SUPREME JUDICIAL COUNCILS AS A GUARANTEE OF THE INDEPENDENCE OF JUDICIAL POWER AND THEIR ROLE IN THE APPOINTMENT AND CAREER ADVANCEMENT OF JUDGES

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Abstract: *In recent decades, special attention has been devoted, within the framework of the constitutional conception of the separation of powers, to the systemic independence of judicial power. The main goal is to minimise the organisational and personal influence of executive power, that is, cabinets and ministries of justice. Immediately after World War II, the constitutional solution used by the French and Italians introduced the concept of "supreme judicial councils" as special central authorities of an administrative type. This is an institution that is essentially independent of executive power, generally made up of judges or other justice officials. The function of these institutions, which are in place in over fifteen constitutional democracies in Europe, especially comes into play during decision-making on the professional/personal matters of judicial candidates, during their training for their role and likewise when choosing them. In this sense, these "supreme judicial councils" decide on the selection criteria for judges essentially defined in every constitutional system via applicable laws. However, the councils have a fundamental role in the implementation of these criteria, as well as in judge selection itself. The constitutional systems in which these councils operate have also succeeded in minimising the influence of calculated personal politics by the executive power in relation to court functionaries, which is of fundamental importance above all for decision-making on judges' progression to the higher courts, but is also important for the actual appointment of judges for governing positions at every level of the court system. There is also a need to monitor the independence and essential autonomy of the court system when handling punitive and disciplinary matters relating to judges.*

Keywords: *Independence of judicial power, supreme judicial councils, legal criteria for selecting judges, process for selecting judges, advancement of judges to higher-court functions, punitive and disciplinary proceedings for judges*

I. ON THE CONSTITUTIONAL MODERNISATION OF THE SEPARATION OF POWERS

The development of constitutional democracy after World War II brought a number of new institutional solutions into the system of the separation of powers founded primarily by "written" constitutions. The constitutional models of today also cannot be solely viewed through the prism of "pure" *triple separation* of powers (or the English *double separation* within the system of "*Her Majesty*"). This is because the role of constitutions in the modern era is fundamentally influenced by the increase in their implementability and in the ability to supervise constitutional institutions, and above all by the development of the system for the protection of constitutionally guaranteed human rights and freedoms. At the institutional constitutional level this fact is manifested in the establishment of new constitutional bodies of a supervisory nature, separated out from the mentioned constitutionally classical composition of the separation of powers and especially with a view to their main

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functions, which should be independent of the constitutional functional bodies that supervise these *independent* bodies. This explicitly involves

(1) the development of a specialised constitutional court system,
(2) "supreme judicial councils",
(3) constitutional anchoring of nations' central banks,
(4) the establishing of bodies on the order of a (Swedish-style) ombudsman,
(5) founding of councils for radio and television broadcasting.

Naturally we can also include the system of the specialised administrative judiciary and its arbitration function in relation to public administration in this group. From the standpoint of constitutional-law relationships, meanwhile, the main sense of the establishment and the activities of bodies of this type is their independence on the bodies of executive power, or where appropriate, their supervision of executive power, and likewise where appropriate, their protection of human rights and freedoms, or independence in the performance of the State's punitive function, etc.

Special attention, meanwhile, is devoted to the independence of the court system, not only in ensuring judges' impartiality during decision-making in individual cases, but also the independence of the entire system of judicial power in its typical level-based framework, or where appropriate branch lines of court activity. This is because the court systems of Central Europe are especially influenced by the Austrian or Prussian/German conception from the second half of the 19th century, in which not only was the judicial power not separated at all from the executive, but the direct influence of ministries of justice on the administration of the courts, including staffing matters, was nearly absolute. Not only did the Czechoslovak Republic of 1918–1939 continue in this administrative conception, it was also naturally useful for the "system with the leading role of a single party" in 1948–1989, and its residual effects on administration and staffing did not abide even after the founding of the Czech Republic in 1992. Venice Commission acknowledges the existence of a multitude of systems related to the appointing bodies and their involvement in the appointment of judges. The international standards are clearly in favor of depolisation of these processes, yet no single model, idealy no in line with the principle of separation of powers, is singled out as models vary greatly throughout the legal systems of countries. Even more, there may be different models in the same country depending on the type of judge to be appointed.[1] In general, the recommendations of various international bodies stress that the selection, evaluation and promotion of judges should be either entirely in the hands of an independent body comprised fully or in significant part from the judiciary (Judicial Council) chosen by its peers for a fixed term,[2] or this body should play significant or decisive role in these processes.[3] Therefore, the main principles of the composition of judicial Council, appointment or selection should be set out in the primary legislation or event in the Constitution.[4]

[1] See CDL-AD(2007)028, Report on Judicial Appointments by the Venice Commission, §§ 2-3, 59 and 12-17.
[2] Council of Europe Recommendation CM/REC(2010)12 – Judges, independence, efficiency and responsibilities, para 46.
[3] CDL-AD(2007)028, Report on Judicial Appointments by the Venice Commission, §§ 23-25.
[4] See CHAGNOLLAUD DE SABOURET, D. *Droit constitutionnel contemporain, 2, la Constitution de la V. République. 8, édition.* Paris: DALLOZ, 2017, p. 488 (Le Conseil supérieur de la Magistrature, Art. 65 of French Constitution). See: TULEJA, P. *Konstytucyjne kompetetencje Krajowej rady Sadownictwa.* In: Andrzej Szmyt (ed.). *Trzecia władza. Sądy i trybunały w Polsce.* Gdańsk: Wydawnictwo Uniwersytetu Gdańskiego, 2008, pp. 204–222.

II. THE POSITION AND FUNCTION OF "SUPREME JUDICIAL COUNCILS"

Over the course of the development of democratic constitutionality, it became clear even before World War II that the way that the court system functions is not problem-free from its standpoint as a part of the constitutional system. In a system of parliamentary democracy, parliamentary power and, in Europe, the power given legitimacy through it have potential political and administrative impacts on court institutions – in staffing matters and in organisational, disciplinary and of course budgetary issues as well. The creation of bodies independent of executive power of a quasi-administrative type such as a *supreme judicial council* has shown itself to be one possible route to a constitutional solution. Their importance lies mainly in the fact that they have taken over a portion of the authority of other state administration authorities (most often that of the ministries of justice), and yet they are a systemic guarantee of judicial independence. On of the fundamental principles, entrenched in various recommendations is, that independent authority (or large portion of it) should be constituted from judges, elected by their peers, including the chairperson.[5] Some of recommendation go step further and provide for non judicial members of council as well.[6] Composition of the judicial council should ensure the widest possible representation and be comprised in a manner aimed at ensuring gender balance, geographical balance and balance of hierarchical level.[7] When an independent authority sets up commissions or committees tasked with the selection and (or) evolution of judges,[8] their members may be appointed by the judicial council from the ranks of judiciary , but the inclusion of professional groups, such as attorneys and law-professors is also desired.[9]

Supreme judicial councils are on the whole modern institutions that were (with the exception of France and Italy) founded quite late, in the 1960s and onwards, in two "waves", and thereby frequently became a part of a nation's set of constitutional bodies.[10] The first wave is made up of traditional "Western democracies", in which the gradual stabilisation of parliamentary democracy evoked a need for a systemic solution.[11] Meanwhile the time-

[5] See European Network of Councils for Judiciary (ENCJ), "Reccomandations on Councils for Judiciary", (Rome, 2011).

[6] A participation of law-professors and the members of bar is viewed as desirable and as means to promote greater transparency and inclusiveness.

[7] Explanatory memorandum to CM/REC(2010)12, para 53. (it means – Judges from tier of courts should also be represented in judicial council).

[8] For example, in the Netherlands, see more concrete in this article.

[9] The term of such commission or committees should also be fixed and prescribed either in primary or detailing regulations, they should be accountable towards the public.

[10] In France the High Council of the Judiciary was founded in 1946, making it Europe's oldest institution of this kind. Italy also has a High Council of the Judiciary, active since 1948. The High Council of the Judiciary in France is made up of twelve members voted in for four-year terms. As for their staffing, we find a certain model here for the majority of the remaining countries – five members represent the judiciary, one is a public prosecutor, the two chambers of parliament elect one member each, as do the National Council, the Minister of Justice and the President of the Republic. The President of the French Republic is its chairman, and the Minister of Justice is its vice-chairman.

[11] In Italy, the High Council of the Judiciary has existed since 1948, and out of its 24 members one third is named by the president, while the rest are civil servants with judicial authority. The rules for appointing members to the Council are based on articles 104 and 105 of the Constitution of the Italian Republic.

line of their founding is very "disorganised", and it is difficult to find any special comparative logic within it.[12] The second group is made up of the "new democracies" (as the present author has come to consistently denote the former socialist states). If in connection with this development we follow the nature of the "legitimacy" of supreme judicial councils (e.g. in terms of the ways in which they are established and their staffing profile), then even though the original French model indicated development in a certain direction, from the comparative standpoint it is not possible to deduce any particular essential and unified model for their composition (for example from the standpoint of the scope of participation by judges and judicial functionaries).[13] In any case it has become clear in modern times that the founding of these bodies in the constitutional division of powers is connected with an effort to build up a conception of legal statehood of the current European type.[14]

The procedure followed by the independent authority should be transparent and the reasons for the decisions made should be provided.[15] Judicial selection models in which the executive branch of the government has a strong influence over the judicial appointments also exist. Although such a model may work well in older democracies, where the executive is restrained by the legal culture and traditions,[16] appointment of all tiers of judges by the executive (e.g. president of the state or monarch), and even more by legislative branch (e.g. parliament of specific body therein) of government is viewed as problematic, albeit not necessarily incompatible with the principle of judicial independence the outset.[17] The most important issue to consider in such models is the extent to which an appointing authority is free to decide on the appointment. Venice Commission notes that in the parliamentary systems, where the executive (president or monarch) is relatively withdrawn from the politics and acts in a formal manner, the influence to be regarded less of a danger for the judicial independence. Anyhow, an independent judicial authority should play a relevant role in the selection and appointment processes in such models.[18] When a final appointment is made by the president of the state, his or her discretion

[12] Thus in Cyprus, the country's "Supreme Council of Judicature" was founded in 1960, in Ireland the "Court Service" has been active since 1998, in Denmark the "Court Council" was established in 1999, in Belgium the High Council of the Judiciary came into being in 2000, and in the Netherlands the Council for the Judiciary was established in 2002. A "Judicial Council" was established in Great Britain as well, already in 1988, with 21 of the judges within it being elected by judges themselves.

[13] The Judicial Council of the Slovak Republic comprises the President of the Supreme Court, eight judges who are elected and removed by judges, three members elected and removed by the National Council of the Slovak Republic and three members appointed and removed by the President of the Slovak Republic. Their term of service is five years, with the option of one repeated term. For more detailed information on this, see POSLUCH, M., CIBULKA, L. *Štátne právo Slovenskej reoubliky.* Šamorín: Heuréka, 2003, p. 264.

[14] The National Council of the Judiciary in Poland was founded in 1990, Bulgaria's Supreme Judicial Council in 1991, and the Judicial Council of Lithuania has been in operation since 1995. Hungary established its National Council for the Judiciary in 1997. As far as of the Republic of Romania, see: VALEA, D. *Drept constitutional si instituti politice.* Universul Juridic: Bucuresti, 2014, p. 252.

[15] CM/REC(2010)12, para 48.

[16] See CDL-AD(2007)028, Report of Judicial Appointments by the Venice Commission, §§2-3, 59, and 12-17.

[17] As historical tradition – in Austrian constitutional system, nomination of the Judges, it is the Role of the President of Republic, on the basis of Proposition of the Government (Art. No.86/1, of the Constitution).

[18] A significant role, for example is regarded, when the appointing authority would be either bound by the proposal of the judicial council or follow them in practice (see – CM/REC(2010)12, para 47, I. e. acting in a merely ceremonial manner of formalizing the decision of the council (CDL/AD, (2013)034, Opinion on proposals amending de Draft law on the amendments to the constitution to the strengthen the independence of judges of Ukraine, §16.

should be limited to the candidates nominated by the selection body.[19] Any involvement in a more than merely a formal way is regarded as problematic, as it may cast a doubt over the independence or impartiality of a judge. Although appointment of judges by the parliament, upon the recommendation of a judicial council is not contrary to the European standard at the outset, it is regarded as having major shortcomings due to the possible politization of the process. Venice Commission stresses that appointments of ordinary (not constitutional judges is not an appropriate matter for the vote by the parliament.[20] When comparing the appointment by the legislative or executive branch of government, the appointment linked to the head of the state is considered more appropriate as normally a greater political reserve and neutrality would be demonstrated.[21]

From the constitutional standpoint it is particularly important to assess the relationship between each nation's supreme judicial council and its executive power, traditionally represented by the government and the Ministry of Justice. In the majority of the countries in which these bodies have been constitutionally established, no relationship of dependence in this sense is created, with the exception of requisite cooperation.[22] Not only the date of founding, but also the method through which these councils have been established in individual countries is fairly diverse, and thus there is not just a single model, just as these bodies have varying names. The main mission and function of these councils is expressed in the following activities:

1) with exclusivity during the appointment of judges or prosecutors, or when removing them from office,[23]

2) in a supervisory (inspectorial) function over judges and prosecutors,[24]

3) in punitive and disciplinary authority, in two versions, either with this authority, or without.[25]

In summary, the importance of the activities and authorities of the "extrajudicial" bodies for the administration of justice analysed and compared here generally lies in protecting the independence of courts and judges, primarily in the contexts of:

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[19] The proposals of the judicial council should only by rejected in exceptional circumstances and refusal to nominate the candidate should be limited to procedural grounds and be motivated (reasoned), Report on judicial appointments by the Venice Commission, §§2,3, 59, and 12-17.

[20] See CDL-AD(2007)028, Report on judicial appointments by the Venice Commission, §§2,3, 59, and 12-17. See CDL-AD(2002)033, Opinion on the Draft Law on judicial Power an Corresponding Constitutional Amendments of Latvia, §§ 13 and 21-23.

[21] It is desirable that the involvement by the parliament should be merely ceremonial, the decisive vote resting with the independent judicial authority (see CDL-AD(2015)008).

[22] In France the Minister of Justice is the Council's deputy chairman, while in Spain they merely cooperate, and in the Netherlands the minister does not influence the Council at all.

[23] In France the Council is responsible for selecting both judges and prosecutors. In Slovakia the authority of the Judiciary Council of the Slovak Republic includes nominating Supreme Court chairman and vice-chairman candidates for the Slovak president, as well as proposing the appointment and removal of judges and deciding on their apportionment and transfer. See DRGONEC, J. Súdna rada Slovenskej republiky a disciplinárna zodpovednosť sudcov. *Justičná revue*. 2003, Vol. 6, No. 4.

[24] In Spain, the Council is the body with the monopoly right to supervise judges, from their selection to deciding in matters of their advancement in their careers to questions of discipline. The council also assesses judges through its own body, called the Inspection Service.

[25] In Italy the Council can hold punitive and disciplinary proceedings against judges, while in France this function lies outside the Council, see BENVENUTI, S., PARIS, D. Judicial self-government in Italy – merits, limits of an expert model. *German law Journal*. 2008, Vol. 19, No. 3.

- personnel matters surrounding judges (selecting them and discussing their candidacies),
- appointing the functionaries who govern the courts,
- transferring judges to other courts, including their progress to higher courts,
- activities in which these authorities elaborate their standpoints on prepared legislative changes related to the judicial system,
- these bodies taking standpoints in the judiciary's budgetary matters,
- these bodies making decisions in punitive and disciplinary matters.

Within constitutional systems, the activities of court councils may be subjected to legal supervision, either by a state administration authority or an authority of a judicial nature.[26] This supervision may be thus set as: a) parliamentary control (in Ireland the Minister of Justice presents a report to Parliament), b) court control (in Spain the Supreme Court reviews the Council's activities) or c) also as economic supervision (in Hungary the ministry of supervision thus performs audits).

The constitution-comparison note in relation to the constitutional system of the Czech Republic is based not only on the fact that the Czech Republic has not established a body of this kind, but also on the fact that certain initiative plans to establish such a body have been made during the last twenty years.

III. COMPARATIVE CRITERIA FOR EVALUATING THE FUNCTIONING OF SUPREME JUDICIAL COUNCILS AND OF VENTUAL MODEL CONSTITUTIONAL VERSIONS

In comparative constitution studies, the period immediately after the end of World War II is considered part of the current and therefore modern one. The constitutional disposition of the democratic constitutional systems of "Western Europe" such as the liberation of France and the French "Fourth Republic", the Federal Republic of Germany under the curatorship of the "Western" Allies, and also the 1946 Constitution of a democratised Italy, also brings with itself the modification of the separation of powers. And in light of the fact that the historical development of constitutional democracies in continental Europe had further stages in the 1970s and later on in the 1990s, one must deduce that the installation of supreme judicial councils had its development in a sort of era-related "waves", in which the first models influenced those coming later. However, this cannot be stated unambiguously, because not all democratic states have accepted this body to this day (see below). From the mentioned historical and "genetic" standpoint, the states of Europe can thus be divided into:

a) the states that created and were the original bearers (originators) of the concept of supreme judicial councils, i.e. such as the Republic of France and the Republic of Italy,

b) states such as the Netherlands, Spain and Norway that inspirationally added bodies similar to the first models into their constitutional systems, in some cases modifying other special bodies to assess and evaluate candidates,

[26] In France, decisions may be reviewed if they are issued in punitive matters, in Spain the Supreme Court performs a review of the Council's activities, in Hungary the ministry of supervision reviews the Council's finances. See DUHAMEL, D., MÉNY, Y. *Dictionnaire Constitutionnel*. Paris: Presses Universitaires de la France, 2003, p. 553.

c) states such as the "new democracies", central and eastern Europe (Poland, Slovakia, Ukraine, Lithuania, Latvia and Hungary) as well as the countries of the Balkans (e.g. Croatia, Slovenia and Albania) that were more or less inspired by the French and Italian constitutional model.[27]

From the standpoint of choosing criteria for evaluating the functioning of supreme judicial councils, however, there is above all a need to assess the possible models for their composition. This thus firstly involves a guarantee of the independence of their functioning, since the fundamental personal independence of the supreme judicial council's members prevents or at least impedes the transfer of political influence during the evaluation of judge candidates, and therefore also potentially strengthens the objectivity of collective decision-making.[28] Based on the mentioned criteria, that is, looking from the method for the members' provenance, the method for their selection and above all the representation of the legal professional, it can be concluded that several solution variants exist:

a) the variant in which the council comprises "only" judges and members of other legal professions: applied in e.g. Spain**.** The Spanish General Court Council (El Consejo general del Poder Judicial) was established on the basis of article 122 of the 1978 Constitution (established in 1980). Its assemblage of 21 members includes 12 judges elected by Parliament (by both the Cortes and the Senate) as well as 8 further representatives of the legal professions (procurators, law professors, etc.). It is chaired by the head of the Supreme Court, as the highest court authority in the country. The council is subordinated to the "Spanish Court School", made up of judges, elder judges and elder judges of the Supreme Court. This institution coordinates and educates judges. The Council has three functions under the Constitution: that of appointing and promoting judges, that of supervising and monitoring the courts and also the "court disciplinary regime".[29]

b) the variant in which the judges have decisive and majority representation: this is applied e.g. in **the Netherlands**. The function of selecting judges is delegated to the National Commission for the Selection of Judges, which is named by the Council for the Judiciary. It is made up of six judges and six other representatives of the legal professions.

c) the variant in which at least half of the members must be judges: this is applied in e.g. the Slovak Republic. Its judicial council was founded through constitutional Act No. 90/2001 Coll., and subsequently through the reform constitutional Act No. 161/2014 Coll. The judicial council comprises 18 members (nine are elected by judges from general courts, while the National Council of the SR proposes three members, the President of the Slovak Republic proposes 3 members and the government of the SR proposes three members).[30]

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[27] VIOLANE, A., SANDRA, E. *Global best practices: Judicial Councils. (Lesson learned from Europe and Latin America)*. IFES Rule of Law. White Paper Series, 2004, p. 21.

[28] See KOSAŘ, D. *Perils of Judicial Self-government in Transitional Societies*. Cambridge: Cambridge University Press, 2016, pp. 121–142.

[29] See Constitution of Spain, see: SEGADO, F. F. (ed.). *The Spanish Constitution in the European constitutional context*. Madrid: Dykinson, 2003, p. 103.

[30] Drgonec is polemically discussing about the Slovak situation as far as of "Judicial Council of Slovak Republic (under sub: Záhady Súdnej Rady SR", see DRGONEC, J. *Ústavné právo hmotné*. Bratislava: C. H. Beck, 2018, pp. 422–433.

IV. GENERAL INTRODUCTION TO THE CONFIGURATION OF THE CRITERIA FOR SELECTING (NEW) JUDGES

The comparative approach to evaluating selected court systems of Europe from the standpoint of the criteria for the selection of judges to nominate for the first level of the court system primarily takes into account the fact that the Council of Europe predetermines the configuration of certain common principles in individual legal systems.[31] These are requirements that must be fulfilled in the individual legal systems, even in the situation where the court systems differ in view of traditions, national mentalities, differing historical experiences in individual countries, different degrees of respect towards courts' decisions and (we should take into consideration) also the potential tendency towards corruption.[32]/22 The systems are also influenced by the size of a country, its population, general and multi-level court systems depending on the types of decision-making activities, the number and level of law schools, salary conditions for judges, etc.

The international standard is primarily moving towards the depoliticisation and independence of the courts, as well as towards transparent legislation. In relation to a judge's professional portfolio, three key requirements in their profile as a judge are emphasised:

1. professional qualifications,
2. personal capability to perform this function and
3. the ability to make decisions in specific matters on the basis of applying legal norms.

The principle of judicial independence must be maintained at all levels of proceedings. Article 6 of the European Constitution regarding human rights and fundamental freedoms, providing for the independence of individual judges likewise demands that any arbitrariness of any kind be absent from their selection and appointments into positions in the first instance. The selection of judges should thus be based on decision-making by bodies that are independent of the executive authorities, as well as a major portion of non-judiciary bodies. These independent bodies should play a defining role in these processes. Decision-making by these bodies should be transparent and properly justified. All forms of discrimination (that is, primarily with a view to the structure of the population) should be excluded as well.[33]

For the actual selection of the candidates, the law must set forth clearly defined criteria that lead to conclusions that then lead to a subsequent evaluation. There is a growing tendency for a number of European countries to reform these criteria, make them more precise and concrete, etc.[34] This tendency is pushing toward an increase in the requirements for objectivity in decision-making, comparative grounds for selection of judges as well as the assessment of candidates' practical habits, including oral interviews and tests. In our approach to categorising criteria, the goal is to observe the configuration of these fundamental and general criteria, as a hypothetical delineation of:

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[31] Consultative Council of European Judges, CCJE (2021) 11, per eventum: CCJE Opinion No. 24 (2021) – "Evolution of the Councils for the Judiciary and their role in independent and impartial systems", or Opinion No. 10(2007) of the CCJE.

[32] See Magna Charta of Judges (CCJE), 2010.

[33] See European Network of Councils for the Judiciary (ENCJ) – "Recommendations on Councils for the Judiciary", Rome, 2011.

[34] See, for example MIKULI, P. W poszukiwaniu optymalnego modelu Rady Sadownictwa. In: Krzysztof Grajewski (ed.). *Konstytucionalizm Polski.* Gdańsk: Wydawnictwo Uniwersytetu Gdańskiego, 2020, p. 1129 et all.

a) professional abilities, i.e. as the ability to assess the situation in a case and write a decision along with an appropriate justification,

b) prerequisites related to personality; in assessing these, the person's entire ethical culture is determined, as well as their moral values, decisiveness and ability to make decisions in general, to work without stress and to engage in lifelong learning,

c) social abilities, with an emphasis being placed on abilities in relation to a specific environment (place of residence, court buildings, employees, lawyers of other professions, etc.).

For the above-mentioned areas, individual indicators must be set, based on which candidates' abilities and skills (in individual categories) will be assessed.

An assessment of the various approaches in the process of preparing candidates for work as a judge, including (if appropriate) technologies for examinations, judicial schools, training courses, leadership by trainers, exercises, determination of skills (testing and examinations), etc. will also be a part of the comparative evaluation.

Requirements for, above all, candidates' professional abilities will arise from analyses of selected legal systems and therefore from an evaluation of the requirements for judicial candidates (as well as any legislative formulation they may eventually have). From this standpoint, it appears to be a fundamental and general requirement that a judge be a person who is a) physically and mentally capable of fulfilling their judicial duties, b) a person capable of avoiding illegal, unethical, irresponsible, etc. behaviour (including anti-corruption capabilities), c) a person who has a good overview of all areas of the law, which is contingent on a requirement for a higher law degree. The requirement for flawless knowledge of the national language (in both oral and written form) can be considered to be justified. In order to verify the very generally defined ability requirements, verification indicators are defined within legal systems as well.[35]

Regarding professional abilities for performing a court function, the following abilities more specifically can be summarised (via synthesis) for the selected legal systems:

- analyse and summarise information for a justified decision,
- the ability to convey concepts in writing (creativity in writing decisions),
- the ability to plan out one's work and thus the ability to lead a case,
- decision-making ability,
- the ability to communicate with participants in the proceedings (the ability to be a master of the word),
- an awareness and feeling of responsibility and thus a degree of personal self-reflection as well.[36]

[35] The case formulation of the version for the **Netherlands** (can simultaneously be considered as indicators as well) enumerates the following: the candidate's perception and comprehension of their surroundings, analytical skills, systematic reviewing and evaluating of a situation (of a matter for which they are the judge), convincingness of demeanour, clear leadership of trials, managerial abilities (the ability to plan out a trial and organise it) and personal adaptability/flexibility.

[36] In the case of the FRG a number of special aspects appear within both the entire process of selecting new judges and the determining of judicial candidates' abilities. For example in Baden-Württemberg, these are indicative criteria for the "second state examination", which is a specific version in the FRG only: a) Professional qualification (broad knowledge of the law, ability to apply the law in practice, ability to acquaint oneself with new legal fields, good judgement, and ability to apply information technology); b) Understanding of the judicial

Specifically regarding candidates' personality prerequisites, one can find these in the legal orders of the selected states in the form of requirements on a) the candidate's overall ethical and personal culture, b) their moral characteristics, c) their psychological disposition, and above all d) their decisiveness and overall decision-making abilities.[37]

Meanwhile, specifically regarding candidates' social capabilities, requirements can be found within these legal systems for:

a) the ability to perceive and navigate (internally and externally) within one's social environment,

b) the capability for interpersonal communication,

c) tolerance and assertiveness towards participants in the process (the ability to react to various situations in their discourse), and

d) the capability for respectable collegiality towards other legal professions (especially towards prosecutors and attorneys).[38]

The legal systems of the selected states place special requirements on the psychological criteria for the selection of candidate judges. The candidate must present a standard moral character, naturally with a clean criminal record. They must not be inclined toward the use of psychotropic substances, narcotics, other toxic substances or alcohol; as well as other requirements set for acquiring a driver's licence (the judicial code of conduct).[39]

office (impartiality, prepared to actively uphold the values of the constitution, prepared to defend oneself against undue influence, prepared to take responsibility for judicial decisions, awareness of the influence of private conduct on the judicial office); c) Ability to present arguments and to convince (precise phrasing, ability to define issues in complex cases, giving reasons thoroughly, with respect to the individual case, openness); d) Ability to conduct hearings and interrogations (being thoroughly prepared, having knowledge of the court files and documents, planning and structuring of trials, respect for the interest of the parties, understanding, sensitivity and patience with parties, a clear view of chances for settlements); e) Competence in teaching (preparedness to instruct students in the preparatory service, diligent correction of students' papers).

[37] We can give the example of the FRG re: "Personal competence" as one specific solution here: a) General elements of personality (broad interests, natural authority, prepared to accept difficult duties, awareness of one's strengths and weaknesses, control of one's emotions), b) Sense of duty and responsibility (awareness of social responsibility, prepared to accept responsibility for the judicial administration, able to assess consequences of decisions, responsible handling of large workloads, openness toward lay judges and court staff), c) Ability to cope with the workload (physical and psychological fitness, prepared to accept additional duties, able to work fast under pressure and with concentration, maintaining standards even with a large workload), d) Ability to manage and to organise work (set priorities, optimise workflow, able to motivate oneself and others, delegate work reasonably, take available resources into account), e) Ability to make decisions (to do so swiftly and responsibly, prepared to face necessary disputes), f) Flexibility and preparedness for innovations (openness towards new technologies, openness towards the modernisation of the courts, prepared to work in different court structures, ability to develop new solutions).

[38] Here as well we can present this listing taken from the example of the legislation in one federal state of the FRG to round out the reader's conception: a) Ability to work in a team, b) Ability to communicate, c) Ability to deal with conflicts and to mediate (prepared for compromises, fairness, positive approach in dealing with colleagues, constructive criticism, ability to mediate, being accepted as an authority), d) Awareness of the role's service aspects (respect for the interests and concerns of parties and witnesses, politeness, keeping of schedules, taking the necessary amount of time), e) Competence of leading (clear instructions, trust in staff and colleagues and openness towards the concerns of staff).

[39] Cf. e.g. the Lithuanian act on the courts dated 31 May 1994, as amended in 2002.

V. ASSESSMENT AND WHERE APPROPRIATE EVALUATION OF THE PREPARATION PROCEDURE FOR JUDICIAL CANDIDATES INCLUDING TESTS AND EXAMINATION METHODS

Both the historical and novel approaches (from updates and amendments) in the selected countries of Europe show the quite fundamental variety of these systems in their organisational solutions for the selection of candidates for the role of judge, as well as in the further preparation of these candidates. Alongside the realities in which the state does not organise any sort of special preparation (for example the individual federal states in the FRG), there is the need to compare and assess the role of preparatory education for the selected candidates in those countries where the selection, examination and attestation of these is an unavoidable condition. In this direction the modality of the assessment of judicial candidates, and especially their final testing, etc., is very inspiring.

From the standpoint of the procedure for selecting candidates and testing them, we can look at the **Spanish** version as one example; it is founded firstly on (a) the taking of a public exam (which means a written test plus two verbal presentations, each one lasting 60 minutes). The selection itself is then (b) organised by the "Court School" and is applied in two phases, first as a theory portion lasting nine months, and then as a practical portion implemented at various courts.[40]

The **Dutch** model is likewise made up of individual phases. The fundamental responsibility for the selection of judicial candidates lies with the "National Judge Selection Committee" (composition: Six plus six judges or other lawyers, along with six plus six MPs, plus a chairman and two secretaries for each part of the Commission). The procedure for their selection is supervised and verified by the Ministry of Justice.[41] The king then appoints the judges by decree. The Dutch approach to the selection of candidates is based on the prerequisite that a candidate must be involved for at least two years in legal practice, outside of the justice system. During the actual selection of judicial candidates, three types of so-called analytical testing are then applied:

a) in the first, the following traits are determined: verbal capabilities, critical thinking and abstraction capability,

b) after this, interviews are performed by the so-called local advisory selection committee, each of which operates for a particular court. At a specific court it should be determined whether the candidate is a suitable person, in terms of their profile, for holding office at this court and in a particular position,

c) after this an "evaluation centre" performs a "psychological evaluation", which is an interview with a psychologist, on the basis of a preceding test comprised of a number of questions; the psychologist prepares a report expressing their positive and negative findings, the results can be discussed (with an advisor); this evaluation is about capabilities: analytical thinking and other intellectual capabilities, decision-making ability, composure, capability for communication, empathy, social awareness, ability to cooperate, convinc-

[40] Its contents include the conception of specific court decisions under the leadership of a trainer, who is a judge who has been assigned to the candidate.

[41] The Dutch solution makes it clear that new judges are, with parity, selected by members of parliament as well, who always have a certain political direction.

ingness, capabilities of expression, work attitude, ability to make decisions independently, and stress resistance,

d) all this is followed by a concluding interview in front of the National Judge Selection Committee (see above), with a duration of 45 minutes for an interview in front of both commissions (with the first commission being comprised of judges and the second from other lawyers from practice).

A successful candidate is placed into a personal training plan, whose duration depends on the candidate's previous legal experience: 2–6 years (4 years), over 6 years (2 years), over 10 years (15 to 24 months): the preparatory training is organised by the "Training Centre for the Judiciary and Prosecution Service".

The **Lithuanian** solution for evaluating candidates for judicial functions is based on the categorisation of scores for individual items with various score values. Each candidate can achieve a maximum of 100 points, as follows:

a) studies and legal practice lasting at least 5 years = 5 points,

b) character and quality of legal and pedagogical practice (including doctoral studies, law-related publishing, lecture activities and participation in teams and commissions) = up to 20 points,

c) results of tests = 10 to 15 points,

d) professional abilities and knowledge (viewed through the lens of practice and application – knowledge of foreign languages, participation in legislative work, teaching work at a university, expert opinions, etc.) = 10 points,

e) personal abilities and character traits (this evaluation is based on findings from personal interviews, opinions acquired in candidates' workplaces, from the conclusions of supervisory authorities, recommendations of other persons, other judges at a given court, etc.) = up to 50 points.[42]

The further progress of a candidate for the position of judge in Lithuania is such that on the basis of an overall evaluation of the candidates, the Selection Commission recommends to the President of the Republic one or more of the best-rated candidates for vacant judge positions. The President, meanwhile, is not bound by this opinion; nevertheless, on the basis of his selection they must acquire the confirmation of the Judicial Council, which then is legally binding for the President (the President may not decide *ex officio*),

The **Slovak** practice for the method of choosing candidates similarly brings in a number of inspiring testing and examination components, for example, the model of the written and oral portions of this procedure in specific details:

[42] Within the individual criteria, more specifically the following things are evaluated:
- the candidate's creative thinking, ability to concentrate on the essence of a matter and ability to summarise results, ability for quick decision-making,
- personal emotional composure, effectiveness and objectivity of decision-making, adherence to principles, ability to justify one's opinions with arguments, ability to resist pressure from one's surroundings,
- responsibility towards one's obligations, ability to effectively organise one's own work and that of others, ability to plan out work (to schedule it) and to retain creativity even in stressful situations,
- ability to communicate and cooperate: clear presentation (in both oral and written form), ability to handle difficult communication situations, ability to understand others, teamwork ability, level of professional ethics and culture,
- professional motivation to perform the judicial function, effort to educate oneself, as well as participation in activities of the entire court (professional) community.

The bulk selection procedure includes a written test, case study, preparation of court decisions, translation from a foreign language, psychological assessment and an oral part.

a) The written test – verifies the candidate's professional knowledge of constitutional law, criminal law, administrative law, international law and the law of the European Union. The written test is composed of 40 questions (= max. 40 points) in 30 minutes. The database of questions for the purposes of the composition of written tests consists of a minimum of 1,000 test questions.

b) The case study – includes a description of a possible and/or real situation, where the candidate is to propose its written solution. When preparing the written solution for the case study, non-commented versions of generally binding legislation in printed form may be used (the limit for completion is 60 minutes and max. 25 points). The database of case studies consists of a minimum of 100 case studies of comparable difficulty, and it is changed as needed.

c) Translation from a foreign language – may be performed from English, German or French (a translation dictionary in printed form may be used). The database of texts in the foreign language consists of a minimum of 50 texts, the time for completion is 60 minutes, and it is assessed for a maximum of 20 points.

d) In the framework of preparing the written court decision, the candidate shall prepare one court decision – one from the area of criminal law and one from the area of civil law (non-commented versions of generally binding legislation in printed form may be used).

e) The purpose of the psychological assessment is to verify a candidate's personal qualifications for performing a judicial function. The psychological assessment shall be made by psychologists, on a different day from the selection procedure. The results of the psychological assessment are to be presented by the psychologist to the selection commission in written form. If a candidate requests so in writing, the psychologist who performed their psychological assessment for the purposes of this decree shall provide him/her with consultation relating to the interpretation of the results of the psychological assessment.

f) The oral portion – this is composed of a presentation of the candidate regarding their person and their professional practice, as well their motivation for performing a judicial function, and also of answers to questions by members of the selection commission (each member scores the candidate from zero to three points). After completion of the oral portion, each member of the selection commission shall fill out their own assessment sheet.[43]

In the framework of this comparative study it is also necessary to focus on the role of judicial educational facilities (schools) and where appropriate on any other system for candidates' preparatory education. An example of the **Polish** model is the National School of Judiciary and Public Prosecution (*Krajowa szkola sadownictwa i prokuratury*). A candidate for a judicial function is enrolled into this school, which then lasts for three years. The enrolment procedure is divided into two parts, with the candidate undergoing (1) a test lasting 180 minutes (made up of 150 questions, each with four solutions, of which one is correct) and after this they produce (2) a written work, based on preparing a deci-

[43] See SVÁK, J. *Miesto Súdnej rady Slovenskej Republiky v systéme ústavných záruk na súdnu ochranu.* Banská Bystrica, 2015, p. 111.

sion in a case, with a duration of 180 minutes. The candidate attends the school two times per quarter. Every candidate is assigned a trainer (a patron) and performs practice at a particular court. The Polish model is definitely inspiring from the standpoint of determining, acquiring and verifying candidates' practical judicial habits before appointing them to a court function. This is because in Poland, during the second phase of required preparation, after finishing the justice school and passing the exams, candidates are already deciding cases as assistant judges (with the exception of certain criminal matters (prison) and civil-law matters (guardianship). Acceptance into the office of assistant judge is conditioned upon a candidate's having earned at least 60% of the points in both the written and oral parts of the examination, while they are accepted into the oral part if they do not receive more than 30% of the case's written solution. The examination questions are composed by a commission, which is named by the Minister of Justice. The Minister of Justice also declares (no later than one month before examinations) a list of places to which assistants may be appointed. Judicial assistants are then appointed into the vacant positions, without stating a period for this activity, but essentially for up to four years. After three years of a candidate's service as a judicial assistant have passed, the candidate may ask the chairman of the regional court (i.e. the superior instance) to appoint them to the position of a judge at a district court. This functionary then determines an assessor (called a "visitator") for the given assistant, and this from both of the mentioned instances.[44]

VI. THE SPECIFIC ROLE OF SUPREME JUDICIAL COUNCILS IN THE SELECTION OF CANDIDATES FOR APPOINTMENT INTO COURT SERVICE

One very important matter connected with guarantees of the independence of the judicial system is ensuring qualified staffing of judicial positions, with an accent on the acceptance and appointment of new judges. This is a serious matter of a constitutional-law nature from many viewpoints. In light of the essential corresponding high professional (starting) qualifications, heightened emphasis is placed on personality-related qualifications, especially surrounding decision-making, etc. (see above). The constitutional tendencies are thus in the direction of variants for the organisation of the system for selecting new judges in such a direction as to entirely clearly eliminate the influence of both the executive sphere and the sphere of politics and parliaments. Thus in this direction the supreme judicial councils, or more precisely special "selection" commissions in connection with them, play a predominant selective role. Constitutional systems thus exhibit several variants for this solution, including models in which bodies of this kind do not exist. The systems can furthermore be classified not only by the different versions for the role of the supreme judicial councils in the selection of judges, but also by which variants exist in systems where bodies of this type do not exist, as follows:

a) into selected constitutional systems where a decisive, or exclusive, role is played by the supreme judicial council:

[44] The assessment must above all contain the level of the cases decided, the candidate's ability to organise their work, their professional growth and their culture of judicial decision-making, as well as the complexity of their court decisions.

In **Italy**, which is the main representative for bodies of this type (founded in 1948), the "Consilio superiore della magistratura" (High Council for the Judiciary)[45]/26 performs the selection of judges "per concorso". Afterwards each candidate attends a "judge university" with an eighteen month length of study.[46] Each candidate must also serve as an intern in a court office, and then after four years they are entrusted with a judicial function by the Council. In **France** as another country behind the historical initiation of this type of body (founded in 1946), the President of the Republic names judges at the suggestion of the Supreme Judicial Council. One condition in one of these variants for entry into judicial function is attendance (and graduation) at the "National School for the Judiciary" (in Bordeaux), on the basis of an announced entry application round and the passing of an acceptance test. Judicial school students must also go through an internship at a court.

In **Spain** the "General Council of the Judiciary" has been established, and it also announces appointment proceedings, which are then performed on the basis of a public competitive application round.[47] Based on it, it is possible to enter the judicial services using 3 legal options: after graduating from the Spanish Court School (including 4 years of judicial experience). The second option is to make use of a transition from another legal profession, after 10 years of legal practice, and also on the basis of direct appointment by the Council into one of the supreme judicial functions.

In the **Republic of Lithuania** the Constitution establishes institutions bearing responsibility for the selecting of judges (see article 112), and meanwhile a specifying act defines the court system, the organisation of judicial activities, the administration of the courts, their self-government and principles, the authority of judges, the procedure for the selection of judges, and how judges are appointed, promoted and evaluated. The rules of procedure for the activities of the special Selection Commission of Candidates to Judicial Office are set by the President of the Republic, as are the rules for evaluating and selecting judges.[48] The rules for the actual selecting of judges are set by the Judicial Council, through its resolutions.[49] The Selection Commission is made up of seven members and is appointed for three-year terms by the President of the Republic. It is forbidden for its members to also be members of the Judicial Council.

In the **Slovak Republic** the Judicial Council of the Slovak Republic has been established as a body for the "legitimacy of the judiciary".[50]/28 Its chairman and vice-chairman are elected by this Council itself from among its own members.[51] The Judicial Council pro-

[45] See Art. No. 105 of the Italian Constitution.
[46] This preparation also includes practical exercises and forensic theory (precisely at the Supreme Judicial Council).
[47] See Art. No. 122 of the Spanish Constitution.
[48] Thus Decree No. 1K-243/2020, or Decree No. 1K-242/2020, govern the rules for announcing and organising the selection of candidates for vacated positions (at all types of courts).
[49] As well as Act of the Republic of Lithuania on Courts No. 1-480/ 1994 in its amended version No. IX-732/2002, and also Judicial Council decrees 13P-144-(7.1.2.).
[50] See SVÁK, J. Komentár k článku 141a. In: Milan Čič. *Komentár k Ústave Slovenskej Republiky.* Žilina: Eurókodex, 2012, p. 765.
[51] The composition of this Judicial Council is designed as follows: one member is elected and removed by the courts of the Supreme Court of the Slovak Republic and the Supreme Administrative Court of the Slovak Republic from among the ranks of their judges, while the remaining eight members are elected and removed by judges in multiple electoral districts, another three members are elected and removed by the National Council of the Slovak Republic, three members are appointed by the President of the Slovak Republic and three members are appointed by the government of the Slovak Republic. The term of service for this body's members is five years. See Decision of the Constitutional Court of Republic of Slovakia, Pl.ÚS 2/2012, ZNUÚS, 2015, pp. 176–177.

poses new judges to the President of the Slovak Republic, who then appoints them without temporal limitation.[52] Each judge candidate must go through a selection process, including professional judicial exams. With the agreement of the Judicial Council, the applicant need not take this test if they have been active for at least ten years in the field of law, legislation or public administration.

In the Kingdom of Norway the central administration of the courts was solely in the hands of the Ministry of Justice up until 2002. In that year the "Norwegian Courts Administration", the "Judicial Appointments Council" and also the "Supervisory Committee for Judges" were founded, with the Judicial Appointments Board being the body that appoints judicial candidates.

b) Another possible variant is constitutional systems where on the one hand, supreme judicial councils do play a deciding role, but on the other hand they do so in cooperation with the Ministry of Justice:

Thus **in the Netherlands** the Council for the Judiciary was established in 2002, and meanwhile it has entrusted the job of selecting judges to a National commission for judicial appointments. A candidate must first be accepted into what is called the "training programme", in the course of which their personality qualifications are assessed on the basis of a cognitive test. Acceptance into this programme also means that the candidate becomes an assistant judge. This institution proposes judges to the Minister of Justice, who allows the proposal to move onward, through their signature, towards the issuing of a royal decree. The minister thus merely checks the legality of the process.

c) As another, combined solution, in which the principal selection role is performed by independent judicial bodies, including special selection commissions, we can name the following selected versions:

Thus in **Latvia** a Judicial Council has been established, and it in turn has founded a Selection Commission. Based on an advisory statement of the "Judicial Qualification Committee", the Minister of Justice then proposes judicial appointments to Parliament. In the **Slovenian Republic** judges are elected by the National Assembly on the basis of a "Judicial Council" (see article 130 of the Constitution).[53] The nation's Supreme Court in turn initiates an application round for this selection process. Candidates must pass a national law exam to ensure they have the needed qualifications. In **Belgium** the "Supreme Council for Justice" is active; it selects judge candidates and approves them, and meanwhile the Minister of Justice appoints them into service based on its advice. In light of the federal nature of the Kingdom of Belgium, the above-mentioned Council decides within two groups: one for the Flanders region and one for the Wallonia region.

d) And lastly, how are the selection and establishment of judges handled by countries that do not have supreme judicial councils? Primarily the constitutional systems that have

[52] The qualifications for performing the role of a judge are based upon Act No. 385/ 2000 Coll., on Judges and assessors; for more information, see BRÖSTL, A., HOLLANDER, P., PRIBELSKÝ P. *Ústavné právo Slovenské republiky. Fourth updated edition*. Plzeň: Nakladatelství a vydavatelství Aleš Čeněk, s.r.o., 2021, p. 384.

[53] The Judicial Council in Slovenia is an independent body that ensures cooperation between the legislative and judicial powers in the appointment of judges. Nevertheless, it is subjected to criticisms to the effect that ultimately a body of a parliamentary type (Slovenia's National Assembly) makes the decisions here; see GRAD, F., KAUČIČ, I., ZAGORC, S. *Ustavno pravo.* Ljubljana: Pravna fakulteta, 2018, p. 563.

been in place through a longer period of history and are more traditionalist tend to remain with variants in which no body of a "modern type" has been established, and the practice to date shows us that there is also no tendency for them to move towards adding such a body.

The fundamental differentness of the system in **Great Britain** thus lies primarily in the fact that performing a judicial function is treated as a "second" lifetime profession. By this we mean that entry into this societally exceptionally respected state is conditioned by at least five years of prior activities as a lawyer – generally as an attorney. The selection process is organised by the Ministry of Justice (for England and Wales); a "Judicial Appointments Commission" is active within it. The nation's public-competition selection method means that candidates go through a "pre-selection" in the form of online tests, and then in a single day, a candidate attends an interview, an in-person "role-play" as a judge, questioning, etc.[54]

The system for the acceptance of new judges in the **Federal Republic of Germany** is above all quite original.[55] In light of the nation's federative organisation, acceptance into a judicial function is always handled by a particular German federal state and its Ministry of Justice.[56]/29 Thus a "judicial selection committee" as a body within the federal state's parliament (its *Landtag*) makes the decision on acceptance into judicial service.[57]

In the **Federal Republic of Austria** judges are appointed to their functions by the President of the Republic, upon the advice of the Federal Government (or more precisely advice from among its ranks – from the Minister of Justice). Prior to this, selection proceedings take place for every judicial position, and the selection commission then chooses three candidates for each position. The selection version in the **Republic of Estonia** has an approach in which the Minister of Justice announces a public competition for vacated positions, with the selection criteria being set by the Commission for the Selection and Preparation of Judges. The judges are then appointed into their positions by the President of the Republic upon the advice of the Supreme Court.

[54] The judges of the supreme courts are appointed by the Queen upon the advice of the Prime Minister, while the judges of the lower (remaining) courts are named by the Lord Chancellor upon the advice of none other than the above-mentioned commission (since 2006 and its "Constitutional Reform Act"). See also MIKULI, P. *Sadownictwo w Sjednoczonym Królewstwie, Wybrane zagadnenia ustrojowe.* Kraków: Księgarnia Akademicka, 2019.

[55] In a number of his publications, the present author deals with criticisms of the system for the execution of justice in the Czech Republic, in which no body on the order of a "supreme judicial council" exists, and the task of court system administration, including the exclusive position of the Ministry of Justice, is entrusted to the Ministry of Justice; more on this for example in KLÍMA,K. *Ústavní právo srovnávací.* Prague: Metropolitan University Prague Press Wolters Kluwer, ČR, 2020, pp. 100–102.

[56] Wittreck is speaking: "Typicaly, Germany is portrait rayed as a persistent objector to Judicial Self-governement in any form …", in: German Judicial Self-government – Institutions and Constraints, German Law Council.

[57] Federal judges are named by the Federal President, upon the advice of a Judicial Selection Commission. It is made up of sixteen ministers (from federal states) and sixteen members of the lower house of parliament. The high degree of political influence on the selection of high-court judges is thus clear.

VII. SPECIAL IMPORTANCE IN THE HIGHEST RANKS OF THE JUDICIAL SYSTEM WHEN APPOINTING COURT FUNCTIONARIES, PROMOTING THEM AND ACCEPTING NEW JUDGES FROM OUTSIDE

In our discussion so far concerning predominantly systems for the acceptance of new judges as candidates for first-level judicial functions (i.e. the position of a judge), it is evident that sufficient protection of the system from outside influences during acceptance processes has been ensured.[58] The role of supreme judicial councils here is very important in setting the rules for this selection, monitoring it and auditing it (see above). However, it is also necessary to ensure the independence of judicial power during the filling of governing positions in the entire court system, including the supreme courts. And in this sense the role of supreme judicial councils, in those countries where they exist, takes on an exceptionally strong importance.[59] This is because these are the only bodies that have an authentic ability to assess the previous career of candidates for these functions and thereby eliminate any efforts coming from the area of the public administration to "push in" such persons as would be easy to influence and thus manipulate. In the case of functions at countries' main courts, meanwhile, the point is minimisation of political pressures, including pressures from fractions within parliaments.[60]

In continental Europe especially, however, the court system also enables the parallel input of candidates for judges from the area of public administration (and thus from outside). In this respect as well, it has become clear that supreme judicial councils are guarantors of the preservation of the objectivity of the process of evaluating both their abilities and their moral qualifications for entry into judicial service.[61]

VIII. SUMMARY AND CONCLUSIONS

The variability of the solutions for the independence of the court system evidently does not make it possible to create one optimal model that would ensure the explicit independence of the court system, especially in the state administration, from the financial, political and also personnel-management standpoints. In the matter of accepting new judges, both those fresh out of university studies and those who have a certain amount of legal practice behind them, shows, however, that the solution first established in France (1946) has accumulated later confirmations in both the constitutional democracies of the "West" and the "new democracies". A certain summarising comparative statement can be added

[58] See KOSAŘ, D., BOBEK, M. Global solutions, local damages: a critical study in judicial councils in Central and Eastern Europe. *German Law Journal*. 2014, Vol. 15, No. 7, pp. 1257–1292.

[59] In our expert opinion, it is primarily the systems of France, Poland, Slovenia and Lithuania that are evaluated.

[60] In the absence of any body of this type in the Czech Republic, the role played by (each and every) Minister of Justice not only in filling these positions, but also in personnel management throughout the public prosecution system as well as the submitting of exceptional remedial measures in criminal proceedings, and in the possibility of filing a punitive suit against judicial officials (including prosecutors), etc. is sufficiently well-known.

[61] The French system is entirely exceptional in this regard, as it makes use of the very broad acceptance of practical officials, enabling the acceptance of even officials from regional administrations (who have at least four years of practice) or anyone else, even without legal education, including persons coming from elected functions, after eight years of practice. The fact is, however, that this system is not as weighed down with procedural rules as the Austrian/German legal doctrine.

here to the effect that the dignity and importance of a judge's function is boosted by a final appointing (establishing) act by the head of state, who generally in constitutional monarchies or more precisely in republican systems has no executive authority, nor even any ability to interfere in the court system in individual matters. That is, if constitutional systems do not exclude governments in their collective decision-making form from this process, then the mediated influence of government policy on the Ministry of Justice cannot be excluded. It is thus necessary to leave even the Ministry of Justice itself in such a position as to remain in the role of a "mere" administrator for the selection process and have all decision-making processes fall into the hands of another, and thus separate, evaluation and decision-making system. A comparison performed between selected court systems of Europe thus shows not only the importance of supreme judicial councils but also that of a further commission-based selection mechanism working in cooperation with these. However it cannot be forgotten here that this issue is not just about accepting judge candidates at the first level of judicial-career positions, but also about the accepting of judges from outside practice and thus legal practice, including judges coming from previous activities in public administration. And the role of supreme judicial councils then has an entirely decisive importance in decision-making on governing positions at all levels of the court system.

The comparative analysis also very aptly demonstrates that constitutional systems devote fundamental attention to the configuration of educational, professional and practice requirements and also special emphasis on judges' character traits. It is obvious that when the configured requirements in the area of personnel policy are perfected to some degree, the system will emphasise the experience and the professional and personal qualities of those who decide on candidates. In this sense it is once again possible to comparatively deduce from the various constitutional systems the strong demands placed on the role of above all the commission-based (collective) and professional justice institutions (we are deliberately avoiding the term "body" here) that, both in consultation and, above all, in selection and decision-making, provide the supreme judicial councils with statements in personnel matters.

A comparative analysis of the systemic independence of judicial power also visibly demonstrates multiple aspects of personnel policy of judicial power in the sense that can be described as the power of assignment, as regards reducing arbitrary acts by the administration in the localisation of the performance of judicial functions at individual courts and their instances. Special emphasis in the activities of judges is placed on judicial discipline as a special type of ethical rules in the area of the functioning of state authority. Thus regarding punitive and disciplinary proceedings held against judges, prosecutors, etc., supreme judicial councils can guarantee the regularity, objectivity and justness of these proceedings within a system, as well as the elimination of deliberate impulses from among the bodies of public administration and the advancement of business, economic-competition and also the criminal-law interests within them.