



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 – SAN MARINO

*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?
The exact denomination is CONSIGLIO GIUDIZIARIO PLENARIO. Worth mentioning is that the Republic of San Marino has recently embarked on a process of reform of its entire legislation on the judicial system. San Marino Parliament (called Great and General Council) decided on 24 June 2020 to launch the reform of the legislation on the judicial system in line with the European standards. With a subsequent Decision dated 5 October 2020, the current Government of the Republic of San Marino has consequently set up a specific Joint Working Group (composed of lawyers, judges and university professors) to draft the reform text in line with international standards. The work of this Joint Working Group is currently ongoing.
This reform project, which will be launched shortly, envisages significant changes to the judicial system and therefore also to the Judicial Council in plenary session, in line with the European standards and fully respecting the specificities of the Republic of San Marino.
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 checked="" type="checkbox"/> Court Presidents <input type="checkbox"/> bodies within individual courts <input type="checkbox"/> Judicial Administration Board <input 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 checked="" type="checkbox"/> Court Presidents <input type="checkbox"/> bodies within individual courts <input type="checkbox"/> Judicial Administration Board <input type="checkbox"/> Association of Judges <input type="checkbox"/> other, please specify
Administration of the judiciary	<input checked="" type="checkbox"/> HJC <input type="checkbox"/> MoJ <input checked="" type="checkbox"/> Court Presidents <input type="checkbox"/> bodies within individual courts <input type="checkbox"/> Judicial Administration Board <input type="checkbox"/> Association of Judges <input type="checkbox"/> other, please specify
Selection of new judges	<input checked="" type="checkbox"/> HJC <input type="checkbox"/> MoJ <input type="checkbox"/> Parliament <input type="checkbox"/> Court Presidents <input type="checkbox"/> bodies within individual courts <input type="checkbox"/> Judicial Administration Board <input type="checkbox"/> A special Judicial Appointment Body <input type="checkbox"/> other, please specify
Selection of judges for promotion	<input checked="" type="checkbox"/> HJC <input type="checkbox"/> MoJ <input type="checkbox"/> Parliament <input type="checkbox"/> Court Presidents <input type="checkbox"/> bodies within individual courts <input type="checkbox"/> Judicial Administration Board <input type="checkbox"/> A special Judicial Appointment Body <input type="checkbox"/> other, please specify
Evaluation of judges	<input type="checkbox"/> HJC <input type="checkbox"/> MoJ <input type="checkbox"/> Parliament <input type="checkbox"/> Court Presidents <input type="checkbox"/> bodies within individual courts <input type="checkbox"/> Judicial Administration Board <input type="checkbox"/> Association of Judges <input checked="" type="checkbox"/> other, please specify The current legislation does not provide for a system of periodic evaluation of the

	<p>judges' activity. It is envisaged exclusively in the case of disciplinary measures or in the case of career advancement, promotion or appointment. The draft reform not yet deposited, and currently being drafted by the Working Group, also provides for procedures for periodic evaluation of the judges' activity.</p>
<p>Evaluation of court performance</p>	<p> <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 </p>
<p>Conducting disciplinary procedures</p>	<p> <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 checked="" type="radio"/> other, please specify </p> <p>The Permanent Parliamentary Commission for Justice is one of the parties entitled to initiate disciplinary proceedings against judges. The decision on the admissibility and on the merits of the procedure is in any case the responsibility of the Guarantors' Panel on the Constitutionality of Rules, which is composed of three judges (and is similar to a Constitutional Court).</p> <p>The current legislation exclusively provides for removal as the only disciplinary sanction. The draft reform provides instead for several disciplinary sanctions to be applied gradually.</p>
<p>Drafting and enforcing a code of ethics</p>	<p> <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"/> other, please specify </p> <p>A code of conduct for judges, drawn up in consultation with the judges and approved by the Judicial Council in plenary session, currently exists.</p> <p>This code of conduct is intended to provide the judges with ethical guidelines</p>

	to be followed, also with a view to improving control of their independence.
Public relations/media coverage for the judiciary, or individual courts	<input checked="" type="checkbox"/> HJC <input type="checkbox"/> MoJ <input type="checkbox"/> Parliament <input checked="" type="checkbox"/> Court Presidents <input type="checkbox"/> bodies within individual courts <input type="checkbox"/> Judicial Administration Board <input type="checkbox"/> Association of Judges <input type="checkbox"/> other, please specify
Providing input on legislative projects	<input checked="" type="checkbox"/> HJC <input checked="" type="checkbox"/> MoJ <input type="checkbox"/> Court Presidents <input type="checkbox"/> bodies within individual courts <input type="checkbox"/> Judicial Administration Board <input type="checkbox"/> Association of Judges <input type="checkbox"/> other, please specify
Training of judges	<input checked="" type="checkbox"/> HJC <input type="checkbox"/> MoJ <input checked="" type="checkbox"/> Court Presidents <input type="checkbox"/> bodies within individual courts <input type="checkbox"/> Judicial Administration Board <input type="checkbox"/> Association of Judges <input type="checkbox"/> other, please specify
IT, including digitalisation of the judiciary and online hearings	<input checked="" type="checkbox"/> HJC <input checked="" type="checkbox"/> MoJ <input type="checkbox"/> Parliament <input type="checkbox"/> Court Presidents <input type="checkbox"/> bodies within individual courts <input type="checkbox"/> Judicial Administration Board <input type="checkbox"/> other, please specify
The allocation of financial resources to the judiciary including individual courts	<input type="checkbox"/> HJC <input type="checkbox"/> MoJ <input checked="" type="checkbox"/> Parliament <input type="checkbox"/> Court Presidents <input type="checkbox"/> bodies within individual courts <input type="checkbox"/> Judicial Administration Board <input type="checkbox"/> other, please specify
Salaries of judges	<input type="checkbox"/> HJC <input type="checkbox"/> MoJ <input checked="" type="checkbox"/> Parliament <input type="checkbox"/> Court Presidents <input type="checkbox"/> Bodies within individual courts <input type="checkbox"/> Judicial Administration Board <input type="checkbox"/> 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?

Besides being responsible for appointing and recruiting judges and for initiating disciplinary actions, the Judicial Council in plenary session can suspend judges upon their request, or in case of precautionary needs.

The Judicial Council in plenary session is also competent to appoint the Head of the Court for a maximum term of 5 years and his/her Alternate. The legislation currently in force contains no provision giving any party the power to revoke the mandate of the Head of 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?

Nothing in particular.

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

It should be noted that the draft reform of the judicial system currently being drafted envisages, in line with the standards, that all mechanisms to monitor the independence and autonomy of the judiciary be provided for in the constitutional law.

- 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?

Nothing in particular.

Composition and Membership

5. The composition of the Council for the Judiciary:

- How many members are there?

22. Worth mentioning is that the draft reform of the judicial system currently being drafted envisages a reduction in the number of members.

- Are there ex-officio members?
Yes, the Minister of Justice. It should be noted that the draft reform currently being drafted no longer provides for the presence of the Minister of Justice.

- How many members must be judges? Do they need specific qualifications or experiences, must they come from different court systems or instances?
**There are 11 judges. In order to participate, according to the law they must meet an experience requirement based on seniority and position held. San Marino legal system does not provide for differentiated courts. All instances are represented in the current Judicial Council in plenary session. Worth recalling is also that the only “full-time” judges (who therefore carry out the jurisdictional activity in San Marino as their primary activity) are first instance judges, whereas higher judges carry out their activity “part-time” (i.e. together with other primary activities). Only recently, with new internal recruitments, some “full-time” appeal judges were appointed.
It should be noted that the reform project currently being drafted envisages an elective system for participation in the Judicial Council in plenary session.**

- Can/must non-judges be members of the Council? Please specify (number, qualification/specific functions)
Among the members, 11 are non-judges. These are the Minister of Justice and 10 members elected by the Parliament from among its members. The draft reform of the judicial system currently being drafted envisages an elective system also for non-judges who are members, based on specific skills and qualifications, and no longer provides for the presence of the Minister of Justice.

6. Please describe the procedure of appointment:

- Who nominates the members? (judges or other institutions or authorities – please specify)
Members who are not judges are appointed by the Parliament from among its members by a 2/3 majority.

- Please describe the appointment system. **Previous answers.**

- If members are elected by Parliament, are these members elected with a simple or qualified majority? **Qualified Majority.**

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

The current legislation does not provide for the immunity in favour of members who are judges, whereas non-judges who are members have parliamentary immunity.

This aspect will also be regulated in the draft reform of the judicial system currently being drafted.

8. How is the President and/or Vice-President of the Council selected and appointed?
The Judicial Council in plenary session is chaired by the two Heads of State (called Captains Regent) who serve for six months and are elected from among the members of Parliament. Their task is to chair the meetings and direct their works without any right to vote or to enter into the merits of the debate.
9. What is the term of office for a member of the Council?
The current legislation does not provide for a term of office. The draft reform of the judicial system currently being drafted provides instead for a specific term of office.
10. May a member be removed from office against his/her will and, if so, under what circumstances? **No.**

Resources and management

11. Which body provides funding for the Council for the Judiciary?	<input type="radio"/> MoJ <input checked="" type="radio"/> Parliament <input type="radio"/> other, if so specify
12. Is the administration of the Council for the Judiciary independent from other branches of government?	<input checked="" type="radio"/> yes <input 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?
In past years there were no conflicts but normal exchanges of views among members. On the contrary, in recent years there have been some conflicts within the Judicial Council in plenary session concerning appointment, tasks and recruitment. To date, these conflicts are being solved. Those concerned had the opportunity to lodge a formal appeal through judicial procedure against the decisions taken by the Judicial Council in plenary session.
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?
Only in recent years have some judges challenged the decisions of the Judicial Council in plenary session. These conflicts concern matters related to appointment, tasks and recruitment. Also in this case, the judges concerned had the opportunity to formally appeal against the decisions taken.

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 past years there were no conflicts but normal exchanges of views. In more recent years, approximately from 2017 onwards, conflicts have arisen in

connection with individual tasks. In some cases, the legitimacy of the appointment procedure of some judges was also questioned.

There were also tensions concerning recent legislative interventions. In particular, some judges expressed criticism with respect to Qualified Law no. 1 of 26 February 2019 adopted in the previous legislature and concerning also the composition rules of the Judicial Council in plenary session. Criticism was also expressed by other judges with respect to the subsequent Qualified Law no. 1 of 20 February 2020 adopted in this legislature in order to solve interpretative doubts that had arisen precisely with respect to the composition of the Judicial Council in plenary session.

The Heads of State (Captains Regent) presiding over the Judicial Council requested a legal opinion from an authoritative Italian constitutionalist (former President of the Italian Constitutional Court) in order to correctly apply Qualified Law no. 1 of 20 February 2020 and thus solve the doubts arisen.

The draft reform of the judicial system currently being drafted also provides for new rules on the composition of the Judicial Council in plenary session.

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 current law does not provide for many remedies in case of violation of the role of the Judicial Council in plenary session. In the event that the role of the Judicial Council in plenary session is violated, the Heads of State (Captains Regent), who preside over the Judicial Council and who are the guarantors of the balance among State powers, may take protective measures, including at public and/or political level. Also the Judicial Council in plenary session may interact with the media.
17. How does the Council for the Judiciary in your judicial system interact with anti-corruption bodies? **There are not anti-corruption bodies.**
18. How does the Council for the Judiciary in your judicial system interact with NGOs? **There are not NGOs.**
19. How does the Council for the Judiciary in your judicial system interact with associations of judges? **There are not associations of judges.**
20. How does the Council for the Judiciary in your judicial system interact with media?
The meetings of the Judicial Council in plenary session are not open to the public. However, the Judicial Council in plenary session may transmit press releases to the media to provide information about the decisions taken.
21. What, if any, is the role of the Council for the Judiciary in the vetting of judges?
Consiglio Giudiziario Plenario has not such role, and in my opinion sole idea vetting of judges is wrong.

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.

In my opinion, the most important challenge, both for the Judicial Council in plenary session and for the entire judicial system is the forthcoming reform of the judicial system, which is currently being drafted. This reform will have to lead to an evolved judicial system that complies with the highest standards and is better adapted to technological developments and the digitalisation, which has also been imposed by the recent worldwide pandemic, compatibly with the specificities of the Republic of San Marino.

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

Yes, I believe that the role of the Judicial Council in plenary session has changed significantly in recent years. This is particularly true for the judiciary, which has been characterised by the recruitment of young judges and by the need for reform and adjustment of the judicial system. In this regard, the recent establishment of a Joint Working Group (also composed of lawyers, judges and academic professors) by the Government for the purpose of drawing up the draft reform of the judicial system is important.

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?

In recent years there have been several reforms concerning the Judicial Council in plenary session. Indeed, in the previous legislature, Qualified Law no. 1 of 26 February 2019 concerning also the composition rules of the Judicial Council in plenary session was adopted. In order to solve some doubts that arose regarding the composition of the Judicial Council in plenary session, Qualified Law no. 1 of 20 February 2020 was subsequently adopted in this legislature. The Heads of State (Captains Regent) presiding over the Judicial Council requested a legal opinion from an authoritative Italian constitutionalist (former President of the Italian Constitutional Court) in order to correctly apply Qualified Law no. 1 of 20 February 2020 and thus solve the doubts arisen.

The draft reform of the judicial system currently being drafted also provides for new rules on the composition of the Judicial Council in plenary session, which should solve doubts on the composition and the problems emerged.

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.