



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 /MONTENEGRO

*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 checked="" type="checkbox"/> yes <input type="checkbox"/> no
2. What is the exact title/denomination of this body?	Judicial Council of Montenegro/Sudski savjet Crne Gore
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 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 type="checkbox"/> other, please specify
Defending judges/the judiciary against public attacks	<input checked="" type="checkbox"/> HJC <input type="checkbox"/> MoJ <input type="checkbox"/> Court Presidents

	<input type="radio"/> bodies within individual courts <input 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 checked="" type="radio"/> MoJ <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
Selection of new judges	<input checked="" 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"/> A special Judicial Appointment Body <input type="radio"/> other, please specify
Selection of judges for promotion	<input checked="" 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"/> A special Judicial Appointment Body <input type="radio"/> other, please specify
Evaluation of judges	<input checked="" 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
Evaluation of court performance	<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
Conducting disciplinary procedures	<input checked="" 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
Drafting and enforcing a code of ethics	<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 checked="" type="radio"/> Conference of judges
Public relations/media coverage for the judiciary, or individual courts	<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 checked="" type="radio"/> Supreme Court of Montenegro
Providing input on legislative projects	<input checked="" type="radio"/> HJC <input type="radio"/> MoJ <input type="radio"/> Court Presidents <input type="radio"/> bodies within individual courts <input type="radio"/> Judicial Administration Board <input checked="" type="radio"/> Association of Judges <input type="radio"/> other, please specify
Training of judges	<input checked="" type="radio"/> HJC <input type="radio"/> MoJ <input type="radio"/> Court Presidents <input type="radio"/> bodies within individual courts <input type="radio"/> Judicial Administration Board <input checked="" type="radio"/> Association of Judges <input checked="" type="radio"/> Training Center in the Judiciary and State's prosecutor office
IT, including digitalisation of the judiciary and online hearings	<input checked="" 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
The allocation of financial resources to the judiciary including individual courts	<input checked="" 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

Salaries of judges	<input type="radio"/> HJC <input type="radio"/> MoJ <input checked="" type="radio"/> Parliament- The Law on Public Sector Wages <input type="radio"/> Court Presidents <input type="radio"/> Bodies within individual courts <input type="radio"/> Judicial Administration Board <input type="radio"/> other, please specify
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- 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?

According to the Constitution , Judicial Council:

- 1) elects and dismisses the President of the Supreme Court;
- 2) elect and dismiss the President of the Judicial Council;
- 3) submit to the Assembly an annual report on the work of the Judicial Council and the overall situation in the judiciary;
- 4) elect and dismiss a judge, court president and lay judge;
- 5) consider the report on the work of the court, petitions and complaints on the work of the court and take positions on them;
- 6) determine the termination of the judicial function;
- 7) determines the number of judges and lay judges;
- 8) propose to the Government the amount of funds for the work of courts;

The Judicial Council decides by a majority vote of all members except in cases prescribed by the Constitution. In procedures of disciplinary responsibility of judges, the minister in charge of judicial affairs does not vote

According to the Law on Judges and Judicial Council, Judicial Council is authorized to:

- 1) decide on the disciplinary responsibility of judges and court presidents;
- 2) keep records of data on judges and court presidents;
- 3) consider complaints against the work of judges and court presidents
- 4) set out indicative benchmarks for the required number of judges and other civil servants and court employees;
- 5) give an opinion on the incompatibility of performing certain tasks with performing the judicial function;
- 6) form the Judges' Evaluation Commission

7) selects a disciplinary prosecutor;

8) adopt the rules of procedure of the Judicial Council;

9) determine the methodology for the preparation of reports on the work of courts and the annual schedule of work in the court.

- 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 checked="" type="checkbox"/> Constitution <input checked="" type="checkbox"/> Law <input type="checkbox"/> other, please specify
Composition	<input checked="" type="checkbox"/> Constitution <input checked="" type="checkbox"/> Law <input type="checkbox"/> other, please specify
Selection of members including tenure and removal during tenure	<input checked="" type="checkbox"/> Constitution <input checked="" type="checkbox"/> Law <input type="checkbox"/> other, please specify
Tasks	<input checked="" type="checkbox"/> Constitution <input checked="" type="checkbox"/> Law <input type="checkbox"/> other, please specify
Resources, funding, administration	<input type="checkbox"/> Constitution <input checked="" type="checkbox"/> Law <input type="checkbox"/> other, please specify
Independence	<input checked="" type="checkbox"/> Constitution <input checked="" type="checkbox"/> Law <input type="checkbox"/> 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 the Judicial Council**

Composition and Membership

5. The composition of the Council for the Judiciary in Montenegro is prescribed by the Constitution.

The Judicial Council has a president and nine members. The members of the Judicial Council are:

1) the President of the Supreme Court;

2) four judges elected and dismissed by the Conference of Judges, taking into account the equal representation of courts and judges;

3) four eminent lawyers elected and dismissed by the Assembly, at the proposal of the competent working body of the Assembly upon a public invitation (2/3 majority)

4) the minister in charge of justice

- 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) **The members of the Judicial Council from the ranks of judges are: 1) three members from the ranks of judges of the Supreme Court of Montenegro, the Court of Appeals of Montenegro, the Administrative Court of Montenegro, the High Court for Misdemeanors of Montenegro, the Commercial Court of Montenegro and higher courts, who have at least ten years of work experience as a judge; 2) one member from the ranks of basic court judges.**

The procedure of preparation of the list of candidates for election of members of the Judicial Council from among judges and the procedure of election of members of the Judicial Council from among judges at the Conference of Judges is carried out by the Election Commission, which has a president and two members. judge of all courts. Members of the Commission may not be candidates for members of the Judicial Council. The proposal of the candidate for the election of the members of the Judicial Council is determined: 1) at a special session of judges of the Supreme Court at which two candidates from that court are proposed; 2) at special sessions of judges of the Court of Appeals, the Administrative Court, the High Court for Misdemeanors, the Commercial Court and higher courts at which one candidate from each court is proposed. The list of eight candidates, in alphabetical order, is made by the Selection Committee.

- Please describe the appointment system **As a member of the Judicial Council from among eminent lawyers may be elected a person who has at least fifteen years of work experience in legal affairs and enjoys a personal and professional reputation, that he has not been convicted of criminal offenses that make judges unfit to perform judicial office in accordance with this law. The competent working body of the Parliament of Montenegro is announcing a public call for the election of a member of the Judicial Council from the ranks of eminent lawyers in the Official Gazette of Montenegro and in at least one of the printed media. The competent working body of the Assembly publishes on the website of the Assembly the list of registered candidates which must be available to the public, at least ten days from the day of publication. The proposal for the election of a member of the Judicial Council from the ranks of eminent jurists shall be submitted to the Assembly by the competent working body of the Assembly. The proposal for election contains as many candidates as there are elected members of the Judicial Council.**
- If members are elected by Parliament, are these members elected with a simple or qualified majority? **2/3 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? **The President of the Judicial Council is elected by the Judicial Council from among its members, who are not holders of judicial office, by a two-thirds majority of the members of the Judicial Council.**
9. What is the term of office for a member of the Council? **4 years**
10. May a member be removed from office against his/her will and, if so, under what circumstances? **A term of office of a member of the Judicial Council shall end before the expiration of the term for which he was elected, if: his function on the basis of which he was elected to the Judicial Council is terminated; if she/he resigns or be sentenced to unconditional imprisonment.**

Resources and management

11. Which body provides funding for the Council for the Judiciary?	<input type="radio"/> MoJ <input type="radio"/> Parliament <input checked="" type="radio"/> Financial resources for the work of the Judicial Council are provided within the section of the budget of Montenegro for the judiciary as a special program. The Judicial Council proposes annual budget for the work of the Judicial Council to the Government of Montenegro.
12. Is the administration of the Council for the Judiciary independent from other branches of government?	<input type="radio"/> yes <input checked="" 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? **Not as known**
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**

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? **Not conflict per se, but we had the situation that 4 members from among eminent lawyers were not elected in Parliament (2/3 votes). So, in order to overcome this situation, the Parliament passed the Amendmens to the Law of judges and Judicial Council, that prescribed that The President and members of the Judicial Council from among eminent lawyers, whose term of office expires due to the expiration of the term for which they were elected, shall continue to perform their duties until the election and proclamation of new members of the Judicial Council from among eminent lawyers.**
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? **Public reactions**

17. How does the Council for the Judiciary in your judicial system interact with anti-corruption bodies? **No interaction is prescribed by the law**
18. How does the Council for the Judiciary in your judicial system interact with NGOs? **Members of the NGOs can be, and they usually are present at the sessions of the Judicial Council. Some NGOs share their views and suggestions on necessary changes in the judiciary**
19. How does the Council for the Judiciary in your judicial system interact with associations of judges?
20. How does the Council for the Judiciary in your judicial system interact with media? **Through its president, web site and through public statements.**
21. What, if any, is the role of the Council for the Judiciary in the vetting of judges? **See above**

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