

### 'Justice in Transition: A Time of Peril and Progress in Central and Eastern Europe'

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The Conference was opened by CEELI Executive Director **Christopher Lehmann**, who gave an overview of past topics that are still relevant in today's discussion of the conference theme:

- Attacks on judicial independence
- Need for judges to have a direct and important role in the administration of their own courts
- Need to build public trust in the judiciary and maintain transparency (communication by judges)
- Need to incorporate international standards
- Guidance of remote justice and digital platforms (tools, guidelines, etc.)

The event was moderated by **Judge John Tunheim**, who managed the two discussion panels as well as the 3-minute participant intervention slots.

### First Panel

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*Addressing the theme of Judicial independence – focus on Poland as a bell-weather for governmental attacks on the judiciary and the rule of law.*

**Sabine Donner** from the [Bertelsmann Transformation Index](#) discussed patterns of democratic backsliding in various countries of Central and Eastern Europe, like Poland and Hungary. Often democratic institutions formally stay in place, but their substance is hollowed out and undermined by governments that are:

- Systematically weakening judicial oversight and independence
- Depriving watchdog-institutions of their functions and/or politicizing them
- Streamlining public opinion by influencing media and challenging the independence of critical media
- Polarizing society and restricting civic space, marginalizing political opponents

For more specifics on the BTI assessment of East-Central and Southeast Europe or individual country reports, see [here](#).

**Judge Darius Mazur** from the Regional Court in Krakow gave an overview of conditions in Poland since the Law and Justice party won the parliamentary election in 2015, an event which kick-started a “pseudo-reform” of the judicial system in which the judiciary is designed to only support politicians instead of acting independently. Over the last five years, attacks against the judiciary (and individual judges) have intensified with: disciplinary proceedings, criminal proceedings, administrative repressions (unjustified transfers between divisions and regions, etc.), and black PR campaigns by state-owned media.

**Lukasz Bojarksi** continued the conversation on Poland by discussing judicial resistance to the politicization of the judiciary. While the Polish government has advanced its campaign by packing the courts, refusing to publish verdicts of the Constitutional Court, and taking over such organs as the Constitutional Tribunal, the National Council of the Judiciary, prosecution offices, and the public media... the common courts, civil society organizations, and part of the country's private media outlets still remain independent.

The **'Legal Complex'** – comprised of CSOs, legal professionals, legal academia, and the international community – has shown solidarity in its pushback against the takeover of the judiciary's independence. The widespread campaigns by judges (and Judges Associations), both in and out of the court, promote the concept of balance in the judiciary, achieved through independence, accountability, and efficiency. The goals of the judicial resistance are summed up in the slogan "3xW" (Wolne Sądy, Wolne Wybory, Wolna Polska) – Free Courts, Free Elections, Free Poland.

**Other members of the Judicial Exchange Network also spoke at the Conference during 3-minute intervention slots, articulating similar issues in Albania and Lithuania.**

### Albania

There is a lack of public trust in the judiciary – which is blamed for corruption and lack of independence after 25 years of political intervention. In the last few years, a system has been implemented to assess judicial candidates' proficiency, background checks (integrity) and assets declaration. However, restarting the judiciary has increased stress and workloads on those judges able to go through the vetting process, while currently leaving the Supreme Court and Constitutional Court not fully benched. It will take time to clean up the system and develop a network of good judges with high proficiency and integrity to become role models for a new judiciary.

### Lithuania

There is trouble ensuring the independence of individual judges given the powerful role of Court Presidents—who have the opportunity to influence every-day work life of judges. Furthermore, there is an unequal distribution of workloads due to the random case assignment system (not taking into account complexity of proceedings and existing tasks). Additionally, ineffective staff and high turnover rates of clerks leave judges overburdened. Lastly, when it comes to candidate selection for judges, the power of Court Presidents is once again elevated because they are able to speak first at commissions and leave lasting impressions on the process. Loyalty versus independence is a major factor, and the Court Presidents decide on their own administrative powers, hear complaints, inspect judges' performances, initiate disciplinary proceedings, and determine the organization of the court – a system which threatens the rule of law.

## Second Panel

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*'Digital Justice' & issues with the implementation of digital solutions for online hearings - risks and challenges.*

**Program Manager Freda Grealy** started off the second panel by presenting results from a 2021 CEELI study *'Digitalization and the Courts in Central and Eastern Europe'*. 70 respondents from across 19 countries participated – primarily members of CEELI's Judicial Exchange Network and recent attendees of its Digital Justice Course. The survey examined the digitalization and tech disparity in regards to legislative frameworks, equipment in courts, accessibility, capacity to be public, staffing/support available, and security aspects.

Other useful CEELI Institute publications and resources are the [‘Practical Guidelines for Remote Judging’](#) and the [‘Practical Guidelines on Use of Social Media by Judges’](#).

**Judge Jose Matos** of Portugal addressed the specific need for checks and balances by the judiciary during the pandemic to ensure that human rights of citizens are protected – supervising the enforcement of national emergency laws to ensure safeguards during crisis. Digital platforms and solutions have a place in the following situations: e-filing, small civil claims, video-conferencing between judges, virtual meetings between lawyers, or even remote conferences between judges and lawyers/bailiffs – when there is no production of evidence. Additional caution is suggested when witnesses, experts, and parties are testifying at the level of fact-finding. Defendants in remote criminal proceedings should be subject to case-by-case assessments to ensure nothing impairs their ability to participate and have their day in court.

**Judge Ksenija Makintan Flack** of the Commercial Court in Varaždin (Croatia) acknowledged that there are everyday perils that remote judging brings to the judiciary, but in times of pandemic and crisis, it is essential to have a tool to provide legal protection to the entire society and preserve the rule of law. Remote hearings can provide benefits like lowered costs of proceedings and saved travel time, but there are challenges associated with technology access—since not all countries have the technology to go virtual, meaning platforms need to be available to all of those who have to use it (not just the court and the judge, but also participants like the parties and attorneys). Technology also comes with connection difficulty, both in terms of the technology and participant engagement. Extensive proceedings can lead to exhaustion and a lack of concentration and motivation for those involved, imperiling the principles of a fair trial. Judges play a major role in understanding how to operate the virtual courtroom and making participants feel more at ease with the platform.

*To hear more on the topic of digital justice, stay tuned for the second series of CEELI Institute's Podcasts.*

**A second round of 3-minute interventions involved speakers from the UK and the US, sharing their own experiences with the road to reform and digitalization.**

### The United Kingdom

There has been an ongoing massive project in digitalization, but the onset of the pandemic meant proceeding with the existing digital structure. Digitalization comes with the advantages of allowing remote overseas witnesses, fitting more hearings in a day (without travel expenses), and lower costs overall. Conversely, the courtroom can be harder to manage – from seeing who is influencing witnesses, to tiring proceedings, to disadvantaging lower courts with fewer resources. Now in the early post-pandemic phase, the question is what to keep and what to discharge of from the system, developing a new normal with blended situations.

### The United States

There is a shifted focus to conducting civil cases remotely – discovery disputes, arguments on court motions, and even mediation. While technology was in place previously, the preference before Covid had still been for in-person proceedings, but there is now a transition toward virtual rule. In the criminal context, there are greater concerns for having a balanced approach in terms of when a defendant’s need for in-person proceedings can be accommodated virtually. When Covid struck, the National Emergency Act passed to allow criminal proceedings to be conducted remotely (including preliminary matters and testimony in trial settings of witnesses who were at-risk), but that will soon expire.

**Before ending the conference, Judge Tunheim asked Judges Mazur and Matos about the role of Judges Associations in protecting judicial independence and institutions.**

**Judge Mazur** remarked that without judicial associations, the battle for protecting judicial independence in Poland would have been lost. The associations were the factor that organized judges in judicial resistance—acting via the media, holding meetings of independent judges, providing support in defense of judges charged with disciplinary proceedings, and gathering in large numbers to demonstrate publicly.

**Judge Matos**, as President of the European Association of Judges, commented on the mundialization of judges – how similar and related all of the judges were in their concerns. He also suggested that protecting judicial independence and institutions required closer connections with civil society – NGOs and academia –and, most importantly, bringing in normal citizens to the mix because rule of law impacts and concerns everyone.

## Closing Remarks

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**Judge Tunheim** made the remark that ‘digitalization is here to stay... but ensure accessibility and transparency to truly achieve justice.’

Similar recommendations and lessons emerged among **panelists and intervention commentators**:

- Create indexes that give evidence-based assessments of the rule of law
- Acknowledge the important role of judges and Judges' Associations to fight back and understand the tools of oppression used in many places – most importantly, supporting colleagues
- Develop a manual for rule of law defenders
- Recognize the great benefits of digitalization, e-filing, remote hearings, digital justice
- Continue producing and distributing CEELI Institute's guidelines
- Hold future conferences to share experience from remote hearings