



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"/> yes <input type="checkbox"/> no
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2. What is the exact title/denomination of this body?

The High Council of Justice

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 type="checkbox"/> Court Presidents <input type="checkbox"/> bodies within individual courts <input type="checkbox"/> Judicial Administration Board <input checked="" 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 type="checkbox"/> Court Presidents <input checked="" type="checkbox"/> bodies within individual courts

	<input type="radio"/> Judicial Administration Board <input checked="" type="radio"/> Association of Judges <input type="radio"/> other, please specify
Administration of the judiciary	<input type="radio"/> HJC <input type="radio"/> MoJ <input type="radio"/> Court Presidents <input type="radio"/> bodies within individual courts <input checked="" type="radio"/> Judicial Administration Board <input type="radio"/> Association of Judges <input type="radio"/> other, please specify
Selection of new judges	<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"/> A special Judicial Appointment Body <input checked="" type="radio"/> other: High Qualification Commission of Judges of Ukraine
Selection of judges for promotion	<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"/> A special Judicial Appointment Body <input checked="" type="radio"/> other: High Qualification Commission of Judges of Ukraine
Evaluation of judges	<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: High Qualification Commission of Judges of Ukraine
Evaluation of court performance	<input type="radio"/> HJC <input type="radio"/> MoJ <input type="radio"/> Parliament <input type="radio"/> Court Presidents <input checked="" type="radio"/> bodies within individual courts <input checked="" type="radio"/> Judicial Administration Board <input type="radio"/> Association of Judges <input type="radio"/> other, please specify
Conducting disciplinary procedures	<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
Drafting and enforcing a code of ethics	<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 checked="" type="radio"/> Association of Judges <input type="radio"/> other, please specify
Public relations/media coverage for the judiciary, or individual courts	<input type="radio"/> HJC <input type="radio"/> MoJ <input type="radio"/> Parliament <input type="radio"/> Court Presidents <input checked="" type="radio"/> bodies within individual courts <input type="radio"/> Judicial Administration Board <input checked="" type="radio"/> Association of Judges <input type="radio"/> other, please specify
Providing input on legislative projects	<input checked="" type="radio"/> HJC <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="radio"/> Association of Judges <input type="radio"/> other, please specify
Training of judges	<input type="radio"/> HJC <input type="radio"/> MoJ <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: National School of Judges of Ukraine
IT, including digitalisation of the judiciary and onlinehearings	<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 checked="" 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 type="radio"/> MoJ <input type="radio"/> Parliament <input type="radio"/> Court Presidents <input type="radio"/> bodies within individual courts

	<input checked="" type="checkbox"/> Judicial Administration Board <input type="checkbox"/> other, please specify
Salaries of judges	<input type="checkbox"/> HJC <input type="checkbox"/> MoJ <input type="checkbox"/> Parliament <input type="checkbox"/> Court Presidents <input checked="" type="checkbox"/> Bodies within individual courts <input checked="" 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?

In addition to the mentioned above responsibilities, the High Council of Justice has the following ones provided by the Constitution of Ukraine:

- decides on the violation by a judge or a prosecutor of the incompatibility requirements;
- reviews complaints on decisions of the relevant body imposing disciplinary liability on a judge or a prosecutor;
- decides on dismissal of a judge from office;
- grants consent for detention of a judge or keeping him or her under custody;
- decides on temporal withdrawal of the authority of a judge to administer justice;
- takes measures to ensure independence of judges;
- decides on transfer of a judge.

The High Council of Justice does not have the power to appoint or dismiss court presidents.

- 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?

There is the High Council of Justice in Ukrainian judicial system.

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"/> Constitution <input checked="" type="checkbox"/> Law <input type="checkbox"/> other, please specify
Composition	<input checked="" type="checkbox"/> Constitution <input checked="" type="checkbox"/> Law <input type="checkbox"/> other, please specify
Selection of members including tenure and removal during tenure	<input type="checkbox"/> Constitution <input checked="" type="checkbox"/> Law <input type="checkbox"/> other, please specify
Tasks	<input checked="" type="checkbox"/> Constitution <input checked="" type="checkbox"/> Law <input type="checkbox"/> other, please specify

Resources, funding, administration	<input type="radio"/> Constitution <input checked="" type="radio"/> Law <input type="radio"/> other, please specify
Independence	<input checked="" type="radio"/> Constitution <input checked="" type="radio"/> Law <input type="radio"/> 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?

No, they do not exist.

Composition and Membership

5. The composition of the Council for the Judiciary:

- How many members are there?

The High Council of Justice consists of twenty-one members: ten of them are elected by the Congress of Judges of Ukraine among judges or retired judges; two of them are appointed by the President of Ukraine; two of them are elected by the Parliament (Verkhovna Rada) of Ukraine; two of them are elected by the Congress of Advocates of Ukraine; two of them are elected by the All-Ukrainian Conference of Public Prosecutors; two of them are elected by the Congress of Representatives of Law Schools and Law Academic Institutions.

- Are there ex-officio members?

Yes. The President of the Supreme Court is a member of the High Council of Justice ex-officio.

- How many members must be judges? Do they need specific qualifications or experiences, must they come from different court systems or instances?

Ten from twenty-one members of the High Council of Justice are elected by the Congress of Judges of Ukraine among judges or retired judges. In addition the President of the Supreme Court is a member of the High Council of Justice ex-officio. So, there are eleven members of the High Council of Justice who are acting or retired judges.

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

Yes. According to the Ukrainian legislation, a citizen of Ukraine, not younger than 35 years old, who speaks the state language, has higher legal education and professional experience in the field of law not less than fifteen years, belongs to the legal profession and meets the criteria of political neutrality could be elected (appointed) on a position of a member of the High Council of Justice.

The High Council of Justice consists of judges, prosecutors, lawyers and scientists. Ukrainian legislation provides that the majority of members of the High Council of Justice must consist of judges or retired judges. The number of members of the High Council of Justice, separately from prosecutors, lawyers and scientists, has not been determined.

6. Please describe the procedure of appointment:

The body that has the right to elect (appoint) members to the High Council of Justice notifies the Secretariat of the HCJ of the date and place of the meeting at which the members of the HCJ will be elected no later than 45 calendar days.

A candidate for the position of a member of the HCJ has to submit to the Secretariat of the HCJ the list of documents specified by law.

Upon receipt of the documents, the Secretariat of the HCJ compiles lists of candidates, which has to be published on the official website of the HCJ and sent to the body that elects (appoints) members immediately. A special examination of candidates is conducted by the Secretariat of the HCJ.

At a meeting of the body that has the right to elect (appoint) members to the HCJ, a secret ballot is held to determine the winner.

The President of Ukraine and the Parliament of Ukraine elect candidates to the High Council of Justice by a different procedure.

The official website of the President of Ukraine announces the beginning of an open competition for the position of a member of the HCJ. After submitting the documents, information about the persons applying for participation in the competition is published on the official website of the President of Ukraine (certain documents to be published are defined). After the completion of the competition and determination of the winner, the President of Ukraine appoints him to the position of a member of the High Council of Justice.

The official website of the Parliament of Ukraine contains information on the beginning of the acceptance of proposals of deputy factions (deputy groups) on candidates for positions of members of the HCJ. Upon receipt of proposals, information on persons applying to be elected to the position of a member of the HCJ, together with copies of certain documents, shall be published on the official website of the Parliament of Ukraine. On a certain day, the Parliament of Ukraine at its session votes on each candidate, and in case the candidate receives the required number of votes, the Parliament of Ukraine appoints him to the position of a member of the High Council of Justice.

- Who nominates the members? (judges or other institutions or authorities – please specify)

Each citizen of Ukraine, who does not younger than 35 years old, who speaks the state language, has higher legal education and professional experience in the field of law not less than fifteen years, belongs to the legal profession and meets the criteria of political neutrality has a right to submit his candidature for the competition on a position of a member of the High Council of Justice.

The President of Ukraine, the Parliament of Ukraine, the Congress of Judges of Ukraine, the Congress of Advocates of Ukraine, the All-Ukrainian Conference of Prosecutors, and the Congress of Representatives of Law Schools and Law Academic Institutions have the right to elect candidates for the position of a member of the High Council of Justice.

- Please describe the appointment system

The High Council of Justice consists of twenty-one members: ten of them are elected by the Congress of Judges of Ukraine among judges or retired judges; two of them are appointed by the President of Ukraine; two of them are elected by the Parliament of Ukraine; two of them are elected by the Congress of Advocates of Ukraine; two of them are elected by the All-Ukrainian Conference of Public Prosecutors; two of them are

elected by the Congress of Representatives of Law Schools and Law Academic Institutions.

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

Parliament elects a candidate for the position of a member of the High Council of Justice at its plenary session by voting for him by a majority of deputies from the constitutional composition (226 votes out of 450 deputies).

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

The High Council of Justice has a Commission on Integrity and Ethics, which aims to ensure transparency and accountability of members of the High Council of Justice and members of the High Qualification Commission of Judges of Ukraine (permanent body in the judicial system of Ukraine, responsible for the formation of the judiciary, ensuring their proper level of qualification etc.).

One of the tasks of the Commission on Integrity and Ethics is to assess the compliance of a member or candidate (during a special inspection) to the High Council of Justice and the High Qualification Commission of Judges of Ukraine with the principles of good faith and ethical norms of a judge, which are an integral part of the professional ethics of the member of the High Council of Justice and the High Qualification Commission of Judges of Ukraine, and control over the transparency of the activities of the High Council of Justice and the High Qualification Commission of Judges of Ukraine

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

The Chairman of the High Council of Justice is elected from among the members of the High Council of Justice for a term of two years.

The Chairman of the High Council of Justice is elected at a meeting of the High Council of Justice by secret ballot by submitting ballots with any number of candidates proposed by members of the High Council of Justice.

The Deputy Chairman of the High Council of Justice is elected on the proposal of the Chairman of the High Council of Justice from among the members of the High Council of Justice for a term of two years.

The legislation of Ukraine provides that if a judge or a retired judge is elected on a position of the Chairman of the High Council of Justice, the deputy shall be elected from among the members of the High Council of Justice who are not judges or retired judges. And vice versa. The procedure for electing a deputy is identical to the procedure for electing the chairman of the High Council of Justice.

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

Term of the office for elected (appointed) members of the High Council of Justice is four years.

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

Yes. A member of the High Council of Justice may be dismissed against his/her will, in such cases:

- gross or systematic neglect of his/her responsibilities or inconsistency with the position, other conduct that undermines the authority and public confidence in the judiciary and judicial system, including non-compliance with the ethical standards of a judge as part of the professional ethics of a member of the High Council of Justice;
- identification of the validity of the existing circumstances regarding the non-compliance of a member of the High Council of Justice with the requirements specified in the legislation of Ukraine;
- significant violation of the requirements established by the legislation in the field of prevention of corruption;
- systematic non-participation in the work of the High Council of Justice or the body of the High Council of Justice of which he/she is a part.

Resources and management

11. Which body provides funding for the Council for the Judiciary?	<input type="radio"/> MoJ <input type="radio"/> Parliament <input checked="" type="checkbox"/> other: the High Council of Justice
12. Is the administration of the Council for the Judiciary independent from other branches of government?	<input checked="" type="checkbox"/> yes <input type="checkbox"/> 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?

There were no internal conflicts in the High Council of Justice that would affect its functioning.

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?

There were no conflicts between the High Council of Justice and the judiciary.

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?

There were no conflicts between the High Council of Justice and the executive or legislative.

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 High Council of Justice has the right to approve and publish public statements and appeals, as well as to address the subjects of the right of legislative initiative, bodies authorized to adopt legal acts, with proposals to ensure the independence of judges and the authority of justice.

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

The interaction of the High Council of Justice with anti-corruption bodies is expressed through annually approving by the High Council of Justice of the Anti-Corruption Program, which assesses corruption risks in the body, their causes and conditions, and agreeing on it with the National Agency on Corruption Prevention.

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

Answers to questions 18 and 19 are combined.

In order to ensure the independence of judges and the authority of justice, the High Council of Justice prepares in cooperation with judicial self-government bodies, other bodies and institutions of the judicial system, NGO's and publishes an Annual report on ensuring judicial independence in Ukraine. In addition, the High Council of Justice cooperates with the Council of Judges of Ukraine, the Public Integrity Council, public associations, and relevant bodies of other states, international organizations and their bodies in developing and implementing measures to ensure the independence of judges and the authority of justice.

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

All meetings of the High Council of Justice and its Disciplinary Chambers are held openly, unless there are grounds provided by the legislation of Ukraine. Within the structure of the High Council of Justice there is a department of communication activities, which systematically and comprehensively covers the activities of the High Council of Justice, its bodies and members, interacts between the High Council of Justice and the media etc.

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

The High Council of Justice does not evaluate judges for professional suitability (qualification assessment). This issue under the competence of the High Qualification Commission of Judges of Ukraine.

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.

Thus, the High Council of Justice, the Plenum of the Supreme Court and the Council of Judges of Ukraine constantly draw the state's attention to a number of problems faced by the judicial system of Ukraine.

The main problems of the judicial system are:

- extremely insufficient funding;
- low staffing;
- interference in the activities of judicial bodies.

According to the information published on the official website of the High Council of Justice, for a certain period of time in Ukraine there has been an obvious disparity in the funding of one of the three state powers. In 2020, the judicial system of Ukraine was funded by only 64 % of the declared need, in connection with which the courts constantly inform the High Council of Justice about the lack of funds for salaries of court staff, as well as the fact that due to underfunding, courts stop sending mail to participants in cases.

By late 2020, every third judicial position in Ukraine is vacant, and about 30% of judges already have the right to retire. Prior to that, due to the absence of the acting High Qualification Commission of Judges of Ukraine, courts are not filled with vacancies of judges. In this regard the lack of judges in Ukraine leads to the violation of citizens' right to access to justice.

Significant restrictions on the financing of salaries in the courts at the end of 2020 and the beginning of 2021 also led to mass layoffs of experienced, qualified employees of the court staff.

The facts of pressure on judges and interference in the activities of courts have become systemic. At the same time, interference in the judiciary is accompanied by loud statements by high-ranking officials about continuous corruption in the courts, incompetence of judges, their low moral qualities, irresponsibility and lack of control. Such statements discredit the entire judicial system of Ukraine. The practice of evaluating court decisions by incompetent subjects has become systemic and has become commonplace, as well as ignoring of court decisions that have entered into force. This, in turn, leads to the spread of legal nihilism in society, disrespect for the court and its decisions, their loss of public recognition and the obligation to have them. Even the President of Ukraine, who has a responsibility to take special care of the authority of the judiciary, publicly assessing one of the Decisions of the Constitutional Court of Ukraine, declares that it is unconstitutional.

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

Yes.

With the introduction of judicial reform in Ukraine in 2016, the High Council of Justice acquired exclusive powers in the field of judicial governance and became a leading body in matters of judicial career, disciplinary responsibility of judges, ensuring the authority of justice and independence of judges.

The powers of the High Council of Justice included crucial issues in the organizational, legal and financial support of courts, namely: presents submission for the appointment of a judge to office; decides on the violation by a judge or a prosecutor of the incompatibility requirements; ensure the implementation of disciplinary body disciplinary proceedings against judges; reviews complaints on decisions of the relevant body imposing disciplinary liability on a judge or a prosecutor; grants consent for detention of a judge or keeping him or her under arrest; decides on temporal withdrawal of the authority of a judge to administer justice; decision-making on transfer of a judge from one court to another, decision on termination of a judge's resignation; approval of the number of judges in court etc.

Today, the most notable and important role of the High Council of Justice is played during disciplinary proceedings against judges.

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?

As a result of judicial reform in Ukraine in 2016, amendments were made to the Constitution of Ukraine, which provides establishment of a new collegial, independent constitutional body of judicial governance, which acts in Ukraine on a permanent basis - the High Council of Justice. The purpose of the High Council of Justice with its constitutional powers was to streamline the judicial system, eliminate duplication of powers, and create an effective and transparent decision-making mechanism, including for judicial careers.

Currently, the President of Ukraine has submitted a draft law to the Parliament of Ukraine, which provides for the reform of the High Council of Justice. This draft law amends the procedure for electing (appointing) members of the High Council of Justice, establishing an Ethics Council that will examine candidates for members of the High Council of Justice in accordance with the rules of professional ethics and integrity, and establishing a service of disciplinary inspectors of the High Council of Justice. independent structure for professional assessment of disciplinary responsibility of members of the High Council of Justice, i.e for control over the activities of members of the High Council of Justice, which is a constitutional body.

However, the Constitutional Court of Ukraine has already ruled in its decisions that the law cannot empower an institution, which is formed under a constitutional body, to control this constitutional body.

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?

The High Council of Justice acts in the judicial system of Ukraine.