



CCJE-BU(

Strasbourg,

CONSULTATIVE COUNCIL OF EUROPEAN JUDGES (CCJE)

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

“on the evolution of the Councils for the Judiciary and their role for independent and impartial judicial systems”

*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?	<input type="radio"/> yes <input checked="" type="radio"/> no
--	---

2. What is the exact title/denomination of this body?

3. This question should be answered by delegates from both legal systems with and without a Council for the judiciary: Which department or body - for example the Council for the Judiciary (HJC) or Ministry of Justice (MoJ) - is responsible for 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 type="radio"/> HJC <input checked="" type="radio"/> MoJ <input checked="" type="radio"/> Court Presidents <input type="radio"/> bodies within individual courts <input checked="" type="radio"/> Judicial Administration Board <input checked="" type="radio"/> Association of Judges <input type="radio"/> other, please specify
--	--

Defending judges/the judiciary against public attacks	<input type="radio"/> HJC <input checked="" type="radio"/> MoJ <input checked="" type="radio"/> Court Presidents <input type="radio"/> bodies within individual courts <input checked="" type="radio"/> Judicial Administration Board <input checked="" type="radio"/> Association of Judges <input type="radio"/> other, please specify
Administration of the judiciary	<input type="radio"/> HJC <input type="radio"/> MoJ <input checked="" type="radio"/> Court Presidents <input type="radio"/> bodies within individual courts <input checked="" type="radio"/> Judicial Administration Board <input type="radio"/> Association of Judges <input type="radio"/> other, please specify
Selection of new judges	<input type="radio"/> HJC <input checked="" type="radio"/> MoJ <input checked="" type="radio"/> Parliament <input checked="" type="radio"/> Court Presidents <input type="radio"/> bodies within individual courts <input type="radio"/> Judicial Administration Board <input checked="" type="radio"/> A special Judicial Appointment Body <input type="radio"/> other, please specify
Selection of judges for promotion	<input type="radio"/> HJC <input checked="" type="radio"/> MoJ <input checked="" type="radio"/> Parliament <input checked="" type="radio"/> Court Presidents <input type="radio"/> bodies within individual courts <input type="radio"/> Judicial Administration Board <input checked="" 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 checked="" type="radio"/> Court Presidents <input type="radio"/> bodies within individual courts <input checked="" 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"/> MoJ <input type="radio"/> Parliament <input checked="" type="radio"/> Court Presidents

	<input type="radio"/> bodies within individual courts <input checked="" type="checkbox"/> 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 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 (Dienstgericht)
Drafting and enforcing a code of ethics	<input type="radio"/> HJC <input checked="" type="checkbox"/> MoJ <input checked="" type="checkbox"/> 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
Public relations/media coverage for the judiciary, or individual courts	<input type="radio"/> HJC <input checked="" type="checkbox"/> MoJ <input type="radio"/> Parliament <input checked="" type="checkbox"/> Court Presidents <input type="radio"/> bodies within individual courts <input checked="" type="checkbox"/> Judicial Administration Board <input checked="" type="checkbox"/> Association of Judges <input type="radio"/> other, please specify
Providing input on legislative projects	<input type="radio"/> HJC <input checked="" type="checkbox"/> MoJ <input checked="" type="checkbox"/> 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
Training of judges	<input type="radio"/> HJC <input checked="" type="checkbox"/> MoJ <input checked="" type="checkbox"/> Court Presidents <input type="radio"/> bodies within individual courts <input checked="" type="checkbox"/> Judicial Administration Board <input checked="" type="checkbox"/> Association of Judges <input type="radio"/> other, please specify

IT, including digitalisation of the judiciary and online-hearings	<input type="radio"/> HJC <input checked="" type="radio"/> MoJ <input type="radio"/> Parliament <input checked="" type="radio"/> Court Presidents <input type="radio"/> bodies within individual courts <input checked="" type="radio"/> Judicial Administration Board <input checked="" type="radio"/> other, please specify (external bodies)
The allocation of financial resources to the judiciary including individual courts	<input type="radio"/> HJC <input checked="" type="radio"/> MoJ <input checked="" type="radio"/> Parliament <input checked="" type="radio"/> Court Presidents <input type="radio"/> bodies within individual courts <input type="radio"/> Judicial Administration Board <input type="radio"/> other, please specify
Vetting of judges	<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"/> other, please specify
Salaries of Judges	<input type="radio"/> HJC <input type="radio"/> MoJ <input checked="" type="radio"/> Parliament <input type="radio"/> Court Presidents <input type="radio"/> Bodies within individual courts <input type="radio"/> Judicial Administration Board <input type="radio"/> other, please specify

Comments to the questions:

Some of the questions show that various institutions may be responsible for the tasks described above. This is due to the federal and to the state court system. In additions the provision in the various state systems may differ as well.

- If there is a Council for the Judiciary in your country, has it other duties not mentioned here? Is there additional information that would be useful to understand the role of the Council for the Judiciary within your country?
- 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?

In Germany there are important elements of self-administration of courts on the federal as state level. The Ministry of Justice (federal and state) have delegated far-reaching and important administration tasks to the courts; for example the appointment and promotion of judges, allocation of budgets and infrastructure matters. The President of the Court is the representative of this administration, supported by a board of administration members.

Based on that delegation the (federal and state) law provides for institutions in which elected members of the judges have co-determination rights together with the president of the court (“Präsidualverfassung”).

Two institutions should be mentioned: “Richterräte” (Council of Judges) and “Präsidualräte” (Council for Judicial Appointment). The federal law of judges (Deutsches Richtergesetz) and the several state laws of judges (Landesrichtergesetze) provide that “Richterräte” and “Präsidualräte” have to be established.

The “Richterräte” (Council of Judges) have a mandatory participation right in social and general matters of the court. Members are elected by the community of judges at the respective court for 4 years. Their task is to represent the judges interests like a staff committee in a company.

The “Präsidualräte” (Council for Judicial Appointment) have a mandatory participation right during the appointment and/or promotion process of judges. They participate as a representative organ of the judges in the event of nominating a judge. The Council delivers a written opinion on the aptitude of candidates for appointments and/or promotion. However, the written opinion is not binding. There are Councils for Judicial Appointment at every State or Federal Court and Supreme Court of the Federation. The “Präsidualräte” consist of the president of the respective court and of a certain number of elected judges of this court.

In addition, in some states and on the federal level you can find “Richterwahlausschüsse” (special committees for the election of judges). These committees participate in or decide on the election and promotion of judges. The membership in these committees varies. On the federal level those committees consist of members of the parliament; they elect the judges of the Federal Courts and the Supreme Court of the Federation.

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 type="radio"/> Law <input type="radio"/> other, please specify.
Composition	<input type="radio"/> Constitution <input type="radio"/> Law <input type="radio"/> other, please specify
Selection of members including tenure and removal during tenure	<input type="radio"/> Constitution <input type="radio"/> Law <input type="radio"/> other, please specify
Tasks	<input type="radio"/> Constitution <input type="radio"/> Law <input type="radio"/> other, please specify
Resources, funding, administration	<input type="radio"/> Constitution <input type="radio"/> Law <input type="radio"/> other, please specify.
Independence	<input type="radio"/> Constitution <input 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?

Composition and Membership

5. The composition of the Council for the Judiciary:

- How many members are there?
- Are there ex-officio members?
- How many members must be judges? Do they need specific qualifications or experiences, must they come from different court systems or instances?
- Can/Must non-judges be members of the Council? Please specify (number, qualification/specific functions)

6. Please describe the procedure of appointment:

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

- Please describe the appointment system
- If members are elected by Parliament, are these members elected with a simple or qualified majority?

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

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

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

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

Resources and Management

11. Which body provides funding for the Council for the Judiciary?	<input type="radio"/> MoJ <input 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 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?

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?

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

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?

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?

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

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

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

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

Challenges, Developments

21. 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.

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

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

24. In case your judicial system does not have one, is there a discussion to introduce a Council for the Judiciary?

Currently there is no specific or strong political debate on introducing such a system in Germany. In the years of 2010-2013 we witnessed such a public discussion. At that time, the Associations of judges (Deutscher Richterbund, Neue Richtervereinigung) had requested the introduction of a complete self-administration of the judiciary. To this extent, the introduction of Councils for the Judiciary has been discussed.

In this debate the “Deutscher Richterbund” had proposed a draft legislation for the Federal States (Bundesländer). In the end, this draft legislation did not pass parliament. The main arguments against changing the system were the existing federal structure as well as the existing independence of the judiciary: The above mentioned traditional self-administration of the judiciary (see above “Präsidialverfassung”) would sufficiently guarantee the judicial independence. There are elements of self-administration which provide for the participation of judges in relevant decisions. These are the representative bodies such as “Richterrat”, “Präsidialrat” and the “Richterwahlausschüsse” (see above). The introduction for a Council for the Judiciary is therefore not planned.

If so, what are the arguments made in favour and against the introduction for a Council for the Judiciary.

Do you think that there are challenges in your judicial system a Council for the Judiciary might help solve?

No.

Is it likely that such a Council will be introduced?

No.