



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

**Conselho Superior da Magistratura (translated: Superior Council of Magistracy)**

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.

<p>Defending and fostering the independence of judges and the judiciary/the rule of law</p>	<p><b>X HJC</b>  <b>X MoJ</b>  <b>X Court Presidents</b>  <input type="radio"/> bodies within individual courts  <input type="radio"/> Judicial Administration Board  <b>X Association of Judges</b>  <input type="radio"/> other, please specify</p>
<p>Defending judges/the judiciary against public attacks</p>	<p><b>X HJC</b>  <input type="radio"/> MoJ  <b>X Court Presidents</b>  <input type="radio"/> bodies within individual courts  <input type="radio"/> Judicial Administration Board  <b>X Association of Judges</b>  <input type="radio"/> other, please specify</p>
<p>Administration of the judiciary</p>	<p><b>X HJC</b>  <b>X MoJ</b>  <b>X Court Presidents</b>  <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>Selection of new judges</p>	<p><b>X HJC</b>  <b>X MoJ</b>  <input type="radio"/> Parliament  <input type="radio"/> Court Presidents  <input type="radio"/> bodies within individual courts  <input type="radio"/> Judicial Administration Board</p>

	<input type="radio"/> A special Judicial Appointment Body <input type="radio"/> other, please specify
Selection of judges for promotion	<input checked="" type="radio"/> <b>HJC</b> <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"/> <b>HJC</b> <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 checked="" type="radio"/> <b>HJC</b> <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"/> <b>HJC</b> <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 checked="" type="radio"/> <b>HJC</b> <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="radio"/> <b>Association of Judges</b> <input type="radio"/> other, please specify
Public relations/media coverage for the judiciary, or individual courts	<input checked="" type="radio"/> <b>HJC</b> <input type="radio"/> MoJ <input type="radio"/> Parliament <input checked="" type="radio"/> <b>Court Presidents</b> <input type="radio"/> bodies within individual courts <input type="radio"/> Judicial Administration Board <input checked="" type="radio"/> <b>Association of Judges</b> <input type="radio"/> other, please specify
Providing input on legislative projects	<input checked="" type="radio"/> <b>HJC</b> <input checked="" type="radio"/> <b>MoJ</b> <input type="radio"/> Court Presidents <input type="radio"/> bodies within individual courts <input type="radio"/> Judicial Administration Board <input checked="" type="radio"/> <b>Association of Judges</b> <input type="radio"/> other, please specify
Training of judges	<input type="radio"/> HJC <input checked="" type="radio"/> <b>MoJ</b> <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
IT, including digitalisation of the judiciary and online hearings	<input type="radio"/> HJC <input checked="" type="radio"/> <b>MoJ</b> <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 type="radio"/> HJC <input checked="" type="radio"/> <b>MoJ</b> <input checked="" type="radio"/> <b>Parliament</b> <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 checked="" type="radio"/> <b>MoJ</b> <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

- 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 appointment or removal of first instance's presidents of courts is an exclusive competence of the Portuguese Council.**

**For second instance courts and supreme courts there is an election of the President by the judges constituting the respective 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?

**Not applicable.**

### 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	<b>X Constitution</b> O Law O other, please specify
Composition	<b>X Constitution</b> O Law O other, please specify
Selection of members including tenure and removal during tenure	<b>X Constitution</b> <b>X Law</b> O other, please specify
Tasks	<b>X Constitution</b> <b>X Law</b> O other, please specify
Resources, funding, administration	O Constitution <b>X Law</b> O other, please specify
Independence	<b>X Constitution</b> <b>X Law</b> O 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?

**Besides the Constitution the relevant laws are:**

**- the Law on the Organization of Judicial System (Law 62/2013, August 26, 2013) and the Statutes of Judges (Law 21/85, July 30, 1985 with the alterations of Law 67/2019, August 27, 2019)**

## **Composition and Membership**

5. The composition of the Council for the Judiciary:

- How many members are there?

**Seventeen members.**

**The President of the Supreme Court is the President of the Council for the Judiciary. Seven Members are elected by the Parliament. Seven members are judges elected by their peers. Two members are appointed by the President of the Republic.**

- Are there ex-officio members?

**Only the President of the Supreme Court that is also President of the Council.**

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

**Eight – seven plus the Supreme Court President.**

**They come from different instances and are all elected and are candidates on a list for Council's elections. One from Supreme Court (that is the Vice-President of the Council), two from Court of Appeal (of Lisbon and Porto) and four from First Instance (one from each Judicial District).**

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

**Yes, a total of nine. There is a majority of non-judges on Portuguese Council.**

**Two appointed by the President of the Republic and seven elected by the Parliament.**

**There are no specific conditions to be appointed/elected by the President/Parliament. It happened in the past that the President of the Republic chose retired judges.**

**They are members of the Council like any other member.**

6. Please describe the procedure of appointment:

- Who nominates the members? (judges or other institutions or authorities – please specify)  
**The President of the Supreme Court is “ex-officio” the President of the Council for the Judiciary. Seven Members are elected by the Parliament. Seven members are judges elected by their peers. Two members are appointed by the President of the Republic.**
- Please describe the appointment system  
**Read previous answer.**
- If members are elected by Parliament, are these members elected with a simple or qualified majority?  
**Qualified majority of 2/3.**

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

**The members of Judicial Council, that are not judges, are subject to the legal regime of rights, duties and guarantees, with the due adaptations, that are imposed to all judges by the Statute of Judges (“Estatuto dos Magistrados Judiciais”) (article 148º Law 21/85).**

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

**The President is appointed “ex officio” since he/she is necessarily the President of Supreme Court.**

**The Vice-President is elected by all the judges of the three instances in a list that will choose seven member judges of the Council. The list more voted is the one that have the elected Vice-President; the other members are elected proportionately according to the votes of the different lists.**

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



Since 2019, the mandate for member judges of the Council is 4 years; the mandate cannot be renewed. For the members that are not judges, the mandate coincides with the mandate of the organ (President of the Republic or Parliament) which appoints these members.

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

**In general terms, it is not possible. Only in particular circumstances related to any criminal or grave disciplinary faults or personal circumstances that lead the member to renounce to the mandate (article 147° of Law 21/85)**

### Resources and management

11. Which body provides funding for the Council for the Judiciary?	<input checked="" type="checkbox"/> <b>MoJ</b> <input checked="" type="checkbox"/> <b>Parliament</b> <input type="checkbox"/> other, if so specify
12. Is the administration of the Council for the Judiciary independent from other branches of government?	<input checked="" type="checkbox"/> <b>yes</b> <input type="checkbox"/> 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?

**There are always disagreements about the way the Council manages the courts. Recently there were some conflicts on the role of Presidents of First Instance Courts and the extent of their powers. However, there were no structural conflicts to report.**

### 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?

**There are not been any relevant public conflicts between the Council and the executive or legislative. The disagreements are normally settled through institutional dialogue.**

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?

**The Judicial Council derives from constitutional norms. Therefore, it has the means attributed to institutions, at constitutional level, that should guarantee the separation of powers and an independent and impartial judiciary.**

**That said, there is no formal specific legal means to protect its constitutional role besides the constitutional norms applied by all courts in particular by the Constitutional Tribunal.**

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

**There is no specific anti-corruption body to investigate corruption cases outside Prosecutorial Services and the specialized branches of Police Departments.**

**Regarding prevention of corruption, it exists, since 2008, an independent administrative board named Corruption Prevention Council attached to the Court of Auditors aiming to develop a national action strategy in the field of prevention of corruption and related offences (Article 1 of Law 54/2008).**

**The interaction with the Council of the Judiciary with this Corruption Prevention Council is the normal one between State institutions.**

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

**The NGOs – as any other organization of civil society – can interact with the Council for the Judiciary and engage in any cooperation or partnership agreed between organizations.**

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

**In Portugal there is only one association of judges that represents the vast majority of judges. There is an informal dialogue, more or less intense depending on the protagonists, but no formal or legal mechanisms of cooperation.**

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

**The Council has a Department of Communication.**

**Despite the improvement in the Council's communication, communication difficulties remain at the level of the districts and of the courts themselves, aggravating the distance between the courts and the citizens and making it difficult for the community to understand the judicial decisions, a circumstance which is particularly visible in cases covered by the media.**

**Also, the Council communicates with the media mostly through the President and Vice President, the web site and public statements.**

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

**There is no vetting of judges only the standard legal systems of appointment, promotion and disciplinary procedures within the judicial career. Vetting of judges should not, in general terms, exist as recommended by CCJE.**

### **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.

**There is no majority of Judges among Council's members. It is an issue of a constitutional and legal nature, because it doesn't meet the standards of independence set by the Council of Europe.**

The control of Information Technology, totally external to the Council, which makes the judiciary dependent on the management of the IT tools by a third party, which is dependent on the Ministry of Justice. This is a sensitive matter, given that legal proceedings in Portugal are dematerialised and processed electronically.

A recent case of corruption of judges promptly solved by the Council at disciplinary level but still pending at a criminal level raised new concerns on how to deal with these cases in the future.

A structural problem is the lack of human and financial resources specially if compared with Judicial Councils of neighbourhood countries.

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

The scope of intervention of the Superior Council of the Magistracy is increasingly extended to more complex areas, such as the competences - derived from the Law of Organisation of the Judicial System – of monitoring and processing data related to the management and performance of the 1st and 2nd Instance courts.

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 major reforms have been occurring concerning the Council for the Judiciary although in recent years the new management of courts including “full time” Presidents of First Instance Courts, appointed by the Council, and the new developments on Digital Justice implied increasing responsibilities for the Council and their members.

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?

**Not applicable.**