a mechanism to improve access to justice at EU level (Section 5.1).

Some petitions were selected because citizens referred to historical, social, economic and political factors that had impacted on the justice system, e.g. the petitions referring to the lawyer strike which took place in Greece in 2016 following the adoption of austerity measures¹¹. These petitions were important to understand the context in which justice systems operate in Member States, and the impact of non-legal factors on the accessibility of these justice systems.

The selection of petitions for in-depth analysis represented a key challenge. Frequently, the information available in the summaries of petitions on the EU petitions portal was

¹⁰ Provided as a separate document.

¹¹ See Petition No. 0663/2016.

insufficiently clear to assess their relevance. Likewise, List 3 provides only very limited information¹². Some of the petitions were made available in full by the EP, which, in some cases, helped the assessment. However, in spite of the initially high number of petitions inventoried as potentially relevant to the theme of justice under Step 1, a considerable number were disregarded, as they did not provide enough elements to understand the problems raised, or to assess the relevance of the claims. Only petitions that enabled the identification of specific issues pertaining to access to justice in the countries studied were included in the scope of the in-depth analysis presented in Section 3 below. The list of these petitions is provided in Annex I to this report.

Phase 1 had two main outputs:

- A list of petitions selected for in-depth analysis; and
- A detailed categorisation of specific issues affecting access to justice in the eight Member States studied.

Together, these provide the basis for the core analysis presented in Section 4.

2.2. Phase 2: Conducting national and EU research

Phase 2 aimed to understand the issues impeding effective access to justice for EU citizens in the eight Member States studied, and to identify the tools and mechanisms (stemming from the Lisbon Treaty) available to the EU institutions to address these issues. Research was implemented in parallel at national and EU level.

National analysis

The purpose of the national research was threefold:

- Corroborate whether the issues raised in the selected petitions occurred in the Member States studied;
- Gain a better understanding of these issues and identify the relevant factors which contributed to their existence;
- Obtain information on best practices or suggestions for potential improvements at both national and European level.

The national experts gathered information through desk research and interviews. Firstly, they collected and reviewed existing **literature** focusing on access to justice in their Member States, based on sources identified in conjunction with the project management team. They reviewed various sources, including academic publications and articles, government reports, EU institutions and agencies, NGOs, statistics, and journal articles. The desk research allowed the national experts to confirm whether or not the issues raised in the petitions were systemic problems occurring at national level, to obtain more contextual information about these issues, and to determine areas where information was missing or incomplete. National experts were also asked to provide information on references to EU law in petitions and the

¹² The List 3, for the most part, only provides the title of petitions. Titles generally provided little information on the extent of the problems raised by petitioners. Sometimes, the title did not indicate the relevant Member State which was the object of the petition. This laconism created some challenges for the research team when assessing the relevance of the petitions for this study. Examples of titles, which potentially raised an issue relevant to access to justice, but did not provide sufficient information to be covered in this research, included Petition No. 0140-16 'Petition on procedures applied by the judicial bodies in Poland in the context of a civil trial', or Petition No. 0610-17 'Petition on compliance with a court judgment on property'.

use of references for preliminary ruling by national courts. Secondly, the national experts conducted between one and four interviews with relevant national actors in the justice system (see Annex III to this report). The interviews complemented the desk research by filling in information gaps and obtaining information on concrete obstacles impeding access to justice, including suggestions for improvement. Five types of stakeholders were interviewed: legal practitioners (i.e. lawyers, bar associations); members of the judiciary (i.e. judges and their trade unions); NGOs specialised in access to justice, the rule of law and corruption; academics; and in some cases officials from Ministry of Justice.

On completion of the desk research and interviews, each national expert provided an analysis, which was incorporated in the research paper.

EU analysis

In parallel with the national research, the project management team undertook EU research in order to:

- Define the concept of 'effective access to justice', especially through the prism of the petitions identified during phase 1; and
- Identify the tools and mechanisms (stemming from the Lisbon Treaty) which give competence to the EU institutions to improve access to justice at national level.

The project management team first reviewed the relevant literature on the concept of effective access to justice. They then analysed EU competence in justice, under both the TFEU and the current activities of the EU institutions, which directly or indirectly impact access to justice at national level. Specific aspects were analysed, such as citizens' use of petitions to the EP, references to EU law in petitions, and the national use of references for preliminary rulings. This desk research covered various sources, including EU and regional legal instruments, academic sources, documents from EU institutions and agencies, such as the European Commission or the EU Fundamental Rights Agency (FRA), CJEU case law, NGO reports, etc. An interview with DG Justice of the European Commission also provided relevant information on the current activities of the EU institutions to improve access to justice, especially in relation to initiatives and programmes presented in Section 5.3.2.

2.3. Phase 3: Analysing data and reporting conclusions

Phase 3 analysed the data collected during phases 1 and 2, and synthesised these data into a single coherent report. The project management team first carried out an overall analysis of the findings of the national research. The analysis focused on the key obstacles to access to justice in the Member States studied (Section 4) and the interplay between the EU and access to justice at national level through tools available to the EU institutions, including petitions and references for preliminary ruling (Section 5). The results of this analysis are presented as part of this report.

3. SCOPE OF ANALYSIS

The scope of the present research encompasses a number of elements. Firstly, it is defined based on theory, and on the understanding of the concept of effectiveness of access to justice as shaped by literature, legal acts and case law both at EU level and in the Member States (Section 3.1). It is also defined in relation to the specific issues raised in petitions, which can be grouped into various categories (Section 3.2).

3.1. Definition of the concept of effective access to justice

The concepts of 'rule of law' and 'effective access to justice' are two interlinked preconditions for a 'functioning democracy'¹³. The rule of law, 'one of the constitutive, foundational values of the European Union'¹⁴, mainly refers to 'the existence of laws and rules governing how society should function'¹⁵. One of the most important conditions for the 'establishment of the rule of law' is effective access to justice¹⁶, which 'concerns the ability of ordinary citizens to avail themselves of the instruments of the law, in a word the system of justice'¹⁷. Having full access to justice results in a positive connection between citizens and the justice system, mirrored in the 'respect for the rule of law and confidence in the justice system'¹⁸. Importantly, access to justice cuts across civil, criminal and administrative law and is crucial for individuals seeking to benefit from other procedural and substantive rights¹⁹.

The concept of 'access to justice' received particular attention in the 1970s and 1980s in the work of Mauro Cappelletti and Bryant Garth²⁰. According to Cappelletti and Garth, the expression 'access to justice' serves to focus on two basic purposes of the 'legal system'²¹. Access to justice means, first of all, that the legal system must be equally accessible to all. Plaintiffs must be empowered to bring a claim before a court. Therefore, the procedural rules and practicalities shaping the legal system, such as standards on standing, litigation costs, availability of legal aid, or access to legal representation, may allow or restrict the ability of plaintiffs, especially the poor and disadvantaged, to bring a claim. Access to justice cannot be achieved when plaintiffs face many obstacles that prevent them from filing a lawsuit. Access to justice also means that the legal system must lead to results that are 'individually and socially just'²².

¹³ Greenleaf, G. & Peruginelli, G., A comprehensive free access legal information system for Europe (February 29, 2012). Online access to legal information, Firenze, Italy, May 2011; *UNSW Law Research Paper* No. 2012-9, p.2.

¹⁴ *Ibid.*, p.1.

¹⁵ *Ibid.*; See also Leal-Arcas, R., Essential elements of the rule of law concept in the EU, Queen Mary University of London, *School of Law Legal Studies Research Paper* No. 180/2014.

¹⁶ ADR Centre Development website, Access to justice, available at: <http://www.adrcenterinternational.com/areas-of-expertise/adr-and-access-to-justice/>.

¹⁷ Greenleaf, G. & Peruginelli, G., A comprehensive free access legal information system for Europe (February 29, 2012). Online access to legal information, Firenze, Italy, May 2011; *UNSW Law Research Paper* No. 2012-9, p.1.

¹⁸ *Ibid.*, p.2.

¹⁹ FRA, 2016 Handbook, p. 16.

²⁰ Reviewed Work: Access to justice and the welfare state by Cappelletti, M., in *Michigan Law Review* Vol. 81, No. 4, 1983 survey of books relating to the law (March, 1983), p. 1006; See *Access to justice and the welfare state*, edited by Cappelletti, M., Florence, Italy, European University Institute, 1981; Garth, B. & Cappelletti, M., 'Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective' (1978). Articles by Maurer Faculty, paper 1142; On access to justice, see Deborah Rhode, *Access to justice* (OUP 2004); Francesco Francioni (ed), *Access to justice as a human right* (OUP 2007).

²¹ Cappelletti and Bryant have defined legal systems as 'the system by which people may vindicate their rights and/or resolve their disputes under the general auspices of the State.' See Cappelletti, M. & Garth, B., 'Access to justice: the newest wave in the worldwide movement to make rights effective' (1978), 27 *Buffalo Review* 181; 182.

²² *Ibid.*; See also FRA, Annual Report 2011, Chapter 8 Access to efficient and independent justice, p.182.

The right of access to justice used to be understood in a restrictive manner, mainly as 'the aggrieved individual's formal right to litigate or defend a claim'²³. This understanding has, however, evolved over time. With the practice of national and regional courts and evolving legislation at EU and national levels²⁴, it has moved from a mere formal right to access to a more comprehensive right, incorporating greater enforcement aspects²⁵.

In the EU, effective access to justice is considered to be a core fundamental right²⁶, as well as a general principle of EU law²⁷. Treaties, however, refer to this concept without defining it. For instance, Article 67(4) of the TFEU provides that 'the Union shall facilitate access to justice, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in civil matters'²⁸. Pursuant to Article 81(2)(e) of the TFEU, the EU shall adopt measures, particularly when necessary for the proper functioning of the internal market, to ensure effective access to justice in the field of civil justice. Other treaties refer to components of the concept of effective access to justice, such as the right to fair trial or the right of access to court. Article 47 of the EU Charter of Fundamental Rights (EU Charter) provides for the right to an effective remedy and to fair trial. It states that everyone whose rights and freedoms guaranteed by EU law are subsequently violated, has the right to an effective remedy before a tribunal. In addition, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Article 47 also foresees the right to legal advice and representation and, importantly, provides that legal aid must be made available to those who lack sufficient resources (insofar as such aid is necessary to ensure effective access to justice). These rights are legally binding since the entry into force of the Treaty of Lisbon²⁹.

Access to justice is also recognised as encompassing a number of core human rights, or as a right itself under specific international human rights or environmental conventions. In Europe, Articles 6 and 13 of the European Convention on Human Rights (ECHR) recognise the right to fair trial and the right to an effective remedy, respectively. Article 9 of the Convention on access to information, public participation in decision-making and access to justice in environmental matters (the Aarhus Convention) recognises access to justice as a right enabling citizens to enforce other important environmental rights, such as access to information, public participation or enforcement of environmental law.

European courts have played a significant role in the development of the concept of effective access to justice. According to CJEU case law, access to justice is one of the constitutive elements of a Union based on the rule of law³⁰. The CJEU has accepted that the right to

²³ ADR Centre Development website, Access to justice, available at: <http://www.adrcenterinternational.com/areas-of-expertise/adr-and-access-to-justice/>

²⁴ FRA, Access to justice in Europe: an overview of challenges and opportunities, 2011, p.22.

²⁵ See Reviewed Work: Access to justice and the welfare state by Cappelletti, M. by Michigan Law Review Vol. 81, No. 4, 1983 *survey of books relating to the law* (March, 1983), pp. 1006-1008.

²⁶ FRA, Access to justice, available at: <http://fra.europa.eu/en/theme/access-justice>

²⁷ Cuniberti, G. (2008), The recognition of foreign judgments lacking reasons in Europe: Access to justice, foreign court avoidance, and efficiency. *International and Comparative Law Quarterly*, 57(1), 25-52. See also Coote v Granada Hospitality Ltd C-185/197 [1998] ECR 5211.

²⁸ See TFEU Article 81(2)(e) which refers to access to justice, and Article 81(2)(f) on the 'elimination of obstacles to the proper functioning of civil proceedings'.

²⁹ Greenleaf, G., & Peruginelli, G., A comprehensive free access legal information system for Europe (29 February 2012). Online access to legal information, Firenze, Italy, May 2011; *UNSW Law Research Paper* No. 2012-9, p.1.

³⁰ FRA, Access to justice in Europe: an overview of challenges and opportunities, 2011, p.17. FRA argues that this can be seen in the CJEU's reasoning for establishing the principles of direct effect (CJEU, *Van Gend en Loos*, Case 26/62, 05 February 1963) and supremacy (CJEU, *Costa v ENEL* Case 6/64, 15 July 1964), as well as the concept of state liability (*Francovich and Bonifaci v Italy*, Case C-6 and C-9/90, 19 November 1991) and the requirement that national remedies for breaches of rights derived from Community law comply with the principles of equivalence and effectiveness (CJEU, *Preston v Wolverhampton Healthcare NHS Trust*, C-78/98, 16 May 2000).

effective judicial protection is a general principle of Union law³¹. Effective access to justice also finds expression in the principle of state liability for breach of Union law. According to the CJEU, individuals must be able to obtain reparation when their rights are infringed by a breach of Union law for which a Member State can be held responsible, otherwise the full effectiveness of Union rules would be impaired and the protection of the rights granted would be weakened³². The ECtHR has also developed the right of access to justice in the context of Article 6, enlarging 'the scope of the notion of "civil rights" so that considerable parts of administrative law are now also safeguarded by this provision'³³.

At national level, the legislator and, more importantly, the domestic courts remain the central actors of effective systems of access to justice. National courts can indeed play a crucial role in identifying deficiencies in the implementation of EU laws and guarantees at national level. The EU legal system has emphasised the importance of access not only to courts at European level, such as the CJEU, 'but also to national courts and tribunals for the enforcement of rights derived from EU law'³⁴. Both the EU Charter and the ECHR stress that 'the rights to an effective remedy and to a fair trial should primarily be enforced at national level'³⁵.

3.2. Categories of issues affecting effective access to justice

As described above, the concept of 'effective access to justice' is not commonly used as 'legal terminology'³⁶ or is generally not defined in relevant legal texts. As a result, it can cover various general aspects, such as access to a court, fair trial, legal aid, etc.

Given the broad nature of the concept of effective access to justice³⁷ and the timeframe of the research, this study focuses on three main categories of issues affecting:

- 1) effective access to court;
- 2) costs of justice and legal assistance;
- 3) access to a fair trial and enforcement of judgments.

This approach not only focuses on elements of access to justice established under the main EU legal texts and case law, it also reflects the key categories of issues identified in the petitions of the Member States studied. Indeed, as previously explained (Section 2.1), the analysis of petitions led the Project Management Team to review the categorisation of petitions. As a result, the category 'effective remedy' was removed when it became clear that the information provided in petitions pointed either to issues related to procedural guarantees and fair trial, or to more general discontent about the outcome of trial, with a high degree of subjectivity, and insufficient information on the remedies applied, making a meaningful analysis of the effectiveness of remedies difficult. As a result, the in-depth analysis focuses mainly on procedural aspects, which rely on more objective and tangible facts.

³¹ FRA, Access to justice in Europe: an overview of challenges and opportunities, 2011, p.17. See for instance Opinion of Advocate General Ruiz-Jarabo Colomer, CJEU, *Roda Golf & Beach Resort SL*, C-14/08, paragraph 29, delivered on 5 March 2009.

³² FRA, Access to justice in Europe: an overview of challenges and opportunities, 2011, pp.18-19.

³³ FRA, Handbook on European Law relating to access to justice, 2016, p.16.

³⁴ Ibid.

³⁵ FRA, Handbook on European Law relating to access to justice, 2016, p.16 ; See also FRA, Access to justice in Europe: an overview of challenges and opportunities, 2011, p.18: 'It must also be borne in mind that, according to settled case law, in the absence of relevant Community rules, the detailed procedural rules designed to ensure the protection of the rights which individuals acquire under Community law are a matter for the domestic legal order of each Member State, under the principle of the procedural autonomy of the Member States.'

³⁶ Mendez Pinedo, E., Access to justice as hope in the dark in search for a new concept in European law, p. 9; FRA, Access to justice in Europe: an overview of challenges and opportunities, 2011, p.14.

³⁷ Barendrecht, M., Mulder, J., Giesen, I., & The Study Group, Access to justice: how to measure the price and quality of access to justice?, November 2006, p.3.

The categories covered in the analysis, as well as the outcome of the allocation of petitions by category, are presented in Sections 3.2.1 to 3.2.4 below.

3.2.1. Category 1: Effective access to court

Effective access to court requires that litigants, usually in civil matters, should be able to institute proceedings before a dispute resolution body. Article 47 of the EU Charter and Article 6(1) of the ECHR embody the 'right of access to a court' when providing that everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law³⁸.

Pursuant to the ECtHR's case law, the right of access to a court must be practical and effective, which means that an individual must have a clear and practical opportunity to challenge an act that interferes with his or her rights³⁹. All Member States usually recognise the general right of recourse to a judicial body to resolve legal disputes relating to breaches of a right⁴⁰.

Based on the petitions analysed here, three main issues were identified as impeding effective access to court:

- organisation of the national judicial system;
- legal and procedural obstacles; and
- practical obstacles.

Table 1 below describes the specific problems covered by each of these issues.

Table 1: Categories of issues affecting effective access to court

Issues	Coverage
Organisation of the national judicial system	<ul style="list-style-type: none"> • Lack of financial, material or human resources of the judiciary affecting its capacity to render a judgment; • Absence of specialised courts, such as small claims courts or ADR mechanisms; • Absence of the possibility of appeal, etc.
Legal and procedural obstacles	<ul style="list-style-type: none"> • Restrictive rules on time limits, legal standing or admissibility; • Strict rules governing the production of evidence and the burden of proof; • Excessive procedural formalism; • Lack of rules guaranteeing access to information and transparency, or access to translation, etc.
Practical obstacles	<ul style="list-style-type: none"> • Insufficient geographical court coverage; • Logistical issues (IT issues relating to electronic application), etc.

³⁸ In the context of the ECHR, see *Golder v the United Kingdom*, § 36. See also http://www.echr.coe.int/Documents/Guide_Art_6_ENG.pdf, p. 16.

³⁹ *Bellet v France*, § 36-38.

⁴⁰ *FRA*, 2011, p. 37.

3.2.2. Category 2: Costs of justice and legal assistance

High or disproportionate costs, including representation and court fees, may discourage citizens from bringing a claim before a court. Article 47 of the EU Charter provides that legal aid must be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice. Such availability is important, as lack of access to legal aid may impede citizens' (particularly the disadvantaged) effective access to justice. In addition, the right to legal assistance is protected under Article 47 of the EU Charter, which provides that everyone must have the option to be advised, defended and represented. Therefore, the availability and quality of legal assistance at national level are likely to affect effective access to justice.

This paper focuses on the following issues identified in the petitions:

- costs of justice;
- rules governing legal aid; and
- other issues affecting access to proper legal assistance.

These issues, together with their associated specific elements, are further detailed in **Table 2** below.

Table 2: Category of issues related to costs of justice and legal assistance

Issues	Coverage
Costs of justice	<ul style="list-style-type: none"> • Application fees, costs of representation, testimony costs, expertise costs; • Disproportionate or high costs for the nature of the claim or the plaintiff's resources, etc.
Legal aid	<ul style="list-style-type: none"> • Availability of legal aid for all types of proceedings (civil, criminal, administrative); • Eligibility for legal aid; • Existence of alternative and/or complementary schemes, such as legal insurance, etc.
Other issues preventing access to proper legal assistance	<ul style="list-style-type: none"> • Insufficient availability of lawyers or other types of counsel; • Quality of representation, etc.

3.2.3. Category 3: Access to fair trial and enforcement of judgments

Access to fair trial is a key component of guaranteeing effective access to justice. Both Article 47 of the EU Charter and Article 6(1) of the ECHR provide that everyone is entitled to a fair and public hearing by an independent and impartial tribunal established by law. Article 6(2) and (3) of the ECHR also list several procedural rights to which everyone charged with a criminal offence is entitled. Both the EU Charter and the ECHR recognise that everyone is entitled to a hearing within a reasonable timeframe⁴¹. The ECtHR has repeatedly stressed the importance of administering justice without delay, as it may otherwise jeopardise its

⁴¹ Article 47 of the EU Charter and Article 6(1) of the ECHR.

effectiveness and credibility⁴². In addition, failure to enforce judgments, or a delay in such enforcement (i.e. delays in carrying out of a final judgment in order to ensure that obligations are imposed or fulfilled in practice), also constitutes an obstacle to accessing justice⁴³. The ECtHR has made it clear that failure to enforce a final judgment amounts to a breach of the right to an effective remedy⁴⁴.

This study considered the following issues likely to have an impact on effective access to justice:

- procedural guarantees;
- length of proceedings; and
- enforcement of judgments.

These issues, together with their specific elements, are further detailed in **Table 3** below.

Table 3: Category of issues affecting access to a fair trial and enforcement of judgments

Issues	Coverage
Procedural guarantees	<ul style="list-style-type: none"> • Independence and impartiality of courts; • Procedural rights of suspects and accused persons in criminal proceedings, such as the presumption of innocence, the right to interpretation and translation, the right to information on rights; • Absence of discrimination and protection of vulnerable parties (e.g. juveniles); • Absence of reasoning in a judgment, etc.
Length of proceedings	<ul style="list-style-type: none"> • Average length of proceedings; • Backlog; • Existence of fast-track procedures for claims for small amounts of money, etc.
Enforcement of judgments	<ul style="list-style-type: none"> • Failure or delay to enforce national judgments or ECtHR rulings, etc.

3.2.4. Outcome of the categorisation of petitions

Table 4 below provides an overview of the main issues on access to justice identified in the petitions selected for in-depth analysis in the eight Member States studied, according to the three categories and corresponding sub-categories described in Sections 3.2.1 to 3.2.3.

⁴² H v France, § 58; Scordino v Italy (no 1) §224.

⁴³ FRA, 2011, p. 62.

⁴⁴ ECtHR, *Brumarescu v. Romania*, No. 28342/95, 28 October 1999, paragraph 61; ECtHR, *Driza v. Albania*, No. 33771/02, 13 November 2007, paragraph 64; FRA, 2011, p. 62.

Table 4: Overview of issues affecting access to justice in selected petitions

Key topics	Number of relevant petitions identified⁴⁵
Category 1: Effective access to court	
1.1 Organisation of the national judicial system	16
1.2 Legal and procedural obstacles impeding access to court	7
1.3 Practical obstacles impeding access to court	7
Category 2: Costs of justice and legal assistance	
2.1 Costs of justice	11
2.2 Legal aid	7
2.3 Other issues preventing access to proper legal assistance	9
Category 3: Access to a fair trial and enforcement of judgments	
3.1 Procedural guarantees	43
3.2 Length of proceedings	21
3.3 Enforcement of judgments	16

⁴⁵ Please note that a petition may fall under more than one (sub)category.

4. ANALYSIS OF ACCESS TO JUSTICE IN THE MEMBER STATES STUDIED

This section details the comparative analysis carried out based on the results gathered from the eight Member States studied. It focuses on the main issues identified in the petitions selected for in-depth analysis (see list of selected petitions in Annex I to this report).

Section 4.1 provides some elements of background to understand the context impacting access to justice in each of the eight Member States. Sections 4.2 to 4.4 explore the issues raised in petitions (if any) from these countries, for each of the categories previously described (effective access to court, costs of justice and legal assistance, and access to a fair trial and enforcement of judgments). For each issue raised in one (or several) petition(s) for a specific country, the report describes the petition(s), analyses the issue raised and, where relevant, discusses the factors that led to the issues.

4.1. Background: country-specific factors affecting access to justice

KEY FINDINGS

- The obstacles faced by petitioners to access justice can in most cases be explained by economic, social, historical or political factors specific to their country. Historical factors include the transition from the communist regime to democracy (Croatia, Latvia, Romania and Slovakia), or consequences from dictatorship (Spain). The economic crisis had a particularly strong impact on access to justice in Greece, Italy, Latvia and Spain. Social factors play a significant role in Romania (level of poverty, ethnic minorities). The political context can also have a direct impact on the effectiveness of access to justice, for instance because of corruption (Romania) or through waves of legal reforms or reforms of the judiciary (Croatia, Poland and Slovakia).
- In case of failure to access courts, citizens are offered alternative mechanisms to voice their grievance or solve disputes. In more than half the Member States studied, citizens can address petitions to their national Parliament. In some countries, parliaments have established committees on petitions which deal with citizens' complaints. However, petitions must generally deal with issues of public interest and present therefore a limited interest in the context of private disputes. Citizens can address petitions to the national or the regional Ombudsman in all Member States. In general, Ombudsmen can only help in cases raising misconduct from public authorities and the scope of their competence may exclude legal sectors in which issues to gain effective access to justice have been observed.

4.1.1. Croatia

Historical and political events have seen Croatia's judiciary subject to **constant reform** over the last 40 years. At the heart of these reforms was the question of judicial independence and, to a lesser extent, the efficiency of the justice system.

Following the break-up of Yugoslavia, the Croatian Constitution of 21 December 1990⁴⁶ provided a new regulation for organisation and status of judicial power, under which the system of division and separation of powers was reintroduced.

The war in the former Yugoslavia during the 1990s temporarily put aside the new Constitutional rules, and numerous Executive Decrees with statutory force were enacted from 1991. The most significant of these in relation to judicial power was the Decree on Organisation, Work and Jurisdiction of Judicial Power in the State of Emergency or Imminent Threat to Independence and Unity of the Republic of Croatia⁴⁷. This Decree reinstated Martial Courts and suspended certain rules protecting the independence of judges. Another war-related Decree was the Decree on Application of the Law on Criminal Procedure in the State of Emergency or Imminent Threat to Independence and Unity of the Republic of Croatia⁴⁸, which also suspended certain procedural guarantees and introduced simplified martial procedures in Martial Courts. Following a cease-fire agreement, these war decrees were abandoned over time, with decrees regulating judicial power among the last to be repealed at the end of 1996⁴⁹, when Martial Courts were also dismantled.

Another cornerstone in the development of the Croatian judicial system was the adoption of the Courts Act at the end of 1993⁵⁰. This Act provided a basic legislative framework for the organisation of the state judiciary, including status and obligations of judges, and requirements for their appointment, discipline and removal. The Courts Act required all judges to be 'reappointed' in accordance with the new law. This was in breach of the Constitution (which guaranteed permanent office to judges) and resulted in a wave of resignations by judges who anticipated their 'unsuitability' under the Courts Act.

The second half of the 1990's was marked by the exertion of strong control over the judiciary apparatus by the ruling government of the Croatian Democratic Union (HDZ) and President Tuđman. Under political pressure, many experienced judges left their positions for other branches of the legal profession, and were replaced by party-loyal judges. This era was also characterised by a series of scandals and frequent changes of personnel in crucial positions of the national judiciary. The crisis, affecting both the speed of the judicial process and the quality of the justice system⁵¹, became so visible that the problems were acknowledged by the President in his traditional annual address. He requested 'stricter responsibility for performance of the judicial duty, including a principled application of disciplinary measures for poor work and other forms of undue process'⁵². In February 1999, a report by the State Department concluded that '[t]he judicial system is subject to executive and political influence, and the court system suffers from such a severe backlog of cases and shortage of judges that the right of citizens to address their concerns in court is seriously impaired. Cases

⁴⁶ Official Gazette of the Republic of Croatia No. 56/90 of 22 December 1990; amendments Official Gazette No. 135/97 of Dec 15, 1997; the amended text of the Constitution was published in Official Gazette 8/98 of 26 January 1998.

⁴⁷ Official Gazette of the Republic of Croatia No. 67/91 of 12 December 1991.

⁴⁸ Official Gazette of the Republic of Croatia No. 73/91 of 31 December 1991.

⁴⁹ The Decree on Abolishing the Decrees from the Area of Judiciary, Official Gazette of the Republic of Croatia of 6 December 1996.

⁵⁰ *Zakon o sudovima* (Courts Act), Official Gazette No. 3/94, entered into the force on 30 December 1993.

⁵¹ Uzelac, A., Role and status of judges in Croatia, Croatian judiciary: lessons and perspectives, Zagreb, Croatian Helsinki Committee for Human Rights, p.23; Netherlands Helsinki Committee, 2002. pp. 81-140, available at: <http://www.alanuzelac.from.hr/pubs/A01Role%20and%20Status.pdf>

⁵² Uzelac, A., Role and Status of Judges in Croatia, Croatian judiciary: lessons and perspectives, Zagreb, Croatian Helsinki Committee for Human Rights, p.24; Netherlands Helsinki Committee, 2002. pp. 81-140, available at: <http://www.alanuzelac.from.hr/pubs/A01Role%20and%20Status.pdf>

of interest to the ruling party are processed expeditiously while others languish in court, further calling into question the independence of judiciary⁵³.

Finally, the Parliamentary elections in 2000 significantly changed the judiciary system in Croatia once again, with the election of the Socialist Democratic Party (SDP) and subsequent strengthening of judicial authority. The 1993 Courts Act was amended almost every year from 2000 onwards, eventually being replaced by a new Courts Act in 2013⁵⁴. This latter was replaced by another Courts Act in 2015⁵⁵, confirming the independence and 'permanent office' of judges.

Further developments of the Croatian judicial system were influenced by its accession to the EU, including the enactment and implementation of new laws and amendment of others, as well as improved case management. As a result, according to the World Bank Report in 2014 on Justice Sector Public Expenditure and Institutional Review of Croatia, the country's justice reform strategy (which had long aimed to strengthen the independence and impartiality of the justice system and to increase its efficiency) has indeed delivered significant results. The reformed State Judicial Council and State Prosecutorial Council function independently, appointing judicial officials based on transparent, uniform and objective criteria. The prosecution and courts have worked to combat high-level corruption. Improved efficiency is being sought through measures, such as: reducing case backlogs and the duration of judicial proceedings; streamlining enforcement; modernising court administration; strengthening alternative dispute resolution (ADR), legal aid, education and professional training; rationalising the court and prosecutorial network; and increasing transparency of courts' functioning. Government programmes have committed to prioritising the continuation of such reforms⁵⁶.

Alternative mechanisms for petitions and dispute resolution

In Croatia, citizens have access to alternative means of expressing grievances and obtaining justice. For instance, citizens can submit petitions and proposals for the enactment of legislation to the Parliament⁵⁷. The Croatian Parliament has a specific Petitions and Appeals Committee, which deals with petitions and suggests remedial measures. It also alerts the Parliament and public authorities to violations of the law or of citizens' rights (as well as other negative phenomena of wider significance), and proposes remedial measures⁵⁸. Citizens can bring complaints or express their concerns to specific state bodies, such as the Office for the Suppression of Corruption and Organized crime (USKOK)⁵⁹ or the Ombudsman, which examines citizens' complaints pertaining to the work of state bodies and public authorities⁶⁰. Finally, ADR mechanisms are well developed and encouraged both within courts and outside

⁵³ The US Departments of State's Report on Human Rights in Croatia for 1998, issued by the Office for Democracy, Human Rights and Labor of 26 February 1999, Section 1, at e). Published at: http://www.usembassy.hr/issues/hrights_eng.htm

⁵⁴ Zakon o sudovima (Courts Act), Official Gazette No. 28/13.

⁵⁵ Zakon o sudovima (Courts Act), Official Gazette No. 28/13, 28/13, 33/15, 82/15, 82/16, entered into force on 1 September 2015.

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<http://documents.worldbank.org/curated/en/375221468261878579/pdf/ACS74240REVISE000PUBLIC00JSPIER0ENG.pdf>

⁵⁷ See Article 44 of the Standing Orders of the Croatian Parliament (NN 81/2013).

⁵⁸ 'Petitions and Appeals Committee', Website of the Croatian Parliament, <http://www.sabor.hr/petitions-and-appeals-committee-9>

⁵⁹ <http://www.dorh.hr/Default.aspx?sec=18>

⁶⁰ <http://ombudsman.hr/en/>

of courts⁶¹. In 2011, Croatia enacted the Mediation Act⁶², which aims to transpose Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters (ADR Directive). The Ministry of Justice established an Alternative Dispute Resolution Commission, which aims to monitor the development and implementation of ADR mechanisms, and propose measures to improve ADR⁶³.

4.1.2. Greece

In Greece, **economic and social factors**, specifically the 2008 financial crisis, constituted the key factors triggering and/or intensifying barriers to effective access to justice.

In its Annual Report⁶⁴ of April 2017, the General Commission of the State (responsible for monitoring and supervising administrative courts) highlights the following problems:

- Lack of adequate number of judges (955 established⁶⁵ positions, 928 covered).
- Lack of adequate number of administrative judicial secretaries (694 positions, 508 covered).
- Lack of adequate number of clerks (124 positions, 10 covered).

The report also indicates that, as of 31 December 2016, the total number of pending cases before the administrative courts (both first instance courts and courts of appeal) was 279,822, compared to 306,918 at the end of 2015. The report highlights the gradual reduction in the number of pending cases despite a nine-month lawyer strike in 2016 (in protest at the new social security model imposed). Finally, the report also stresses the significant reduction of incoming new cases since 2008, with almost 118,000 new cases introduced before the Courts in 2010, compared to around 73,000 in 2015. The General Commission attributes this reduction to the financial crisis and to the significant increase of overall judicial costs (judicial deposits and stamps, notification costs, cost of judges, advance payment of lawyers' contributions, etc.) through successive laws (e.g. Law 3659/2008, 3772/2009, 3900/2010, 4055/2012, 4194/2013, 4274/2014).

A similar picture emerges from the CEPEJ 2016 study⁶⁶ on the functioning of the judicial systems in the EU, with respect to the reduction in incoming civil and commercial litigation cases. Part of the study (which was incorporated in the 2017 EU Justice Scoreboard⁶⁷) shows that the number of incoming cases in Greece reduced by more than 50% between 2013 and 2014, with a further small decline in 2015.

A number of **new legal instruments** were adopted in recent years, in a bid to speed up access to justice. Chief among these were Article 9 of Law 4048/2012⁶⁸ and Law 4446/2016⁶⁹.

⁶¹ In 2016, Croatia had one of the highest score in the EU for promoting and encouraging the voluntary use of ADR mechanisms. See 2016 EU Justice Scoreboard, Figure 27: Promotion of and incentives for using alternative dispute resolution methods, 2016.

⁶² <https://hgk.hr/documents/mediation-act586b9f6251f81.pdf>

⁶³ https://e-justice.europa.eu/content_mediation_in_member_states-64-hr-en.do?member=1

⁶⁴ The full text of the report is available in Greek at: https://geedd.blogspot.gr/p/blog-page_17.html

⁶⁵ The number of judicial and administrative personnel is determined through a relevant Ministerial Decision. It specifies the exact number of judges and public servants for each Court and as a whole.

⁶⁶ European Commission, CEPEJ Secretariat, *Study on the functioning of judicial systems in the EU Member States*, 2016, http://ec.europa.eu/justice/effective-justice/scoreboard/index_en.htm

⁶⁷ European Commission, 2017 EU Justice Scoreboard, Luxembourg, 2017, p.6, http://ec.europa.eu/justice/effective-justice/scoreboard/index_en.htm

⁶⁸ Law 4048/2012 (OJ A 34/2012) 'On Regulatory Governance: Principles, Procedures and Means of effective law-making'

⁶⁹ Law 4446/2016 (OJ A 240/2016) 'Insolvency Code, Administrative Justice, fees, voluntary disclosure of non-declared income of previous years, Electronic transactions, Amendments to Law 4270/2014 and other provisions'.

Law 4048/2012 introduces guiding principles and procedures for effective law-making, including the simplification and rationalisation of a number of procedural issues. Such procedures include: minimisation of documentation required from citizens or petitioners; reduction of the number of competent authorities involved in administrative decisions; unification of petitions and reduction of the determined response deadlines; abolition of regulations/provisions adding unnecessary burden to the administration and/or the public, etc. This law is expected to rationalize procedures and minimize their length, thus reducing disputes between the administration and the public, and subsequently reducing the number of issues brought before the Courts.

Law 4446/2016 rationalises the procedures for insolvency (which increased rapidly during the financial crisis) and provides strict deadlines for each step, thereby accelerating its completion. The Law introduces procedures to accelerate trials before the administrative courts and the Council of State. Finally, the Law introduces an 'application for repetition of the procedure' in cases where a relevant decision has been issued by the ECtHR.

Finally, a number of reforms aimed at improving the functioning of the Greek judicial system have been agreed and incorporated in the Second Memorandum of Understanding between the European Commission (acting on behalf of the European Stability Mechanism (ESM)) and the Hellenic Republic. Compliance of the Hellenic Republic with its terms and conditions constitutes a prerequisite for receipt of financial assistance from the ESM.

The Second Addendum to the Memorandum of Understanding⁷⁰, signed between the parties on the 7 July 2017, contains a specific and separate chapter on justice (Chapter 5.2), which targets the effective implementation of a three-year strategic plan for the improvement of the national judicial system. Specific prior actions have been agreed, the most important being:

- Amendment of the Civil Procedure Code and adoption of a Ministerial Decision to allow the implementation of electronic auctions through a relevant electronic platform;
- Improvement of e-justice;
- Measures to reduce backlogs in courts.

The Memorandum explicitly acknowledges the fact that timely, efficient and reliable justice is not only a pillar of democracy but also constitutes a key driver for growth.

The Code of Civil Procedure has been amended in the past three years. Law 4335/2015⁷¹, constituting a key prior action and deliverable for the Memorandum, provided for radical changes in the procedures before the civil courts. During 2016, Laws 4370/2016⁷² and 4411/2016⁷³ provided for additional minor amendments, while in 2017 Law 4472/2017⁷⁴ was adopted, amending the Civil Procedure Code once again. The reform of the Code of Civil Procedure includes several important changes and innovations, among which are:

⁷⁰ Supplemental Memorandum of Understanding between the European Commission, acting on behalf of the European Stability Mechanism and the Hellenic Republic and the Bank of Greece, July 2017 .

⁷¹ Law 4335/2015 Emergency measures for the implementation of Law 4334/2015, OJ A 87/23.07.2015.

⁷² Law 4370/2016 on Deposit Guarantee Schemes (transposition of Directive 2014/49/EU), Fund for the Guarantee of Deposits and Investments and other provisions, OJ A 37/07.03.2016.

⁷³ Law 4411/2016 on ratification of the Council of Europe Convention on Cybercrime and its additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems – Transposition in national legislation of Directive 2013/40/EU on attacks against information systems and provisions regarding correctional and counter-crime policy and other provisions, OJ A 142/03.08.2016.

⁷⁴ Law 4472/2017 Provisions regarding pensions of the public sector and amendment of provisions of Law 4387/2016, implementation measures for the achievement of budgetary targets and reforms, measures for social support and labour provisions, Mid-term Framework of Budgetary Strategy 2018-2021 and other provisions, OJ A 74/19.05.2017.

- The introduction of a new system which allows auctions through electronic means (e-auctions). On the basis of the new Articles of the Code, the relevant Ministerial Implementing Decisions have been issued and the pilot e-platform is in place. The Notary Union⁷⁵ (which is responsible for the operation of the platform) state that the first e-auctions will take place in early December 2017. The operation of the platform is expected to significantly accelerate the relevant procedures, thus solving a longstanding backlog.
- Provisions on the acceleration of court procedures for unlawful dismissal and recouped salaries.
- Provisions on the simplification and acceleration of court proceedings before the civil courts of first instance, including conducting trials through written means and minimising the oral proceedings (witness testimonies).
- Provisions on the obligation of the court to encourage conciliatory solutions to disputes between parties, and use of mediation as an extrajudicial instrument for dispute resolution. The Court may even present compromise proposals to the parties, based on its judgement on the actual and legal parameters of each case.
- Amendments to the deadlines for the submission of various legal documents by the parties, aiming to speed up the whole procedure and enable the Court to obtain a full overview of the case well before the date of the trial.
- Obligations on the Court to issue decisions within certain timeframes for specific procedures.
- Introduction of limitations to the right of the parties to request postponement of the trial.

Alternative mechanisms for petitions and dispute resolution

There is no petitions committee within the Greek Parliament, although citizens can address complaints to their Member of Parliament in the hope that he/she will submit a related question to Parliament. Citizens have access to several alternative mechanisms to express grievances or obtain justice. The Ombudsman⁷⁶, for example, is an independent authority which investigates problems caused by legislation or administrative acts and omissions, or violations of rights. However, the Ombudsman does not have competence to intervene in private disputes or in disputes related to banks, insurance companies and over-indebted households, limiting its ability to help citizens gain effective access to justice. Greece has established several ADR mechanisms in recent years, and promoted their voluntary use⁷⁷. In 2010, for example, it transposed the ADR Directive⁷⁸, while in 2017 it introduced an extra-judicial mechanism for the settlement of enterprises' debts⁷⁹.

⁷⁵ <http://www.kathimerini.gr/929287/article/oikonomia/ellhnikh-oikonomia/arxes-dekemvrioy-3ekinoy-n-oi-hlektronikoi-pleisthriasmoi>

⁷⁶ <https://www.synigoros.gr/?i=stp.en.home>

⁷⁷ See 2016 EU Justice Scoreboard, Figure 27: Promotion of and incentives for using alternative dispute resolution methods, 2016.

⁷⁸ Law 3898/2010 (OJ A 211, 16 December 2010).

⁷⁹ Law 4469/2017 was adopted (OJ A 62, 3 May 2017) according to preliminary unofficial data published through the press (for example: <http://enypografa.gr/?p=156826>). By the end of August 2017, more than 5,000 enterprise applications had been submitted, with a boost in applications expected in the coming months.

4.1.3. Italy

Access to justice is a long-lasting principle in Italian law, and the Italian Constitution guarantees everyone's right to have recourse to a judge to defend their rights and legitimate interests. The right of defence is inviolable and made accessible to the underprivileged through specific means (e.g. legal aid)⁸⁰. A 1999 reform inserted the principles of fair trial into the Constitution, which now expressly requires cross-examination, parity between parties, impartiality of the judge and reasonable duration of proceedings⁸¹.

Historical and political factors do not play a significant role in explaining the difficulties experienced by Italian citizens in relation to access to justice. Rather, the existing problems can be mainly explained by **social** and **economic** factors, as well as recent **legal reforms**.

Law 14 September 2011, No. 148 was adopted in the wake of the financial crisis to rationalise public expenditure⁸². It mandated the government to reorganise the judicial map (i.e. the geographical location of courthouses) in order to reduce spending and increase efficiency⁸³. The government thus adopted Legislative Decree 7 September 2012, No. 155 (concerning tribunals) and No. 156 (concerning justices of the peace), which sought to reduce the number of courthouses. The main criteria used to identify courthouses to be closed were the level of litigation in the local area, the productivity of the courthouse, and its staff-workload ratio. Most courthouses falling beyond the national average on all three criteria were slated for closure. Similar measures are currently under discussion before Parliament in relation to courts of appeal. The number of courthouses is one of the explanations for the backlog in the courts, which is a significant problem in Italy.

The length of judicial proceedings is widely recognised as problematic in Italy. When all instances of judicial proceedings are considered, it can take more than eight years for a case to be resolved in Italy. For about 50 years after ratifying the ECHR, Italy had no domestic mechanism to compensate parties harmed by unreasonably long proceedings. Italy adopted Law 24 March 2001, No. 89. The so-called Pinto law established a right to obtain compensation for the excessive duration of judicial proceedings⁸⁴. It generally defines reasonable durations and corresponding compensation amounts for each year of delay. This law has however recently been amended to increase formalities and costs to such an extent that it may discourage its use by citizens.

While the backlog has improved in recent years, this seems to largely stem from a sharp fall in incoming cases. The financial crisis, as well as the recent reforms (introduction of ADR mechanisms, higher court fees, specific measures concerning welfare cases, etc.), are important underlying factors⁸⁵. Some of these (court fees, stricter conditions for appealing judgments, the reform of the judicial map) may have indeed reduced the ease of accessing justice⁸⁶.

Alternative mechanisms for petitions and dispute resolution

⁸⁰ Article 24, Italian Constitution.

⁸¹ Article 111, Italian Constitution.

⁸² See Carrer, M. *Il riordino della geografia giudiziaria: Appunti per un inquadramento costituzionale delle riforme di circondari e distretti*, 2017; See also Nastasi, G. & Palmisano, G., *The impact of the crisis on fundamental rights across Member States of the EU: Country report on Italy*, 2015.

⁸³ Article 1(2), Law 148/11.

⁸⁴ Pennisi, C., *Profili di incostituzionalità della riforma della cd. legge 'Pinto'*, 2014.

⁸⁵ Bartolomeo, F. & Bianco, M., *La performance del sistema giudiziario italiano: Un confronto con i principali sistemi giudiziari europei*, January 2017; Nastasi, G. & Palmisano, G., *The impact of the crisis on fundamental rights across Member States of the EU: Country report on Italy*, 2015.

⁸⁶ Nastasi, G. & Palmisano, G., *The impact of the crisis on fundamental rights across Member States of the EU: Country report on Italy*, 2015. The level of court fees in Italy is lower than the OECD average, according to World Bank, *Doing Business 2017: Equal opportunity for all: Economy profile 2017: Italy*, 2017.

In Italy, citizens have the option to access alternative mechanisms to express grievances or solve disputes. The Italian Constitution grants citizens the right to petition the Parliament to request legislative measures or to express collective needs on matters of public interest⁸⁷. Once received, petitions are assigned to the committee competent in the relevant area, as there is no Petitions Committee *per se*. In addition, citizens can address private complaints to independent administrative authorities in the fields of consumer protection and competition law⁸⁸, telecommunications⁸⁹, privacy law⁹⁰, and energy⁹¹. They can also address complaints about the public administration's adherence to the law to regional ombudsmen⁹². Italy has enacted a number of laws to improve ADR in recent years, e.g. Decree-Law of 4 March 2010, No. 28 encourages mediation by providing both voluntary and mandatory mediation, together with financial incentives. It imposes on parties to a dispute in specific areas of civil and commercial law the obligation to attempt mediation before trial⁹³. However, according to the 2016 EU Justice Scoreboard, the promotion of, and incentives for using, ADR mechanisms remains low in Italy compared to other Member States, especially in civil and commercial disputes⁹⁴.

4.1.4. Latvia

One of the factors affecting access to justice in the Republic of Latvia is the **historical background** of the country and the development of the judicial system since restoration of independence.

Latvia was part of the Union of Soviet Socialist Republics (USSR) until 1991. Following restoration of independence, the entire judicial system underwent fundamental changes.

Latvia firstly re-established previous legislation and regulation governing the organisation and the status of judicial power, as it was in the first Republic of Latvia (1918-1940). The constitutional law 'On the Statehood of the Republic of Latvia' was adopted on 21 August 1991 and restored the state architecture in accordance with the Constitution (*Satversme*) of 1922⁹⁵.

In January 1992, the Supreme Council restored the Civil Law of the Republic of Latvia from the year 1937⁹⁶, and on 15 December 1992, the Supreme Council of the Republic of Latvia adopted the 'Law on Judicial Power'⁹⁷, which, for the first time in the history of Latvian courts, affirmed that there is an independent judicial power alongside the legislature and the executive branch. Pursuant to the 'Law on Judicial Power', Latvia has an independent

⁸⁷ Article 50 of the Italian Constitution.

⁸⁸ Autorità Garante della Concorrenza e del Mercato (AGCM)

⁸⁹ Autorità per le garanzie nelle comunicazioni (Agcom)

⁹⁰ Autorità garante per la protezione dei dati personali

⁹¹ Autorità per l'energia elettrica e il gas

⁹² In Italy, there is no national Ombudsman, only regional ombudsmen. See Coordinamento Nazionale dei Difensori Civici delle Regioni e delle Province autonome, <https://sites.google.com/a/crtoscana.it/difesa-civica-italia/>

⁹³ On ADR mechanisms in Italy, see De Luca, A. Mediation in Italy: Feature and Trends. In *New Developments in Civil and Commercial Mediation*, Springer International Publishing, 2015, pp. 345-365.

⁹⁴ See 2016 EU Justice Scoreboard, Figure 27: Promotion of and incentives for using alternative dispute resolution methods, 2016.

⁹⁵ Law on the Statehood of the Republic of Latvia (translation into English), viewed 24 July 2017, https://view.officeapps.live.com/op/view.aspx?src=http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Citi/On_the_Statehood_of_the_Republic_of_Latvia.doc

⁹⁶ Matisāne I., 11 November 2008, Tieslietu sistēmai – 90, viewed 24 July 2017, <http://m.lvportals.lv/visi/likumi-prakse/183576-tieslietu-sistemai-90/>

⁹⁷ Law on Judicial Power (*Par tiesu varu*), adopted on 15 December 1992, entered into force on 1 January 1993, as last amended on 18 June 2016, viewed 24 July 2017 <https://likumi.lv/doc.php?id=62847>

judiciary, with a three-tiered court system⁹⁸. Chapter IV of the Constitution (*Satversme*) of the Republic of Latvia states that judicial power is vested in district and city courts, regional courts, the Supreme Court and the Constitutional Court⁹⁹.

An important political decision at that time was whether to allow judges who had studied and worked in the Soviet Union to continue their work. Judges were given the opportunity to individually evaluate their work and loyalty, with several choosing to leave the Supreme Court while most retained their mandate.

A succession of **reforms** took place in the 1990's to regulate the judiciary:

- On 21 May 1993, the Advocacy Law of the Republic of Latvia¹⁰⁰ entered into force, governing the professional and corporate activities of lawyers.
- On 1 July 1994, a new 'Law on the Prosecutor's Office'¹⁰¹ entered into force. It provides that the public prosecutor's office is a single, centralised system of institutions of three levels (district and city prosecutor's offices, judicial district prosecutors and the Prosecutor General's Office), headed by the Attorney General.
- On 9 December 1996, an independent judiciary institution, the Constitutional Court, was established to deal with the compliance of laws and other normative acts with the Constitution (*Satversme*), as well as with other cases transferred by law to its competence¹⁰².

Other reforms were adopted more recently. For instance, the Office of the Latvian ombudsman (*Tiesībsargs*) was established in 2007 to replace the National Human Rights Office that was in place between 1995 and 2006¹⁰³. Administrative courts were also established on 1 February 2004.

New pieces of legislation were also enacted. On 1 April 1999, a new Criminal Law¹⁰⁴ came into force that replaced the 1961 Criminal Code of the Soviet Republic of Latvia, while on 1 October 2005, a new Criminal Procedure Law¹⁰⁵ entered into force to replace the 1961 Criminal Procedure Code of the Soviet Republic of Latvia.

The Law on Administrative Procedure Law, the Criminal Procedure Law, the Civil Procedure Law, as well as Electronic Documents Law allow the filing of electronic documents and the submission of electronic applications to courts to the extent that it complies with the

⁹⁸ Law on Judicial Power, (*Par tiesu varu*), adopted on 15 December 1992, entered into force on 1 January 1993, as last amended on 18 June 2016, viewed 24 July 2017, <https://likumi.lv/doc.php?id=62847>

⁹⁹ Constitution of the Republic of Latvia (*Latvijas Republikas Satversme*), adopted on 15 February 1922, entered into force on 7 January 1922, as last amended on 19 May 2016, Official Journal reference: 'Latvijas Vēstnesis', 43, 1 July 1993., 'Ziņotājs', 6, 31 March 1994., 'Valdības Vēstnesis', 141, 30 June 1922., 'Diena', 81, 29 April 1993., viewed 24 July 2017, <https://likumi.lv/doc.php?id=57980>

¹⁰⁰ The Advocacy Law, (*Latvijas Republikas Advokatūras likums*), adopted on 27 April 1993, entered into force on 21 May 1993, as last amended on 28 October 2010, viewed 24 July 2017, <https://likumi.lv/doc.php?id=59283>

¹⁰¹ Law on the Office of the Prosecutor (*Prokuratūras likums*), adopted on 19 May 1994, entered into force on 1 July 1994, as last amended on 9 June 2016, Official Journal reference: 'Latvijas Vēstnesis', 65 (196), 2 June 1994., viewed 24 July 2017, <https://likumi.lv/doc.php?id=57276>

¹⁰² Law on the Constitutional Court (*Satversmes tiesas likums*), adopted on 5 June 1996, entered into force on 28 June 1996, as last amended on 16 March 2017, Official Journal reference: 'Latvijas Vēstnesis', 103 (588), 14 June 1996., 'Ziņotājs', 14, 25 July 1996., viewed 24 July 2017, <https://likumi.lv/doc.php?id=63354>

¹⁰³ Ombudsman office (*Tiesībsargs*) viewed 24 July 2017, <http://www.tiesibsargs.lv/>

¹⁰⁴ Criminal Law (*Krimināllikums*), adopted on 17 June 1998, entered into force on 1 April 1999, as last amended on 22 June 2017, 'Latvijas Vēstnesis', 199/200 (1260/1261), 8 July 1998., 'Ziņotājs', 15, 4 August 1998. viewed 24 July 2017, <https://likumi.lv/doc.php?id=88966>

¹⁰⁵ Criminal Procedure Law (*Kriminālprocesa likums*), adopted on 21 April 2005, entered into force on 1 October 2005, as last amended on 22 June 2017., Official Journal reference: 'Latvijas Vēstnesis', 74 (3232), 11 May 2005., 'Ziņotājs', 11, 9 June 2005. viewed 24 July 2017, <https://likumi.lv/doc.php?id=107820>

requirements of these procedural laws. Currently, the web-portal of the courts (www.tiesas.lv) contains several templates of legal documents to be used for documents to be submitted to a court. The forms must be printed and submitted manually, however, as it is not yet possible to submit such forms to the court electronically.

Further development of the judicial system followed Latvia's accession to the EU, including the enactment and implementation of new laws to transpose the *acquis communautaire*¹⁰⁶.

Another important factor influencing effective access to justice in Latvia was the **financial crisis**. In 2008-2010, Latvia faced the financial crisis, which also led to a political crisis in the country. In 2008, the global financial crisis led to the nationalisation of the bank '*Parex banka*', a sharp fall in GDP, and subsequent collapse of the government. In order to save the economy, the European Commission, the International Monetary Fund, the World Bank, the European Bank for Reconstruction and Development and several Member States of the European Union agreed to provide financial support to Latvia. In 2009-2011, the Latvian government was forced to consolidate its state budget. The interviewed representative from the Supreme Court of the Republic of Latvia pointed out that, throughout the financial crisis, the number of claims to the courts increased significantly. For example, the data on received court cases available from the Court Information System shows that 18,939 claims were received in 2007 by the Riga City Courts, compared to 35,921 in 2008 at the start of the financial crisis¹⁰⁷. This increase has slowed down the work capacity of Riga City Courts.

Alternative mechanisms for petitions and dispute resolution

There is no petitions committee within the Latvian Parliament. However, citizens have access to alternative mechanisms to express grievances or obtain remedies, such as the Latvian Ombudsman¹⁰⁸, who is responsible for the protection of citizens' rights. Individuals can address a complaint to the Ombudsman in specific situations, i.e. when public authorities have breached their rights, or where they have been discriminated against, or to ensure good public administration. The Ombudsman may represent a private individual in an administrative court. Although recent, the use of ADR mechanisms is developing in Latvia¹⁰⁹, with the amendment of the Civil Procedure Code to transpose the ADR Directive contributing significantly to the development of mediation.

4.1.5. Poland

Polish law is currently undergoing important **reforms** in order to address issues in the organisation of its judicial system. Although crucial in the context of access to justice, these reforms do not specifically address the issues raised in the petitions, which chiefly related to **legal issues** and **political factors**.

The lack of clarity in the **legal drafting** can be blamed for some of the issues raised by petitioners. The legislation on court fees, for instance, has created issues for citizens, as there are no transparent, clear and consistently used standards for judicial decisions on waiving the fees. This gives judges considerable margin of discretion in deciding whether or

¹⁰⁶ Matisāne I., 11 November 2008, Tieslietu sistēmai – 90, viewed 24 July 2017, <http://m.lvportals.lv/visi/likumi-prakse/183576-tieslietu-sistemai-90/>

¹⁰⁷ Courts information system (Tiesu informācijas Sistēma), viewed 24 July 2017, https://tis.ta.gov.lv/tisreal?Form=TIS_STAT_O

¹⁰⁸ <http://www.tiesibsargs.lv/en>

¹⁰⁹ Kronis, I. Integration of mediation into Latvian legal culture. *The Interaction of National Legal Systems: Convergence Or Divergence?* 2013, p.145. See also 2016 EU Justice Scoreboard, Figure 27: Promotion of and incentives for using alternative dispute resolution methods, 2016.

not the costs should be exempted. In addition, the rules governing court costs are quite complex, making it difficult for parties to understand the possible costs that may be incurred in a given case. Similarly, there are no objective and transparent criteria regulating the granting of legal aid, which may contribute to the lack of accessibility of legal aid in Poland¹¹⁰.

Corruption was mentioned in one petition for Poland. While, officially, the scale of corruption in Polish courts is marginal¹¹¹, it is important to bear in mind the particular difficulty of proving this crime. Judges themselves are responsible for the elimination of corrupt practices, providing an opportunity to camouflage the actions and omissions of their colleagues¹¹². The existence of tight social and professional bonds within the legal and business communities may also affect judicial impartiality.

The Polish judicial system was recently reformed, leading to some unrest in the country. The Polish judiciary suffered from shortcomings in the organisation of courts, as well as problems related to the promotion system for judges, their professional responsibility (i.e. disciplinary proceedings), and removal from their positions. In January 2017, the Minister of Justice set out the underlying principles of the reform of the Polish judiciary system to tackle these issues¹¹³. The Minister pointed to the Polish society's mistrust of the judicial system and argued that the reform aimed to change this negative perception. The reform proposed by the Minister of Justice was based on four main pillars: 1. Efficiency and effectiveness; 2. Impartiality of judges; 3. Trust and fairness; 4. Democratisation and independence.

In mid-July 2017, the Polish Parliament passed three laws¹¹⁴ which the government claimed would integrate the reform in the Polish legal system. The opposition, NGOs and international organisations, however, viewed the proposed changes as a means of subjecting the judiciary to political control by the governing party¹¹⁵. Their principal objections were:

- Excessive powers and competences granted to the Minister of Justice in respect of the organisation and functioning of the judicial system in Poland. One of the three laws passed by the Polish Parliament in July 2017¹¹⁶ gave the Minister of Justice the power to appoint and dismiss presidents and vice-presidents of general courts.
- Changes in the composition of the Polish National Council of the Judiciary. The new rules also gave the Council the power to object to a certain candidate but deprived it of the right to appoint assessors¹¹⁷.

¹¹⁰ International Commission of Jurists (2010). *Access to justice: Human rights abuses involving corporations, Poland*.

¹¹¹ The assessment of the Polish judiciary in light of research, Poland Court Watch Foundation, May 2017, available at: <https://courtwatch.pl/wp-content/uploads/2017/05/Raport-Fundacji-Court-Watch-Polska-Ocena-polskich-s%C4%85d%C3%B3w-w-%C5%9Bwietle-bada%C5%84-maj-2017.pdf>

¹¹² The assessment of the Polish judiciary in light of research, Poland Court Watch Foundation, May 2017, available at: <https://courtwatch.pl/wp-content/uploads/2017/05/Raport-Fundacji-Court-Watch-Polska-Ocena-polskich-s%C4%85d%C3%B3w-w-%C5%9Bwietle-bada%C5%84-maj-2017.pdf>

¹¹³ Website of the Ministry of Justice, <https://ms.gov.pl/pl/informacje/news,8989,zalozenia-planowanej-reformy-sadownictwa.html>

¹¹⁴ Law of 12 July 2017 amending the law on the functioning of general courts and some other acts (*Ustawa z dnia 12 lipca 2017 r. o zmianie ustawy – Prawo o ustroju sądów powszechnych oraz niektórych innych ustaw*), Law of 20 July 2017 on the High Court (*ustawa z dnia 20 lipca 2017 r. o Sądzie Najwyższym*) and Law of 12 July 2017 amending the law on the National Council of the Judiciary of Poland and some other acts (*ustawa z dnia 12 lipca 2017 r. o zmianie ustawy o Krajowej Radzie Sądownictwa oraz niektórych innych ustaw*).

¹¹⁵ Amnesty International Public Statement, AI Index: EUR 37/6753/2017 18 July 2017, available at: <https://amnesty.org.pl/wp-content/uploads/2017/07/o%C5%9Bwiadczenie.reformy-s%C4%85downictwa-w-PL-lipiec-2017.pdf>

¹¹⁶ Law of 12 July 2017 amending the law on the functioning of general courts and some other acts (*Ustawa z dnia 12 lipca 2017 r. o zmianie ustawy – Prawo o ustroju sądów powszechnych oraz niektórych innych ustaw*).

¹¹⁷ Amnesty International Public Statement, AI Index: EUR 37/6753/2017 18 July 2017, available at: <https://amnesty.org.pl/wp-content/uploads/2017/07/o%C5%9Bwiadczenie.reformy-s%C4%85downictwa-w-PL-lipiec-2017.pdf>

- Changes affecting the functioning of the High Court: One of the three laws¹¹⁸ gave the Minister of Justice *inter alia* the right to terminate the mandates of all judges of the High Court and to decide upon the composition of the new Court¹¹⁹.

The proposed changes were criticised by NGOs¹²⁰ and legal experts¹²¹ as unconstitutional, politically motivated and breaching the right to access to justice as set out in Article 45 of the Polish Constitution and Articles 6 and 13 of the ECHR. The adoption of these laws also generated widespread protest among Polish citizens¹²². In this context, on 26 July 2017, the European Commission sent a letter of formal notice and launched an infringement proceeding against Poland for breaches of EU law¹²³. On 12 September 2017, the Commission maintained its position that Polish Law was incompatible with EU law. It issued a Reasoned Opinion, and gave the Polish authorities one month to take the necessary steps to comply with it¹²⁴.

On 31 July 2017, the President of the Republic of Poland vetoed two of the three legal acts (the Law of 20 July 2017 on the High Court and the Law of 12 July 2017 amending the law on the National Council of the Judiciary of Poland and some other acts)¹²⁵. He pointed out certain legislative mistakes, the unsuitability of increasing the competence of the Minister of Justice, and errors in the procedure for the appointment of the members of the National Council of the Judiciary of Poland. He also committed to propose, within two months, drafts of new legislative acts to improve the functioning of the judiciary in Poland.

On 25 September 2017, the President of the Republic of Poland presented several draft amendments of the law on High court and the law on the National Council of the Judiciary of Poland. The Presidential bill on the High Court introduced, *inter alia*, the possibility of filing an extraordinary complaint against final court judgements, a provision requiring the High Court judges to retire at the age of 65 with the possibility of requesting the President to extend their mandate, the establishment of a Disciplinary Chamber and a Chamber for Extraordinary Control and Public Order, and involvement of jury members in certain proceedings of the High Court. The Presidential bill on the National Council of the Judiciary of Poland introduced a substantial change in the nomination of judges by the Parliament. Candidates for judiciary position will be proposed by a group of at least 2,000 Polish citizens or a group of at least 25 active judges. Judges will be chosen by the Parliament by a majority of 3/5 or, if this fails, through personal voting. Ultimately, the President of the Republic of Poland will appoint judges. The amendment introduced also certain provisions for increasing the transparency of the activities of the National Council of the Judiciary of Poland (e.g. broadcasting of the Council's meetings).

¹¹⁸ Law of 20 July 2017 on the High Court (*ustawa z dnia 20 lipca 2017 r. o Sądzie Najwyższym*).

¹¹⁹ Amnesty International Public Statement, AI Index: EUR 37/6753/2017 18 July 2017, available at: <https://amnesty.org.pl/wp-content/uploads/2017/07/o%C5%9Bwiadczenie.reformy-s%C4%85downictwa-w-PL-lipiec-2017.pdf>

¹²⁰ Amnesty International Public Statement, AI Index: EUR 37/6753/2017 18 July 2017, available at: <https://amnesty.org.pl/wp-content/uploads/2017/07/o%C5%9Bwiadczenie.reformy-s%C4%85downictwa-w-PL-lipiec-2017.pdf>; the Helsinki Foundation for Human Rights, available at: <http://www.hfhr.pl/en/the-draft-amendment-to-the-act-on-the-supreme-court/>

¹²¹ <http://prawo.gazetaprawna.pl/artykuly/1057595,nowelizacja-ustawy-o-sn-pis-komentarz-letowska.html>

¹²² <http://wiadomosci.onet.pl/tylko-w-onecie/osmy-dzien-demonstracji-przeciwko-reformie-sadownictwa-relacja/6snt933>, <http://www.rp.pl/Spoleczenstwo/170729723-Polacy-protestowali-przeciwko-reformie-sadownictwa.html>, <http://www.pap.pl/aktualnosci/news,1016958,protesty-przeciw-reformom-sadownictwa---przed-palacem-prezydenckim-i-w-innych-miejscach-w-kraju.html>

¹²³ European Commission, Press release, available at: http://europa.eu/rapid/press-release_IP-17-2161_en.htm

¹²⁴ European Commission - Press release, available at: http://europa.eu/rapid/press-release_IP-17-3186_en.htm

¹²⁵ Website of the President of the Republic of Poland, available at: <http://www.prezydent.pl/prawo/ustawy/zawetowane/>

The Presidential bills were submitted to the Parliament on 26 September 2017 and will be passed in the upcoming weeks. They have also been the subject of bilateral consultations between the President of Poland, Andrzej Duda, and the President of the ruling party 'Law and Justice' ('Prawo i Sprawiedliwość'), Jarosław Kaczyński. The agreement concerning the final text of the two legal acts was reached in the first days of November 2017. The two legal drafts will be subject to proceedings in the Parliament in the upcoming weeks.

On 25 September 2017, the vice-President of the European Commission, Franz Timmermans, informed that Poland and the Commission offered pledges for renewed dialogue on the judicial reform. Timmermans welcomed the readiness of the Polish government to continue the dialogue¹²⁶. However, on 15 November 2017, the EP adopted a resolution on the situation in Poland¹²⁷ in which it voiced specific concerns about the separation of powers, the independence of the judiciary and fundamental rights. The EP urged 'the Polish Parliament and Government to implement fully all recommendations of the Commission and the Venice Commission, and to refrain from conducting any reform which would put at risk respect for the rule of law, and in particular the independence of the judiciary'. It called 'in this respect for postponement of the adoption of any laws until a proper assessment has been made by the Commission and the Venice Commission'¹²⁸. Furthermore, the EP stated that it 'believes that the current situation in Poland represents a clear risk of a serious breach of the values referred to in Article 2 of the TFEU'¹²⁹. It instructed its Committee on Civil Liberties, Justice and Home Affairs to draw up a specific report, with a view to holding a plenary vote on a reasoned proposal calling on the Council to act pursuant to Article 7(1) of the TFEU. If the risk persists and the Polish authorities refuse to comply with the recommendations, the procedure might lead to the suspension of Poland's voting rights in the Council¹³⁰.

Alternative mechanisms for petitions and dispute resolution

In Poland, citizens have access to alternative mechanisms to voice grievances or solve disputes. The Polish Constitution grants the right to submit petitions, proposals and complaints to public bodies on matters of public or private interest¹³¹. Both chambers of the Polish Parliament (the *Sejm* and the Senate) have their own Petitions Committees. Petitions sent to the Polish Parliament may indicate issues relating to access to justice. For instance, the lower chamber received 125 petitions in 2016, 13 of which concerned court and administrative proceedings¹³². Citizens can also address complaints to the Polish Ombudsman, the Commissioner for Human Rights¹³³, who is an independent authority responsible for ensuring that public authorities respect human rights in their interactions with citizens. Finally, mediation was first introduced in Poland in the 1990s for collective labour law. In 2005, it was extended to civil law, including commercial and family law. However, the

¹²⁶ See European Council (2017). General Affairs Council 25/09/2017, available at <http://www.consilium.europa.eu/en/meetings/gac/2017/09/25/>.

¹²⁷ European Parliament resolution of 15 November 2017 on the situation of the rule of law and democracy in Poland (2017/2931(RSP)).

¹²⁸ European Parliament resolution of 15 November 2017, para. 7.

¹²⁹ European Parliament resolution of 15 November 2017, para. 16.

¹³⁰ European Parliament, Rule of law and democracy in Poland at risk: Parliament ready for next steps, 15 November 2017, available at <http://www.europarl.europa.eu/news/en/press-room/20171110IPR87824/rule-of-law-and-democracy-in-poland-at-risk-parliament-ready-for-next-steps>.

¹³¹ Article 63 of the Polish Constitution. The procedure for the submission and follow-up of petitions is regulated by the Act of 11 July 2014 on petitions, *Ustawa z dnia 11 lipca 2014 r. o petycjach*, available at: <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20140001195>

¹³² Report on the petitions submitted in 2016, available at:

[http://orka.sejm.gov.pl/petycje.nsf/nazwa/informacja_roczna_2016/\\$file/informacja_roczna_2016.pdf](http://orka.sejm.gov.pl/petycje.nsf/nazwa/informacja_roczna_2016/$file/informacja_roczna_2016.pdf)

¹³³ <https://www.rpo.gov.pl/en>

regulation of mediation in Poland has been criticised for its lack of adequate requirements for potential mediators and the lack of public funding and legal aid for civil matters¹³⁴.

4.1.6. Romania

Some of the factors affecting access to justice in Romania included the transition from the former communist regime, the reluctance (and sometimes opposition) to promote reforms, the high level of corruption, and widespread poverty.

During the early stages of the transition from the communist regime to democracy, reform of the judiciary was necessary. The Constitution adopted in 1991 (and revised in 2003), recognised the fundamental principle of access to justice in its Article 21¹³⁵. In accordance with the Constitution, judicial power must be unique, impartial and equal for all, with independent judges, and providing effective access to justice. Other than the Constitution, it was observed in literature that reform was a slow and difficult process, with a parliament unable 'to keep up with the pace of reforms needed'¹³⁶. In response, the government was 'ruling by decree', a recurring pattern that sped up the legislative process sometimes at the expense of democracy¹³⁷. Although a member of the EU since 1 January 2007¹³⁸, Romania's accession represented a 'slow process of internal transformations and democratic rule of law reforms'¹³⁹.

Recently, Romania has adopted and implemented **new Civil and Criminal Codes**, with the goal of 'modernising the substantive law and improving the efficiency and consistency of the judicial process'¹⁴⁰. The new Civil Code entered into force in 2011, the Civil Procedure Code in 2013 and the new Criminal Code in 2014. The transition to the new Civil Code and Civil Procedure Code has been gradual and now applies to most cases. By contrast, all provisions of the Criminal Code were applicable immediately. Some issues remain to be addressed, such as the implementation of the Civil Code provisions on new infrastructure and the application of several provisions of the new Civil Procedure Code, which have been postponed until 1 January 2019¹⁴¹. The Criminal Code has seen many developments, with rulings of the Constitutional Court, amendments proposed by parliament and Emergency Ordinances prepared by the government. The changes suggested by the parliament and the government raised controversy, attracting claims that they weakened the legal framework on corruption¹⁴², while fighting corruption is a highly sensitive issue in Romania, which, as a

¹³⁴ Morek, R., & Rozdeicz, L. Mediation in Poland: Time for a quiet revolution. *Mediation Principles and Regulation in Comparative Perspective*, 2013, Oxford, OUP, 775.

¹³⁵ Friedmann-Nicolescu, I., *Acesul liber la justitie in Dreptul romanesc actual I, Aspecte Constitutionale*, 2016, Bucharest, p.6, available at: <http://uniuneabarourilor.ro/wp-content/uploads/2017/03/Acesul-liber-la-justitie-2017-av-dr-Nicolaescu-Friedmann-BB.pdf>.

¹³⁶ Demsorean, A., Parvulescu, S., & Vettrici-Soimu, B., Romania: Vetted reforms, skewed results, in Magen, A. & Morlino, L. (Eds), *International Actors, Democratisation and the Rule of Law: Anchoring Democracy?*, Routledge Taylor & Francis Group, USA, 2009, p.87.

¹³⁷ Ibid. p.100.

¹³⁸ Radu, M., *Ghid practic privind cooperarea judiciară în materie penală. Perspectivă comparativă a instrumentelor juridice folosite în Germania, România, Spania și Suedia*, realizat în cadrul proiectului 'JUST/2013/JPEN/AG/4475 Întărirea cooperării judiciare la nivel European', 2016, p.16.

¹³⁹ Demsorean, A., Parvulescu, S. & Vettrici-Soimu, B., Romania: Vetted reforms, skewed results, in Magen, A. & Morlino, L. (Eds), *International Actors, Democratisation and the Rule of Law: Anchoring Democracy?*, Routledge Taylor & Francis Group, USA, 2009, p.87.

¹⁴⁰ European Commission, Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism, Brussels, 25 January 2017 COM (2017) 44 final, available at: https://ec.europa.eu/info/sites/info/files/com-2017-44_en_1.pdf, p.10. See also: European Commission, The 2017 EU Justice Scoreboard, 2017, Brussels, available at: http://ec.europa.eu/justice/effective-justice/scoreboard/index_en.htm; p. 5: "The Commissions further assists justice reforms in Romania and Bulgaria through the cooperation and verification mechanism".

¹⁴¹ Ibid. p.10.

¹⁴² On 31 January 2017, the government adopted an emergency ordinance to amend the Criminal Code. The changes decriminalised some important offences related to corruption and ongoing investigations or prison

post-communist country, suffered from widespread corruption after 1989. With respect to the corruption of judiciary power, the wider public distrusts the judicial system generally, considering it to be corrupt and influenced by the political class. According to Transparency Romania, 24% of magistrates interviewed in 2005 and 30% interviewed in 2006 'admitted having been subject to attempts to influence their decision on court cases'¹⁴³. Also, over 60% of the magistrates interviewed in 2006 stated that political pressure on ruling in specific cases still remained¹⁴⁴. Aside from the recent problems in relation to the Emergency Ordinances, the anti-corruption practices have proven increasingly effective in recent years, especially with the introduction of the renewed national anti-corruption strategy to tackle corruption in public administration for the 2016-2020 period¹⁴⁵.

For many years, Romania was characterised by widespread poverty, chiefly due to corrupt practices. Although the level of poverty has declined in recent years, the high degree of income inequality persists, with Romania having one of the highest levels of income inequality in the EU, and rising, according to a recent European Commission report¹⁴⁶. The same report observes that poverty and social exclusion persist for young people, families with children, people with disabilities, Roma, the rural population and the unemployed¹⁴⁷. Romania is home to two important ethnic groups, the Hungarian and Roma communities. Although the Hungarian minority managed to obtain significant minority rights and created a strong ethnic party (UDMR), the Roma community is still subject to serious discrimination¹⁴⁸.

The recent reforms and developments in the political and judicial systems demonstrate the progress made by Romania in granting independence to the judiciary and improving its effectiveness¹⁴⁹, while also fighting high-level corruption¹⁵⁰. However, efforts are still needed on judicial independence in Romania's public life, finalising reforms of the criminal and civil codes, and ensuring efficiency in the implementation of court decisions. As recently pointed out by the European Commission, Romania has made some progress towards further measures to prevent and combat corruption, particularly within local government¹⁵¹.

sentences, in the context of widespread accusations of corruption among government officials and politicians. After the ordinance was passed, Romanian people mounted the largest protest since the fall of Communism. While a subsequent government emergency ordinance issued on 5 February 2017 repealed the first ordinance, parliamentary scrutiny of both ordinances is still pending. These events also led to the resignation of the Minister of Justice.

¹⁴³ See Transparency International Romania, Study of magistrates' perceptions regarding their professional independence, editions 2005 and 2006.

¹⁴⁴ Ibid.

¹⁴⁵ European Commission, Commission Staff Working Document, Country Report Romania 2017, Brussels, 22 February 2017 SWD(2017) 88 final, available at: <https://ec.europa.eu/info/sites/info/files/2017-european-semester-country-report-romania-en.pdf>, p.2.

¹⁴⁶ Ibid, p.2.

¹⁴⁷ Ibid.

¹⁴⁸ Ana Damsorean, Sorana Parvulescu, Bogdan Vettrici- Soimu, *Romania: Vetoed reforms, skewed results, in Amichai Magen, Leonardo Morlino, International Actors, Democratization and the Rule of Law: Anchoring Democracy?*, Ed. Routledge Taylor & Francis Group, USA, 2009, p.92.

¹⁴⁹ Damsorean, A., Parvulescu, S. & Vettrici-Soimu, B. *Romania: Vetoed reforms, skewed results, in Magen, A. & Morlino, L. (eds), International Actors, Democratization and the Rule of Law: Anchoring Democracy?*, Routledge Taylor & Francis Group, USA, 2009, p.99.

¹⁵⁰ European Commission, Commission Staff Working Document, Country Report Romania 2017, Brussels, 22 February 2017, SWD(2017) 88 final, available at: <https://ec.europa.eu/info/sites/info/files/2017-european-semester-country-report-romania-en.pdf>, p.11.

¹⁵¹ European Commission, Commission Staff Working Document, Country Report Romania 2017, Brussels, 22.2.2017, SWD(2017) 88 final, available at: <https://ec.europa.eu/info/sites/info/files/2017-european-semester-country-report-romania-en.pdf>, p.11.

Alternative mechanisms for petitions and dispute resolution

In Romania, alternative mechanisms are available to citizens to voice grievances or solve disputes. The Romanian Constitution grants Romanian citizens the right to petition public authorities, while obliging public authorities to answer within the deadlines prescribed by law. Citizens can also address petitions to the Romanian Parliament. The Committee for the Investigation of Abuses, Corrupt Practices, and for Petitions of the lower chamber of the Parliament (Chamber of Deputies) examines and investigates the abuses raised in the petitions¹⁵². Citizens can address petitions to the People's Advocate, i.e. the Romanian Ombudsman, on matters relating to the violation of their rights and freedoms by acts of public authorities and public companies¹⁵³. Petitions concerning certain authorities, such as the judiciary, are inadmissible. Finally, in recent years, Romania has increasingly adopted rules to foster the use of ADR mechanisms¹⁵⁴. The most important legal instrument in this respect is Law No. 192/2006, which governs mediation and the organisation of the profession of mediator. Law No. 192/2006 has been amended several times, notably to transpose the ADR Directive. In 2016, Romania was among the Member States with the highest score for promoting and encouraging the use of ADR mechanisms¹⁵⁵.

4.1.7. Slovakia

For Slovakia, historical factors, in particular the transition from the communist regime to democracy drove the constant reforms of the judiciary and the resulting difficulties in accessing justice.

The breakdown of the communist regime in Czechoslovakia and its ensuing separation into two independent countries in the early 1990s brought a series of challenges for Slovakia in rebuilding itself as a democratic country. The judiciary required profound reform, including aligning the design and functioning of its institutions with European and international democratic standards.

Soon after the revolution, elections were won by Vladimír Mečiar and the *Hnutie Za Demockatické Slovensko* party (Movement for Democratic Slovakia). The political choices made by the new government caused a severe setback in reform of the judiciary, halting progress for the next decade. During this time, judges who were willing to reform the judiciary and introduce principles such as independence and transparency of justice were criticised and subjected to disciplinary sanctions.

The Slovakian judicial system has undergone very important **reforms** in recent years. Undoubtedly, one important landmark was the recodification of key procedural codes. In May 2015, the National Council of the Slovak Republic adopted:

- Act No. 160/2015 Coll. Code of Contentious Civil Procedure (CCCP).
- Act No. 161/2015 Coll. Code of Non- Contentious Civil Procedure (CNCCP).

¹⁵² Chamber of Deputies (2017), Committee for the Investigation of Abuses, Corrupt Practices, and for Petitions <http://www.cdep.ro/pls/parlam/structura.co?idl=2&idc=14>

¹⁵³ <http://www.avp.ro>

¹⁵⁴ On mediation in Romania, see Lungu, E. & Adi Gavrilă, C. Mediation in Romania, 2016, <https://gettingthedealthrough.com/area/54/jurisdiction/73/mediation-romania/>

¹⁵⁵ See 2016 EU Justice Scoreboard, Figure 27: Promotion of and incentives for using alternative dispute resolution methods, 2016.

- Act. No. 162/2015 Coll. Code of Administrative Judicial Procedure (Správny súdny poriadok) (CAJP)¹⁵⁶.

This represented the first comprehensive legal reform of Slovakian procedural law in over 50 years¹⁵⁷. The primary aim of the recodification was to accelerate the often criticised speed of court proceedings, to ensure equitable protection of participants' rights, and to rationalise the cost of proceedings¹⁵⁸. In this respect, the new CCCP introduced the 'concentration of proceedings' which entitles the judge to order the participants to submit all evidence in proceedings within a stipulated timeframe to avoid delaying tactics¹⁵⁹. Another key novelty was the introduction of preliminary hearings, to encourage the parties to drop the legal action and settle out of court¹⁶⁰. The CCCP was also intended to enhance the specialisation of courts, increase the quality of decisions, and ensure that cases are dealt with more promptly.

After the 2016 Parliamentary elections and the entry of the political party *Most-Híd* into government, additional reforms were launched in respect of the judiciary and the justice system:

- Extensive recodification of the **Code on Distress Procedure** (Law No. 2/2017 Coll.) which entered in force in April 2017. This new Code intends to address delays in judicial proceedings caused by overworked judges and obstacles in distress proceedings. In 2016, courts dealt with more than one million cases, many of which were distress proceedings¹⁶¹. This extensive agenda takes time and resources away from other legal matters. In this respect, the new Code has transferred this competence to one specialised court. The amendment also introduced compulsory electronic submission of cases in the distress proceedings, with the aim to save time and resources at the courts. The amendment also addressed the problem of transparency in the selection of judges administering distress proceedings.
- In July 2017, a package of reforms concerning the **functioning of the judiciary** (amendments to Law No. 385/2000 Coll. on judges and Law No. 757/2004 Coll. on courts) were adopted in order to make the judiciary more efficient and improve access to justice¹⁶², through the establishment of a regional selection procedure for judges, the evaluation of the work of judges through professional commissions, and a more efficient disciplinary system.

Almost no major reforms have been undertaken recently for criminal law, specifically procedural guarantees in the framework of criminal proceedings. The last comprehensive recodification of criminal law and its procedure was implemented in 2005. In criminal procedural law, however, protection of the rights of victims in criminal proceedings has been the subject of much discussion. A new legislative act, the Act on crime victims, was adopted

¹⁵⁶ Hereinafter 'new procedure codes'.

¹⁵⁷ Devínsky, P., 'Slovakia: new Civil Procedure Regulation entering into force in 2016', Roadmap 2016, <http://roadmap2016.schoenherr.eu/slovakia-new-civil-procedure-regulation-entering-into-force-in-2016/>, accessed in July 2016.

¹⁵⁸ Ibid.

¹⁵⁹ Ibid.

¹⁶⁰ Futej, D. & Hric, C., 'Slovak Republic: New Civil Procedure Codes', *International Financial Law Review*, 30 October 2015, <http://www.iflr.com/Article/3502255/Slovak-Republic-New-civil-procedure-codes.html>, accessed in July 2017.

¹⁶¹ Bieliková, K. & Homza, M., 'Rule of law in Slovakia and its impact on the business environment', The American Chamber of Commerce in Slovakia, http://www.amcham.sk/publications/connection-magazine/issues/2017-01/272596_rule-of-law-in-slovakia-and-its-impact-on-the-business-environment, accessed in July 2017.

¹⁶² Daily SME, 'Sudcov čakajú nové pravidlá, zmeny v justícii vstúpili do účinnosti' (There will be new rules for judges, changes related to judiciary entered in force), 3 July 2017, available at: <https://domov.sme.sk/c/20573534/sudcov-ckaju-nove-pravidla-zmeny-v-justicii-vstupili-do-ucinnosti.html#axzz4IIBIVxPn> <https://domov.sme.sk/c/20573534/sudcov-ckaju-nove-pravidla-zmeny-v-justicii-vstupili-do-ucinnosti.html#axzz4IIBIVxPn>, accessed in July 2017.

by the Slovak Parliament on 12 October 2017. This act aims to align the Slovak legislation with European standards.

Alternative mechanisms for petitions and dispute resolution

The Slovakian Constitution guarantees the right to petition¹⁶³. As such, everyone has the right to address public bodies in matters of public interest (or other common interest) with petitions, proposals, and complaints either individually or with others. The right to petition public bodies is governed by Act No. 85/1990 on the right to petition¹⁶⁴. Citizens can also file a complaint with the Public Defender of Rights where they deem that a public body has violated their fundamental rights and freedoms¹⁶⁵. However, the Public Defender of Rights is not competent to hear disputes with other actors. The Parliament of Slovakia has no petitions committee in its National Council. Citizens may use ADR mechanisms, which are gaining in importance in Slovakia¹⁶⁶ and which are governed by Act No. 420/2004¹⁶⁷. Despite increasing use of ADR mechanisms, litigation culture remains strong among legal practitioners and the public. ADR is still not perceived as an 'equal alternative to litigation'¹⁶⁸, with promotion and incentives remaining one of the lowest in the EU¹⁶⁹.

4.1.8. Spain

The difficulties in accessing justice in Spain seem to be brought to the attention of the European institutions rather frequently. In addition to the historical background, the economic crisis accentuated some of the problems, when accessing justice on a domestic level. Since 2012, the Spanish government has also carried out several reforms on justice, attracting complaints from petitioners (Petitions No. 2679/2014, 1523/2014, 2833/2013, 2809/2013, 2808/2013, 2801/2013 and 2596/2013).

In 2012, the government introduced a Law on Court Fees (Law 10/2012)¹⁷⁰, which reintroduced additional court fees after these were abolished by Spain in 1986 and reinstated in 2002. Court fees are required for the exercise of judicial power in civil, administrative and employment cases, and are uniformly charged throughout Spain. Law 10/2012 aimed to rationalize the exercise of jurisdictional authority, while providing greater resources to improve the financing of the judicial system and, in particular, of free legal assistance¹⁷¹. Some studies observed that the imposition of new court fees on complaints lodged in various types of proceedings has impacted the ability of citizens to access justice¹⁷². In view of the

¹⁶³ Article 27(1) of the Slovakian Constitution.

¹⁶⁴ Act No. 85/1990 Coll. on the Right to Petition, as amended.

¹⁶⁵ Website of the Public Defender of Rights, <http://www.vop.gov.sk/home>

¹⁶⁶ On mediation in Slovakia, see Kutlík, F. 'Slovakia', in Mota, C. E., Iglesias, J. L., & Moreno, G. P. (Eds.). (2014). *Civil and commercial mediation in Europe*. Vol. I. Intersentia.

¹⁶⁷ Act No. 420/2004 Coll. on mediation (Mediation Act).

¹⁶⁸ Chovancova, K. Mediation in Slovakia and the Czech Republic: Niceties of Legal Neighbourhood, 2017, *YB on Int'l Arb.*, 5, 285.

¹⁶⁹ See 2016 EU Justice Scoreboard, Figure 27: Promotion of and incentives for using alternative dispute resolution methods, 2016.

¹⁷⁰ Ley 10/2012, de 20 de noviembre, por la que se regulan determinadas tasas en el ámbito de la Administración de Justicia y del Instituto Nacional de Toxicología y Ciencias Forenses (BOE núm. 280 de 21 de Noviembre de 2012). See, in particular, the preamble : "*se pretende racionalizar el ejercicio de la potestad jurisdiccional, al mismo tiempo que la tasa aportará unos mayores recursos que permitirán una mejora en la financiación del sistema judicial y, en particular, de la asistencia jurídica gratuita, dentro del régimen general establecido en el artículo 27 de la Ley 47/2003, de 26 de noviembre, General Presupuestaria.*"

¹⁷¹ See, in particular, the preamble : "*se pretende racionalizar el ejercicio de la potestad jurisdiccional, al mismo tiempo que la tasa aportará unos mayores recursos que permitirán una mejora en la financiación del sistema judicial y, en particular, de la asistencia jurídica gratuita, dentro del régimen general establecido en el artículo 27 de la Ley 47/2003, de 26 de noviembre, General Presupuestaria.*"

¹⁷² Tamamović, A. I. (2015). The impact of the crisis on fundamental rights across member States of the EU: Comparative analysis. European Parliament, p. 101.

economic context of 2012¹⁷³, the introduction of new court fees limited the ability of citizens to initiate judicial proceedings, especially those affected by the consequences of the economic crisis. This was particularly the case for citizens with potentially unfair mortgage loan agreements, as highlighted in several of the petitions analysed¹⁷⁴. In 2013 and 2015, the Spanish government adopted two regulations creating exemptions for specific categories of litigants (e.g. natural persons) or reducing the amount of court fees. In 2016, the Spanish Constitutional Court ruled that the current rules governing the imposition of court fees were in breach of the right to an effective remedy and impeded access to justice¹⁷⁵ which brought the situation back to where it was before 2012.

The Spanish government has carried out **reforms in the field of justice** in the past five years. These include changes to the Criminal Code (Organic Law 1/2015), the Criminal Procedure law (Law 4/2015, Organic Law 13/2015 and Law 41/2015), the Civil Procedure law (Law 42/2015), the Organic Law of the Judiciary (Organic Law 7/2015), and the Law on Citizen Security (Organic Law 4/2015).

In the area of criminal law, reforms included several issues affecting access to justice:

- The **Criminal Code** has been modified to decriminalise certain small conducts (*faltas*) that are now considered civil or administrative offences¹⁷⁶.
- The **Criminal Procedure Law** was modified to provide the possibility of appeal for first instance rulings to which the right of appeal did not previously apply (*Audiencias provinciales* and *Audiencia Nacional*), to broaden the scope of cassation (*recurso de casación*), to include a maximum time limit to end the pre-trial phase in criminal proceedings, to transpose Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings, and to specify that police records for crimes with no known suspect would not be sent to the courts, to avoid work overload¹⁷⁷. A new proposal to reform the law was announced in December 2016. If approved, this would bring important changes, including (most fundamentally) entrusting the investigation phase of a criminal proceeding to the public prosecutor (*fiscal*) instead of the judge (*juez de instrucción*) as is currently the case¹⁷⁸.

The reform of the **Civil Procedure Law** provided several innovations, among which were the adoption of new technologies in justice administration, revision of free legal assistance, and other procedural changes¹⁷⁹.

In terms of general procedures, the reform of the **Organic Law of the Judiciary** includes modifications in the regulation of the cassation appeal (*recurso de casación*) and the revision appeal (*recurso de revisión*), as well as measures to speed judicial proceedings (e.g. joint action of several courts, rules on the application of CJEU case law, modification of the functions of the court clerks¹⁸⁰, changes to the competence of first instance and commercial courts, and publication of assignment of dates for trials)¹⁸¹.

¹⁷³ On the Spanish economic crisis, see Ortega, E. & Peñalosa, J. (2012). The Spanish Economic Crisis: Key Factors and Growth Challenges in the Euro Area. *Documentos Ocasionales No. 1201*, Banco de España.

¹⁷⁴ Petitions No. 0142/2014, 2679/2014, 0628/2016, 0644/2016.

¹⁷⁵ Spanish Constitutional Court, 140/2016.

¹⁷⁶ Thomson Reuters – Aranzadi 'La prisión permanente revisable protagoniza la reforma del Código Penal', *Dossier Actualidad Legislativa*, 2015b, pp. 3-4.

¹⁷⁷ Luzón Campos, E. 'Principales novedades en la Ley de Enjuiciamiento Criminal tras la reforma operada mediante la Ley Orgánica 13/2015 y la Ley 41/2015', *Gómez-Acebo & Pombo*, 2015.

¹⁷⁸ Thomson Reuters – Aranzadi 'Catalá propone una ley orgánica del derecho a la defensa para ampliar la protección de los ciudadanos', 2016.

¹⁷⁹ Thomson Reuters – Aranzadi 'Dossier reforma de la ley del enjuiciamiento civil', 2015a.

¹⁸⁰ Now called *letrados de la administración de justicia* instead of *secretarios judiciales*.

¹⁸¹ Wolters Kluwer 'Las 10 claves de la reforma de la Ley Orgánica del Poder Judicial', 2015.

Alternative mechanisms for petitions and dispute resolution

The Spanish Constitution recognises that everyone has the right to individual and collective petition¹⁸². It allows both chambers of the *Cortes Generales* (the Spanish Parliament at national level) to receive individual and collective petitions¹⁸³, in addition to a specific Petitions Committee¹⁸⁴. Citizens can also file a complaint with the *Defensor del Pueblo*, the Spanish Ombudsman¹⁸⁵, to highlight any alleged misconduct by public authorities. Autonomous Communities also have their own Ombudsman for issues within their competence. For ADR mechanisms, Law 5/2012 of 6 July 2012 on mediation in civil and commercial matters transposes the ADR Directive into Spanish law. Law 5/2012 introduced an explicit reference to mediation as one of the non-judicial methods to launch proceedings in the Code of Civil Procedure¹⁸⁶. Law 15/2015 of 2 July 2015 encourages voluntary mediation, and the practice is well developed in employment and family proceedings¹⁸⁷.

4.2. Effective access to court

KEY FINDINGS

- Effective access to court requires that litigants should be able to institute proceedings before a dispute resolution body.
- In the Member States under study, the petitions revealed that three main issues can impede effective access to court, namely the organisation of the national judicial system, legal and procedural obstacles, and practical obstacles.
- The organisation of the national judicial system may impact, more or less directly, access to justice. Some petitions referred to the organisation of courts, and the working conditions of judges. For example, judges on temporary employment contracts complained about their precarious employment conditions (Italy and Spain). Another concern for several petitioners was their inability to appeal first instance judgments or rulings in criminal proceedings (Croatia and Greece).
- The number of petitions referring to legal and procedural obstacles impeding access to court was relatively small. One petitioner complained about the obligation to have a Polish postal address in order to be served court documents in Poland. In Spain, petitioners raised that procedural law limited the ability of homeowners to object to the enforcement of mortgage-related evictions in the context of the economic crisis.
- Several petitions raised concerns about the existence of practical obstacles impeding access to court. Such obstacles included the unavailability of courts in isolated regions (Italy), or access to proper translation and interpretation in civil and family law proceedings (Spain). In several petitions from Poland, citizens complained about the court's refusal to allow the use of qualified electronic signatures in correspondence with the judiciary.

¹⁸² Article 29(2) of the Spanish Constitution.

¹⁸³ Article 77 of the Spanish Constitution.

¹⁸⁴ See Derecho de petición (Cortes Generales), Guías Jurídicas, Wolters Kluwer

¹⁸⁵ <https://www.defensordelpueblo.es/en/>

¹⁸⁶ Mediation in Member States – Spain, https://e-justice.europa.eu/content_mediation_in_member_states-64-es-en.do?member=1

¹⁸⁷ See 2016 EU Justice Scoreboard, Figure 27: Promotion of and incentives for using alternative dispute resolution methods, 2016.

4.2.1. Organisation of the national judicial system

The way in which a national judicial system is organised may have some direct and indirect repercussions for access to justice. Some petitions highlighted concerns about aspects of the organisation of the judiciary insofar as they impacted citizens' access to courts. The right to appeal first instance judgments or rulings in criminal proceedings was raised as an issue in Croatia and Greece. The relevant petitions are listed in **Table 5** below. Issues related to the lack of independence and impartiality of the judiciary are covered under Section 4.4.1.

Table 5: Selected petitions raising issues linked to the organisation of the national judicial system

Country	Subject-matter of Petition	Admissibility
Croatia	0652/2014: Absence of possibility to appeal a lower court's judgment	Inadmissible: Subject-matter outside EU's field of activity
	2093/2013: Possibility to bring claims before Croatian courts	Inadmissible: Subject-matter outside EU's field of activity
Greece	1687/2013: Absence of efficient supervisory system to prevent corruption and unethical practices of the judiciary	Inadmissible: no additional information
Italy	0028/2016, 0044/2016, 0177/2016, 0214/2016, 0333/2016, 0889/2016, 1328/2015, 1376/2015: Precarious employment situation of Justices of the Peace on fixed-term contracts ¹⁸⁸	Admissible: available to supporters <ul style="list-style-type: none"> • EP decided to keep petitions open • Information requested from the EC • The EP sent a letter to the Italian Ministry of Justice
Romania	2701/2013: Complaint about different judgments on the same problem in different courts.	Admissible: closed. No additional information
Spain	0283/2014 ¹⁸⁹ : Precarious situation of judges on temporary employment contracts in breach of Directive 1999/70/EC on fixed-term work ¹⁹⁰	Admissible: closed <ul style="list-style-type: none"> • In its reply, the EC considered there was no breach of Directive 1999/70/EC on fixed-term work¹⁹¹
	1461/2013: Precarious situation of judges on temporary employment contracts in breach of Directive 1999/70/EC on fixed-term work	Inadmissible: no additional information

Croatia

In Petition No. 2093/2013, the petitioner complained about the functioning of the Croatian justice system, stating that he had been unable to be heard by a national court.

¹⁸⁸ European Parliament, Minutes: Meeting of 28 February 2017, PETI_PV(2016)262_1

¹⁸⁹ European Parliament, Notice to Members, 29 May 2015 available at:

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONGML%2bCOMPARL%2bPE-557.380%2b01%2bDOC%2bPDF%2bV0%2f%2fEN>

¹⁹⁰ Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, OJ L 175, 10.7.1999, p. 43–48 (Fixed-Term Work Directive)

¹⁹¹ European Parliament, Notice to Members, 29 May 2015, available at:

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONGML%2bCOMPARL%2bPE-557.380%2b01%2bDOC%2bPDF%2bV0%2f%2fEN>

Based on the desk research and interviews, no factors have been identified that might have led to the issues claimed in the petition. Croatian courts are divided by their jurisdiction as well as their level, and all court processes are thoroughly regulated by procedural rules under which legal remedies have an important role. Legal remedies are well-developed means that are available to the petitioner at all levels of the judicial decision-making process. Arbitration is also a viable option in every instance of the courts.

In Petition No. 0652/2014, the petitioner stated that he had no option to appeal a judgment delivered by the Slavonski Brod County Court, which, he alleged, was a denial of justice.

In Croatia, the right to appeal is recognised as a constitutional right for both natural and legal persons. While county courts are almost exclusively second instance courts, they are occasionally used as first instance courts. This is the case in penal litigation if the punishment by law surpasses 10 years, or in other proceedings governed by special regulations (where the court decides on the compensation amount for expropriated real estate, or the right to belong to an association, etc.). The Supreme Court is a court of full jurisdiction with respect to court decisions, which it can void, confirm or revise. The Supreme Court is the highest court in Croatia and, as the last instance, decides on extraordinary legal remedies against valid court decisions of the courts of general jurisdiction (dismissed appeal), and all other courts in Croatia. The Supreme Court is also an appellate court in all cases where municipal courts were the first instance.

Looking at the judicial system in place, there is no element to substantiate the petitioner's claim, and no evidence to indicate that Petition 0652/2014 reflects a systemic issue with the Croatian appeal system. In relation to the latter, it should be however noted that in 2012, the ECtHR found that Croatia had violated Article 6(1) of the ECHR in a case concerned with the Croatian Supreme Court's refusal to consider an appeal in a property claim¹⁹². In *Zubac v. Croatia*, the ECtHR found that the Supreme Court had applied the rules concerning the statutory minimum for lodging an appeal in an excessively formalistic manner and that this had been contrary to the general principle of procedural fairness inherent in Article 6.

Greece

One petition raised issues relating to the organisation of the national judicial system in Greece. In Petition No. 1687/2013, the petitioner argued that there was no actual supervision of judges, as the competent judicial supervision bodies refused to judge or condemn colleagues guilty of wrongdoing or breach of oath.

In general, the national organisation of the judicial system does not give rise to significant concerns about the effectiveness of the justice system. Specialised courts are in place, categorised according to the scope of their competency (administrative, penal, civil), and the capacity of judges is considered satisfactory. At the same time, the legislation in force provides adequate legal remedies, which can be exercised at first, second (appeal) and in several cases also at third stage (High Courts). However, the lack of adequate personnel – both judges and court employees – often leads to an excessive length of proceedings. This can significantly affect effective access to justice in practical terms.

Petition No. 1687/2013 raises the issue of lack of supervision of the judiciary. Ordinary judges usually enjoy operational and personal independence. In exercising their duties, they are subject only to the Constitution and laws and are not required to comply with any provisions

¹⁹² *Zubac v. Croatia*, No. 40160/12

they believe to violate the Constitution. By law, ordinary judges are reviewed by senior judges and by the Public Prosecutor and Deputy Public Prosecutors of the Supreme Court. The Ministry of Justice is responsible for the conditions of service of judges¹⁹³.

It is unclear whether there is a lack of supervision of the judiciary in Greece. However, several large criminal organisations, involving judges, notaries, lawyers, etc., have been brought to justice in recent years. One notorious case (currently before the Court of Appeal for Felonies) involves a criminal organisation of 105 natural persons, including former judges, notaries, lawyers, and judicial employees, accused of various fraudulent activities¹⁹⁴. The organisation detected abandoned or uninhabited real-estate, which it then occupied and subsequently transferred – through off-shore companies – to its members. The trial started in February 2017 and was still ongoing at the time of this report.

Italy

Several petitions submitted by Italian justices of the peace concerned the working conditions of these honorary judges. The petitioners complained about remuneration, retirement conditions and the fixed-term nature of the appointment. In the context of this study, the question of whether their working conditions raise issues that can impact access to court in Italy became relevant.

Under the current framework, justices of the peace are not considered employees and do not enjoy the associated entitlements. The petitioners, however, argued that their duties essentially require a full-time commitment, that they are subject to organisational instructions and disciplinary oversight, and that they must perform their work at specific locations, dates and times. They therefore believe they should be considered employees. Petitioners also complained about a violation of Directive 1999/70/EC on fixed-term work¹⁹⁵, which aims to prevent discrimination and the successive use of short-term employment contracts for what is effectively a permanent occupation.

To address these issues, the Government has adopted Legislative Decree 13 July 2017, No. 116, which expressly states that the office of honorary judge is temporary and shall be carried out in such a way as to allow the performance of other work¹⁹⁶. To this end, an honorary judge may not be required to perform his duties for more than two days per week in total¹⁹⁷. The duration of the office is four years, renewable once¹⁹⁸, with mandatory retirement at 65 years of age¹⁹⁹. The Decree provides for rules on remuneration, social scheme, paid leave and conditions for termination of the position.

In the context of this study, it was not apparent that either the qualifications or the work performed by justices of the peace are the same or similar to those of 'comparable permanent workers', i.e. ordinary judges. The nature and extent of responsibilities, as well as the recruitment process and qualifications, are different, thereby excluding the notion of discrimination for the purposes of Directive 1999/70/EC. The reform confirms that honorary judges, including justices of the peace, are actually not employees. The new Legislative

¹⁹³ https://e-justice.EURpa.eu/content_legal_professions-29-el-maximizeMS-en.do?member=1#n02

¹⁹⁴ <http://www.skai.gr/news/greece/article/338329/arhizei-i-diki-mamouth-gia-to-paradikastiko-2/>

¹⁹⁵ Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP.

¹⁹⁶ Except activities giving rise to incompatibility according to Article 5, D.Lgs. 116/17.

¹⁹⁷ Article 1(3), D.Lgs. 116/17.

¹⁹⁸ Article 18(1)-(2), D.Lgs. 116/17.

¹⁹⁹ Article 18(3), D.Lgs. 116/17.

Decree ensures that there will be no reiteration of fixed-term employment contracts capable of establishing an effectively permanent working relationship.

This study found no evidence of negative impacts on citizens' ability to access court or on the quality of justice. The pre-reform framework did not seem to limit access to court for citizens or lower the quality of justice, and the recent Legislative Decree has in fact improved the employment conditions of honorary judges. Nonetheless, further research may be needed to assess the overall fairness of the employment conditions of honorary judges, and their impact on the quality of justice.

Romania

Petition No. 2701/2013 included three cases relating to inconsistencies in the notification of reports on offences, each of which was settled differently in court. The petitioner also indicated that he referred the issue to the Ombudsman, whose failure to act led the petitioner to level an accusation of covering-up abuses and illegalities. The petition is analysed in the present section, as part of the investigation of lack of consistency in judgments²⁰⁰.

Consistency of court decisions – or, in other words, non-uniform practice – has been a key problem in effective access to justice in the Romanian judicial system since its accession to the EU²⁰¹. One of the main underlying reasons identified through literature research and interviews is the lack of competence of the Romanian magistrates, while other explanations include the lack of consistency in the legislation itself, the excessive workload of courts, and the reluctance of some magistrates to use new tools.

The judiciary system, as well as the law, provides for safeguards for judicial competence. One such safeguard is the principle of double jurisdiction, whereby any case ruled by a first-degree court may be subject to a retrial in all of its aspects, both on its merits and on procedure, by the appeal court. According to Article 126 of the Romanian Constitution and Law 304/2004 regarding judicial organisation²⁰², the courts have a hierarchical structure. Tribunals exercise legal control over the decisions ruled by the Courts of First Instance, Courts of Appeal supervise Tribunals and Specialised Tribunals, and decisions by the Courts of Appeal can be challenged before the High Court of Cassation and Justice. This system allows for hierarchically superior courts to remedy potential errors made by first-degree courts²⁰³. Another safeguard is the strict appointment procedures and the training of judges. To be admitted into Magistracy, applicants must go through a contest-based examination, which encompasses their professional competence, aptitude, and good reputation within the National Institute of Magistracy, and requires the approval of the Superior Council of Magistracy. Selected candidates go through a three-year selection process, including examinations and a probation period²⁰⁴. Various training programmes for magistrates are frequently organised by the National Institute of Magistracy²⁰⁵. The rigour of the entry

²⁰⁰ The accusation of corruption of the Ombudsman is analysed separately in Section 4.4.1.

²⁰¹ European Commission, Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism, Brussels, 25 January 2017 COM (2017) 44 final, available at: https://ec.europa.eu/info/sites/info/files/com-2017-44_en_1.pdf, p.6.

²⁰² Law No. 304/2004 on judicial organisation.

²⁰³ FRA, Access to justice in Europe: an overview of challenges and opportunities by the National Thematic Study: Romania, 2012, p.2, available at: <http://fra.europa.eu/en/country-report/2012/country-thematic-studies-access-justice>.

²⁰⁴ Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union i.n.p.a., Administrative justice in Europe – Romania Report, available at: http://www.aca-europe.eu/en/eurtour/i/countries/romania/romania_en.pdf, p.5.

²⁰⁵ Ibid.

procedures and the compulsory continuous training aim to consolidate a stable and trustworthy judicial system²⁰⁶.

The unclear formulation of laws and the constantly changing legislation are a key factor in legal inconsistency²⁰⁷. The recent **reforms** of the Civil and Criminal Codes²⁰⁸ targeted the improvement of the mechanisms for consistency²⁰⁹. Although there have been discussions on the process of unification of judicial practice, progress has been minimal, with many judges invoking their independence, and the fact that judicial decisions are not considered to be a source of law.

Efforts have been made to counter this trend. For instance, all court decisions are available online and there have been **managerial efforts** to promote consistency²¹⁰. The European Commission pointed out that these efforts have had an impact, as the 'attitude of rank and file judges has changed [...], with a better consideration for the need to take into account decisions of other courts in similar cases'²¹¹.

The European Commission reported that the High Court of Cassation and Justice continuously 'provide solutions to inconsistencies of court decisions through the **legal mechanisms** of appeal in the interest of the law' (*recurs in interesul legii*)²¹² and 'preliminary questions'²¹³.

Finally, the excessive **workload of courts** and uneven workload between large and small courts was highlighted as another factor explaining inconsistency of court decisions²¹⁴. In particular, **shortages of court clerks** and **delays in motivation** of decisions, as well as the distribution of tasks between judges and court clerks have been observed²¹⁵. This was confirmed by the magistrate interviewed, who pointed to both the lack of infrastructure and the acute shortage of clerks and archivists, who have seen their job demands triple under the reform of the Civil and Criminal Codes.

Overall, progress has been slow in addressing the consistency question. In 2016, no legislative reform was adopted on this issue, and managerial action alone was insufficient to provide a long-term solution. The lack of personnel, too, remains an issue. However, now,

²⁰⁶ European Commission, Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism, Brussels, 25 January 2017 COM (2017) 44 final, available at: https://ec.europa.eu/info/sites/info/files/com-2017-44_en_1.pdf, p.4.

The high quality of the education and training provided by the National Institute was also pointed out by the magistrate interviewed for the study.

²⁰⁷ Interview with stakeholder; European Commission, Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism, Brussels, 25 January 2017 COM (2017) 44 final, available at: https://ec.europa.eu/info/sites/info/files/com-2017-44_en_1.pdf, p.11.

²⁰⁸ See Section 4.1.6 above.

²⁰⁹ European Commission, Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism, Brussels, 25 January 2017 COM (2017) 44 final, available at: https://ec.europa.eu/info/sites/info/files/com-2017-44_en_1.pdf, p.6.

²¹⁰ Ibid.; the Accompanying Report states that 'the HCCJ, the National Institute of Magistracy (NIM), the SCM, the General Prosecution service and the Presidents of the Courts of Appeal have encouraged awareness and training of judges and prosecutors on the need for consistency, developed online tools and organised regular meetings at all court levels to discuss diverging interpretations, thereby supporting the legal work of the HCCJ', p.7.

²¹¹ European Commission, Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism, Brussels, 25 January 2017 COM (2017) 44 final, available at: https://ec.europa.eu/info/sites/info/files/com-2017-44_en_1.pdf, p.11.

²¹² With regard to criminal practice, the Court pronounced several decisions on the process of unification of criminal judicial practice in appeals, in the interest of legal procedure. These decisions are binding for all. For civil practice, the decisions pronounced by the High Court of Cassation and Justice (HCCJ) were not as numerous because the civil court cases are extremely complicated.

²¹³ Ibid.

²¹⁴ Interview with stakeholder; European Commission, Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism, Brussels, 25 January 2017 COM (2017) 44 final, available at: https://ec.europa.eu/info/sites/info/files/com-2017-44_en_1.pdf, p.11.

²¹⁵ European Commission, Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism, Brussels, 25 January 2017 COM (2017) 44 final, available at: https://ec.europa.eu/info/sites/info/files/com-2017-44_en_1.pdf, p.11.

as observed by the European Commission, 'all tools are in place to monitor the functioning of the courts and of the human resource situation, and there is a comprehensive Strategy for the Development of the Judiciary 2015-2020'²¹⁶, and these legal mechanisms are increasingly used by the judiciary to improve consistency.

Spain

Petitions No. 1461/2013 and 0283/2014 refer to the labour situation of so-called 'substitute judges' (*jueces sustitutos y magistrados suplentes*). A 'substitute judge' in Spain is a legal professional selected to substitute for 'professional judges' (*jueces de carrera*) when they are absent from their position or until a position for a professional judge is filled, or to support the courts during periods of excessive workload. They are hired on a temporary basis and the selection process is different from that for judges.

A 2012 legislative reform modified the situation of substitute judges, who are now used only as a last resort solution to insufficient resources²¹⁷. The reform saw a drop in the need for substitute judges. This situation has placed them in a precarious economic position, as many found themselves with limited work and yet were unable to exercise any other professional activity, given the incompatibility regime applicable to judges in general²¹⁸. This reform aimed to save EUR 16 million and to rationalise the resources of the justice system. However, some judges have complained that, while the option to hire substitute judges has been removed, there has been no accompanying increase in the number of professional judges, thereby increasing their workload²¹⁹.

Petition No. 0283/2014 referred to a breach of Directive 1999/70/EC on fixed-term work, alleging abuse in the use of fixed-term contracts. Substitute judges, the petition claimed, are discriminated against because they work like permanent judges but do not enjoy the same rights. Both the Supreme Court of Spain and the European Commission rejected this argument²²⁰. The Supreme Court of Spain justified the different status based on the selection process, which is less demanding for substitute judges, and the specific and exceptional nature of the figure of the substitute judge. Since the legal regime applicable is different, the principle of equality is not breached.

4.2.2. Legal and procedural obstacles impeding access to court

The number of petitions which referred to legal and procedural obstacles impeding access to court was relatively small compared with other issues. The relevant petitions are listed in **Table 6** below.

²¹⁶ Ibid., p.4.

²¹⁷ Ley Orgánica 8/2012, de 27 de diciembre, de medidas de eficiencia presupuestaria en la Administración de Justicia, por la que se modifica la Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial.

²¹⁸ El País (2014b), 'La 'condena' de los jueces sustitutos', 13 July 2014.

²¹⁹ Interview with judge in the context of the present study.

²²⁰ Abogacía Española, 'El Tribunal Supremo rechaza equiparar a los jueces sustitutos con los de carrera', 25 February 2015a; Noticias Jurídicas 'El TS se opone a equiparar a los jueces sustitutos con los de carrera', 26 February 2015; European Parliament 'Notice to Members: Petition No 0283/2014 by Fruitos Richarte i Travesset (Spanish), on behalf of the Associació per la Judicatura Catalana AJUDICAT, on judges and magistrates in temporary employment', 2015.

Table 6: Selected petitions raising legal and procedural obstacles impeding access to court

Country	Subject-matter of Petition	Admissibility
Poland	1569/2013: Obligation to have a postal address to be a party to proceedings	Admissible: closed No additional information
Spain	0142/2014 ²²¹ : Failure of Spanish courts to act in unfair mortgage clauses cases despite Directive 93/15/EEC on unfair terms in consumer contracts ²²²	Inadmissible: no additional information
	0357/2013: Complaint about admission of evidence in a court of law	Inadmissible: no additional information
	0410/2013: Ability to challenge a court decision ordering a house eviction ²²³	Admissible: closed • The EC did not identify any infringement of EU law
	2679/2014 ²²⁴ , 0628/2016 ²²⁵ , 0644/2016 ²²⁶ : Time-limits preventing consumers from objecting to the enforcement of mortgage-related evictions, and failure of Spanish courts to act in unfair mortgage clauses cases despite Directive 93/15/EEC on unfair terms in consumer contracts and CJEU's case-law	Admissible: available to supporters • 2679/2014: The EC started a dialogue with Spain to resolve issues regarding the procedural protection of consumers. • 0628/2016: The EC will monitor whether the upcoming Spanish legislation on mortgage credit contracts will be in conformity with EU law. The EC will assess further steps for an infringement case. • 0644/2016: The EC found that Spain has made progress in consumer law and will continue to monitor Spain.

²²¹ The database of the PETI does not provide further information as to the content of the petition. However, Petition No. 0142/2014 is similar to Petitions No. 2679/2014, 0628/2016 and 0644/2016, which challenge the application of time-limit when consumers object the enforcement of mortgage-related evictions. Therefore, Petition No. 0142/2014 was classified as raising a legal and procedural obstacle impeding access to courts.

²²² Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, OJ L 95, 21.4.1993, p. 29–34 (Unfair Terms in Consumer Contracts Directive).

²²³ European Parliament, Notice to Members, 31 March 2014, available at <http://www.europarl.europa.eu/sides/getDoc.do?type=COMPART&reference=PE-532.511&format=PDF&language=EN&secondRef=01>

²²⁴ See European Parliament, Notice to Members, 27 January 2016, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bCOMPART%2bPE-576.764%2b01%2bDOC%2bPDF%2bV0%2f%2fEN>

²²⁵ European Parliament, Notice to Members, 31 July 2017, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bCOMPART%2bPE-600.982%2b02%2bDOC%2bPDF%2bV0%2f%2fEN>

²²⁶ European Parliament, Notice to Members, 28 February 2017, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bCOMPART%2bPE-600.984%2b01%2bDOC%2bPDF%2bV0%2f%2fEN>

Poland

In Petition No. 1569/2013, the petitioner complained that, under Polish law, a person who is a party to court proceedings must provide a postal address in Poland or appoint a representative with such an address. The petitioner felt that this requirement restricted access to justice for people without an address.

Under Polish law, this obligation exists in civil, criminal and administrative cases.

Before 2013, pursuant to Article 1135 of the Polish Civil Proceedings Code, when a party to civil proceedings was not domiciled or resident in Poland, that party was obliged to nominate a representative authorised to receive service of documents (unless the party had appointed a representative to conduct the case). Where no representative was appointed, the documents would remain in case files with the effect of service (the fiction of service). The CJEU held that this provision infringed Regulation 1393/2007 on service in the Member States of judicial and extrajudicial documents in civil or commercial matters²²⁷. Following this judgment, Article 1135 was amended in June 2013. The change was, however, limited, since the obligation to nominate a representative authorised to receive service of documents still applies to residents of non-EU countries. Article 131 of the Civil Proceedings Code provides that the obligation to nominate a representative authorised to receive service of documents does not apply where a party has chosen to be serviced by electronic mean of communication. This provision will become operational by September 2019, when a dedicated ICT system is scheduled to be introduced in all courts in Poland²²⁸.

The Polish criminal procedure generally obliges the party who resides abroad to provide an address in Poland for service of documents, otherwise the documents will remain in cases files with the effect of service (fiction of service). However, it also includes alternatives, such as the service of documents via electronic communication or fax. Polish administrative procedures impose the same requirement. In this case, however, in the absence of a representative, the court shall deliver case documents to the party's address abroad by registered mail with acknowledgment of receipt, or in an equivalent manner. This applies for parties resident or established in an EU Member State other than Poland, in Switzerland or in a Member State of the European Free Trade Association (EFTA)

The literature reviewed generally views the obligation to indicate an address for service in Poland as discriminatory on the grounds of place of residence²²⁹. In addition, the fiction of service infringes the right of access to the court expressed in Article 47 of the Charter of Fundamental Rights of the European Union and Article 67(4) of the TFEU²³⁰. By contrast, stakeholders interviewed stated that this requirement speeds up and facilitates proceedings, and minimises the costs of proceedings (delivery costs outside Poland, and especially outside the EU, might be significant)²³¹.

²²⁷ Case C-325/11.

²²⁸ Domagalski, M., 'Elektronizacja sądów: wchodzi w życie przepisy o e-procedurach w sprawach cywilnych'. *Sędziowie i sądy*, 01 July 2016, <http://www.rp.pl/Sedziowie-i-sady/307019983-Elektronizacja--sadow-wchodzi-w-zycie-przepisy-o-e-procedurach-w-sprawach-cywilnych.html#ap-1>

²²⁹ M. Seroczyńska, Artykuł 138 Kodeksu postępowania karnego w świetle orzeczenia Trybunału Sprawiedliwości Unii Europejskiej z dnia 19 grudnia 2012 r. w sprawie o sygn. C-325/11, Prokuratura i Parwo 1, 2016.

²³⁰ Seroczyńska, M., Artykuł 138 Kodeksu postępowania karnego w świetle orzeczenia Trybunału Sprawiedliwości Unii Europejskiej z dnia 19 grudnia 2012 r. w sprawie o sygn. C-325/11, Prokuratura i Parwo 1, 2016.

²³¹ Interview with an advocate conducted via Skype on 6 July 2017.

Spain

Several petitions (Petition No. 0644/2016, 0628/2016, 2679/2014, 0142/2014 and 0410/2013) raised various legal and procedural obstacles to accessing justice in the context of foreclosure proceedings²³².

The housing bubble was one of the factors which caused the economic crisis in Spain in the late 2000s²³³. Disruptions in the housing market led to the inability of homeowners to pay mortgages and thus a multiplication of foreclosures. Between 2002 and 2012, 415,117 foreclosure proceedings were initiated, while the total number of evictions reached 244,278²³⁴. Spanish law did not provide for consumer insolvency, accentuating the housing crisis and the exposure of Spanish citizens. In response to a CJEU ruling²³⁵, Spain adopted measures aimed at strengthening protection for mortgage debtors and restructuring debts and public rentals. However, some studies have found that this reform was inadequate for ongoing and past foreclosures²³⁶. In 2013, the Spanish Supreme Court declared unfair mortgage clauses invalid. However, it stated that only money regarding quantities unlawfully paid from the date of the ruling had to be returned to claimants²³⁷. In December 2016, the CJEU declared that all quantities had to be returned from the moment they were included in the contract and not just since the date of the Spanish Supreme Court's judgment²³⁸.

The lack of an adequate legal framework meant that many citizens hit by foreclosures faced legal and procedural obstacles when bringing claims before courts. For instance, in some of the petitions reviewed here, petitioners denounced 'the failure of Spanish courts to take action in defence of consumers [in] cases of unfair mortgage clauses, such as floor clauses or early-maturity clauses for non-payment of a single instalment'²³⁹. More specifically, courts in Spain generally failed to act in defence of consumers' rights in all foreclosure proceedings (*procedimientos de ejecución hipotecaria*) within the consumer affairs field, and in proceedings where judges had to assess the fairness of certain clauses found in the vast majority of mortgage agreements underwritten by Spanish banking institutions (unfair default interest rates, 'floor' clauses, early-maturity clauses for non-payment of a single instalment, etc.). Spanish courts also failed to take the steps provided under procedural law, i.e. open the plea, hear the parties and decide whether to discontinue the foreclosure or recalculate the amounts owed by the defendant. Petitioners also complained about the time limits for consumer objections to the enforcement of mortgage-related evictions²⁴⁰.

The Commission carried out a wider assessment of the overall implications of Spanish law, including the additional provisions of Law 14/2013 of 23 September 2013, and concluded that the current Spanish rules are not yet compatible with the procedural requirements

²³² Petitions No. 0644/2016, 0628/2016, 2679/2014, 0142/2014, 0410/2013.

²³³ For a discussion of the factors leading to the Spanish economic crisis, see Ortega, E. & Peñalosa, J. (2012). The Spanish Economic Crisis: Key Factors and Growth Challenges in the Euro Area. *Documentos Ocasionales No. 1201*, Banco de España.

²³⁴ Tamamović, A. I. (2015). The impact of the crisis on fundamental rights across member States of the EU: Comparative analysis. European Parliament.

²³⁵ Case C-169/14.

²³⁶ Tamamović, A. I. (2015). The impact of the crisis on fundamental rights across member States of the EU: Comparative analysis. European Parliament,

²³⁷ Abogacía Española, 'El TS declara que se restituirá el dinero de cláusulas suelo a partir del 9 de mayo de 2013', 17 April, 2015b.

²³⁸ Joined cases C 154/15, Francisco Gutiérrez Naranjo v Cajasur Banco, S.A.U., C 307/15, Ana María Palacios Martínez v Banco Bilbao Vizcaya Argentaria, S.A. and C 308/15, Banco Popular Español, S.A. v Emilio Irlés López y Teresa Torres Andreu. See also Noticias Jurídicas 'El TJUE ha dictado sentencia sobre las cláusulas suelo: pierde la banca', 21 December, 2016.

²³⁹ Petition No. 0644/2016.

²⁴⁰ Petition No. 0628/2016.

stemming from the case law of the CJEU on Directive 93/13/EEC on unfair terms in consumer contracts²⁴¹. As a result, the Commission decided to open infringement proceedings against Spain²⁴². In the meantime, in its ruling of 26 January 2017²⁴³, the CJEU stated that Spanish judges must review all 'floor clauses'²⁴⁴.

Petition No. 0357/2013 raised questions about the admissibility of evidence in administrative court. Evidence in administrative proceedings are regulated in the Civil Procedure Law and in the Law governing Administrative Jurisdiction. In 2011, the Parliament approved a new law to speed up court procedures, which includes reforming the regulation of evidence in administrative proceedings. It is unclear what problems the petitioners experienced, and whether these problems are related to the reform.

4.2.3. Practical obstacles impeding access to court

Several petitions raised concerns about the existence of practical obstacles impeding access to court. Such obstacles included the geographical coverage of courts, access to proper translation and interpretation, or the use of qualified electronic signatures in correspondence with the judiciary. The relevant petitions are listed in **Table 7** below.

Table 7: Selected petitions raising practical obstacles impeding access to court

Country	Subject-matter of Petition	Admissibility
Greece	1131/2016: Inability to appeal a court decision to issue a European Arrest Warrant	Admissible: available to supporters
Italy	0853/2015: Excessive security measures which prevented lawyers from carrying out their work properly	Inadmissible: no additional information
	0273/2016: Impact on access to court of the court closure on the Island of Capri	Inadmissible: no additional information
Poland	1008/2013 ²⁴⁵ : Courts' refusal to allow the use of qualified electronic signatures in correspondence with the judiciary in violation of Directive 1999/93/EC on electronic signatures ²⁴⁶	Admissible: closed <ul style="list-style-type: none"> The EC replied that Directive 1999/93/EC does not oblige Member States to implement any administrative procedure that would oblige them to allow citizens to file a complaint electronically. There was no violation of EU law.

²⁴¹ See European Parliament, Notice to Members, 28 February 2017, available at <http://www.europarl.europa.eu/sides/getDoc.do?type=COMPART&reference=PE-600.984&format=PDF&language=EN&secondRef=01>.

²⁴² The infringement procedure started on 28 April 2016 and was on-going at the time of writing this study. The infringement number is: 20152200.

²⁴³ CJEU, *Banco Primus SA v Jesús Gutiérrez García*, C-421/14.

²⁴⁴ Martín Faba, J.M. 'El juez de la ejecución hipotecaria puede apreciar de oficio la abusividad de una cláusula sobre la que no se había pronunciado aún no teniendo disponible un acto procesal para ello, pero con el límite temporal de la toma de posesión del inmueble por el ejecutado o, en su caso, hasta que se dicte el decreto de adjudicación a favor de un tercero', *Centro de Estudios de Consumo, Universidad de Castilla-La Mancha*, 2017.

²⁴⁵ European Parliament, Notice to Members, 27 June 2014, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bCOMPART%2bPE-536.073%2b01%2bDOC%2bPDF%2bV0%2f%2fEN>

²⁴⁶ Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures, OJ L 13, 19.1.2000, p. 12–20 (no longer in force).

Country	Subject-matter of Petition	Admissibility
	1844/2013: Courts' refusal to allow the use of qualified electronic signatures in correspondence with the judiciary	Admissible: closed No additional information
Spain	0823/2014: Access to an interpreter in family law proceedings and allegation of lack of impartiality of the Spanish courts	Admissible: closed No additional information
	2220/2014: Discrimination for linguistic reasons in court proceedings	Admissible: closed No additional information

Greece

In Petition No. 1131/2016, the petitioner complained that he had been unable to appeal against a European Arrest Warrant issued against him, due to a lawyer strike in Greece.

The austerity measures adopted following the economic crisis have had an impact on access to courts²⁴⁷. Petition No. 1131/2016 is based on the bar associations' strike of January 2016 to 16 September 2016, following the adoption of austerity measures imposing heavy taxes on self-employed professionals²⁴⁸. This situation indirectly increased the backlog of cases before courts, as well as cancellations of cases and delays in obtaining a judgment in family, civil or criminal matters. Nevertheless, in urgent cases regarding criminal law, lawyers could request an exemption from abstention (usually, in the form of a permit) in order to attend the relevant judicial proceedings and offer legal services to their clients²⁴⁹.

Italy

Petitions No. 0273/2016 and 0853/2015 concerned practical obstacles to accessing justice, specifically the closure of a courthouse on the Island of Capri and security measures making it more difficult for lawyers to access a courthouse.

Petition No. 0273/2016 posed the question of the impact on access to court of a court's closure on the Island of Capri. This court closure was a direct consequence of a legal reform which took place in the wake of the financial crisis. In 2011, measures²⁵⁰ were taken to 'rationalise' public spending, including reducing the number of courts²⁵¹. The main criteria used to identify the courthouses to be closed were the level of litigation in the local area, the productivity of the courthouse, and its staff-workload ratio. Courthouses that fell below the national average on all three criteria were generally slated for closure. The measures were unsuccessfully challenged before the Constitutional Court and, ultimately, 31 tribunals and all 220 separate sections of tribunals were suppressed. Similar measures are currently under discussion before Parliament in relation to courts of appeal.

²⁴⁷ European Parliament, The impact of the crisis, pp. 95-108.

²⁴⁸ <http://www.nomothesia.net/archives/1354>

²⁴⁹ The framework for granting an exemption (permit to attend court during the strike) is available at the official site of the Athens Bar Association. A permit is granted – inter alia – in cases of prisoners (temporarily detained or upon a convicting decision) <http://www.dsa.gr>

²⁵⁰ Legislative Decree 7 September 2012, No. 155 (on tribunals) and No. 156 (on justices of the peace)

²⁵¹ Tamamović, A. I. (2015). *The impact of the crisis on fundamental rights across member States of the EU: Comparative analysis*. European Parliament. p.115.

While it falls beyond the scope of this study to assess whether the reform has achieved its budget and efficiency objectives, it has found that the proximity of judges to citizens is important to ensure effective access to justice, and that this factor must be balanced with others, such as the size of courts²⁵². In the specific case here, estimates suggested that it would take at least four hours longer for a person to reach the nearest tribunal. Associated transport costs will also be higher. In creating additional time and cost requirements to reach the tribunal in Naples from Capri, the reform is likely to discourage access to court, thereby impairing effective access to justice.

In Petition No. 0853/2015, the President of the Bar Association of Naples, on behalf of the association, complained that the adoption of additional security measures, following an incident in an Italian tribunal, had made it more difficult for lawyers to access the court in Naples. Inadequate infrastructure and the poor organisation of security checks had resulted in lawyers (including the elderly and pregnant) enduring long waits in uncomfortable conditions before being allowed into the courthouse. This situation appears to contradict the ECtHR's position that, under the ECHR, it is 'essential that...lawyers can follow the hearing, answer questions and plead their cases without being in a state of excessive fatigue'²⁵³. The petition also stated that the inability of lawyers and other personnel to promptly access the courthouse resulted in the expiry of deadlines, hampering the right of defence and the right to work. The additional security measures were temporary, and were ultimately revoked.

These additional security measures were implemented shortly after a shooting in another Italian courthouse. Available information suggests that the security of courthouses is a long-standing problem in Italy, which does not appear to have been fully resolved. Future events could cause the situation described in the petition to be repeated, further hindering the right to effective access to justice.

Poland

Petitions No. 1844/2013 and 1008/2013 shed light on issues related to the development and use of modern information and communication technologies (ICT) in court proceedings in Poland. Petitioners complained about the lack of an option to use qualified electronic signatures in correspondence with the Polish judiciary²⁵⁴. According to the petitioners, courts in Poland refused to treat secure electronic signatures as equivalent to handwritten signatures, in breach of Directive 1999/93/EC on a Community framework for electronic signatures.

In administrative proceedings, the Polish Supreme Administrative Court held that it was not possible to file a case or submit a document using an electronic signature²⁵⁵. The lack of a handwritten signature on a document implied the lack of legal form and, as such, the document would be inadmissible and would require re-submission with a handwritten signature. The Court pointed out that Directive 1999/93/EC allows Member States to determine the domains in which electronic signatures can be used and does not apply to judicial proceedings, except under the express authorisation of the Polish legislator. However, recent amendments to the relevant administrative provisions now foresee the possibility of

²⁵² See on this point European Commission for the Efficiency of Justice (CEPEJ), Revised Guidelines on the Creation of Judicial Maps to Support Access to Justice within a Quality Judicial System, 2013.

²⁵³ ECtHR, *Makhfi v. France*, 2004, paragraph 40.

²⁵⁴ Petitions No. 1844/2013 and 1008/2013.

²⁵⁵ Decision of the Supreme Administrative Court of 12 May 2014, I OPS 10/13; <http://www.codozasady.pl/podpis-elektroniczny-nie-zadziala-w-sadzie-administracyjnym/>

creating case files in an electronic form²⁵⁶. In such situations, documents submitted to the court electronically must be signed with an electronic signature. In civil cases, Polish law allows for the use of electronic signatures in communication with the court in two types of civil proceedings, i.e. when entering data in the National Register of Courts (*Krajowy Rejestr Sadowy*)²⁵⁷ and in the Electronic Payment Proceedings²⁵⁸. The possibility to use an electronic signature is not currently foreseen for criminal proceedings.

According to some NGOs, Polish courts have been slow to develop ICT systems, due to the complexity of the judicial system and procedures, reluctance of court staff to change the traditional way of handling court documents, cost of investing in ICT systems, etc.²⁵⁹. However, this trend is slowly changing and more ICT systems are being introduced into Polish courts²⁶⁰.

Spain

Petitions No. 0823/2014 and 2220/2014 raised concerns about access to translation and interpretation in civil and family law proceedings.

Translation and interpretation are usually performed by translators and interpreters who are public officers of the justice administration. However, due to a lack of personnel, the service may be outsourced to private companies through public tenders. Some judges considered the service of translation and interpretation to be inadequate, stating that translators sent by private companies sometimes lack adequate qualifications. They asked that the justice administration hire more translators and interpreters as public officers²⁶¹.

At the same time, lawyers and judges interviewed during this study stated that translation services work efficiently for EU languages in all courts. In this sense, courts in big cities have translators available most of the time while courts in smaller cities have access to translators on request²⁶². Spanish lawyers pointed out that some difficulties occur with less-frequently spoken languages, making it difficult for public defence lawyers (*abogados de oficio*) to communicate with foreign clients who do not speak Spanish²⁶³.

²⁵⁶ In 2016, the Law on Proceedings before Administrative Courts was amended by Law of 5 September 2016 on security services and electronic identification - Ustawa z dnia 5 września 2016 r. o usługach zaufania oraz identyfikacji elektronicznej (O.J 2016 item 1574), available at: <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20160001579>. The new provisions will enter into force in May 2018.

²⁵⁷ Article 694¹ (and subsequent provisions) of the Civil Proceedings Code - concern the registration of entrepreneurs, various types of associations and debtors

²⁵⁸ Article 505²⁸ (and subsequent provisions) of the Civil Proceedings Code and are handled by the E-Court (a Civil Division of the District Court in Lublin)

²⁵⁹ Poland Court Watch Foundation, The assessment of the Polish judiciary in light of research, May 2017, available at: <https://courtwatch.pl/wp-content/uploads/2017/05/Raport-Fundacji-Court-Watch-Polska-Ocena-polskich-s%C4%85d%C3%B3w-w-%C5%9Bwietle-bada%C5%84-maj-2017.pdf>

²⁶⁰ Interview with a judge conducted on 10 July 2017.

²⁶¹ Luna (de), P. 'El intérprete judicial: ese interlocutor emocional entre el acusado y el juez.' *Ponencia para el congreso Jueces para la democracia, Bilbao*, 2017; APTIJ, '¿Cuáles son los principales problemas con los que se encuentra un traductor e intérprete judicial o policial?', 2017; Luna (de), P. 'El derecho a interpretación y a traducción en los procesos penales', 2015.

²⁶² This is the opinion of the Spanish Bar Association. The judge interviewed declared that, in his experience, the translation services have always worked adequately and no trial has been conducted without the proper understanding of the persons involved.

²⁶³ Interview with Spanish Bar Association.

4.3. Costs of justice and legal assistance

KEY FINDINGS

- High or disproportionate amount of legal costs or the absence of legal aid mechanisms may discourage citizens from bringing a claim before a court, thus impeding effective access to justice. Furthermore, the availability and quality of legal assistance at national level are likely to affect effective access to justice.
- In the Member States under study, the petitions revealed that the costs of justice and the rules governing legal aid may impede effective access to justice. Furthermore, other issues can affect access to proper legal assistance and have therefore a negative impact on the ability of citizens to gain effective access to justice.
- The costs of justice were raised by petitions in most of the Member States studied. The court fees were flagged as an issue by petitioners in Spain and Italy. Petitioners complained about the amount of the stamp duty in Greece and Romania. More general grievances about the costs of justice were expressed by petitioners from Latvia and Poland.
- Access to legal aid mechanisms appears to be a significant concern in the Member States studied. Petitioners complained about the lack of compliance with Directive 2002/8/EC on legal aid in cross border-disputes in Greece. In Spain, rules governing access to court-appointed lawyers were also challenged. The questions of exemption from court fees and of access to free legal advice were raised by petitioners in Poland.
- Access to proper legal assistance plays a key role in ensuring that citizens have access to justice. Several elements may impede the provision of such assistance. Obstacles to the exercise of legal professions were pointed in several petitions. In Greece, the recent adoption of new tax legislation has led to a nine-month lawyer strike, during which plaintiffs and citizens had limited access to legal representation and counsel. In Spain, the implementation of Directive 2006/123/EC on services in the internal market raised concerns about its impact on the justice sector and the financial security of legal professionals. In Italy, a petitioner raised the question of discrimination in access to the profession of lawyer. Another important element is the possibility to choose one's representation freely. This was denied to several petitioners from Romania. Finally, the quality of the legal assistance provided was raised as an issue in several petitions (Spain and Romania).

4.3.1. Costs of justice

Petitioners were concerned about the costs of justice in most of the Member States studied (see **Table 8: Selected petitions concerned with the costs of justice**). Costs of justice, coupled with inadequate access to legal aid mechanisms, may impede the ability of citizens, and disadvantaged citizens in particular, to gain access to justice, especially in the context of the recent economic crisis.

Table 8: Selected petitions concerned with the costs of justice

Country	Subject-matter of Petition	Admissibility
Greece	0659/2013: Expensive costs of justice as a consequence of backlog of complaints	Inadmissible: no additional info
	2142/2013: High legal costs in a dispute concerning child custody	Admissible: available to supporters
	0281/2014: High cost of stamp duty to file a complaint on small claims	Inadmissible: no additional info
Italy	1172/2016: Disagreement with the payment of a court fee	Inadmissible: list 3, subject-matter seemingly not coming within the EU's field of activity
	0659/2017: Petition on court fees	Inadmissible: list 3, subject-matter seemingly not coming within the EU's field of activity
Latvia	0664/2013: Complaint about the costs of justice	Inadmissible: no additional info
	1262/2013: Complaint about the costs of justice	Inadmissible: no additional info
Poland	1270/2013: Exemptions from court costs and costs of legal representation	Inadmissible: no additional info
Romania	2210/2013: Complaint about the introduction of stamp duty in relation to the non-pecuniary rights of natural persons	Inadmissible: no additional info
Spain	1256/2013: Complaint about Spanish Law 10/2012 introducing a non-reimbursable court fee for appeals against administrative decisions deemed excessive in the context of small claims ²⁶⁴	Admissible: closed <ul style="list-style-type: none"> No further investigation was needed since Spain abolished court fees for individuals on 27 February 2015²⁶⁵ Petition was closed based on the EC's reply²⁶⁶
	2654/2014: Complaint against Spanish Law 10/2012 requiring the payment of a fee (EUR 300) to bring an action to annul a general contractual term in violation of Directive 93/13/EEC on unfair terms in consumer contracts ²⁶⁷	Admissible: available to supporters <ul style="list-style-type: none"> The EC's replied that there was no evidence that the court fee would make the exercise of the rights conferred by Directive 93/13/EEC impossible or excessively difficult²⁶⁸

²⁶⁴ European Parliament, Notice to Members, 29 May 2015, available at <http://www.EURparl.EURpa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bCOMPARL%2bPE-544.228%2b02%2bDOC%2bPDF%2bV0%2f%2fEN>

²⁶⁵ European Parliament, Notice to Members, 29 May 2015, available at <http://www.EURparl.EURpa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bCOMPARL%2bPE-544.228%2b02%2bDOC%2bPDF%2bV0%2f%2fEN>

²⁶⁶ European Parliament, Minutes: Meeting of 14 July 2015, PETI_PV 244_1.

²⁶⁷ European Parliament, Notice to Members, 28 October 2016, available at <http://www.EURparl.EURpa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bCOMPARL%2bPE-593.909%2b01%2bDOC%2bPDF%2bV0%2f%2fEN>

²⁶⁸ European Parliament, Notice to Members, 28 October 2016, available at <http://www.EURparl.EURpa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bCOMPARL%2bPE-593.909%2b01%2bDOC%2bPDF%2bV0%2f%2fEN>

Country	Subject-matter of Petition	Admissibility
		<ul style="list-style-type: none"> The EC cannot pronounce itself on the proportionate character of court fees in MS.

Greece

Several petitions, including Petitions No. 0659/2013, 2142/2013 and 0281/2014, raised concerns that costs of justice could prevent citizens and residents from accessing justice.

Costs of justice have been the subject of intense debate in Greece during the recent economic crisis. Since 2010, new rules adopted in the context of austerity measures have increased the costs of justice. For instance:

- New tax regulations now impose VAT on lawyers' fees, causing a 23% fee increase for citizens²⁶⁹.
- Greece adopted a new Code of Lawyers, which requires a fixed amount to be prepaid by lawyers for each procedural act, submission or court appearance, subject to inadmissibility of the case²⁷⁰. This fixed amount ranges between EUR 80 for each representation before the District Court and up to EUR 1,496 for each representation before the Court of Felonies (amounts before VAT). However, beneficiaries of legal aid are exempt from paying the fixed fees²⁷¹.
- Further increases in court fees were also introduced. The amounts for judicial stamp duty, which is payable on every procedural act, submission and court appearance, increased in 2011 by up to 750%, together with the amounts for judicial duty notes²⁷².
- The legal aid system no longer covers the fees of technical experts, instead shifting the cost to citizens²⁷³.
- According to the New Code of Administrative Procedures, in tax and customs financial disputes, the appellant is obliged to prepay, subject to inadmissibility, 50% of the amount of the tax or fine imposed against him through the challenged act or decision. The appellant is also obliged to pay a 2% judicial stamp duty, which can reach up to EUR 10,000.

Increases in the costs of justice raised concerns in the context of the economic crisis. Since 2008, Greek GDP has decreased by more than 26%²⁷⁴. In 2016, the average gross salary in Greece was around EUR 1,200 per month²⁷⁵. The actual amount received by a worker is thus approximately EUR 780 after deduction of social contributions and taxes. If a citizen wishes to challenge an administrative decision issued against him/her, the average cost to access a remedy could easily reach EUR 1,500, including stamp duties, judicial costs, lawyer fees, VAT, etc. The costs of justice can increase significantly in tax law cases or in appeals before the Courts of Appeal, the Supreme Court or the Council of State. Recent rises in the costs of bringing a complaint in the sphere of tax law raises serious concerns as to the ability of

²⁶⁹ Tamamović, A. I. (2015). *The impact of the crisis on fundamental rights across member States of the EU: Comparative analysis*. European Parliament, p.101.

²⁷⁰ Ibid.

²⁷¹ Ibid., p. 103.

²⁷² Ibid., p. 101.

²⁷³ Ibid.

²⁷⁴ According to the official data of the Hellenic Statistical Authority, <http://www.statistics.gr/en/statistics/-/publication/SEL15/>

²⁷⁵ Data from the economic newspaper Express, available at: http://www.express.gr/news/finance/792720oz_20160830792720.php3

citizens to challenge the legality of acts of the taxation authorities on foot of new austerity measures affecting the taxation of citizens²⁷⁶. Ultimately, the combination of low salaries and increasing costs of justice is likely to hinder citizens from seeking access to remedy. Increasing costs of justice may also explain why a growing number of Greek citizens and residents are bringing petitions to the PETI instead of bringing complaints before national courts.

All four stakeholders interviewed for this study (a lawyer, a former High Court President, an official of the Ministry of Justice and the Greek Ombudsman) agreed that while the costs of justice are reasonable in first instance disputes, these costs can rise significantly in appeal cases. They also considered that such an increase is a justifiable means of preventing frivolous claims and discouraging appellants from submitting unfounded or inadmissible appeals.

Italy

Petitions No. 1172/2016 and 0659/2017 pertained to costs of justice in Italy.

In Italy, the lodging of a court application or an appeal must be accompanied by the payment of an application fee. In addition, parties must pay duties for obtaining copies of documents held in the case file²⁷⁷.

Recent years have seen an increase in the court fees applied to start judicial proceedings. Measures taken from 2008 to 2014 resulted in a 92% increase in application fees for civil courts (compared to 15% increase in the six-year period to 2008)²⁷⁸. In addition to court fees, provisions were introduced requiring further payments in certain situations (e.g. an appeal dismissed in its entirety or declared inadmissible, an attorney omitting certain information from the application, etc.). Duties are also charged for extracting copies of court documents. The increase in the level of court fees seemed intended to reduce the number of incoming cases²⁷⁹.

However, even with these recent increases, court fees in Italy are not disproportionate compared to other countries²⁸⁰, and constitute a small share of the total cost of proceedings, with the largest being attorney costs. As a consequence, the increase in court fees is not viewed as having had significant negative impacts on access to justice (except, perhaps, for low-value cases). Studies nevertheless suggest that the overall costs of proceedings remain high in comparison with costs incurred in other EU Member States, such as France, Germany or Spain²⁸¹.

Latvia

Petitions No. 0664/2013 and 1262/2013 referred to the costs of justice as impediments to access to justice in Latvia.

²⁷⁶ Tamamović, A. I. (2015). *The impact of the crisis on fundamental rights across member States of the EU: Comparative analysis*. European Parliament. p. 104.

²⁷⁷ Nastasi, G. & Palmisano, G., *The impact of the crisis on fundamental rights across Member States of the EU: Country report on Italy*, European Parliament, 2015, p. 68.

²⁷⁸ Ibid, pp. 69-70.

²⁷⁹ Ibid.

²⁸⁰ European Commission, 2017 EU Justice Scoreboard, Figure 22: Court fee to start a judicial proceeding in a specific consumer case, 2017.

²⁸¹ 23.1% of the value of a claim (vs 14.4% in Germany, 17.4% in France and 18.5 in Spain). See Table 2 of Italian Annex, based on the data in the table are from World Bank, *Doing Business 2017: Explore Economy Data*, 2017, available at: <http://www.doingbusiness.org/>.

In Petition No. 0664/2013, the petitioner argued that his right to a fair trial was infringed, and sought action from the European Parliament to review Article 44 of the Latvian Code of Civil Procedure concerning legal costs.

Article 44 of the Latvian Code of Civil Procedure governs expenses related to legal proceedings in civil claims and their reimbursement. Generally, expenses related to a claim are proportionate to the amount of the claim. Since 2013, when the petition was introduced, Article 44 has been amended. It now provides for the 'loser pays' principle, but subjects the reimbursement of expenses to the discretion of the court: a court may impose a lesser amount of reimbursable expenses for the payment of advocate's assistance, in view of the principles of fairness and proportionality, and with regard to the objective circumstances of the case, in particular its complexity and scope, the number of court hearings, and the court instance. A court may also refuse to reimburse the costs of an interpreter where the party in whose favour such expenses are understood the language of the proceedings.

Pursuant to Article 44 of the Latvian Code of Civil Procedure, expenses related to a claim are proportionate to the amount of the claim. One could argue that the costs for the expenses, although low, may still be excessive compared to the minimum wage in Latvia. For example, in June 2017 the minimum wage determined by the Ministry of Welfare in the Republic of Latvia is EUR 380²⁸². However, legal aid is available and aims to facilitate access to court for people with the lowest incomes, in accordance with the 2000 State Ensured Legal Aid Law.

In Petition No. 1262/2013, the petitioner was the unsuccessful party in court proceedings and had to bear all of the court costs. He argues that he should not have borne such costs, because employees bringing a case against their employers are exempted from the state fee for Court proceedings.

Pursuant to Article 43(1)(1) of the Latvian Code of Civil Procedure, plaintiffs in claims for recovery of remuneration for work and other claims of employees arising from legal employment relations or related to such are indeed exempt from payment of court expenses to the State. But the petition was based on a misunderstanding of the national legal rules, as this exception applies only to the 'court expenses to the State', which correspond to the fee paid by the plaintiff to introduce a case to court, and not the expenses, presented above, which apply in case the plaintiff loses the case.

Poland

In Petition No. 1270/2013, the petitioner complained about his inability to obtain an exemption from court fees and the costs of legal representation.

Polish law regulates the costs of judicial proceedings, which vary depending on the type of proceedings²⁸³. In all cases, the parties usually incur court costs and lawyers' fees, with exemptions granted under specific conditions.

In civil matters, litigants usually incur court costs, which include the costs to file a complaint and the costs of each aspect of the proceedings (translation, witnesses, experts, etc.). Court costs may vary from approximately EUR 8 to EUR 25,000, depending on the case. Parties must pay their lawyer's fee, which is typically determined by a private contract between the lawyer and his/her client. However, the losing party must usually pay the costs of the winning

²⁸² Ministry of Welfare, viewed 7 August 2017: <https://www.lm.gov.lv/text/2525>

²⁸³ EU Report on costs of justice: Poland, 2007, p 9.

party, including courts costs and lawyers' fees. In specific circumstances, a party may be exempted from paying courts costs, such as where the party has insufficient means to pay them. Anyone claiming exemption must demonstrate his/her situation, and comply with various procedural conditions. Exemption from court costs is limited to certain proceedings, such as consumer law cases or alimony cases. The losing party, even when benefitting from an exemption from court costs, must still reimburse the winning party's court costs.

In criminal matters, a person found guilty must pay the court costs, including the fees and expenses incurred by the state during the proceedings (witnesses, experts, etc.) and other parties' justified expenses. The same rules apply to the costs of legal representation here as for civil procedures. However, the minimum rates are lower than those of civil proceedings, ranging from EUR 30 to EUR 300. The criminal court usually decides on the costs. The losing party may also be ordered to pay the costs of the state and the costs of victims, where they have joined the proceedings. A party may be exempted, in whole or in part, from paying court costs and state's expenses where such payment would create an unjustifiable burden in view of the financial or family situation. Similarly, the losing party, even when benefitting from an exemption from court costs, must still reimburse the winning party's court costs.

In administrative matters, the court costs include court fees and processing fees. Depending on the value of the case, court fees may vary from 4% for a disputed amount up to EUR 2,500, to 1% for a disputed amount under EUR 25,000. Where the value of the case cannot be measured, fixed court fees apply, ranging from EUR 25 to EUR 25,000, depending on the nature of the case. Similar rules to those under civil law govern the cost of legal representation. Where the public authorities lose a case, they must pay all of the costs incurred by the winning party. However, where the public authorities win a case, they cannot claim reimbursement from the losing party. Certain groups of claimants are exempted from paying court costs, such as in cases of a party claiming a public body's failure to act in cases concerning social services support. Generally, a person who can prove inability to pay the court fees may be granted the right to aid. Similarly, requests for exemption must be supported by adequate evidence.

Most legal scholars agree that, despite the existence of regulatory provisions on the costs of justice, there are no transparent, clear and consistent standards applied by judges to court fee exemptions. Judges enjoy considerable discretion, and practice varies from one judge to the next. Some parties will be exempted on the basis of limited documentation, while others will need to provide much more comprehensive data. This may create a feeling of inequality and unjust treatment, especially when an exemption request is refused. The complexity of the legislation regulating the costs of justice may also be a source of stress for potential litigants²⁸⁴. In 2017, the Court of Appeal of Krakow highlighted that excessive court costs may hamper access to justice. In order to avoid this risk, judges, in their decisions on exemptions, should consider the amount to be paid by the party and allow partial exemption from costs where that amount would preclude the party from launching proceedings²⁸⁵.

Romania

Petition No. 2210/2013 relates to Government Emergency Ordinance no. 80/2013 which introduced a new court stamp duty of RON 100 (EUR 22) to file a case for injury to honour, dignity and reputation for natural persons. The petitioner wanted to bring a lawsuit but could not afford the court stamp duty.

²⁸⁴ International Commission of Jurists, 'Access to justice: Human rights abuses involving corporations, Poland', Geneva, 2010.

²⁸⁵ Decision of the Court of Appeal in Krakow of 16 March 2017, no I ACz 227/17.

Article 21 of the Romanian Constitution guarantees the principle of 'free access to justice', which states that any person can turn to the courts for the defence of his legitimate interests, rights, and freedoms, and that no law can restrict this right. The principle, however, must be balanced with the existence of court expenses, which include court fees and stamp duty, attorney and expert fees, as well as expenses for official trips and discovery of evidence²⁸⁶.

The judicial stamp duty is part of the court fees payable by all natural and legal persons in both the first instance and appeal procedures. The judicial stamp duty is regulated by Government Emergency Ordinance no. 80/2013, adopted following the amendment of the legal framework of the Civil Code. According to the Emergency Ordinance, the different court requests will be charged differently, in line with the object's monetary value. Where value can be determined, the duty consists of a lump sum to which a percentage is added, depending on the value of the request²⁸⁷. Where value cannot be determined, the judicial stamp duty represents a lump sum, according to the type of request or action. Article 7 of the Emergency Ordinance provides that actions concerning the establishment and award of damages for moral damages to a person's honour, dignity or reputation are charged at RON 100 [EUR 22]. This corresponds to the fee mentioned by the petitioner.

Under Article 42(1) of Government Emergency Ordinance no. 80/2013, natural persons may benefit from exemptions, reductions, or deferrals based on average income²⁸⁸. Also, Article 42(2) provides that legal persons, on request, can benefit from reductions and deferrals for the payment of the stamp duty in specific situations listed by law, as well as in exceptional additional cases where the payment of the stamp duty would significantly affect the current business of the legal person.

The existence of such expenses cannot in themselves be considered to restrict access to justice. Court fees are viewed as a public necessity, being a way to partially cover the expenses incurred by the public service of justice. They are also useful in limiting the submission of unfounded, abusive or frivolous applications. According to the law, the costs of the stamp duty can be recovered from the losing party.

Although Romania has a high poverty rate (see Section 4.1.6), the amounts provided in the legislation cannot be considered an obstacle, particularly since the legislative framework provides for exemptions on financial grounds. According to Government Emergency Ordinance no. 51/2008 on public judicial assistance in civil matters, natural and legal persons lacking financial capability may apply for financial assistance. Following evaluation of the request and the conditions to be fulfilled (i.e. a certain level of the monthly average net income per family member), the court decides whether or not to grant a reduction, exemption or deferral. Judicial public assistance may also be granted in other situations, proportionate to the applicant's needs, where the estimated costs of the process are such as to restrict effective access to justice (including due to differences in cost of living between the Member State in which the person has their usual domicile or residence, and that of Romania). A stakeholder interview confirmed that public judicial assistance in civil matters works very well in practice for those who do not possess the necessary financial capabilities to pay the court

²⁸⁶ European E-justice portal, Study on the transparency of costs of civil judicial proceedings in the European Union, Country Report Romania, December 30, 2007, p.7, available at: https://e-justice.europa.eu/content_costs_of_proceedings-37-en.do.

²⁸⁷ For claims with a value of RON 500 [EUR 109], the stamp duty amounts to 8%, but not less than RON 20 [EUR 4]; the maximum for claims above RON 250,000 [EUR 54,826] amounts to RON 6,105 [EUR 1,338] plus 1% of everything above RON 250,000 [EUR 54,826].

²⁸⁸ European E-justice portal, *Court fees regarding small claims procedure*, last updated 03 February 2016, available at: https://e-justice.europa.eu/content_court_fees_concerning_small_claims_procedure-306-ro-en.do?clang=ro.

stamp duty (among other things). In addition, the Constitutional Court removed from the New Civil Procedure Code the provision that included the obligation of the parties to be assisted by lawyers in the appeal procedure, thus lowering the cost of justice. The petitioner also stated that Government Emergency Ordinance no. 51/2008 introduced the court stamp duty for non-pecuniary requests. This is inaccurate, as the new regulation did not bring new taxes but, rather, modified the allowable amounts of those already in place. The only addition was the introduction of the RON 20 [EUR 4] tax for contravention complaints, which could not be considered excessive.

Spain

Petitions No. 1256/2013 and 2654/2014 related to the adoption of a new regulatory framework imposing a fee on the lodgement of claims. In both cases, the petitioners claimed that the fee made it more difficult for litigants to bring small claims in consumer and administrative law proceedings.

In 1986, Spain abolished court fees for litigants in respect of lodging complaints²⁸⁹. These were then reintroduced in 2002²⁹⁰ for businesses with a significant turnover, before civil and administrative courts only. In 2012, Law 10/2012 extended the scope of the 2002 legislation to all jurisdictions (except criminal) and to all natural and legal persons, irrespective of their turnover. Some exceptions, however, do apply. Court fees are required for the exercise of judicial power in civil, administrative and employment cases and are charged uniformly throughout Spain²⁹¹. NGOs and legal practitioners complained about the reintroduction of court fees, arguing that it denied access to justice to citizens and small and medium enterprises²⁹². In Petitions No. 1256/2013 and 2654/2014, the petitioners also claimed that the required amount of court fees was disproportionate in the context of small claims in consumer and administrative law proceedings.

In 2013 and 2015, the Spanish government adopted two regulations which created some exemptions for specific categories of litigants (e.g., natural persons) or reduced the amount of court fees. However, small and medium enterprises must still pay court fees²⁹³. In 2016, the Spanish Constitutional Court ruled that the current rules governing the imposition of court fees were in breach of the right to an effective remedy, in view of the fact that the rules placed impediments or obstructions on access to justice, and the absence of any justification or reasonableness regarding the legal aims of such a regulation for the legislator. Finally, the Court held that most of the court fees were disproportionate and may have a dissuasive effect²⁹⁴. At present, the situation is as it was before 2012 reforms.

4.3.2. Legal aid

Access to legal aid remains a major concern to EU citizens in the Member States studied (see **Table 9: Selected petitions concerned with legal aid**).

²⁸⁹ Ley 25/1986, de 24 de diciembre, de supresión de las tasas judiciales (BOE núm. 313, 31 December 1986).

²⁹⁰ Ley 53/2002, de 30 de diciembre, de medidas fiscales, administrativas y del orden social (BOE núm. 313, 31 December 2002).

²⁹¹ https://e-justice.EURpa.eu/content_costs_of_proceedings-37-es-en.do?member=1

²⁹² See for instance SISEJ, 2013, pp.3-4.

²⁹³ Real Decreto-ley 3/2013, de 22 de febrero, por el que se modifica el régimen de las tasas en el ámbito de la Administración de Justicia y el sistema de asistencia jurídica gratuita (BOE núm. 47, 23 February 2013) ; and Real Decreto-ley 1/2015, de 27 de febrero, de mecanismo de segunda oportunidad, reducción de carga financiera y otras medidas de orden social (BOE núm. 51, de 28 February 2015).

²⁹⁴ Sentencia del Tribunal Constitucional 140/2016.

Table 9: Selected petitions concerned with legal aid

Country	Subject-matter of Petition	Admissibility
Greece	0779/2013: Lack of compliance with Directive 2002/8/EC on legal aid in cross-border disputes	Admissible: available to supporters
	2142/2013: Access to legal aid in cross-border disputes	Admissible: available to supporters
Poland	1270/2013: Exemption from court costs and costs of legal representation	Inadmissible: no additional information
	2847/2013: Denial of access to free legal advice	Inadmissible: no additional information
Spain	0720/2013: Complaint about costs of justice and impact of the petitioner's lack of financial resources to pay for legal representation on procedural guarantees in criminal courts	Admissible: closed No additional information
	0478/2014: Complaint about the amount of lawyer's fees paid to lawyers appointed by the state	Admissible: closed No additional information
	1500/2014: Complaint about the refusal of the state to provide the petitioner with a lawyer despite her lack of financial resources	Inadmissible: no additional information

Greece

In Petitions No. 0779/2013 and 2142/2013, the petitioners complained about the lack of access to legal aid in cross-border disputes.

Pursuant to Greek procedural law, the availability of legal aid depends on proven needs, chiefly low income. Legal aid is provided in matters falling under both civil and criminal law, and covers judicial expenses (fiscal stamps) and lawyers' fees. Greece also uses the principle of user contribution for legal aid²⁹⁵. The legal aid system no longer covers the fees of technical experts. In addition, legal aid is provided separately for every trial; it is valid throughout each level of jurisdiction and is related to the enforcement of the judgment. Legal aid is provided under the presumption that the submitted judicial remedies are admissible and not obviously unfounded or disadvantageous²⁹⁶.

According to Article 1 of the Law 3226/2004, the citizen of any EU Member State may benefit from legal aid, irrespective of the place of permanent residence. Citizens of non-EU countries may also receive legal aid if they have their usual or permanent residence in Greece or in another EU Member State. In addition, Law 3226/2004²⁹⁷ regulates transboundary cases. It provides that the right to legal aid may include the costs of a translator, the costs for

²⁹⁵ Tamamović, A. I. (2015). *The impact of the crisis on fundamental rights across member States of the EU: Comparative analysis*. European Parliament.

²⁹⁶ See also the National thematic study for Greece, commissioned as background material for the comparative report on 'Access to justice in Europe: an overview of challenges and opportunities' by the European Union Agency for Fundamental Rights (FRA), available at: <http://fra.EURpa.eu/en/country-report/2012/country-thematic-studies-access-justice>

²⁹⁷ Article 10 of Law 3226/2014, entitled 'Special provisions regarding transboundary disputes'.

official translation of judicial documents and, in certain circumstances, the travel costs of any person whose presence is considered necessary by the court.

Individuals applying for legal aid must submit a relevant application (with supporting documentation) to the Judge of the District Court, the President of the Court of First Instance or the President of the Court which is competent for the case in question. The petitioner may also appeal the decision of the President, before a different Court, within five days of the decision. The Court decides at a second and final stage following the interim measures procedures (injunctive relief), which sets reasonable time limits (one to six months) on a decision. The stakeholder interviews revealed that litigants might nonetheless be reluctant to use the legal aid system, given the bureaucratic obstacles relating to the paperwork and documentation required.

Poland

Petitions No. 1270/2013 and 2847/2013 referred to accessibility of legal aid in Poland. In Petition No. 2847/2013, the petitioner alleged that the Polish state breached his constitutional rights by preventing him from obtaining proper access to free legal advice. In Petition No. 1270/2013, the petitioner, a German national, complained that courts had rejected his requests that they cover the costs of legal representation in civil actions he had brought.

In Poland, legal aid can be granted in civil, criminal and administrative proceedings. In civil cases, the parties exempted from court fees, as well as those of insufficient means, can benefit from legal aid. Similarly, in administrative cases, parties with insufficient means can request legal aid. In criminal cases, an accused person may request an attorney ex officio if he/she sufficiently demonstrates the burden that defence costs would place on his/her material well-being or that of their family²⁹⁸. In addition, there are certain circumstances in which representation by a lawyer is mandatory for the accused (e.g. if he/she is under 18 or if there is a doubt regarding his/her mental health)²⁹⁹. Since January 2016, a free legal aid and legal education system operates in Poland³⁰⁰. In this framework, legal aid is offered free of charge to the most vulnerable portions of society at various stages, including pre-litigation.

Currently, there are no objective and transparent criteria that precisely regulate the granting of legal aid (e.g. level of income). According to national case law, criteria may include legal or factual complexity of the case, or the applicant's vulnerability. The judge may request the applicant to provide additional information or may decide to start additional proceedings to clarify the financial situation of the applicant (despite the delay to court proceedings). In general, the judge enjoys considerable discretion³⁰¹.

In civil cases, judges may grant legal aid if they find it necessary. While the word 'necessary' is general and open to interpretation, the judge is obliged to provide necessary advice to parties without legal representation (Article 5 of the Civil Procedural Code). A judge may assess the party's competence to deal with the case without legal representation, and appoint legal aid ex officio where appropriate. The requirement of the 'necessity' of legal representation is not present in criminal cases, where legal aid is granted solely on the basis

²⁹⁸ Article 78 of the Criminal Proceedings Code.

²⁹⁹ Article 78 of the Criminal Proceedings Code.

³⁰⁰ Law on legal aid - Ustawa z dnia 5 sierpnia 2015 r. o nieodpłatnej pomocy prawnej oraz edukacji prawnej (O.J 2015 item 1255), available at: <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20150001255>

³⁰¹ FRA, page 14.

of financial circumstances. This may explain the granting of legal aid more frequently in criminal cases, compared to civil cases³⁰².

The quality of legal aid is subject to a variety of factors³⁰³: firstly, it is based on a drawing system, which means that lawyers assigned to a case may be reluctant to deal with it, or may lack the necessary time or expertise³⁰⁴; secondly, the scope of eligible persons is narrow and does not include all vulnerable persons (such as single mothers, persons with disabilities, the unemployed or those not paid by an employer, etc.), and such exclusion may, according to NGOs, hamper access to justice for groups of people not covered by the free legal aid system³⁰⁵; thirdly, legal aid represents only 1.3% of justice expenses, one of the lowest rates in Europe³⁰⁶.

Spain

Petitions No. 0478/2014 and 1500/2014 referred to the provision of legal assistance through court-appointed lawyers. Petition No. 0720/2013 also raised the issue of the impact on procedural guarantees of the lack of financial resources to pay for legal representation in criminal proceedings, which, he claimed, prevented his access to justice.

The Spanish Constitution guarantees free access to justice for persons of insufficient means. Under the law, legal aid is guaranteed to all natural persons with scarce resources and income under legal thresholds. Legal aid is also provided to legal persons under prescribed conditions, as well as to victims of specific crimes. It covers various aspects of the proceedings, such as pre-litigation advice, legal assistance to detainees, prisoners or investigated persons, exemption from court fees, etc. Of the 142,061 lawyers currently active in Spain, 45,300 lawyers are registered to provide free legal assistance.

Following the economic crisis, the Spanish government cut the funding allocated to legal aid by 11% between 2011 and 2015³⁰⁷. Legal aid was also reformed in 2015³⁰⁸, when it was extended to additional legal procedures, such as specific administrative procedures, as well as specific groups of litigants, including NGOs.

Data show limited numbers of complaints from citizens about court-appointed lawyers, e.g. in 2014, of 785,673 appointments of lawyers, there were 4,602 complaints (0.59%). Complaints generally raised issues such as the difficulty in finding a lawyer, poor access to information, slow reactions from lawyers, lack of visits, lawyers not appearing at trial, disagreements about legal strategy, not receiving an effective defence, and lawyers pretending to charge the litigants³⁰⁹. The Syndicate of Court Clerks adds that, in some cases, free legal service is being denied because of a poor interpretation of the law (e.g. negation of the service when a lawyer is not compulsory in a specific procedure, thus ignoring the fact that the service applies to advice before trial)³¹⁰. A recent survey shows that the services are

³⁰² Interview with a judge conducted on 10 July 2017.

³⁰³ Interview with an advocate conducted on 7 July 2017; interview with a judge conducted on 10 July 2017.

³⁰⁴ International Commission of Jurists, 'Access to justice: Human rights abuses involving corporations, Poland', Geneva, 2010.

³⁰⁵ <http://wiadomosci.ngo.pl/wiadomosc/2034821.html>

³⁰⁶ Poland Court Watch Foundation, The assessment of the Polish judiciary in light of research, May 2017, available at: <https://courtwatch.pl/wp-content/uploads/2017/05/Raport-Fundacji-Court-Watch-Polska-Ocena-polskich-s%C4%85d%C3%B3w-w-%C5%9Bwielu-bada%C5%84-maj-2017.pdf>

³⁰⁷ Abogacía Española, *XI Informe del Observatorio de Justicia Gratuita*, 2017c; Abogacía Española, *X Informe del Observatorio de Justicia Gratuita*, 2016b.

³⁰⁸ Ley 42/2015, de 5 de octubre, de reforma de la Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil.

³⁰⁹ Aragüés Estragués, M.A., 'Análisis de las prestaciones de justicia gratuita v jornadas de asistencia jurídica gratuita' V Jornadas de asistencia jurídica gratuita, Segovia, 14 y 15 de abril de 2016, 2016.

³¹⁰ SISEJ, 2013, p. 7.

highly valued by Spanish society³¹¹. Finally, according to the Consejo General de la Abogacía Española (CGAE)³¹², criticism of the legal aid system tends to come from some court-appointed lawyers themselves, who have complained about unrealistic expectations from litigants, low compensation and late payments from the state³¹³.

4.3.3. Other issues preventing access to proper legal assistance

Effective access to justice implies access to proper legal assistance. However, the working conditions of lawyers may impede the quality of the services they provide to citizens. In Greece, the recent adoption of new tax legislation in the context of austerity measures has led to a nine-month lawyer strike, during which plaintiffs and citizens had limited access to legal representation and counsel. In Spain, the implementation of Directive 2006/123/EC on services in the internal market raised concerns about its impact on the justice sector and the financial security of legal professionals. The relevant petitions are listed in **Table 10** below.

Table 10: Selected petitions raising other issues to access proper legal assistance

Country	Subject-matter of Petition	Admissibility
Greece	0663/2016: Impact of legislation increasing the taxation of lawyers in Greece, adopted in the context of austerity measures ³¹⁴	Admissible: available to supporters <ul style="list-style-type: none"> The EC replied it did not see any grounds to take action, since national authorities have competence here.
Italy	1898/2014: Allegation of discrimination based on annual turnover required to practice the profession of lawyer and mandatory registration to the Italian lawyers' pension association ³¹⁵	Admissible: closed in the light of the EC's reply <ul style="list-style-type: none"> In its reply, the EC concluded that the matter did not fall within the scope of EU law³¹⁶ and that there was no indication that the compulsory affiliation to the pension fund would infringe Articles 106 and 102 TFEU.
Romania	0023/2013: Complaint about fraud committed by lawyer in the exercise of his profession	Inadmissible: no additional information
	0602/2014: Choice of lawyer	Inadmissible: no additional information

³¹¹ Abogacía Española, 2017c, p. 171.

³¹² The CGAE is a public body that represents and gathers the '*colegios de abogados*'. These '*colegios*', distributed throughout Spain and composed of lawyers, are also public bodies with delegated competence from the State, as regulated by Article 36 of the Spanish Constitution. They are, therefore, different from the Anglo-Saxon 'bar associations', which are legally created in a 'voluntary' way. See Abogacía Española, available at <http://www.abogacia.es/>

³¹³ See Abogacía Española, 2017c. Aragüés Estragués, M.A., 2016; Abogacía Española, 2017b, Abogacía Española, 2016b, p. 165

³¹⁴ European Parliament, Notice to Members, 31 July 2017, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bCOMPARL%2bPE-602.847%2b02%2bDOC%2bPDF%2bV0%2f%2fEN>

³¹⁵ European Parliament, Notice to Members, 30 March 2016, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bCOMPARL%2bPE-580.633%2b01%2bDOC%2bPDF%2bV0%2f%2fEN>

³¹⁶ The EC specifically cited the following directives: Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained, OJ L 77, 14.3.1998, p. 36–43; Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services, OJ L 78, 26.3.1977, p. 17–18.

Country	Subject-matter of Petition	Admissibility
	1859/2014: Choice of lawyer	Inadmissible: no additional information
	0262/2016 and 0263/2016: Complaint about fraud committed by lawyer in the exercise of his profession	Inadmissible: no additional information
Spain	2525/2013 ³¹⁷ : Complaint about the impact on the justice sector of the Spanish implementation of Directive 2006/123/EC on services in the internal market ³¹⁸	Admissible: closed <ul style="list-style-type: none"> In its reply, the EC considered that the Spanish legal reform had a positive impact on competition and on lowering or eliminating persistent internal market barriers to access and exercise the services in question.
	2837/2013: Complaint about the practices of lawyers	Inadmissible: no additional information

Greece

Petition No. 0663/2016 raised concerns about new rules governing the taxation of lawyers in Greece. The petitioner protested Law 4387/2016³¹⁹ which, he argued, nearly tripled tax and insurance contributions for freelance professions, including lawyers. According to the petition, 'insurance contributions and tax payments total at least 80% of their income'. Lawyers' associations have challenged the new legislation before the Council of State, and those proceedings were pending at the time of this report.

Law 4387/2016, in combination with the tax legislation, imposes significant financial burdens on lawyers. According to this law, the annual social contributions for lawyers are set at 37.95% of their annual income, while income tax is determined at 22% for income up to EUR 20,000 and gradually increases to reach 45% for that part of annual income above EUR 50,000³²⁰.

One consequence of the adoption of Law 4387/2016 is that the number of active lawyers has significantly decreased³²¹. Despite this, Greece has one of the highest ratios of lawyers to citizens³²², making it unlikely that citizens will find it difficult to access proper legal assistance.

The adoption of Law 4387/2016 led to the 2016 lawyer strike, during which plaintiffs had limited access to proper legal assistance. In addition, the strike resulted in the cancellation and postponement of thousands of cases, thereby increasing the length of proceedings and

³¹⁷ European Parliament, Notice to Members, 28 February 2015, available at <http://www.EURparl.EURpa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONGML%2bCOMPARL%2bPE-551.832%2b01%2bDOC%2bPDF%2bV0%2f%2fEN>

³¹⁸ Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, OJ L 376, 27.12.2006, p. 36–68.

³¹⁹ Law 4387/2016 on the Unified Social Security System, available at <https://www.taxheaven.gr/laws/law/index/law/751>

³²⁰ Examples on income tax of freelancers for 2017, Newspaper Naftemporiki, 14 February 2017, available at <http://www.naftemporiki.gr/finance/story/1204758/ti-tha-plirosoun-to-2017-oi-eleutheroi-epaggelmaties>

³²¹ Speech of the President of the Athens Bar Association, Second Hellenic Forum for Lawyers, June 2017.

³²² According to processed data from the Council of Bars and Law Societies of Europe (CCBE), in Greece there is one lawyer for every 254 inhabitants, second only to Italy for number of lawyers per number of inhabitants. Data retrieved from the Electronic Legal Guide, available at: <http://www.nomikosodigos.info/guide/anti-legal/813-overpopulation-of-lawyers-in-greece>

the ability of plaintiffs to obtain a timely decision. In some instances, the strike also had an impact on the ability of individuals to appeal against a court's ruling³²³.

Law 4387/2016 was recently amended by Law 4472/2017, adopted on 19 May 2017³²⁴. According to the new amendments, from 1 January 2018, the social contributions paid during a financial year shall not be deducted from annual income but, rather, calculated based on the gross income. In practice, this means that lawyers are obliged to pay increased social contributions³²⁵. The Bar Associations of Greece have already appealed against this new amendment, without ruling out the option to instigate a new strike during the year. Another strike could lead to the postponement of thousands of judicial cases, significant delays in reaching judgments, and affect the delivery of timely decisions. Ultimately, a new lawyer strike would once again affect the ability of citizens to access proper legal assistance.

Italy

In Petition No. 1898/2014, the petitioner complained that new national legislation required that a licence to practice law be revoked if the lawyer did not achieve a minimum turnover. The petitioner claimed that this 'income-based discrimination' distorted competition. The petition went on to state that the national provisions also required lawyers to register with a specific pension scheme, thus creating a monopoly. Petition No. 1898/2014 concerns mandatory social security contributions imposed on lawyers. It does not expressly raise issues of effective access to justice, but may have an impact on the availability of legal assistance to citizens in matters brought before Italian courts. It is therefore important, firstly, to verify whether the petitioner's allegation is accurate, as well as the impact of the recently adopted legislation on access to proper legal assistance.

The petition indirectly refers to Law 31 December 2012, No. 247, which regulates the legal profession, and the related implementing regulation. Among other things, this law states that registration in the Roll of Attorneys entails registration with the National Welfare and Assistance Fund for Lawyers. The law also mandates that fund to establish minimum social security contributions due by registered lawyers³²⁶. The implementing regulation sets out the minimum social security contributions (which total more than EUR 3,500 per year). It further provides that for the first eight years of participation in the fund, lawyers with a professional income below EUR 10,300 may contribute up to about EUR 1,400 less than the mandatory minimum contribution³²⁷.

Research confirmed that current legislation obliges lawyers in Italy to pay certain social security contributions. However, it is not the practice of the legal profession itself that is the criterion for calculating social security contributions but, rather, the income received. The imposition of mandatory social security contributions upon lawyers increases the cost to register and remain in the Roll of Attorneys (i.e. the listing of all lawyers licensed to practice law in Italy). In practice, this measure is likely to have an impact on individual lawyers with a small turnover, or small law firms. In this context, the imposition of mandatory social security contributions could act as a barrier to entering the highly regulated legal market,

³²³ See, for instance, Petition No. 1131/2016.

³²⁴ The full text of the Law is available in Greek at: https://www.taxheaven.gr/pagesdata/4472_2017.pdf

³²⁵ The President of the Athens Bar Association, during his speech at the Second Hellenic Forum for Lawyers (footnote 6) notes that, according to the new Law, lawyers will be obliged to pay social contributions calculated on amounts already paid for social contributions.

³²⁶ Article 21(8) and (9), Law 247/12.

³²⁷ Article 9(1), implementing regulation. If they decide to use this option, only half a year's worth of contribution will be counted instead of a full year, for the purposes of calculating both the time of retirement and the amount of the pension (Article 9(2), implementing regulation). They are, however, entitled to assistance for the whole year (Article 9(3), implementing regulation).

and discourage some lawyers from practicing their profession, for economic reasons. Compulsory social security contributions may affect lawyers differently depending on their economic capacity, thus raising the possibility of discrimination. Although Italian legislation provides for safeguards, these apply only for a limited period and do not fully allay concerns about the possibility for economic discrimination. This appears to contradict the UN Basic Principles on the Role of Lawyers, which prohibits this type of discrimination³²⁸.

It is unclear whether Italy's recent changes in the regulation of the legal profession are likely to reduce access to proper legal assistance. However, it may put pressure on lawyers with low turnovers or small law firms, and discourage the practice of the legal profession.

Romania

Petitions No. 0602/2014, 1859/2013, 0023/2013, 0262/2016 and 0263/2016 related to access to proper legal assistance, such as the case where courts of law appointed lawyers other than those chosen by the client, and cases where the lawyer representing the party allegedly committed criminal offences.

Lawyers' activities are regulated by Law no. 51/1995 regarding the organisation and performance of the profession of lawyer and by the Statute of the profession. According to Law no. 51/1995, the profession of lawyer is free and independent, being exercised only by members of a bar which is a member of the Romanian National Union of Bar Associations (UNBR). Bars and the UNBR safeguard the right to a qualified defence, professional competence and discipline, and the protection of their members' dignity and honour. The bar provides judicial assistance in all cases where defence is mandatory under the law, as well as at the request of the courts of law, criminal inquiry bodies, or local public administration bodies, where it is believed that the persons in question are unable to pay the lawyers' fees³²⁹.

In Petition No. 1859/2014, the petitioner, a lawyer, was chosen by a German citizen to represent her, with both parties signing a legal counselling agreement to that effect. However, the court appointed another lawyer who was unfamiliar with the case and who did not offer the client the required legal counselling services.

According to a judge interviewed for this study, the court can appoint another lawyer in certain circumstances, e.g. in criminal proceedings, a replacement is permitted where the lawyer chosen by the client is not present at a court session where legal assistance is mandatory, or where the chosen lawyer introduces ill-founded requests to postpone hearings. Replacement is motivated by the importance of obtaining a timely decision in criminal cases. In civil cases, while the law does not provide for the court to appoint a lawyer, they may do so if the party allows it. The court is obliged to appoint a lawyer, acting as a curator, for persons lacking legal capacity and for companies with unknown headquarters. In general, however, lawyers chosen by the parties always take priority over those appointed by the court.

³²⁸ United Nations, Basic Principles on the Role of Lawyers, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

³²⁹ In exceptional cases, if the rights of the person lacking financial means were to be prejudiced because of the delay in resolving his claim, the President of the bar may approve the provision of free assistance, Law no. 51/1995 regarding the organisation and performance of the profession of lawyer, available at:

http://www.dreptonline.ro/en_resourses/en_law_organization_lawyer_profession_romania.php.

In Petition No. 0602/2014, the petitioner wanted to be represented by a particular lawyer, but her request was rejected by the Romanian authorities on the grounds that the lawyer was not a member of a professional organisation, namely the UNBR.

According to the judge interviewed, this case is related to the Constitutional Bar. The Constitutional Bar (or the Romanian Constitutional Bar³³⁰) was set up by Pompiliu Bota in 2002 as an alternative to the 'classical bars' of lawyers in Romania, which are affiliated with the UNBR. In 2012, Pompiliu Bota was convicted to a six months' prison sentence for the unjust exercise of the profession of lawyer³³¹.

Over the years, the practice of the courts has not been uniform in assessing the legal status of members of the Constitutional Bar. In 2015, the Romanian High Court of Cassation and Justice issued an appeal in the interest of the law (RIL) on the non-unitary practice of attorneys in alternative bars. The decision indicated that the person exercising the profession of lawyer within entities that are not recognised by Law 51/1995 on the organisation and exercise of the profession of lawyer, is guilty of the offence of unjust exercise of the profession of lawyer pursuant to Article 348 of the Criminal Code³³². As a consequence, judges must verify the quality of lawyers and refuse those belonging to the Constitutional Bar. Failure to do so would be a failure to safeguard the quality of the legal advice.

Finally, in Petitions No. 0023/2013, 0262/2016 and 0263/2016, petitioners complained that their lawyers committed abuses in the exercise of their profession, such as falsification of documents.

According to law, Romanian lawyers must defend the rights, freedoms and legal interests of their clients, and the attorney-client relationship be based on honesty, probity, correctness, sincerity and confidentiality³³³.

Also as a member of a bar association under the UNBR, a lawyer is entitled to assist and represent any natural or legal entity, based on a contract concluded in a written form, which acquires a sure date after being recorded in the official registration book. A lawyer shall be bound to thoroughly study the cases entrusted to him/her, whether taken by him/her or received ex-officio, to appear before the court on each deadline set by the court, the criminal inquiry bodies or other institutions, based on the mandate entrusted to him/her, to show consciousness and professional integrity, to plead with dignity before the judges and the parties in the law suit, and to submit written conclusions or notes whenever the nature or difficulty of the cause requires it or the court of law so orders.

According to the judge interviewed, this is an uncommon situation in Romanian Courts. However, if presented with this situation, there are several remedies at the disposal of the court and the party. Legal means exist in cases where it is found that the documents used by the lawyer representing one of the parties are false: both the judge and the parties can send the case to prosecution and the parties can request the suspension of the judgment until it is established that the documents are false. If the investigation proves that the documents are false, the lawyer's action is classified as a criminal offence, and a revision appeal of the civil decision can be introduced by the party.

³³⁰ See the website of the Constitutional Bar, available at: <http://bota.ro/>

³³¹ Juridice.ro, *Pompiliu Bota has been convicted for the unjust exercise of the profession of lawyer*, available at: <https://www.juridice.ro/195945/pompiliu-bota-a-fost-condamnat-pentru-exercitarea-fara-drept-a-profesiei-de-avocat-update.html>.

³³² Consilierjuridic.com, *Appeal in the interest of the law (RIL): The act of exercising activities specific to the profession of lawyer outside UNBR is a criminal offence*, available at: <http://consilierjuridic.com/309/ril-admis-exercitarea-profesiei-de-avocat-in-afara-unbr-este-infractiune.html>.

³³³ Ibid.

A lawyer's failure to meet their professional duties shall also trigger a disciplinary sanction. The courts of law and the public prosecutor's offices of the Department of the Public Prosecutor have the obligation to forward any complaint filed against a lawyer to his/her bar, and to notify that bar of any criminal inquiry or prosecution action started against a lawyer³³⁴. The competence for investigation and sanction rests with the Council of the Bar³³⁵. Disciplinary sanctions shall consist of: a) a reprimand; b) a warning; and c) a fine of RON 500 [EUR 110] to 5,000 [EUR 1,096]³³⁶. If a lawyer is convicted of an intentional crime likely to harm the prestige of the profession, he or she loses their licence to practice law.

Spain

Two petitions referred to issues affecting access to proper legal assistance in Spain. In Petition No. 2525/2013, the petitioner complained about the reform of legal professional services in Spain and the potential impact of the Spanish implementation of Directive 2006/123/EC on services in the internal market³³⁷ on the justice sector. The petitioner was concerned about 'the possible impact on consumers of allowing legal practitioners to engage in other activities'. He also argued that deregulation of public functions, such as those of public prosecutors, may undermine competition and result in legal uncertainty. Furthermore, he complained that large service providers would be able to abuse their dominant position by setting their own fees, leaving very little margin for consumers to seek redress, and undermining smaller companies. In Petition No. 2837/2013, the petitioner complained about the fees and unethical practices of some lawyers. The following analysis focuses on the issues raised in Petition No. 2525/2013.

The Spanish reform on professional services raised in Petition No. 2525/2013 followed Recommendation 6 in the context of the European Semester regarding the Spanish National Reform Programme of 2014³³⁸. In its reply to the PETI, the European Commission held that the unification of the professional qualification for lawyers and *procuradores* is 'an important reform in easing access barriers to those professions'³³⁹.

Law 37/2011³⁴⁰ and the 2015 reform of the Civil Procedure Law have also changed the role of the Spanish *procurador*. In Spain, a *procurador* is responsible for the procedural representation of the client before the court, while the *abogado* (lawyer) is responsible for the client's defence³⁴¹. With the reform, citizens can hire a *procurador* for all communication acts and certain implementation acts, or continuing to use the civil servants who have traditionally carried out this work for free. The petition also drew attention to a new law on professional services and professional associations proposed by the government in 2014. This draft law, however, was withdrawn the following year.

³³⁴ Law no. 51/1995 regarding the organisation and performance of the profession of lawyer, available at: http://www.dreptonline.ro/en_resourses/enLaw_organization_lawyer_profession_romania.php.

³³⁵ Except where presidents of bars and members of the Council of UNBR are targeted by the investigation, in which case the Council of UNBR is competent. The person under investigation or being prosecuted shall not participate in the decision-making.

³³⁶ Ibid.

³³⁷ Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market.

³³⁸ European Parliament, Notice to Members, p. 1.

³³⁹ Ibid., p. 2.

³⁴⁰ Ley 37/2011, de 10 de octubre, de Medidas de Agilización Procesal.

³⁴¹ A *procurador* deals with the formal communications between the court and the client. It signs documents on behalf of the client, which accelerates the judicial proceedings. This profession must not be confused with the English 'barrister', who actually defends the client before the court.

4.4. Access to a fair trial and enforcement of judgments

KEY FINDINGS

- Access to a fair trial is a key component to guarantee effective access to justice. Everyone should be entitled to a fair and public hearing by an independent and impartial tribunal established by law. Furthermore, justice should be administered without delays as it may otherwise jeopardise its effectiveness and credibility. Failure, or delay, to enforce judgments also constitutes another obstacle to access justice.
- In the Member States studied, the petitions revealed that three main issues can impede effective access to justice, namely procedural guarantees, length of proceedings, and enforcement of judgments.
- Violations of procedural guarantees were flagged by petitions for all the Member States selected for this study, except for Latvia. Corruption in the judiciary remains an important source of concern for many citizens. In particular, a high number of petitions were submitted for Romania in respect of corruption in the judiciary and the lack of independence and impartiality of judges. However, the perception of corruption expressed by petitioners does not necessarily correspond to the reality. More generally, the lack of independence and impartiality of judges, and the existence of irregularities during trials were raised in numerous petitions. In these cases, it was sometimes unclear whether petitioners were raising valid claims or merely expressed dissatisfaction with the remedy granted. Several petitions related to procedural rights being denied (interpretation, rights of the child, discrimination of minorities, etc.). These petitions were assessed in the light of the procedural guarantees offered by law, and of their practical implementation, in each of the countries concerned.
- Petitions complaining about the length of proceedings were numerous. Excessive duration of legal proceedings, which often results from the backlog of courts, is a well-documented and acknowledged issue in Croatia, Greece, Italy, Romania and Spain. On a more specific topic, petitioners also complained about lengthy duration of proceedings in international child custody disputes in Slovakia, which is also an issue that was recognised by the ECtHR.
- Despite the existence of EU rules on the matter, enforcement of judgments remains a key concern for citizens in more than half of the Member States studied. Petitioners complained about the lack of enforcement, or delays in enforcement, of judgments from national courts, the CJEU and the ECtHR. This problem is particularly acute in Greece and Spain.

4.4.1. Procedural guarantees

Petitioners have complained about violations of procedural guarantees and the lack of independence and impartiality of judges in most of the Member States selected for this study. Corruption or perception thereof in the judiciary remains an important source of concern for many citizens. In particular, a high number of petitions were submitted for Romania in respect of corruption in the judiciary and the lack of independence and impartiality of judges (see **Table 11** below). However, on several occasions, petitioners alleged irregularities during the conduct of judicial proceedings and the unfairness of the justice system, as a means of complaining about the outcomes of specific court rulings. It was therefore unclear whether allegations of violations of procedural guarantees were valid claims. During the research, one challenge was to differentiate petitions raising valid concerns about violations

of procedural guarantees from petitions whose purpose was to express dissatisfaction with the remedy granted. Only petitions raising concerns about specific procedural guarantees were considered here.

Table 11: Selected petitions concerned with procedural guarantees

Country	Subject-matter of Petition	Admissibility
Croatia	1208/2013: Violation of procedural guarantees in criminal proceedings, including violation of presumption of innocence and excessive duration of proceedings	Admissible (closed after EC's reply): <ul style="list-style-type: none"> • The EC's does not have the power to interfere with the justice system of MS • Absence of EU rules in subject-matter of petition
	1331/2013: Irregularities in a case to which the petitioner was a party	Inadmissible: no additional info
	2265/2013: Impact of corruption among the judiciary on the independence and impartiality of courts	Admissible (closed): <ul style="list-style-type: none"> • Forward for info to EC's DG Justice responsible for Justice Scoreboard
	2458/2014: Procedural irregularities in a case to which the petitioner was a party, and long duration of proceedings before the courts	Admissible (closed): <ul style="list-style-type: none"> • Explain to the petitioner that the PETI is not a judicial or investigative body • Forward for info to EC's DG Justice
Greece	1603/2014: Irregularities violating procedural guarantees and failure by the Greek administration to enforce courts' decisions	Inadmissible: no additional info
	1661/2013: Lack of independence and impartiality of the judiciary and other procedural irregularities in a case on corruption	Admissible (closed): <ul style="list-style-type: none"> • See EC's reply to Petition no. 650/2011 on the same subject³⁴²
	1782/2013: Lack of independence and impartiality of the judiciary in a case against a journalist	Admissible (closed): <ul style="list-style-type: none"> • The EC replied that the EU Charter is only applicable to MS when implementing EU law – it is not the case here
Italy	0200/2016: Allegation of corruption among the judiciary	Admissible: closed No additional information
	1312/2015: Allegation of corruption among the judiciary in a divorce case	Inadmissible: list 3, subject-matter seemingly not coming within the EU's field of activity
	1530/2013: Procedural guarantees and absence of the option to appeal European Arrest Warrant ³⁴³	Admissible: closed <ul style="list-style-type: none"> • The EC replied that no EU legislation in relation to minimum rules on procedural

³⁴² The authors of this study were unable to find information regarding Petition No. 650/2011.

³⁴³ European Parliament, Notice to Members, 29 August 2014, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bCOMPARL%2bPE-537.463%2b01%2bDOC%2bPDF%2bV0%2f%2fEN>

Country	Subject-matter of Petition	Admissibility
		<p>rights of suspects and accused persons in criminal proceedings was in force at the time of the facts.</p> <ul style="list-style-type: none"> The EC has no competence to intervene in the day-to-day administration of the justice systems of individual MS.
Poland	1270/2013: Discrimination against a German national in court proceedings and exemption from court costs and costs of legal representation	Inadmissible: no additional info
	2568/2013: Alleged corruption among Polish courts	Inadmissible: no additional info
Romania	0033/2013: Alleged corruption among the judiciary in a civil case	Inadmissible: no additional info
	0185/2013: Allegation of corruption of the legal system in Romania, and lengthy proceedings	Inadmissible: no additional info
	0346/2016: Allegation of corruption among the judiciary and violation of the right to fair trial	Admissible: closed No additional information
	0352/2014: Allegation of violation of the right to fair trial	Inadmissible: no additional info
	0697/2013: Absence of information on the grounds of a ruling	Admissible: closed No additional information
	0810/2014: Alleged abuses by prosecutors of the National Directorate for Combatting Corruption	Inadmissible: no additional info
	0860/2015: Procedural irregularities as a result of alleged corruption	Inadmissible: no additional info
	0907/2013: Allegation of corruption among the judiciary	Inadmissible: no additional info
	1018/2016: Allegation of procedural irregularities during proceedings, due to corruption among the judiciary	Inadmissible: no additional info
	1152/2015: Allegation of corruption among the judiciary	Inadmissible: list 3, subject-matter seemingly not coming within the EU's field of activity
	1187/2016: Alleged misconduct and violation of citizens' rights by the national judicial authorities	Inadmissible: list 3, subject-matter seemingly not coming within the EU's field of activity
	1192/2015: Alleged abuse of power by the judiciary	Inadmissible: list 3, subject-matter seemingly not coming within the EU's field of activity
	1394/2013: Alleged abuse of authority by criminal courts	Inadmissible: no additional info

Country	Subject-matter of Petition	Admissibility
	1428/2013: Allegation of corruption among the judiciary	Inadmissible: no additional info
	1470/2014: Procedural irregularities in the context of judicial proceedings	Inadmissible: no additional info
	1854/2014: Allegation that the Romanian legal system is inefficient in fighting corruption	Admissible: closed No additional information
	2449/2013: Discrimination in the context of judicial proceedings and violation of the right to fair trial	Inadmissible: no additional info
	2701/2013: Complaint about the Romanian Ombudsman, specifically the lack of independence and impartiality	Admissible: closed No additional information
Slovakia	0225/2013: Allegation of corruption in the judiciary	Inadmissible: no additional info
	0234/2013: Allegation of corruption in the judiciary	Inadmissible: no additional info
	0632/2016: Allegation of corruption in the judiciary	Inadmissible: no additional info
	0672/2013: Lack of procedural guarantees and judicial reasoning in a case where seizure of private property was carried out	Inadmissible: no additional info
	0762/2016: Allegation of violation of the presumption of innocence	Inadmissible: no additional info
Spain	0477/2014: Request for legislation on procedural guarantees for children in legal proceedings	Admissible: closed No additional information
	0518/2015: Access to an impartial tribunal	Inadmissible: list 3, it did not appear to meet the requirement of Article 227 of the TFEU
	0720/2013: Impact of the petitioner's lack of financial resources to pay for legal representation on procedural guarantees in criminal courts	Admissible: closed No additional information
	0820/2014: Call for the establishment of a time limit for the pre-trial phase of criminal investigations	Admissible: available to supporters
	0823/2014: Access to an interpreter in family law proceedings and allegation of lack of impartiality of the Spanish courts	Admissible: closed No additional information
	1105/2014: Request for the modification of judicial appointments	Inadmissible: no additional info

Country	Subject-matter of Petition	Admissibility
	1178/2014: Lack of access of an accused person to relevant documents to prepare her criminal trial ³⁴⁴	Admissible: closed based on EC's reply ³⁴⁵ <ul style="list-style-type: none"> The EC acknowledged it initiated infringement proceedings against Spain. However, Spain ultimately communicated its transposing measures The EC has no general competence to intervene in the day-to-day administration of the justice systems of individual MS
	1233/2015 ³⁴⁶ : Lack of guarantee of the procedural rights of child victims of crime in violation of EU law ³⁴⁷	Admissible: available to supporters ³⁴⁸ <ul style="list-style-type: none"> The EC replied that it will initiate proceedings with Spain to enquire about the legislative measures transposing the relevant EU law and whether the alleged violations exist in a systemic way
	1721/2013: Allegation of fraud during the conduct of judicial proceedings in relation to property development	Admissible: available to supporters No additional information
	2205/2013: Complaint about judicial corruption and violation of constitutional rights in court proceedings regarding a house auction	Inadmissible: no additional info
	2465/2013: Allegation of violation of procedural guarantees (access to proper interpretation, access to information, etc.)	Inadmissible: no additional info

³⁴⁴ European Parliament, Notice to Members, 30 June 2015, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bCOMPARL%2bPE-564.873%2b01%2bDOC%2bPDF%2bV0%2f%2fEN>

³⁴⁵ European Parliament, Minutes: Meeting of 17 September 2015, PETI_PV(2015)245_1

³⁴⁶ European Parliament, Notice to Members, 28 October 2016, available at http://www.emeeting.europarl.europa.eu/committees/agenda/201705/PETI/PETI%282017%290503_1P/sitt-4458879

³⁴⁷ The petitioner alleged that Spain infringed the following directives: Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, OJ L 335, 17.12.2011, p. 1–14; and Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, OJ L 315, 14.11.2012, p. 57–73.

³⁴⁸ In May 2017, the petition was still being discussed in committee on the basis of the EC's reply. See European Parliament, Minutes: Meeting of 3 May 2017 and 4 May 2017, PETI_PV (2017)265_1, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bCOMPARL%2bPE-604.538%2b01%2bDOC%2bPDF%2bV0%2f%2fEN>

Croatia

Petitions No. 1208/2013, 1331/2013, 2265/2013 and 2458/2014 raised concerns about potential violations of procedural guarantees, including violation of the presumption of innocence, and the independence and impartiality of courts.

The Croatian Constitution and laws provide the legal foundations for the right to a fair and public trial and the guarantee of several procedural rights in criminal proceedings, including the presumption of innocence, the person's right to be informed of the charges against him/her, the right to free interpretation, the right to be represented and the right to be present at the trial.³⁴⁹

In practice, Croatia was found to be in violation of Article 6(1) of the ECHR for several procedural guarantees, including:

- the right to legal assistance of one's own choosing (*Dvorski v Croatia*)³⁵⁰;
- the right to fair trial, specifically non-disclosure of certain evidence used in the criminal proceedings in a case of corruption (*Matanović v Croatia*)³⁵¹;
- the independence and impartiality of courts (*Mežnarić v Croatia*)³⁵²;
- the presumption of innocence (*Peša v Croatia*)³⁵³ etc.

The lack of independence and impartiality of the judiciary has been problematic for several decades in the country. Before the democratic transition in 1989-1990, the judicial system was under strict control of the League of Communists of Croatia, which limited its independence³⁵⁴. The adoption of the Constitution in 1990 laid the foundations for the establishment of judicial autonomy, although the war had repercussions for the democratic consolidation of the country³⁵⁵. The Croatian judicial system faced a crisis in the late 1990s, when many experienced judges transferred to other branches of the legal profession for political reasons to be replaced with less competent and/or experienced judges. It then endured a series of scandals during the first decade of 2000.

Increased political will to eliminate corruption saw efforts being made in the 2010s to improve the independence and impartiality of the judiciary, coupled with the accession process to the EU³⁵⁶. The 2010 adoption of a legal framework to combat corruption significantly improved the levels of corruption in Croatia, as did investing the anti-corruption agency with stronger powers to prosecute tax fraud linked to organised crime and corruption³⁵⁷. However, according to the 2016 US State Department Human Rights Report on Croatia, corruption remains a general problem. Reports from the EU institutions have also found that problems persist with the efficiency and independence of the judiciary³⁵⁸. According to the 2017 EU Justice Scoreboard, only 30% of companies and the general public rate the independence of courts and judges in Croatia as good, one of the lowest rates in the EU³⁵⁹. Interference or

³⁴⁹ Croatian Constitutions, available at <https://www.state.gov/documents/organization/265618.pdf>

³⁵⁰ ECtHR, *Dvorski v Croatia*, no. 25703/11, 20 October 2015.

³⁵¹ ECtHR, *Matanović v Croatia*, no. 2742/12, 4 April 2017.

³⁵² ECtHR, *Mežnarić v Croatia*, no. 43947/10, 15 July 2005.

³⁵³ ECtHR, *Peša v. Croatia*, no. 40523/08, 8 April 2010.

³⁵⁴ Maldini, P. (Ed.), *Croatia and the European Union: Changes and Development*, Routledge, 2016, p. 37.

³⁵⁵ Ibid.

³⁵⁶ Ibid.

³⁵⁷ Office for the Prevention of Corruption and Organised Crime (USKOK).

³⁵⁸ Maldini, P. (Ed.), *Croatia and the European Union: Changes and Development*. 2016, Routledge, p. 38.

³⁵⁹ 2017 EU Justice Scoreboard, Figure 51: Perceived independence of courts and judges among the general public & Figure 53: Perceived independence of courts and judges among companies.

pressure from government, politicians and economic interests are cited as the main reasons for the perceived lack of judicial independence³⁶⁰.

Greece

Petitions No. 1661/2013, 1782/2013 and 1603/2014 raised concerns about the violation of procedural guarantees in legal proceedings, including alleged lack of independence and impartiality of judges, and alleged corruption within the judicial system.

The 2017 EU Justice Scoreboard shows that more than half of companies and the general public rate the independence of courts and judges in Greece as good³⁶¹. Interviewees also agreed that corruption cases within the judicial system are isolated and, where they exist, they do not constitute a barrier to effective access to justice. It was, however, suggested that corruption is insufficiently documented. The stance of successive governments towards the judiciary³⁶², as well as discontent with the outcomes of individual cases, may have contributed to public perceptions of corruption in the judicial system. In the last decade, several cases of corruption involving judges have attracted public attention, although most of the judges implicated were subsequently brought to court and convicted³⁶³.

At the same time, reports from international institutions and NGOs have highlighted the existence of corruption in the Greek administration and, to some extent, the judicial system. For example, according to the Anti-Corruption Business Portal³⁶⁴, corruption severely affects Greece's business environment, completely distorting market competitiveness. Accordingly, companies contend with a high corruption risk when dealing with Greece's judiciary.

Italy

In Petition 1530/2013, the petitioner complained about situations resembling violations of the procedural rights of suspects or accused persons in the context of criminal investigations and proceedings. The petitioner complained about the conditions of his preventative detention, particularly his lack of access to a lawyer and translator. He alleged that he had been found guilty in a criminal trial to which he had not been legally summoned, going on to claim that he had not been able to appeal the European Arrest Warrant subsequently issued. This petition thus raised questions about the following procedural guarantees: access to interpretation and translation, access to a lawyer in criminal proceedings and in European Arrest Warrant proceedings, detention conditions, trials *in absentia*, and the right to appeal a European Arrest Warrant.

Italian law generally provides for various procedural guarantees in the context of criminal procedure, touching upon the conduct of criminal arrests and investigations. It requires that the lawyer of an arrested person and his/her family must be immediately informed of the arrest. The law also guarantees that the arrested person cannot be summarily held by the

³⁶⁰ 2017 EU Justice Scoreboard, Figure 52: Main reasons among the general public for the perceived lack of independence & Figure 54: Main reasons among companies for the perceived lack of independence.

³⁶¹ 2017 EU Justice Scoreboard, Figure 51: Perceived independence of courts and judges among the general public & Figure 53: Perceived independence of courts and judges among companies.

³⁶² Interview with the President of the Union of Judges and Attorneys on 12 September 2016, available at: <http://ende.gr/synentefksi-tou-proedrou-tis-edes-xristoforou-sevastidi-stin-presspublica>

³⁶³ One characteristic example was a former President of the Court of First Instance, involved in a corruption case. In 2005, he was dismissed from the judicial body by the Supreme Court and in 2008 he was convicted, receiving a 12-year prison sentence for bribery, breach of duty and money laundering.

<http://www.iefimerida.gr/tag/%CE%B5%CF%85%CE%AC%CE%B3%CE%B3%CE%B5%CE%BB%CE%BF%CF%82-%CE%BA%CE%B1%CE%BB%CE%BF%CF%8D%CF%83%CE%B7%CF%82>

³⁶⁴ Greek Corruption Report available at: <http://www.business-anti-corruption.com/country-profiles/greece>

police but must be brought before a judge within a short period of time. The arrest loses effect if the procedure is not respected. However, some procedural rights were not legally guaranteed at the time of the events in the petition, such as access to a translator and an interpreter, access to information and a lawyer, etc. As a result of the transposition of various EU directives in the field of criminal justice, Italy recently amended its Code of Criminal Procedure to guarantee the right to an interpreter and to translation of key acts, as well as the right to inform consular authorities.

The Italian law in force at the time of the events described allowed criminal trials *in absentia*, with the accused still represented by a lawyer. However, the ECtHR has found this to be insufficient under the ECHR³⁶⁵. Subsequent reforms have effectively eliminated the possibility of trial *in absentia*. The executing judicial authority may refuse to execute a European Arrest Warrant if the person concerned did not appear in person at the trial, unless other specific conditions are met.

Petitions No. 1312/2015 and 0200/2016 also raised some concerns about alleged corruption in the judiciary.

Italy has high levels of perceived corruption³⁶⁶. For instance, according to the 2017 EU Justice Scoreboard, only about 30% of the general public rate the independence of courts and judges in Italy as good or very good, one of the lowest rates in the EU³⁶⁷. Interference or pressure from government, politicians and economic interests are the main reasons for the perceived lack of judicial independence³⁶⁸.

There is a lack of studies on the existence of judicial corruption in Italy, making the extent of accuracy of allegations of corruption unclear. The Fourth Evaluation Report³⁶⁹ of the Council of Europe's Group of States against Corruption (GRECO) states that the Italian judicial system 'is governed by a very solid legislative framework enshrining its independence, both for judges and prosecutors'. In addition, the report cites the Code of Ethics of the National Association of Magistrates (*Associazione Nazionale Magistrati*), which is the oldest in Europe. However, doubts about the system's effectiveness in penalising wrongdoing have to a certain extent eroded public confidence³⁷⁰. The Fourth Evaluation Report and other sources³⁷¹ attribute the erosion of public confidence in the impartiality of the judiciary to overly complicated and sometimes overlapping laws (requiring interpretation and therefore creating room for discretion), cultural issues (e.g. judges' and prosecutors' personal beliefs or preferences) and the strong guarantees of independence of Italian judges (at the expense of their accountability).

The Fourth Evaluation report suggests tightening up the applicable rules. It recommends the further development of a Code of Conduct for all magistrates, to provide practical examples of the application of principles to real-life cases. This Code should be disseminated more

³⁶⁵ ECtHR, *Zana v. Turkey*, 1997, paragraph 72, according to which the presence of the lawyers at the hearing cannot compensate for the absence of the accused.

³⁶⁶ See World Bank, *World Governance Indicators*, 2017; Transparency International, *Corruption perceptions index* 2016, 2017.

³⁶⁷ 2017 EU Justice Scoreboard, Figure 51: Perceived independence of courts and judges among the general public & Figure 53: Perceived independence of courts and judges among companies.

³⁶⁸ 2017 EU Justice Scoreboard, Figure 52: Main reasons among the general public for the perceived lack of independence and Figure 54: Main reasons among companies for the perceived lack of independence.

³⁶⁹ GRECO, *Fourth Evaluation Round: Corruption prevention in respect of members of parliament, judges and prosecutors: Evaluation Report: Italy*, 2016.

³⁷⁰ *ibid*, p. 3.

³⁷¹ See, for example, Dakolias, M. & Thachuk, K., *Attacking corruption in the judiciary: a critical process in judicial reform*, 2000.

proactively and assisted by a more effective supervisory mechanism. The Italian Constitution³⁷² currently vests disciplinary powers over ordinary magistrates in the *Consiglio Superiore della Magistratura* (not the National Association of Magistrates, which is a private body).

Poland

In Petition No. 2568/2013, a petitioner complained about corruption in the judiciary after losing his property in a foreclosure case. In Petition No. 1270/2013, the petitioner claimed he was discriminated against in court proceedings because of his nationality (German).

There are legal safeguards in place to ensure the independence and impartiality of judges. The Polish Constitution guarantees that judges shall have conditions of work and remuneration corresponding to the dignity of the office and the scope of their duties. Judges should not sympathise with any of the parties in the trial, nor should they be members of a political party or trade union, or engage in public activities irreconcilable with the principles of judicial independence. Judges are obliged to disqualify themselves from proceedings if there is a doubt as to their impartiality in the case, and failure to do so will result in disciplinary proceedings. Parties to the proceedings can request a change in the court composition on the grounds of 'a threat to impartiality'. The Code of Ethics of the National Judicial Council also seeks to prevent corruption and conflicts of interest among judges³⁷³. Judges found guilty of corruption are expelled from the profession and lose their income, which is set sufficiently high to counteract corruption. In addition, they are required to make their annual financial statements publicly available³⁷⁴.

Despite the existence of legal safeguards, allegations of corruption in the judiciary are regularly reported by the media and civil society organisations. There is a widespread perception among Polish citizens that judges are partial and corrupt. According to the polls carried out by the Public Opinion Research Centre in March 2017, 30% of the respondents believed that Polish judges are corrupt³⁷⁵. Likewise, the 2017 Scoreboard indicated that approximately 45% of the respondents perceived the independence of courts and judges as fairly or very bad³⁷⁶. However, the stereotype of the corrupt judge may stem from the communist era in Poland, where corruption in courts was commonplace³⁷⁷.

If corruption is regularly reported, it is rarely punished, with only five judges found guilty of corruption in the period 2001-2016³⁷⁸. It is unclear whether the low number of cases indicates the marginal nature of corruption in the Polish judiciary or the difficulties in proving corruption. In addition, corruption may take forms other than financial benefits, such as providing mutual favours or protection³⁷⁹. An additional difficulty in detecting corrupt practices in courts is that judges themselves are responsible for the elimination of such practices (the disciplinary proceedings are conducted by judges), meaning that there are

³⁷² Article 105, Italian Constitution.

³⁷³ <http://www.isp.org.pl/uploads/filemanager/sdownictwo.PDF>

³⁷⁴ Interview with a judge conducted on 10 July 2017.

³⁷⁵ <http://www.rp.pl/Sedziowie-i-sady/303169865-Jak-Polacy-oceniaja-wymiar-sprawiedliwosci---sondaz-CBOS.html#ap-1>

³⁷⁶ the 2016 EU Justice Scoreboard, p.35.

³⁷⁷ Interview with a judge conducted on 10 July 2017.

³⁷⁸ Poland Court Watch Foundation, The assessment of the Polish judiciary in light of research, May 2017, available at: <https://courtwatch.pl/wp-content/uploads/2017/05/Raport-Fundacji-Court-Watch-Polska-Ocena-polskich-s%C4%85d%C3%B3w-w-%C5%9Bwietle-bada%C5%84-maj-2017.pdf>

³⁷⁹ Interview with an advocate conducted via Skype on 6 July 2017.

opportunities to disguise the actions and omissions of their colleagues³⁸⁰. Another factor affecting impartiality of the judiciary might be the existence of close-knit social and professional bonds within the legal and business establishments, particularly in small cities³⁸¹. As there is no requirement for judges to move to a different city after having served their office for a certain period, there are opportunities for such bonds to develop, allowing for trading of influences and the exertion of social pressure on judges³⁸².

According to Article 32 of the Polish Constitution, everyone is equal before the law and public authorities have a duty of equal treatment. No one can be discriminated against in political, social or economic life for any reason. While certain restrictions may be placed on foreigners, they are regulated by statutory law and must be in line with the non-discrimination principle enshrined in the Constitution.

Limited information is available on potential discriminatory behaviours by Polish judges. However, a NGOs publication indicates that the Polish administration in general is insufficiently prepared to service foreigners for several reasons, including the ethnocentricity of Polish law, lack of training on relevant issues by public officers, or discriminatory views or xenophobic practices and behaviours of public officers³⁸³.

In 2016, the Office of the Ombudsman issued a guidance document for judges and prosecutors on equal treatment in court proceedings³⁸⁴. One of the chapters of the document focuses on facilitating access to court for foreigners or persons of a different ethnic identity. According to the guidance document, the Roma minority is most vulnerable to discrimination, and remains in the most difficult socioeconomic position, distinctly different from other national and ethnic minorities.

Romania

In Romania, several petitions concerned the violation of procedural guarantees during judicial proceedings, such as the obligation to inform a party of the grounds of a judgment (Petition No. 0697/2013); discrimination and violation of the right to a fair trial (Petition No. 2449/2013); or the lack of independence and impartiality of judicial and non-judicial mechanisms (Petition No. 2701/2013, 1470/2014). Several other petitions complained about the existence of corruption in the judiciary, with varying levels of detail (Petitions No. 0033/2013, 0185/2013, 0907/2013, 1394/2013, 1428/2013, 0352/2014, 0810/2014, 1854/2014, 0860/2015, 1152/2015, 1192/2015, 0346/2016, 1018/2016 and 1187/2016). In some cases, procedural irregularities appeared to be a direct consequence of corruption in the judiciary (Petition No. 0860/2015, 1018/2016).

According to the 2017 EU Justice Scoreboard, 50% of the general public and around 40% of companies think that the independence of courts and judges is good in Romania³⁸⁵.

³⁸⁰ Poland Court Watch Foundation, The assessment of the Polish judiciary in light of research, May 2017, available at: <https://courtwatch.pl/wp-content/uploads/2017/05/Raport-Fundacji-Court-Watch-Polska-Ocena-polskich-s%C4%85d%C3%B3w-w-%C5%9Bwietle-bada%C5%84-maj-2017.pdf>

³⁸¹ International Commission of Jurists (2010). *Access to justice: Human rights abuses involving corporations, Poland*.

³⁸² International Commission of Jurists (2010). *Access to justice: Human rights abuses involving corporations, Poland*.

³⁸³ http://www.hfhr.org.pl/wielokulturowosc/documents/doc_186.pdf,

https://www.rpo.gov.pl/sites/default/files/podrecznik_Rowne_traktowanie_uczestnikow_postepowan.pdf

³⁸⁴ https://www.rpo.gov.pl/sites/default/files/podrecznik_Rowne_traktowanie_uczestnikow_postepowan.pdf

³⁸⁵ 2017 EU Justice Scoreboard, Figure 51: Perceived independence of courts and judges among the general public and Figure 53: Perceived independence of courts and judges among companies.

Interference or pressure, mainly from economic interests, is perceived as the main reason for the lack of judicial independence³⁸⁶.

It is widely acknowledged that corruption was and, to some extent still is, a major issue in Romania. In 2002, Romania established the National Anti-Corruption Prosecutor's Office (PNA), an independent body to fight high-level corruption. Due to political pressures, administrative changes and lack of personnel, the PNA was unable to investigate and convict any high-level corruption cases in its first years. Its field of competence was extended by a Government Ordinance in 2004, which lowered the financial threshold to investigate petty corruption cases. It was subsequently restricted again in 2005. The Romanian Constitutional Court ruled that the PNA could no longer investigate corruption allegations against Members of Parliament, for which the General Prosecutors' Office attached to the High Court of Cassation and Justice was competent³⁸⁷. The PNA being left with no scope of activity, it was restructured in the second half of 2005 into the National Anticorruption Department (DNA)³⁸⁸.

The DNA deals with corruption at a national level. It is an autonomous structure within the Public Ministry, and is coordinated by the General Prosecutors' Office attached to the High Court of Cassation and Justice. The DNA is independent from the courts and prosecutors' offices and is organised in a central and territorial structure³⁸⁹. Every four years it adopts a National Anti-Corruption Strategy, which is the 'core instrument of corruption prevention by public administration at the national and local level'³⁹⁰. The first strategy was adopted in 2001, and the most recent is the National Anti-Corruption Strategy 2016-2020. However, until 2011, the anti-corruption strategy was ineffective³⁹¹. The National Anti-Corruption Strategy 2016-2020 has the potential to address the shortcomings of the previous anticorruption strategies, to create a better corruption prevention policy and to promote integrity in the public sector, if it is properly implemented and followed up on the ground, especially at local level. In addition, the National Anti-Corruption Strategy 2016-2020 introduced measures to consolidate transparency and facilitate proper dialogue with the relevant authorities and stakeholders in both decision-making and legislative processes³⁹².

Both the DNA and the High Court of Cassation and Justice have consolidated the implementation of the fight against corruption by investigating many high and medium-level corruption cases. The Courts of Appeal also ruled in a considerable number of high-level and medium level corruption cases³⁹³. The European Commission has observed the continuous 'effort of the judicial institutions addressing high level corruption'³⁹⁴. It assessed that the strong track record of the institutions is a signal of the independence and professionalism of

³⁸⁶ 2017 EU Justice Scoreboard, Figure 52: Main reasons among the general public for the perceived lack of independence and Figure 54: Main reasons among companies for the perceived lack of independence.

³⁸⁷ Demsorean, A., Parvulescu, S. & Vetrici-Soimu, B, Romania: Vetoed reforms, skewed results, in Magen, A. & Morlino, L. (eds), *International Actors, Democratization and the Rule of Law: Anchoring Democracy?* Routledge Taylor & Francis Group, USA, 2009, p.107.

³⁸⁸ Ibid.

³⁸⁹ Radu, M., *Ghid practic privind cooperarea judiciară în materie penală. Perspectivă comparativă a instrumentelor juridice folosite în Germania, România, Spania și Suedia*, realizat în cadrul proiectului 'JUST/2013/JPEN/AG/4475 Întărirea cooperării judiciare la nivel European', 2016, p.21.

³⁹⁰ European Commission, Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism, Brussels, 25 January, 2017 COM (2017) 44 final, available at: https://ec.europa.eu/info/sites/info/files/com-2017-44_en_1.pdf, p.8.

³⁹¹ Ibid.

³⁹² European Commission, Commission Staff Working Document, Country Report Romania 2017, Brussels, 22 February 2017 SWD (2017) 88 final, available at: <https://ec.europa.eu/info/sites/info/files/2017-european-semester-country-report-romania-en.pdf>, p.2.

³⁹³ European Commission, Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism, Brussels, 25 January 2017 COM (2017) 44 final, available at: https://ec.europa.eu/info/sites/info/files/com-2017-44_en_1.pdf, p.8.

³⁹⁴ Ibid., p.12.

the judicial institutions, but 'the repetition of similar offences also suggests that corruption prevention has not been effective'³⁹⁵. The entry into force of the new Criminal Codes in 2014 provided a comprehensive legal framework to address and combat corruption crimes in Romania. However, the European Commission considered that the stability of the criminal legal framework has been a source of concern since its inception, when there were regular attempts to amend the laws incriminating corruption, 'often without consultation of the key state and judicial institutions in this area'³⁹⁶, and that the strong media and political attacks on magistrates and the justice system continue to be a serious threat to the fight against corruption³⁹⁷. Finally, even though cases of corruption have decreased in recent years, and new institutions have been developed to better counter corruption, the large numbers of petitions filed with PETI demonstrates the lack of trust in the political and judicial system.

Slovakia

Various petitions raised concerns about the respect of procedural guarantees in the context of criminal proceedings.

In Petition No. 0762/2016, the petitioner complained about the application of the presumption of innocence in criminal proceedings.

The Slovakian Constitution and the Code of Criminal Procedure guarantee the application of the presumption of innocence in criminal proceedings. The Slovakian Supreme Court has also defined the specifics of this guarantee, stating that '*it is not the defendant's duty to prove his innocence because the principle of presumption of innocence requires that the State bears the burden of proof in criminal proceedings. [...] In case of any reasonable doubt as to whether or not the defendant has committed the act, these doubts need to be interpreted in his favour and not vice versa. Even a high degree of suspicion of his culpability does not in itself constitute a legal basis for a condemnation*'³⁹⁸. However, in practice, it appears that the presumption of innocence is not applied adequately during various phases of the criminal procedure (i.e. investigation, hearings before the court, etc.)³⁹⁹. Prosecutors (who are responsible for supervising the investigation phase and evaluating whether or not a case should be brought to court) do not necessarily sufficiently assess whether evidence points towards the culpability of the accused person. From the perspective of practising lawyers, the role and competence of prosecutors during criminal proceedings are especially problematic. They hold a real power in bringing cases to courts and, in practice, there is little opportunity to challenge their actions. In practice, appeals against prosecutors' resolutions are rarely successful, as superior prosecutors tend to support those beneath them⁴⁰⁰. According to the government's legislative plan for 2017⁴⁰¹, changes in the field of prosecution and police services should be underway. But no detailed proposals have yet been issued by the competent Ministries to amend the laws regulating the police and prosecution services.

In Petitions No. 0234/2013, 0225/2013 and 0632/2016, petitioners complained about the existence of corruption in the judiciary.

Corruption is a significant problem in Slovakia. Transparency International Slovakia points out that the existence of corruption is the result of a lack of government action rather than

³⁹⁵ Ibid., p.8.

³⁹⁶ Ibid.

³⁹⁷ Ibid., p.13.

³⁹⁸ Najpravo.sk, Zásada prezumpcie nevinny (*Principle of the presumption of the innocence*), 21 March 2012, <http://www.najpravo.sk/judikatura/trestne-pravo-procesne/zakladne-zasady-trestneho-konania/zasada-prezumpcie-nevinny.html>, accessed on July 2017.

³⁹⁹ Interview with stakeholder conducted in the context of this study.

⁴⁰⁰ Based on an interview with a practising lawyer working in the field of criminal law.

⁴⁰¹ http://www.vlada.gov.sk/data/files/6771_plu-2017.pdf

a lack of legislation, or insufficient rules tackling the issue. For instance, in 2016, no high-ranking politician was investigated, charged or convicted of corruption despite numerous corruption scandals⁴⁰². Even though various legislative measures were adopted to tackle corruption, in practice there is little political will to implement them. However, Transparency International Slovakia considered the recent adoption of new legislation on the register of partners in the public sector to be progress, which should bring more transparency into the business activities between the state and private companies⁴⁰³. NGOs have also called for the adoption of measures to improve the independence of investigative police, the prosecution service, and judges.

According to the 2017 EU Justice Scoreboard, Slovakia has the lowest rate of perceived judicial independence among companies and the general public in the EU⁴⁰⁴. Interference or pressure from government, politicians and economic interests are perceived as the main reasons for the lack of judicial independence⁴⁰⁵. Generally, the judiciary is seen as inefficient and engenders low public trust. Although the Slovakian Constitution and the law provide for an independent judiciary, alleged corruption, inefficiency, and a lack of integrity and accountability have undermined public trust in the judicial system⁴⁰⁶. Recent events attest to the existence of threats to the independence and impartiality of the judiciary. In 2014, the Slovakian Parliament adopted a constitutional amendment requiring all sitting judges and candidates for judicial positions to receive security clearances from the government. These clearances were intended to attest to judges' suitability for public office. The amendment was criticised by various stakeholders, including judicial associations, NGOs and legal experts, who asserted that the security clearance process was not transparent, could be abused for political purposes, and would limit judicial independence. Proceedings to review the constitutionality of the law were pending at the time of writing⁴⁰⁷. To increase fairness and transparency, most courts now use a computerised system for random case assignment. However, there were reports that this system was subject to manipulation. The Constitutional Court confirmed that, in several cases, a former Supreme Court judge arbitrarily changed the composition of judicial panels, contrary to fair trial guarantees⁴⁰⁸.

Until recently, the selection of judges, too, was problematic. NGOs have demonstrated that the criteria for the selection of judges were too general and did not allow for a quality evaluation of the candidates, nor were selection commissions required to justify their decisions. In 2017, new statutory rules governing courts and judges (including selection) were adopted. On a positive note, most NGOs' recommendations to ensure an objective and transparent selection process were incorporated into the new legislation. According to the new rules, judges must attend a collective selection process, which will take place twice a year. Instead of applying for a position in a specific court, they will choose a court in the region of their choice, as a function of their success rate.

Similarly, the lack of justification or reasoning in court rulings, and the formalistic approach of courts have been a source of concern in recent years. Slovakian courts often fail to deliver well-reasoned and justified decisions; according to the case law of the ECtHR and the

⁴⁰² Including one case involving the Minister of Interior.

⁴⁰³ Transparency International Slovakia, Index vnímania korupcie 2016: Slovensko v boji proti korupcii naďalej stagnuje (Corruption Perception Index 2016: *Slovakia still stagnates in the fight against corruption*), 25 January 2017, <http://transparency.sk/sk/cpi-2016-slovensko-v-boji-proti-korupcii-nadalej-stagnuje/>, accessed in July 2017.

⁴⁰⁴ 2017 EU Justice Scoreboard, Figure 51: Perceived independence of courts and judges among the general public and Figure 53: Perceived independence of courts and judges among companies.

⁴⁰⁵ 2017 EU Justice Scoreboard, Figure 52: Main reasons among the general public for the perceived lack of independence and Figure 54: Main reasons among companies for the perceived lack of independence.

⁴⁰⁶ US Department of State, 2016 Country Report for Slovakia on Human Rights Practices, 2016.

⁴⁰⁷ Ibid.

⁴⁰⁸ Ibid.

Slovakian Constitutional Court, this constitutes a violation of the right to judicial protection and fair trial⁴⁰⁹. In response to pressure from NGOs⁴¹⁰, higher standards and requirements for justification of judicial decisions were recently incorporated into the new Code of Non-Contentious Civil Procedure. Judges are now required to provide convincing justification of their decisions.

Spain

Various petitions raised concerns about the respect of procedural guarantees in criminal proceedings in Spain, including the rights of the defence, access to translation and interpretation⁴¹¹, and the independence and impartiality of the judiciary⁴¹².

Various Spanish laws currently govern the rights of defence. Article 24 of the Constitution guarantees the right to defence, which has additionally been reinforced by legislation and case law.⁴¹³ The CGAE, has demanded though to regulate the rights of defence through a single legislative instrument⁴¹⁴, with the guarantee and protection offered by an organic law and put an end to the current fragmentation of the legal regime pertaining to the rights of defence⁴¹⁵. In addition as part of ongoing reform, there have been proposals to transfer the task of carrying out criminal investigations from judges to prosecutors. If the CGAE welcomed these proposals⁴¹⁶, some judges have expressed dissatisfaction on the grounds that the accusatory principle is already respected, since the judge in charge of the investigation (*juez de instrucción*) is different from the judge who will pronounce on the case (*juez de lo penal*)⁴¹⁷.

Regarding access to translation and interpretation, Spain recently reformed its criminal procedure, modifying the rules governing interpretation and translation in criminal proceedings in the context of the transposition of Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings⁴¹⁸. Spanish criminal procedure provides that accused persons must have access to a translator during all proceedings in which the translator's presence is required, especially during the oral phase, and during conversations between accused persons and their lawyers in certain cases. It also governs other aspects, such as translation of essential documents so that an accused person can prepare his/her defence, or the suspension of all deadlines while translation is carried out⁴¹⁹. According to the lawyer and the judge interviewed during this study, translation services are usually effective in all courts regarding all EU languages in general. When an issue exists, it is isolated and not a general flaw of the system. The General Council of Spanish Lawyers nonetheless pointed out that some difficulties may occur with other spoken languages less frequently

⁴⁰⁹ Wilfling P., Kvalitatívne požiadavky na odôvodnenie súdneho rozhodnutia (*Quality requirements for the justification of the judicial decision*), VIA IURIS 2013, <http://www.viaiuris.sk/wp-content/uploads/2016/09/publikacia-2013-kvalita-sudnych-rozhodnuti-2-vydanie.pdf>, p.70, accessed in July 2017.

⁴¹⁰ See for instance VIA IURIS' action on the subject.

⁴¹¹ Petition No. 2465/2013.

⁴¹² Petition No. 0518/2015.

⁴¹³ Rosal (del), R., 'Hacia una Ley Orgánica de desarrollo del Derecho fundamental de Defensa jurídica', *Ética Jurídica*, 2016.

⁴¹⁴ Thomson Reuters – Aranzadi, 2016.

⁴¹⁵ An Organic Law needs the approval of the absolute majority of the National Parliament, unlike ordinary laws that just need the simple majority.

⁴¹⁶ Abogacía Española, 2017b.

⁴¹⁷ The judgment STC 145/1988 of the Constitutional Court declared that a judge being in charge of both the investigation and the resolution of a case was non-constitutional.

⁴¹⁸ Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings.

⁴¹⁹ La Web Legal, 'El detenido y las recientes modificaciones de la Ley de Enjuiciamiento Criminal', 23 October 2015.

encountered⁴²⁰. There is also a demand to include more translators as personnel of the justice administration⁴²¹.

In Petitions No 1721/2013, 2205/2013 and 1105/2014, petitioners raised concerns about the judiciary, alleging potential "lack of objectivity" and "misinterpretation of evidence", "judicial corruption", and "changes in the election of the members of courts". According to the 2017 EU Justice Scoreboard, only 30% of companies and the general public in Spain think that the independence of courts and judges is good⁴²². Interference or pressure from government, politicians and economic interests are perceived as the main reasons for the lack of judicial independence⁴²³. The judge and lawyer interviewed for this study considered that citizens' perceptions of the judiciary relate chiefly to high bodies, not ordinary courts. In their view, the independence of ordinary judges is ensured and their judgments are not biased⁴²⁴. There seem to be a perception of lack of independence of High Courts. Various actors, such as the CGAE and the Council of Europe⁴²⁵, have raised concerns about the election of the executive body of the judiciary (the CGPJ) and specific courts, notably for its lack of transparency and for the risk of potential conflicts of interest.

Two petitions (No. 1233/2015 and 0477/2014) raised the issue of underage people in hearings before the courts, and one of them also concerned victims of gender violence. Spanish Criminal Procedure Law includes the possibility to accelerate procedures, though literature suggests difficulties in implementation⁴²⁶. The judge interviewed stated that the lack of means does not affect the application of all the guarantees provided by law to underage people and to victims of gender violence. The Victim Rights Law includes some of the measures stated previously in the case law of the Supreme Court on the issue⁴²⁷, even though it is considered to be insufficient by some authors⁴²⁸. In October 2016, the National Parliament initiated the processing of a proposal to create a protocol on the guidance on examining, questioning or obtaining testimony from minors in a judicial process and the creation of 'friendly' rooms⁴²⁹.

On gender-based violence, a prolific set of legal instruments were developed in the past 15 years⁴³⁰, the most notable being Organic Law 1/2004 on Measures of Integral Protection against Gender Violence⁴³¹, which has been recognised as good practice by UN Women⁴³². However, several court officials have complained about the need for more means faced by courts specialised in such issues. It has been pointed out that these deficiencies create difficulties in some cases in complying with the provisions of the law on gender violence, such

⁴²⁰ Interview with the General Council of Spanish Lawyers.

⁴²¹ Luna (de), P., 'El intérprete judicial: ese interlocutor emocional entre el acusado y el juez.' *Ponencia para el congreso Jueces para la democracia*, Bilbao, 2017; APTIJ, *Cuáles son los principales problemas con los que se encuentra un traductor e intérprete judicial o policial?*, 2017; and Luna (de), P., *El derecho a interpretación y a traducción en los procesos penales*, 2015.

⁴²² 2017 EU Justice Scoreboard, Figure 51: Perceived independence of courts and judges among the general public and Figure 53: Perceived independence of courts and judges among companies.

⁴²³ 2017 EU Justice Scoreboard, Figure 52: Main reasons among the general public for the perceived lack of independence and Figure 54: Main reasons among companies for the perceived lack of independence

⁴²⁴ Interview with a judge and Abogacía Española, 2017b.

⁴²⁵ Abogacía Española, 2017b; Council of Europe, 'Fourth Evaluation Round. Corruption prevention in respect of members of parliament, judges and prosecutors' GRECO, Compliance Report Spain, 2016c.

⁴²⁶ Vieira Morante, F.J., 'El menor como víctima del delito', *Diario La Ley*, No. 8453, 2015.

⁴²⁷ Díaz Torrejón, P. *La protección de la víctima menor de edad en el proceso penal. Incidencia de la entrada en vigor de la ley 4/2015, de 27 de abril, del estatuto de la víctima del delito*, 2015.

⁴²⁸ Vieira Morante, F.J., 2015.

⁴²⁹ Noticias Jurídicas, *El Congreso pide al Gobierno un protocolo para proteger a los menores que declaren en procesos judiciales*, 20 October 2016.

⁴³⁰ Ministerio de Sanidad, Servicios Sociales e Igualdad, *Guía de Derechos de las mujeres víctimas de la violencia de género*, 2016.

⁴³¹ Organic Law 1/2004, of December 28, on Measures of Integral Protection against Gender Violence (*Ley Orgánica 1/2004, de 28 de diciembre, de Medidas de Protección Integral contra la Violencia de Género*), BOE núm. 313, de 29 de diciembre de 2004.

⁴³² UN Women; 'Handbook for Legislation on Violence against Women', *Division for the advancement of women*, 2010.

as the presence specialised legal or social assistance⁴³³.

4.4.2. Length of proceedings

The legal saying 'Justice delayed is justice denied'⁴³⁴ appears to apply in many of the Member States studied. Citizens complained about lengthy proceedings in a great number of petitions. Excessive duration of legal proceedings is a well-known and long-term problem in Croatia, Italy, Romania and Spain, for example. Petitioners also complained about lengthy duration of proceedings in international child custody disputes in Slovakia. The relevant petitions are listed in **Table 12**.

Table 12: Selected petitions concerned with the length of proceedings

Country	Subject-matter of Petition	Admissibility
Croatia	2458/2014: Long duration of proceedings before the courts and procedural irregularities	Admissible (closed): <ul style="list-style-type: none"> • Explain to the petitioner that the PETI is not a judicial or investigative body • Forward for info to EC's DG Justice
	0656/2013: Failure to deliver a judgment in a case pending since 2005 before the Greek Council of State	Inadmissible: no additional info
Greece	0659/2013: Impact of backlog of cases on duration of proceedings	Inadmissible: no additional info
	0663/2016: Impact of legislation increasing the taxation of lawyers in Greece, adopted in the context of austerity measures	Admissible: available to supporters
	0129/2013: Complaint about a ruling of the ECtHR related to excessive delays in judicial proceedings in Italy	Inadmissible: no additional info
Italy	1590/2013: Excessive length of proceedings in an inheritance case	Admissible: closed No additional information
	1766/2013: Excessive length of proceedings	Inadmissible: no additional info
	2092/2013: Allegation of excessive delays and inefficiency of the Italian court system	Inadmissible: no additional info
	0185/2013: Lengthy proceedings and alleged corruption of the Romanian legal system	Inadmissible: no additional info
Romania	0713/2013: Excessive duration of proceedings before national courts and the ECtHR	Inadmissible: no additional info
	1131/2013: Excessive duration of proceedings before national courts and the ECtHR	Inadmissible: no additional info

⁴³³ Público, 2016.

⁴³⁴ Gladstone, W.E.

Country	Subject-matter of Petition	Admissibility
	1550/2013: Excessive length of criminal proceedings involving minors	Inadmissible: no additional info
	2269/2013: Excessive length of proceedings both at national and regional level	Admissible: closed No additional information
	2570/2013: Lengthy procedure regarding seizure under the communist regime	Inadmissible: no additional info
	2792/2013: Excessive length of legal proceedings in relation to an authorisation to engage in commercial fishing ⁴³⁵	Admissible: available to supporters <ul style="list-style-type: none"> The EC replied that infringement proceedings against Romania have been launched for non-compliance with the principle of equal access to EU waters and resources. No EC's position on the length of the legal proceedings
	1146/2014: Delayed enforcement of ECtHR's ruling	Inadmissible: no additional information
Slovakia	0639/2014: Complaint about lengthy judicial proceedings in child abduction cases	Admissible: available to supporters <ul style="list-style-type: none"> The EC replied that it would focus on the upcoming revision of the Brussels IIa Regulation⁴³⁶
	1006/2015: Delays in enforcing an Italian judgment ordering the return of an abducted child and infringement of Brussels IIa Regulation	Admissible: available to supporters <ul style="list-style-type: none"> The EC replied that it took the petition into account during the evaluation of the Brussels IIa Regulation and the drafting of the recast proposal Petitioner should pursue his case before the national courts as the EC cannot intervene in pending proceedings
Spain	0820/2014: Call for the establishment of a time limit on the pre-trial phase of criminal investigations	Admissible: available to supporters

⁴³⁵ European Parliament, Notice to Members, 31 March 2017, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bCOMPARL%2bPE-551.850%2b03%2bDOC%2bPDF%2bV0%2f%2fEN>

⁴³⁶ Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, OJ L 338, 23.12.2003, p. 1–29.

Croatia

Petition No. 2458/2014 raised concerns about the excessive duration of court proceedings.

The excessive duration of court proceedings is one of the most important symptoms of the crisis in Croatia's judicial system⁴³⁷. According to the 2016 US State Department Human Rights Report, judicial delays are an ongoing problem in Croatia, with the judiciary suffering from a backlog of 520,000 cases in 2016⁴³⁸. In 2010, the ECtHR found Croatia in violation of the right to fair trial within a reasonable timeframe⁴³⁹. This situation therefore raises concerns regarding judicial effectiveness and efficiency, as well as access to justice. The long duration of court proceedings can be explained by the political events in recent decades, which are described in Section 4.1.1.

In 2013, the amendment of the Civil Procedure Act brought major changes to the way in which proceedings were conducted, in a bid to reduce the duration of court proceedings⁴⁴⁰. The following rules were adopted:

- all evidence must be submitted to the court first,
- main hearings at the court shall be conducted within one day,
- the deadline for verdicts is a maximum 45 days from the conclusion of the main hearing, and
- appeal courts can decide on a case only once⁴⁴¹.

Every legal process and proceeding in Croatia has now prescribed time limits. In addition, some procedures are prescribed as urgent proceedings in certain civil matters (such as assessment of mental health, and cases about custody and child protection), as well as administrative or criminal cases (such as cases of child abuse and neglect), including simplified procedures in certain criminal cases (such as petty offences) and civil cases (small claims). Croatia has fast-track resolution procedures for arbitration and mediation proceedings (e.g. objection to jurisdiction in arbitration proceedings is prescribed as an urgent proceeding⁴⁴², as are mediation proceedings, which are limited to 60 days)⁴⁴³.

In the context of the 2015 National Reform Programme of Croatia, the Council recommended that Croatia identify and implement steps to improve the efficiency and quality of the justice system, in particular in commercial courts⁴⁴⁴.

Greece

Petitions No. 0656/2013, 0659/2013 and 0663/2016 have raised some concerns about the length of legal proceedings in Greece.

The problem of excessive length of proceedings has been widely acknowledged for a long time. From 1959 to 2016, the ECtHR has issued 926 judgments against Greece, of which

⁴³⁷ https://bib.irb.hr/datoteka/195152.C-3.8_Uzelac_Accellerating.pdf

⁴³⁸ <https://www.state.gov/documents/organization/265618.pdf>

⁴³⁹ Oršuš and Others v Croatia, 16 March 2010.

⁴⁴⁰ Zakon o parničnom postupku (Civil Procedure Act) Official Gazette No. NN 53/91, 91/92, 58/93, 112/99, 88/01, 117/03, 88/05, 02/07, 84/08, 123/08, 57/11, 148/11, 25/13, 89/14;

⁴⁴¹ Articles 311 and 335 of the Civil Procedure Act, as amended in O.J. **No. 25/13**.

⁴⁴² Article 15(3) and (4) of the Law on Arbitration (O.G. No. 88/01).

⁴⁴³ Zakon o mirenju (Mediation Act), Official Gazette No. NN 18/11.

⁴⁴⁴ [Council Recommendation of 14 July 2015 on the 2015 National Reform Programme of Croatia and delivering a Council opinion on the 2015 Convergence Programme of Croatia, \(2015/C 272/15\).](#)

more than 50% (511 judgments) related to the length of proceedings⁴⁴⁵. In 2016, the Minister of Justice explicitly stated that delays constitute the most crucial problem in the Greek judicial system⁴⁴⁶. In April 2017, the Annual General Report of the General Commission of the State, responsible for monitoring and supervision of the administrative courts, showed that the total number of pending cases before the administrative courts (Courts of First Instance and Courts of Appeal) was 306,918 cases on 31 December 2015 and 279,822 on 31 December 2016⁴⁴⁷. The issue of length of proceedings is also reflected in the 2017 EU Justice Scoreboard, where it is estimated that the average time needed to resolve civil, commercial and administrative cases at first instance before the Greek courts reaches approximately 500 days (data available only for 2010)⁴⁴⁸. In that year, therefore, Greece ranked among the five 'slowest-moving' judicial systems in the EU Member States.

During this research, interviewees agreed that the length of proceeding constitutes the top-ranking problem visibly affecting effective access to justice in all types of legal proceedings.

The main factors triggering excessive delays include:

- Lack of appropriate court rooms and buildings;
- Lack of adequate judicial personnel. Many small regional courts lack both judges and personnel, causing problems in the communication between the judge and the litigants and leading to significant delays⁴⁴⁹;
- Repeated prolonged strikes of lawyers and court staff. The problem has become more acute in the years since the economic crisis, due to austerity measures imposed⁴⁵⁰;
- Inadequate application and use of IT tools in all types of procedures and courts. There are several ongoing projects related to the introduction of IT tools in all courts and interconnection between the courts, including the possibility for electronic submission of all relevant petitions and documentation;
- Judges are still allowed to handwrite their decisions, which are afterwards handed to secretaries to be clean-written and typed.

Finally, the inadequate application and use of IT tools in all types of procedures and courts. There are several ongoing projects related to the introduction of IT tools in all courts and interconnection between the courts, including the possibility for electronic submission of all relevant petitions and documentation. An interview with an e-justice specialist of the Greek Ministry of Justice, Transparency and Human Rights held that one of the main problems hindering effective access to justice is the absence (for the time being) of integrated information management systems and tools. This view is corroborated by recent studies. According to the 2017 EU Justice Scoreboard, electronic submission of claims is not in place in Greece. Electronic means are currently available solely to monitor the stages of a

⁴⁴⁵ ECtHR, Statistics by state and violations by Article and by state 1959-2016, available at:

http://www.echr.coe.int/Documents/Stats_violation_1959_2016_ENG.pdf

⁴⁴⁶ Interview with the Minister of Justice on 21 February 2016, available at:

<http://www.tanea.gr/news/greece/article/5336579/paraskeyopoylos-h-bradythta-einai-to-kyriotero-problhma-ths-ellhnikhs-dikaioynhs>

⁴⁴⁷ The full text of the Report is available in Greek at: https://geedd.blogspot.gr/p/blog-page_17.html

⁴⁴⁸ European Commission, *2017 EU Justice Scoreboard, Figure 4 : Time needed to resolve civil, commercial, administrative and other cases*, 2017, p. 7.

⁴⁴⁹ On 29 November 2016, the Felony Court of Appeals of the island of Corfu, during a major trial involving 35 defence lawyers but held in a hall accommodating a maximum of 12 lawyers, postponed the trial until October 2017 so that an appropriate hall could be found and all lawyers would be able to effectively exercise their duties.

Source: <https://insidestory.gr/article/ellinika-dikastiria?token=94IDHVVZ7U>

⁴⁵⁰ It is characteristic that the Union of Judicial Employees of the Court of Appeals has declared daily two-hour strikes (from 11.00 to 13.00) from 3 July 2017 until 14 July 2017, protesting against the increasing workload and the delay of recruitment of new personnel. The relevant declaration of the Union is available at:

http://www.dsa.gr/sites/default/files/news/attached/sylogos_dikastikon_ypallilon_athinas_30-06-2017.pdf

proceeding⁴⁵¹ and these are offered by only half of the courts in Greece. Other aspects, such as the possibility to submit a case or to relay summons', do not appear to be available. Greece has one of the lowest rates of information and communication technologies (ICT) use between courts and lawyers⁴⁵². This is as a result of the lack of availability of ICT, or negative past experiences⁴⁵³.

The expert interviewed in the context of this study argued that further enhancement of e-justice would lead to significant improvements in effective access to justice overall, helping to rationalise processes, minimise administrative costs, reduce the length of procedures, ensure high quality services for all stakeholders involved, and provide legal certainty. To date, the most important milestones achieved in the field of e-justice include:

- The development and operation of the National E-Registry of Criminal Records Certificates.
- The establishment of electronic recording of trials in civil courts.
- The ongoing programme for the digitalisation, interconnection and interoperability of all Courts, on a common e-platform. The programme is 'Integrated System for the Management of Judicial Affairs' (SOLON) and is co-funded by the EU. The programme is currently being piloted in the four largest Courts of First Instance and Courts of Appeal, i.e. Athens, Thessaloniki, Piraeus and Chalkida, including the Supreme Court (*Areios Pagos*). The pilot platform is expected to become fully operational by September 2018, at which point other cities will come on board, enabling integration of the whole territory of Greece.

During a meeting held in early October 2017 between the Minister of Justice and the newly appointed President of the Supreme Court, the Minister requested the President to develop and submit proposals on policies and legal interventions which could facilitate the acceleration of access to justice procedures⁴⁵⁴.

Italy

Several petitioners complained about the excessive length of judicial proceedings in Italy, itself a widely recognised and well documented issue. For example, first instance civil and commercial cases took 6.8% longer in 2015 than in 2010⁴⁵⁵. Courts at all levels are burdened by a high number of unresolved cases. However, improvements have been recorded in first instance tribunals and courts of appeal where the number of pending cases has declined⁴⁵⁶. By contrast, the backlog of cases pending before the Supreme Court is increasing⁴⁵⁷.

A key factor that has reduced pressure on the Italian court system is the decreasing number of incoming cases between 2010 and 2012. This reduction may be due to the economic growth and/or to recent reforms that have made access to justice costlier or more burdensome. It cannot be confirmed if those cases excluded from the judicial system are

⁴⁵¹ European Commission, *2017 EU Justice Scoreboard, Figure 23: Availability of electronic means*, 2017, p. 20.

⁴⁵² European Commission, *2017 EU Justice Scoreboard, Figure 24: Use of ICT between courts and lawyers*, 2017, p. 21.

⁴⁵³ European Commission, *2017 EU Justice Scoreboard, Figure 25: Reasons for the (non-)use of ICT between courts and lawyers*, 2017, p. 21.

⁴⁵⁴ Press release of 2 October 2017, available at: <http://www.skai.gr/news/greece/article/356620/protaseis-gia-epitahunsi-tis-dikaiosis-zitise-o-kodonis-apo-ton-areio-pago/>

⁴⁵⁵ European Commission for the Efficiency of Justice (CEPEJ), *Study on the functioning of judicial systems in the EU Member States: Facts and figures from the CEPEJ questionnaires 2010-2012-2013-2014-2015, 2017*.

⁴⁵⁶ Ibid.

⁴⁵⁷ Bartolomeo, F. and Bianco, M., *La performance del sistema giudiziario italiano: Un confronto con i principali sistemi giudiziari europei*, 2016.

only those that did not deserve to be heard. While Italian courts seem to have enough resources to perform their missions, their organisation and use of those resources may be suboptimal. No evidence was found to confirm this.

Following various applications to the ECtHR to obtain compensation under Article 41 of the ECHR⁴⁵⁸, Italy adopted Law 24 March 2001, No. 89 (the Pinto law), which establishes the right to obtain compensation in case of excessive duration of judicial proceedings⁴⁵⁹. It sets reasonable thresholds for the maximum duration of judicial proceedings: three years for first instance proceedings, two years for appeal proceedings, and one year for proceedings before the Supreme Court⁴⁶⁰. The duration of proceedings is considered reasonable if the case is resolved through a final judgment (not necessarily before the Supreme Court) within six years. The Pinto law also provides for compensation (from EUR 500-1500 per year (or part thereof) of delay).

It is unclear whether or not the Pinto law provides an adequate remedy in case of unreasonable duration of proceedings⁴⁶¹. Firstly, the timelines set out in the law do not consider the idiosyncrasies of each case and may not always be reasonable. Secondly, the costs and formalities for accessing the compensation procedure appear burdensome to ensure effective access to justice. Thirdly, rules governing the determination of the amount of compensation do not ensure that it will always be adequate. While parties may have recourse to the ECtHR for additional compensation, they would still have to exhaust domestic remedies. This therefore entails further delay in obtaining satisfaction. Overall, the right to be heard within a reasonable time is, in some cases, not guaranteed in Italy.

Romania

Petitions No. 0185/2013, 0713/2013, 1131/2013, 1550/2013, 2269/2013, 2570/2013, 1146/2014 and 2792/2013 referred to the length of proceedings as hindering the petitioners' effective access to justice, in both civil and criminal cases.

Article 21(3) of the Romanian Constitution provides that parties are entitled to a fair trial and the settlement of cases within a reasonable period. The same regulation is found in Article 10 of Law no. 304/2004 regarding judicial organisation⁴⁶² and Article 91(1) of Law no. 303/2004 concerning the statute of judges and prosecutors, which imposes an obligation on judges and prosecutors to solve the cases within the given timescales⁴⁶³.

In general, a typical case lasts between six months and one year⁴⁶⁴. Despite this, unreasonable delays in timely resolution of disputes is a recognised issue in the Romanian judicial system⁴⁶⁵, illustrated by the wealth of ECtHR jurisprudence on this topic for Romania,

⁴⁵⁸ Article 41 ECHR allows the ECtHR to 'afford just satisfaction to the interested party' if he or she could not obtain it, or could obtain it only in part, within the country concerned.

⁴⁵⁹ Pennisi, C., *Profili di incostituzionalità della riforma della cd. Legge "Pinto"*, 2014.

⁴⁶⁰ Further timelines are set for specific types of proceedings (e.g. insolvency), which are not reported here.

⁴⁶¹ The Pinto law was declared ineffective by the ECtHR on several occasions. See Tamamović, A. I. (2015). *The impact of the crisis on fundamental rights across member States of the EU: Comparative analysis*. European Parliament.

⁴⁶² Law no. 304/2004 regarding judicial organisation, Article 10 provides that: 'All persons are entitled to a fair trial and to the ruling of their cases within a reasonable time, by an impartial and independent court, set-up according to the law'.

⁴⁶³ Tanase, C., *Legal Nature of Criminal Proceedings Regarding the length of the Appeal*, 11th edition of the international conference, European integration realities and perspectives, 2016, pp. 59-60, available at: http://evidentacercetare.univ-danubius.ro/Surse/Set_010/9rvYo1fGBP.pdf,

⁴⁶⁴ Data from interview conducted for this study.

⁴⁶⁵ FRA, *Access to justice in Europe: an overview of challenges and opportunities by the National Thematic Study: Romania*, 2012, p.5, available at: <http://fra.europa.eu/en/country-report/2012/country-thematic-studies-access->

with a total of 55 judgments and four amicable agreements. The interviews revealed that, of the 188,000 cases that the Bucharest Tribunal had in recent years, 80% were resolved within less than a year, while 15,000 cases lasted longer than one year.

A 2010 study identifies the following causes for these delays:

- a reduced number of judges relative to the number of cases filed with the court;
- inadequate division of material jurisdiction between courts;
- insufficient number of judicial experts;
- late submission of expert reports;
- legislative uncertainty caused by frequent changes to the applicable legislation.

Other flaws in the system that influence the length of proceedings are the failure of witnesses to present themselves at hearings, procedural rules giving the parties numerous opportunities to prolong the judicial procedure, parties and lawyers abusing adjournment requests, lack of defence, lack of witnesses, medical reasons, and parties and lawyers failing to complete procedural documents⁴⁶⁶.

The judge interviewed confirmed that the length of proceedings is a significant problem in the Romanian justice system, and one which hinders effective access to justice. She mentioned that the length of proceedings is greater in some civil cases, as these are more complicated. In addition, expertise is often submitted late in the judicial process, there are few experts with the Ministry of Justice, and these are overloaded with work. Also, civil cases relating to bankruptcy procedures are quite lengthy, as the law provides for a three-year term for a bankrupt business to recover. She also indicated that the length of proceedings in criminal cases is a pressing issue, as the prosecution phase is usually long.

In recent years, in line with the legislative reforms and the adoption of the new Civil and Criminal Codes, measures have been introduced to ensure reasonable length of proceedings and to expedite delayed proceedings.

Article 6(1) of the Code of Civil Procedure (Law no.134/2010) provides for the right to fair trial in an optimum and foreseeable time⁴⁶⁷. Article 233 of the same Code provides that, during the first hearing, the judge shall estimate the time necessary for the trial's inquiry, taking into consideration the circumstances of the case, for the trial to be resolved within a reasonable time. The estimated length must be registered and can only be re-evaluated with a justification and with parties heard.

The Criminal Procedure Code also provides in its Article 8 that criminal proceedings must be resolved within a reasonable time limit. It states that 'through an appeal concerning the length of criminal proceedings, the parties can induce a limited judicial control on the work

[justice](#); See also ECtHR, *Bursuc v. Romania*, (12 October 2004), *Nichifor v. România*, admissibility decision (27 January 2005); *Moldovan and others v. România* (12 July 2005), *Anghel v. România* (7 October 2007).

⁴⁶⁶ Tanase, C., *Legal Nature of Criminal Proceedings Regarding the length of the Appeal*, 11th edition of the international conference, European integration realities and perspectives, 2016, p.5, available at: <http://rtsa.ro/tsa/index.php/tsa/article/viewFile/53/49>

⁴⁶⁷ Roghina, G.E., Fair trial in an optimum and foreseeable time, Council of Europe's recommendation through European Commission for the efficiency of justice and express legal provisions in the new Romanian Code of Civil Procedure, *Curentul Juridic*, 2012, vol. 49, pp.44-45, http://www.upm.ro/facultati_departamente/ea/RePEc/curentul_juridic/rcj12/recjurid122_4F.pdf.

of the prosecuting authorities and the courts by verifying the extent of criminal proceedings, as appropriate"⁴⁶⁸.

According to the judge interviewed, the new Civil and Criminal Codes have not changed the situation to any great extent, although they created useful tools to shorten delays.

Finally, the Superior Council of Magistracy and the Judicial Inspection body regularly issue decisions on the length of proceedings. Cases older than one year are subject to an annual review by the Judicial Inspection body, which also undertakes biannual inspections of court files between five and 10 years old. Only the Council's decisions are mandatory for the magistrates, although the Superior Judicial Council has sanctioned disciplinary faults related to delays⁴⁶⁹.

Slovakia

Petitions No. 0639/2014 and 1006/2015 raised the issue of lengthy proceedings in international child custody disputes.

According to the US Department of State, inefficiency of the judiciary is a major problem in Slovakia, leading to long trials which may discourage individuals from filing civil suits. Recent European Commission statistics have showed, for instance, that bankruptcy proceedings take four years on average to complete. The average length of civil and commercial court cases is more than 500 days, while economic competition cases take approximately 800 days. The Slovakian Constitutional Court recently stated that delays in court proceedings were one of the biggest problems facing the judiciary. It highlighted extreme delays, exceeding 20 years in dozens of cases and 30 years in three cases. Between 2010 and 2015, the Constitutional Court awarded EUR 5 million in compensation for delays⁴⁷⁰. According to Transparency International Slovakia, the most important factors influencing the quality and efficiency of the work of judges are the qualification of judges and the role played by their support staff. Low salaries, which may be lower than the national average salary, have made it difficult to build and maintain quality support staff at courts⁴⁷¹. Various reforms to advance the efficiency of the justice system have been ongoing since 2016. The adoption of new procedure codes is expected to accelerate proceedings, reduce obstructions, improve court specialisation, and enhance the predictability of rulings. Early settlement of cases is encouraged through preliminary hearings and the introduction of evidence at the beginning of a dispute.

Various cases brought before the ECtHR shed light on the excessive length of Slovakian proceedings in international child custody disputes⁴⁷². In *López Guió v. Slovakia*⁴⁷³, the ECtHR held that the legal remedies available to the parties in cases of international child abduction resulted in excessive delays in the enforcement of judgments, thereby undermining the purpose of the provisions of The Hague Convention on the Civil Aspects of International Child

⁴⁶⁸ Tanase, C., *Legal Nature of Criminal Proceedings Regarding the length of the Appeal*, 11th edition of the international conference, European integration realities and perspectives, 2016, available at: <http://rtsa.ro/rtsa/index.php/rtsa/article/viewFile/53/49> p. 60.

⁴⁶⁹ Kuijter, M., The Right to a Fair Trial and the Council of Europe's Efforts to Ensure Effective Remedies on a Domestic Level for Excessively Lengthy Proceedings, *Human Rights Law Review* 13:4, 2013, 777-794, available at: http://www.ejtn.eu/Documents/About%20EJTN/Independent%20Seminars/Human%20Rights%20BCN%202829%20April%202014/KUIJTER_Fair_Trial_Lengthy_Proc_CoE_2013.pdf.

⁴⁷⁰ US Department of State, Country Report for Slovakia on Human Rights Practices, 2016.

⁴⁷¹ Šimalčík M., 'Aj sudcov treba hodnotiť: nové hodnotenie slovenských sudcov' (*Even judges have to be evaluated: new evaluation of Slovak judges*), Transparency International Slovakia, 6 June 2017, <http://transparency.sk/sk/aj-sudcov-treba-hodnotit-nove-hodnotenie-slovenskych-sudcov/>, accessed in July 2017.

⁴⁷² López Guió v. Slovakia; Tommy Hoholm v. Slovakia, 13 January 2015.

⁴⁷³ López Guió v. Slovakia, [http://hudoc.echr.coe.int/eng#{"itemid":\["001-144355"\]}](http://hudoc.echr.coe.int/eng#{), accessed in July 2017.

Abduction⁴⁷⁴. Similarly, in *Tommy Hoholm v. Slovakia*⁴⁷⁵, the use of the extraordinary appeal mechanism caused an international child custody dispute to last for seven years before the Slovakian courts. Extraordinary appeal is generally permitted in civil and criminal procedures, although requirements were recently introduced to limit this procedure.

More generally, the length of proceedings remains a key issue in Slovakia. According to the 2017 EU Justice Scoreboard, the number of days needed to resolve civil and commercial cases in Slovakia is one of the highest in the EU⁴⁷⁶. There are various reasons for such lengthy proceedings. TIS, in its most recent evaluation of judges, points to the diverse factors influencing the quality and efficiency of judges' work, chiefly their level of qualification, and the role played by their support staff, as well as limited means and human resources at courts. The judges' association For Open Justice⁴⁷⁷ estimated that 90 additional judges and 90 support staff were needed at the courts⁴⁷⁸.

As outlined earlier, the Slovak judiciary has undergone important reforms since 2016, in response to the inefficiency of justice. The adoption of the new CCCP in July 2016 is likely to have a positive impact on the length of proceedings, as it includes new rules aiming to accelerate judicial proceedings.

Spain

Petition No. 0820/2014 dealt with the issue of lengthy proceedings in criminal and civil proceedings.

Article 24(2) of the Spanish Constitution recognises the fundamental right to a public trial without undue delay. The Constitutional Court has acknowledged that this right is independent from the right to an effective remedy. However, the right to a public trial without undue delay can only be breached in specific circumstances. For instance, delay must be undue, which means that not all types of delay can result in a breach of the right. Ultimately, the concept lacks clarity. The complexity of the case or the behaviour of the parties can influence the delimitation of the right. The Constitutional Court⁴⁷⁹ has stated that the inherent flaws of the justice system, such as the lack of resources within the justice administration, cannot justify a breach of the right to a trial without undue delay⁴⁸⁰.

Judges, court clerks, and scholars⁴⁸¹ have suggested that justice is slow and shows a large rate of pending cases. According to the 2017 EU Justice Scoreboard, the length of proceedings in Spain is higher than in most EU countries, although it is still far behind countries like Cyprus, Malta or Portugal⁴⁸². Length of proceedings was expressly pointed as an issue in the State's Public Prosecutor 2014 Report, which observed that, while the length of the investigation period (*periodo de instrucción*) was adequate, the issue of the length of

⁴⁷⁴ Záhradníková J., 'Prvý rozsudok proti Slovensku o medzinárodnom únose detí' (First judgment against Slovakia concerning international child abduction), 10 August 2014, <http://zahradnikova.sk/blog/rodicovske-unosy/prvy-rozsudok-proti-slovensku-o-medzinarodnom-unose-deti/>, accessed in July 2017.

⁴⁷⁵ Hoholm v. Slovakia, <http://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-149202&filename=001-149202.pdf>, accessed in July 2017.

⁴⁷⁶ 2017 EU justice scoreboard, Figure 5: time needed to resolve litigious civil and commercial cases, p. 8.

⁴⁷⁷ Judges' association For Open Judiciary, <http://www.sudcovia.sk/sk/dokumenty/zoj>, accessed in July 2017.

⁴⁷⁸ TASR Slovak Press Agency, *Združenie za otvorenú justíciu vyzvalo na personálne posilnenie súdov* (Association For open judiciary calls for personal strengthening of courts), 25 June 2015, <http://www.teraz.sk/slovensko/zoj-pre-narastajuce-sudne-prietahy-z/142675-clanok.html>, accessed in July 2017.

⁴⁷⁹ STC 10/1997, Sala 1ª, de 14 de enero.

⁴⁸⁰ Oubiña Barbolla, S., 'Dilaciones Indevidas', *Eunomía* No 10, 2015.

⁴⁸¹ Gómez Pomar, F. (2014), Mayoral Díaz-Asensio, J.A. (2013) 'La calidad de la Justicia en España ¿Cómo evalúan los españoles el funcionamiento de las instituciones judiciales y qué se puede hacer para mejorarlas?' *Estudios de Progreso*, Fundación Alternativas, No 76, CGPJ (2016), and SISEJ (2013).

⁴⁸² European Commission, 2017, p. 7.

the procedure has to be addressed regarding criminal matters⁴⁸³. The evolution of data in the following reports until 2017 suggests that the issue persists.⁴⁸⁴ This is corroborated by the statistics published by the CGPJ on its website regarding estimations on the average length of proceedings in Spain⁴⁸⁵ and the reports compiling their main findings every year⁴⁸⁶. According to the latest report⁴⁸⁷, in 2016, civil jurisdictions took, on average, 6.1 months for the first instance and 44.8 months in commercial courts regarding insolvency cases. Proceedings before administrative courts lasted on average 10.2 months, the social courts 10.2 months, and the criminal courts 2.3 months for investigation (*juzgados de instrucción*) and 10.2 months in criminal trials (average time for *procedimiento abreviado*). Lack of resources within the justice administration appears to increase delays in proceedings before civil, labour, commercial and criminal courts⁴⁸⁸.

Petition No. 0820/2014 concerned the establishment of a time limit for concluding the pre-trial phase of criminal investigations so that persons under investigation would no longer be forced to stand accused for lengthy pre-trial periods. During the 2015 reform of the Spanish criminal procedure, the Government modified the length of the pre-trial phase. As a result, the instruction phase has a general time limit of six months, which cannot be extended, and a special time limit of 18 months for complex cases, which can be extended for a further 18 months⁴⁸⁹. Legal professionals have voiced their concerns that this measure was not accompanied by an increase in the means to achieve the time limit, which, they allege, can damage the quality of the investigation⁴⁹⁰. They have also suggested that increased appeals during the pre-trial phase have led to court backlogs⁴⁹¹.

4.4.3. Enforcement of judgments

Enforcement of judgments is a key concern for citizens in more than half of the Member States studied. Petitioners complained about the lack of enforcement, or delays in enforcement, of judgments from national courts, the CJEU and the ECtHR. The relevant petitions are listed in **Table 13**.

⁴⁸³ Fiscalía General del Estado, *Memoria 2013, 2014*, p.XIII

⁴⁸⁴ Annual Reports of the State's Public Prosecutor:

https://www.fiscal.es/fiscal/publico/ciudadano/documentos/memorias_fiscalia_general_estado/lut/p/a1/04_Sj9CPyKssy0xPLMnMz0vMAfGjzOI9HT0cDT2DDbwsqozNDBwtjNycnDx8jAwszIAKIPEVuPtYuBk4unsGO5I6eBhbBJkQp98AB3A0IKQ_XD8KVYm_h68R0AWGvqEmli7GBu6G6AqwOBGsAI8bCnJDIwwyPRUByaZ9Iq!!/dI5/d5/L2dJQSEvUU3QS80SmlFL1o2X0IBSEExSVMwSjhSMzYwQTgyRkJCSEwyMDq2/?selAnio=2016

⁴⁸⁵ In the absence of direct data on durations, the CGPJ has prepared, as an approximation to them, estimates of the durations of the procedures completed each year. The estimate is made by means of a mathematical model that uses the data collected in the quarterly statistics: number of cases admitted, resolved and pending. It does not distinguish the form of termination (rulings, inadmissibility, etc.). Data is accessible in the following link: <http://www.poderjudicial.es/cgpj/es/Temas/Estadistica-Judicial/Estadistica-por-temas/Actividad-de-los-organos-judiciales/Estimacion-de-los-tiempos-medios-de-los-asuntos-terminados/>

⁴⁸⁶ <http://www.poderjudicial.es/cgpj/es/Temas/Estadistica-Judicial/Estudios-e-Infórmes/Justicia-Dato-a-Dato/>

⁴⁸⁷ CGPJ, *La Justicia Dato a Dato. Año 2016*, 2016

⁴⁸⁸ Defensor del Pueblo, 'Informe Anual 2015', 2016, p. 137.

⁴⁸⁹ Article 324 of Ley de Enjuiciamiento Criminal and Circular 5/2015, sobre los plazos máximos de la fase de instrucción.

<http://www.abogacia.es/wp-content/uploads/2015/11/Circular-5-plazos-maximos-de-instruccion.pdf>

⁴⁹⁰ Abogacía Española, 2017b.

⁴⁹¹ CGPJ, 2016.

Table 13: Selected petitions concerned with the enforcement of judgments

Country	Subject-matter of Petition	Inadmissibility
Croatia	0841/2014: Failure by a lower court to comply with rulings of the Supreme Court and the Constitutional Court of Croatia	Inadmissible: Subject-matter outside EU's field of activity
Greece	0082/2013: Complaint about the Greek government's refusal to enforce court rulings in general, and reference to the second economic adjustment programme for Greece	Admissible: available to supporters <ul style="list-style-type: none"> The EC replied the fundamental rights of citizens are being respected in the context of the programme The Greek government has the responsibility for the implementation of the economic policy conditions attached to the programme
	0949/2013: Failure to respect a CJEU's judgment ⁴⁹²	Admissible (closed): <ul style="list-style-type: none"> The EC held that the CJEU's interpretation was in favour of Greece The EC rejected the allegations of the petitioners regarding the EC's behaviour
	1603/2014: Failure by the Greek administration to enforce court decisions and irregularities violating procedural guarantees	Inadmissible: no additional information
	1990/2014: Failure by the Greek courts to comply with a ruling of the ECtHR	Admissible (closed): no additional information
	2167/2014: Failure by the Greek administration to comply with rulings of civil courts and the ECtHR	Inadmissible: no additional information
Poland	0729/2016: Failure to implement a court ruling within a reasonable time	Inadmissible: list 3, subject-matter seemingly not coming within the EU's field of activity
Romania	0125/2016: Enforcement of national rulings following a CJEU ruling	Admissible (closed): no additional information
	0188/2016: Failure to enforce an ECtHR judgment	Inadmissible: no additional information
	0314/2017: Non-application of ECtHR ruling	Inadmissible: list 3, Lack of substantial elements enabling the identification of the Union's fields of activity
	0420/2017: Failure to comply with a court ruling	Inadmissible: list, incoherent reasoning with an unclear link to the Union's fields of activity (List 3)

⁴⁹² See European Parliament, Notice to Members, 29 September 2014, available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=COMPARL&reference=PE-535.837&format=PDF&language=EN&secondRef=02>

Country	Subject-matter of Petition	Inadmissibility
	1146/2014: Delayed enforcement of ECtHR's ruling	Inadmissible: no additional information
Spain	0444/2014 and 0468/2014: Complaint about the state's failure to comply with a court ruling	Inadmissible: no additional information
	1500/2013: Complaint about the functioning of a thermal power station despite the existence of three judgments declaring it illegal ⁴⁹³	Admissible: closed <ul style="list-style-type: none"> The EC replied that further action can be considered once the national court process has been concluded and if evidence indicates a breach of EU law The EC will not give further follow-up to this petition
	1523/2014: Complaint about the enforcement by Spanish courts of a German court ruling regarding the application of Regulation 861/2007 on European Small Claims Procedure ⁴⁹⁴	Admissible: available to supporters <ul style="list-style-type: none"> The EC replied that documents and information from the petitioner do not substantiate the allegations about an alleged infringement of Regulation 861/2007 by the Spanish court. The EC cannot take any action in this case

Croatia

In Petition No. 0841/2014, the petitioner complained about the failure of a lower court to comply with rulings of the Supreme Court and the Constitutional Court of Croatia.

Based on desk research and stakeholder interviews, no factors were identified that might substantiate the issue claimed in the petition relating to the non-respect by inferior courts of decisions by higher instances. Subject-matter jurisdiction of the Croatian courts is regulated by the Courts Act⁴⁹⁵. In cases of appeal (and therefore relevant to the relationship between the inferior and higher courts), recent amendments of the Courts Act prescribed that the higher (appeal) court is obliged to inform the inferior (first) instance court on the reasoning underpinning its decision and the legal remedies applied, if any. In addition, the higher (appeal) court may request from the inferior court all data relevant to the case, interpretation of the legislation, problems (if any) during the proceedings, relevant case law, even supervision of the work of certain courts or judges, including mutual meetings to discuss any issues. The same law also prescribes that the higher court, while implementing any of above listed measures, must not in any way influence the final decision or independence of the inferior courts⁴⁹⁶.

⁴⁹³ European Parliament, Notice to Members, 31 October 2014, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2F%2FEP%2F%2FNONSGML%2bCOMPARL%2bPE-541.572%2b01%2bDOC%2bPDF%2bV0%2F%2FEN>

⁴⁹⁴ European Parliament, Notice to Members, 30 October 2015 available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2F%2FEP%2F%2FNONSGML%2bCOMPARL%2bPE-571.550%2b01%2bDOC%2bPDF%2bV0%2F%2FEN> Ibid.

⁴⁹⁵ Zakon o sudovima (Courts Act) Official Gazette No. 28/13, 33/15, 82/15, 82/16, entered into force on 1 September 2015.

⁴⁹⁶ Article 27 of the Judiciary Act as amended in O.G. No. 33/15.

With respect to the enforcement of foreign judgments in Croatia, since becoming a Member State in 2013, Croatia is bound by the rules governing the recognition and enforcement of foreign judgments under Brussels Regulation I⁴⁹⁷ and Brussels Regulation Ia⁴⁹⁸. The 2007 Lugano Convention is applicable in respect of recognition and enforcement of foreign judgments in disputes with international elements involving jurisdictions of the EU courts and EFTA courts. The recognition and enforcement of judgments adopted by foreign courts not covered by the Brussels Regulations or the 2007 Lugano Convention is primarily governed by bilateral and multilateral treaties. Finally, in the absence of any such treaty, the Croatian courts apply the Act on Resolution of Conflict of Law with Laws of Other Countries (Conflict of Laws Act) for the procedures of recognition and enforcement of foreign judgments⁴⁹⁹.

Greece

In Petitions No. 0082/2013, 0949/2013, 1603/2014, 1990/2014 and 2167/2014, petitioners complained about the lack of enforcement of court rulings, or long delays in their enforcement. In Petition No. 2167/2014, the Greek administration allegedly failed to comply with rulings of national courts and the ECtHR for 15 years.

Greek law and case law recognise the obligation for the administration to comply with judicial rulings (e.g. Article 95(5) of the Greek Constitution). Violation of this obligation results in the direct liability of the competent authority. The obligation of the administration to comply with court rulings has a dual scope depending on the type of the court decision: 1) the administration is forbidden to implement or apply an administrative act annulled by a court and to issue a new administrative act with content identical to the act already annulled; and 2) the administration is obliged to revoke any administrative act based on the annulled act, to revoke any act identical with the annulled one, and to replace the annulled act with a new one, in compliance with the content of the judicial decision.

The issue of administrative non-compliance with court rulings is not new. In 1997, in *Hornsby v. Greece*⁵⁰⁰, the ECtHR found Greece in violation of Article 6(1) of the ECHR in a case concerned with the enforcement of a judgment. During this research, the interviewees confirmed that the lack of compliance with rulings constitutes a significant problem, and one which has become more acute during the recent economic crisis. The administration has seemingly been reluctant to comply with court rulings entailing financial and/or political cost to the government. At the same time, actions that need to be taken by the administration to comply with rulings are complex and entail many parameters (e.g. contradicting legislation, actions that need to be taken by more than one authority, etc.). In some instances, the administration has limited power or resources to comply with rulings.

Poland

In Petition No. 0729/2016, the petitioner complained that the Polish state has failed to implement within a reasonable amount of time the Constitutional Court's ruling that the different treatment of caretakers of adults, on the one hand, and of children, on the other hand, constitutes discrimination.

⁴⁹⁷ EC Regulation No. 44/2001 of 22-12-2000 ('Brussels Regulation I').

⁴⁹⁸ EC Regulation No. 1215/2012 of 12-12-2012 ('Brussels Regulation Ia').

⁴⁹⁹ Official Gazette No. 43/1982, 72/1982, 53/1991, 88/2001.

⁵⁰⁰ *Hornsby v. Greece*, Strasbourg 19 March 1997. Full text of the judgment available at: <file:///C:/Users/konstantinopoulosq.TERRA/Downloads/001-58020.pdf>

In Poland, legal provisions found unconstitutional by the Constitutional Court become invalid the moment the judgement is published and courts cannot base their judgements on those provisions⁵⁰¹. Furthermore, administrative decisions taken on the basis of unconstitutional provisions may be revoked⁵⁰². The Parliament is then responsible to remedy the unconstitutional character of contested provisions by passing new laws or amending the existing ones in line with the Constitution and the ruling of the Constitutional Court⁵⁰³. However, on average, 444 days pass from the publication of the Constitutional Court's ruling to the enactment of a new law by the Parliament⁵⁰⁴. In the meantime, courts may attempt to interpret the unconstitutional laws in accordance with the Constitution, but, according to literature, they often close or suspend proceedings, waiting for the Parliament to act within its legislative competence⁵⁰⁵.

Deficiencies in legislative planning, cooperation and division of tasks between the competent authorities having legislative initiative (parallel work on the same judgments, lack of comprehensive legislative work plans to implement the rulings, lack of control over the punctuality of implementation of judgments, etc.) have been identified by NGOs as an explanation of these delays⁵⁰⁶. In the period 2010-2016, 35 judgements of the Constitutional Court were not implemented⁵⁰⁷.

Romania

Five relevant petitions were identified in relation to the issue of enforcement of judgments in Romania:

- Petition No. 1146/2014 referred to a decision of the ECtHR regarding the petitioner's involvement in the secret services in Romania. The petitioner sought the enforcement of the ruling near the High Court of Cassation and Justice, but the Court transferred the case to the Military Court in Bucharest, delaying the process.
- Petition No. 0125/2016 dealt with enforcement of national rulings following a CJEU ruling. The CJEU condemned the Romanian Government for adopting a decree imposing a substantial emergency pollution tax on automobiles from other EU Member States. The CJUE then issued several judgments requiring the Romanian Government

⁵⁰¹ Website of the Constitutional Court: <http://trybunal.gov.pl/informacja-publiczna-media/archiwum/wystapienia-bylych-prezesow-tk/marek-safjan-2/>

⁵⁰² Art. 145a of the Law on Proceedings before Administrative Courts

⁵⁰³ Brochure of the Institute of Law and Society entitled 'Implementation of Rulings of the Constitutional Court by the legislative', 2010, available at:

http://www.inpris.pl/fileadmin/user_upload/documents/rekomendacje_wykonywanie_orzeczen_TK.pdf

⁵⁰⁴ Brochure of the Institute of Law and Society entitled 'Implementation of Rulings of the Constitutional Court by the legislative', 2010, available at:

http://www.inpris.pl/fileadmin/user_upload/documents/rekomendacje_wykonywanie_orzeczen_TK.pdf

⁵⁰⁵ Marcin Banasik, Skutki orzeczeń trybunału konstytucyjnego dla spraw administracyjnych

i sądowoadministracyjnych „w toku”, available at:

http://cejsh.icm.edu.pl/cejsh/element/bwmeta1.element.desklight-af517242-029d-4f3b-8342-009243b800a7/c/SKUTKI_ORZECZEN_TRYBUNALU_KONSTYTUCYJNEGO_DLA_SPRAW.pdf

⁵⁰⁶ Brochure of the Institute of Law and Society entitled 'Implementation of Rulings of the Constitutional Court by the legislative', 2010, available at:

http://www.inpris.pl/fileadmin/user_upload/documents/rekomendacje_wykonywanie_orzeczen_TK.pdf

⁵⁰⁷ Public Information Portal on Legislation, available at:

http://ppio.p.rcl.gov.pl/index.php?r=orzeczenia%2Fsearch&OrzeczeniaTk%5Btyp_publicacji%5D=&OrzeczeniaTk%5Brok_publicacji%5D=&OrzeczeniaTk%5Bnumer%5D=&OrzeczeniaTk%5Bpozycja%5D=&OrzeczeniaTk%5Btytul%5D=&OrzeczeniaTk%5Bid_status_wykonania%5D%5B%5D=1&OrzeczeniaTk%5Bid_status_wykonania%5D%5B%5D=5&OrzeczeniaTk%5Bsygnatura%5D=&OrzeczeniaTk%5Borg_wspolne%5D=0&search_type=simple&OrzeczeniaTk%5Bmin_data_wydania%5D=&OrzeczeniaTk%5Bmax_data_wydania%5D=&OrzeczeniaTk%5Bmin_data_ogloszenia%5D=&OrzeczeniaTk%5Bmax_data_ogloszenia%5D=&OrzeczeniaTk%5Bsentencja%5D=&yt0=Szukaj&OrzeczeniaTk%5Bgroup_by%5D=orz_rpt

to reimburse amounts levied in breach of Article 110 TFEU. The petitioner indicated that many of these judgments were not followed by the required reimbursement.

- In Petition No. 0188/2016, the petitioner stated that the Romanian State had not yet implemented a 2010 ECtHR judgment in which it was ordered to pay EUR 30,000 in damages for breaching the provisions of Article 6(1) of the ECHR, and to implement an internal decision made in 2004.
- In Petition No. 0314/2017, the petitioner complained about the non-application of a judgment by the ECtHR (a personal case in Romania).
- In Petition No. 0420/2017, the petitioner referred to a failure to comply with a court decision in Romania.

In relation to domestic judgments⁵⁰⁸, Romanian law and case law recognise the obligation for the administration to comply with judicial rulings. According to Article 623 of the Civil Procedural Code, the enforcement of all judicial decisions is carried out by bailiffs, while Article 663 of the Civil Procedural Code provides that the enforcement occurs at the request of the claimant, within three years of the day of the decision⁵⁰⁹. According to the European Commission, 'the respect and implementation of Court decisions by State institutions and public administrations have been a recurring theme'⁵¹⁰ in Romania, on which the European Commission issued recommendations in 2014, 2015 and 2016. The ECtHR also considers this issue a 'structural deficiency'⁵¹¹.

More specifically in relation to ECtHR judgments, as Romania is a party to the ECHR, ECtHR rulings are binding on Romanian courts. Under Romanian law, any person who has obtained a judgment from the ECtHR condemning the Romanian State may apply to the national courts for the review of its initial decision. According to Article 509(10) of the Civil Procedure Code, the review of a final judgment can be requested if the ECtHR has found a violation of fundamental rights or freedoms because of the court decision, and its grave consequences continue to occur and can only be remedied by reviewing the judgment pronounced. The period for exercise of this extraordinary appeal is three months from the date on which the decision of the ECtHR was published in the Official Gazette of Romania, Part I. Also, in accordance with Article 20 of the Constitution, the provisions on citizens' rights and freedoms must be interpreted in accordance with the covenants and other treaties to which Romania is a party.

In the case raised by Petition No. 0125/2016, the CJEU ordered an illegal pollution tax to be returned to taxpayers. The reimbursement was to be made only after deduction of the environmental stamp, i.e. when the amount of the tax was higher than the environmental stamp, as provided for in Article 12 of Government Emergency Ordinance 9/2013⁵¹². There are no data available to measure the extent of non-enforcement of judgments of the CJEU by Romania. However, mechanisms have been put in place directly at EU level, with Article 260(2) of the TFEU allowing the Commission to bring cases to court where Member States

⁵⁰⁸ Issue raised in Petition No. 0420/2017.

⁵⁰⁹ European Commission, Case study on the functioning of enforcement proceedings relating to judicial decisions in Member States, February 2015, p.106; See also Articles 632-642 of the New Civil Procedure Code.

⁵¹⁰ European Commission, Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism, Brussels, 25 January 2017 COM(2017) 44 final, p.6.

⁵¹¹ Săcăleanu (group) 73970/01: Failure or significant delay of the administration or of legal persons under the responsibility of the State in abiding by final domestic court decisions. An action plan from the Romanian authorities was submitted to the Council of Europe in December 2016, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016806d8adb

⁵¹² For more information, see: <http://economie.hotnews.ro/stiri-auto-19923970-hotarare-cjue-statul-roman-incalcat-legislatia-uniunii-europene-cand-decis-scutirea-plata-taxei-auto-vehiculelor-deja-inmatriculate-tara.htm>

do not comply with CJEU judgments. The court may then impose a penalty or a lump sum on the Member States concerned.

Slovakia

Petitions 0639/2014 and 1006/2015 refer to the difficulty in enforcing judgments as a corollary to the length of proceedings. These petitions are treated under Section 4.4.2 above.

Spain

Petitions No. 1500/2013, 0444/2014 and 0468/2014, and 1523/2014 pertained to the enforcement of judgments in Spain.

The enforcement of rulings has been a source of concern in Spain. The Observatory for the Activity of Justice in Spain stated that, in 2015, 60.9% of final judgements were not enforced during that year.⁵¹³ This report considers that the issue would not only be solved through an increase on the means of the administration of justice, but essentially through a reorganisation of the existing ones, which follows the organisation scheme created in the XIX century. Similar views are shared by the judges' association interviewed in the context of this study, which demands the improvement of means and better coordination between competent bodies⁵¹⁴. In this sense, there have been proposals to make the *procuradores* responsible for implementation of judgements⁵¹⁵. However, this has been criticised by the General Council of Spanish Lawyers, since in its opinion, it would imply the partial privatisation of this aspect of justice and would be an additional cost for citizens⁵¹⁶.

⁵¹³ Wolters Kluwer, 'Observatorio de la Actividad de la Justicia. Informe 2016'.

⁵¹⁴ Stakeholder interview.

⁵¹⁵ Several political groups asked the President of General Council of the Spanish Lawyers on this issue during her intervention in the National Parliament (Abogacía Española, 2017b.)

⁵¹⁶ *idem*

5. ANALYSIS OF EU TOOLS AVAILABLE TO IMPROVE ACCESS TO JUSTICE AT NATIONAL LEVEL

In addition to providing an understanding of the reasons leading to specific issues impeding access to justice in the eight Member States studied, this research paper also identifies the potential EU tools and instruments (stemming from the Treaty of Lisbon and pertaining to justice) available to improve access to justice for EU citizens at national level.

This section first analyses the mechanisms available to the EU institutions that are triggered at national level, including by citizens. Such mechanisms include petitions (Section 5.1), and references for preliminary rulings (Section 5.2). It then explores other tools available to the EU institutions, which allow the institutions to act on their own initiative to improve access to justice in the Member States (Section 5.3).

5.1. Petitions

KEY FINDINGS

- Petitions can be considered as one of the tools available to the EU institutions (in that case the European Parliament) to intervene at national level to improve access to justice for EU citizens.
- In the context of access to justice, the petitions analysed for this paper show that petitions are usually used in two main circumstances: as a complementary tool to the domestic tools to obtain justice; and to seek enforcement of EU rules at national level.
- In countries where the number of petitions related to justice are highest (Greece, Italy, Spain and Romania), citizens resorted to petitions for several reasons. Petitions are in some cases used as an alternative mechanism to seek redress, because of excessive barriers to accessing national courts, or because of lack of trust in the national judiciary system, for instance in Greece and Romania. But in many other cases, citizens resort to petitions due to a lack of understanding and knowledge of the level at which cases could be resolved, i.e. whether national or European level (Spain). In countries with a less significant number of petitions complaining about access to justice, petitions are mainly used as a complementary tool, in combination with judicial proceedings before the national courts or before the CJEU and ECtHR, to increase chances of obtaining redress (Slovakia, Latvia).
- Petitions are used in many instances as a means of enforcing rights granted by EU rules, and ensuring compliance with EU legislation and jurisprudence. In such cases, petitions are used as a mean to bring the EU institutions' attention on the lack of compliance with EU law pertaining to justice by national administrations and courts.
- Admissibility is the first step to understanding the extent to which petitions can be considered a viable tool for citizens to seek redress in case of breach of their right to access justice in their country. Though all dismissals must be clearly justified, the PETI enjoys broad discretion during the admissibility stage. Many petitions relating to access to justice are put on List 3, and the introduction of this new practice may have limited the number of admissible petitions raising issues to access to justice.

- Once declared admissible, the EP has different options to follow-up on petitions. The information collected during the research suggests that, for most petitions relating to access to justice issues covered in this study and declared admissible, the PETI requested information from the Commission in order to determine whether the allegations were substantiated or would fall within EU competence. For some other petitions, the European Parliament decided to contact the Member State concerned directly.

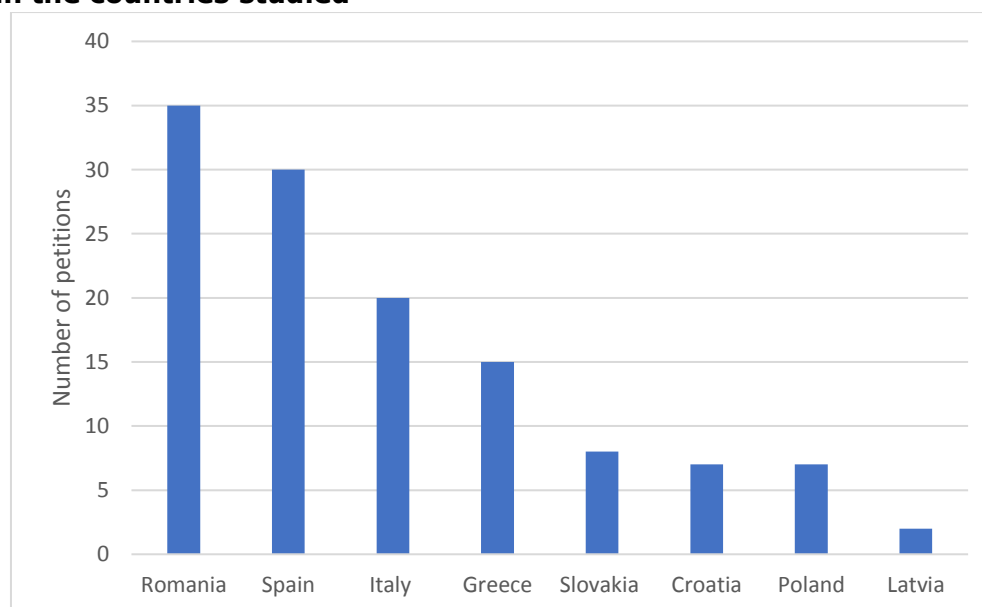
5.1.1. Use of petitions as a mean to enforce the right to access justice

In the context of access to justice, the petitions analysed for this paper show that petitions are usually used in two main circumstances: as a complementary tool to the domestic tools to obtain justice (Section 5.1.1.1); and to seek enforcement of EU rules at national level (Section 5.1.2.2).

5.1.2.1 Use of petitions as a supra-national procedure to seek redress

Figure 1 below provides an overview of the number of petitions raising issues considered directly relevant to access to justice in the eight Member States, between 2013 and 2017.

Figure 1: Number of petitions analysed as relevant in the context of access to justice in the countries studied



In countries where the number of petitions related to justice are highest (Greece, Italy, Spain and Romania), citizens resorted to petitions for several reasons.

Some countries resorted to petitions as an 'alternative mechanism' to seek redress. In Greece, for example, petitioners did not seek to obtain remedy at national level, preferring instead to submit a petition directly to the EP. Twelve petitions displaying this characteristic could be identified during the research, for the period 2013-2016⁵¹⁷. In Romania, the number of petitions addressed to the EP has steadily increased since Romania's accession to the EU.

⁵¹⁷ These petitions were not mentioned in Section 4, since the research focused on concrete issues that petitioners faced when seeking access to justice at national level.

In both countries, two main reasons were suggested for this phenomenon: 1) the existence of potential obstacles and barriers discouraging citizens from accessing justice at national level, particularly in Romania, given the lack of trust in the political and judiciary system; 2) the lack of understanding and knowledge of what can be resolved at national and/or the European level and of the areas in which the EU is competent. The latter point was also suggested as one explanation for the high number of petitions in Spain.

By contrast, the smaller number of justice-related petitions from Latvia was explained by the fact that access to justice can be considered efficient in that country. There is also a strong litigation culture in Latvia. People are aware of the possibility to appeal decisions of the lower courts to the higher courts and the ECtHR, as well as the right to submit complaints to the Ombudsman, or to use the existing mechanisms to seek redress. In 2016, the Latvian Ombudsman received a total of 293 requests relating to political and citizenship rights, including access to justice. This suggests that those living in Latvia (both citizens and non-citizens) rely on the national Ombudsman system to deal with their complaints, rather than turning to the petition channel of the EP. Similarly, the majority of Polish petitions concerned cases where the petitioner had exhausted the judicial means of law enforcement and the petition to the EP was the last resort. In Slovakia and Italy, interviews revealed that, in certain cases, the petitions system was used in combination with other tools available at EU and national level to increase the chances of success in the cases in question. This aspect, combined with the fact that petitions are free of charge, was also suggested as one explanation of the high number of petitions in Greece and Spain, whereby petitioners have 'nothing to lose'⁵¹⁸.

The level of awareness of the mechanism of petitions also plays an important role in their use in certain countries. Overall, in Poland, people are aware of the petition system, mostly due to the information provided by NGOs, social organisations, and politicians, on their websites and in the media. In Croatia, the limited number of petitions can be explained by the fact that people (not only citizens, but also NGOs, state officials, and legal professionals⁵¹⁹) are not aware of the mechanism. In Slovakia, there is no indication that petitions are particularly promoted by Slovakian NGOs.

5.1.2.2 Use of petitions in relation to EU law

Another explanation underpinning the use of petitions is the fact that many refer to EU law, and petitions are used as a mean to enforce rights granted by EU rules.

Petitions provide an alternative avenue of inquiry and compliance checks with EU legislation and CJEU case law. The petitions analysed here show that petitioners use this mechanism to inform the EP of the lack of compliance with EU law pertaining to justice by national administrations and courts, as shown in **Table 14** below.

⁵¹⁸ On this point, see Section 1.3 of the Greek report in Annex I.

⁵¹⁹ Information provided during stakeholder interviews.

Table 14: Relevant EU Regulations and Directives cited in petitions

EU Regulations and Directives	Petition No.	Admissibility
Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union ⁵²⁰	0518/2016 (Romania)	Admissible: available to supporters
	0526/2016 (Romania)	Admissible: available to supporters
Directive 2012/29/EU on establishing minimum standards on the rights, support and protection of victims of crime	0304/2014 (Greece))	Inadmissible: no additional information
	1233/2015 (Spain)	Admissible: available to supporters <ul style="list-style-type: none"> The EC replied that it will initiate proceedings with Spain to enquire about the legislative measures transposing the relevant EU law and whether the alleged violations exist in a systemic way
Directive 2011/92/EU on combatting the sexual abuse and sexual exploitation of children and child pornography	1233/2015 (Spain)	Admissible: available to supporters ⁵²¹ <ul style="list-style-type: none"> The EC replied that it will initiate proceedings with Spain to enquire about the legislative measures transposing the relevant EU law and whether the alleged violations exist in a systemic way
Regulation 861/2007 establishing a European Small Claims Procedure	1523/2014 (Spain)	Admissible: available to supporters <ul style="list-style-type: none"> The EC replied that documents and information from the petitioner do not substantiate the allegations about an alleged infringement of Regulation 861/2007 by the Spanish court. The EC cannot take any action in this case
Directive 2006/123/EC on services in the internal market	2525/2013 (Spain)	Admissible: closed <ul style="list-style-type: none"> In its reply, the EC considered that the Spanish legal reform had a positive impact on competition and on lowering or eliminating persistent internal market barriers to access and exercise the services in question.

⁵²⁰ Directive 2014/42/EU of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union.

⁵²¹ In May 2017, the petition was still being discussed in committee on the basis of the EC's reply. See European Parliament, Minutes: Meeting of 3 May 2017 and 4 May 2017, PETI_PV (2017)265_1, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bCOMPARL%2bPE-604.538%2b01%2bDOC%2bPDF%2bV0%2f%2fEN>

EU Regulations and Directives	Petition No.	Admissibility
Council Framework Decision 2005/212/JHA on Confiscation of Crime-Related Proceeds, Instrumentalities and Property ⁵²²	0518/2016 (Romania)	Inadmissible: list 3, it did not appear to meet the requirement of Article 227 of the TFEU
	0526/2016 (Romania)	Admissible: available to supporters
Council Regulation EC 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility ⁵²³	0375/2016 (Greece)	Admissible (closed): no additional information
Directive 2002/8/EC to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes ⁵²⁴	0779/2013 (Greece)	Admissible: available to supporters
2002 Council Framework Decision on the European Arrest Warrant and surrender procedures between Member States ⁵²⁵	1131/2016 (Greece)	Admissible: available to supporters
	1259/2013 (Croatia)	Inadmissible: no additional information
Council Directive 1999/70/EC concerning the framework agreement on fixed-term work ⁵²⁶	0028/2016, 0044/2016, 0177/2016, 0214/2016, 0333/2016, 0889/2016, 1328/2015, 1376/2015 (Italy)	Admissible: available to supporters <ul style="list-style-type: none"> • EP decided to keep petitions open • Information requested from the EC • The EP sent a letter to the Italian Ministry of Justice
	0283/2014 (Spain)	Admissible: closed <ul style="list-style-type: none"> • In its reply, the EC considered there was no breach of Directive 1999/70/EC on fixed-term work
	1461/2013 (Spain)	Inadmissible: no additional information

⁵²² Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property.

⁵²³ Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility, repealing Regulation (EC) No 1347/2000.

⁵²⁴ Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes.

⁵²⁵ Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States (2002/584/JHA).

⁵²⁶ Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP.

EU Regulations and Directives	Petition No.	Admissibility
Directive 1999/93/EC on a Community framework for electronic signatures ⁵²⁷	1008/2013 (Poland)	Admissible: closed <ul style="list-style-type: none"> The EC replied that Directive 1999/93/EC does not oblige Member States to implement any administrative procedure that would oblige them to allow citizens to file a complaint electronically. There was no violation of EU law.
	1844/2013 (Poland)	Admissible: closed No additional information
Council Directive 93/13/EEC on unfair terms in consumer contracts	0142/2014 (Spain)	Inadmissible: no additional information
	0628/2016, 0644/2016 and 2679/2014, (Spain)	Admissible: available to supporters <ul style="list-style-type: none"> 2679/2014: The EC started a dialogue with Spain to resolve issues regarding the procedural protection of consumers. 0628/2016: The EC will monitor whether the upcoming Spanish legislation on mortgage credit contracts will be in conformity with EU law. The EC will assess further steps for an infringement case. 0644/2016: The EC found that Spain has made progress in consumer law and will continue to monitor Spain.

In several cases, petitioners raised issues related to accessing justice in the Member States that may be the direct or indirect consequence of inadequate transposition or implementation of EU law at national level. This was the case in Petition No. 1178/2014 where the petitioner alleged that he had not received the adequate documents to attend his criminal proceedings, which appeared to be in violation of Directive 2012/13/EU on the right to information in criminal proceedings. In Petition No. 2654/2014, the petitioner argued that Spain's lack of compliance with Directive 93/13/EEC on unfair terms in consumer contracts led to disproportionate high court fees, limiting his right to effective legal remedy⁵²⁸.

Some petitioners also explicitly suggested that Member States did not properly transpose or implement EU law in the field of justice and that this has created obstacles to accessing justice at national level. For instance, a number of petitioners complained about the lack of an option to use qualified electronic signatures in correspondence with the judiciary in Poland, which, they argued, was in breach of Directive 1999/93/EC on a Community Framework for electronic signatures⁵²⁹. Other examples include petitioners who complained that Greece did

⁵²⁷ Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures.

⁵²⁸ See also Petition No. 2679/2014.

⁵²⁹ Petitions No. 1844/2013 and 1008/2013.

not comply with the rules granted by Directive 2002/8/EC on legal aid⁵³⁰ or that Spain, in particular the judiciary, failed to comply with Directive 2012/29/EU on establishing minimum standards on the rights, support and protection of victims of crime⁵³¹.

In other instances, petitioners have questioned whether or not national courts complied with EU legislation. In Petition No. 2792/2013, the petitioner argued that the rulings of several Romanian courts did not comply with EU legislation on fishing⁵³² nor with various decisions of the Commission in his favour. The Commission even suggested that the Romanian Court of Appeal omitted to refer the matter to the CJEU for a preliminary ruling 'in a situation where there was a need to clarify the correct interpretation of the applicable EU rules'⁵³³.

Citizens used petitions to point to the failure of Member States to comply with CJEU rulings. This was the case in Petition No. 0628/2016, where the petitioner alleged that Spain had not changed its legislation on the time limits available to consumers to object to the enforcement of mortgage-related evictions following a CJEU ruling on the matter⁵³⁴. In Petition No. 0044/2016, the petitioner complained that the treatment of justices of the peace in Italy infringed Directive 1999/70/EC, as well as CJEU case law⁵³⁵. Petitions also represented potential attempts by citizens to request that national courts refer matters to the CJEU. In Petition No. 0437/2014, the petitioner had allegedly requested that a national court in Romania refer his matter to the CJEU but the court refused. In Petition No. 0949/2013, the petitioner complained that Greece did not comply with the judgement C-74/06 of the CJEU⁵³⁶ regarding transparency of national taxes on vehicle. However, the European Commission observed that the Court had found that Greece had fulfilled the requirement of transparency. Therefore, Greece could not be in violation of the CJEU's judgment.

5.1.2. Impact of petitions on effectiveness of access to justice

The impact of petitions on justice matters depends on two elements: firstly, the admissibility of petitions in this area (Section 5.1.2.1); and secondly, the outcome of such petitions (Section 5.1.2.4).

5.1.2.3 Admissibility of petitions dealing with access to justice

Admissibility is the first step to understanding the extent to which petitions can be considered a viable tool for citizens to seek redress in case of breach of their right to access justice in their country.

⁵³⁰ Petitions No. 2142/2013 and 0779/2013.

⁵³¹ Petition No. 1233/2015.

⁵³² Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC, OJ L 354, 28.12.2013, p. 22–61.

⁵³³ See European Parliament, Notice to Members, 31 March 2017.

⁵³⁴ Case C-8/14 BBVA SA v Pedro Peñalva López and Others (29 October 2015).

⁵³⁵ In this instance, it was Case C 393/10.

⁵³⁶

General rules on admissibility

Petitions must respect several procedural requirements and admissibility criteria in order to be admissible. These requirements and criteria are contained in Article 227 of the TFEU and Rules 215 to 218 of the Rules of Procedure of the European Parliament⁵³⁷.

Pursuant to Rule 215, petitions must respect several **procedural requirements**. They must show the name and the permanent address of each petitioner, be written in one of the official EU languages, and be written in a clear and legible manner⁵³⁸. They can be submitted either by post (on paper) or through the European Parliament's petitions portal. Submissions to the Parliament that are clearly not intended to be a petition are not registered as petitions. Once petitions comply with the procedural requirements, they are entered in a register and are forwarded to the PETI, which establishes their admissibility, in accordance with Article 227 of the TFEU.

Pursuant to Article 227 of the TFEU, any EU citizen, and any natural or legal person residing or having a registered office in a Member State, shall have the right to address a petition to the European Parliament, individually or in association with other citizens or persons, on a matter which comes within the Union's fields of activity and which affects him, her or it directly. A petition must meet three main **admissibility criteria**:

1. The petition must have been filed by an EU citizen or resident;
2. It must be on a matter which comes within the EU's fields of activity; and
3. The subject matter of the petition must affect the petitioner directly.

Rule 216(10) provides that the PETI shall adopt guidelines for the treatment of petitions in accordance with the Rules of Procedure of the EP. However, the 2015 Guidelines of the Committee on Petitions do not provide further indications of admissibility criteria, and simply states that the rules concerning decisions on admissibility are detailed in the Rules of the Procedure, most notably Rule 215⁵³⁹. The absence of detailed guidance on admissibility criteria seems to give a certain amount of leeway to the PETI when deciding on the admissibility of a petition.

Since 2015, petitions that are assessed to be potentially non-compliant with the provisions of Article 227 of the TFEU are placed on a separate list called 'List 3' and communicated to Members of the PETI separately for decision. Once List 3 is approved, all petitions that remain on it are deemed inadmissible⁵⁴⁰. This new practice, which aims to limit delays in dealing with petitions, means that petitions on List 3 have less chance of being considered. This is reinforced by the fact that the petitions already declared inadmissible on List 3 are not summarised, thus committee members are given little information to assess whether a petition raises a legitimate concern. Many petitions relating to access to justice are put on List 3, and the introduction of this new practice may have limited the number of admissible petitions raising issues to access to justice. Petitions on the List 3 are usually classified under the following categories:

⁵³⁷ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+RULES-EP+20170116+TOC+DOC+XML+V0//EN&language=EN>

⁵³⁸ FAQ <https://petiport.secure.europarl.europa.eu/petitions-content/docs/faq/FAQ-en.pdf> The CJEU has accepted that the lack of clarity and precision of a petition may justify the PETI's decision to declare a petition inadmissible. See Case T-160/10, *J v Parliament*, Judgment of the General Court (Sixth Chamber) of 27 September 2012, ECLI:EU:T:2012:503, § 27.

⁵³⁹ 2015 guidelines.

⁵⁴⁰ 2015 guidelines.

1. Matter seemingly not coming within the Union's fields of activity;
2. Lack of substantial elements enabling the identification of the Union's fields of activity;
3. Incoherent reasoning with an unclear link to the Union's field of activity.

Where applicants have challenged the PETI's decision to dismiss petitions, the CJEU has frequently confirmed that the PETI enjoys broad discretion during the admissibility stage. The Court has repeatedly held that a decision to dismiss a petition must clearly show the reasons justifying such dismissal, without further action⁵⁴¹. In *Tegebauer v Parliament*⁵⁴², the CJEU annulled a PETI decision declaring a petition inadmissible on the grounds that the PETI had failed to fulfil its obligation to state the reasons for its decision. In this instance, the contested decision did not contain any information on the reason the subject of the petition did not fall within the Union's fields of activity. Since the petition had explicitly referred to a possible infringement of Article 39 of the TEC, the PETI was obliged to reply, even briefly, on that topic⁵⁴³. This obligation appears to be restricted to a summary statement of reasons. In *Schönberger v Parliament*, the Court held that, 'A negative decision by which the Parliament takes the view that the conditions laid down in Article 227 TFEU have not been met must provide a sufficient statement of reasons to allow the petitioner to know which of those conditions was not met in his case'. But 'that requirement is satisfied by a summary statement of reasons'⁵⁴⁴. Importantly, the Court specified that, 'By contrast, it is clear from the provisions of the TFEU and from the rules adopted by the Parliament for the organisation of the right of petition that, where the Parliament takes the view that a petition meets the conditions laid down in Article 227 TFEU, it has a broad discretion, of a political nature, as regards how that petition should be dealt with. It follows that a decision taken in that regard is not amenable to judicial review, regardless of whether, by that decision, the Parliament itself takes the appropriate measures or considers that it is unable to do so and refers the petition to the competent institution or department so that that institution or department may take those measures'⁵⁴⁵.

In summary, pursuant to the TFEU, the Rules of Procedure of the European Parliament and the CJEU case law, the PETI enjoys broad discretion when deciding on the admissibility of petitions. The number of petitions declared admissible and inadmissible in 2015 and 2014 (see **Table 15** below) indicates that the rate of inadmissibility remains quite high. In 2016, 71.1% of the 1,568 petitions registered were admissible and 28.9% were inadmissible⁵⁴⁶.

Table 15: Distribution of petitions per year

Distribution/Year	2016	2015	2014
Admissible	1,115	1,607	943
Inadmissible	453	1,070	483
Not yet decided	--	37	5
Total number	1,568	2,714	1,431

Sources: PETI Committee (2015⁵⁴⁷ and 2016⁵⁴⁸)

⁵⁴¹ Case T-308/07, Judgment of the General Court (Sixth Chamber) of 14 September 2011, *Tegebauer v Parliament*, ECLI:EU:T:2011:466 § 24.

⁵⁴² *Tegebauer v Parliament*.

⁵⁴³ *Tegebauer v Parliament* § 28.

⁵⁴⁴ C-261/13 P - *Schönberger v Parliament* Judgment of the Court (Grand Chamber), 9 December 2014 ECLI:EU:C:2014:2423 § 23. This interpretation was confirmed in Case C-607/15 P, *Pannonhalmi Főapátság v Parliament* Order of the Court (Sixth Chamber) of 4 May 2016 § 14.

⁵⁴⁵ *Schönberger v Parliament* § 27. See also T-112/16 - *Gaki v Parliament* Order of the General Court (Eighth Chamber) of 19 September 2016 § 11-12.

⁵⁴⁶ Numbers provided by the PETI Committee.

⁵⁴⁷ Report on the activities of the Committee on Petitions PETI Committee (2015)

⁵⁴⁸ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fTEXT%2bREPORT%2bA8-2016-0366%2b0%2bDOC%2bXML%2bV0%2f%2fEN&language=EN#title4>

Admissibility of petitions dealing with access to justice

In order to understand the admissibility rate of petitions dealing more specifically with access to justice, the petitions selected for this study declared admissible were compared to those declared inadmissible, in the countries studied. **Table 16** below provides an overview of the number of admissible and inadmissible petitions falling within the scope of this study.

Table 16: Distribution of selected petitions in Member States

Admissibility /Country	Croatia	Greece	Italy	Latvia	Poland	Romania	Slovakia	Spain
Admissible	3	9	12	0	3	7	5	20
Inadmissible	4	6	8	2	4	28	3	10
Total	7	15	20	2	7	35	8	30

With the exception of Greece, most of the petitions raising issues in relation to access to justice are declared inadmissible by the PETI Committee.

This is explained by citizens' **low level of awareness and lack of understanding** of the areas of competence of the EU. The analysis supports this assertion, showing that admissible petitions were usually written in a clear manner and visibly dealt with an EU competence, by referring to a matter of either fundamental rights or EU law, while inadmissible petitions lacked clarity, especially with regard to the subject matter of the claim, or their matter fell outside of EU fields of activity. It was not possible, however, to determine the specific reasons leading to the PETI's decision for a large number of inadmissible petitions.

With regard to rejected petitions, the PETI Committee generally argued that their subject matter **did not fall within the EU's fields of activity**, as per the second admissibility criterion. The PETI dismissed some petitions, for instance, because of a 'lack of substantial elements enabling the identification of the Union's fields of activity' or because 'the petitioner does not clarify the subject matter of his claim'⁵⁴⁹. Some other petitions were also deemed inadmissible 'on the grounds that [they] did not appear to meet the requirements of Article 227 of [the TFEU]'⁵⁵⁰.

The criterion of being within the field of activity of the EU is usually **interpreted in a broad manner**. The high proportion of claims relating to access to justice being declared inadmissible may therefore also be explained by other reasons more specific to access to justice issues. In several instances, petitioners seemed unaware of the purpose and functioning of the right of petition process, or confused it with national and supra-national judicial mechanisms⁵⁵¹. According to the 2015 Annual Report on the activities of the Committee on Petitions, petitions are often declared inadmissible because petitioners confuse EU and national competences, as well as the EU institutions and the Council of Europe's institutions, in particular the ECtHR⁵⁵². In the context of this study, it was indeed found that petitioners occasionally complained about inadmissibility decisions or rulings of the ECtHR⁵⁵³. In a number of petitions, petitioners also asked the European Parliament to assist with the enforcement of judgments or to overturn national rulings⁵⁵⁴. In such cases, the PETI

⁵⁴⁹ For instance, see Petition No. 2093/2013 (Croatia).

⁵⁵⁰ For instance, see Petition No. 0652/2014 (Croatia).

⁵⁵¹ For instance, see Petition No. 0652/2014 (Croatia).

⁵⁵² 2015 report, p. 22.

⁵⁵³ For instance, see Petitions No. 0129/2013 (Italy), 1261/2015 (Slovakia), 0599/2016 (Romania), 0240/2017 (Spain).

⁵⁵⁴ For instance, see Petition No. 0652/2014 (Croatia).

usually informs the petitioner that the European Parliament is not a court of law which can deliver judgments or quash national rulings. In a number of instances, petitioners did not seek to obtain remedy at national level, instead submitting a petition directly to the EP or to one of the European courts. This was particularly visible in several of the petitions from Greece, where, of the 44 petitions originally selected for study, 12 reflected this (between 2013 and 2016). This type of petition is usually inadmissible.

While reviewing the information available on the PETI's website, it was observed that petitions dealing with similar issues, but from different countries, occasionally had different outcomes. This was the case, for instance, with Petition No. 0281/2014 and Petition No. 1256/2013, which deal with fees to introduce small claims. In both cases, the petitioners argued that these fees were excessive and impeded access to justice. Petition No. 0281/2014, in which the petitioner argued that the cost of stamp duty to file a complaint on animal abuse in Greece was excessive, was inadmissible. At the same time, Petition No. 1256/2013, in which the petitioner objected to the introduction of a non-reimbursable court fee for appeals against administrative decisions in Spain, was declared admissible. Another example is the way in which Petitions No. 1661/2013 and 1687/2013 were treated. Although both petitions called into question the fairness of justice, only the second was admitted. However, this assessment is based on the information available on the PETI website and may lack relevant detail relating to the specifics of the petition or the authenticity of the information provided, which may have justified different responses to the petitions.

It seems that, despite the EP's **broad margin of discretion** in declaring petitions admissible, a high proportion of petitions in relation to access to justice issues do not pass the admissibility stage. This is due not only to the admissibility criteria, but also to the specific nature of citizens' complaints, which sometimes require an intervention that the EP is not competent to provide (e.g. intervening with national courts or quashing judgments). In addition, the margin of discretion of the EP is accompanied by a certain **lack of predictability** in the admissibility of access to justice claims, as illustrated by the contrary decisions taken by the PETI Committee in petitions presenting apparently comparable claims.

5.1.2.4 Outcome of admissible petitions dealing with access to justice

Once declared admissible, petitions must be examined by the PETI either through discussion at a regular meeting or by written procedure. Petitioners may be invited to participate in the PETI meetings if their petition is the subject of discussion, or they may themselves request to be present⁵⁵⁵.

Pursuant to the 2017 Rules of Procedure of the European Parliament⁵⁵⁶, the PETI can decide on different actions to take with regard to admissible petitions:

1. Submit a short motion for a resolution to the European Parliament⁵⁵⁷.
2. Draw up an own initiative report dealing with the application or interpretation of Union law or proposed changes to existing law⁵⁵⁸.
3. Allow signatories to lend support to, or withdraw support from, an admissible petition on the petitions portal⁵⁵⁹.

⁵⁵⁵ Rule 216(1).

⁵⁵⁶ The Rules of Procedure of the European Parliament have changed over the years. For instance, the request for information from the Commission, which is currently governed by Rule 216(5), used to be governed by Rule 2016(6) under some of the previous Rules of Procedure of the European Parliament. Information in this section reflects the type of outcome.

⁵⁵⁷ Rule 216(2).

⁵⁵⁸ Rule 216(3).

⁵⁵⁹ Rule 216(4).

4. Request assistance from the Commission, particularly in the form of information on the application of, or compliance with, Union law and information or documents relevant to the petition⁵⁶⁰.
5. Ask the President of the European Parliament to forward its opinion or recommendation to the Commission, the Council or the Member State authority concerned for its action or response⁵⁶¹.
6. Investigate the petition or seek a solution, including organising a fact-finding visit to the Member State or region concerned by the petition. In this case, a mission report including possible recommendation must be submitted to the PETI⁵⁶².

Table 17 below shows the outcome of admissible petitions dealing with access to justice.

Table 17: Outcomes of admissible petitions dealing with access to justice⁵⁶³

Outcome/ Country	Croatia	Greece	Italy	Latvia	Poland	Romania	Slovakia	Spain
Motion for EP resolution								
Own-initiative report								
Available to supporters		5	8			1	2	7
Request information from Commission	3	5	10		1	1	3	14
Contact with the Member State			8					
Investigation								
Unknown		1	2		2	8		5

The information collected during the research suggests that, for most petitions declared admissible in the scope of this study, the PETI requested **information from the Commission** in order to determine whether the allegations were substantiated or would fall within EU competence, or to decide on the best course of action.

In some instances, the Commission decided to examine the application of EU law by national authorities and courts, or initiated proceedings with the state to enquire about transposition measures⁵⁶⁴.

However, the argument that national law or judicial practice was in breach of EU law was not always well-founded. Petitioners sometimes lacked knowledge on the distribution of competences between the EU institutions and the Member States, or there was confusion as to the exact content of EU legislation. For one of the petitions, where citizens complained about the lack of an option to use qualified electronic signatures in correspondence with the judiciary in Poland, the European Commission replied that the general principle which

⁵⁶⁰ Rule 216(5).

⁵⁶¹ Rule 216(6).

⁵⁶² Rule 216a.

⁵⁶³ This table shows the outcomes for each admissible petition presenting an issue related to access to justice and selected in this study at the time of research. Admissible petitions which only referred to EU law are not reflected in this table. Readers should take into account that, in some instances, the PETI decided to take different actions with regard to one petition. This is reflected in this table. Some petitions were still being treated at the time of research.

⁵⁶⁴ See for instance, Petition No. 1233/2015.

establishes the validity of electronic signatures and their equivalence with handwritten signatures was to be interpreted in the light of the competence of Member States to establish whether electronic signatures are allowed in a given domain where their use is regulated either by national provisions or Union law. Directive 1999/93/EC does not oblige Member States to implement any administrative procedure that would oblige them to allow citizens to file a complaint electronically. As a result, the procedure to be followed to file a court case in the national courts of Member States rested within the competence of the rules of procedure of their Courts⁵⁶⁵.

For some other petitions, the European Parliament decided to **contact the Member State**. This was the case for several petitions regarding the situation of Justices of the Peace in Italy, for which the PETI decided to send a letter to the Italian Ministry of Justice to highlight the issue⁵⁶⁶. In any case, it is quite normal for the PETI to take various actions regarding admissible petitions.

These results demonstrate that, once declared admissible, petitions in the area of justice are usually **followed up by concrete actions** to clarify and/or to solve the problems raised in petitions. The extent of the actions of the institutions and the impact of such actions, especially motions or investigations undertaken directly by the EP, varies according to the case.

In one case in Slovakia, an NGO used the mechanism of petition (among others) to force Slovakia to comply with EU law. The person interviewed in the context of this study stated that, with hindsight, while the petition was interesting enough to the media to publicise the case, it was not an efficient instrument, nor did it bring concrete results⁵⁶⁷.

5.2. References for a preliminary ruling

KEY FINDINGS

- Another tool available to the EU institutions, in that case the CJEU, to improve access to justice for EU citizens in their countries is the reference for a preliminary ruling procedure enables national courts to question the CJEU on the interpretation and validity of EU law.
- References for a preliminary ruling ensure that EU legislation is properly implemented in Member States and that EU law is interpreted in a uniform manner throughout the Union. In addition, preliminary rulings encourage national legal reforms to comply with EU law.
- By being able to request references for a preliminary ruling before their national courts, citizens may be able to draw the CJEU's attention to national application or judicial interpretation of EU law in the field of justice which they believe impedes effective access to justice.
- Despite increasing acceptance and support from national courts, this procedure is infrequently used by some Member States, chiefly because of lack of knowledge and understanding of the procedure by the judges, its length, or varying practices among jurisdictions. The length of the preliminary ruling increases the length of national proceedings, which, in turn, adversely impacts effective access to justice.

⁵⁶⁵ European Parliament, Notice to Member, 27 June 2014.

⁵⁶⁶ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bCOMPARL%2bPE-601.031%2b02%2bDOC%2bPDF%2bV0%2f%2fEN>; Petitions No. 1328/2015, 1376/2015, 0028/2016, 0044/2016, 0177/2016, 0214/2016, 0333/2016, 0889/2016.

⁵⁶⁷ Based on the interview with an attorney cooperating with the NGO.

5.2.1. Use of reference for a preliminary ruling by national judges

Pursuant to Article 267 of the TFEU, the reference for a preliminary ruling procedure enables national courts, when deciding on a dispute in which the application of EU law raises problems, to question the CJEU on the interpretation and validity of EU law. The reference for a preliminary ruling therefore creates a dialogue between national courts and the CJEU, and offers a means to **guarantee legal certainty and the uniform application of EU law**. Parties involved in the dispute may request the referral of the case to the CJEU and, while the decision to do so rests with national courts, it is nonetheless a potential tool available to EU citizens to trigger, indirectly, the involvement of the EU institutions in matters raised at national level.

The reference for a preliminary ruling from the CJEU is a useful tool available to national judicial systems to ensure that EU legislation is properly implemented in Member States. However, despite increasing acceptance and support from national courts, this procedure has been little used in some Member States (see **Table 18**)⁵⁶⁸.

Table 18 : Number of references for preliminary ruling lodged by national courts in selected Member States

Year/Country	Croatia ⁵⁶⁹	Greece	Italy	Latvia	Poland	Romania	Slovakia	Spain
2016	2	6	62	9	19	14	6	47
2015	5	2	47	9	15	18	5	36
2014	1	4	52	7	14	28	3	41
2013	0	5	62	5	11	17	4	26
2012	-	1	65	5	6	13	9	16
Total	8	18	288	35	65	90	27	166

Source: CJEU (2017)

There is considerable variation among the Member States as to the number of times their courts have used references for a preliminary ruling⁵⁷⁰.

The reasons for this discrepancy cannot be explained by the size of the country or the number of courts in each Member State.

Figure 2 below illustrates the ratio between the number of courts and the number of references for a preliminary ruling for each country studied. It shows, for example, that in 2015, while the number of courts in Greece was six times higher than in Latvia, the number of references by Latvian courts was four times higher than for Greek courts⁵⁷¹. Latvian courts therefore appear to be more inclined to use the procedure than Greek courts.

Figure 2: Ratio of number of courts to references for a preliminary ruling in 2012, 2013, 2014 and 2015⁵⁷²

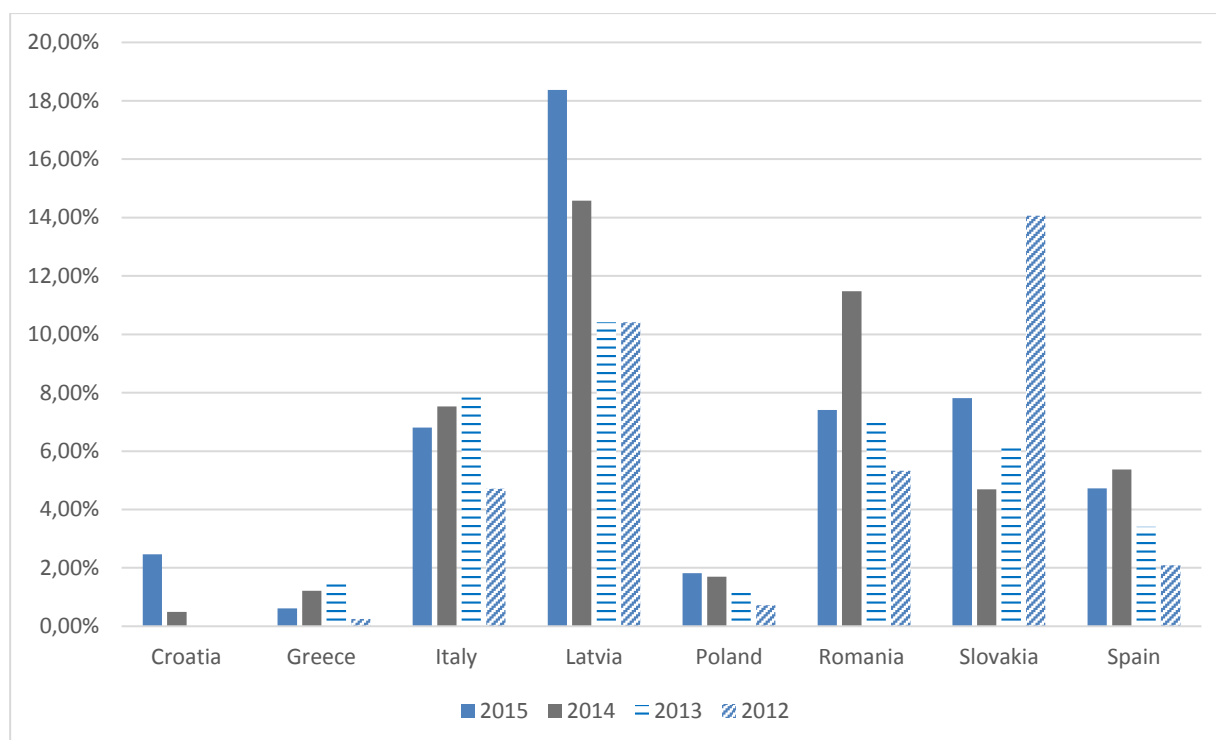
⁵⁶⁸ Jaremba, U., *National Judges as EU Law Judges: The Polish Civil Law System*, Martinus Nijhoff Publishers, 2013, pp. 223-225.

⁵⁶⁹ This information is not available since Croatia joined the EU on 1 July 2013.

⁵⁷⁰ CJEU, Annual Report 2016: Judicial Activity, p. 108.

⁵⁷¹ See CEPEJ study - http://ec.europa.eu/justice/effective-justice/files/cepej_study_for_european_commission_2017_en.pdf

⁵⁷² This figure is based on information provided by the CJEU and the CEPEJ. The number of courts in Poland was unavailable for 2015. Therefore, the ratio is based on the number of courts for 2012. Data on the number of courts in Greece was also unavailable for 2013. Therefore, the ratio is based on the 2014 figure as an important judicial reform, which reduces the number of courts, passed in March 2012. Finally, data on the number of courts in Spain was unavailable for 2013. Therefore, the ratio is based on 2012, 2014 and 2015 figures.



Sources: CJEU (2016)⁵⁷³ and CEPEJ (2017)⁵⁷⁴

Factors other than the size of the country or the number of courts must underpin the fact that some countries use the reference for a preliminary ruling more than others. This study identified various reasons explaining why some national courts do not use the reference for preliminary ruling mechanism.

A lack of knowledge and understanding of the functioning of the reference for preliminary ruling was identified as one factor that may impede the use of this mechanism by national courts. For instance, as mentioned in interviews, Greek judges, especially in lower courts, appear to be unwilling to use this mechanism, especially when they are uncertain of the procedural aspects and admissibility criteria. In Poland, the literature suggests⁵⁷⁵ that national judges are generally aware of the procedure's existence and of its general purpose. However, only 41% of them found the procedure of the preliminary ruling mechanism clear. Such a small number may be explained by the lack of practical experience with the mechanism. The extent to which national judges are aware of the existence of the CJEU's recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings is also unclear⁵⁷⁶.

The **length of the procedure** itself may deter national courts from using the reference for a preliminary ruling. Interviewees suggested that Greek judges are sometimes reluctant to use references for a preliminary ruling because they want to avoid causing further delay in the national proceedings. The same observation was made in Poland, where literature suggests that procedural length should take into account not only the duration of the

⁵⁷³ CJEU, Annual Report 2016: Judicial Activity, p. 108

⁵⁷⁴ European Commission for the efficiency of justice (CEPEJ), Study on the functioning of judicial systems in the EU Member States, 2017, Table 2.1, p.118

⁵⁷⁵ Jaremba, U., *National Judges as EU Law Judges: The Polish Civil Law System*. Martinus Nijhoff Publishers. 2013, p. 223.

⁵⁷⁶ Recommendations to national courts and tribunals, in relation to the initiation of preliminary ruling proceedings, OJ C 439, 25.11.2016, pp. 1–8.

proceedings before the CJEU but also the time for national judges to formulate the question⁵⁷⁷.

The various **courts' practice** is another factor that can explain the more or less frequent use of preliminary rulings. In particular, the civil, criminal and administrative courts in one country may use the reference for preliminary ruling in different ways. In Poland, for example, there is a marked contrast between the practice of administrative courts, which seem to participate eagerly in the process of dialogue with the CJEU, and civil courts, which have used the mechanism only rarely⁵⁷⁸.

5.2.2. Impact of references for a preliminary ruling on effectiveness of access to justice

References for a preliminary ruling can have a positive impact on the effectiveness of access to justice for several reasons.

In general, preliminary rulings have several important functions, including ensuring the **uniform interpretation of EU law** throughout the Union and the **effective application** of EU law⁵⁷⁹. They are **binding**, not only on the national court which initiated the reference for a preliminary ruling but also on the national courts of all Member States. As a result, preliminary rulings can potentially improve access to justice throughout the EU by ensuring that national courts interpret EU law touching upon a specific justice issue in the same way. Scholars have also argued that, by providing the meeting point between Union and national law, the reference for a preliminary ruling facilitates access to justice by making it clear that Union law is to be applied not only by the CJEU but also by national courts, thus **enabling citizens to enforce their Union rights within a national jurisdiction**⁵⁸⁰.

In addition, preliminary rulings can **encourage national legal reforms** to comply with EU law. This happened in Poland in the context of the obligation for parties to court proceedings to indicate a postal address in Poland, or to appoint a representative with a Polish postal address. This obligation generally applies to civil, criminal and administrative proceedings. In 2012, the relevant provision of the Polish Code of Civil Procedure was the subject matter of a preliminary ruling in which the CJEU⁵⁸¹ held that this provision infringed Regulation 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters⁵⁸². Following the judgment, the provision was amended in June 2013. It is interesting to note that the right to address petitions to the European Parliament gave the opportunity for citizens to raise this issue. In Petition No. 1569/2013, the petitioner had indeed argued that this obligation impeded his ability to effectively access justice.

Another important aspect of the procedure, which can potentially have a positive impact on effective access to justice, is that **citizens**, where they are parties to a dispute before a national court, **can request that the court refers the matter to the CJEU**. In such cases, national courts are not obliged to exercise the reference for a preliminary ruling and, where they do refer the matter, the question and its formulation are at their discretion. This ability

⁵⁷⁷ See also, Jaremba, U., *National Judges as EU Law Judges: The Polish Civil Law System*. Martinus Nijhoff Publishers. 2013, p. 227.

⁵⁷⁸ Ibid., pp. 223-224.

⁵⁷⁹ Broberg, M. & Fenger, N., *Preliminary references to the European Court of Justice*. Oxford University Press. 2014, p.2.

⁵⁸⁰ Cowen, T. 'Justice Delayed is Justice Denied': The Rule of Law, Economic Development and the Future of the European Community Courts. *European Competition Journal*, 4(1), 1-57, 2008, p.16; See also Tridimas, G. & Tridimas, T., National courts and the European Court of Justice: a public choice analysis of the preliminary reference procedure. *International Review of Law and Economics*, 2004, 24(2), 125-145.

⁵⁸¹ Case C-325/11.

⁵⁸² Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000.

to request references for a preliminary ruling means that citizens may be able to **draw CJEU attention to national application or judicial interpretation of EU law in the field of justice** where such national interpretation impedes their effective access to justice. These requests may increase in the future, as there is an emerging trend in ECtHR case law to protect citizens' ability to make these requests. It follows from case law that when a national court refuses to refer a matter to the CJEU after a party to the case before it has so requested, the national court must state why the question should not be referred. If it does not provide reasons and ignores the request, this refusal may prove arbitrary, thereby constituting an infringement of the right to a fair trial under Article 6 of the ECHR⁵⁸³.

References for a preliminary ruling are likely to increase the **length of national proceedings**, which may, in turn, adversely impact the effectiveness of access to justice. When a national court refers a matter to the CJEU, national proceedings are stayed until the Court has given its ruling. As outlined, national courts are sometimes reluctant to refer matters to the CJEU because they want to avoid causing further delays in the national proceedings. The excessive length of proceedings has been identified by several actors, including the CJEU itself, as a recurring issue in recent years. Petitions have also revealed the impact of references for a preliminary ruling on the duration of national proceedings. In Petition No. 2679/2014, the petitioner stated that Spanish judges had referred questions on the Spanish Mortgage Act Law (which was the subject of dispute) to the CJEU. He complained that, as a result of these references, 20 national cases awaited a hearing⁵⁸⁴. In 2016, the average duration of proceedings for references for a preliminary ruling was 15 months⁵⁸⁵. This represented a clear improvement on previous years (see **Table 19** below).

Table 19: Average duration of proceedings for references for a preliminary ruling

Year	Average duration of proceedings (in months)
2010	16
2011	16.4
2012	15.7
2013	16.3
2014	15
2015	15.3
2016	15

Source: CJEU press releases 2010-2016

Scholars have argued that the CJEU has been 'victim of its success'⁵⁸⁶. Given its wide jurisdiction, accession to the EU by new Member States, and its eagerness to encourage national courts to refer matters for interpretation, the CJEU has seen an increase in its workload in recent years, thereby delaying proceedings⁵⁸⁷. In this context, excessive length of references for a preliminary ruling can have a negative impact on the effectiveness of access to justice at national level, not only by increasing the length of national proceedings but also by deterring national courts from using the procedure.

⁵⁸³ Broberg, M. & Fenger, N., Preliminary References to the Court of Justice of the EU and the Right to a Fair Trial under Article 6 ECHR. *European Law Review*, 2016, 41(4), 599-607, 607.

⁵⁸⁴ European Parliament, Notice to Members, 27 January 2016, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bCOMPARL%2bPE-576.764%2b01%2bDOC%2bPDF%2bV0%2f%2fEN>

⁵⁸⁵ Statistics concerning judicial activity in 2016: the duration of proceedings continues its downward trend, to the benefit of citizens, Press Release No17/17, Luxembourg, 17 February 2017.

⁵⁸⁶ Jeney, P., Victim of its own success – the EU Court in need of reform. *Web: Monitoring human rights and the rule of law in Europe, online (ověřeno 28. března 2011). Dostupný z http://www. eumap.org/journal/features/2002/avg02/eucourtreform*, 2010.

⁵⁸⁷ Cowen, T., 2008, p. 17.

5.3. Other instruments available to the EU institutions on the basis of the TFEU

KEY FINDINGS

- In addition to the mechanisms provided by the TFEU that enable the citizens to trigger the involvement of EU institutions in case they experience difficulties accessing justice in their country⁵⁸⁸, the EU institutions can act on their own initiative based on the competences provided in the TFEU.
- On that basis, the EU has adopted several legal instruments on procedural rules with a direct impact on the effectiveness of access to justice:
 - In the area of civil law, the EU has enacted a number of legal measures to improve access to civil justice for citizens (Directive 2002/8/EC on minimum common rules relating to legal aid; Regulation No (EC) 861/2007 on the creation of the European small claims procedure; Directive 2008/52/EC on mediation in civil and commercial matters; Directive 2013/11/EU on alternative dispute resolution for consumer disputes).
 - In the area of criminal law, the EU has enacted several directives to guarantee the rights of individuals in criminal proceedings and victims of crime, or governing specific aspects of criminal proceedings (Directive 2010/64/EU on interpretation and translation in criminal proceedings; Directive 2012/29/EU on the rights of victims; Directive 2012/13/EU on the right to information; Directive 2013/48/EU on access to a lawyer; and Directive 2016/34 on the presumption of innocence).
- EU institutions have also implemented various programmes and initiatives with an impact on access to justice:
 - Structural reforms: the EU has been active in promoting and supporting structural reforms through mechanisms such as the Structural Reform Support Programme, the Cooperation and Verification Mechanism, the European Structural and Investment Funds and the European Semester. These may improve access to justice in the long-term, especially in countries where the administration is inefficient, corruption is a recurring problem, or in countries going through an economic or political crisis.
 - Initiatives in training and capacity building, including support for networks of courts and legal practitioners: this contributes to the achievement of the objective of half of all national legal practitioners having participated in training on EU law by 2020.
 - Websites and portals to raise awareness of legal rights and access to justice (e.g. Europe Direct, Your Europe, Your Europe Advice, or the European eJustice Portal).
 - Provision of ad-hoc funding (e.g. Justice Programme).
 - Development of various platforms to promote the resolution of disputes through alternative dispute resolution (ADR) mechanisms (e.g. ODR Platform, SOLVIT).
- These tools all contribute, more or less directly, to the improvement of access to justice at national level.

⁵⁸⁸ In terms of instruments available to the citizens, in addition to the possibility to introduce petitions provided by its Article 227, the TFEU also provides EU citizens with the opportunities to alert the EU institutions about instances where EU law is not correctly applied or implemented, or where their rights under EU law are violated, through a complaint to the Commission about any law, regulation or administrative decision which appears to be against EU law. The opportunities offered by other mechanisms, such as the European Ombudsman or the European Citizens' Initiative, should be explored.

5.3.1. EU competence in the area of justice defined by the TFEU

Pursuant to Article 4(2)(j) of the TFEU, the Union and the Member States **share competence** in the area of freedom, security and justice. Article 67(4) of the TFEU provides that the *Union shall facilitate access to justice, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in civil matters*. Therefore, the EU institutions can play a decisive role in improving access to justice for EU citizens. This action is possible to the extent authorised by the EU treaties and the strategic guidelines for legislative and operational planning within the area of freedom, security and justice defined by the European Council (Article 68 of the TFEU).

The TFEU sets the scope of the EU institutions' competence in the context of judicial cooperation in civil and criminal matters. However, it does not refer to EU institutions' competence in civil or criminal justice in general. The scope of EU competence is thus restricted to specific justice issues. While the TFEU puts a strong emphasis on EU competence in civil and criminal matters with cross-border implications, its competence in such matters in the absence of those implications is unclear. More generally, it is relevant to ask how the formulation of EU competence under the TFEU may provide opportunities to the EU institutions to improve access to justice.

In the field of **civil justice**, Article 81(1) of the TFEU provides that the *Union shall develop judicial cooperation in civil matters having cross-border implications, based on the principle of mutual recognition of judgments and of decisions in extrajudicial cases. Such cooperation may include the adoption of measures for the approximation of the laws and regulations of the Member States*. The EU is thus competent to adopt measures, including legislation, to ensure judicial cooperation in civil matters with cross-border implications.

Pursuant to Article 81(2) of the TFEU, *the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures, particularly when necessary for the proper functioning of the internal market, aimed at ensuring:*

- (a) mutual recognition and enforcement between Member States of judgments and of decisions in extrajudicial cases;*
- (b) cross-border service of judicial and extrajudicial documents;*
- (c) the compatibility of the rules applicable in the Member States concerning conflict of laws and jurisdictions;*
- (d) cooperation in the taking of evidence;*
- (e) effective access to justice;*
- (f) elimination of obstacles to the proper functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States;*
- (g) development of alternative methods of dispute settlement;*
- (h) support for the training of the judiciary and judicial staff.*

Article 81(2) reflects the focus of EU competence on judicial cooperation and cross-border civil matters. However, a number of areas are formulated broadly, leaving the door open for EU action to improve access to civil justice for EU citizens. In the context of this study, the most relevant are:

- Effective access to justice;
- The elimination of obstacles to the proper functioning of civil proceedings;
- The development of alternative methods of dispute settlement; and
- Support for the training of the judiciary and judicial staff.

In the area of **criminal justice**, the Lisbon Treaty introduced significant changes with regard to the legal framework on criminal law and policy. It has provided a stronger role for the EU institutions by introducing the Union's power to adopt directly effective legislation in the field of criminal justice⁵⁸⁹. However, the EU may only adopt legislation on specific criminal matters.

Pursuant to Article 82(1) of the TFEU, *judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgments and judicial decisions and shall include the approximation of the laws and regulations of the Member States in the areas referred to in paragraph 2 and in Article 83*. In this context, the EU may be able to legislate in specific cases.

Article 82(2) provides that, *to the extent necessary to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension*, the Union may adopt directives to establish minimum rules on specific criminal matters. Most relevant here are *the rights of individuals in criminal procedure*⁵⁹⁰, *the rights of victims of crime*⁵⁹¹, and *any other specific aspects of criminal procedure which the Council has identified in advance by a decision*⁵⁹². Although they concern specific aspects of criminal proceedings, in practice these matters have been interpreted broadly. In particular, the last matter (*any other specific aspects of criminal procedure which the Council has identified in advance by a decision*) seems broad enough to allow EU institutions to address specific issues that EU citizens may face in criminal proceedings at national level.

Article 83 of the TFEU allows the EU to adopt directives to *establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis*. In the context of this study, corruption is most relevant, being cited as an obstacle to effective access to justice in some petitions.

5.3.2. Legal instruments adopted on the basis of the TFEU

In the area of **civil law**, on the basis of Article 81(2) TFEU, the EU has enacted a number of regulations and directives which aims to improve access to civil justice for EU citizens. They include:

- Minimum common rules relating to legal aid (Council Directive 2002/8/EC)⁵⁹³;
- Creation of the European small claims procedure (Regulation No (EC) 861/2007);
- Mediation in civil and commercial matters (Directive 2008/52/EC);
- Alternative dispute resolution for consumer disputes (Directive 2013/11/EU).

In the area of **criminal law**, on the basis of Article 82(2) TFEU, the EU has enacted a number of directives to guarantee the rights of individuals in criminal proceedings and victims of crime, or governing specific aspects of criminal proceedings, such as:

- Compensation of crime victims (Directive 2004/80/EC);

⁵⁸⁹ Chalmers, D. & Tomkins, A., *European Union public law: text and materials*. Cambridge University Press, 2010, p. 583.

⁵⁹⁰ Article 82(2)(b) of the TFEU.

⁵⁹¹ Article 82(2)(c) of the TFEU.

⁵⁹² Article 82(2)(d) of the TFEU.

⁵⁹³ Directive 2003/8/EC applies to cross-border civil and commercial cases. However, it also establishes EU-wide rules on legal aid which improve access to justice not only in cross-border civil cases but also in other civil cases.

- Right to interpretation and translation in criminal proceedings (Directive 2010/64/EU);
- Minimum standards on the rights, support and protection of victims of crime (Directive 2012/29/EU);
- Right to information in criminal proceedings (Directive 2012/13/ EU);
- Right of access to a lawyer in criminal proceedings (Directive 2013/48/EU);
- European Investigation Order in criminal matters (Directive 2014/41/EU);
- Strengthening of the presumption of innocence and of the right to be present at the trial in criminal proceedings (Directive 2016/343), etc.

5.3.3. Institutional tools and mechanisms enabled by the TFEU

Apart from these legal instruments, other tools and mechanisms available to the EU institutions may have an impact on access to justice in the Member States. Structural reforms relating to the justice system (see Section 5.3.3.1), as well as other EU initiatives, such as networks, information tools and funding, can directly target the factors that impede access to justice at national level (Section 5.3.3.2).

5.3.3.1 Programmes accompanying structural reforms

Structural reforms may improve access to justice in the long-term, especially in countries where the administration is inefficient, corruption is a recurrent problem, or the country is going through an economic or political crisis. As illustrated by the analysis of petitions in Section 4, these were key factors that led to issues impacting access to justice in the countries studied. The EU institutions have been active in promoting and supporting structural reforms through various mechanisms and tools in several of the countries examined here.

The following mechanisms continue to provide opportunities to address some of the obstacles identified as impediments to access to justice:

- **Structural Reform Support Programme (SRSP)⁵⁹⁴:** This EU programme allows the Commission (through the Structural Reform Support Service, or SRSS⁵⁹⁵) to coordinate and provide tailor-made assistance to EU countries, at their request, to support them in the design and implementation of institutional, administrative and structural reforms, and in making efficient and effective use of relevant EU funds. The SRSP covers various policy areas, including institutional reform and efficient and service-oriented functioning of public administration, including, where appropriate, simplification of rules, effective rule of law, reform of the justice systems and reinforcement of the fight against fraud, corruption and money laundering⁵⁹⁶. Under the SRSP, Member States may request technical assistance from the Commission, for instance to conduct national judicial reforms. Eligible actions include: expertise related to legislative, institutional structural and administrative reforms; institutional, administrative or sectoral capacity building; IT capacity building; and communication projects. Greece, for example, received assistance and funding under the SRSP to conduct economic and institutional reforms, including in the judicial system. In its

⁵⁹⁴ The most recent SRSP was established by Regulation (EU) 2017/825 of the European Parliament and of the Council of 17 May 2017 on the establishment of the Structural Reform Support Programme for the period 2017 to 2020 and amending Regulations (EU) No 1303/2013 and (EU) No 1305/2013.

⁵⁹⁵ The SRSS was created in 2015 by the European Commission.

⁵⁹⁶ Regulation 2017/825, Article 5(2)(b).

Work Programme 2018, the Commission stated that the SRSP 'will continue to provide tailor-made support to help Member States build more effective institutions, stronger governance frameworks and efficient public administrations, while broadening its activities to more sectors and to more Member States'⁵⁹⁷. Therefore, the SRSP can provide assistance to Member States to tackle the challenges that their national justice systems may face.

- **Cooperation and Verification Mechanism (CVM):** The Commission set up the CVM as a transitional measure to support Romania and Bulgaria in the fields of judicial reform and corruption when they joined the EU in 2007. For Romania, the Commission regularly assesses progress with judicial reform and the fight against corruption. Assessment benchmarks in Romania include the effectiveness and transparency of the judicial system, key institutions in areas like integrity and the fight against corruption at all levels, and corruption prevention.
- **European Structural and Investment Funds (ESIF):** ESIF channel over half of EU funding in the Member States, with investment areas including justice and fundamental rights (the most important fund for justice is the European Social Fund). Funding under *Thematic Objective 11 on Institutional Capacity* is relevant here, as it aims to enhance the institutional capacity of public authorities and stakeholders and an efficient public administration. It has the potential to fund projects to improve access to justice and, more particularly, the efficiency of national courts, for instance through the financing of operational programmes for the digitalisation of court procedures (*Thematic Objective 2 on ICT* may thus also be relevant). In its Work Programme 2018, the Commission provided that it will continue 'to support judicial reforms and judicial training with EU funds'⁵⁹⁸.
- **European Semester:** The European Semester provides a framework for the coordination of economic policies in all Member States across the EU. It is relevant since it supports structural reforms at national level, including in the field of justice. Each year, the Council endorses country-specific recommendations, which are formulated by the Commission based on various information tools, including the EU Justice Scoreboard⁵⁹⁹. Member States then choose the appropriate policy decision in response to these recommendations. In the context of this study, this framework gives to the EU institutions the opportunity to tackle country-specific issues affecting access to justice in the Member States. In line with this framework, the Commission stated, in its Work Programme 2018, that it will 'continue to help Member States improve the effectiveness of their national justice systems and to fight corruption through the European Semester and to support justice reforms and judicial training with EU funds, including with the EU Justice Scoreboard'⁶⁰⁰.

5.3.3.2 Other EU initiatives in the area of justice

Article 81(2)(h) of the TFEU allows the EU institutions to adopt measures to support the training of the judiciary and judicial staff in civil matters. In addition, Article 85(1) of the TFEU provides that Eurojust's tasks may include the strengthening of judicial cooperation,

⁵⁹⁷ European Commission, Commission Work Programme 2018: An agenda for a more united, stronger and more democratic Europe (COM(2017) 650 final), p. 13.

⁵⁹⁸ European Commission, Commission Work Programme 2018: An agenda for a more united, stronger and more democratic Europe (COM(2017) 650 final), p. 13.

⁵⁹⁹ The EU Justice Scoreboard is an information tool which delivers comparable data on the quality, independence and efficiency of justice systems in all Member States.

⁶⁰⁰ European Commission, Commission Work Programme 2018: An agenda for a more united, stronger and more democratic Europe (COM(2017) 650 final), p. 13.

including by resolution of conflicts of jurisdiction and by close cooperation with the European Judicial Network.

Training and capacity-building of the judiciary and national courts' staff members were identified as important activities to improve understanding of EU law and access to justice. Improved cooperation and exchanges between national courts and administration, and the CJEU and the EU institutions, are crucial to ensure the proper application of EU law and protect the rights that EU citizens enjoy under EU law.

The EU is already tackling the issues of training and capacity-building of judges and legal practitioners⁶⁰¹. One objective in its 2011 Communication 'Building trust in EU-wide justice: A new dimension to European judicial training' is to ensure that half of the national legal practitioners have participated in training on EU law by 2020. Training and cooperation should each build on existing **networks** of courts and legal practitioners, such as the European Judicial Network, European Network of Councils for the Judiciary (ENCJ), the Network of the Presidents of the Supreme Judicial Courts of the EU (NPSJC), the Association of the Councils of State and Supreme Administrative Jurisdictions of the EU (ACA-Europe), the Council of Bars and Law Societies of Europe (CCBE), and the European Judicial Training Network (EJTN). The EJTN, as an umbrella association for 35 training institutions for the judiciary from all EU Member States, is central here. In 2016, it offered 27,312 training days, with 5,556 judges, prosecutors, trainers and trainees participating. The EJTN aims to constantly strengthen its network, in order to reach the objectives set in the 2011 Communication and in the EU Justice Agenda for 2020⁶⁰².

A lack of awareness and understanding of the EU procedures available to EU citizens was identified as a general issue. Existing tools may help remedy this situation. The Commission has developed various **websites and portals** to raise awareness of legal rights and access to justice. These include websites such as Europe Direct, Your Europe, Your Europe Advice, or the European e-Justice Portal.

Another way to improve access to justice is through the provision of **ad-hoc funding**, e.g. the Justice Programme under DG Justice. This programme aims to contribute to the development of a European area of justice based on mutual recognition and mutual trust. It promotes various activities, such as judicial training, e.g. language training on legal terminology or effective access to justice in Europe, including rights of victims of crime and procedural rights in criminal proceedings. It funds various types of actions, such as training activities (e.g. financing of activities of the EJTN presented above), mutual learning, development of ICT tools, awareness-raising activities, support for main actors, etc.

Article 81(2)(g) of the TFEU allows the EU institutions to adopt measures to ensure the development of alternative methods of dispute resolution. The Commission has therefore developed various **platforms** to promote the resolution of disputes through ADR mechanisms. For instance, the Online Dispute Resolution platform (ODR platform) helps consumers and traders to resolve their contractual disputes about online purchases of goods and services out-of-court at a low cost, simply and quickly⁶⁰³. SOLVIT⁶⁰⁴ is also a free of charge service provided by the national administration in each EU Member State. It provides

⁶⁰¹ See for instance Council conclusions of 27 October 2011 on European judicial training; 2011 Communication, 'Building trust in EU-wide justice: A new dimension to European judicial training' includes the objective to ensure that half of the legal practitioners have participated in training on EU law by 2020 (COM (2011) 551).

⁶⁰² EJTN Annual Report 2016, available at:

http://www.ejtn.eu/PageFiles/16274/EJTN_Annual_Report_2016_FINAL.pdf

⁶⁰³ Regulation (EU) No 524/2013 on online dispute resolution for consumer disputes.

⁶⁰⁴ http://ec.europa.eu/solvit/docs/2017/com-2017-255_en.pdf

pragmatic solutions to EU/EEA citizens and businesses when they are experiencing difficulties in having their EU rights recognised by public authorities, particularly while moving or doing business cross-border in the EU.

6. CONCLUSIONS AND RECOMMENDATIONS

Overall, the analysis of the issues raised in petitions shows that the problems pointed by petitioners usually accurately reflect key issues more widely acknowledged as impeding to access to justice in the countries under study. These issues also reflect how access to justice has been affected by the wider historical, social, economic or political context specific to these countries.

For instance, post-communist countries have undergone constant reforms of their justice systems in the past thirty years, not the least with their accession to the EU. These changes have required many adaptations of the judiciary, including from a cultural perspective, which have in some cases rendered the application of key principles of access to justice difficult. These countries have also been particularly affected by corruption of the judiciary, which resulted in denial of procedural guarantees in many court cases.

Older Member States have seen their judiciary strongly affected by the economic crisis, especially so for Greece, Spain and Italy. This largely explains the higher number of petitions in these countries. In that regard, access to justice has been impacted by two main consequences of the financial crisis. Firstly, Member States have adopted reforms aimed at cutting expenditures in the judiciary. This resulted in cuts in budget, in personnel and/or in the number of courts, which increased the backlog at courts⁶⁰⁵. Secondly, citizens have been directly affected by the crisis, with contradictory consequences: on one hand, it increased their difficulties affording costs of justice (sometimes also increased as a result of reforms), which made them more reluctant to bring cases to court; on the other hand, it resulted in an increase of cases brought as a consequence of the crisis (e.g. foreclosure cases in Spain), increasing the backlog at Courts.

National reports provide for recommendations about possible improvements based on the issues experienced in the Member States. These are reflected in Sections 6.1 to 6 below. These recommendations are mainly addressed to the Member States.

6.1. Effective access to court

RECOMMENDATIONS TO ENSURE EFFECTIVE ACCESS TO COURT

In relation to the **organisation of the national judicial system**, in the light of the problems raised in petitions, several recommendations are proposed, in addition to legal reforms where necessary, such as:

- The improvement of physical infrastructures (i.e. courthouses) in order to ensure that justice is rendered in better conditions, both for citizens and for legal professionals (e.g. Italy);
- The development of electronic justice systems to facilitate the handling of cases, and in particular communication between lawyers and courts⁶⁰⁶ (e.g. Greece, Italy);
- More and better training in the judiciary to improve the consistency and quality of judgments (Romania).

⁶⁰⁵ See in particular Section 4.1 above.

⁶⁰⁶ On this point, see the 2017 Justice Scoreboard, providing an overview of the use of electronic communication between lawyers and judges. Figure 24, p.21.

Legal and procedural obstacles raised in petitions can mainly be addressed through changes in national laws.

In relation to **practical obstacles** experienced by citizens in accessing justice, recommendations include:

- Supporting access to transport and increasing the use of ICT in cases where the geographical coverage of courts is an issue (e.g. Italy, Greece);
- Policy and/or financial intervention to increase and improve the use of electronic systems in courts (e.g. Poland);
- Additional means to improve infrastructures in order to ensure security at courthouses (Italy);
- Additional efforts to provide access to translation for least spoken languages (e.g. Spain).

Organisation of the national judicial system

In spite of the significant legal and institutional reforms undertaken in the Member States studied, efforts in the modernisation of the justice system should generally continue in all Member States. Modernisation covers aspects such as improvement of the **physical infrastructure of courts** (Greece; Italy), **better coordination** between the various bodies in charge of justice (Spain).

However, the major challenge for most of the Member States is the **development of electronic justice systems**. Long-term investment and planning are required in to develop and anchor the use of modern ICT systems (Greece, Poland, Romania and Spain).

In addition, the adequate **training** of judges has been identified as a key issue. Continuous training of national judges is important to ensure that they understand new legal concepts in emerging fields of law as well as in EU law (Croatia, Greece and Romania). As illustrated by the difficulties in relation to preliminary ruling in Section 5.2, specific training efforts should also aim to improve the relationship between national courts and the CJEU. For instance, detailed guidance should be provided regarding the drafting of references for a preliminary ruling or already existing documents providing such guidance should be made available more easily to national judges. Finally, court personnel should be trained to the use of modern ICT systems to guarantee a timely resolution of legal disputes (Greece).

Practical obstacles

An effective justice system means that citizens and lawyers must be able to physically have access to courts in an efficient manner. The geographical re-organisation of courts in several of the Member States under study, often as the result of economic restrictions, can impede citizens and lawyers to have effective access to a court (Italy). When efficiency requires the closure of some courts, States should ensure that litigants can still go to court in practice. Countermeasures could include improved, subsidised public transport and better use of communication technology, such as the use of teleconference. An ex post evaluation of measures could be carried out to assess their impacts and the achievement of the objectives pursued. Lessons learned could be used in the current national debates on the reform of the judicial map. Where small local courts are maintained, they should be given the resources necessary to function properly and avoid significant delays (Greece).

Petitions have shed light on the challenges facing national courts when it comes to e-Justice and the impacts of the lack of adequate ICT on effective access to justice for citizens. Modern ICT systems can improve the quality of justice systems. For instance, ICT systems for the registration and management of cases can help courts manage cases more effectively and reduce the overall length of proceedings.⁶⁰⁷ In practice, ICT tools may cover various aspects, such as electronic submission of claims, electronic communication between courts and parties or the use of secure electronic signatures. Some Member States are however still lagging behind on some of these aspects (Poland, Romania). The annual EU Justice Scoreboards have showed that the lack of ICT tools makes judicial proceedings more difficult and costly, both for the court and the parties, therefore impeding the accessibility and the quality of judicial systems.⁶⁰⁸ Policy intervention is therefore needed to improve e-Justice in all the Member States.

Effective justice also means that courts should be secured places for judges, lawyers, and citizens (Italy). The security of courthouses should be systematically reviewed, considering access needs, infrastructure, availability of security personnel and apparel. Short-term measures taken in the wake of occasional tragic events and media attention can cause hindrance to individuals legitimately seeking access to the courthouse, without representing a long-term solution to the issue of security.

In answer to an issue raised in several petitions, additional efforts could be made to guarantee that litigants have access to proper translation services in legal proceedings, especially for the least spoken languages (Spain). This is increasingly relevant with the growing number of cross-border disputes in various legal areas (family, commercial law, etc.).

6.2. Costs of justice and legal assistance

RECOMMENDATIONS ON COSTS AND LEGAL ASSISTANCE

Mainly due to the financial crisis, the costs of justice have increased in most Member States studied while the use of **legal aid** has increased. As a consequence:

- Support to legal aid schemes need to be increased in a few Member States (e.g. Croatia);
- Awareness raising activities (campaigns, websites, etc.) have to be put in place to better inform citizens about their financial rights and duties when bringing a case to court (e.g. Poland, Italy, Romania, Spain).

Regarding **other issues preventing access to legal assistance**,

- In relation to problems raised in petitions regarding the regulation and conditions of the lawyer's profession, national schemes may in some cases require to be adapted to enable lawyers to exercise their profession and provide legal assistance to citizens seeking justice in better conditions (e.g. Greece, Italy).
- Where legal assistance is not properly ensured through regular judicial proceedings, mechanisms should be available to citizens seeking either legal counsel, or resolution of their conflict. Petitions can for instance be addressed to the national parliament in several Member States (Croatia, Italy, Poland, Romania, Spain), though the area of competence of the parliaments is often limited. Citizens can also turn to an Ombudsperson in all Member States studied; and ADR mechanisms exist in all Member States, in accordance with EU law.

⁶⁰⁷ http://ec.EURpa.eu/EURpe2020/pdf/themes/2015/effective_justice_systems_20151126.pdf p. 4

⁶⁰⁸ For instance, 2016 EU justice scoreboard, p. 33; 2017 EU Justice scoreboard, p. 35

Costs of justice and legal aid

The lack of budget for the justice system also impacts the resources allocated to legal aid mechanisms, therefore impacting the ability of the more vulnerable persons to have effective access to justice. While affecting the judiciary, the financial crisis has also affected citizens, who have seen their income diminishing, and their ability to face costs of justice reduced. In Member States where this problem has been observed, additional **funds** would support and boost legal aid systems.

Petitions have also uncovered a lack of awareness of citizens as to their rights, entitlements, but also as to the financial risks of bringing a claim to court ('loser pays principle' applying in most Member States). More **information** to citizens, through campaigns and other awareness raising activities seem therefore needed.

Other issues preventing access to proper legal assistance

National provisions concerning the registration and permanence of lawyers qualified in a Member State but providing legal services in another Member State should be more closely examined for compatibility with Directive 98/5/EC (Italy). Social security contributions could be made voluntary or, if they remain mandatory, their amount could be made proportional to income, as opposed to generally imposing a minimum level of contribution (Italy).

In all Member States under study, citizens have access to alternative mechanisms, which could contribute to improve their effective access to justice. Several Member States allow citizens to address petitions to their national parliaments (Croatia, Italy, Poland, Romania, Spain). In some of them, parliaments have established committees on petitions which deal with citizens' complaints (Croatia, Poland, Romania, Spain). However, petitions must generally deal with issues of public interest. Therefore, the petition procedure presents a limited interest for those struggling to effectively have access to justice in the context of private disputes. Furthermore, citizens can address petitions to the national Ombudsman in all Member States, apart for Italy where the figure of the ombudsman exists at regional level only. However, Ombudsmen can only help in cases raising misconduct from public authorities. Furthermore, the scope of the Ombudsman's competence may exclude legal sectors in which issues to gain effective access to justice have been observed (Greece). Finally, all Member States have developed their legal framework governing ADR mechanisms, often because of EU harmonisation in that sector. Although ADR mechanisms, especially mediation, are growing in importance, legal culture in several countries remains an obstacle to a more systematic use of ADR.

6.3. Access to a fair trial and enforcement of judgments

RECOMMENDATIONS TO ENSURE FAIR TRIAL AND ENFORCEMENT OF JUDGMENTS

Corruption was pointed as a main issue impeding the proper application of **procedural guarantees** in the Member States studied. Corruption can be mainly tackled through:

- Reforms of the judicial systems, in particular targeting specific bodies of the judiciary where necessary (e.g. Croatia, Slovakia, Romania)
- Regular monitoring of the progress made to eliminate corruption.

In most Member States studied, **length** was pointed as a key issue affecting the effectiveness of access to justice. Recommendations to improve the situation include:

- Encourage the use ADR mechanisms to reduce backlogs of cases in courts (e.g. Spain, Greece)
- Divert specific cases to legal professionals other than courts (e.g. Greece)
- Rebalance the workload between courts (e.g. Latvia)
- Strengthen the use of ICT tools to accelerate procedures (e.g. Greece).

Several cases relating to problems with enforcement of judgments were also due to backlogs of court cases and the length of judicial proceedings (e.g. Slovakia, Poland, Spain). The same recommendations therefore apply to those cases.

Procedural guarantees

Corruption or perception thereof in the judiciary generally remains an important issue in many of the EU Member States. Reforms targeting specific bodies (judges, prosecutors, police) should continue in countries where corruption remains prevalent (Croatia, Romania and Slovakia). In addition, monitoring of the situation in these countries, for instance through indicators, is a strong incentive to encourage progress.

Length of proceedings

Excessive length of proceedings is a crucial problem facing most of the countries under study (Croatia, Greece, Italy, Romania and Spain). The use of alternative dispute resolution mechanisms should be encouraged to reduce backlogs of cases and delays in obtaining remedy (Spain). Specific efforts should target countries where the litigation culture is strong, and arbitration and mediation mechanisms are neglected by citizens. For instance, effective and transparent dispute-resolution mechanisms and committees should also be introduced within the administration (Greece). Member States and the EU institutions should also continue to raise citizen awareness about the availability and the benefits of existing alternative dispute resolution mechanisms at both national and EU levels. One suggestion may also be to divert specific cases to legal professionals (e.g., notaries) other than courts in specific areas of law (this is already done, for example, in the context of consensual divorces in Greece). In Latvia, the redirection of cases from clogged courts to less overloaded courts by means of teleconference has already significantly improved the backlog of cases. As was raised above, modern ICT tools can potentially improve the length of proceedings if used adequately. In some countries, judges should typewrite their decisions instead of handwriting them (Greece).

These recommendations entail nonetheless significant financial costs. However, the lack of economic resources of the justice system is a major issue facing most of the Member States selected for this study. The recent economic crisis has made this problem particularly acute in some countries, affecting the resources allocated to the modernisation of the court system. Therefore, it is crucial that cuts are avoided in budgets allocated to the justice system. Given the restrictive economic context in several of the Member States under study, the political and economic support from the EU institutions seems even more relevant to improve effective access to justice.

6.4. EU action to improve access to justice

RECOMMENDATIONS FOR EU ACTION

Many of the recommendations presented above, while addressed to Member States, can be supported by the EU institutions, in particular through the tools available to them. Various types of intervention exist, and their use should be enhanced to contribute to effective access to justice:

- **Enforcement** through:
 - Infringement procedures are available to the Commission in order to ensure the proper transposition and application of the EU legal instruments providing procedural guarantees⁶⁰⁹, and to protect the rule of law during national judicial reforms (e.g. Poland).
 - References for preliminary ruling are also, to some extent, an enforcement tool, which allows the CJEU to ensure the uniform interpretation of EU law by national judges.
- Support to **reforms** needed in national judicial systems can be provided through mechanisms adopted at EU level, and in particular through the Structural Reform Support Programme⁶¹⁰.
- **Financial support** can be provided by the EU, and in particular through the European Structural and Investment Funds⁶¹¹.
- **Monitoring mechanisms** (recommended in relation to corruption) exist at EU level, mainly in the form of the Cooperation and Verification Mechanism supporting Romania and Bulgaria in the fields of judicial reform and corruption. But the EU Justice Scoreboard is also a useful tool for instance.
- **Training activities** are also supported by the EU Commission and organised at EU level⁶¹².
- Finally, the EU has many tools to **inform** citizens about their rights, including in the area of justice, and covering information on costs, such as websites, platforms and portals⁶¹³.

Even though in many cases, petitions pertaining to access to justice have referred to internal issues, and have therefore been considered inadmissible by the PETI Committee, as not

⁶⁰⁹ See Section 5.3.2 of this report.

⁶¹⁰ See Section 5.3.3.1 of this report.

⁶¹¹ Ibid.

⁶¹² See Section 5.3.3.2 of this report.

⁶¹³ Ibid.

falling within the fields of activity of the EU, they reveal issues on which the EU institutions can provide support. The EU intervention can take different forms.

Enforcement

The use of the enforcement tools available to the EU institutions could contribute to the effectiveness of access to justice at national level.

Infringement procedures are the most obvious enforcement mechanism available to the EU institutions, and more precisely to the Commission, which can have a positive impact on the exercise of their rights by citizens in the Member States. Firstly, **infringement procedures**, even if used as the last resort, aim at ensuring that the EU instruments providing for procedural guarantees, such as the EU acts in the area of civil law adopted on the basis of Article 81(2) TFEU to regulate civil justice or the directives in the area of criminal law adopted on the basis of Article 82(2) TFEU to guarantee the rights of individuals in criminal proceedings and victims of crime, or governing specific aspects of criminal proceedings, are properly transposed and applied. Infringement procedures can also be used by the European Commission as a safeguard of the rule of law. The recent Polish crisis, and the decision of the Commission to launch an infringement procedure against Poland, is a strong signal of the importance attached by the EU to the proper functioning of the judicial systems of its Member States.

To a certain extent, **references for preliminary ruling** can also be considered as a mean for the EU institutions, and more specifically the CJEU in this case, to enforce EU legal instruments. The CJEU, via its preliminary rulings, ensures the uniform interpretation of EU law by national judges, thereby contributing to the proper implementation of EU rules across the EU.

In addition, and in relation to the specific issue raised in several petitions regarding the lack of **enforcement of EU jurisprudence** at national level, it should be mentioned that the EU institutions have the possibility to act directly. Indeed, the procedure provided in Article 260(2) TFEU, and which has been simplified with the Lisbon Treaty, offers the possibility of imposing financial sanctions on a Member State that has failed to implement a CJEU judgment establishing an infringement.

Support to reforms

Reforms of the judicial system and/or of the legislation is often necessary to address the issues raised in petitions. Reforms are in particular needed in order to improve procedural guarantees, to identify measures to reduce backlogs of cases at courts, or else to improve the application of legal assistance schemes.

The use of EU programmes accompanying structural reforms, and in particular of the **Structural Reform Support Programme** (SRSP), which enables the Commission to coordinate and provide tailor-made assistance to EU countries, can be particularly helpful in this context.

Financial support

Many problems pointed in petitions are a direct consequence of the lack of financial means. Additional resources would more specifically contribute to solving issues relating the infrastructures, to reduce practical obstacles to access justice (e.g. translation, mobility, security) and, even more importantly, to increase and improve the use of electronic systems in courts.

European Structural and Investment Funds (ESIF) have a significant role to play in that regard. ESIF investment areas include justice and fundamental rights, with the **European**

Social Fund, and are designed to enhance the institutional capacity of public authorities and stakeholders and an efficient public administration. As previously mentioned, ESIF have the potential to fund projects to improve access to justice, for instance through the financing of operational programmes for the digitalisation of court procedures.

Monitoring mechanisms

Corruption has been pointed in many petitions as impeding access to justice. The monitoring of the legal system, and of the measures in place to fight corruption, can act as a strong incentive for Member States to reduce the risks.

Such mechanism already exists at EU level, in the form of the **Cooperation and Verification Mechanism (CVM)**, set up by the European Commission to support Romania and Bulgaria in the fields of judicial reform and corruption. The continuing distrust in the judiciary in some countries justifies its relevance still to date.

At a larger scale, the **EU Justice Scoreboard** also plays an important role in monitoring the independence of judges in the Member States.

Training activities

The quality of the justice system, the qualification of judges (and of legal professionals in general), and the lack of knowledge among the judiciary of EU rules all justify the need for training.

The EU is already tackling the issues of **training and capacity-building** of judges and legal practitioners. Policy documents have set specific objectives, and training activities have been supported for a long time by the EU institutions, either through funding of existing networks or with the provision of training by the EU itself. Such activities should therefore continue.

Information of citizens

Awareness raising activities have been identified as a tool potentially contributing to a better access to legal aid, and to inform citizens about the costs of bringing a case to court.

The EU institutions call all contribute to such activities through the various media at their disposal. The Commission has for instance developed various **websites and portals** to raise awareness of legal rights and access to justice (Europe Direct, Your Europe, Your Europe Advice, or the European e-Justice Portal).

Petitions

In addition, based on the work carried out for this research paper, some recommendations more directly relevant for the PETI Committee may also be mentioned. As previously indicated, the level of inadmissible cases of petitions pertaining to access to justice is particularly high. Even though this may be due to the nature of such claims, which fall in an area where EU has limited competence, the margin of discretion given to the interpretation of the concept of 'fields of activity of the EU' is quite broad. At the same time, citizens are often confused about the petitions mechanism, or are simply not aware of it. From that perspective, **more guidance on the use of petitions**, and more specifically on the admissibility criteria as well as on the drafting of petitions, combined with a better visibility of the mechanism through more awareness raising would certainly increase the efficiency of the petitions system.

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ANNEX I: LIST OF PETITIONS

Country	Subject-matter of petition	Admissibility
EFFECTIVE ACCESS TO COURT		
<i>Organisation of the national judicial system</i>		
Croatia	2093/2013: Possibility to bring claims before Croatian courts	Inadmissible: Subject-matter outside EU's field of activity
	0652/2014: Absence of possibility to appeal a lower court's judgment	Inadmissible: Subject-matter outside EU's field of activity
Greece	1687/2013: Absence of efficient supervisory system to prevent corruption and unethical practices of the judiciary	Inadmissible: no additional information
Italy	1328/2015, 1376/2015, 0028/2016, 0044/2016, 0177/2016, 0214/2016, 0333/2016, 0889/2016: Precarious situation of Justices of the Peace on fixed-term contracts	Admissible: available to supporters <ul style="list-style-type: none"> • EP decided to keep petitions open • Information requested from the EC • The EP sent a letter to the Italian Ministry of Justice
Romania	2701/2013: Complaint about different judgments on a similar problem in different courts	Admissible: closed. No additional information
Spain	1461/2013 and 0283/2014: Precarious situation of judges on temporary employment contracts in breach of Directive 1999/70/EC	Inadmissible: no additional information
<i>Legal and procedural obstacles impeding access to court</i>		
Poland	1569/2013: Obligation to have a postal address to be a party to proceedings	Admissible: closed No additional information
Spain	0142/2014: Failure of Spanish courts to act in unfair mortgage clauses cases despite Directive 93/15/EEC on unfair terms in consumer contracts	Inadmissible: no additional information
	0357/2013: Complaint about admission of evidence in a court of law	Inadmissible: no additional information
	0410/2013: Ability to challenge a court decision ordering a house eviction	Admissible: closed <ul style="list-style-type: none"> – The EC did not identify any infringement of EU law
	0142/2014, 2679/2014, 0628/2016, 0644/2016: Time limits preventing consumers from objecting to the enforcement of mortgage-related evictions and failure of Spanish courts to act in unfair mortgage clauses cases despite Directive 93/15/EEC on unfair terms in consumer contracts	Admissible: available to supporters <ul style="list-style-type: none"> – 2679/2014: The EC started a dialogue with Spain to resolve issues regarding the procedural protection of consumers. – 0628/2016: The EC will monitor whether the upcoming Spanish legislation on mortgage credit contracts will be in conformity with EU law. The EC will assess

Country	Subject-matter of petition	Admissibility
		further steps for an infringement case. – 0644/2016: The EC found that Spain has made progress in consumer law and will continue to monitor Spain.
Practical obstacles impeding access to court		
Greece	1131/2016: Inability to appeal a court decision to issue a European Arrest Warrant	Admissible: available to supporters
Italy	0853/2015: Excessive security measures which prevented lawyers from carrying out their work properly	Inadmissible: no additional information
	0273/2016: Impact of a court's closure on the Island of Capri on access to court	Inadmissible: no additional information
Poland	1008/2013: Courts' refusal to allow the use of qualified electronic signatures in correspondence with the judiciary in violation of Directive 1999/93/EC on electronic signatures	Admissible: closed – The EC replied that Directive 1999/93/EC does not oblige Member States to implement any administrative procedure that would oblige them to allow citizens to file a complaint electronically. There was no violation of EU law.
	1844/2013: Courts' refusal to allow the use of qualified electronic signatures in correspondence with the judiciary	Admissible: closed No additional information
Spain	0823/2014: Access to an interpreter in family law proceedings and allegation of lack of impartiality of the Spanish courts	Admissible: closed No additional information
	2220/2014: Discrimination for linguistic reasons in court proceedings	Admissible: closed No additional information
COSTS OF JUSTICE AND LEGAL ASSISTANCE		
Costs of Justice		
Greece	0659/2013: Expensive costs of justice as a consequence of backlog of complaints	Inadmissible: no additional info
	2142/2013: High legal costs in a dispute concerning child custody	Admissible: available to supporters
	0281/2014: High cost of stamp duty to file a complaint on small claims	Inadmissible: no additional info
Italy	1172/2016: Disagreement with the payment of a court fee	Inadmissible: list 3, subject-matter seemingly not coming within the EU's field of activity

Country	Subject-matter of petition	Admissibility
	0659/2017: Petition on court fees	Inadmissible: list 3, subject-matter seemingly not coming within the EU's field of activity
Latvia	0664/2013: Complaint about the costs of justice	Inadmissible: no additional info
	1262/2013: Complaint about the costs of justice	Inadmissible: no additional info
Poland	1270/2013: Exemption from court costs and costs of legal representation	Inadmissible: no additional info
Romania	2210/2013: Complaint about the introduction of stamp duty in relation to the non-pecuniary rights of natural persons	Inadmissible: no additional info
Spain	1256/2013: Complaint about Spanish 10/2012 introducing a non-reimbursable court fee for appeals against administrative decisions deemed excessive in the context of small claims	Admissible: closed <ul style="list-style-type: none"> – No further investigation was needed since Spain abolished court fees for individuals on 27 February 2015 – Petition was closed based on the EC's reply
	2654/2014: Complaint against Spanish Law 10/2012 requiring the payment of a EUR 300 fee to bring an action to annul a general contractual term in violation of Directive 93/13/EEC on unfair terms in consumer contracts	Admissible: available to supporters <ul style="list-style-type: none"> – The EC's replied that there was no evidence that the court fee would make the exercise of the rights conferred by Directive 93/13/EEC impossible or excessively difficult – The EC cannot pronounce itself on the proportionate character of court fees in MS.
Legal aid		
Greece	0779/2013: Lack of compliance with Directive 2002/8/EC on legal aid in cross-border disputes	Admissible: available to supporters
	2142/2013: Access to legal aid in cross-border disputes	Admissible: available to supporters
Poland	1270/2013: Exemption from court costs and costs of legal representation	Inadmissible: no additional information
	2847/2013: Denial of access to free legal advice	Inadmissible: no additional information
Spain	0478/2014: Complaint about the amount of lawyers' fees paid to lawyers appointed by the state	Admissible: closed No additional information
	1500/2014: Complaint about the refusal of the state to provide the petitioner with a lawyer despite her lack of financial resources	Inadmissible: no additional information

Country	Subject-matter of petition	Admissibility
	0720/2013: Complaint about costs of justice and impact on procedural guarantees in criminal courts of the petitioner's lack of financial resources to pay for legal representation	Admissible: closed No additional information
Other issues preventing access to legal assistance		
Greece	0663/2016: Impact of legislation adopted in the context of austerity measures increasing the taxation of lawyers in Greece	Admissible: available to supporters – The EC replied it did not see any grounds to take action, since national authorities have competence here.
Italy	1898/2014: Allegation of discrimination based on annual turnover to practice the profession of lawyer and mandatory registration to the Italian lawyers' pension association	Admissible: closed in the light of the EC's reply – In its reply, the EC concluded that the matter did not fall within the scope of EU law and that there was no indication that the compulsory affiliation to the pension fund would infringe Articles 106 and 102 TFEU.
Romania	0023/2013: Complaint about fraud committed by lawyer in the exercise of their profession	Inadmissible: no additional information
	0602/2014: Choice of lawyer	Inadmissible: no additional information
	1859/2014: Choice of lawyer	Inadmissible: no additional information
	0262/2016 and 0263/2016: Complaint about fraud committed by lawyer in the exercise of its profession	Inadmissible: no additional information
Spain	2525/2013: Complaint about the impact of the Spanish implementation of Directive 2006/123/EC on services in the internal market on the justice sector	Admissible: closed – In its reply, the EC considered that the Spanish legal reform had a positive impact on competition and on lowering or eliminating persistent internal market barriers to access and exercise the services in question.
	2837/2013: Complaint about lawyers' fees and the practices of lawyers	Inadmissible: no additional information
ACCESS TO A FAIR TRIAL AND ENFORCEMENT OF JUDGMENTS		
<i>Procedural guarantees</i>		
Croatia	1208/2013: Violation of procedural guarantees in criminal proceedings, including violation of presumption of innocence and excessive duration of proceedings	Admissible (closed after EC's reply): – The EC's does not have the power to interfere with the justice system of MS

Country	Subject-matter of petition	Admissibility
		– Absence of EU rules in subject-matter of petition
	1331/2013: Irregularities in a case to which the petitioner was a party	Inadmissible: no additional info
	2265/2013: Impact of corruption among the judiciary on the independence and impartiality of courts	Admissible (closed): – Forward for info to EC's DG Justice responsible for Justice Scoreboard
	2458/2014: Procedural irregularities in a case to which the petitioner was a party, and long duration of proceedings before the courts	Admissible (closed): – Explain to the petitioner that the PETI is not a judicial or investigative body – Forward for info to EC's DG Justice
Greece	1661/2013: Lack of independence and impartiality of the judiciary and other procedural irregularities in a case raising corruption	Admissible (closed): – See EC's reply to Petition no. 650/2011 on the same subject
	1782/2013: Lack of independence and impartiality of the judiciary in a case against a journalist	Admissible (closed): – The EC replied that the EU Charter is only applicable to MS when implementing EU law, it is not the case here
	1603/2014: Irregularities violating procedural guarantees and failure by the Greek administration to enforce courts' decisions	Inadmissible: no additional info
Italy	1530/2013: Procedural guarantees and absence of possibility to appeal European Arrest Warrant	Admissible: closed – The EC replied that no EU legislation in relation to minimum rules on procedural rights of suspects and accused persons in criminal proceedings was in force at the time of the facts. – The EC has no competence to intervene in the day-to-day administration of the justice systems of individual MS.
	1312/2015: Allegation of corruption among the judiciary in a divorce case	Inadmissible: list 3, subject-matter seemingly not coming within the EU's field of activity
	0200/2016: Allegation of corruption among the judiciary	Admissible: closed No additional information
Poland	1270/2013: Discrimination against a German national in court proceedings and exemption from court costs and costs of legal representation	Inadmissible: no additional info

Country	Subject-matter of petition	Admissibility
	2568/2013: Alleged corruption among Polish courts	Inadmissible: no additional info
Romania	0033/2013: Alleged corruption among the judiciary in a civil case	Inadmissible: no additional info
	0185/2013: Allegation of corruption of the legal system in Romania and lengthy proceedings	Inadmissible: no additional info
	0697/2013: Absence of information on the grounds of a ruling	Admissible: closed No additional information
	0907/2013: Allegation of corruption among the judiciary	Inadmissible: no additional info
	1394/2013: Alleged abuse of authority by criminal courts	Inadmissible: no additional info
	1428/2013: Allegation of corruption among the judiciary	Inadmissible: no additional info
	2449/2013: Discrimination in the context of judicial proceedings and violation of the right to a fair trial	Inadmissible: no additional info
	2701/2013: Complaint about the Romanian Ombudsman and its lack of independence and impartiality	Admissible: closed No additional information
	0352/2014: Allegation of violation of the right to a fair trial	Inadmissible: no additional info
	0810/2014: Alleged abuses by prosecutors of the National Directorate for Combating Corruption	Inadmissible: no additional info
	1470/2014: Procedural irregularities in the context of judicial proceedings	Inadmissible: no additional info
	1854/2014: Alleged that the Romanian legal system is inefficient to fight corruption	Admissible: closed No additional information
	0860/2015: Procedural irregularities as a result of alleged corruption	Inadmissible: no additional info
	1152/2015: Allegation of corruption among the judiciary	Inadmissible: list 3, subject-matter seemingly not coming within the EU's field of activity
	1192/2015: Alleged abuse of power by the judiciary	Inadmissible: list 3, subject-matter seemingly not coming within the EU's field of activity
	0346/2016: Allegation of corruption among the judiciary	Admissible: closed No additional information
	1018/2016: Allegation of procedural irregularities during proceedings due to corruption among the judiciary	Inadmissible: no additional info
	1187/2016: Alleged misconduct and violation of citizens' rights by the national judicial authorities	Inadmissible: list 3, subject-matter seemingly not coming within the EU's field of activity

Country	Subject-matter of petition	Admissibility
Slovakia	0225/2013: Allegation of corruption in the judiciary	Inadmissible: no additional info
	0234/2013: Allegation of corruption in the judiciary	Inadmissible: no additional info
	0672/2013: Lack of procedural guarantees and judicial reasoning in a case where seizure of private property was carried out	Inadmissible: no additional info
	0632/2016: Allegation of corruption in the judiciary	Inadmissible: no additional info
	0762/2016: Allegation of violation of the presumption of innocence	Inadmissible: no additional info
Spain	0720/2013: Impact of the petitioner's lack of financial resources to pay for legal representation on procedural guarantees in criminal courts	Admissible: closed No additional information
	1721/2013: Allegation of fraud during the conduct of judicial proceedings in relation to property development	Admissible: available to supporters No additional information
	2205/2013: Complaint about judicial corruption and violation of constitutional rights in court proceedings regarding a house auction	Inadmissible: no additional info
	2465/2013: Allegation of violation of procedural guarantees (access to proper interpretation, access to information, etc.)	Inadmissible: no additional info
	0477/2014: Request for legislation on procedural guarantees for children in legal proceedings	Admissible: closed No additional information
	0820/2014: Call for the establishment of a time limit on the pre-trial phase of criminal investigations	Admissible: available to supporters
	0823/2014: Access to an interpreter in family law proceedings and allegation of lack of impartiality of the Spanish courts	Admissible: closed No additional information
	1178/2014: Lack of access of an accused person to relevant documents to prepare her criminal trial	Admissible: closed based on EC's reply – The EC acknowledged it initiated infringement proceedings against Spain. However, Spain ultimately communicated its transposing measures

Country	Subject-matter of petition	Admissibility
		<ul style="list-style-type: none"> The EC has no general competence to intervene in the day-to-day administration of the justice systems of individual MS
	0518/2015: Access to an impartial tribunal	Inadmissible: list 3, it did not appear to meet the requirement of Article 227 of the TFEU
	1233/2015: Lack of guarantee of the procedural rights of child victims of crime	Admissible: available to supporters <ul style="list-style-type: none"> The EC replied that it will initiate proceedings with Spain to enquire about the legislative measures transposing the relevant EU law and whether the alleged violations exist in a systemic way
Length of proceedings		
Croatia	2458/2014: Long duration of proceedings before the courts and procedural irregularities	Admissible (closed): <ul style="list-style-type: none"> Explain to the petitioner that the PETI is not a judicial or investigative body Forward for info to EC's DG Justice
Greece	0656/2013: Failure to deliver a judgment in a case pending since 2005 before the Greek Council of State	Inadmissible: no additional info
	0663/2016: Impact of legislation adopted in the context of austerity measures increasing the taxation of lawyers in Greece	Admissible: available to supporters
	0659/2013: Impact of backlog of complaints on duration of proceedings	Inadmissible: no additional info
Italy	0129/2013: Complaint about a ruling of the ECtHR related to excessive delays in judicial proceedings in Italy	Inadmissible: no additional info
	1590/2013: Excessive length of proceedings in an inheritance case	Admissible: closed No additional information
	1766/2013: Excessive length of proceedings	Inadmissible: no additional info
	2092/2013: Allegation of excessive delays and inefficiency of the Italian court system	Inadmissible: no additional info
Romania	0185/2013: Lengthy proceedings and alleged corruption of the Romanian legal system	Inadmissible: no additional info

Country	Subject-matter of petition	Admissibility
	0713/2013: Excessive duration of proceedings before national courts and the ECtHR	Inadmissible: no additional info
	1131/2013: Excessive duration of proceedings before national courts and the ECtHR	Inadmissible: no additional info
	1550/2013: Excessive length of criminal proceedings involving minors	Inadmissible: no additional info
	2269/2013: Excessive length of proceedings both at national and regional level	Admissible: closed No additional information
	2570/2013: Lengthy procedure regarding seizure under the communist regime	Inadmissible: no additional info
	2792/2013: Excessive length of proceedings in relation to an authorisation to engage in commercial fishing	Admissible: available to supporters <ul style="list-style-type: none"> – The EC replied that infringement proceedings against Romania have been launched for non-compliance with the principle of equal access to EU waters and resources. – No EC's position on the length of the legal proceedings
	1146/2014: Delayed enforcement of ECtHR ruling	Inadmissible: no additional information
Slovakia	0639/2014: Complaint about lengthy proceedings in child custody case	Admissible: available to supporters <ul style="list-style-type: none"> – The EC replied that it would focus on the upcoming revision of the Brussels IIa Regulation
	1006/2015: Delay in enforcing foreign judgment in child custody case	Admissible: available to supporters <ul style="list-style-type: none"> – The EC replied that it took the petition into account during the evaluation of the Brussels IIa Regulation and the drafting of the recast proposal – Petitioner should pursue his case before the national courts as the EC cannot intervene in pending proceedings
Spain	0820/2014: Call for the establishment of a time limit on the pre-trial phase of criminal investigations	Admissible: available to supporters
Enforcement of judgments		
Croatia	0841/2014: Failure by a lower court to comply with rulings of the	Inadmissible: Subject-matter outside EU's field of activity

Country	Subject-matter of petition	Admissibility
	Supreme Court and the Constitutional Court of Croatia	
Greece	0082/2013: Complaint about the Greek government's refusal to enforce court rulings in general and reference to the Second economic adjustment programme for Greece	Admissible: available to supporters <ul style="list-style-type: none"> – The EC replied the fundamental rights of citizens are being respected in the context of the programme – The Greek government has the responsibility for the implementation of the economic policy conditions attached to the programme
	0949/2013: Failure to respect CJEU judgments	Admissible (closed): <ul style="list-style-type: none"> – The EC held that the CJEU's interpretation was in favour of Greece – The EC rejected the allegations of the petitioners regarding the EC's behaviour
	1603/2014: Failure by the Greek administration to enforce courts' decisions and irregularities violating procedural guarantees	Inadmissible: no additional information
	1990/2014: Failure by the Greek courts to comply with a ruling of the ECtHR	Admissible (closed): no additional information
	2167/2014: Failure by the Greek administration to comply with rulings of civil courts and the ECtHR	Inadmissible: no additional information
Poland	0729/2016: Failure to implement a court ruling within a reasonable time	Inadmissible: list 3, subject-matter seemingly not coming within the EU's field of activity
Romania	1146/2014: Delayed enforcement of ECtHR ruling	Admissible (closed): no additional information
	0125/2016: Enforcement of national rulings following a CJEU ruling	Inadmissible: no additional information
	0188/2016: Failure to enforce ECtHR judgment	Inadmissible: no additional information
	0314/2017: Non-application of ECtHR ruling	Inadmissible: list 3, Lack of substantial elements enabling the identification of the Union's fields of activity
	0420/2017: Failure to comply with a court ruling	Inadmissible: list, incoherent reasoning with an unclear link to the Union's fields of activity (List 3)
Spain	1500/2013: Complaint about the functioning of a thermal power station despite the existence of three judgments declaring it illegal	Admissible: closed <ul style="list-style-type: none"> – The EC replied that further action can be considered once the national court process has

Country	Subject-matter of petition	Admissibility
		<p>been concluded and if evidence indicates a breach of EU law</p> <ul style="list-style-type: none"> – The EC will not give further follow-up to this petition
	0444/2014 and 0468/2014: Complaint about the Spanish state's failure to comply with a court ruling	Inadmissible: no additional information
	1523/2014: Complaint about the enforcement by Spanish courts of a German court ruling regarding the application of Regulation 861/2007 on European Small Claims Procedure	<p>Admissible: available to supporters</p> <ul style="list-style-type: none"> – The EC replied that documents and information from the petitioner do not substantiate the allegations about an alleged infringement of Regulation 861/2007 by the Spanish court. – The EC cannot take any action in this case

ANNEX II: LIST OF STAKEHOLDERS INTERVIEWED FOR THE STUDY⁶¹⁴

Country	Position
Croatia	Law Professor at the Faculty of Law, University of Zagreb
	Lawyer at the NGO Croatian Legal Centre (<i>Hrvatski pravni centar</i>)
	Legal Affairs Advisor to the Ombudswoman
Greece	<ul style="list-style-type: none"> • Professor at National Public Administration University • Attorney at the Supreme Court of Athens • Partner and Member of the Legal Committee of the NGO ECOCITY
	<ul style="list-style-type: none"> • Honorary President of the Council of State • President of the Hellenic Data Protection Authority • Former President of the Association of Greek Judges for Democracy and Liberties
	<ul style="list-style-type: none"> • President of two NGOs in the field of environmental and urban planning law
	<ul style="list-style-type: none"> • Greek Ombudsman (Head) • Attorney at the Supreme Court
Italy	Secretary General of the National Union of the Justices of the Peace
	Head of the Customer Protection and Anti-Money Laundering Service of the Bank of Italy
Latvia	Anonymous plaintiff
	Attorney at Law
	Head of Division, Division of Case law and Research at the Supreme Court of the Republic of Latvia
Poland	Judge (anonymity required in view of current political context)
	Lawyer (anonymity required in view of current political context)
Romania	Judge and President of the Bucharest Tribunal
Slovakia	Director of the Centre for Legal Aid
	Senior Lawyer, VIA IURIS
	Attorney at Law
	Attorney at Law
Spain	<ul style="list-style-type: none"> • Judge • Representative of the biggest judges' association in the country (<i>Asociación Profesional de la Magistratura</i>)
	<ul style="list-style-type: none"> • Attorney at Law • Vice-president of the General Council of Spanish Lawyers (<i>Consejo General de la Abogacía Española</i>)
EU	European Commission, DG Justice

⁶¹⁴ Some stakeholders required anonymity, therefore only the role of interviewed stakeholders is presented here.

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

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