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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**in cooperation with University *La Sapienza*, Rome, Italy
and the University of Barcelona, Spain**

International Round Table

**SHAPING JUDICIAL COUNCILS
TO MEET CONTEMPORARY CHALLENGES**

University *La Sapienza*, Rome

21-22 March 2022

(Hybrid format)

GENERAL CONCLUSIONS



International round table on “Shaping judicial councils to meet contemporary challenges”

GENERAL CONCLUSIONS

1. The international round table on “Shaping judicial councils to meet contemporary challenges” was organised by the Venice Commission together with University *La Sapienza*, Rome, and the University of Barcelona, and took place in a hybrid format (in presence and online) in the *Palazzo dell Rettorato* of the University *La Sapienza* on 21 and 22 March 2022.

2. This round table examined several national models of judicial governance based on a judicial council and similar institutions. Judicial and non-judicial members of judicial councils, representatives of the authorities, including the Minister of Justice of Serbia and the Chair of the Legal commission for appointments and immunities of the Parliament of the Republic of Moldova, representatives of civil society from Albania, Bulgaria, Denmark, Georgia, France, Italy, Republic of Moldova, North Macedonia, Poland, Serbia, and Spain presented their national experiences and held exchanges of views with Venice Commission members and representatives of international organisations and expert bodies. The participants in the round table also discussed European standards in this field and the approaches of the Council of Europe and its bodies, in particular the European Court of Human Rights, the Venice Commission, CCJE, and GRECO, and of the European Commission. Opening remarks were made by Italian Under-Secretary of State Benedetto Della Vedova, Italian Minister of Justice Marta Cartabia, EU Commissioner Didier Reynders, and the Special Representative of the Venice Commission, Gianni Buquicchio. The full list of the speakers and the detailed program of the event is annexed to these General Conclusions.

3. Building upon recent national experiences and the work of the European institutions in this field, participants of the conference formulated further recommendations regarding the composition and the mandate of the judicial councils. These General Conclusions were based on the interventions of the speakers and were presented at the closing session of the round table by Cesare Pinelli, professor at the Law Faculty of University *La Sapienza* and the substitute member of the Venice Commission for Italy.

4. The following general conclusions were drawn from the discussions:

- There is a great diversity and no uniform model of judicial governance in Europe;
- Countries with a strong tradition of separation of powers and judicial independence may decide not to institute judicial councils, but having such a council is recommended in those countries where the judicial independence is more fragile; if a judicial council is set up, it has to meet the applicable international standards;
- Judicial councils should be constitutionally entrenched.
- The European Court of Human Rights has recently focused on institutional aspects of judicial independence under Article 6 of the European Convention on Human Rights;
- Other important European standards include the recommendations of the Committee of Ministers of the Council of Europe, opinions of the Consultative Council of European Judges (CCJE), Venice Commission opinions and reports, and recommendations by the Group of States against Corruption (GRECO);
- Standards in this field should provide parameters rather than hard rules;
- The independence of the judiciary goes hand in hand with its accountability;
- The ultimate beneficiary of the independence of the judiciary is the society. Independence is not only a prerogative of the judges, but also their primary duty; the judiciary must enjoy and deserve public trust;
- Judicial councils should avoid corporatism and politicization;

- Unrestrained self-government of judges may result in a self-serving judiciary, detached from the society;
- The presence of non-judicial members in the judicial council is crucial to mitigate corporatism, to provide democratic legitimacy, and to ensure accountability of this body and of the judicial system as a whole;
- Politicization takes many forms and is a risk for both the judicial and the non-judicial (“lay”) members of the judicial council;
- Accountability of the judiciary does not mean subordination to the executive. Judicial, informational, and punitive accountability serves the purpose of the realisation of the rule of law and democratic constitutionalism;
- Accountability is necessary for public trust but should not become a tool for influencing judicial decisions;
- The Committee of Ministers of the Council of Europe recommends that “not less than half” of the members of the judicial council should be judges elected by their peers. In order to prevent politicisation, however, the proportion of judges should also depend on the other features of the system;
- When lay members are elected by parliament this should be done with the broadest consensus, in principle by a qualified majority vote which involves the opposition, following an open and transparent competition. Effective anti-deadlock mechanisms should be provided;
- Other methods of appointment of lay members with the participation of civil society may be devised;
- Eligibility criteria should be designed taking into account the functions the members of the judicial council are to carry out. Legal skills are normally required but may not always be indispensable to become a lay member;
- Ineligibility criteria contribute to avoiding politicisation;
- Judicial members should be elected by their peers in a manner which ensures broad and fair representation of all levels and types of courts. The influence of the associations of judges should be taken into account in the choice of the electoral system;
- A staggered system of renewal of the composition of the judicial council may be considered, but it should not lead to open-ended processes of election;
- Members of judicial councils should have security of tenure and functional immunity. No possibility of impeachment/revocation should be envisaged, but removal of members should be possible for stated misbehaviour based on identified criteria in the law. There should exist ethical rules for members of judicial councils;
- Judicial councils may have an “asymmetric architecture”, with differently composed sub-bodies of the judicial council or even different autonomous institutions dealing with different aspects of the judicial governance;
- The opportunity of the presence and the powers of the *ex officio* members in the judicial council should be assessed in the light of the composition of the council and its functions. If the Minister of Justice sits on it, s/he should not decide on the matters of discipline of judges;
- Judicial councils should be set up with a view to also ensuring their effectiveness;
- Judicial councils should ensure the quality of justice;
- Judicial councils should provide fair and transparent decision-making; decisions should be duly motivated;
- Judicial review of career and disciplinary decision of the judicial councils should be made available, while respecting the mandate of the judicial council;
- There is a diversity of models as concerns the functions allocated to a judicial council, which may include all or a combination of powers relating to the recruitment, the career, the discipline, the training, the management and the budget of the judiciary, as well as advisory powers;

- The more powers are allocated to a judicial council, the greater its accountability should be and the more guarantees of independence should be provided; too broad powers, however, lead to increased pressure, which could jeopardise independence;
- Judicial councils should be given appropriate resources to fulfil their mandate;
- The independence of the judicial councils and of the judiciary is as much a result of the constitutional and legal framework governing it, as it is of the constitutional and legal culture prevailing in each country;
- Reforming the judiciary is a political necessity in many states but vetting procedures, which should at any rate be decided by the broadest agreement of the political forces and be supported by the society, are no panacea;
- Standards relating to judicial councils should be developed with a view to ensuring the ultimate goal of protecting and strengthening the independence of the judiciary, while providing specific solutions adapted to the prevailing context in each state.

APPENDIX: Programme and List of participants

APPENDIX I

PROGRAMME

Introduction - International Round Table

“Shaping judicial councils to meet contemporary challenges”

While there is a variety of systems of judicial governance in Europe, the most common model is based on the institution of a judicial council – an autonomous public body, usually composed of judges and lay members in different proportions, and exercising powers related to the career and discipline of judges, and also performing some administrative and standard-setting functions. This model has been recommended by the Council of Europe bodies as a means to avoid the two opposite risks of corporatism (and ensuing lack of accountability of the judicial system) and politicisation (undue influence of the parliament and government over the judicial system).

Finding the right balance between independence and accountability has proved challenging in some Council of Europe member States, where frequent and repeated reforms have been attempted to achieve an appropriate composition of judicial councils. The Venice Commission has been consulted in relation to these reforms and has analysed their compliance with the applicable international standards. It has realised the need to identify more detailed options and solutions for achieving a formula for the composition of judicial councils which meets both international standards and the specific national circumstances and needs, and for attributing to those councils necessary functions and powers.

This round table will examine several national examples of composition of judicial councils, and, building upon recent experiences, formulate further recommendations as to how its members - judicial, lay and any *ex officio*, should be selected and appointed. It will also deal with the mandate of those councils.

The speakers – members of the national judiciaries or judicial governance bodies, government officials, academics, and international experts – are encouraged to identify not only the *problems* of the currently existing models but also *solutions* (already existing or possible) to those problems.

Monday, 21 March 2022

10:00 am – 10:30 am. Opening addresses

- Mr Benedetto Della Vedova, Under-Secretary of State, Ministry of Foreign Affairs and International Cooperation of Italy
- Ms Marta Cartabia, Minister of Justice, Venice Commission, Italy
- Mr Gianni Buquicchio, Venice Commission Special Representative
- Mr Didier Reynders, European Commissioner for Justice ([video message](#))

10:30 am – 12:30 am. Introductory session: *Defining the framework*

Moderator: Mr Christos Giakoumopoulos, Council of Europe, Director General, Directorate of Human Rights and Rule of Law (DGI)

- Mr Raffaele Sabato, Judge, European Court of Human Rights:
Independence of the judiciary from the standpoint of the European Court of Human Rights
- Mr Martin Kuijer, Venice Commission, Judge at the Supreme Court, the Netherlands:
Independence of the judiciary – a dynamic concept
- Ms. Anke Eilers, President of the Consultative Council of European Judges (CCJE) (online):
The work of the Consultative Council of European Judges (the CCJE)
- Mr Alastair Brown, judge, UK, GRECO evaluator (online):
The work of GRECO regarding the composition of the judicial councils
- Ms Anne Sanders, CCJE Scientific Expert, Prof. University of Bielefeld, Germany/University of Bergen, Norway (online):
A survey of the judicial councils in Council of Europe member states

Followed by discussion

14:00 – 16:00. First Panel: *The status of the members of the Judicial Council*

Moderator: Mr Josep Maria Castellà Andreu, Venice Commission, Professor of Constitutional Law, University Barcelona, Spain

Particular issues to be covered: irremovability and immunity, duration of mandate, possibility of re-election; institutional reforms of the judicial council and the renewal of its composition; pros and contras of part-time membership; *ex officio* members of the judicial councils (President of the Republic, President of the Supreme Court, Prosecutor General, President of the Bar, Ombudsperson); possible conflicts of interests and incompatibilities of

mandates; impact of the *ex officio* members on the independence of the judicial council; possible limitation of powers of the *ex officio* members; *ex officio* members and the chairmanship of the council; integrity checks of the candidates/members of the councils; possibility for members of the council to hold political or governmental offices before or after their mandate (“revolving door” problem).

- Mr Richard Barrett, Venice Commission, Former Deputy Director General, Office of the Attorney General of Ireland
- Ms Nina Betetto, Judge of the Supreme Court of Slovenia, former President of the CCJE
- Mr Evgeny Staykov, Judge of the Supreme Court of Cassation, former judicial member of the Supreme Council of Magistracy, Bulgaria
- Ms Nazibrola Janezashvili, Director of the Georgian Court Watch, former lay member of the Judicial Council, Georgia
- Ms Olesea Stamate, Venice Commission, Chair of the Legal commission for appointments and immunities, Parliament, Republic of Moldova

Followed by discussion

16:30 – 18:30. Second Panel: *Election/appointment of the members of the judicial council*

Moderator: Ms Simona Granata-Menghini, Director, Secretary of the Venice Commission

Particular issues to be covered: balance between lay members and judicial members; mixed judicial-prosecutorial councils; eligibility criteria for lay members, rules on political affiliation; power to appoint or elect lay members; guarantees against politicization; guarantees of political pluralism; advantages, downsides, alternatives to election by qualified majority by the Parliament; anti-deadlock mechanisms/ proportionate systems; nomination/appointment of lay members by the civil society or independent institutions, guarantees of representativeness and independence, procedure of election of judge members.

- Mr Kaarlo Tuori, Venice Commission, Professor of Jurisprudence, Department of Public Law, University of Helsinki, Finland
- Ms Ana Gallego Torres, Director General, Directorate-General for Justice and Consumers (DG JUST), European Union
- Ms Maia Popovic, Minister of Justice, Serbia
- Ms Małgorzata Szuleka, Secretary of the board, Helsinki Foundation for Human Rights, Poland
- Ms Lene Sigvardt, Vice-President, Danish Association of Justices, Denmark (online)

Followed by discussion

Tuesday, 22 March 2022

9:30 am – 11:30 am. Third Panel: *The role and the powers of the judicial council*

Moderator: Mr António Henriques Gaspar, Venice Commission, Judge Councillor, Supreme Court of Justice, Former President of the Supreme Court and of the High Judicial Council, Portugal

Particular issues to be covered: Powers of the judicial councils related to the career of judges – first-time appointment to the judicial positions, promotion to higher courts, promotion to management positions within the judiciary; powers and rules related to discipline; powers to give opinions on legislation and budget in the judicial sphere; interrelation between the composition of the judicial council and its powers – centralized model vs. fragmented model; annex bodies assuming some of the powers of the judicial councils.

- Mr Bertrand Mathieu, Venice Commission, Senior Member of the Council of State, France
- Mr Filippo Donati, President, European Network of the Councils for the Judiciary (ENCJ)
- Ms Renata Deskoska, Venice Commission, Professor of Constitutional Law, University “Ss. Cyril and Methodius”, Former Minister of Justice, North Macedonia
- Ms Naureda Llagami, Chairperson of the High Judicial Council, Albania
- Mr Juan Manuel Fernandez, Member of the High Council of the Judiciary, Spain

Followed by discussion

12:00 – 13:00. Concluding session: *General discussion and conclusions*

Conclusions by Mr Cesare Pinelli, Venice Commission, Head of the Public Law Section, Legal Science Department, University La Sapienza, Rome

APPENDIX II

LIST OF PARTICIPANTS

Italian authorities

- Mr Benedetto Della Vedova, Under Secretary of State, Ministry of Foreign Affairs and International Cooperation
- Ms Marta Cartabia, Minister of Justice, Venice Commission, Italy

European Commission

- Mr Didier Reynders, European Commissioner for Justice (video) DG Justice and Consumers
- Ms Ana Gallego Torres, Director General, Directorate-General for Justice and Consumers (DG JUST), European Commission

Venice Commission

- Mr Gianni Buquicchio, Venice Commission Special Representative
- Mr Richard Barrett, barrister, Former Deputy Director General, Office of the Attorney General of Ireland
- Ms Renata Deskoska, Professor of Constitutional Law, University "Ss. Cyril and Methodius", Former Minister of Justice, North Macedonia
- Mr Josep Maria Castellà Andreu, Professor of Constitutional Law, University Barcelona, Spain
- Mr António Henriques Gaspar, Judge Councillor, Supreme Court of Justice, Former President of the Supreme Court and of the High Judicial Council, Portugal (online)
- Mr Martin Kuijer, Judge at the Supreme Court, the Netherlands
- Mr Bertrand Mathieu, Senior Member of the Council of State, France
- Mr Cesare Pinelli, Head of the Public Law Section, Legal Science Department, University La Sapienza, Rome
- Ms Olesea Stamate, Chair of the Legal commission for appointments and immunities, Parliament, Republic of Moldova
- Mr Kaarlo Tuori, Professor of Jurisprudence, Department of Public Law, University of Helsinki, Finland

Other Council of Europe bodies and European institutions

- Mr Raffaele Sabato, Judge, European Court of Human Rights
- Ms Anke Eilers, President of the Consultative Council of European Judges (CCJE) (online)
- Ms Nina Betetto, Judge of the Supreme Court of Slovenia, former President of the CCJE
- Ms Anne Sanders; CCJE Scientific Expert, Prof. University of Bielefeld, Germany/University of Bergen, Norway (online)
- Mr Sheriff Alastair Brown, Judge, United Kingdom, GRECO evaluator
- Mr Filippo Donati, President, European Network of the Councils for the Judiciary (ENCJ)

National experts and representatives of the authorities of the member States

- Ms Nazibrola Janezashvili, Director of the Georgian Court Watch, former lay member of the Judicial Council, Georgia
- Mr Evgeniy Staykov, Judge of the Supreme Court of Cassation, former judicial member of the Supreme Council of Magistracy, Bulgaria
- Ms Małgorzata Szuleka, Secretary of the board, Helsinki Foundation for Human Rights, Poland
- Ms Naureda Llagami, Chairperson of the High Judicial Council, Albania
- Ms Lene Sigvardt, Vice-President, Danish Association of Justices, Denmark (online)

- Ms Maia Popovic, Minister of Justice, Serbia
- Mr Juan Manuel Fernandez, Member of the High Council of the Judiciary, Spain

Council of Europe staff members

- Mr Christos. Giakoumopoulos, Director General, Directorate of Human Rights and Rule of Law (DGI)
- Ms Simona Granata-Menghini, Director, Secretary of the Venice Commission (DGI)
- Ms Stoica Livia, Head of Office, Legal cooperation (CDCJ, CCJC and CCPE), (DGI)
- Mr Grigory Dikov, legal officer, Venice Commission (DGI)