



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

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| 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?

Official name in Slovenian: Sodni svet Republike Slovenije

Official name in English: Judicial Council of the Republic of Slovenia (hereinafter JC)

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.

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| Defending and fostering the independence of judges and the judiciary/the rule of law | <input checked="" type="checkbox"/> HJC <input checked="" type="checkbox"/> Court Presidents <input checked="" type="checkbox"/> Association of Judges |
| Defending judges/the judiciary against public attacks | <input checked="" type="checkbox"/> HJC <input checked="" type="checkbox"/> Court Presidents <input checked="" type="checkbox"/> Association of Judges |

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| Administration of the judiciary | <ul style="list-style-type: none"> x HJC (limited; see 3.5) x MoJ x Court Presidents x Supreme Court |
| Selection of new judges | <ul style="list-style-type: none"> x HJC (selection and appointment) x Parliament (appointment) <p><i>If the JC selects a candidate who has not been elected to the judicial office before it is obliged to propose such a candidate to the Parliament for the election.</i></p> |
| Selection of judges for promotion | <ul style="list-style-type: none"> x HJC x Parliament (only for Supreme Court judges on the proposal of the JC) |
| Evaluation of judges | <p>X Other</p> <p>Judicial Personnel Councils established at higher courts and at the Supreme Court.</p> <p>The Judicial Personnel Council of the Supreme Court is responsible for assessing performance of Supreme Court judges and judges of higher courts, the judicial personnel councils of higher courts are responsible for assessing performance of judges of local and district courts.</p> <p>A judicial personnel council is composed of the president of the court (<i>ex officio</i>) and judge-members elected by their peers.</p> |
| Evaluation of court performance | <ul style="list-style-type: none"> x HJC (limited; see 3.5) x MoJ x Court Presidents x Supreme Court |
| Conducting disciplinary procedures | <ul style="list-style-type: none"> x HJC (independent disciplinary bodies within the HJC) |
| Drafting and enforcing a code of ethics | <ul style="list-style-type: none"> x HJC x Association of Judges |
| Public relations/media coverage for the judiciary, or individual courts | <ul style="list-style-type: none"> x Court Presidents x bodies within individual courts (optional – depends on each court) x Supreme Court |
| Providing input on legislative projects | <ul style="list-style-type: none"> x HJC x MoJ x Court Presidents x Association of Judges |
| Training of judges | <ul style="list-style-type: none"> x MoJ |
| IT, including digitalisation of the judiciary and online hearings | <p>Other (Supreme Court)</p> <p>District and higher courts have an information technology service and the Supreme Court has an information</p> |

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| | <p>technology centre as a special organisational unit. The information technology service of a district court also performs tasks for the needs of local courts within the territory of the district court.</p> |
| <p>The allocation of financial resources to the judiciary including individual courts</p> | <p>x Parliament x MoJ x Supreme Court</p> <p>The annual amount of funds for the salaries of judges and other court staff, for the operational costs of courts, for equipment costs and for the provision of spatial conditions is determined by the state budget.</p> <p>The amount of funds for the salaries of judges and court staff and for the operational costs of courts is provided by the state budget of the Republic of Slovenia for all courts on the basis of the financial plans of the individual courts at the budget user, i.e. the Supreme Court of the Republic of Slovenia.</p> <p>In order to harmonise the proposals for court financial plans and court staff plans in accordance with the Act regulating public finance and public employees, a judicial budget committee is established at the Supreme Court of the Republic of Slovenia, which is composed of representatives of the Supreme Court of the Republic of Slovenia, higher courts, district courts, JC and MoJ.</p> <p>In the budget of the Republic of Slovenia, the funds for the purchase of equipment for courts and ensuring the spatial conditions for courts are determined and provided by the MoJ, while funds for the computerisation of courts are provided by the Supreme Court of the Republic of Slovenia.</p> |
| <p>Salaries of judges</p> | <p>x Parliament (The salaries of judges are determined by law)</p> <p>x HJC (See 3.2.)</p> |

- 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 basic, constitutionally defined roles of the JC are the selection and nomination of candidates for election to the office of a judge (Article 130 of the Constitution) and the proposal of dismissal of judges (Article 132 of the Constitution).

In order to ensure the independence, effectiveness and accountability of the judiciary and to strengthen public trust in the judiciary, the JC has a number of other powers laid down in the Judicial Council Act (*Zakon o sodnem svetu*; hereinafter JCA; Article 23):

1. in respect of the selection, appointment and dismissal of judges, presidents and vice-presidents of courts:
 - to give a preliminary opinion in proceedings for the appointment of the Supreme Court president;
 - to propose to the National Assembly candidates for appointment as Supreme Court judges;
 - to appoint and dismiss presidents and vice-presidents of courts, with the exception of the Supreme Court president;
 - to select from among candidates for a vacant judicial post;
 - to propose to the National Assembly candidates to be elected to judicial office and to appoint judges following a call for vacant judicial posts;
 - to give a reasoned opinion in procedures for the dismissal of the Supreme Court president;
 - to notify the National Assembly of any final judgment of conviction against a judge;
 - to submit proposals to the National Assembly for the dismissal of a judge;
 - to issue declaratory decisions on the termination of judicial office or judicial service;

2. in respect of other personnel matters relating to judges:
 - to decide on the incompatibility of the judicial function;
 - to decide on the promotion to a higher judicial title;
 - to decide on faster promotion within salary grades, promotion to the title of senior judge or promotion to a higher judicial post;
 - to decide on extraordinary promotion to a higher judicial title;
 - to decide on confirmation of a negative assessment of judge's suitability for judicial service;
 - to decide on the proposal for the elimination of violations of a judge who considers that their independence has been affected;
 - to decide on the complaints against decisions on transfer and/or appointment to a judicial post, a judicial title and/or a higher judicial title and against decisions on classification into salary grades;
 - to decide on the transfer of a judge;
 - to decide on the assignment of a judge to work at the Constitutional Court of the Republic of Slovenia, the Supreme Court, the Higher Court, the specialised department of a district court, the administrative and professional service of the

JC or the Centre for Judicial Training, or to perform more demanding professional work at the ministry;

- to decide on exemption from the performance of judicial service;
- to decide on granting scholarships in the judicial area;

3. in respect of judicial ethics and integrity:

- to adopt the Code of Judicial Ethics;
- to appoint the members of the Ethics and Integrity Commission;
- to request consideration of ethical issues before the Ethics and Integrity Commission;

4. in respect of disciplinary responsibility of judges:

- to appoint disciplinary bodies;
- to submit initiatives to initiate disciplinary proceedings against a judge;
- to enforce disciplinary sanctions against a judge if, under the act governing the judicial service, a disciplinary sanction was imposed on them suspending their promotion, reducing their salary or transferring them to another court;
- to decide on the measure of temporary suspension from the judicial service of the Supreme Court president;
- to decide on complaints against the Supreme Court president's decision on temporary suspension of a judge from the judicial service;

5. Other tasks:

- to adopt criteria for the selection of candidates for a judicial post following a preliminary opinion of the minister and judicial work quality criteria for judges with regard to judicial service assessment;
- to adopt instructions on the manner of election of members of personnel councils and issuance of calls for election;
- to give consent to the policy for detecting and managing corruption risks and vulnerabilities at courts and monitoring its implementation;
- to submit preliminary opinions on schemes of internal organisational units of courts;
- to submit preliminary opinions in procedures for determining the number of judicial posts in a particular court;
- to submit an opinion on the Supreme Court's annual report concerning the effectiveness and performance of the courts and on the proposed financial plan for the courts;
- to submit opinions to the National Assembly and the ministry on laws governing the courts and the judicial service;
- to submit requests for the initiation of proceedings for review of the constitutionality and legality of regulations in the event of their interference with the constitutional status or rights of the judiciary;
- to submit reasoned requests for ordering a review of operations in a particular case;
- to submit opinions on orders for the detention of or the initiation of criminal proceedings against a judge and
- to perform other tasks if so stipulated

Legal basis

4. Please explain which legal sources regulate the following aspects of the Council for the Judiciary in your legal system

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| Existence of a Council for the Judiciary | x Constitution |
| Composition | x Constitution |
| Selection of members including tenure and removal during tenure | x Constitution x Law (JCA) |
| Tasks | x Constitution x Law (JCA) |
| Resources, funding, administration | x Law (JCA) |
| Independence | x Constitution x Law (JCA) |

- 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?

Within the framework determined by the JCA, the JC sets out its own manner of operation; it adopts, by a two-thirds majority vote of all members, its Rules of Procedure, which regulate in more detail its method of work, such as the organisation, convening and conduct of sessions, data protection method, procedures for the implementation of decisions, cooperation with other bodies, informing the public.

Composition and Membership

5. The composition of the Council for the Judiciary:

- How many members are there? 11
- 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?
- Can/must non-judges be members of the Council? Please specify (number, qualification/specific functions)

The JC comprises eleven members. The National Assembly elects five members on a proposal of the President of the Republic from among university professors of law, attorneys, and other lawyers, whereas judges holding permanent judicial office elect six members from among their own ranks: one member is elected by judges of the Supreme Court, one member by judges of higher courts, one member by judges of district courts, one by judges of local courts and two members are elected by direct universal suffrage of all judges.

6. Please describe the procedure of appointment:

- Who nominates the members? (judges or other institutions or authorities – please specify)
- Please describe the appointment system
- If members are elected by Parliament, are these members elected with a simple or qualified majority? Simple majority

After the President of the Republic has published a call for proposals for potential candidates for JC membership, five members of the JC are elected by the National Assembly by secret ballot. On the list of candidates the number of proposed candidates must exceed the number of vacant posts but only to a maximum of twice the number of posts available.

Six judge members of the JC are elected by direct and secret ballot from among their peers. The judges who on the voting day hold judicial function and are registered in the judicial electoral register have the right to vote. Similarly, every judge has a right to stand as a candidate in the elections provided that on the voting day he or she holds a judicial function and is registered in the judicial electoral register. Candidates for JC members are nominated by their peers in writing or at the assembly of judges. A candidate is entered on the list when proposed by at least three judges.

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

The JCA provides for several provisions that protect the independence of JC members:

- It ensures the autonomy and independence in decision-making: when deciding on proposals for election to judicial office, promotion to a higher judicial post or other promotion of judges, confirmation of a negative assessment of a judge's suitability for the judicial service and the incompatibility of the judicial office, the JC independently assesses the fulfilment of conditions in accordance with the Judicial Service Act (Article 32, JCA).
- It ensures the functional immunity of members - a member of the JC participating in the JC's work can not be held accountable for any opinion expressed during decision-making (Article 11, JCA).
- It stipulates that the members of the JC may not be bound by any instructions when deciding (Article 28-3, JCA).
- It specifies the situations that can lead to the termination of office of a JC member (Article 14, JCA).

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

The president and vice-president are elected by the members from among themselves by secret ballot and by a two-thirds majority vote for a period of three years and may not be re-elected after the expiry of their term of office.

If the president is elected from among the judge members of the JC, it follows that the vice-president may be elected only from among the JC members elected by the National Assembly, and vice versa.

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

The term of office of a member of the JC is six years. Every three years, two or three members of the JC are elected by the National Assembly and three members of the JC are elected by and from among judges.

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

The circumstances that can lead to the termination of office of a JC member against his/her will are specified in the Article 14 of the JCA, as follows:

- 1. if he or she has been issued a disciplinary sanction by a competent professional organisation or if a competent professional organisation has found that a member, on the basis of his/her conduct, has violated the code of ethics, and is consequently deemed unfit to serve as a JC member;
- 2. if he or she is finally convicted of a criminal offence;
- 3.
 - a) by cessation of or dismissal from judicial office if the JC member is a judge;
 - b) in the event of permanent inability to perform his or her office or loss of the status on the basis of which a JC member who is not a judge was elected.

Resources and management

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| <p>11. Which body provides funding for the Council for the Judiciary?</p> | <p>Funds for the work of the JC are provided for in the state budget.</p> <p>As an autonomous and direct budget user, the JC adopts a budget proposal for its operation for each budgetary period by a two-thirds majority vote of its members and submits it to the Government (Article 56-1,2, JCA).</p> |
| <p>12. Is the administration of the Council for the Judiciary independent from other branches of government?</p> | <p>Yes</p> |

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?

First, some tensions between the JC and the courts, in particular the Supreme Court, need to be mentioned. Much to the disappointment of the Supreme Court, where judges are often seconded to perform task which, strictly speaking, do not fall within the category of adjudicating cases (e. g. modernization of court administration), the JC has tightened its approach as to the duration of (temporary) assignment of judges to higher instance courts/MoJ on the ground that a judge should, in principle, adjudicate cases, whereas the excessive length of assignments may impair his or her ability to hear cases. In the light of these tensions, the assignment of judges is likely to be subject to a more detailed regulation in the forthcoming amendment to judicial legislation.

Second, as regards the relations between individual judges and the JC, it should be noted that, over the last few years, the number of judges who have challenged the decisions of the JC pertaining to judicial career (selection, promotion etc.) before the court when they believed that they were unfairly treated in the process before the JC has increased.

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?

Two types of tensions between the JC and the legislative and executive branches of government may be highlighted. First, it has happened at several occasions that the National Assembly did not elect candidates proposed by the JC for election to judicial positions without stating clear reasons for doing so, which casts doubt as to whether judges are appointed on the basis of professional and personal qualities or on the basis of political preferences.

Another pressing problem are legislative processes where the JC is generally not given sufficient time to comment on the intended legislation in matters connected with the status of judges and administration of courts. The JC keeps drawing attention to this problem.

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?

As mentioned (see 3.2.), it is one of the most important tasks of the JC to decide on the proposal for the elimination of violations of a judge who considers that his or her independence has been affected. Additionally, the JCA gave the JC an important new competence to request for an assessment of the constitutionality of regulations that interfere with the constitutional position of the judiciary before the Constitutional Court.

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

There has not been much cooperation with the anti-corruption bodies lately. In the GRECO fourth evaluation round "Prevention of Corruption in respect of members of parliament, judges and prosecutors", however, the JC actively responded to the commission's questions and recommendations.

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

There has not been any cooperation with NGOs in past few years.

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

The Slovenian Association of Judges actively informs the JC about its activities and positions.

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

Publicity and transparency are ensured primarily through free access to documents under the Access to Public Information Act; public announcement of scheduled meetings and agendas, minutes of meetings and decisions taken. The JC also strives to answer journalists' questions in a timely and substantive manner. In case when an important position is adopted, the JC makes a press release and publishes it on its website and through the Slovenian Press Agency.

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

NA.

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 biggest problem of the JC is a tight budget. The JC has neither sufficient administrative, technical or professional support nor adequate informational technology

for its operation. To meet the legitimate expectations of the public and the three branches of government for the efficient and quality work of the JC certain changes in the substantive and organizational area of the JC's work are also required. For instance, pursuant to Article 18-5 of the Judicial service Act, the JC has the possibility to perform psychological tests and tests of professional knowledge, personality traits, abilities and skills of candidates in selection procedures for judicial positions. Unfortunately, this has not been possible due to inadequate financial and human resources. The allocated funds also do not enable the body to actively participate in the wider international (especially European) legal arena.

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

The powers of the JC have been expanded significantly since its establishment in 1990; first with the adoption of the Courts Act in 1994, to be followed by numerous amendments to judicial legislation, in particular the Courts Act, the Judicial Service Act and the JCA. With all these changes, the role of the JC as the guardian of the autonomy and independence of the judiciary on the one hand and as the custodian of the quality of work of courts and judges and the public reputation of the judiciary on the other was strengthened and emphasized.

Since the adoption of the JCA in 2017, the status of the JC has been comprehensively regulated in a separate law. The most important achievements include financial independence of the JC; granting the JC the leading role in conducting disciplinary proceedings against judges; and granting the JC the right to submit requests for an assessment of the constitutionality of regulations that interfere with the constitutional position of the judiciary before the Constitutional Court.

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?

See the answer to the previous question.

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?

NA