



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 - FINLAND

*Please in your answers do not send extracts of your legislation
but describe the situation in brief and concise manner.*

General

1. Is there a Council for the Judiciary in your judicial system?	X yes O no
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2. What is the exact title/denomination of this body?

Tuomioistuinvirasto (in English: National Courts Administration).

The National Courts Administration (below “NCA”) is an independent central agency that serves the entire court system. NCA falls within the administrative branch of the Ministry of Justice. It is led by a Board of Directors of eight members of whom the majority are judges.

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	<input checked="" type="checkbox"/> HJC <input checked="" type="checkbox"/> MoJ <input checked="" type="checkbox"/> Court Presidents <input type="checkbox"/> bodies within individual courts <input type="checkbox"/> Judicial Administration Board <input checked="" type="checkbox"/> Association of Judges <input checked="" type="checkbox"/> other, please specify The Association of Finnish Lawyers
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Defending judges/the judiciary against public attacks	<p>X HJC X MoJ X Court Presidents O bodies within individual courts O Judicial Administration Board X Association of Judges X other, please specify The Association of Finnish Lawyers</p>
Administration of the judiciary	<p>X HJC X MoJ (mostly indirectly, e.g. through decisions relating to court network and preparation of the State Budget; in some ways directly, e.g. through decisions on the court premises) X Court Presidents X bodies within individual courts (mostly in consultative role) O Judicial Administration Board O Association of Judges O other, please specify</p>
Selection of new judges	<p>X HJC (tasks of technical nature only) X MoJ (formal proposals for appointments of permanent judges) O Parliament X Court Presidents (appointments of judges for a fixed term up to one year) X bodies within individual courts (consultative role or official statements to be considered in the appointments) O Judicial Administration Board X A special Judicial Appointment Body = Judicial Appointments Board (reasoned proposals for all appointments of permanent judges other than those of the supreme courts) X other, please specify The Supreme Court and the Supreme Administrative Court (proposals for appointments of the justices of the supreme courts, official statements to be considered in the appointments of certain court presidents, appointments of judges for a fixed term of more than one year) The President of the Republic (formal appointments of permanent judges)</p>
Selection of judges for promotion	<p>X HJC X MoJ O Parliament X Court Presidents X bodies within individual courts O Judicial Administration Board X A special Judicial Appointment Body (= Judicial Appointments Board) X other, please specify</p>

	<p>The Supreme Court and the Supreme Administrative Court The President of the Republic</p> <p>Concerning details, see above. In Finland there are no separate procedures for selection of new judges and selection of judges for promotion.</p>
Evaluation of judges	<p><input type="radio"/> HJC <input type="radio"/> MoJ <input type="radio"/> Parliament <input type="radio"/> Court Presidents <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</p> <p>There is no formal evaluation system in Finland. Candidates for judicial appointments are of course in some way evaluated in the context of appointments procedures.</p>
Evaluation of court performance	<p><input checked="" type="checkbox"/> HJC <input type="checkbox"/> MoJ <input type="checkbox"/> Parliament <input checked="" type="checkbox"/> Court Presidents <input type="checkbox"/> bodies within individual courts <input type="checkbox"/> Judicial Administration Board <input type="checkbox"/> Association of Judges <input type="checkbox"/> other, please specify</p>
Conducting disciplinary procedures	<p><input type="radio"/> HJC <input type="radio"/> MoJ <input type="radio"/> Parliament <input checked="" type="checkbox"/> Court Presidents <input type="radio"/> bodies within individual courts <input type="radio"/> Judicial Administration Board <input type="radio"/> Association of Judges <input checked="" type="checkbox"/> other, please specify</p> <p>Appeals against disciplinary decisions to courts specified in chapter 23 of the Courts Act</p>
Drafting and enforcing a code of ethics	<p><input type="radio"/> HJC <input type="radio"/> MoJ <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="checkbox"/> Association of Judges <input type="radio"/> other, please specify</p>

Public relations/media coverage for the judiciary, or individual courts	<input checked="" type="checkbox"/> HJC <input type="checkbox"/> MoJ <input type="checkbox"/> Parliament <input checked="" type="checkbox"/> Court Presidents <input checked="" type="checkbox"/> bodies within individual courts <input type="checkbox"/> Judicial Administration Board <input checked="" type="checkbox"/> Association of Judges (in general issues concerning the Judiciary) <input type="checkbox"/> other, please specify
Providing input on legislative projects	<input checked="" type="checkbox"/> HJC <input checked="" type="checkbox"/> MoJ <input type="checkbox"/> Court Presidents <input type="checkbox"/> bodies within individual courts <input type="checkbox"/> Judicial Administration Board <input checked="" type="checkbox"/> Association of Judges <input checked="" type="checkbox"/> other, please specify The Association of Finnish Lawyers The Supreme Court and the Supreme Administrative Court
Training of judges	<input checked="" type="checkbox"/> HJC <input type="checkbox"/> MoJ <input checked="" type="checkbox"/> Court Presidents <input checked="" type="checkbox"/> bodies within individual courts <input type="checkbox"/> Judicial Administration Board <input type="checkbox"/> Association of Judges <input checked="" type="checkbox"/> other, please specify Judicial Training Board
IT, including digitalisation of the judiciary and online hearings	<input checked="" type="checkbox"/> HJC <input checked="" type="checkbox"/> MoJ <input type="checkbox"/> Parliament <input type="checkbox"/> Court Presidents <input type="checkbox"/> bodies within individual courts <input type="checkbox"/> Judicial Administration Board <input checked="" type="checkbox"/> other, please specify The Government ICT Centre Valtori
The allocation of financial resources to the judiciary including individual courts	<input checked="" type="checkbox"/> HJC <input checked="" type="checkbox"/> MoJ (through its role in the preparation of the State Budget) <input checked="" type="checkbox"/> Parliament <input type="checkbox"/> Court Presidents <input type="checkbox"/> bodies within individual courts <input type="checkbox"/> Judicial Administration Board <input checked="" type="checkbox"/> other, please specify Ministry of Finance (through its role in the preparation of the State Budget)
Salaries of judges	<input checked="" type="checkbox"/> HJC <input type="checkbox"/> MoJ <input type="checkbox"/> Parliament <input type="checkbox"/> Court Presidents <input type="checkbox"/> Bodies within individual courts <input type="checkbox"/> Judicial Administration Board <input checked="" type="checkbox"/> other, please specify Ministry of Finance

- 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?

NCA has duties relating to general development of the Judiciary and to international co-operation.

NCA has no role in appointing or removing presidents of the courts to and from the office.

- 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?

Legal basis

4. Please explain which legal sources regulate the following aspects of the Council for the Judiciary in your legal system

Existence of a Council for the Judiciary	<input type="radio"/> Constitution <input checked="" type="radio"/> Law <input type="radio"/> other, please specify
Composition	<input type="radio"/> Constitution <input checked="" type="radio"/> Law <input type="radio"/> other, please specify
Selection of members including tenure and removal during tenure	<input type="radio"/> Constitution <input checked="" type="radio"/> Law <input type="radio"/> other, please specify
Tasks	<input type="radio"/> Constitution <input checked="" type="radio"/> Law <input type="radio"/> other, please specify
Resources, funding, administration	<input type="radio"/> Constitution <input checked="" type="radio"/> Law <input type="radio"/> other, please specify
Independence	<input type="radio"/> Constitution <input checked="" type="radio"/> Law <input type="radio"/> other, please specify

- Are there other formal or informal rules which are necessary to understand the role and functioning of the Council for the Judiciary in your country?

Rules of procedure of NCA which the Board of Directors has confirmed pursuant to chapter 19a, sections 6 and 13 of the Courts Act. The Rules are attached to this response (Appendix A).

Composition and Membership

5. The composition of the Council for the Judiciary:

- How many members are there?

Eight (8) members + personal substitutes for each of the members.

- Are there ex-officio members?

No.

- How many members must be judges? Do they need specific qualifications or experiences, must they come from different court systems or instances?

Six (6) members must be judges. Of these two come from the supreme courts (the Supreme Court and the Supreme Administrative Court), one from the courts of appeal, one from the district courts, one from the administrative courts and one from the special courts. Two of the members coming from other than the supreme courts must be court presidents (one from either courts of appeal or district courts and one from either administrative courts or special courts).

- Can/must non-judges be members of the Council? Please specify (number, qualification/specific functions)

Yes, two members are non-judges. One of them is selected from among other court personnel than judges and the other must have experience in leadership in public administration.

NOTE: Members of Parliament or Government, the respective organs of the autonomous province of Åland or municipal councils or municipal executives (ie. executive boards) can not be members of the Board of NCA.

What above and below is said about the members applies also to the substitute members.

6. Please describe the procedure of appointment:

- Who nominates the members? (judges or other institutions or authorities – please specify)

a) Members who are judges

The members coming from the supreme courts are nominated by each of those courts. The supreme courts only nominate one candidate each. Because of this they in reality select in a binding fashion the members coming from the supreme courts.

The other member candidates coming from the courts are nominated by the court presidents from among those judges who have announced themselves to be willing to be appointed as Board members. The presidents of the courts of appeal and the district courts nominate the member candidates from those courts. Likewise, the presidents of the administrative courts and the special courts nominate the member candidates from those courts. The court presidents nominate twice as many candidates as there are members to be appointed (ie. two of each kind).

b) Member who is selected from among other personnel of the courts

These member candidates are nominated by the court presidents (presidents of courts of appeal, district courts, administrative courts and special courts jointly). The court

presidents nominate twice as many candidates as there are members to be appointed which means that they nominate two candidates.

c) Member required to have experience in leadership in public administration

The member is selected from among those who have announced themselves to be willing to be appointed as a Board member. The court presidents have no role in selecting this member.

- Please describe the appointment system

Concerning members coming from the courts see the answer above. During the nomination procedure the court presidents (in fact representatives of the court presidents) hear the representatives of organizations representing judges (ie. other judges than those of the supreme courts) and other personnel of the courts after which they decide on the nominations.

All the members are appointed by the Government on the proposal of the Ministry of Justice that must propose the two candidates put forward by the supreme courts, either of the candidates for each post that have been nominated by the court presidents and one of the candidates who have announced themselves to be willing to be appointed as a Board member having experience in leadership in public administration.

- If members are elected by Parliament, are these members elected with a simple or qualified majority?

They are not elected by Parliament.

7. How is integrity and independence of members ensured in the selection process and during their time on the Council?

The candidacy for membership is open for everyone fulfilling the qualifications (ie. the position, regarding seven members, or the required experience, regarding one member, and the non-membership in Parliament etc.). There are no unofficial prerequisites for the membership. The rules of recusal apply for the court presidents who are themselves candidates for membership in the Board.

The nomination process could perhaps be more democratic but certain co-ordination in the nominations is necessary because of the composition of the Board, limited number of candidates (especially that of the court presidents), the legal requirement of sufficiently equal gender representation in the Board and the practical requirement of broad territorial representativity in the Board. Therefore, the system now in use can be regarded as proper and appropriate.

The Board members are not appointed to take care of interests of those courts (or kind of courts) they are coming from. On the contrary they are expected to promote the concerted interests of the (whole of the) judiciary.

Regarding a Board member's right to stay in one's position see the answer to question 10.

8. How is the President and/or Vice-President of the Council selected and appointed?

The Board itself selects its President (chairman) and two Vice-Presidents (deputy chairmen).

9. What is the term of office for a member of the Council?

Five (5) years.

10. May a member be removed from office against his/her will and, if so, under what circumstances?

In principle Board members cannot during their term be replaced against their will. They cannot, however, continue as members of the Board if they lose the position required to be a member or they are selected to one of the positions which disqualify them from being a member (member of Parliament etc.). Theoretically a member could also lose one's position if he/she were sentenced to imprisonment for an offence in office committed as a member of the Board.

Resources and management

11. Which body provides funding for the Council for the Judiciary?	<input type="radio"/> MoJ <input checked="" type="radio"/> Parliament <input type="radio"/> other, if so specify
12. Is the administration of the Council for the Judiciary independent from other branches of government?	<input checked="" type="radio"/> yes <input type="radio"/> no

Relations within the Council for the Judiciary and within the judiciary

13. Have there been any severe internal conflicts within the Council for the Judiciary that have seriously affected its functioning? If yes, what was the character of these conflicts and have they been solved?

No.

14. Have there been conflicts between the Council for the Judiciary and the judiciary? Have judges felt that the Council for the Judiciary did not represent their interests? If yes, why and has the conflict been solved?

No, at least not so far. NCA was established the 1st of January 2020. It has been in existence a relatively short time. The judges' experiences of the functioning of NCA have not been subject to any surveys. However, the first impressions seem to have been rather positive.

Relations with other branches of government, governmental bodies, civil society and media

15. Have there been conflicts between the Council for the Judiciary and the executive or legislative? If yes, what was the character of these conflicts and have they been solved?

No, at least not so far. During the transitional period in the first year of NCA (2020) there were some differences of views between NCA and the Ministry of Justice concerning division of authority and tasks in certain fields but these questions were resolved after talks between them.

16. What legal and political means may the Council of Judiciary in your judicial system employ if it feels that its constitutional role has been infringed?

These questions have not been under consideration in Finland. It is also rather difficult to imagine what kind of infringements could in reality be directed against the role of NCA. In principle, one could argue that if e.g. the Ministry of Justice would try to overtake authority which (according to the Courts Act) belongs to NCA the latter could resist the attempted take-over by simply ignoring such an attempt.

A competence conflict, unless settled through talks between the parties of the conflict, could probably be resolved by administrative courts (through a trial in an administrative court and after an appeal in the Supreme Administrative Court).

Such a competence conflict could perhaps also become a matter for either the Parliamentary Ombudsman or the Chancellor of Justice, neither of whom, however, has authority of resolving the conflict in a binding manner.

However, as the Government can always use legislative measures, it could be possible that a competence conflict between NCA and the Ministry of Justice could result in the Government trying to resolve the conflict by driving through new legislation in the Parliament.

NCA has the right to submit the Government legislative initiatives and initiatives to measures and development in its own field of activity.

17. How does the Council for the Judiciary in your judicial system interact with anti-corruption bodies?

So far, NCA has not been in any direct contacts with anti-corruption bodies. NCA has had preliminary talks with the Ministry of Justice about the future division of tasks in this field.

18. How does the Council for the Judiciary in your judicial system interact with NGOs?

NCA has not been involved in any organized and regular co-operation with NGOs. The interaction between NCA and NGOs has at least so far been limited to contacts at expert level in individual matters.

19. How does the Council for the Judiciary in your judicial system interact with associations of judges?

The only regular contact between NCA and the Finnish Association of Judges (which represents judges of all other courts than the supreme courts) has been the participation of both of them in the meetings of the co-operation council in the administrative sector of the Ministry of Justice (a statutory organ of co-operation).

The Finnish Association of Judges has also been heard in connection with changes of Board members of NCA (which have been necessitated because of the appointments of certain members to new positions).

NCA has in certain cases used judges proposed by the Finnish Association of Judges as experts (at least in evaluating answers to the ENCJ Questionnaire on indicators of independence and accountability of the Judiciary).

There has been discussion in NCA of ways to establish regular interaction of some form with the associations representing (a) judges and other judicial court personnel and (b) other court personnel. It is at the moment unclear whether and when these discussions are going to lead to some concrete results.

The associations representing judges (other than those of the supreme courts) are from the beginning of this year also NCA's negotiating partners (on the opposite side) in matters relating to collective agreements (and in this way especially to salaries of the judges).

20. How does the Council for the Judiciary in your judicial system interact with media?

NCA interacts with media e.g. through articles and columns in newspapers, information bulletins, internet news service, social media (LinkedIn, twitter etc.) and, when needed, arranging press conferences. NCA has tried to be active in responding to questionnaires and requests for interviews. It has also tried to react promptly to any incorrect information in its field of activities that has been circulating in public. NCA does not participate in reporting of court cases. However, it has supported the communications work of the courts by providing training to judges in communications skills and coordinating and developing the media judge network of the district courts and courts of appeal.

The activities of NCA in the field of media relations have undoubtedly been hampered by the on-going Covid-19 pandemic. However, it is worth noting that the Association of Judicial Reporters (Oikeustoimittajat ry) awarded in 2020 its annual prize for promoting publicity to NCA for NCA's role in promoting publicity of court proceedings through its guidelines to the courts concerning court hearings during the Covid-19 pandemic.

21. What, if any, is the role of the Council for the Judiciary in the vetting of judges?

There is not (and has not ever been) any system of vetting of judges in Finland (if with "vetting" is meant a systematic review of the conduct and decisions of the judges in order to decide whether they can keep their positions as judges or not). NCA has not any substantive role in the appointment procedures of judges, either. It only has tasks of technical nature relating to the appointment procedures. Furthermore, NCA has no role in disciplinary or criminal procedures against judges.

Challenges, developments

22. Does the Council for the Judiciary in your judiciary face particular challenges? If so, what is the character of these challenges? These challenges might have arisen – among other reasons - because of political and economic developments, societal changes, corruption, the Covid-19 pandemic or technological challenges such as the digitalisation of the judiciary.

NCA was unfortunate to be established just a couple of months before the Covid-19 pandemic broke out. Some of its staff only started working in March 2020. This led to difficulties in organizing the work and allocating the tasks in NCA. These initial difficulties have since then been overcome bit by bit.

The Covid-19 pandemic has of course caused a lot of extra work (e.g. drafting guidelines for the courts on how to handle court proceedings during the pandemic) and made changes to normal practices necessary, e.g. all training of judges is arranged using IT-connections.

The most challenging problems faced by NCA are, however, the resourcing of both NCA and the Judiciary in Finland and the problems with the current IT-technology of the Judiciary. NCA was forced to begin its activities with resourcing that was in advance known to be insufficient in view of the multiple tasks NCA was given. The clearly insufficient basic funding of the Judiciary is another – and unfortunately long-standing – problem that NCA is battling with. The chronic lack of sufficient resources has made it increasingly difficult for the Judiciary to meet the ever higher standards that are required of the Judiciary.

The problems relating to IT-technology are various and long-standing. They include e.g. problems with the quality of connections (for example problems with maintaining the connections without interruptions and with the sound quality) and with the systems in use (and delays in the introduction of new ones, especially a case-management system called Aipa).

23. Has the role of the Council for the Judiciary in your judicial system changed in recent years? If so, how?

It has been given, starting on the 1st of January 2021, new tasks relating to employment issues (e.g. deciding upon establishing, abolishing and transferring the offices of judges) and collective agreements of court personnel. These tasks were already included in the legislation through which NCA was established.

The role of NCA has not changed otherwise during the short time it has existed.

24. Have there been reforms concerning the Council for the Judiciary in your judicial system recently? If so, what were the objectives of these reforms and have they been successful?

No. The time of its existence has been so short.

25. In case your judicial system does not have one, is there a discussion to introduce a Council for the Judiciary? If so, what are the arguments made in favour 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?

The 26th of February, 2021

Kimmo Vanne
Judge in Court of Appeal

Päivi Hirvelä
Justice of the Supreme Court