



CCJE-BU(2021)1

Strasbourg, 21 January 2021

## CONSULTATIVE COUNCIL OF EUROPEAN JUDGES (CCJE)

Questionnaire for the preparation of the CCJE Opinion No. 24 (2021):

**“Evolution of the Councils for the Judiciary  
and their role for independent and impartial judicial systems”**

**Answers - AUSTRIA**

### General

1. Is there a Council for the Judiciary in your judicial system?	<input type="radio"/> yes <input checked="" type="radio"/> no
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2. What is the exact title/denomination of this body?  
**There is no Council for the Judiciary in Austria.**

3. This question should be answered by members from both legal systems with and without a Council for the Judiciary: Which department or body - for example the Council for the Judiciary (often denominated as High Judicial Council (HJC)) or Ministry of Justice (MoJ) - is responsible for or is in position to perform the following tasks? More than one institution might be involved, so more than one box can be ticked.

Defending and fostering the independence of judges and the judiciary/the rule of law	<p>O HJC  <b>x MoJ</b>  O Court Presidents  O bodies within individual courts  O Judicial Administration Board  <b>x Association of Judges</b>  <b>x other, please specify: media, the so called “fourth power”, are mostly helpful to raise awareness on issues of independence, but are sometimes themselves under pressure</b></p>
Defending judges/the judiciary against public attacks	<p>O HJC  <b>x MoJ (sometimes, much depends on the person and political issues)</b>  <b>x Court Presidents (usually through a media spokesperson)</b>  O bodies within individual courts  O Judicial Administration Board  <b>x Association of Judges</b>  <b>x other, please specify: media</b></p>
Administration of the judiciary	<p>O HJC  <b>x MoJ</b>  O Court Presidents  <b>x bodies within individual courts</b>  O Judicial Administration Board  O Association of Judges  <b>x other, please specify: heads of administration, i.e. Minister of Finance (for the Federal Fiscal Court) and heads of governments of provinces (for admin. courts of the <i>Länder</i>)</b></p>
Selection of new judges	<p>O HJC  <b>x MoJ</b>  O Parliament  O Court Presidents  <b>x bodies within individual courts (issuing only non-binding proposals in general)</b>  O Judicial Administration Board  <b>x A special Judicial Appointment Body</b>  <b>x other, please specify: general assembly at the Supreme Administrative Court, issuing <u>binding</u> proposals to the government</b></p>

Selection of judges for promotion	<input type="radio"/> HJC <input checked="" type="radio"/> <b>MoJ</b> <input type="radio"/> Parliament <input type="radio"/> Court Presidents <input checked="" type="radio"/> <b>bodies within individual courts (non-binding prop.)</b> <input type="radio"/> Judicial Administration Board <input type="radio"/> A special Judicial Appointment Body <input type="radio"/> other, please specify
Evaluation of judges	<input type="radio"/> HJC <input type="radio"/> MoJ <input type="radio"/> Parliament <input type="radio"/> Court Presidents <input checked="" type="radio"/> <b>bodies within individual courts</b> <input type="radio"/> Judicial Administration Board <input type="radio"/> Association of Judges <input type="radio"/> other, please specify
Evaluation of court performance	<input type="radio"/> HJC <input checked="" type="radio"/> <b>MoJ</b> <input type="radio"/> Parliament <input checked="" type="radio"/> <b>Court Presidents</b> <input type="radio"/> bodies within individual courts <input type="radio"/> Judicial Administration Board <input type="radio"/> Association of Judges <input type="radio"/> other, please specify
Conducting disciplinary procedures	<input type="radio"/> HJC <input type="radio"/> MoJ <input type="radio"/> Parliament <input type="radio"/> Court Presidents <input checked="" type="radio"/> <b>bodies within individual courts</b> <input type="radio"/> Judicial Administration Board <input type="radio"/> Association of Judges <input checked="" type="radio"/> <b>other, please specify:</b> <ul style="list-style-type: none"> <li>• <b>disciplinary courts</b></li> <li>• <b>disciplin. competences partly allocated at other admin. courts</b></li> </ul>
Drafting and enforcing a code of ethics	<input type="radio"/> HJC <input checked="" type="radio"/> <b>MoJ</b> <input type="radio"/> Parliament <input type="radio"/> Court Presidents <input type="radio"/> bodies within individual courts <input type="radio"/> Judicial Administration Board <input checked="" type="radio"/> <b>Association of Judges</b> <input type="radio"/> other, please specify

Public relations/media coverage for the judiciary, or individual courts	<input type="radio"/> HJC <input checked="" type="radio"/> <b>MoJ</b> <input type="radio"/> Parliament <input checked="" type="radio"/> <b>Court Presidents (special spokes-persons selected/appointed by court presidents)</b> <input type="radio"/> bodies within individual courts <input type="radio"/> Judicial Administration Board <input checked="" type="radio"/> <b>Association of Judges</b> <input type="radio"/> other, please specify
Providing input on legislative projects	<input type="radio"/> HJC <input checked="" type="radio"/> <b>MoJ</b> <input type="radio"/> Court Presidents <input type="radio"/> bodies within individual courts <input type="radio"/> Judicial Administration Board <input checked="" type="radio"/> <b>Association of Judges</b> <input checked="" type="radio"/> <b>other, please specify: The courts have their own chambers that can issue opinions on draft laws.</b>
Training of judges	<input type="radio"/> HJC <input checked="" type="radio"/> <b>MoJ</b> <input checked="" type="radio"/> <b>Court Presidents</b> <input type="radio"/> bodies within individual courts <input type="radio"/> Judicial Administration Board <input checked="" type="radio"/> <b>Association of Judges</b> <input type="radio"/> other, please specify
IT, including digitalisation of the judiciary and online hearings	<input type="radio"/> HJC <input checked="" type="radio"/> <b>MoJ</b> <input type="radio"/> Parliament <input checked="" type="radio"/> <b>Court Presidents</b> <input type="radio"/> bodies within individual courts <input type="radio"/> Judicial Administration Board <input type="radio"/> other, please specify
The allocation of financial resources to the judiciary including individual courts	<input type="radio"/> HJC <input checked="" type="radio"/> <b>MoJ (by orders)</b> <input checked="" type="radio"/> <b>Parliament (by law)</b> <input checked="" type="radio"/> <b>Court Presidents</b> <input type="radio"/> bodies within individual courts <input type="radio"/> Judicial Administration Board <input type="radio"/> other, please specify
Salaries of judges	<input type="radio"/> HJC <input type="radio"/> MoJ <input checked="" type="radio"/> <b>Parliament (by law)</b> <input type="radio"/> Court Presidents <input type="radio"/> Bodies within individual courts <input type="radio"/> Judicial Administration Board <input checked="" type="radio"/> <b>other, please specify: extraordinary promotions by some governments of the Länder</b>

- If there is a Council for the Judiciary in your country, has it other duties not mentioned here? Is it in a position to appoint or remove presidents of courts to and from the office? Is there additional information that would be useful to understand the role of the Council for the Judiciary within your country?

**There is no Council for the Judiciary in Austria.**

- If there is no Council for the Judiciary in your country, are there other important institutions, and formal or informal rules which are necessary to understand how the judiciary functions in your country?

**Answer for the admin. judiciary in Austria:**

The administration of (admin.) courts is exercised by the court presidents subordinated to the MoJ (regarding the Federal Admin. Court), the MoF (regarding the Federal Fiscal Court) and most governments of the provinces (Länder) in a strong 'executivistic system'; only in two provinces the presidents of admin. courts of first tier are not submitted to orders, but are still dependent from budget and personnel resources. Also in these two provinces these presidents are obliged to report "on all matters" to the government.

The President of the Supreme Administrative Court is (as well as the President of the Constitutional Court) independent from the government.

The administration of courts is based on law, without participation of judicial self-administrative bodies, except the above mentioned proposals for appointment (and promotion) of judges, the allocation (distributions) of cases and the evaluation of judges by bodies within individual courts, comprising a majority of elected members and members ex officio (president and deputy president).

In the administrative judiciary there is no regular and institutionalized participation of judges' associations.

As far as ordinary jurisdiction is concerned, personnel panels are involved in career-relevant decisions concerning judges, which are immunised against external, especially political, influences due to their composition.

The involvement of the Judges' Association in important changes to the service, in particular also in the organisation of the selection procedure, is provided for by law.

## **Legal basis**

(Points not relevant for Austria are skipped)

25. In case your judicial system does not have one (Council for the Judiciary), is there a discussion to introduce a Council for the Judiciary? If so, what are the arguments made in favor and against the introduction of a Council for the Judiciary. Do you think that there are challenges in your judicial system a Council for the Judiciary might help to solve? Is it likely that such a Council will be introduced?

Unfortunately: no!

The principle of separation of powers is only incompletely implemented in Austria. Without a doubt, judges can decide their cases independently and uninfluenced. But the structural independence of the judiciary is strong. The entire administration of justice is essentially determined by the federal minister - i.e. a member of the executive. The dependence on resources is great. In the appointment of judges entrusted to the head of state, the government has a decisive role. The Austrian justice system functions excellently despite these structural deficits. Therefore, the politicians do not see any need for change.

In 2010, there was a draft that provided for the creation of a Council of the Judiciary with budgetary sovereignty; there was also an opening clause. This project also failed. One of the main arguments is the federal minister's accountability to parliament.

For decades associations of judges have demanded to reduce political influence on courts (as well as on the public prosecution relevant for the effective criminal justice) by establishing a council for the judiciary, but also by minor steps (e.g. by a reform of the above mentioned self-administrative bodies within courts).

This demand was strongly emphasized during the process of the establishment of the (new) administrative judiciary (in 2014) as the political influence of the executive branch (government) on administrative courts could (and sometimes does) pervert the course of justice! The Austrian Constitutional Court gave examples for that: in its ruling G 19/99 the Court held, that the influence of the executive branch (administration) on the Administrative Court can reverse the control of the courts to one of the administration over the court. As a consequence the Court quashed the subordination of the President of the (former) Administrative Court to the Chancellor in matter of court-administration.

The Austrian federal system culminates in an administrative judicial structure of 9 partly different administrative courts of the provinces plus one fiscal plus one (general) administrative court on the federal level with eleven different organizations and ten different regulations on the judicial service<sup>1</sup>. The general provisions in the Federal Constitution on

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<sup>1</sup> A lack of sufficient legislation was also indirectly criticized by GRECO: the Expert group of the Council of Europe, Group of States against Corruption, has harshly criticized the intransparent appointment procedures in its Evaluation Report on Austria of February 13th 2017 and its Fourth Evaluation Round of July 17th 2019.

the organization of the administrative courts leave too much room to the legislation and to the governments of the provinces and (on the federal level) to the ministers responsible.

An establishment of a council for the judiciary (covering all branches) would help unifying the judiciary and protecting it against undue influence.

Politicians of nearly all political parties (Conservative Party/ÖVP, Social democratic Party, Freedom Party/FPÖ and Greens) have rejected these demands arguing that self-administration of the judiciary has no sufficient democratic legitimation and no political control (by ministers and governments being responsible vis a vis the parliament); only the NEOS (a relative young party) support this idea, but there is no chance of a constitutional majority for necessary amendments.

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See also the opinion of the CCJE, CCJE-BU(2019)3, Opinion of the CCJE Bureau following a request by the Association of European Administrative Judges (AEAJ) as regards the legal setting of the position of the president (vice-president) of the Administrative Court of Vienna, Austria, of 29.03.2019, and the Rule of Law Report 2020 of the European Commission on Austria, SWD(2020) 319 final