



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”

*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
2. What is the exact title/denomination of this body? Raad voor de rechtspraak (Council for the Judiciary)	
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	X HJC X MoJ X Court Presidents O bodies within individual courts O Judicial Administration Board X Association of Judges X other, please specify, Nederlandse Orde van Advocaten (NOvA). Dutch Association of Lawyers.
Defending judges/the judiciary against public attacks	X HJC X MoJ

	<p>X Court Presidents (<i>In the Dutch Judiciary, the court president works closely with the two other board members. One judge and one non-judge member.</i>)</p> <p>O bodies within individual courts</p> <p>O Judicial Administration Board</p> <p>X Association of Judges</p> <p>O other, please specify</p>
Administration of the judiciary	<p>X HJC</p> <p>O MoJ</p> <p>X Court Presidents</p> <p>O bodies within individual courts</p> <p>O Judicial Administration Board</p> <p>O Association of Judges</p> <p>O other, please specify</p>
Selection of new judges	<p>O HJC</p> <p>O MoJ</p> <p>O Parliament</p> <p>O Court Presidents</p> <p>O bodies within individual courts</p> <p>O Judicial Administration Board</p> <p>O A special Judicial Appointment Body</p> <p>X other, please specify</p> <p>The Council for the Judiciary has delegated the task of selection of judges to the <a href="#">national committee of selection of judges</a>. This committee exists of judges, public administrators, researchers, lawyers and public prosecutors.</p>
Selection of judges for promotion	<p>O HJC</p> <p>O MoJ</p> <p>O Parliament</p> <p>X Court Presidents</p> <p>O bodies within individual courts</p> <p>O Judicial Administration Board</p> <p>O A special Judicial Appointment Body</p> <p>O other, please specify</p>
Evaluation of judges	<p>O HJC</p> <p>O MoJ</p> <p>O Parliament</p> <p>X Court Presidents</p> <p>O bodies within individual courts</p> <p>O Judicial Administration Board</p> <p>O Association of Judges</p> <p>O other, please specify</p>
Evaluation of court performance	<p>X HJC</p> <p>O MoJ</p> <p>O Parliament</p> <p>X Court Presidents</p> <p>O bodies within individual courts</p> <p>O Judicial Administration Board</p>

**Commented [KF('1)]:** Additional information on *appointment* of judges:  
 After selection, candidates start their training. Training is partly organized by the local courts and partly by the Training and study Centre for the Judiciary (*Studiecentrum Rechtspleging*), the joint training institute of the judicial system of the Netherlands and the Public Prosecution Service. After successfully ending training, the Council for the Judiciary recommends the candidate to be appointed as a judge. The Minister of Justice and Security checks if the applicant fulfils the legal requirements to be appointed by the King. The Minister of Justice and Security has in all cases followed the recommendation by the Council for the Judiciary. The King finally appoints the candidate by Royal Decree as arranged in [Article 117 of the Constitution](#) (*Grondwet*) and [Article 2 Law on the legal position of judges](#). The candidate becomes judge for life (more specific: till the age of 70).

	<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="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"/> other, please specify Supreme Court
Drafting and enforcing a code of ethics	<input checked="" 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 type="radio"/> Judicial Administration Board <input checked="" type="radio"/> Association of Judges <input type="radio"/> other, please specify
Public relations/media coverage for the judiciary, or individual courts	<input checked="" 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 type="radio"/> Judicial Administration Board <input type="radio"/> Association of Judges <input checked="" type="radio"/> other, please specify Communication departments of the individual courts
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 checked="" type="radio"/> other, please specify Landelijk Overleg Vakinhoud (National committee of judges) The aim of the LOV is to promote unity of law, legal certainty, expertise and improvement of work processes within the Judiciary. Each jurisdiction has its own LOV/ committee. The LOV's provide input on legislative projects via the Council for the Judiciary.
Training of judges	<input 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 type="radio"/> Association of Judges <input checked="" type="radio"/> other, please specify

	Training and study centre for the judiciary (SSR)
IT, including digitalisation of the judiciary and online hearings	X HJC O MoJ O Parliament X Court Presidents O bodies within individual courts O Judicial Administration Board X other, please specify ICT Service of the Judiciary (IVO Rechtspraak)
The allocation of financial resources to the judiciary including individual courts	X HJC X MoJ O Parliament O Court Presidents O bodies within individual courts O Judicial Administration Board O other, please specify
Salaries of judges	O HJC O MoJ O Parliament O Court Presidents O Bodies within individual courts O Judicial Administration Board X other, please specify The Collective Labor Agreement (in Dutch: CAO) is the responsibility of the MoJ and association of judges (NVvR).

- 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?

The Council for the Judiciary is part of the judiciary system, but does not administer justice itself. It has taken over responsibility over a number of tasks from the Minister of Justice. These tasks are operational in nature and include the allocation of budgets, supervision of financial management, personnel policy, ICT and housing. The Council supports the courts in executing their tasks in these areas. Another central task of the Council is to promote quality within the judiciary system and to advise on new legislation which has implications for the administration of justice. The Council also acts as a spokesperson for the judiciary on both national and international levels. [See art. 91, 92, 94, 95, 97 and 100 Law on the judicial system.](#)

#### Appointment of court president

The Council for the Judiciary recommends a candidate for appointment to MoJ. After agreement of the Minister the candidate is appointed as court president by Royal Decree. The Council for the Judiciary is obliged in the selection procedure for a court president to involve the Board of the Court and the Works Council (Ondernemingsraad). Also, the courts council (gerechtshofvergadering) has the right to be heard. [See articles 15, 22, 28 Law on the Judicial Organization.](#)

**Commented [KF('2)]:** Please be noted that the appointment of court presidents and the other board members are at the moment under discussion. Alterations to this procedure might take place very soon. CCJE will be notified when this happens.

Remove of court president

In the event of serious suspicion of incapacity for reasons other than illness, the Council may propose to the MoJ to nominate one or more members of the board (including the court president) for suspension. [Article 38 Law on the judicial system](#).

- 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?

N/a.

**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?

[The Council for the Judiciary | Judiciary \(rechtspraak.nl\)](#)

Mission, Vision and Agenda of the Judiciary. See [attachment](#).

**Commented [KF'3]:** This document will be translated and sent to CCJE within two weeks.

**Composition and Membership**

5. The composition of the Council for the Judiciary:

- How many members are there?

Currently the Council for the Judiciary has four members. In the event of an equality of votes, the vote of the chairman is decisive. The chairman is by law a judge, as is the majority or half of the Council. According to [art. 84 Law on judicial system](#) the Council must consist of a minimum of three and a maximum of five 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?

According to [art. 84 Law on judicial system](#) if the Council consists of three or four members, or five members, as the case may be, two members or three members respectively must be judges [...]. The other members of the Council are non-judges [...].

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

Yes. See previous question.

6. Please describe the procedure of appointment:

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

When a position is vacant, the Council publishes the vacancy in national news outlets. First, candidates will have an interview with the members of the Council for the Judiciary. Thereafter, a commission existing of a court president, a representative of the Netherlands Association for the Judiciary (Nederlandse Vereniging voor de Rechtspraak, [NVvR](#)), a board member of a district court (non-judge member), a member of the Board of Delegates and a representative of the Ministry of Justice and Security will recommend one or more candidates (max. 3). The commission is preceded by the president of the court. Candidate members of the Council for the Judiciary will be recommended by the commission to the Ministry of Justice and Security, and appointed by Royal Decree. [Art. 85 Law on judicial system.](#)

- Please describe the appointment system

See previous question.

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

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

By law, [art. 44 en 44a Wvra](#), these articles indicate which ancillary activities can be carried out by a member of the council and which cannot. The Council members are also bound to [Protocol Onderzoek Integriteitsschendingen.doc \(minjus.nl\)](#). This protocol states when an issue concerning integrity violation needs to be reported and what the procedure and communication plan for these issues are.

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

The President and/or Vice-President are selected and appointed the same way as the other members of the Council. See previous question.

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

According to [art. 84 Law on judicial system](#) the term of office for members of the Council is six years. They may be reappointed once for a term of three years.

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

The Minister of Justice can nominate members of the Council for suspension and dismissal due to (serious suspicion of) incapacity other than due to illness. Suspension and dismissal are effected by Royal Decree ([art. 107 Law on judicial system](#)). Appeal against such a decision can be filed at the Supreme Court ([art. 108 Law on judicial system](#)).

**Resources and management**

11. Which body provides funding for the Council for the Judiciary?	X MoJ O Parliament O other, if so specify
12. Is the administration of the Council for the Judiciary independent from other branches of government?	X yes O 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?

Severe internal conflicts that affected the functioning of the Council have not occurred.

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?

Within the judiciary it has been discussed whether judges should have a greater influence on the selection of the management of the judiciary, court boards and Council for the Judiciary.

This issue has also been raised by members of parliament in a resolution. The Minister for Justice and Security has informed the parliament by letter that the Council for the Judiciary is in dialogue with its constituency on the selection of board members of the courts and members of the Council for the Judiciary.

As a follow up the minister asked the Council of State to advice on the matter. The Advisory Division of the Council of State (23 September 2020) has issued a guidance on the process of appointment of members of board members in the Judiciary. The Advisory Division of the Council of State concludes there is no need to alter the current legal system. The system is in accordance with the principles of the rule of law and the international standards. It was recommended, not required, by the Advisory Division of the Council of State to enlarge the role of local judges in the appointment process at their specific court and it was recommended to increase transparency of the appointment procedures for local employees.

More generally, the relationship between the Council and the courts works on the basis of checks and balances. When trying to find the right balance, some friction is both inevitable and necessary.

#### **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?

In recent years, several judicial decisions led to societal and political discussion: f.e. following [the PAS ruling of the Council of State](#), or the [Urgenda ruling](#) or [the ruling on the return of IS children](#). When the Urgenda case was in proceedings before the Supreme Court, the government argued that the judge should not meddle in political decision-making and order the making of law. In view of the relations between the state powers, it is solely the task of the legislator to decide whether certain legislation is made. The State argued that the underlying question of the case should be decided by the legislator and not by the (civil law) judge. Some parliamentary politicians criticised the judges for the above mentioned rulings and stated that the judges took the place of the politicians by giving these verdicts. The criticism focused on the term “dicastracy” i.e. ‘government by the judges’ and resulted in [a round table](#) on the subject organised by the House of Representatives of the Netherlands.

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?

Council for the Judiciary has regular meetings with the Minister of Justice. If it feels that its constitutional role has been infringed this will be discussed during these meetings. If the Council cannot reach an agreement with the Minister, the Council can turn to the (chairman of the) House of Representatives.

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

Each court has an integrity commission and a confidential advisor. The tasks of these two is to advice on integrity issues. In addition, the HRM department of the Council also advices courts, might they have questions on integrity issues. In more severe cases such as corruption investigation will be done by the National Police Internal Investigations Department (in Dutch: Rijksrecherche). This organization is affiliated to the Public Prosecution Office (in Dutch: Openbaar Ministerie). Corruption is prosecuted by specialized prosecutors of the Public Prosecution Office. Cases of integrity or corruption that relate to judges are handled by the Supreme Court.

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

Council for the Judiciary has good relations with several NGO's such as CILC and (Center for International Legal Cooperation) and NHC (Netherlands Helsinki Commission). CILC is an independent Dutch non-profit organisation, which provides expertise to developing and transition countries engaged in legal and judicial reform. With this NGO the Council has worked on various projects concerning the judiciary. NHC promotes human rights and a strong rule of law and democracy in European countries. The emphasis with NHC is slightly more on human rights, but where the rule of law is concerned there have been a number of projects in recent years in which the Council cooperated with NHC.



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

Yes. The Council has regular consultations with Netherlands Association for the Judiciary (Nederlandse Vereniging voor de Rechtspraak, [NVvR](#)). The consultations focuses on various topics such as the procedure for selection and appointment of court presidents/ court board members and the code for integrity.

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

Transparency is an important aim for the judiciary. Therefore it is important for the Judiciary to maintain a good relationship with the press in the Netherlands. During the last 15 years press guidelines were developed, the judiciary has allowed to broadcast court cases that could be of particular interest to the public, and is explaining judicial decisions to the media. Within the Council for the Judiciary there is a Communication Department. In close cooperation with the communications advisors in the courts the department has started a number of information 'streams/ channels', each with its own goal and target audience.

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

The Council has no role in the vetting of 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.

[The Council for Public Administration](#) (Raad voor het Openbaar Bestuur, ROB) recently stated in its advisory report on the rule of law in The Netherlands ("[Een sterke rechtsstaat, verbinden beschermen in een pluriforme samenleving](#)") that the judiciary in the Netherlands is under pressure and over demanded. The Council for Public Administration concludes that formally the independence of the judiciary is guaranteed. However, the Council sees clear signs that the level of knowledge, attitude and conduct of parties involved on the value of an independent judiciary put the position of the judiciary under pressure. According to the advisory report, challenges for the judiciary include the increasing workload due to more complex cases and vague legislation, a strong orientation on efficiency of the judiciary and access to the judiciary.

Furthermore, the Judiciary has formulated 5 objectives for the new long term mission, vision and agenda of the Dutch Judiciary (please see [attachment](#)).

1. Judiciary is timely and predictable.
2. Access to justice is provided digitally and in an easily accessible manner. Access to justice is facilitated for litigants who are insufficiently able to participate in digitally accessible case law.
3. The Judiciary actively cooperates in networks and is reliable in this. This collaboration is not without obligation. In this cooperation, the independent and impartial role of the judge is safeguarded.

**Commented [KF('4)]:** As stated at question 4, this document will be translated and sent to CCJE within two weeks.

4. The Judiciary works with a human touch. Humanity determines the way we carry out our work. We see the person behind the legal file. Our communication has a personal approach where possible
5. The Judiciary has a diverse composition and ensures inclusiveness. This means that we ensure that everyone feels at home in the organization and can be themselves. We create opportunities for learning from each other and work together. We are driven by the values formulated in the mission statement. Directors and managers encourage ownership of everyone who works for the Judiciary and give them confidence.

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

No.

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.

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?

N/a.