



International Round Table
SHAPING JUDICIAL COUNCILS
TO MEET CONTEMPORARY CHALLENGES

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Comparative Overview on Judicial Councils in Europe

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Dear distinguished speakers and attendees, it is a great honour to speak today at this Roundtable. In the following minutes, I would like to give a brief comparative overview of Judicial Councils in Europe.

1. The data

The data on which my following remarks are based, was gathered in preparation of CCJE Opinion 24 (2021) on the „Evolution of the Council for the Judiciary and their role in an independent and impartial judicial system“. It is the working method of the CCJE to send out a questionnaire to the members in preparation of every opinion.

Last year, a questionnaire¹ with 25 questions on the organisation of the judiciary and the role, competences, composition and challenges of judicial councils was sent out.

¹ The questionnaire and a compilation of answers can be found on the CCJE website: https://www.coe.int/en/web/ccje/opinion-no.-24-on-the-evolution-of-the-councils-for-the-judiciary-and-their-role-for-independent-and-impartial-judicial-systems?p_p_id=56_IN-STANCE_3VHasSSKx889&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&p_p_col_id=column-4

A very high number of 42 states replied. I have added Malta in this presentation based on information published by the ENCJ.

This report just summarizes the reported answers. While I am confident that all responding states did their best to answer, some limitations of the data must be taken into account. Some information may be evaluated differently. Therefore, the information should just be taken as a starting point. More research remains necessary to get a complete picture.

2. How many judicial councils are there in Europe?

According to the responses, there is a high number of judicial councils in Europe. Out of 43 countries discussed here, 36 (84%) report having a judicial council. Austria, Czech Republic, Germany, Luxembourg, Sweden, Switzerland and the United Kingdom report not having one. While there is no judicial council at the federal level in Switzerland, 5 out of 26 cantons have established one.

YES, there is a judicial council 36/43 = 84%	NO, there is no judicial council 7/43 = 16%
Albania, Andorra, Armenia, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Denmark, Estonia, Finland, France, Georgia, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, Monaco, Montenegro, The Netherlands, North Macedonia, Norway, Poland, Portugal, Romania, Russia ² , San Marino, Slovakia, Slovenia, Spain, Turkey, Ukraine.	Austria, Czech Republic, Germany, Luxembourg, Sweden, Switzerland (no one at the federal level, 5 out of 26 cantons have one), United Kingdom.

3. Competences

The questionnaire asked about competences a judicial council (or other institution) may have, among them:

- Defending judicial independences/defending judges against public attacks
- Administration of the judiciary/individual courts

² Russia reported no relevant competences of its judicial council and will not be discussed further in this presentation.

- Selection of new judges
- Selection of judges for promotion
- Evaluation of judges/courts
- Disciplinary procedures
- Drafting and enforcing Codes of Ethics
- Public relations
- Input on legislation
- Training of judges
- IT, including digitalization and video-hearings
- Allocation of financial resources
- Salaries of judges

A great number of responding states report a considerable number of competences. However, most countries even with a smaller number of competences have councils of considerable importance.

Competences	Member states
14	3 Albania, Andorra, Georgia
13	3 Bosnia and Herzegovina, Spain, Turkey
12	5 Armenia, Bulgaria, Lithuania, San Marino, Slovakia
11	4 Azerbaijan, Belgium, Finland, Portugal
10	3 Ireland, Montenegro, Slovenia
9	5 Hungary, Italy, Latvia, Poland, Romania,
8	4 Denmark, Netherlands, North Macedonia, Norway
6	2 Croatia, France
5	1 Monaco
4	4 Cyprus, Estonia, Greece, Ukraine

Almost all countries report that a judicial council is responsible for defending judicial independence (33/43 = 77%) and for defending judges against public attacks.

In most countries, judicial council have considerable influence on judges' careers such as:

- Selection of judges (27/43 = 63%)
- Promotion of judges (28/43 = 65%)
- Evaluation of judges (19/43 = 44%)

In almost 60% of countries, judicial councils draft and enforce codes of ethics (25/43).

In 56% of countries, judicial councils have a role in disciplinary procedures (24/43)

In almost half of the countries, judicial councils play a role in the administration of the judiciary, often in cooperation with court presidents (21/43 = 48%).

It may be important to note that in many countries, IT is under the control of the Ministry of Justice, including countries with a judicial council. Given the growing importance of IT for the judiciary of the future, this might be an important competence to keep in mind.

In **countries without a judicial council**, ministries of justice often play a decisive role in the administration of the judiciary. However, in these member states, judges often play an important role in court administration, and judges' career. Moreover, decisions concerning judges' careers may be subject to independent judicial review like in Germany or in the hands of an independent appointment body like in the UK. Traditionally, many Nordic countries installed judicial administration bodies of relative independence. However, in recent years, these bodies have been reformed and strengthened and are reported as judicial councils now.

A list of competences is not enough to understand the **actual role of a judicial council** and judicial independence in a country. A more nuanced look at the whole system is necessary.

The CCJE-questionnaire included a number of questions aimed at understanding the actual role of judicial councils and safeguards of their independence. The questionnaire asked about the means judicial councils employ if they feel their position has been infringed. According to the responses, in 14 (40%) countries with a judicial council, a complaint to a constitutional or other court is a possibility. Thus, for 60% of councils, only institutional dialogue, reports, opinions and appeals to the media is available.

4. Composition

The more competences a judicial council has, the more important it is that it can exercise them independently. To ensure this, according to the recommendations of the Venice Commission and the CCJE, the majority of members should be judges elected by their peer.

Composition of judicial councils				
all judges (5/35 = 14%)	majority judges (18/35 = 51%)	half/half (5/35 = 14%)	minority judges (7/35 = 20%)	no judges (1/35=3%)

Judicial councils with half or a minority of judges may be joint councils representing both judges and prosecutors.³ Many councils have **non-judge members** like legal academics, advocates, some members of the civil society but some also politicians. In a few countries, such membership is forbidden, however. In Croatia, for example, one member each of the parliamentary majority and of the opposition must be present on the Council. In the majority of countries (20/35, 57%) there are **ex-officio members**, often the president of the supreme court, the prosecutor general in joint councils, but sometimes also the minister of justice. In a high number of countries 15 (43%), however, there are no ex-officio members.

In most countries, **judges are elected by their peers**, but there are cases, where judges are elected by parliament and/or the president. A number of countries aim at ensuring diversity of gender, court instances, regions and often also languages of judge-members through voting procedures.

In 21 countries (60%) of 35 countries that report having a judicial council, at least some members are **elected by parliament**. Among them, a simple majority requirement is reported by 9 countries,⁴ a 3/5 majority by 5 countries⁵ and a 2/3 majority by 7 countries.⁶

Some countries requiring a qualified majority mentioned a rule for cases where such a majority is not reached. There are reports of a simple majority in the second round, casting a lot between candidates with the highest votes and the necessity to nominate new candidates. Moreover, in some countries, the list of candidates is already prepared by a subcommittee composed of the parliamentary majority and two of the minority (Albania), or successful candidates must include members of the opposition (Croatia).

The CCJE also asked in its questionnaire, how the **independence and impartiality of the members' actions** can be ensured while in office. Countries mentioned that council members enjoy the privileges of judges, may not be held responsible for votes and opinions given in the council⁷ and must not vote on their own affairs. Moreover,

³ e.g. Belgium, Bosnia and Herzegovina, France, Italy, Portugal.

⁴ Azerbaijan, Bosnia and Herzegovina, Croatia, Estonia, North Macedonia (with special regional rules), Norway, Slovakia, Slovenia, Ukraine.

⁵ Armenia, Belgium, Georgia, Poland, Spain.

⁶ Albania, Belgium, Bulgaria, Montenegro, Portugal, San Marino, Turkey.

⁷ e.g. Andorra, Armenia, Croatia, North Macedonia, San Marino, Slovenia, Spain.

rules of incompatibility apply: 10 member states report that members may not hold other public offices or run a business.⁸

It is also important to look at the **removal of members from judicial councils**. In some member states, a removal is not allowed/not regulated at all. In others, a dismissal is possible first because members have lost their position, either as ex-officio members, or as members representing a certain court or because they have retired or were dismissed as a judge because of disciplinary reasons. Second, a mandate may be terminated because of a court decision or because of a decision of the council. It is clear that the reasons and procedure for such dismissals require careful attention to secure the independence of judicial councils.

Thank you for giving me your attention in this little journey through the diversity of judicial councils in Europe.

⁸ e.g. Albania, Andorra, Armenia, Belgium, Bulgaria: both political office and incompatibilities with running a business, Denmark: no member may hold political office, Georgia, Latvia, Netherlands. In Finland, members may not be a member of parliament or hold a position in public administration.