

COMPARATIVE NOTE ON MODELS OF JUDICIAL COUNCILS AS INDEPENDENT AND SELF-GOVERNING BODIES

KAZAKHSTAN

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EXECUTIVE SUMMARY

OSCE/ODIHR welcomes the request of the Supreme Judicial Council of Kazakhstan for international expertise in relation to the international obligations on administrative justice and in particular standards for selecting judges. OSCE/ODIHR hopes that this Note will provide further guidance on how the relevant legislation could be brought in line with international human rights obligations and OSCE commitments.

OSCE participating States have committed to protecting and guaranteeing the rights of individuals. This includes the right to a fair trial by an independent and impartial tribunal.

A fair, accountable and accessible justice system is a fundamental element of rule of law. One of the key elements of the rule of law is an independent and impartial judiciary. Consequently, the proper selection of judges is essential to ensuring the independence of the judiciary, including judges in the administrative jurisdiction. Both the United Nations and the Council of Europe have developed recommendations on the selection of judges. These standards recognise that only an independent court is able to adequately redress a violation of individual rights and the law, including the acts of an administrative authority.

Through their commitments, OSCE Participating States have undertaken to “respect the international standards that relate to the independence of judges [...] and the impartial operation of the public judicial service” and to “ensure that the independence of the judiciary is guaranteed and enshrined in the constitution or the law of the country and is respected in practice” (1990 Copenhagen Document). Regardless of the legal tradition of a particular country, administrative judges are part of the judiciary. Therefore, they are required to meet the same standards of impartiality, have the same skills and capabilities as all other judges, and be able to impart justice in an impartial way.

In addition, regional case law and other authoritative recommendations offer useful guidance on the meaning and scope of the international norms and standards. Their proper interpretation contributes to an evolved understanding of the standard for selecting judges and an independent judiciary. This sets the backdrop for an analysis of the standards for administrative justice and the selection of judges through a review of legislation and practices in the participating States.

As part of its mandate to assist OSCE participating States in implementing OSCE commitments, the OSCE/ODIHR reviews, upon request, draft and existing legislation to assess their compliance with international human rights standards and OSCE commitments and provides concrete recommendations for improvement.

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I. INTRODUCTION

1. On 28 May 2021, the Chairman of the High Judicial Council of the Republic of Kazakhstan sent to the OSCE Office for Democratic Institutions and Human Rights (hereinafter “ODIHR”) a request for a comparative note on structures of high judicial councils.
2. On 9 June 2021, ODIHR responded to this request, confirming the Office’s readiness to prepare this overview of international practice relating to the practices and international human rights standards and OSCE human dimension commitments with respect to structures of high judicial councils.
3. This Note was prepared in response to the above request. ODIHR conducted this assessment within its mandate to assist the OSCE participating States in the implementation of their OSCE commitments.¹

II. SCOPE OF THE OPINION

4. The scope of this Note on Models of Judicial Councils as Independent and Self-Governing Bodies (hereinafter referred to as “the Note”) in the OSCE Region (hereinafter “the Region”) encompasses the relevant international human rights instruments (conventions, covenants etc. and protocols thereto), national laws and good legal practices in the Region pertaining to administrative justice.
5. The Note raises key issues and provides indications of areas that often cause concern. The Note also highlights, as appropriate, good practices from other OSCE participating States. When referring to national legislation, the OSCE/ODIHR does not advocate for any specific country model; it rather focuses on providing clear information about applicable international standards while illustrating how they are implemented in practice in certain national laws. Any country example should always be approached with caution since it cannot necessarily be replicated in another country. Country examples should always be considered in light of the broader national institutional and legal framework, as well as country context and political culture.

¹ ODIHR conducted this assessment within its mandate to assist the OSCE participating States in the implementation of their OSCE commitments. Footnote: See especially [OSCE Decision No. 7/08 Further Strengthening the Rule of Law in the OSCE Area](#) (2008), point 4, where the Ministerial Council “[e]ncourages participating States, with the assistance, where appropriate, of relevant OSCE executive structures in accordance with their mandates and within existing resources, to continue and to enhance their efforts to share information and best practices and to strengthen the rule of law [on the issue of] independence of the judiciary, effective administration of justice, right to a fair trial, access to court, accountability of state institutions and officials, respect for the rule of law in public administration, the right to legal assistance and respect for the human rights of persons in detention [...]”.

6. Moreover, in accordance with the *Convention on the Elimination of All Forms of Discrimination against Women*² (hereinafter “CEDAW”) and the *2004 OSCE Action Plan for the Promotion of Gender Equality*³ and commitments to mainstream gender into OSCE activities, programmes and projects, the Opinion integrates, as appropriate, a gender and diversity perspective.
7. The Note is translated into Russian, but in case of discrepancies, the English version shall prevail.
8. In view of the above, the OSCE/ODIHR would like to make mention that this Note does not prevent the OSCE/ODIHR from formulating additional written or oral recommendations or comments on relevant legal acts or related legislation pertaining to the legal and institutional framework regulating the judiciary and judicial bodies in Kazakhstan in the future.

III. LEGAL ANALYSIS

1. RELEVANT INTERNATIONAL HUMAN RIGHTS STANDARDS AND OSCE HUMAN DIMENSION COMMITMENTS

9. The independence of the judiciary is a fundamental principle and an essential element of any democratic state based on the rule of law as well as an integral part of the fundamental democratic principle of the separation of powers.³ This independence entails that both the judiciary as an institution, but also individual judges, must be able to exercise their professional responsibilities without being influenced by or fearful of arbitrary disciplinary investigations and/or sanctions by the executive or legislative branches or other external actors. The independence of the judiciary is also essential to engendering public trust and credibility in the justice system in general, so that everyone is treated equally before the law and that no one is above the law. Public confidence in the courts and their perception as independent from political influence is vital in a democratic society that respects the rule of law. In short, a state is governed by the rule of law if, *inter alia*, an independent, impartial and accountable judiciary prevents the exercise of arbitrary power by the authorities and protects the rights of the individuals, so that public decision-making is predictable.
10. The principle of the independence of the judiciary is also crucial to upholding other international human rights standards.⁴ More specifically, the independence of the judiciary is a prerequisite to the broader guarantee of every person’s right to a fair trial i.e., to a fair and public hearing by a competent, independent and impartial tribunal established by law and by an accountable judiciary. This independence means that both

2 UN Convention on the Elimination of All Forms of Discrimination against Women (hereinafter “CEDAW”), adopted by General Assembly resolution 34/180 on 18 December 1979. Ukraine deposited its instrument of ratification of this Convention on 12 March 1981.

3 See [OSCE Action Plan for the Promotion of Gender Equality](#), adopted by Decision No. 14/04, MC.DEC/14/04 (2004), par 32.

4 See e.g., OSCE Ministerial Council Decision No. 12/05 on Upholding Human Rights and the Rule of Law in Criminal Justice Systems, 6 December 2005, <<http://www.osce.org/mc/17347?download=true>>.

the judiciary as an institution, but also individual judges must be able to exercise their professional responsibilities without being influenced by the executive or legislative branches or other external sources.

11. At the international level, it has long been recognized that litigants in both criminal and civil matters have the right to a fair hearing before an “independent and impartial tribunal”, articulated in Article 10 of the Universal Declaration of Human Rights, which reflects customary international law, and subsequently incorporated into Article 14⁵ of the International Covenant on Civil and Political Rights (hereinafter “the ICCPR”).
12. The institutional relationships and mechanisms required for establishing and maintaining an independent judiciary are the subject of the UN Basic Principles on the Independence of the Judiciary (1985),⁶ and have been further elaborated in the Bangalore Principles of Judicial Conduct (2002).⁷ In particular, these principles presuppose that judges are accountable for their conduct to appropriate institutions established to maintain judicial standards, which are themselves independent and impartial, and are intended to supplement and not to derogate from existing rules of law and conduct which bind the judge.⁸
13. In its General Comment No. 32 on Article 14 of the ICCPR, the UN Human Rights Committee specifically provided that States should ensure “the actual independence of the judiciary from political interference by the executive branch and legislature” and “take specific measures guaranteeing the independence of the judiciary, protecting judges from any form of political influence in their decision-making through the constitution or adoption of primary and secondary legislation, and establishing clear procedures and objective criteria for the appointment, remuneration, tenure, promotion, suspension and dismissal of the members of the judiciary and disciplinary sanctions taken against them”.⁹
14. While the Republic of Kazakhstan is not a Member State of the Council of Europe (hereinafter “the CoE”), the European Convention on Human Rights and Fundamental Freedoms (hereinafter “the ECHR”), the developed case law of the European Court of Human Rights (hereinafter “the ECtHR”) in the field of independence of judiciary and judicial councils (or similar bodies), and other CoE instruments may serve as useful reference documents from a comparative perspective. Article 6 of the ECHR provides that everyone is entitled to a fair and public hearing “by an independent and impartial

5 UN International Covenant on Civil and Political Rights (hereinafter “ICCPR”), adopted by the UN General Assembly by resolution 2200A (XXI) of 16 December 1966. The Republic of Kazakhstan ratified the ICCPR in 2006, <<http://indicators.ohchr.org/>>

6 UN Basic Principles on the Independence of the Judiciary, endorsed by UN General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985 <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx>>.

7 Bangalore Principles of Judicial Conduct, adopted by the Judicial Group on Strengthening Judicial Integrity, which is an independent, autonomous, not-for-profit and voluntary entity composed of heads of the judiciary or senior judges from various countries, as revised at the Round Table Meeting of Chief Justices in the Hague (25-26 November 2002), and endorsed by the UN Economic and Social Council in its resolution 2006/23 of 27 July 2006, <http://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf>. See also Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct (2010), prepared by the Judicial Group on Strengthening Judicial Integrity,

<http://www.judicialintegritygroup.org/images/resources/documents/BP_Implementation%20Measures_Engl.pdf>.

8 Bangalore Principles of Judicial Conduct, 2002, Preamble

9 UN Human Rights Committee, General Comment No. 32 on Article 14 of the ICCPR: Right to Equality before Courts and Tribunals and to Fair Trial, 23 August 2007, par 19, <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f32&Lang=en>.

tribunal established by law”. To determine whether a body can be considered “independent” according to Article 6 par 1 of the ECHR, the ECtHR considers various elements, *inter alia*, the manner of appointment of its members and their term of office, the existence of guarantees against outside pressure and whether the body presents an appearance of independence.¹⁰

15. OSCE participating States have also committed to ensure “the independence of judges and the impartial operation of the public judicial service” as one of the elements of justice “which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings” (1990 Copenhagen Document).¹¹ In the 1991 Moscow Document,¹² participating States further committed to “respect the international standards that relate to the independence of judges [...] and the impartial operation of the public judicial service” (par 19.1) and to “ensure that the independence of the judiciary is guaranteed and enshrined in the constitution or the law of the country and is respected in practice” (par 19.2).
16. Moreover, in its Decision No. 7/08 on Further Strengthening the Rule of Law in the OSCE Area (2008), the Ministerial Council also called upon OSCE participating States “to honour their obligations under international law and to observe their OSCE commitments regarding the rule of law at both international and national levels, including in all aspects of their legislation, administration and judiciary”, as a key element of strengthening the rule of law in the OSCE area.¹³ Further and more detailed guidance is also provided by the OSCE/ODIHR Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia (2010) (hereinafter the “Kyiv Recommendations”).¹⁴
17. The Note will also make reference to the opinions of the Consultative Council of European Judges (CCJE),¹⁵ an advisory body of the Council of Europe on issues related

10 See European Court of Human Rights (ECtHR), *Campbell and Fell v. the United Kingdom* (Application no. 7819/77, 7878/77, judgment of 28 June 1984), par 78, <<http://hudoc.echr.coe.int/eng?i=001-57456>>. See also *Olujic v. Croatia* (Application no. 22330/05, judgment of 5 May 2009), par 38, <<http://hudoc.echr.coe.int/eng?i=001-91144>>; and *Oleksandr Volkov v. Ukraine* (Application no. 21722/11, judgment of 25 May 2013), par 103, <<http://hudoc.echr.coe.int/eng?i=001-115871>>.

11 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, pars 5 and 5.12 <<https://www.osce.org/files/f/documents/9/c/14304.pdf>>.

12 OSCE, Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE (Moscow, 10 September-4 October 1991), <<http://www.osce.org/f/odihr/elections/14310>>.

13 OSCE, Ministerial Council Decision No. 7/08 on Further Strengthening the Rule of Law in the OSCE Area, Helsinki, 4-5 December 2008, <<http://www.osce.org/mc/35494>>.

14 The OSCE/ODIHR Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia (2010) were developed by a group of independent experts under the leadership of ODIHR and the Max Planck Institute for Comparative Public Law and International Law – Minerva Research Group on Judicial Independence, <<http://www.osce.org/odihr/kyivrec>>.

15 Available at <http://www.coe.int/t/dghl/cooperation/ccje/textes/Avis_en.asp>, particularly CCJE, Opinion No. 3 (2002) on the Principles and Rules Governing Judges’ Professional Conduct, in particular Ethics, Incompatible Behaviour and Impartiality, 19 November 2002, <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE\(2002\)OP3&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE(2002)OP3&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3&direct=true)>. See also CCJE, Opinion No. 1 (2001) on Standards Concerning the Independence of the Judiciary and the Irremovability of Judges, 23 November 2001, <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE\(2001\)OP1&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE(2001)OP1&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3&direct=true)>; Magna Carta of Judges, 17 November 2010, par 13, <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE-MC\(2010\)3&Language=lanEnglish&Ver=original&BackColorInternet=DBCDF2&BackColorIntranet=FDC864&BackColorLogged=FD864&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE-MC(2010)3&Language=lanEnglish&Ver=original&BackColorInternet=DBCDF2&BackColorIntranet=FDC864&BackColorLogged=FD864&direct=true)>; and Opinion No. 18 (2015) on the Position of the Judiciary and its Relation with the Other Powers of State in a Modern Democracy, 16 October 2015,

to the independence, impartiality and competence of judges, and to the opinions and reports of the Council of Europe's European Commission for Democracy through Law (hereinafter "Venice Commission").¹⁶

18. Other useful reference documents elaborated in various international and regional fora contain more practical guidance to help ensure the independence of the judiciary, including, among others:
- Reports of the UN Special Rapporteur on the Independence of Judges and Lawyers;¹⁷
 - Reports and other documents of the European Network of Councils for the Judiciary (ENCJ);¹⁸
 - The European Charter on the Statute for Judges (1998);¹⁹
 - Report of the Venice Commission on the Independence of the Judicial System, in particular Part I on the independence of judges; and ²⁰
 - Opinions of the OSCE/ODIHR dealing with issues pertaining to judicial councils and the independence of the judiciary.²¹

1.1. Standards pertaining to Judicial Bodies

19. In practice, ensuring the independence and impartiality of a court or tribunal is as much a matter of principle as it is a matter of management. In this sense, the management of the judiciary acquires relevance as a guarantee to protect independence and impartiality. The powers attributed to a body managing the judiciary (High Judicial Councils or similar) is a determining factor to ensure independence and impartiality. The human

[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE\(2015\)4&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE(2015)4&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864&direct=true).

- 16 In particular European Commission for Democracy through Law (Venice Commission), Report on Judicial Appointments (2007), CDL-AD(2007)028-e, 22 June 2007, <[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2007\)028-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2007)028-e)>; Report on the Independence of the Judicial System – Part I: The Independence of Judges (2010), CDL-AD(2010)004, 16 March 2010, <[http://www.venice.coe.int/webforms/documents/CDL-AD\(2010\)004.aspx](http://www.venice.coe.int/webforms/documents/CDL-AD(2010)004.aspx)>; and Rule of Law Checklist, CDL-AD(2016)007, 18 March 2016, <[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)007-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)007-e)>.
- 17 Annual reports available in six languages (including English and Russian) available at: <http://www.ohchr.org/EN/Issues/Judiciary/Pages/Annual.aspx>.
- 18 Available at <https://www.enci.eu/>.
- 19 European Charter on the Statute for Judges (Strasbourg, 8-10 July 1998), adopted by the European Association of Judges, published by the Council of Europe [DAJ/DOC (98)23], <<https://wcd.coe.int/ViewDoc.jsp?p=&id=1766485&direct=true>>
- 20 The recommendations and guiding principles developed by the Venice Commission in its reports and opinions are widely accepted as part of the soft law and although Republic of Kazakhstan is not a member to the Venice Commission, these documents may serve as important and useful sources for reference. Report on the Independence of the Judicial System is available at: [http://www.venice.coe.int/webforms/documents/?pdf=CDL\(2009\)055rev5-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL(2009)055rev5-e)
- 21 See for instance: OSCE/ODIHR, Final Opinion on Draft Amendments to the Act of the National Council of the Judiciary and Certain other Acts of Poland (5 May 2017), OSCE/ODIHR Opinion on Certain Provisions of the Draft Act on the Supreme Court of Poland (As Of 26 September 2017) available here: <http://www.legislationline.org/documents/id/20682>, Opinion on Certain Provisions of the Draft Act on the Supreme Court of Poland (30 August 2017) available here: <http://www.legislationline.org/documents/id/21259>, Opinion on Certain Provisions of the Draft Act on the Supreme Court of Poland (as of 26 September 2017) available here: <http://www.legislationline.org/documents/id/21444>, OSCE/ODIHR Opinion on the Law of Ukraine on the Judiciary and the Status of Judges (30 June 2017) available here: <http://www.legislationline.org/documents/id/21193>, OSCE/ODIHR Opinion on the law 29/1967 Concerning the Judicial System, The Supreme Judicial Council of the Judiciary, and the Status of Judges in Tunisia (as amended up to 12 August 2005 (21 December 2012), available here: <https://www.osce.org/odihr/99826?download=true> and several other opinions available at <http://www.legislationline.org/search/runSearch/1/type/2/topic/9>.

resource management system (selection and recruitment, promotion, immovability, remuneration, ethical codes and discipline of judges) is also crucial to guarantee professionalism.

20. It must be reiterated that the key purpose of judicial self-governing bodies, particularly judicial councils or similar independent bodies, is to safeguard the independence of the judiciary and of individual judges. To serve this purpose, judicial councils must themselves enjoy sufficient independence from the other branches of power in their work and decision-making.²² It is also important to note that when assessing whether a given body enjoys independence or not, the ECtHR has highlighted that the manner in which judges are appointed to a judicial council, and particularly the nature of the appointing authorities, is relevant in terms of judicial self-governance.²³ More specifically, the ECtHR has stressed the importance of having the judicial corps elect its own representatives to the Council, in order to “reduc[e] the influence of the political organs of the government on the composition of the [Council]”.²⁴
21. The OSCE/ODIHR has noted in previous opinions that: *“In principle, judicial councils or other similar bodies are crucial to support and guarantee the independence of the judiciary in a given country, and as such should themselves be independent and impartial, i.e., free from interference from the executive and legislative branches. Indeed, interfering with the independence of bodies, which are guarantors of judicial independence, could as a consequence impact and potentially jeopardize the independence of the judiciary in general.”*²⁵ The Venice Commission also underlines that “the due functioning of the Judicial Council, in those legal systems where it exists, is an essential guarantee for judicial independence”.²⁶ Furthermore, the Venice Commission has recommended establishing judicial councils as a guarantee to prevent pressure from other branches of government and external actors.²⁷
22. International standards require judicial councils to be independent bodies, established and regulated either by the constitution or by another law. The rule of law demands that the legal provisions regulating the composition of judicial councils should be clear and unambiguous.
23. According to the Kyiv Recommendations, the composition of judicial councils shall not be dominated by representatives of the executive and legislative branches, including the State President.²⁸ Furthermore, the CCJE has expressly stated that it “does not advocate

22 OSCE/ODIHR, Final Opinion on Draft Amendments to the Act of the National Council of the Judiciary and Certain other Acts of Poland (5 May 2017), par 61.

23 ECtHR, Oleksandr Volkov v. Ukraine, (Application 21722/11) judgment of 9 January 2013, par 112, <<https://hudoc.echr.coe.int/eng?i=001-115871>>

24 Ibid.

25 OSCE/ODIHR Final Opinion on Draft Amendments to the Act of the National Council of the Judiciary and Certain other Acts of Poland (5 May 2017), par 37.

26 Venice Commission Opinion On The Draft Law On Amendments to the Law On The Judicial Council And Judges (Montenegro), CDL-Ad(2018)015, par 37.

27 Venice Commission Report (CDL-AD(2007)028 on Judicial Appointments, par 48 “An appropriate method for guaranteeing judicial independence is the establishment of a judicial council, which should be endowed with constitutional guarantees for its composition, powers and autonomy.” Available here: <https://rm.coe.int/0900001680700a62>

28 Ibid.

[for] systems that involve political authorities such as the Parliament or the executive at any stage of the selection process [of judge members of Judicial Councils]”.²⁹ The Venice Commission concluded similarly: “The exact composition of the judicial councils varies, but it is widely accepted that at least half of the council members should be judges elected by their peers.”³⁰ The Recommendation of the Committee of Ministers of the Council of Europe states that “not less than half the members of such councils should be judges chosen by their peers from all levels of the judiciary and with respect for pluralism inside the judiciary”.³¹

24. At the same time, if these bodies are composed completely or over-prominently by members of the judiciary, there is a risk that this might further behaviour that advances self-interest, self-protection, cronyism and also the perceptions of corporatism.³² At a minimum and in line with CCJE Opinion no 10, when councils are composed solely of judges, they should be elected by their peers.³³
25. This approach is also reflected in the Kyiv Recommendations which state that “apart from a substantial number of judicial members elected by the judges, the Judicial Council should comprise law professors and preferably a member of the bar, to promote greater inclusiveness and transparency. Prosecutors should be excluded where prosecutors do not belong to the same judicial corps as the judges. Other representatives of the law enforcement agencies should also be barred from participation. Neither the State President nor the Minister of Justice should preside over the Council.”³⁴ Furthermore, the Kyiv Recommendations provide that “*in order to avoid excessive concentration of power in one judicial body and perceptions of corporatism it is recommended to distinguish among and separate different competences, such as selection, promotion and training of judges, discipline, professional evaluation and budget.*”³⁵
26. There is no single approach to the functions of judicial councils. The CCJE deems that they “*should have a wide role in respect of competences which are interrelated, in order that it can better protect and promote judicial independence and the efficiency of justice*”.³⁶ In its Opinion no.10 the CCJE provides the range of powers that may be considered inherent to judicial councils, namely: the selection and appointment of judges, the promotion, evaluation and training of judges, disciplinary and ethical matters, control and management of a separate budget, the administration of courts, protection of the image of judges, opinions to other powers of the State, the co-operation with other relevant bodies on national, European and international level, the responsibility towards

29 2007 CCJE Opinion No. 10 on the Council for the Judiciary at the Service of Society, para 31.

30 Venice Commission, Opinion on the Draft Act Amending the Act on the National Council of the Judiciary, on the Draft Act Amending the Act on the Supreme Court, Proposed by the President of Poland, and on the Act on the Organisation of Ordinary Courts, (11 December 2017), par. 17, available here: http://krs.pl/admin/files/wwm/venice_com_opinion%20cdlad9042017031_of_11.12.2017_on_draft_acts_krs_sn_ustp.pdf

31 Council of Europe, Committee of Ministers, Recommendation 2010(12), section 27.

32 [ODIHR Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia](#) (2010), para 7.

33 2007 Consultative Council of European Judges (CCJE) Opinion No. 10, para 17.

34 OSCE/ODIHR Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia (2010), p.2.

35 Ibid, section 2.

36 2007 CCJE Opinion No. 10 on the Council for the Judiciary at the Service of Society, para 41.,

the public: transparency, accountability, reporting.³⁷ The Kyiv Recommendations consider that *“in order to avoid excessive concentration of power in one judicial body and perceptions of corporatism it is recommended to distinguish among and separate different competences, such as selection..., promotion and training of judges, discipline..., professional evaluation,.... and budget.... A good option is to establish different independent bodies competent for specific aspects of judicial administration without subjecting them to the control of a single institution or authority. The composition of these bodies should each reflect their particular task. Their work should be regulated by statutory law rather than executive decree.”*³⁸

27. This position is also supported by the Venice Commission, which has emphasised that the key role in appointment of judges should belong to the judicial governance body and that this body must be competent to make independent decisions regarding appointments.³⁹ The Kyiv Recommendations provide that the State President’s involvement in appointment processes should be limited to refusal of candidates nominated by the High Judicial Council and only on procedural grounds and that such refusal be reasoned. The High Judicial Council should have the possibility to overrule by a qualified majority the President’s refusal to appoint after revisiting its previous decision.⁴⁰
28. With respect to the role of judicial councils in sanctioning judges, the Venice Commission noted that disciplinary liability *“has different constitutive elements from criminal liability and applies a different standard of proof, however, it should be pointed out that criminal and disciplinary liability are not mutually exclusive. Disciplinary sanctions may still be appropriate in case of a criminal acquittal... If the misconduct of a judge is capable of undermining public confidence in the judiciary, it is in the public interest to institute disciplinary proceedings against that judge... In any event, it is important that both types of liability be used sparingly in order not to cause a chilling effect on the judiciary”*.⁴¹ Recommendation 2010 of the CoE Committee of Ministers provides that: *“The interpretation of the law, assessment of facts or weighing of evidence carried out by judges to determine cases should not give rise to civil or disciplinary liability, except in cases of malice and gross negligence”*.⁴² Disciplinary proceedings against judges based on the rule of law should correspond to certain basic principles, which include the following: *“the liability should follow a violation of a duty expressly defined by law; there should be fair trial with full hearing of the parties and representation of the judge; the*

37 Ibid , p 42.

38 OSCE/ODIHR Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia (2010), par. 2..

39 See for example Venice Commission: Opinion on proposals amending the draft law on the amendments to the constitution to strengthen the independence of judges of Ukraine (CDL-AD(2013)034), par. 16, available here: Venice Commission: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2013\)034-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2013)034-e), see also, Venice Commission: Opinion on the Draft New Constitution of Iceland (CDL-AD(2013)010), para. 137, available here: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2013\)010-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2013)010-e).

40 OSCE/ODIHR Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia (2010),, par. 23.

41 Venice Commission Amicus Curiae Brief, Republic of Moldova - Amicus Curiae Brief for the Constitutional Court on the Criminal liability of judges, (CDL-AD(2017)002) par. 18, available here: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2017\)002-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)002-e)

42 Council of Europe, Recommendation CM/Rec(2010)12 of the Committee of Ministers to Member States on Judges: Independence, Efficiency and Responsibilities, adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers’ Deputies, para 66.

*law should define the scale of sanctions; the imposition of the sanction should be subject to the principle of proportionality; there should be a right to appeal to a higher judicial authority”.*⁴³

29. The Kyiv Recommendations specify that judicial councils should mainly be involved in establishing the criteria for evaluating judges, but not be directly involved in such evaluations, as persons dealing with the evaluated judges on a regular basis on the local level should perform the actual evaluation.⁴⁴
30. An important aspect of judicial councils pertains to the status of their members. In some countries, judicial council membership is part-time work⁴⁵ and acting judges can also be members of judicial councils. In this case, their status as judges does not change and their immunities continue operating. However, some specific immunities for the members of judicial councils might be required. The Venice Commission has stated that “[g]ranteeing immunity to members of the Council guarantees their independence and allows them to carry out their work without having to constantly defend themselves against, for instance, unfounded and vexatious accusations.”⁴⁶ Pursuant to Opinion no.10 of the CCJE, members of the Council for the Judiciary (both judges and non-judges) should be granted guarantees for their independence and impartiality.⁴⁷
31. The OSCE/ODIHR and the Venice Commission have emphasized that independence of judges should not be compromised “through fear of the initiation of prosecution”.⁴⁸ Similarly, it is crucial to ensure procedural immunity of the members of the judicial councils, which typically includes special protection against arrest, detention and prosecution.⁴⁹
32. It is important that judicial councils are financially and administratively independent. Opinion no.10 of the CCJE stresses that these bodies should be financed in a way that enables them to function properly. They should have appropriate means to operate independently and autonomously as well as power and capacity to negotiate and organize their own budgets effectively. Opinion No. 2 of the CCJE on the funding and management of courts provides: “... *although the funding of courts is part of the State budget presented to Parliament by the Ministry of Finances, such funding should not be subject to political fluctuations. Although the level of funding a country can afford for its courts is a political decision, care must always be taken, in a system based on the separation of powers, to ensure that neither the executive nor the legislative authorities are able to exert any pressure on the judiciary when setting its budget. Decisions on the allocation of funds to*

43 Venice Commission, Opinion on the Law on Disciplinary Responsibility and Disciplinary Prosecution of Judges of Common Courts of Georgia, (CDL-AD(2007)009) par. 9.

44 Ibid, par 30.

45 Having said that the Venice Commission recommended that “the members of the [Judicial Council] should exercise their functions as a full-time profession.” CDL-AD(2013)034, Opinion on proposals amending the draft law on the amendments to the constitution to strengthen the independence of judges of Ukraine, para 43.

46 CDL-AD(2008)006, Opinion on the Draft Law on the High Judicial Council of the Republic of Serbia, para 26.

47 2007 CCJE Opinion No. 10 on the Council for the Judiciary at the Service of Society, par. 18.

48 Venice Commission – OSCE/ODIHR, Joint Opinion on the draft amendments to the legal framework on the disciplinary responsibility of judges in the Kyrgyz Republic (CDL-AD(2014)018), para. 37, available here: <http://www.legislationline.org/documents/id/19099>

49 OSCE/ODIHR - Venice Commission, Joint Opinion CDL-AD(2016)025, Kyrgyz Republic - Endorsed joint opinion on the draft law "on Introduction of amendments and changes to the Constitution", par. 77, available here: <https://www.osce.org/odihr/313186?download=true>

the courts must be taken with the strictest respect for judicial independence”. It notes that it is important “...that the arrangements for parliamentary adoption of the judicial budget include a procedure that takes into account judicial views.”⁵⁰

33. Members of judicial councils can only be dismissed for very serious reasons which are clearly stipulated by law and that may harm the reputation of the judiciary.⁵¹ As this body is closely linked to the judiciary, similar standards for dismissal of judges in courts can serve as guidance. According to OSCE/ODIHR “there are three basic requirements with respect to national laws governing the disciplinary responsibility of judges, i) A clear definition of the acts or omissions which constitute disciplinary offences; ii) The disciplinary sanctions must be proportionate to the respective disciplinary offence; and iii) The disciplinary proceedings must be of an appropriate quality.”⁵² Vague, imprecise and broadly worded provisions may be used against members of judicial councils in ways which might hinder them to properly fulfil their mandates.

2. MODELS OF JUDICIAL COUNCILS

34. According to the Sofia Declaration on Judicial Independence and Accountability, it is the essential task of judicial councils to maintain and strengthen the independence of the judiciary, especially when it is threatened. Therefore, the composition, functions and role of judicial councils should be designed to focus on judicial independence while maintaining the required level of judicial accountability. The independence of the judiciary can be fostered by creation of a well-functioning and competent judicial council.
35. There is no typical or standard model for the judicial bodies in the Region. The organization and management of these bodies vary according to different legal systems and within the same legal system. The most common model of composition is the mixed model where judicial councils are composed of judicial and non-judicial members. While in some countries judicial councils have vast competencies, from appointment to dismissal of judicial members, there is not a common practice as to the functions or powers of these bodies. Generally judicial councils determine their own budget. However, some judicial bodies are also authorized to determine the budget of courts. Different practices exist as to the status of the members of the judicial councils and the grounds and procedures for their dismissal.
36. The composition of a judicial council is of crucial importance for its ability to protect the independence of the judiciary. The council needs to be able to prevent undue influence from other branches of power as well as withstand internal pressures. There are various forms of composition of judicial councils and there is no one correct or legitimate format. Since a judicial council is a judicial self-governing body, it is expected that a significant proportion (majority) of this body would include judges selected by other judges.

50 Opinion no. 2 of the Consultative Council of European Judges (CCJE), pars. 5 and 10, available here: <https://rm.coe.int/1680747492>

51 OSCE/ODIHR Opinion on the Law on the Selection, Performance, Evaluation and Career of Judges in Moldova (13 June 2014), par 25, available here: <http://www.legislationline.org/documents/id/19100>

52 OSCE/ODIHR, Opinion on the Draft Law of the Republic of Moldova on the Disciplinary Responsibility of Judges. (14 December 2012), par 10, available here: <http://www.legislationline.org/documents/id/17699>, see also: Venice Commission - OSCE/ODIHR Joint Opinion on the Draft Law on Disciplinary Liability of Judges of the republic of Moldova (24 March 2014), par 15, available here: <http://www.legislationline.org/documents/id/18817>

37. Judicial councils have different institutional bases in the system of governance in different countries but generally they have functions in the following areas:
- Appointment of judges;
 - Career progression;
 - Disciplinary actions;
 - Judicial training;
 - Supporting legislative reform;
 - Promotion of judicial ethics;
 - Court management and financing.
38. In many countries these functions are divided between different bodies, while in some others the judicial councils have various committees responsible for different aspects of judicial self-governance. The Venice Commission opined in this respect that “*there are different models of distribution of administrative functions... The only important requirement is that the most important administrative functions should belong to a body or bodies enjoying a significant degree of independence.*”⁵³ The discussion of functions and duties of judicial councils therefore occupies considerable space in this Note.
39. Finally, it is important that judicial councils have appropriate means to operate independently and autonomously as well as power and capacity to negotiate and organise their own budgets effectively. This Note looks into how the budgets of the judicial councils are formed and regulated.⁵⁴

3. OVERVIEW OF JUDICIAL COUNCILS IN SELECTED COUNTRIES

40. A variety of country examples from across the Region are provided in this section. Most of these country examples were determined by indication of the requester. The OSCE/ODIHR is not presenting one model as superior to others nor endorsing any particular model for the Republic of Kazakhstan, but rather describing the systems as they stand for comparative purposes – to reflect the diversity of councils. It is reiterated that any country example should always be approached with caution since it cannot necessarily be replicated in another country. Country examples should always be considered in light of the broader national institutional and legal framework, as well as country context and political culture. Further, any model should be based on the international standards described above.

⁵³ Venice Commission CDL-AD(2017)019, Opinion on the Draft Judicial Code of Armenia, para 100.

⁵⁴ In accordance with the Budapest Resolution the following functions should fall within the remit of Judicial Councils: the appointment and the promotion of judges; the training; the discipline and judicial ethics; the administration of the courts; the finances of the judiciary; the performance management of the judiciary; the processing on of complaints from litigants; the protection of the image of justice; the formulation of opinions on judicial policies of the State; setting up a system for evaluating the judicial system; drafting or proposing legislation concerning the judiciary and/or courts. Self Governance for the Judiciary : Balancing Independence and Accountability”. <https://www.ency.eu/images/stories/pdf/opinions/budapestresolution.pdf>. See also, Article 42 of the Opinion no.10(2007) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the Council for the Judiciary at the service of society. <https://rm.coe.int/168074779b>.

3.1. Slovenia

Composition

41. The Slovenian judicial council is an autonomous and independent state authority which performs tasks as determined by the law, protects the autonomy and independence of the judiciary, ensures the quality of work of courts and judges and the public reputation of the judiciary. Its status, powers, organization and composition, the procedure and conditions for the election of its members, the duration of members' terms of office and termination thereof, and other issues connected with the functioning of the judicial council are regulated by the Judicial Council Act.
42. The elections of new judicial council members are called by the president of the National Assembly at least 90 days before the expiry of the terms of office of current Judicial Council members or, in the event of by-elections, within 30 days of the occurrence of the circumstances due to which by-elections are to be held. A decree calling for elections is published in the official gazette of Slovenia. Members are elected by secret ballot. The list of candidates proposed by the President of Slovenia shall be submitted to the National Assembly not later than 20 days before the polling day and the proposed list should contain, at the most, twice as many candidates as there are vacant positions.
43. The judicial council consists of 11 members. The National Assembly elects five members on the proposal of the President of Slovenia from among university professors of law, attorneys and other lawyers, while judges holding permanent judicial office elect six members from among their ranks. Regarding the election of judge members, two members of the judicial council shall be elected by judges holding judicial office at courts of first instance, one member by judges holding judicial office at the Supreme Court and one by judges holding judicial office at higher courts. Two additional members shall be elected by all judges.⁵⁵ A candidate shall be entered on the list when proposed by at least three judges.
44. The judicial council is supported by the secretary-general, who is a seconded judge, at least at the level of a district judge. The secretary-general is responsible for the operation of the judicial council and the management of the administrative and professional service.
45. In order to decrease the risk of political influence, every three years, two or three members of the judicial council are elected by the National Assembly and three members of the judicial council are elected by and from among the judges performing a permanent judicial function.
46. The judicial council has a president and a vice-president, who shall be elected by secret ballot of the members of the judicial council by a two-thirds majority vote of all members. In addition to performing the function of a member, according to the Judicial Council Rules of Procedure⁵⁶ the president of the judicial council shall represent the judicial council and manage and organize its work in a manner that ensures the independence of

⁵⁵ According to article 20 (2) of the Judicial Council Act of Slovenia.

⁵⁶ <http://www.sodni-svet.si/doc/Poslovnik%20Sodnega%20sveta%20-%20ANG%20-%20kon%C4%8Dno%20besedilo.pdf>

the judicial council and protects its position as defined by the Constitution, laws and Rules of Procedure.

47. The law states that the judicial council shall make decisions by public vote and by a majority of the votes of all its members, unless otherwise provided by the law or the Rules. Judicial council decisions shall be deemed valid if the majority of all members of the council are present at the session. The members of the judicial council shall not be bound by any instructions when deciding.⁵⁷

Functions

48. The judicial council has competences in respect to selection, appointment and dismissal of judges and presidents and vice-presidents of courts, including giving a preliminary opinion in proceedings for the appointment of the Supreme Court president and providing a reasoned opinion in procedures for their dismissal. Additionally, the council plays a role in proposing to the National Assembly candidates for appointment as Supreme Court judges and candidates to be elected to judicial office. The body plays a role in the dismissal of a judge, appointing and dismissing presidents and vice-presidents of courts, (with the exception of the Supreme Court president), selecting candidates for a vacant judicial post, appointing judges following a call for vacant judicial posts, notifying the National Assembly of any final judgment of conviction against a judge and issuing declaratory decisions on the termination of judicial office or judicial service.
49. In relation to other personnel matters pertaining to judges, the judicial council decides on the incompatibility of judicial function, promotion to a higher judicial title, accelerated promotion within salary grades, promotion to a higher judicial post, extraordinary promotion to a higher judicial title, confirmation of a negative assessment of a judge's suitability for judicial service, and proposal for the elimination of violations of a judge who considers that their independence has been affected. The council also decides on 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, transfer of a judge, the assignment of a judge to work at the Constitutional Court, the Supreme Court, the Higher Court, the specialized department of a district court. It is additionally involved in the administrative and professional service of the judicial council.
50. The judicial council's role in respect to disciplinary proceedings is to appoint disciplinary bodies, initiate disciplinary proceedings against a judge, enforce disciplinary sanctions against a judge, and to decide on the measure of temporary suspension from the judicial service of the Supreme Court president and on complaints against the Supreme Court president's decision on temporary suspension of a judge from the judicial service.
51. Other tasks of the judicial council of Slovenia include adoption of criteria for the selection of judicial candidates for a judicial post, adoption of the Code of Judicial Ethics, appointment of members of the Ethics and Integrity Commission, adopting instructions on the manner of election of members of personnel councils and issuance of calls for election. Further, the judicial council provides consent to the policy for detecting and

⁵⁷Article 28 of the Act on Judicial Council of Slovenia.

managing corruption risks and vulnerabilities at courts and monitoring its implementation, submits preliminary opinions on internal organizational units of courts and in procedures for determining the number of judicial posts in a particular court, and submits an opinion on the Supreme Court's annual report and on the proposed financial plan for the courts. The body also submits opinions to the National Assembly and the ministry on laws governing the courts and the judicial service, and initiates 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. Finally, the council submits reasoned requests for ordering a review of operations in a particular case and opinions on orders for the detention of or the initiation of criminal proceedings against a judge.

Budget

52. The judicial council has its own budget and is a member of the board of budgetary users.⁵⁸ The main negotiator of the budget for the judiciary is the Supreme Court of the Republic of Slovenia.⁵⁹ The judicial budget is not controlled by the judicial council and is a separate part of the State budget. The allocation of funds to each district court, higher court and to the Supreme Court is determined by the Parliament on the basis of the governmental proposal. The budget of the judiciary, as far as financial means for salaries and functional expenses are concerned, is drafted by the Supreme Court on the basis of financial plans, prepared separately by all the courts. The Supreme Court sends the draft proposal to the Ministry of Finance. The final proposal is drafted by the Government which sends it to the Parliament for adoption. The Supreme Court also co-ordinates the realization of the budgetary financial plans of the lower courts. The financial means for the courts' premises are secured through the Ministry of Justice.⁶⁰

Status and term

53. The members of the judicial council are elected for a period of six years without the possibility of re-election. Additionally, the function of a judicial council member shall be honorary and performed on a non-professional basis. A member of the judicial council participating in the council's work shall not be held accountable for any opinion expressed during decision-making.

Dismissal

54. The term of office of a judicial council member shall be terminated on the expiry of the term for which they were elected, by resignation, if they have been issued a disciplinary sanction by a competent professional organization or if a competent professional organization found that a member, through their conduct, has violated the code of ethics to which they are bound and should accordingly be deemed unfit to serve as a judicial council member, if they are convicted of a criminal offence, by cessation of or dismissal from judicial office if the judicial council member is a judge, in the event of permanent

58 See: <http://www.sodni-svet.si/#/eng/budget>

59 https://www.enci.eu/images/stories/pdf/factsheets/sodni_svet_slovenia.pdf

60 https://ec.europa.eu/info/sites/default/files/2020_rule_of_law_report_-_input_from_member_states_-_slovenia.pdf

inability to perform their office or loss of the status on the basis of which a judicial council member who is not a judge was elected.

3.2. Croatia

Composition

55. The State Judicial Council (“SJC”) in Croatia is anchored in the Constitution as the autonomous, independent body which secures the independence and impartiality of the judicial branch (Article 121 of the Constitution).⁶¹
56. The SJC comprises eleven members, seven of whom belong to the judiciary, two are university law professors and another two are deputies of the parliament, one from the governing party and another from the opposition. The members of the judiciary consist of two Supreme Court judges, one high court judge, three judges of county courts and one first instance judge. The members elect among themselves the president of the SJC.
57. The judge members of the SJC are elected by the Commission for the Election of Council Members, candidature committees and by electoral committees. The Commission for the Election of Council Members is appointed by the General Assembly of the Supreme Court, which consists of two judges of all the high courts and one judge of each county court in Croatia.
58. All judges can propose a judge for SJC membership. The candidate cannot be a judge who has been disciplinarily sanctioned in four years prior to the candidacy. The candidate must also give his or her consent. The two university law professors are elected by all professors of law from law faculties in Croatia. The faculty councils make the proposals and form a list of candidates. The Justice Committee of the Croatian Parliament proposes two deputies who are appointed by the Croatian Parliament.

Functions

59. The SJC has the competence to appoint judges, appoint and decide over dismissal of the presidents of the courts, decide on the judicial immunity, transfer of judges, disciplinary powers and disciplinary liability of judges, and on termination of office of judges. The SJC participates in judicial training and education of judges and judicial officials, enacts a methodology for evaluation for judicial assessment, maintains records on the personal profiles of judges, grants permission for undertaking of other services or jobs next to the judicial profession, and registers and supervises the judicial declarations on assets.
60. A member of the SJC is excused from deciding on the appointment, transfer, or disciplinary liability in case of personal ties with the candidate. If the member has doubts on the circumstances related to exemption, it is the SJC which decides on exemption.
61. Based on the Act on the Judiciary, the SJC has been included in the procedure on proposing the candidate for the the President of the Supreme Court and is the body that announces the call for candidates, reviews the formal requirements for candidatures and

61 Constitution of the Republic of Croatia <https://www.usud.hr/en/the-constitution>. Provisions are elaborated by the Law on State Judicial Council.

advises the President of the Republic who makes the proposal and has the power to propose a candidate to the Parliament.

Budget

62. The SCJ is accorded its own budget for its operation and submits a proposal of the annual budget for its work to the Government.

Status and term

63. The mandate of a SJC member is four years with possibility of one additional term renewal. The members are entitled to the compensation of expenses and other compensations. During the mandate, members who belong to the judiciary may not be promoted to a judicial position of the higher court nor elected as the president of the court.

Dismissal

64. The term of office of SJC members may be terminated if the member resigns, is convicted for criminal offence, or in case of incapacity. The decision on termination of office is passed by the electoral bodies, i.e. Parliament, law faculties and, for judges, by the SJC.
65. A judge who has been dismissed or sanctioned has the right to appeal against such decision. The appeal is lodged by the Constitutional Court within 15 days as of delivery of the decision. The Constitutional Court must decide within 30 days after the receipt of the appeal. The appeal as a legal remedy excludes the right of the judge to lodge a constitutional complaint on violation of human rights.

3.3. Georgia

Composition

66. In some cases, like in Georgia and Croatia, three or more bodies are participating in the formation of the judicial council. Regulations related to the High Council of Justice (“HCJ”) of Georgia are contained in the Organic Law of Georgia on General Courts. According to the law, the HCJ is created to ensure the independence of courts and the quality and effectiveness of justice, to appoint and dismiss judges, to organize judicial qualification examinations, to formulate proposals towards implementing a judicial reform, and to accomplish other objectives determined by law.
67. Pursuant to Article 47 of the Organic Law of Georgia on General Courts, the HCJ shall consist of 15 members. Eight members of the HCJ of Georgia are to be elected by a self-governing body of judges of the general courts of Georgia according to a procedure determined by this Law; five members are elected by the Parliament of Georgia and one member is appointed by the President of Georgia. The chairperson of the Supreme Court shall, by virtue of his/her position, be a member of the HCJ.
68. The HCJ is accountable to the conference of judges of Georgia, the latter encompassing the judicial self-government body consisting of all judges. The conference of judges shall

protect and strengthen the independence of the judiciary, promote increased confidence and faith of the people in the courts and enhance the reputation of judges.

69. The Parliament of Georgia elects five members of the HCJ by secret ballot, by a three-fifths majority, under the procedure established by the Rules of Procedure of the Parliament of Georgia. Candidates for the HCJ shall be selected from among the professors and scholars working in higher education institutions of Georgia, members of the Bar Association of Georgia and/or individuals nominated by non-entrepreneurial (non-commercial) legal entities of Georgia, upon recommendation of a collegial management body of the organization concerned. Each of the organizations may present a maximum of three candidates for membership of the HCJ to the Parliament. No member of the Parliament of Georgia, judge or prosecutor may be nominated as candidate for membership of the HCJ of Georgia.
70. The President of Georgia appoints a member of the HCJ not earlier than one month and not later than one week before the term of office of the relevant member of the HCJ expires, and if the powers of the member are terminated, not later than one month after such termination. The administration of the President publishes the information about the application process on the official website and through mass media. The organization nominating a candidate to the HCJ may not present more than one nominee to the President.
71. The general courts of Georgia are represented in the HCJ by the chairperson of the Supreme Court and eight members elected by the conference of judges, including the secretary of the HCJ. The latter is elected for a four-year term and may not at the same time hold the office of the chairperson or deputy chairperson of a court, or the chairperson of the judicial panel or chamber of a court.
72. A member elected by the conference of judges shall be a general court judge, a member of the chamber of disciplinary cases or the chamber of qualification of the Supreme Court. Only up to half of the members who are elected by the conference of judges may be the chairperson of a court, his/her first deputy or a deputy, or the chairperson of a judicial panel or a chamber. The chair of the HCJ is selected by the council members amongst its members. The key function of the chair is to preside over the sessions of the HCJ.

Functions

73. The HCJ solely selects the judges of the first and second instances. According to the Organic Law of Georgia on General Courts, the High Council of Justice of Georgia shall, among others, appoint and dismiss Georgian general court judges (other than the chairperson and members of the Supreme Court), determine the composition of the qualification examination commission, determine the specialization of judges of a court of appeals and a district (city) court, approve the staff list and structure of the personnel of the Office of the High Council of Justice of Georgia, determine the salary of a member of the High Council of Justice of Georgia, the salaries and job titles of the officials and auxiliary personnel of the High Council of Justice of Georgia, as well as the structure and staff size of the administrative office of Georgian general courts (other than the Supreme Court).

74. It also conducts disciplinary proceedings against general court judges in the prescribed manner and within the scope of its powers, and formulates proposals for judicial reform. It may review a matter and make a decision if more than half of the full membership of the council is present at its meeting. A decision of the High Council of Justice of Georgia shall be deemed to have been adopted if it is supported by a majority of the members present, except as otherwise provided in the law. A decision on disciplinary matters shall be deemed to have been adopted if it is supported by secret ballot by at least two-thirds of the full membership of the Council. The HCJ appoints a person as a judge if the candidate receives at least two-thirds of the votes of the full membership of the council by secret ballot.
75. The acts of the council are administrative acts and can be reviewed by courts of general jurisdiction. It is also notable that some procedures⁶² have special rules of appeal according to the law.

Budget

76. The HCJ has considerable powers regarding the judicial budget, though the budget of the council itself is not part of the general courts' budget and it bears a separate code in the law of budget approved yearly by the Parliament of Georgia.

Status and term

77. In order for a judge member of the HCJ to effectively discharge his/her duties, the body may pay him/her salary increments, while a member of the HCJ appointed by the President of Georgia/elected by the Parliament of Georgia shall be paid remuneration in the amount of the salary of a judge of a court of appeals. The salary of non-judicial members is separately regulated and HCJ can adopt and amend these rules with a vote of two-thirds of its members.

Dismissal

78. The grounds for terminating the powers⁶³ of a member of the HCJ shall be by resignation, transfer or election to another office by his/her consent, recognition by court as having limited competence or as a beneficiary of support, unless otherwise determined under court decision, entry into force of a final judgment of conviction against him/her, termination of Georgian citizenship, expiry of the term of office, death, inability to discharge his/her powers for more than four months a year, systematic non-fulfilment or improper fulfilment of duty, holding an incompatible office or engaging in an incompatible activity, or being appointed or elected as a member by an unauthorized body or in violation of the procedure laid down by the Law.
79. In addition to the grounds provided above, a judge member of the HCJ may be dismissed on the ground of his/her early dismissal (removal) from the office of a judge. A member

⁶² For example, decisions taken in terms of judicial selection procedure as well as disciplinary procedures.

⁶³ Article 48 of the Organic law.

of the HCJ shall be dismissed by the Parliament of Georgia, the Conference of Judges of Georgia, or the President of Georgia, depending on the appointing body.

3.4. Spain

Composition

80. In Spain the General Council of Judiciary (“GCJ”) is the governing body of the judiciary.⁶⁴ The GCJ consists of the President of the Supreme Court, who presides over it, and 20 members appointed by the King and who serve for a five-year period. Twelve members are judges and magistrates of all judicial categories, and the remaining members should be lawyers and other jurists with recognized competence and with more than fifteen years of experience in this respective profession, whereas four of them are proposed by the Congress of Deputies and four by the Senate and are elected by a three-fifths majority.
81. The 20 members⁶⁵ of the GCJ are elected by the *Cortes Generales*, the Spanish Parliament, taking into account the principle of gender equality. Each of its Chambers shall elect (by a three-fifths majority) ten members, consisting of six judges and four jurists of recognized competence with more than fifteen years of practice in their profession.
82. Judges who are not in active service within the judiciary and magistrates with more than 15 years of professional experience may be elected as a jurist member, taking into account both seniority in the judicial career and years of experience in other legal professions.
83. Any current judge or magistrate is entitled to present as a candidate upon the endorsement of 25 other judges or upon the endorsement of a legally constituted judicial association.⁶⁶ Each of the judges or magistrates or judicial associations may endorse up to a maximum of twelve candidates. The candidacy letter is sent to the President of the Supreme Court, i.e. president of the GCJ, within a month after the call for candidates with a justification accompanying endorsements by the 25 judges or the judicial association.
84. The candidates are reviewed by the electoral board⁶⁷ that consists of the longest serving president of a chamber within the Supreme Court, who will preside over the body, along with two members, the longest serving magistrate and the most recently appointed magistrate within the Supreme Court. The candidacies will be publicized and may be challenged within three days upon the publication. The definitive announcement of candidates is subject to administrative appeal, to be lodged within the two-day period subsequent to its publication.⁶⁸
85. The appointment of the twelve judges or magistrate members must meet, at least, the following proportion: three magistrates of the Supreme Court, three magistrates with

64 Article 122 par. 2 of the Constitution. See also: Article 104 of the Organic Law 6/1985 of Judiciary of July 1, consolidated text <https://www.boe.es/buscar/act.php?id=BOE-A-1985-12666&tn=1&p=20210702>

65 Article 567 of the Organic Law.

66 Article 573 of the Organic Law

67 Article 576 of the Organic Law

68 Article 577 of the Organic Law

more than 25 years of professional experience and six judges or magistrates with no requirement in terms of professional experience.⁶⁹

Functions

86. The GCJ proposes the appointments of the President of the Supreme Court and of the GCJ, judges, magistrates and magistrates of the Supreme Court, and two magistrates of the Constitutional Court. The body is heard by the Government before the appointment of the State Attorney General. Other functions include participating in the selection of Judges and Magistrates, appointing the Vice President of the Supreme Court, the initiator of the Disciplinary Action, Chief of the Court Inspection and Director of the Technical Cabinet of the General Council of the Judiciary, and the supervision and coordination of the ordinary inspection activity of the Presidents and governing chambers of the Courts. Further it has functions with respect to regulating its organization and operation of personnel, publication of judicial decisions, and preparing its own budget. The GCJ may also receive complaints from citizens on matters related to the administration of justice.
87. The GCJ is obliged to send annually to the Parliament a report on the state, operation and activities of the GCJ and of the courts and tribunals, which among others include activities of the President and members with detailed expenses, gender impact in the judicial sphere and a report on the use of co-official languages.⁷⁰ The Parliament may debate on the content and require the President to appear and answer the questions. Additionally, the President of the Supreme Court and the GCJ have an obligation to appear annually before the Justice Committee of the Chamber of the Representatives to report on the most relevant aspects of the state of justice in Spain.
88. Draft laws and draft by-laws that relate to judicial power explicitly named in the relevant article, and any other question that the Government, the Parliament or, where appropriate, the legislative assemblies of the autonomous communities deem necessary are submitted to GCJ on which the latter may report.⁷¹ The report related to draft laws is forwarded to the Parliament.

Budget

89. The GCJ draws up its own budget which is prepared and executed according to the general budget legislation. The internal control is carried out by the Superior Body of State Audit, functionally dependent under the GCJ, while the external control is made by the Court of Accounts.

Status and term

90. The mandate of a member of GCJ is five years. The position of a member is incompatible with any other position, profession or activity, public or private, on their own or third

⁶⁹ Article 578 of the Organic Law

⁷⁰ Article 563 of the Organic Law of Spain.

⁷¹ Article 561 of the Organic Law of Spain.

parties, paid or not, with the exception of mere administration of personal or family assets.⁷²

91. The Presidents of the Congress of Deputies and the Senate must adopt the necessary measures so that the renewal of the GCJ takes place on time. Four months before the expiration of the five-year period, the President of the Supreme Court and of the GCJ notifies the Presidents of the Congress of Deputies and the Senate on the opening of the term of presentation of candidatures for the appointment of the members.
92. Furthermore, the position of a member is not compatible with the simultaneous performance of other governmental responsibilities in the judicial sphere. The members are obliged to declare assets.

Dismissal

93. The rules for the General State Administration personnel in relation to abstention and disqualification are applicable for the members of the GCJ. Members must refrain from taking part in those matters in which there may be a direct or indirect interest, or when their intervention in them could affect objective impartiality in their performance as member, nor may they invoke or make use of their status as such in the exercise of their profession. The violation of these rules is deemed a serious breach of duties which may lead to dismissal of the member by the Plenary which decides on it by three-fifths majority.
94. The mandate may cease in case of resignation, due to incapacity, incompatibility or serious breach of the duties of the position which are assessed by the Plenary of the General Council of the Judiciary by a three-fifths majority. Judge members cease their membership if their active judicial career ceases, in the case of retirement and for other reasons provided by the law.⁷³

3.5. Romania

Composition

95. An example of a judicial council in which prosecutors are also participating is the Superior Council of Magistracy (SCM) of Romania, which has constitutional status.⁷⁴ Pursuant to Article 133 of the Romanian Constitution, the SCM must guarantee the independence of justice.
96. The SCM consists of 19 members, 14 members of whom are elected in the general meetings of the magistrates and validated by the Senate. They belong to two sections, one for judges and one for public prosecutors. The former section consists of 9 judges, and the latter of 5 public prosecutors. Two representatives of the civil society, specialists in

⁷² This determination is a result of the Organic Law 4/2018 of December 28, reforming Organic Law 6/1985 of July 1 on Judiciary which changed previous possibility of parallel functioning of the membership in GCJ with professional activities.

⁷³ Article 582 of the Organic Law of Spain.

⁷⁴ It is also regulated by Law No 317/2004. Available in English here: https://www.legislationline.org/download/id/6982/file/Romania_law_on_statute_judges_prosecutors_2004_am2009_en.pdf

law, with a good professional and moral reputation, are elected by the Senate. These members only participate in plenary proceedings. The remaining members are the Minister of Justice, the President of the High Court of Cassation and Justice, and the general public prosecutor of the Public Prosecutor's Office attached to the High Court of Cassation and Justice.

Functions

97. The powers of the SCM are established in Article 134 of the Romanian Constitution,⁷⁵ which provides that the SCM proposes to the President of Romania the appointment of judges and public prosecutors.
98. The SCM performs as a court of law in procedures concerning disciplinary liability of judges and public prosecutors. In such cases, the Minister of Justice, the president of the High Court of Cassation and Justice, and the general public prosecutor of the public prosecutor's office attached to the High Court of Cassation and Justice are not entitled to vote.
99. The SCM is also involved in training for judges and prosecutors. For instance, the SCM approves the professional training programme upon proposal of the National Institute of Magistracy – the institution that is responsible for judicial and prosecutorial training.⁷⁶
100. The SCM further plays a role in promotion and career development of judges and prosecutors in Romania. For instance, in accordance with Article 43 of Law No 317/2004, the competitive exam for the promotion of judges is held annually or any time considered necessary, by the SCM, through the National Institute of Magistracy.

Budget

101. The SCM has its own budget which is approved annually by the Parliament. The Ministry of Public Finance⁷⁷ establishes the expenditure ceiling for each primary spending authority in the judicial sector. The SCM files with the Ministry of Public Finance its own budget proposal which is included in the draft budget law. After the endorsement of the draft by the government, the Parliament approves budgets as a whole. The budget of the courts or prosecutors' offices is not included in the budget of the SCM, but they are endorsed by the SCM and follow the same procedure.⁷⁸

Status and term

102. The president of the SCM is elected for a non-renewable one-year term from among the judges or prosecutors who are members of the SCM. The members are elected for a term of six years without a possibility of renewal.

Dismissal

75 Available in English here: <https://www.presidency.ro/en/the-constitution-of-romania>. See also and Law No 317/2004

76 Article 16 of the Law No 317/2004 of Romania.

77 See the Public Finance Law 500/2002 and the provisions of the Fiscal Responsibility Law 69/2010.

78 See, https://www.ency.eu/images/stories/pdf/factsheets/csm_romania.pdf.

103. An elected member of the SCM may be dismissed during their term if that person no longer meets the legal requirements to be an elected member of the Superior Council of Magistracy, or if that person has been subject to disciplinary action as stipulated under the law for judges and prosecutors, and that action has been ruled to be final, or if based on a report prepared by the judicial inspectorate, the appropriate division of the SCM has found that the concerned person has failed to discharge or improperly, grossly, repeatedly and unreasonably discharged their duties under the law.
104. As to the process, the appropriate division of the SCM (either the division for judges, or the division for prosecutors) shall find which of the circumstances described above applies, upon being notified by a majority of the judges in the division for judges or by a majority of the prosecutors in the division of prosecutors, as applicable, as well as upon being notified by any general assembly.
105. The process for removing a SCM member following a report by the judicial inspectorate is initiated by a removal motion by at least two-thirds of the general assemblies of courts or prosecutor's offices represented by the member of the SCM whose removal is sought. This motion should specifically indicate the legal duty which that person has failed to discharge or has grossly, repeatedly and unreasonably discharged, as well as the reasons generating those circumstances. The motion shall be inadmissible if it concerns the way in which the elected member has exercised their voting rights, since the mandate of elected members is not imperative. The motion is then to be submitted to the proper division of the Superior Council of Magistracy, which shall order the judicial inspectorate to make the required investigations. The latter prepares a report and submits it to the appropriate division of the SCM, which shall relay it to the concerned judge or prosecutor. The concerned judge or prosecutor may object to the report within 30 days after being served with it. The final report shall be submitted to the general assemblies of courts or prosecutor's offices represented by the member of the SCM whose removal is sought. For the purpose of debating the report, the appropriate division of the SCM shall summon all the general assemblies of the courts or prosecutor's offices represented by the member of the SCM whose removal is sought, and the person subject to the removal process may make their case before the judges or prosecutors in any suitable way. Removal can take place if two-thirds of the judges or prosecutors convening for the general assemblies of the courts or prosecutor's offices represented by the member of the SCM whose removal is sought are for the removal motion.⁷⁹

3.6. Belgium

Composition

106. The legal basis for establishment, competences and functioning of the High Council of Justice of Belgium ("HCJ") is provided in Article 151 of the Constitution and the Judicial Code.⁸⁰
107. The HCJ is composed of 44 members – 22 members of a Dutch-speaking college and 22 members of a French-speaking college. Each college comprises 11 magistrates elected

⁷⁹ More detail is available in English, here: <https://rm.coe.int/romania-en-ccje-opinion-24-reply/1680a1df&1>.

⁸⁰ Article 259bis of the Code Judiciaire CHAPITRE Vbis Du conseil supérieur de la Justice <https://csi.be/admin/storage/hri/chapitre-vbis.pdf>

directly by their peers and 11 non-magistrates appointed by the Senate by a two-thirds majority of the votes cast. Each linguistic college is composed of two committees – nomination and appointment committee and advisory and investigatory committee. The membership is open to any Belgian national who enjoys all civil and political rights and has not been condemned or is under probation with final conviction of a correctional or criminal sentence, unless rehabilitated. This precondition includes convictions and sentences from abroad.

108. The membership of magistrates is composed of at least a member of a court or of the public prosecutor at a court, a member of the sitting magistrate, a member of the public prosecutor, and one member per jurisdiction of the court of appeal.
109. The membership of the ‘*non-magistrates*’ group is composed of at least four members of each sex per college and consists of at least four lawyers with at least 10 years’ professional experience at the bar, three professors from a university or college in the Flemish or French community with at least 10 years of professional experience useful for the mission of HCJ, and four members who are holders of at least a diploma from college of the Flemish or French Community and having professional experience useful for the mission of the HCJ with at least 10 years in the legal, economic, administrative, social or scientific field.
110. A person who has been an active magistrate in the five years preceding the candidacy cannot become a member of the non-magistrate cluster. Further, the French-speaking college is required to have at least one member with knowledge of German.
111. The magistrate members are elected by direct and secret ballot, from among career magistrates in active service. Voting is compulsory and secret, and each voter (under penalty of nullity) must cast three votes, of which at least is one for a candidate of the chair, one for a candidate of the public prosecution and one for a candidate of each sex.
112. Candidatures may be submitted individually, by each (French and Flemish) bar associations and universities and colleges. For each language, at least five members are nominated among the candidates presented.
113. The call for candidatures is published in the Belgian Official Gazette at the latest eight months before the expiration of the mandate of the members of the HCJ. The candidatures of the magistrates should be submitted within one month following the call for candidates whereas the list of non-magistrate candidatures must be sent to the President of the Senate within three months of the call for candidates.

Functions

114. The HCJ is responsible for the nomination of candidates for appointment as judges of the courts and of the Supreme Court as well as for the appointment of officers of the public prosecutor’s office, the first president of the Supreme Court, the first presidents of the appeal courts and the presidents of the lower courts and for the position of head of the public prosecutor’s office. The HCJ is also responsible for the training of judges and of officers of the public prosecutor’s office. Further it prepares the general profiles for the positions of the first president of the Supreme Court, the first presidents of the appeal

courts and the presidents of the lower courts and of the position of head of the public prosecutor's office.

115. The HCJ organizes the examination for the professional entry to the judiciary and it presents the magistrates for the appointment, exercises the external control over the functioning of the judiciary by means of audit and specific inquiries and by handling the complaints concerning the functioning of the judiciary, and issues opinions for the improvement of the functioning of judiciary.⁸¹
116. The HCJ provides advice and proposals concerning the general operation and organisation of the judiciary and carries out internal control. It further receives and follows up on complaints relating to the operation of the judiciary and may conduct enquiries on the operation of the judiciary. These competencies are divided between the nomination and appointment committees and the advisory and investigatory committees respectively.
117. The General Assembly of HCJ approves opinions, proposals, reports, directives, programs and other acts of the colleges and committees under prescribed conditions, recognizes the end of the mandate of a member of HCJ, and draws up an annual report based on an analysis and an evaluation of the information available concerning the general functioning of the judiciary.

Budget

118. The HCJ receives a financial allocation entered in the budget of the Belgian Federal State. This allocation is intended to cover the costs of its operation and the exercise of its powers. The budget is approved by the Chamber of the Representatives of the Belgian Parliament which is also entitled to control its execution as well as to verify the regularity of the accounts.

Status and term

119. The duration of the mandate of a member of the HJC of Belgium is four years and no one can serve more than two terms. Membership of the HJC is incompatible with the exercise of a function of a deputy magistrate, a public mandate conferred by election, public office of a political nature, and a mandate as head of police. The HCJ members (except for members of the Bureau) have the right to compensation, and subsistence expenses.

Dismissal

120. The term of office within the HJC is terminated at the request of the member him/herself, upon the appearance of the prescribed incompatibility conditions, in the event of loss of the quality required for position within the HJC, when a member is a candidate to be appointed as magistrate or to be appointed as head of corps or federal magistrate, when a magistrate has been admitted to retirement, when a member is convicted and/or under probation with final conviction, with a correctional or criminal sentence at home or abroad.

⁸¹ See: High Judicial Council, Presentation <https://csi.be/fr/presentation>.

121. When serious reasons justify it, the mandate of a member may be terminated by the HCl which decides by a two-thirds majority of the votes cast in each college. The decisions are not subject to any appeal, but the mandate can only be terminated after hearing the member.

3.7. Italy

Composition

122. In Italy, the High Council of the Judiciary is the body of judicial self-governance.⁸² The Constitution also mentions the Ministry of Justice as another body that is responsible for the organisation and functioning of the justice system.⁸³
123. The High Council of the Judiciary is presided over by the President of Italy. The first president and the general prosecutor of the Court of Cassation are *ex officio* members. Two thirds of the members are elected by all the ordinary judges belonging to the various categories, and one third are elected by Parliament in joint session from among university law professors and lawyers with fifteen years of experience.

Functions

124. Pursuant to Article 105 of the Constitution of Italy, the High Council of the Judiciary, in accordance with the regulations of the judiciary, has competencies with respect to employment, assignments and transfers, promotions and disciplinary measures of judges. Article 106 specifies that judges are appointed through competitive examinations.
125. The Minister of Justice has the power to initiate disciplinary action. The disciplinary accountability framework involves the collaboration of the three state powers. The Ministry of Justice initiates the procedure based on the general framework for disciplinary offenses and procedural guarantees set by the Parliament, while the disciplinary section of the High Council of Judiciary is in charge of the disciplinary decisions. The disciplinary procedure is of a judicial nature and is governed by the rules of the criminal procedure code, insofar as they are compatible. The procedural steps include notification of the accused about the start of the disciplinary action, and that they can be assisted by another magistrate or a lawyer. The hearing represents the ‘trial’ phase of the proceeding.
126. The competent body to judge is the Disciplinary Section of the High Council of the Judiciary, composed of six members: a President (as a rule, the Vice President of the Council) and five judges (one lay and four professional judges). At the end of the hearing, the disciplinary panel decides with a sentence. The Minister of Justice and the Prosecutor General at the Court of Cassation may appeal against the sentence of the disciplinary Section of the accused before the Civil Sections of the Court of Cassation.
127. The High Council of the Judiciary supervises judicial training and approves the programme for training.⁸⁴

⁸² Articles 104-110 of the Constitution of Italy. See also: laws 195 of 1998 and 44 of 2002.

⁸³ Article 110 of the Constitution.

⁸⁴ See, https://www.encl.eu/images/stories/pdf/factsheets/italy_csm.pdf.

Budget

128. The High Council of the Judiciary has financial autonomy with regard to the amounts made available by the State for its functioning. The budget for the operation of the courts and, in general, for the organization of the judiciary, is administered by the Council itself. In order to safeguard its autonomy and independence the Council is not politically or institutionally accountable to anyone.

Status and term

129. The Council elects a vice-president from among those members designated by Parliament. Elected members of the Council remain in office for four years and cannot be immediately re-elected. They may not, while in office, be registered in professional roles, nor serve in Parliament or on a Regional Council. For judges the membership is not full-time, since they still work in their courts.

Dismissal

130. The members of the Council are suspended in the case of criminal (for judges, also disciplinary) charges for intentional crimes being brought against them; they are removed if such charges are confirmed by a court's decision.⁸⁵

3.8. France

Composition

131. In France, the guarantor of the independence of the judicial power is the President of the Republic who is “*assisted by the Superior Council of the Magistrature*” (“SCM”).⁸⁶ The SCM consists of a section with jurisdiction over judges and a section with jurisdiction over prosecutors.
132. The “judicial” section is presided over by the President of the Court of Cassation (*Cour de cassation*) and includes five judges and one prosecutor. The “prosecutorial” section is presided over by the General Prosecutor at the Court of Cassation and includes five prosecutors and one judge. The SCM consists in total of 22 members. In addition to judges and prosecutors, the SCM includes one *Conseiller d'État* appointed by the Conseil d'État, one practising lawyer and six qualified, prominent citizens who are not members of parliament, the judiciary or administration.
133. The President of France, the President of the National Assembly and the President of the Senate each appoint two qualified, prominent citizens. The procedure for the appointment for the prominent citizens derives from Article 13 of the Constitution which provides *inter alia* that the power of appointment of the President of the Republic is exercised after consultation with the competent standing committee of each House of Parliament. The

85 Article 37 of the Law of 24 March 1958 n. 195 (with amendments),

86 Article 64 and 65 of the Constitution of France (https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank_mm/anglais/constitution_anglais_oct2009.pdf) and the Organic Law of 1994 as amended by the Organic Law 2010-830 of July 22, 2010. Loi organique n° 94-100 du 5 février 1994 sur le Conseil supérieur de la magistrature <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000364282/>

President of the Republic cannot make an appointment when the sum of the negative votes in each committee represents at least three fifths of the votes cast by the two committees.

134. The appointments made by the President of each Chamber of Parliament (National Assembly and Senate) shall be submitted for consultation only to the relevant standing committee in that Chamber. The appointments of prominent citizens should reflect a balanced representation of men and women. The *Conseiller d'Etat* (Counsellor of the State) is elected by the General Assembly of the Conseil D'Etat, while the lawyer is appointed by the president of the National Bar Council after the approval of its General Assembly.

Functions

135. Article 65 of the Constitution defines the functions of the SCM. The SCM participates in the judicial selection procedure and acts as a body that issues recommendations. The section of the SCM with jurisdiction over judges makes proposals for the appointment of judges to the *cour de cassation*; Chief Presidents of the Courts of Appeal and the Presidents of the *tribunaux de grande instance*; is consulted for the appointment of other judges; and is the disciplinary tribunal for judges.
136. The plenary section of the SCM replies to the requests for opinions made by the President of France on questions concerning the ethics of judges or on any question concerning the operation of justice which is referred to it by the Minister of Justice.⁸⁷ The Minister of Justice may participate in all sittings of the sections of the SCM except those concerning disciplinary matters. The SCM may receive referrals by litigants.

Budget

137. According to Article 12 of the Organic Law of France, the SCM possesses budgetary autonomy which is ensured under the conditions determined by law.

Status and term

138. The mandate of a member of SCM is four years and is not immediately renewable. The member may not exercise the profession of public or ministerial officer nor any elective mandate, the functions of Ombuds person nor, with the exception of the member appointed in capacity of a barrister, the profession of lawyer. No member may, during his or her term of office, sit in an independent administrative authority or an independent public authority.
139. Judge members of SCM are barred from professional advancement in grades, promotion to a non-hierarchical position or appointment to another post during the term of office. SCM members are placed on secondment or are partially discharged from service activity during the duration of their mandate.

⁸⁷ Article 64 of the Constitution of France.

Dismissal

140. If a member resigns, the appointment of the replacement takes place within three months of the resignation at the latest.

3.9. The Netherlands

Composition

141. The key body that is entrusted with judicial self-governance in the Netherlands is the Council of the Judiciary.⁸⁸ In the Netherlands the appointment of judges is not done directly by the Judicial Council but by the National Selection Committee and Ministry of Justice and Security. The Committee is composed of 22 members, including a Presidium of four members, 12 members, and six supplementary members. The members represent the judiciary as well as a variety of societal sectors, including public governance, business, education and science, law firms, and the public prosecutor's service. Members are appointed by the Council for the Judiciary based on a selection made by the committee itself. There are other bodies that are involved in the governance of the judiciary such as Ministry of Justice and Security or the Court's Management Boards.
142. The Council⁸⁹ must consist of a minimum of three and a maximum of five members. If the Council consists of three or four members, or five members, as the case may be, two or three members respectively must be judicial officers responsible for the administration of justice or members of the Central Appeals Tribunal or the Trade and Industry Appeals Tribunal. The other members may not be a member of the parliament, a minister, state secretary, vice-president or member of the Council of State, president or member of the Court of Audit, national ombudsman or deputy ombudsman, a civil servant at a ministry or at the institutions, agencies and businesses that fall under a ministry, a judicial officer, vice-president, justice or justice extraordinary at the Supreme Court, or a member of the Board of Delegates that is mandated to advise the Council on the implementation of the latter's activities.
143. For the appointment of the members of the Council, the Minister of Justice and Security must draw up, in agreement with the Council, a list of not more than six persons who appear eligible to fill the relevant vacancy.⁹⁰ The list must be made available to a recommendations body. This body must consist of a president of a court, a representative of the Dutch Association for the Judiciary, a member of the Board of Delegates, the non-judicial member of a court management board and a person designated by the Minister of Justice and Security. The committee must recommend not more than three persons from the list. It must send this recommendation to the Minister of Justice and Security no later than eight weeks after the adoption of the list.

Functions

88 Articles 84-109 of the Judiciary Organization Act of the Netherlands.

89 Article 84 of the Judiciary Organization Act regulates the Composition of the Council of the Judiciary in the Netherlands.

90 Article 85 of the Judiciary Organization Act of the Netherlands.

144. The Council may issue general directions to the management boards of the courts in so far as this is necessary for the proper operation of the courts. The Council is tasked with providing support for activities of the courts aimed at achieving uniform application of the law and promoting legal quality.
145. The Council also has advisory competences. It is tasked with advising the government and the parliament on generally binding regulations and the policy to be pursued by central government in relation to the administration of justice. The opinions of the Council are adopted after consultation with the courts. The Council cannot interfere in procedural or substantive decision-making in cases.

Budget

146. The Council is responsible for preparing the budget for the Council and the courts jointly, allocating budgets from the central government budget to the courts, supporting operations at the courts, and supervising the implementation of the budget by the courts and operations at the courts. The body carries out nationwide activities relating to the recruitment, selection, appointment and training of court staff.
147. The Council adopts a proposal each year, before the start of the budget year concerned, for a joint budget of the Council and the courts, including the rules to be attached to the budget to be awarded, and a multi-year estimate for at least four years following the budget year.

Status and term

148. The members of the Council are appointed by Royal Decree at the recommendation of the Minister of Justice and Security for a term of six years. They may be reappointed once for a term of three years.
149. During their term as members of the Council, the judicial members of the Council will receive a fixed salary, commensurate with the duties of a chairperson or other judicial member of the Council.⁹¹

Dismissal

150. A member of the Council is discharged by royal decree at the recommendation of the Minister of Justice and Security if the member accepts an office or position that is incompatible under Article 84 with membership of the Council. Non-judicial members of the Council must be discharged as members of the Council by royal decree on the recommendation of the Minister of Justice and Security if they are appointed as judicial officers responsible for the administration of justice, members of the Central Appeals Tribunal responsible for the administration of justice, or members of the Trade and Industry Appeals Tribunal responsible for the administration of justice.
151. Judicial members of the Council must be discharged or suspended as members of the Council by royal decree on the recommendation of the Minister of Justice and Security, if they are discharged or suspended as judicial officers responsible for the administration

⁹¹ Article 86 of the Judiciary Organization Act of the Netherlands

of justice or as members of the Central Appeals Tribunal or the Trade and Industry Appeals Tribunal who are responsible for the administration of justice.

152. Non-judicial members of the Council may be subjected to disciplinary action, suspended and discharged by royal decree on the recommendation of the Minister of Justice and Security.

3.10. Serbia

Composition

153. The High Council of Judiciary (HCJ) of the Republic of Serbia is an autonomous constitutional body which secures and guarantees the independence and autonomy of courts and judges. The legal basis for the functioning of the HCJ is the Constitution of the Republic of Serbia.⁹²
154. The HCJ has 11 members amongst which the President of the Supreme Court of Cassation, the Minister of Justice and Chairperson of the authorised committee of the National Assembly are ex officio members, and eight electoral members elected by the National Assembly, in accordance with the law.
155. Elected members comprise six judges with permanent tenure of office, of whom at least one judge is from the territory of autonomous provinces, and two credible and prominent jurists with a minimum of 15 years of professional experience, one of whom should be an attorney and the other a professor of law. Presidents of Court may not be elected members of the HCJ.
156. The judicial members are elected from the following courts: one candidate from the Supreme Cassation Court, Commercial Appellate Court and Administrative Court; one candidate from appellate courts; one from higher and commercial courts; two from first instance courts, misdemeanour courts and Higher Misdemeanour Court; and one from the autonomous provinces.
157. The elected members are appointed by the National Assembly on the proposal of the body authorized to nominate respective members. For nominating judicial members, this body is the HCJ. The HCJ may propose only the candidates who in turn were elected by the judges. The authorized body to nominate the solicitor is the Serbian Bar Association, while the member from university professors is proposed by the plenary session of the deans of law faculties.
158. The candidatures must be submitted to the National Assembly at the latest 90 days before expiration of the mandate of the elected members. The candidate for judicial member may be any judge with a permanent position. The status of a candidate is granted to the judge who is proposed by the plenary session of one or more courts according to the kind and grade of the courts as well as the judge who is supported by at least 20 judges.

Functions

⁹² Articles 153, 154 and 155 of the Constitution of the Republic of Serbia, <http://www.ustavni.sud.rs/page/view/en-GB/235-100028/constitution> Law on High Council of Judiciary (Zakon o Visokom savetu sudstva) <https://vss.sud.rs/sr-lat/dokumenti/zakoni>

159. The constitutional framework of competences of the HCJ is provided in Article 154 of the Constitution, however, the detailed list of functions is provided in Article 13 of the Law on the High Council of Judiciary. These functions include appointment of judges for permanent positions, deciding on termination of office of judges, proposing to the National Assembly candidates for the first judicial position, and the election and termination of the president of the Supreme Cassation Court and presidents of courts.
160. The HCJ also proposes to the Supreme Cassation Court the candidates for Constitutional Court judge, nominates members of jury, decides on transfer, assignments and suspension of judges, and decides on incompatibility of judicial functions with other functions. It further decides on evaluation of judges and presidents of courts, proposes the scope and the structure of the budget and supervises its execution, decides on existence of conditions for compensation of damage due to illegal and incorrect work of judges, and delivers the annual report on its work to the National Assembly.

Budget

161. The financial means for the work of HCJ are secured in the State budget on the proposal of the HCJ. The HCJ is independent in the disposition of the allocated budget.

Status and term

162. The mandate lasts 5 years except for the ex officio members. The elected members may be re-elected, however not consecutively. During the mandate, the elected member from the judiciary is employed in the HCJ and has the right to a salary, while the ex officio members and the lawyer and professor of law members have the right to an allowance which is determined by the respective committee of the National Assembly.
163. Members who are lawyers and professors of law may not during the mandate hold a position in bodies that enact regulations, executive bodies, public services and autonomous provinces bodies and local government. The members from the judicial group are exempted from the judicial office during the mandate and cannot be appointed as a judge of another court.

Dismissal

164. The termination of office for elected members comes in the case of permanent incapacity, resignation, expiration of the mandate or dismissal. The members who are judges are terminated of the membership in the case of the cessation (termination) of the judicial office (upon personal request, in case of retirement, loss of working capacity, if not elected for permanent position, and in the case of dismissal).
165. In relation to a lawyer, the position in the HCJ terminates in the case of the individual being removed from the Bar Association Records, and as regards professor of law, if he or she loses the position of professor.

3.11. England and Wales

166. The Judges' Council that exists in **England and Wales** is significantly different compared to other judicial self-governing bodies that exist in other European countries. The Council is mostly representative and other competences that are usually associated with Judicial Councils are spread across various actors. For example, judicial appointments are made by the Judicial Appointments Commission (JAC). The Judge's Council can only appoint three members of this Commission. The JAC is an independent body that selects candidates for judicial office in courts and tribunals in England and Wales, and for some tribunals with UK-wide jurisdiction. The JAC runs selection exercises for all judicial roles in courts and tribunals up to and including High Court Judge and Upper Tribunal Judge and convenes panels to make appointments for senior roles such as the Lord Chief Justice.
167. The Commission comprises 15 Commissioners who are responsible for ensuring that the JAC fulfils its role, achieves its aims and objectives, and promotes the efficient and effective use of staff and other resources. The Chairman of the Commission is a lay member. Of the 14 other Commissioners, six must be judicial members (including two tribunal judges); two must be professional members (Barrister, Solicitor or fellow of the Chartered Institute of Legal Executives), five must be lay members, and one must be a non-legally qualified judicial member. Twelve commissioners, including the Chairman, are appointed through open competition. The other three are selected by the Judges' Council (which selects two senior members of the courts judiciary) or the Tribunal Judges' Council (which selects one senior member of the tribunals judiciary).
168. There are 29 members of the Council. All of them are judges except for the Chief Executive of the Judicial Office.⁹³

3.12. Ireland

Composition

169. The system of judicial self-governance in Ireland is undergoing reform. There are currently a number of bodies that are responsible for judicial self-governance. Since 1999, the Court Service is dealing with managing the courts, providing support services for judges and other administrative duties.⁹⁴ Another ongoing reform is related to judicial appointments which traditionally is a political process. This reform is intended to increase the independence of judicial selection. According to the Irish Government website, “[i]n December 2020 the Minister for Justice secured Government approval for the drafting of a Judicial Appointments Commission (“JAC”) Bill. The Bill provides for the establishment of a new nine-member commission to replace the Judicial Appointments Advisory Board. Under the JAC, both serving judges and non-judges will have to apply

⁹³ The Judges' Council was first set up under the Judicature Act 1873. It was chaired by the Lord Chancellor and all the Judges of the Supreme Court were members. The Council continued to function until 1981. The Council was then reformed in 1988, 2002 and 2006. The Council was referred to in the Constitutional Reform Act of 2005. Constitutional Reform Act, <https://www.legislation.gov.uk/ukpga/2005/4/contents>.

⁹⁴ See, The Courts Service Act 1998.

through the Judicial Appointments Commission. The JAC will develop upgraded procedures and requirements for judicial office selection.”⁹⁵

170. Another recent innovation is the creation of the Judicial Council.⁹⁶ Pursuant to Article 8 of the Judicial Council Act, the Council comprises the Chief Justice and the ordinary judges of the Supreme Court, the President of the court of appeal and the ordinary judges of the Court of Appeal, the President of the High Court and the ordinary judges of the High Court, the President of the Circuit Court and the ordinary judges and specialist judges of the Circuit Court, the President of the District Court and the judges of the District Court other than the President of that Court. ‘The Council will be chaired by the Chief Justice and every judge will automatically become a member.’⁹⁷ The Chief Justice is the chairperson of the Council and the President of the Court of Appeal is its vice-chairperson.
171. The Board of the Council performs the functions of the Council on its behalf. The Board is comprised of 11 members, including the Chief Justice and the presiding judges mentioned above, one judge elected by and from the judges of each of the five jurisdictions, and one additional judge co-opted by the Board.
172. The Council may establish a number of committees. One of those committees is the Judicial Conduct Committee. This Committee’s functions include considering complaints and referring them for resolution by informal means or undertaking investigations into the conduct of individual judges; taking such action, if any, as it considers necessary for the purposes of safeguarding the administration of justice whether as a result of its consideration of a complaint and its referral for resolution by informal means or the undertaking of an investigation; preparing and publishing guidelines providing for the resolution by informal means of complaints that are determined to be admissible; and submitting to the Board for its review draft guidelines concerning judicial conduct and ethics and draft amendments to guidelines concerning judicial conduct and ethics adopted by the Council. The Judicial Conduct Committee shall comprise 13 members.⁹⁸ Of the

95 See, http://www.justice.ie/en/JELR/Pages/Judicial_Appointments.

96 The Judicial Council Act 2019, <http://www.irishstatutebook.ie/eli/2019/act/33/enacted/en/html?q=judicial+council+act>.

97 O'Brien P, “Never Let a Crisis Go to Waste: Politics, Personality and Judicial Self-Government in Ireland” (2018) 19 *German Law Journal* 1871, 1878.

98 1. Each of the following shall, ex officio, be a member of the Judicial Conduct Committee:

- (a) the Chief Justice, who shall act as chairperson of the Committee;
- (b) the President of the Court of Appeal;
- (c) the President of the High Court;
- (d) the President of the Circuit Court;
- (e) the President of the District Court.

2. Three members of the Judicial Conduct Committee shall be elected by and from among—

- (a) the ordinary judges of the Supreme Court,
- (b) the ordinary judges of the Court of Appeal,
- (c) the ordinary judges of the High Court,
- (d) the ordinary judges and specialist judges of the Circuit Court, and
- (e) the judges, other than the President, of the District Court.

3 The Government shall appoint 5 persons to be members of the Judicial Conduct Committee from among such persons as are recommended by the Public Appointments Service.

lay members appointed to the Judicial Conduct Committee, not fewer than 40 per cent of them shall be women.

Functions

173. Article 7 of the Judicial Council Act provides that the functions of the Council are to promote and maintain excellence in the exercise by judges of their judicial functions, high standards of conduct among judges, having regard to the principles of judicial conduct requiring judges to uphold and exemplify judicial independence, impartiality, integrity, propriety (including the appearance of propriety), competence and diligence and to ensure equality of treatment to all persons before the courts, the effective and efficient use of resources made available to judges for the purposes of the exercise of their functions, continuing education of judges, respect for the independence of the judiciary, and public confidence in the judiciary and the administration of justice.

Budget

174. The Council has its own budget.⁹⁹ The budget for the Judges' Council is agreed on a rolling annual basis with the Ministry of Justice. The Council operates on a part-time basis. It Council meets three times a year and is chaired by the Lord Chief Justice. Detailed work is carried out through standing committees and working groups. The Council has a secretary. According to Article 35, the governing Board of the Council, with the approval of the Minister and the consent of the Minister for Public Expenditure and Reform, appoints such and so many persons to be members of the staff of the Council as it may determine.

Status and term

175. The term in office (except for ex officio members) is four years.

[END OF TEXT]

⁹⁹ Judicial Council formally established today at 5pm. The Law Society Gazette. <https://www.lawsociety.ie/gazette/top-stories/judicial-council-to-be-formally-established-tomorrow/>