STRENGTHENING JUDICIAL INDEPENDENCE: career and training of judges

Selection and appointment based on objective criteria

Venice Commission standards

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Venice Commission Standards
Main Sources

1. Venice Commission, CDL-AD(2007)028, Report on Judicial Appointments;
2. Venice Commission, CDL-AD(2010)004, Report on the independence of the judicial system - Part I: The independence of judges;
3. Venice Commission, CDL-AD(2016)007, Rule of Law Checklist;
4. Venice Commission, CDL-AD(2025)002, The Updated Rule of Law Checklist;
5. Country - Specific Opinions.

Rule of Law Benchmark - Access to Justice, Judicial Independence and Appointment of Judges

*"**102.** Judges cannot uphold the Rule of Law if domestic law deprives them of adequate guarantees on matters directly touching upon their independence and impartiality. Some of the most common measures which may undermine judicial independence include changing judicial appointment procedures, replacing judges or failing to appoint or vote on nominees. Moreover, there are clear links between the guarantee of judicial independence, the integrity of the judicial appointment process and the autonomy of any national body with responsibility for safeguarding the independence of the courts and judges […]".*

Venice Commission, CDL-AD(2025)002, The Updated Rule of Law Checklist

No Single Model, but Common Guarantees

"***44.*** *In Europe, a variety of different systems for judicial appointments exist and that there is not a single model that would apply to all countries."*

Venice Commission, CDL-AD(2007)028, Report on Judicial Appointments

"***32.*** *To sum up, it is the Venice Commission's view that it is an appropriate method for guaranteeing for the independence of the judiciary that an independent judicial council have decisive influence on decisions on the appointment and career of judges. Owing to the richness of legal culture in Europe, which is precious and should be safeguarded, there is no single model which applies to all countries. While respecting this variety of legal systems, the Venice Commission recommends that states which have not yet done so consider the establishment of an independent judicial council or similar body."*

Venice Commission, CDL-AD(2010)004, Report on the independence of the judicial system – Part I: The independence of judges

No Single Model, but Common Guarantees

*"**44.** As the Commission has previously observed, there is a great variety in the method by which judges are appointed in domestic legal orders within the European legal systems. No single model for the appointment of judges exists which could ideally comply with the principle of the separation of powers and secure full independence of the judiciary. All systems should strive for a depoliticisation of judicial appointments and promote appointments according to the objective merits of the candidates. Undue influence and/or unfettered discretion of the other State powers in judicial appointments should be avoided. Conversely, involving only judges carries the risk of raising a perception of self-protection, self-interest and cronyism. Moreover, Article 6 ECHR not only protects the independence of the individual judges but requires a system of judicial appointments that excludes arbitrary appointments."*

Venice Commission, CDL-AD(2026)003, Finland - Opinion on the proposed amendments to the Constitution of Finland regarding the independence of the judiciary

From Merit to Objective Criteria

*"**27.** The principle that all decisions concerning appointment and the professional career of judges should be based on merit, applying objective criteria within the framework of the law is indisputable."*

*"**24.** Merit is not solely a matter of legal knowledge analytical skills or academic excellence. It also should include matters of character, judgment, accessibility, communication skills, efficiency to produce judgements, etc."*

***"25.** It is essential that a judge have a sense of justice and a sense of fairness. However, in practice, it can be difficult to assess these criteria. Transparent procedures and a coherent practice are required when they are applied."*

Venice Commission, CDL-AD(2010)004, Report on the independence of the judicial system – Part I: The independence of judges

The Updated Rule of Law Checklist. Merit, Objective Criteria and Procedural Guarantees

*"**104.** The term "independence" characterises both a state of mind which denotes a judge's imperviousness to external pressure as a manifestation of professional and moral integrity, and a set of institutional and operational arrangements – involving both a procedure by which judges can be appointed in a manner that ensures their independence and selection criteria based on merit – which must provide safeguards against undue influence and/or unfettered discretion of the other state powers, both at the initial stage of the appointment of a judge and during the performance of his or her duties."*

Venice Commission, CDL-AD(2025)002, The Updated Rule of Law Checklist

The Updated Rule of Law Checklist. Merit, Objective Criteria and Procedural Guarantees

*"**105.** Concerning the manner of appointment and dismissal of judges, it is necessary to have a holistic view and to take into account the composition, mandate, and the method of appointment of members of a Judicial Council or equivalent body with responsibility for such matters. Independence of the Council or equivalent body must be guaranteed, as has been specified in recent jurisprudence of both the ECtHR and CJEU. Decisions relating to judicial careers should be made by independent bodies, either directly or based on their recommendations. Judges should be appointed and promoted based on their ability, integrity and experience, following a fair assessment of their merits as established by law. The risks of politicisation through the involvement of other government bodies, and of self-interest and corporatism through the exclusive involvement of judges, must be avoided."*

Venice Commission, CDL-AD(2025)002, The Updated Rule of Law Checklist

The Updated Rule of Law Checklist
The Benchmark for Judicial Appointments

a) "*Is the appointment and promotion of judges decided on the basis of merit, with use of objective criteria focusing on ability, qualifications, experience and integrity, in a transparent and independent procedure*?"

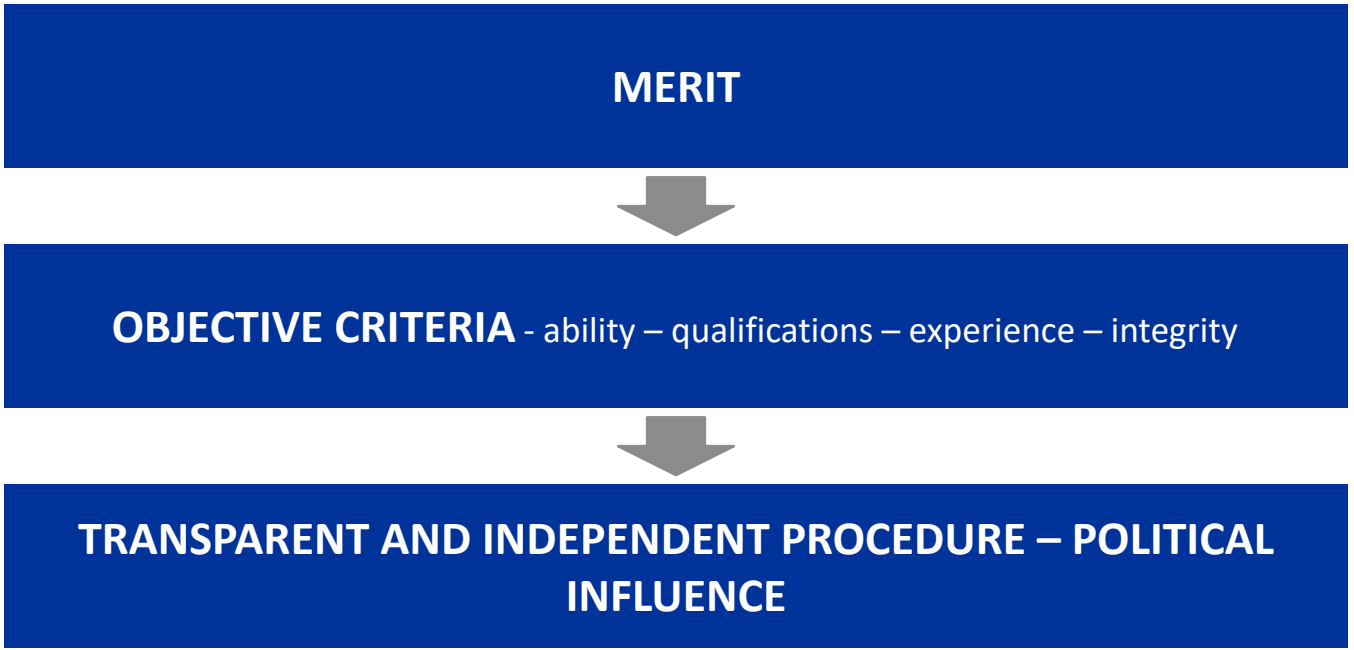
b) "*Is there an independent Judicial Council or other equivalent body with a balanced composition, with at least half being judges elected by their peers, which is responsible for questions of appointment, promotion, discipline and removal or other equivalent body?*"

c) "*Are there sufficient safeguards for the independence of any such body, particularly protecting it against political influence*?"

d) "*If there is no Judicial Council, is there another system with adequate involvement of the judiciary in place that is embedded in the legal culture and effectively guarantees independence*?"

Venice Commission, CDL-AD(2025)002, The Updated Rule of Law Checklist

A synthesis


MERIT
OBJECTIVE CRITERIA - ability – qualifications – experience – integrity
TRANSPARENT AND INDEPENDENT PROCEDURE – POLITICAL INFLUENCE

The Standard in Practice - Opinions

Merit vs political considerations

"There exists a great variety in the method by which judges are appointed in domestic legal orders. [...] No single 'model' exists which could ideally comply with the principle of the separation of powers and secure full independence of the judiciary. [...] But it is fair to say that international standards are more in favour of the extensive depoliticisation of the process. Political considerations should not prevail over the objective merits of a candidate. Article 6 ECHR protects not only the independence of the individual judges but requires a system of judicial appointments that excludes arbitrary appointments."

Venice Commission, CDL-AD(2021)043, Opinion on three bills reforming the judiciary of Cyprus, §33

The Standard in Practice - Opinions

Criteria must be sufficiently precise

"[…] The Commission considers that a "good biography" should not be a separate eligibility criterion. Furthermore, it is too vague to be used as an objective assessment of judicial candidates. Phrased in the very broad manner it currently is, the provision risks being applied arbitrarily. It is, therefore, necessary to identify criteria based on which the integrity of a candidate could be assessed."

Venice Commission, CDL-AD(2024)006, Opinion on the draft law on the Administrative Judiciary of Lebanon, §54

The Standard in Practice - Opinions

Criteria must govern discretion

"In Europe, a variety of different systems for judicial appointments exist and even the proposal for appointment by a single individual, such as the President of the NJO (National Judicial Office), is in principle compatible with the provisions of the ECHR. It seems that the procedure offers guarantees that the appointment of judges is based on merit, applying objective criteria, although the set of substantive and procedural rules do not contain sufficient safeguards in order to exclude that improper considerations play a role. Doubts arise notably as concerns Section 18.3 ALSRJ, which states that the 'President of NJO may decide to deviate from the shortlist and propose the second or third candidate on the list to fill the post'. No conditions nor criteria are referred to under which the President of the NJO may deviate from the order of the shortlist. […] The decision cannot be appealed to a court. This means that there is no way to check this kind of use of the discretionary power. While there are other legal systems in Europe that do not provide for judicial review of decisions on judicial appointments, in the specific context of a system, where a largely non-accountable person exercises wide discretionary powers, such review appears necessary. In order to enable the courts to review these decisions, the law would have to indicate the criteria to be used by the President of the NJO."

Venice Commission, CDL-AD(2012)001, Opinion on Act CLXII of 2011 on the Legal Status and Remuneration of Judges and Act CLXI of 2011 on the Organisation and Administration of Courts of Hungary, §§57 and 58

The Standard in Practice - Opinions

Criteria must actually determine the decision.

"It is also important that the final decision of the HCoJ on which candidates to nominate for Parliament's consideration [for selection of judges of the Supreme Court], be based exclusively on how each candidate has scored on the different evaluation criteria applied, not on the result of a secret ballot among the HCoJ members."

Venice Commission, CDL-AD(2019)009, Urgent Opinion on the selection and appointment of Supreme Court judges of Georgia, §§51-52

The Standard in Practice - Opinions

Objectivity does not mean mechanical selection

"It is positive that the Concept Paper proposes to introduce more "objective and differentiated" criteria for the selection of judges. Rating of candidates on the basis of their graduation exam in the Academy of Justice or the qualification exam may contribute to this goal. It is important, however, to specify the respective weight of different elements ("objective" and "subjective") in the final decision."

Venice Commission, CDL-AD(2018)032, Opinion on the Concept Paper on the reform of the High Judicial Council of Kazakhstan, §66

The Standard in Practice - Opinions

Transparency in judicial appointments as a safeguard of public trust

"55. The Venice Commission notes that, even if vacancies at the Supreme Court and the Supreme Administrative Court are publicly announced there is no open competition where the results could be reviewed by courts. This is understood as an essential feature of the Finnish system relying on the well-informed decision-making procedure within the two highest courts and the specific legal culture. While the Venice Commission learned that the Finnish Supreme Courts enjoy a high level of public trust, it would nonetheless emphasise that transparency in the selection and appointment of judges may make the judiciary more resilient with regard to public trust if, in the future, the political context and the views on the judiciary would become polarized."

Venice Commission, CDL-AD(2026)003, Finland - Opinion on the proposed amendments to the Constitution of Finland regarding the independence of the judiciary

Thank you for your attention

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