



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?	<input checked="" type="checkbox"/> <b>yes</b> <input type="checkbox"/> no
2. What is the exact title/denomination of this body?	<b>CONSEJO GENERAL DEL PODER JUDICIAL</b>
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"/> <b>HJC</b> <input type="checkbox"/> MoJ <input type="checkbox"/> Court Presidents <input type="checkbox"/> bodies within individual courts <input type="checkbox"/> Judicial Administration Board <input checked="" type="checkbox"/> <b>Association of Judges</b> <input type="checkbox"/> other, please specify: <b>The Public Prosecutor can promote actions in defence of judicial independency</b>
Defending judges/the judiciary against public attacks	<input checked="" type="checkbox"/> <b>HJC</b> <input type="checkbox"/> MoJ <input type="checkbox"/> 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
Administration of the judiciary	<input checked="" type="radio"/> <b>HJC</b> <input type="radio"/> MoJ <input checked="" type="radio"/> <b>Court Presidents</b> <input checked="" type="radio"/> <b>bodies within individual courts</b> <input checked="" type="radio"/> <b>Judicial Administration Board</b> <input type="radio"/> Association of Judges <input type="radio"/> other, please specify
Selection of new 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"/> 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 checked="" type="radio"/> <b>Court Presidents</b> <input type="radio"/> bodies within individual courts <input checked="" type="radio"/> <b>Judicial Administration Board</b> <input type="radio"/> Association of Judges

	<input type="radio"/> other, please specify
Drafting and enforcing a code of ethics	<input checked="" type="checkbox"/> <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
Public relations/media coverage for the judiciary, or individual courts	<input checked="" type="checkbox"/> <b>HJC</b> <input type="radio"/> MoJ <input type="radio"/> Parliament <input checked="" type="checkbox"/> <b>Court Presidents</b> <input type="radio"/> bodies within individual courts <input type="radio"/> Judicial Administration Board <input checked="" type="checkbox"/> <b>Association of Judges</b> <input type="radio"/> other, please specify
Providing input on legislative projects	<input checked="" type="checkbox"/> <b>HJC</b> <input type="radio"/> MoJ <input type="radio"/> Court Presidents <input type="radio"/> bodies within individual courts <input type="radio"/> Judicial Administration Board <input checked="" type="checkbox"/> <b>Association of Judges</b> <input type="radio"/> other, please specify
Training of judges	<input checked="" type="checkbox"/> <b>HJC</b> <input type="radio"/> MoJ <input type="radio"/> Court Presidents <input type="radio"/> bodies within individual courts <input type="radio"/> Judicial Administration Board <input checked="" type="checkbox"/> <b>Association of Judges</b> <input type="radio"/> other, please specify
IT, including digitalisation of the judiciary and online hearings	<input checked="" type="checkbox"/> <b>HJC (instructions and recommendations)</b> <input checked="" type="checkbox"/> <b>MoJ (material means)</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="checkbox"/> <b>MoJ</b> <input checked="" type="checkbox"/> <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 type="radio"/> MoJ

	<input checked="" type="checkbox"/> <b>Parliament</b> <input type="checkbox"/> Court Presidents <input type="checkbox"/> Bodies within individual courts <input type="checkbox"/> Judicial Administration Board <input type="checkbox"/> other, please specify
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- 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 competence to appoint o remove presidents of courts is only assigned to the “Consejo General del Poder Judicial (HJC)”. The President of the Supreme Court is appointed by the HJC. It`s only possible to remove presidents because of disciplinary reasons.**
- 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?

### 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 checked="" type="checkbox"/> <b>Constitution</b> <input checked="" type="checkbox"/> <b>Law</b> <input type="checkbox"/> other, please specify
Composition	<input checked="" type="checkbox"/> <b>Constitution</b> <input checked="" type="checkbox"/> <b>Law</b> <input type="checkbox"/> other, please specify
Selection of members including tenure and removal during tenure	<input checked="" type="checkbox"/> <b>Constitution</b> <input checked="" type="checkbox"/> <b>Law</b> <input type="checkbox"/> other, please specify
Tasks	<input checked="" type="checkbox"/> <b>Constitution</b> <input checked="" type="checkbox"/> <b>Law</b> <input type="checkbox"/> other, please specify
Resources, funding, administration	<input type="checkbox"/> Constitution <input checked="" type="checkbox"/> <b>Law</b> <input type="checkbox"/> other, please specify
Independence	<input checked="" type="checkbox"/> <b>Constitution</b> <input checked="" type="checkbox"/> <b>Law</b> <input type="checkbox"/> 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? **The “Consejo General del Poder Judicial” makes rules and instructions about various matters in order to develop the law.**

### Composition and Membership

5. The composition of the Council for the Judiciary:
- How many members are there? **Twenty members plus the President of the Supreme Court.**

- 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? **Twelve members must be judges in active service in the judicial career (three of them are judges of the Supreme Court, three of them are judges with more than twenty-five years in the judicial career, and the remaining six are judges not subject to any antiquity).**
  - Can/must non-judges be members of the Council? Please specify (number, qualification/specific functions) **Non-judges can be members of the Council. Eight members can be non-judges, but other jurists (lawyers, professors...) of recognized prestige. These members have the same competencies than Judicial members.**
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6. Please describe the procedure of appointment:
- Who nominates the members? (judges or other institutions or authorities – please specify) **Members must be appointed by Parliament. The President of the Supreme Court and the HJC are appointed by members of the HJC.**
  - Please describe the appointment system
- Judges are appointed by Parliament: First of all, there is a kind of an electoral process among the judges. Later, the Parliament proceeds to the appointment between the elected judges. Six members by Congress and six members by Senate.**
- Jurists of recognized prestige are also appointed by Parliament: four members by Congress and four members by Senate.**
- If members are elected by Parliament, are these members elected with a simple or qualified majority? **A qualified majority of 3/5 of each chamber is required.**
7. How is integrity and independence of members ensured in the selection process and during their time on the Council? **They have a statute that guarantees their immunity. The civil and criminal liability of the members of the HCJ is the same as the Judges of the Supreme Court's.**
8. How is the President and/or Vice-President of the Council selected and appointed? **The President of the HCJ and of the Supreme Court (it must be the same person) is appointed by the members of HJC (majority of 3/5). The president may be a judge of the supreme Court or also can be a jurist of recognized prestige.**
- The vice-president is elected by the HJC, on the proposal of the President of the CGPJ by simple majority. The vice-president must be a judge of the Supreme Court.**
9. What is the term of office for a member of the Council?
- They are members until their renewal, every five years.**

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

**They can be removed for serious breach of their duties or disability appreciated by the HJC, being required majority of 3/5. The decision may be appealed to the Supreme Court.**

11. Which body provides funding for the Council for the Judiciary?	<input type="radio"/> MoJ <input checked="" type="radio"/> <b>Parliament</b> <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"/> <b>yes</b> <input type="radio"/> no

### **Relations within the Council for the Judiciary and within the judiciary**

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, only normal exchanges of different opinions along the HJC sessions.**

13. 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 haven't been serious conflicts between the judges and the HJC. In Spain, the most controversial issue is the appointment of HJC judicial members. Most judicial associations and some judges believe that HJC judicial members should be directly elected by judges, not by parliament.**

**Some part of the judicial career shows its concern because the appointment of council members by parliament can make that the subsequent appointments for relevant judicial staff can respond to more political than professional reasons.**

14. 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?

**Conflicts between the HJC and the government or parliament are usually resolved through dialogue. However, at the moment, there is a conflict between the HJC and the parliament, considering that a pending law may affect the independence of the Council.**

15. 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? **Usually, institutional declarations are made, but The HJC can submit a conflict of powers at the Constitutional Court.**

16. How does the Council for the Judiciary in your judicial system interact with anti-corruption bodies? **There is not an official or factual interaction. They are independent bodies with clear division of their competences. Members of HJC must make a declaration of their previous assets.**

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

**There is not relevant interaction.**

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

**There is an important interaction with associations of judges. In fact, these associations can promote the election of HJC judicial members at the first phase.**

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

**There is a communication office with media in HCJ and a public access website.**

20. What, if any, is the role of the Council for the Judiciary in the vetting of judges? **The HJC must respect and promote judicial independence. However, the HJC has competencies for the promotion of Supreme Court Members and Court Presidents; inspecting functions and sanctioning disfunctions. For that reason, it is important to ensure the independence of its members. The HJC decisions may be appealed to the Supreme Court.**

### **Challenges, developments**

21. 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. **HJC has the commitment of developing permanent training and IT adaptation. However, the lack of material resources is an important problem.**

22. Has the role of the Council for the Judiciary in your judicial system changed in recent years? If so, how? **The role HJC is, from its origins, the defense of the judicial independence.**

23. 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? **At this moment, there is a law in project at the parliament, in order to introduce some changes in the current system. It affects, basically, two points:**

**a.- The majority to appoint the HJC's judicial members will be 3/5, the same at the moment. But the controverted change is that, if the 3/5 majority can't be achieved, then, an absolute majority (50%+1) will be enough in a second vote.**

**b.- At the end of the five-year term, with no renewal agreement, the HJC will not be able to make any appointment for the High Courts. Neither will not be able to submit a conflict of powers at the Constitutional Court.**

24. 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?