GROUP OF INDEPENDENT LAWYERS

SELECTION OF JUDGES IN TRANSITIONAL DEMOCRACIES

THE ROAD PASSED IN THE POST-COMMUNIST CONTEXT AND THE EFFECTS OF THE REFORMS

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INTRODUCTION

Throughout the history of independent Georgia, in the context of the transition from post-Soviet reality to democratic governance and rapprochement with Europe, the judiciary has consistently been the object of one of the first and largest reforms. Among the changes in the judiciary, the system of selection / appointment and promotion of judges has undergone the greatest and most noticeable transformation. The system of judicial appointment (political appointment) by the president in the 2000s, which did not involve the selection of candidates on two grounds of professionalism and independence, changed the rule of appointing judges by a collegial (rather than individual) body independent of the political branches of government; The criteria for evaluation of candidates and the rules of evaluation have been predefined, the probationary period of judges and their appointment for life have been introduced. Candidates for judges of the Supreme Court are nominated to the Parliament not by the President, but by a collegial body independent of the political branches of government, as well as according to pre-defined criteria and evaluation rules.

Despite fundamental changes, the reformed system of selection / appointment of judges has not yielded the expected results in practice. As a result of the reforms, the corps of judges was not renewed, all those judges were re-appointed and this time for life, whose practice and habit of obeying the ruling party necessitated large-scale reform. A judge of independent Georgia, like a Soviet judge, still obeys or cooperates with the ruling party when deciding on a case and is the object of constant public criticism and distrust.

The aim of the study is to analyze how communist and, consequently, countries with similar past and challenges to Georgia, including the current EU member states, deal with problems in the independence of the judiciary; What is the importance of properly shaping the model of selection/appointment of judges in a particular context to achieve the independence of the judiciary and what steps have been taken in most countries to transform a party-affiliated judiciary into an independent judiciary in a democratic society.

The study analyzes academic papers on judicial reforms implemented in the respective countries and their consequences, the legislation of the countries and the evaluations of international organizations. In order to analyze the practical consequences and impact of the information found on the reforms, an international online discussion was also held by the Group of Independent Lawyers in February 2021 with the participation of researchers and representatives of governmental and non-governmental organizations working on the reforms in the countries studied.

The study summarizes the special importance of the system of selection and appointment of judges for the independence of judges, as well as in various other aspects. The study examines two known models for the appointment of judges and their specificities. The study briefly overviews Georgian context and the approaches in democratic world, which have been incorporated in international standards. The research revolves around three main stages of the judge selection / appointment process: admission of candidates to the competition, evaluation criteria and eligibility, appointment of a judge. At each stage of the selection / appointment of a judge, the relevant information researched in the studied countries is discussed on the issue of how the reform process was developing, what positive or negative results the reform had. In conclusion, the study discusses the main findings of the reforms in the studied countries that may be considered or useful for Georgia.

1. GENERAL OVERVIEW OF RULES OF SELECTION/ APPOINTMENT OF JUDGES AND GEORGIAN CONTEXT

1.1. Importance of the Rule of Selection/Appointment of Judges

Rules/Mechanisms for the Selection and Appointment of Judges have different meanings in different contexts, namely:

A. In the context of the rule of law - this is a guarantee of the selection of a judge independent of political or other type of influence. The basic requirement of the rule of law is to select a person who is personally independent and has a distinct professional qualification as a judge. The selection process serves to achieve this balance.

B. In the context of democratic control - it is a mechanism to ensure the accountability of the judiciary. The rule of selecting a judge is often the only mechanism of democratic control over the judiciary.

C. In the context of judicial authority, it is a source of legitimacy for the judiciary. In order for a court to be trusted even when it makes a controversial or unpopular decision, what matters is the character of the judge - his or her background, his or her representation, his or her accountability, and his or her value system.

D. In the context of European integration - is a prerequisite for meeting European standards. Mandatory or advisory requirements in the European integration process specifically relate to the selection and appointment of judges.

E. In the context of quality and effective justice - is a mechanism for testing the candidate's modern skills, such as: the candidate's communication skills, time management skills, special legal knowledge required for certain areas of law (especially new fields of law).

F. In the context of due process - a means of ensuring accountability for the timeliness, transparency of the selection of judges and the decision to appoint a judge.[1]

1.2. Models of Judicial Carreer and Judicial Selection

In the literature, two models of judicial career are distinguished from each other:2 bureaucratic (with a similar system of promotion in public service), typical of continental European law, and professional (recognition judiciaries), developed in common law countries. The separation of these models is of great importance for the proper planning of the judge selection system.

In Bureaucratic system, the administration of justice has great significance for the disputing parties and not on the general public. A judge will apply an already existing law and its function is not to declare the law unconstitutional.3 Consequently, in this model, the judge is mostly appointed from within the judiciary,

1 Kenneth S. Klein, Weighing Democracy and Judicial Legitimacy in Judicial Selection, 23 TEX. REV. L. & POL. 269 (2018); Mary L. Volcansek, Appointing Judges the European Way, 34 FORDHAM URB. LJ 363 (2007); Quality of Judicial Input and Independence of Judges in Hungary and Romania: Assessing Judicial Selections ; John Bell, Principles and Methods of Judicial Selection in France, 61 S. CAL. L. REV. 1757 (1988), p. 1772.

2 Guarnieri, Pederzoli, as well as Graham Gee are mentioned in the literature as the first source concerning two models of judges' careers.

3 Anja Seibert-Fohr (ed.), Judicial Independence in Transition: The Persistent Politics of Judicial Selection, Graham Gee, Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, 2012, page. 123; Luis Muniz-Arguelles, Migdalia Fraticelli-Torres, Selection and Training of Judges in Spain, France, West Germany, and England, 8 B.C. Int'l and Comp. L. Rev. 1 (1985), p. 4-11.

through career steps and through promotion. In the professional model, the judge has both a norm-application and a norm-creative function and performs important social, economic and constitutional tasks. In this model, the judge has discretionary powers when he decides public policy issues in politically sensitive legal disputes. Consequently, in this model, the judge is mostly appointed due to his/her successful work in different areas of the legal profession, on merit-based principle.4

In the case of the bureaucratic model, some authors point to threats such as self-perpetuation of attitudes, beliefs, and practices within the judiciary, with the view that since the future development of a judge in this model depends on his or her superior judges, this may jeopardize the judge's internal independence. What motivates them to be loyal.5 The professional model is seen as a threat to external (political) influence, which is offset by other mechanisms, such as lifetime appointments.6

Although these two models are defined in theory and each corresponds to the appropriate model for the selection of judges, in the countries the models for the selection of judges are presented not in a pure but in a mixed form.7 Thus, for example, the open admissibility in the selection process (selection of judges from outside the system) becomes characteristic of the bureaucratic (career) model to avoid corporatism. A similar mechanism is the allocation of a certain number of vacancies to be filled from outside the judiciary (France, Spain). The increasing involvement of judges in the selection process has become characteristic of the professional model (common law countries), where the selection of judges has traditionally been the prerogative of the executive branch, and promotion within the judicial system is also a common practice.8 Increasing the involvement of judges here serves to increase the legitimacy and depoliticization of the judiciary.

Depending on which subjects are involved in the process of selecting judges, following models are distinguished:

- model in which the political branches of government (executive or legislative) have a decisive voice;
- Model, in which the judiciary participates in the selection process - by itself or through a specialized committee/commission/council;
- Representatives of the society participate in the selection of judges.[9]

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4 Judicial Independence in Transition, The Persistent Politics of Judicial Selection, Graham Gee, page. 127.

5 Samuel Spac, Recruiting European Judges in the Age of Self-government, German Law Journal, Vol. 19., No. 05, p. 2083 https://drive.google.com/drive/u/2/folders/14WqLnO6hbYzQdoYpW5MWRxpYqUT7NOUK

6 Samuel Spac, Recruiting European Judges in the Age of Self-government, German Law Journal, Vol. 19., No. 05, p. 2083 https://drive.google.com/drive/u/2/folders/14WqLnO6hbYzQdoYpW5MWRxpYqUT7NOUK

7 Samuel Spac, Recruiting European Judges in the Age of Self-government, German Law Journal, Vol. 19., No. 05, p. 2084; Luis Muniz-Arguelles, Migdalia Fraticelli-Torres, Selection and Training of Judges in Spain, France, West Germany, and England, 8 BC Int'l and Comp. L. Rev. 1 (1985), p. 8 .; Anja Seibert-Fohr (ed.), Judicial Independence in Transition, Lydia Friederike Müller / Dominik Zimmermann / Eva Katinka Schmidt / Saskia Klatte (Assistant Editors) p. 122. „Indeed, no one country embraces either of the models unambiguously; rather, in most countries, there are a variety of different courts, performing more or less distinct roles, and perhaps using selection procedures associated with the different models. "

8 Samuel Spac, Recruiting European Judges in the Age of Self-government, German Law Journal , Vol. 19., No. 05, p. 2085

9 Samuel Spac, Recruiting European Judges in the Age of Self-government, German Law Journal, Vol. 19., No. 05, p. 2086 https://drive.google.com/drive/u/2/folders/14WqLnO6hbYzQdoYpW5MWRxpYqUT7NOUK The author cites examples of decision-makers: the appointment of a judge by the executive (in the Czech Republic, a minister formally appoints a judge, and access to the selection process is controlled by court presidents. As a result, it is formally a system where judges are appointed by executive branch, however, factually it is close to the system where judiciary decides who gets into the system; Appointment of a judge by Parliament (Slovenia, Slovakia before 2002); In France, Spain and Portugal, schools of law have control over who acquires the skills necessary to be appointed a judge; In the Kingdom of the Netherlands, Slovakia and Poland, the Judicial Councils have a virtually crucial role to play in the selection process; In Ireland it is true that judges have an important role to play in the process, however, the final decision is made by the executive branch.

In this diversity, attention is paid to the question of how the power is distributed in the selection process of judges, which subjects participate in this process, who has what weight and what motivates them at different stages of selection. More specifically, it should be considered: who has a crucial role in the initial selection process of candidates (short list, so-called gatekeeper role); and whose participation / decision serves to legitimize the selection process; who directly selects and what powers are disposed of by entities involved in this process (decision-makers v. Entities providing legitimacy); Who is involved in the selection process at what stage and how strong a particular actor is; Who makes the final decision about who will become the judge.

Given these aspects, the process of selecting judges is conditionally divided into several stages: a. Initial selection of candidates (admissibility and shortlisting); B. Candidate evaluation process (determination of candidate compliance with defined criteria); C. Deciding on the appointment of a judge.[10]

In addition, an important circumstance that must be taken into account when determining the model of selection/appointment of judges is related to countries with a communist past. Consideration of the past and political processes in these countries is essential in the transition to democratic governance. In terms of selection/appointment of judges, this means, on the one hand, taking into account the skills and character of judges established by the communist regime, and, on the other hand, what kind of skills and character judges need for democratic governance, how to transform. More specifically, it refers to the formalized role of the judge established within the communist regime and preserved in the post-communist reality within the widespread bureaucratic model prevalent in continental European countries, which is reflected in the application of the law to the factual circumstances of a particular case (which in the literature is described as "legal math") as opposed to value judgment; Judges simply apply the existing law within the strictly defined framework adopted by the legislature, but never "create" the law.[11] Under the communist regime, the judge had virtually no discretion, at least in cases of political interest.[12]

1.3. Main Characteristics of International Standards on Judicial selection Appointment and Promotion

Mandatory or recommendatory standards developed by recognized international organizations to ensure the independence and impartiality of the judiciary determine the appointment and promotion of judges based on **objective criteria** and through **transparent procedure.** Objective criteria are needed not only to rule out political influence over judges' appointments, but also against threats such as nepotism, favoritism and cronyism that will exist if appointments are made in an unstructured manner or on the basis of personal recommendations. Objective criteria for appointment and promotion should be adopted, published and implemented in such a way as to enable monitoring of the appointment and promotion process.[13]

Clearly, international standards do not provide for uniform, unified appointment methods for all States, however, it is strictly stated that the selection of judges should always be based on **professional qualifications** and integrity. A judge should have integrity, have the ability to effectively exercise judicial power, and be qualified, which is the principle of merit. The method of appointment (promotion) should provide a guarantee

10 Samuel Spac, Recruiting European Judges in the Age of Self-government, German Law Journal, Vol. 19., No. 05, p. 2087 (C. Structure of the Process of Judicial Recruitment), https://drive.google.com/drive/u/2/folders/14WqLnO-6hbYzQdoYpW5MWRxpYqUT7NOUK

11 Michael Bobek, Judicial Selection, Lay Participation, and Judicial Culture in the Czech Republic: A Study in a Central European (Non) Transformation, College of Europe, 2014. http://aei.pitt.edu/63516/1/researchpaper_3_2014_bobek.pdf

12 For more on "Socialist Justice" see Malá doznání okresního soudce (68 Publishers, 1974) or I Markovits, Justice in Lüritz: Experiencing Socialist Law in East Germany (Princeton University Press, 2010), http://aei.pitt.edu/63516/1/researchpaper_3_2014_bobek.pdf supra note 7.

13 CCJE Opinion N1 (2001), para. 24, 25.

against the appointment (promotion) of a judge with improper motives. Discrimination on any grounds is not allowed in the selection.[14]

According to the paragraph 1.3. of the Charter of European Judges (1998) "in all decisions concerning the selection, appointment, career or termination of judges, the statute provides for the intervention of a body independent from the executive and the legislature, in which at least half are judges elected by colleagues by a method which ensures wide representation."

The Kiev Recommendations were created to strengthen the independence of the judiciary in the Eastern Europe, South Caucasus and Central Asia region, based on an in-depth study of the legal systems and past experiences of this region. With this in mind, the Kiev Recommendations on the Appointment of Judges provide additional recommendations specifically for this region, according to which not only young lawyers should be admitted to the judicial profession as a result of special training, but also lawyers with significant experience working in the legal profession.[15] The Kiev recommendations regarding the selection process additionally indicate that candidates should be interviewed. The interview questions and their weight should be predetermined throughout the selection process.[16]

1.4. Georgian Context of Selection/Appointment of Judges

Georgia has undergone a number of reforms in the Georgian judiciary since breaking apart from Soviet Union and regaining its independence. The United National Movement, which came to power as a result of the Rose Revolution under the leadership of Mikheil Saakashvili, has carried out a number of reforms, including the selection / appointment of judges. The High School of Justice was established in 2006 and its graduation became a mandatory prerequisite for appointment as a judge, along with passing a judge qualification exam. Only candidates with experience of working as a judge or being elected to the Supreme Court were exempt from attending school. In early 2007, Mikheil Saakashvili declared the first phase of judicial reform complete and corruption in the judiciary defeated. This was preceded by the early termination of the judicial powers of a large number of judges and the appointment of new judges by the President. At that time, judges of the Court of First Instance and the Court of Appeals were still appointed by the President of the country on the recommendation of advisory body - the Council of Justice,[17] for a term of 10 years, and judges of the Supreme Court were elected by Parliament on the recommendation of the President.

It was only after the corps of judges was re-staffed legislative changes were made to the appointment rules. With the reforms implemented in 2007, the function of appointing a judge of first instance and appellate court was given to the High Council of Justice. An amendment to the Organic Law of Georgia on Common Courts on June 26, 2009 made it mandatory for judicial candidates to study at the High School of Justice.

From 2007 to 2013, various changes were made to the composition of the council, so that eventually the members of the council are no longer political officials; In 2010 (effective from the end of 2013) the appointment of judges for a term of 10 years has been changed to a permanent appointment and 3 years probationary period was introduced for all judicial appointees. Later, the 3 years probationary period requirement was

14 UN Basic Principles on the Independence of the Judiciary, Principle 10; Universal Charter of the Judge, Article 9; Council of Europe, Recommendation No. R (94) 12, Principle 1.2 .; CCJE Opinion No. 1 (2001), para. 37.

15 KYIV RECOMMENDATIONS ON JUDICIAL INDEPENDENCE IN EASTERN EUROPE, SOUTH CAUCASUS AND CENTRAL ASIA - Judicial Administration, Selection and Accountability - Kyiv, 23-25 June 2010, Para. 17.

16 Ibid. For. 21.

17 The advisory body consisted of 9 members – ex-oficio members of the council were the President of the Supreme Court of Georgia, heads of two supreme courts of two autonomous republics of Georgia, head of legal affairs commitee of the Parliament of Georgia, and the Minister of Justice of Georgia; two members of the Council were appointed by the President of Georgia, two members of the Council (one could be a member of the Parliament) were elected by the Parliament. Member of the Council, except ex-officio members, could become Georgian citizen with higher legal education.

abolished for all candidates former judges so that none of them had to complete 3 years trial period before their appointment for life. The power to elect judges of the Supreme Court of Georgia remained in the hands of the President and the Parliament.

Although the Minister of Justice formally withdrew from the judiciary's human resource policy after the 2007 reform, the executive still interfered in the judiciary's appointment through informal influences, and major staff decisions were agreed with the Minister of Justice[18]. When appointing judges, attention was often paid to politically obedient cadres[19]

The majority of mandates of the judicial staff appointed in 2005-2006 expired in 2015-2016, respectively, and at the same time, despite public outcry and criticism, the reformed High Council of Justice, in its entirety and in the absence of a proper selection and evaluation procedure, re-appointed judges this time for life. During the same period, Parliament adjourned and did not vote for the three candidates nominated by the President for the post of Supreme Court Judge.[20]

The rules for selecting and evaluating judges for the purpose of appointing judges on the basis of their competence and good faith criteria, which applied to the appointment of all judges of the first and appellate instances, were introduced by Parliament only in 2017, after most former judges had already been re-appointed by HCOJ. Initially, the evaluation criteria and rules were extended to all judges and all judges were given a probationary period of 3 years, however, before the probationary period expired, the law was amended again and probationary period for formers judges were abolished. By the decision of the Council, they were appointed to the relevant positions for life without evaluation. In this way, the corps of judges that operated under the full influence of the party during the rule of the United National Movement and before that during the rule of President Eduard Shevardnadze was largely retained by the Georgian Dream party, which came to power in 2012.

As a result of the amendments to the law in 2019, the rule of appointment of a judge of the Supreme Court was changed and according to the current rule, the judge of the Supreme Court is elected by the Parliament of Georgia upon the submission of the High Council of Justice. At the end of 2019, the High Council of Justice nominated 10 candidates for the Parliament of Georgia without a competition, in the absence of a detailed procedure and criteria, which was severely criticized by both local organizations and international partners.[21] Only against the background of widespread criticism was it possible to make legislative changes that introduced rules and criteria for evaluating Supreme Court justices at both the nomination and selection stages in Parliament. Under the new rule, the appointment of 14 candidates for the post of Supreme Court judge has been severely criticized by both local and international observer organizations for their political influence in the candidate selection process.[22] Open interviews with Supreme Court justice candidates reveal

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18 Tsikarishvili K., Clan governance in court since 2007, https://dfwatch.net/%E1%83%99%E1%83%9A%E1%83%90%E1%83%9C%E1%83%A3%E1%83% A0% E1% 83% 98-% E1% 83% 9B% E1% 83% 9B% E1% 83% 90% E1% 83% A0% E1% 83% 97% E1% 83% 95% E1% 83% 94 % E1% 83% 9A% E1% 83% 9D% E1% 83% 91% E1% 83% 90-% E1% 83% A1% E1% 83% 90% E1% 83% A1% E1% 83% 90- 53161

19 „Article 42 of the Constitution," Survey of Practicing Lawyers' Opinions on the Factors Obstructing the Independence of Judges in 2006-2016, 2017.

20 On the three candidates nominated by President Giorgi Margvelashvili for the position of Supreme Court Judge to the Parliament, 28.03.2016. https://netgazeti.ge/news/104554/

21 „The Coalition for an Independent and Transparent Judiciary is concerned by the nomination of candidates for the Supreme Court Justice position by the High Council of Justice (HCOJ) on December 24. The nomination was made without observing any procedure, and a majority of the candidates nominated are associated with unlawful and unjust justice for the society. It is clear that confirmation of the nominated candidates by the Parliament will bring about a further strengthening of clan governance of the judiciary and will make independence of the judiciary an impossible feat for the decades to come." The Coalition's Address to the Parliament, December 27, 2018 http://coalition.ge/index.php?article_id=197&clang=1

22 According to a report by the OSCE Office for Democratic Institutions and Human Rights (ODIHR), political controversy threatens the independence of the process of appointing judges to the Supreme Court of Georgia, 9 January

problems in Candidates Qualifications[23] as well Good faith. It was obvious to the candidates do not understand what is judicial independence and do not recognize problems in judiciary[24]. A well recognized lawyer Roin Migriauli obtained very low score presumably due to the fact that he criticized past activity of judges.[25]. Public Defender's research revealed preliminary agreement scheme between judicial and non judicial members of HCOJ. [26]-. As a result, in the Supreme Court, as well as in the courts of first and appellate instance, priority was given not to the good faith and qualifications of the candidates, but to a secret agreement with the appointing entity, namely the clan.[27]

2020, https://www.osce.org/ka/odihr/443506 ; Special Report of the Public Defender of Georgia on the Selection of Judges of the Supreme Court, 2019, https://ombudsman.ge/geo/akhali-ambebi/sakartvelos-uzenaesi-sasamartlos-mosamartleobis-kandidatebis-iustitsiis-umaghlesi-sabchos-mon angarishi

23 Assessment of Candidates for Supreme Court Judges, Coalition for an Independent and Transparent Judiciary, 2020 http://coalition.ge/index.php?article_id=235&clang=1

24 Article 42 of the Constitution / Group of Independent Lawyers: Analysis of Interviews with Candidates for the Supreme Court Judiciary in terms of the independence, credibility and challenges of the judiciary.

25 The statement of the judicial candidate Roin Migriauli https://1tv.ge/news/roin-migriauli-pirovnulad-nuravin-miighebt-iyvnen-mosamartleebi-romlebsac-chamosareckhi-martlac-aqvt-imitom-rom-umwikvlod-emsakhurebdodnen-im-khel

26 Public Defender of Georgia, Monitoring Report of the Selection of Supreme Court Candidates by the High Council of Justice, 2019 https://www.ombudsman.ge/res/docs/2019100811095425887.pdf

27 The existance of influencieal group of judges in the common courts system of Georgia was mentioned in the 2020 Human Rights Report of the Public Defender of Georgia: „...it is becoming more and more obvious that the court system is ruled by the small influencial groups who through the HCoJ and court presidents are able to control the system" (https://www.ombudsman.ge/res/docs/20210401105739483 97.pdf page 115, accesible in Georgian). Local CSOs also indicate to the clan based rule in the court system (Coalition for an Independent and Transparent Judiciary, The Coalition Is Startin „Make Courts Trustworthy" Campaign, http://coalition.ge/index.php?article_id=-177&clang=1 March 1, 2018). According to a Transparency International Georgia Survey from February – March 2019, public trust in the judiciary and parliament are at 24 per cent and 20 per cent respectively; 53 per cent of respondents believe that the judiciary is under the influence of the ruling party and 43 per cent consider that there is a "clan-based" rule in the judiciary; of those respondents 87 per cent believe that the so-called "clan" is supported by government officials and 94 per cent think that influential groups of judges should leave the judiciary; 46 per cent of respondents think that the courts should be filled with new judges to increase public trust in the judiciary.

2. CONTEXT OF REFORMS OF JUDICIAL SELECTION/ APPOINTMENT/PROMOTION IN THE COUNTRIES STUDIED

All surveyed countries, like Georgia, have common features: decades under communist rule; the post-communist social and attitudes towards the state institutions characteristic only of the communist experience; diverse experience of judicial reforms during the 30 years of transition to democratic rule.

- After the collapse of the communist regime in the 1990s, the courts in the post-communist reality were still **controlled by the ruling party,** thus, the justice was exercised under political influence.

Slovak court system in the 1990 s was almost completely controlled by the party - the politicians decided the judges' appointment, promotion and dismissal issues.[28] Formally, these powers were distributed between the Minister of Justice, the Parliament and the Presidents of the Courts.[29] However, the Minister of Justice practically appointed and dismissed the presidents of the courts, and it was the presidents of the courts who were the main instrument of political control over the court.[30]

In Poland in the late 1980s, amid an economic collapse, the Communist Party had to relinquish power to the opposition in a process known as the Round Table. Along with the various issues of power-sharing, an important part of the negotiations was the liberation of the court from party influence. The new parliament in 1989, in which the Communist Party no longer had an absolute majority, conducted a series of judicial reforms: In 1989, a model of a strong judiciary council was created as a balancing mechanism for leaving the law enforcement system under the control of the Communist Party.[31] 6 new judges were elected to the 12-member Constitutional Court; Judges of the Supreme Court were dismissed (out of 111 judges, 22 judges were reappointed as judges of the Supreme Court); Judges of the common courts at the time retained their positions subject to mandatory lustration.[32]

One of Bulgaria's biggest challenges in overcoming the transition from a communist regime to a democratic state was to tackle corruption in the judiciary.[33] According to the Venice Commission, the judiciary created in the 1990s suffered from a lack of both external and internal independence, accompanied

28 Samuael Spak, Katarina Sipulova, Marina Urbanikova, Capturing the Judiciary from Inside: The Story of Judicial Self-governance in Slovakia, 19 GERMAN LJ 1741 (2018).

29 During the rule of Prime Minister Vladimir Mechiar, the political branches of government exercised powerful authority over the judiciary and did not abstain from using them in practice. David Kosar, Perils of Judicial Self-Government in Transitional Stories (2016), 254-256.

30 Samuael Spak, Katarina Sipulova, Marina Urbanikova, Capturing the Judiciary from Inside: The Story of Judicial Self-governance in Slovakia, 19 GERMAN LJ 1741 (2018).

31 Adam Bodnar and Lukasz Bojarski, Judicial Independence in Poland, Judicial Independence in Transition (Anja Seibert-Fohr (ed.)), Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, 2012, page 896.

32 Fryderyk Zoll & Leah Wortham, Judicial Independence and Accountability: Withstanding Political Stress in Poland, 42 FORDHAM INT'l LJ 875 (2019), p. 882-889.

33 Littlehale, Stephanie A., "A Study of Corruption in the Bulgarian Legal System" (2012). Honors College. 66. https://digitalcommons.library.umaine.edu/honors/66
Many non-communist judges, prosecutors, investigators and law professors were expelled or killed in Bulgaria during the communist regime; The Council of Justice, which was the deliberative body of the Ministry of Justice on personnel issues, was abolished; The concept of an independent court was reversed; The process of appointing judges was controlled by the party; The courts were seen as a means of consolidating and supporting the socialist system. ABA Judicial Reform Index, 2006, page 6, https://pdf.usaid.gov/pdf_docs/PBAAF870.pdf

with improper political influences.[34] CVM[35] reports from the early years[36] consistently indicated an opaque selection / appointment procedure and political influences in the Council of Justice; There were no clear criteria for the appointment of judges, which called into question the objectivity of the appointments; Serious allegations of trafficking of influence and corruption would only be responded to in the event of internal and external pressure, and appropriate law enforcement agencies were not willing to respond proactively.[37]

- In order to achieve the independence of the judiciary from the political branches of government (external independence) and in the context of EU membership, judicial reforms were initially implemented in countries to strengthen judicial self-government (including the creation of strong judicial councils). It was later proved that a strong and unbalanced judicial self-government was a serious detriment to the internal, personal independence of judges. This has again put the need for large-scale reforms in the countries on the agenda, this time to limit judicial self-government and increase accountability. The exception is the example of Estonia, where the broad powers of the executive in the administration of the judiciary have not been fully replaced by the strengthening of judicial self-government.

Slovakia, the Council for the Judiciary and the School of Justice were established In 2001, taking into account the preconditions for EU membership. Although powers over the judiciary's careers were still formally divided between branches of government, in the process of selecting judges, through several phases of reform, power gradually shifted almost entirely to the self-government of judges, in the form of the Council of Justice.[38] This imbalance, based on the illusion that judges would be defenders of the principle of merit and protect the justice system from undue influence, did not justify what became apparent shortly after Slovakia's accession to the European Union (2004).[39] During Harabin's rule, judges close to him were promoted to higher

34 Venice Commission, Opinion on the Judicial System Act, Bulgaria, N855/2016 https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)018-e

35 Cooperation and Verification Mechanism – special monitoring mechanism introdused in Bulgaria by the EU.

36 Bulgaria became a member of the European Union in 2007, when a special mechanism CVM was introduced by the European Union, through which the EU monitors the judicial reform process in Bulgaria on an annual basis. Conclusions of the Council, 17 October 2006 (13339/06); Commission Decision establishing a mechanism for cooperation and verification of progress in Bulgaria to address specific benchmarks in the areas of judicial reform and the fight against corruption and organized crime, 13 December 2006 (C (2006) 6570 final).

37 REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on Progress in Bulgaria under the Co-operation and Verification mechanism {SWD (2016) 15 final}, Brussels, 27.1.2016 COM (2016) 40 final, page 4.

38 One aspect of this reform is particularly significant in terms of granting excessive autonomy to judges' self-government. The Slovak Judicial Council consisted of 9 members elected by judges and 9 members elected by political institutions (3 members by Parliament, 3 members by the Government and 3 members by the President of the country). Since the law did not specify that members elected by the political authorities should not be judges, in practice the ruling government almost always appointed judges as members of the Council of Justice. As a result, during the 15-year history of the Council of Justice, judges have represented the majority of the members of the Council. Samuael Spak, Katarina Sipulova, Marina Urbanikova, Capturing the Judiciary from Inside: The Story of Judicial Self-governance in Slovakia, German Law Journal, Vol. 19 No. 07, pages: 1748-1749; Kosar, David. (2019). Beyond Judicial Councils: Forms, Rationales and Impact of Judicial Self-Governance in Europe. German Law Journal. 19. 1567. 10.1017 / S2071832200023178.

39 Samuael Spak, Katarina Sipulova, Marina Urbanikova, Capturing the Judiciary from Inside: The Story of Judicial Self-governance in Slovakia, German Law Journal, Vol. 19 No. 07, page 1750.
Samuel Spac, Matej Simalcik, Gabriel Sipos, Let's Judge the Judges: How Slovakia Opened its Judiciary to Unprecedented Public Control, Transparency International Slovakia, 2018, p. 3, 4 .: A 2012 survey showed that only a quarter of the public trusted the court, while according to a 2009 survey, half of the citizens perceived the court as corrupt. Suspicions of nepotism and favoritism were expressed in the selection process for judges (a 2012 survey found that almost one-fifth of judges had a family member who worked in court).

instances and to the positions of court chairman, while his critics were disciplined.[40] Among the problems of enhanced judicial self-government were also named: the irreplaceability of judges appointed during the communist regime.[41] The large-scale reform that began in 2011 has largely focused on the selection / appointment of judges and increasing the transparency of the judiciary.[42] However, the confidence of the Slovak public towards the court remains low.[43] As a result of the 2011 reform, a similar procedure for selecting judges was introduced for promotion. Since 2017, the President of the Regional Court or the President of the Supreme Court has set up a 5-member commission to promote judges (1 member will be selected from the list drawn up by the Council of Justice; 2 will be selected from the list drawn up by the Minister of Justice; 1 will be elected by the Judicial Council). As a result of changes in both selection and promotion procedures, the involvement of other branches of government in this process has increased.[44]

Poland Created in 1989 the Council of Justice, As a sui generis body, it was structurally neither part of the executive nor of the judiciary, nor of the self-governing body of judges.[45] It should be noted, however, that the executive did not have a significant influence on the work of the Council of Justice.[46] The opposition party, which came to power in the October 2015 parliamentary elections,[47] aimed to carry out fundamental reforms in the judiciary. The need for radical reforms was explained by Jaroslaw Kaczynski by the fact that all the parties that had ruled the country before were presumably members of the post-communist pact, which made radical reforms impossible.[48] Under this slogan, a substantial change in the judiciary began in Poland,

40 Stefan Harabin: 2006-2009 Minister of Justice of Slovakia, Chairman of the Supreme Court and Chairman of the Council of Justice.

41 Samuael Spak, Katarina Sipulova, Marina Urbanikova, Capturing the Judiciary from Inside: The Story of Judicial Self-governance in Slovakia, 19 GERMAN LJ 1741 (2018): Judges appointed after the fall of the communist regime were educated in a system without a culture of judicial independence and there were no democratic values. As a result, the elite in court used the powerful Justice Council model to their advantage.

42 Samuael Spak, Katarina Sipulova, Marina Urbanikova, Capturing the Judiciary from Inside: The Story of Judicial Self-governance in Slovakia, German Law Journal, Vol. 19 No. 07, page 1755. The reforms related to the name of the Minister of Justice, Lucia Zitnanska, in terms of transparency of the judiciary, were aimed at increasing public control over the judiciary and mainly addressed the following issues: publication of court decisions; Continuous evaluation of judges' activities. Samuel Spac, Matej Simalcik, Gabriel Sipos, Let's Judge the Judges: How Slovakia Opened its Judiciary to Unprecedented Public Control, Transparency International Slovakia, 2018, p. 3.

43 Independence Without Accountability: the Harmful Consequences of EU Policy Toward Central and Eastern European Entrants, James E. Moliterno, Peter Curos, Lucia Berdisova, Jan Mazur, Fordham International Law Journal, V. 42, Issue 2, Article 7, 2018, p. 533.

44 Independence Without Accountability: the Harmful Consequences of EU Policy Toward Central and Eastern European Entrants, James E. Moliterno, Peter Curos, Lucia Berdisova, Jan Mazur, Fordham International Law Journal, V. 42, Issue 2, Article 7, 2018, p. 533.

45 Adam Bodnar and Lukasz Bojarski, Judicial Independence in Poland, Judicial Independence in Transition (Anja Seibert-Fohr (ed.)), Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, 2012, page 670. The members of the Council of Justice were: ex-official, Chairman of the Supreme Court, Minister of Justice, Chairman of the Supreme Administrative Court (during their tenure in the relevant positions); A representative of the President of the country (the President appointed and dismissed at his discretion); 15 judges elected from courts of all levels; 4 members elected by the Sejm (elected from among the members of the Sejm) and 2 members elected by the Senate from among its own members (all of these members were members of the Council of Justice during their term of office)

46 Adam Bodnar and Lukasz Bojarski, Judicial Independence in Poland, Judicial Independence in Transition (Anja Seibert-Fohr (ed.)), Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, 2012, page 673.

47 Party Law and Justice Led by Yaroslav Kachinski.

48 Poland, Joint Opinion ON AMENDMENTS TO THE LAW ON THE COMMON COURTS, THE LAW ON THE SUPREME COURT, AND SOME OTHER LAWS, CDL-AD(2020)017. „On the one side, supporters of the reform led a public campaign accusing the judiciary of corporatism, corruption, links to the communist regime, etc. On the other side, political opposition in Parliament, major associations of judges, leading NGOs and some individual judges publicly condemned the reform as a major encroachment on judicial independence." Venice Commission,

in particular, a significant increase in the role and powers of the executive branch in the judiciary[49], which was sharply criticized by the Venice Commission as a threat to the principle of separation of powers[50], the UN Special Rapporteur[51] and other organisations. As a result of the large-scale legislative reform implemented in 2017, the self-government of judges was significantly limited in various aspects and the participation of the political branches of government in the administration of the court was increased.[52] For example, as a result of the reform, the process of selecting 44 judges of the Supreme Court, which started at the end of 2018, was completely excluded from the Supreme Court. Candidates applied directly to the National Council of the Judiciary (KRS), which conducts formal and material review of candidates' applications before presenting to the President. However, in practice, the Judicial Council failed to ensure proper standards in the selection process of judges, which, among other circumstances, raised doubts about the influence of the executive on the appointment process.[53]

Estonia is a rare exception in the post-Soviet space, which has succeeded in terms of judicial independence and efficiency. Implementation of reforms here also began with the release of the judiciary from strong control over the executive. The main driver of the reforms was the preconditions for joining the European Union.[54] In Estonia, as in other countries, the reforms began with a dramatic increase in the powers of the judicial self-government, however the administration has not been delegated completely to self-government, and Minister of Justice and President retained balancing mechanisms. Before 2002 reform, court administration was mainly led by Minister of Justice, while after the reform, the Council of Judiciary and Minister of Justice administered the courts jointly[55]. Judicial reform has resumed in Estonia since 2009. As a problem was

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Joint Urgent Opinion ON AMENDMENTS TO THE LAW ON THE COMMON COURTS, THE LAW ON THE SUPREME COURT, AND SOME OTHER LAWS. CDL-AD(2020)017 Para. 12. https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2020)017-e

49 Rule of Law in Poland. State of Play in October 2017. Analysis by judge Dariusz Mazur and judge Waldemar Zurek. https://ruleoflaw.pl/so-called-good-change-in-the-polish-system-of-the-administration-of-justice/

50 Venice Commission, Joint Urgent Opinion ON AMENDMENTS TO THE LAW ON THE COMMON COURTS, THE LAW ON THE SUPREME COURT, AND SOME OTHER LAWS. CDL-AD(2020)017 https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2020)017-e

51 Poland Judicial Independence Under Threat, UN Expert Finds, October 2017. https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22321&LangID=E#:~:text=GENEVA%20%2F%20WARSAW%20(27%20October%202017,official%20mission%20to%20the%20country.

52 In practice, part of the current judges were terminated prematurely by lowering the retirement age, leading to the early termination of 72 to 27 judges in the Supreme Court. This rule also applied to judges of lower courts.

53 In practice, the Polish Judicial Council failed to ensure a fair and credible selection process: it was expedient and based on insufficient information and superficially assessed the good faith of the candidates, making the evaluation overly discretionary. Also, the requirement of insufficient information for the candidates was named as a problem: by law they were not obliged to submit documents certifying compliance with the established criteria (proof of legal knowledge, submission of details of professional career, indication of achievements and exclusion of academic papers). One chapter of the report also focuses on the selection of candidates for signs of political influence (low level of transparency, secret ballot, candidates' connections with the executive, etc.). Pawel Filipek, THE NEW NATIONAL COUNCIL OF THE JUDICIARY AND ITS IMPACT ON THE SUPREME COURT IN THE LIGHT OF THE PRINCIPLE OF JUDICIAL INDEPENDENCE,, Chapters 2, 3. https://europeistyka.uj.edu.pl/documents/3458728/141910948/P.+Filipek_PWPM2018_pages-177-196.pdf

54 Timo Ligi, Judicial Independence in Estonia, Judicial Independence in Transition (Anja Seibert-Fohr (ed.)), Max -Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, 2012, page 739.

55 Prior to the 2002 reform, the Minister of Justice determined the number of courts and judges for the first and appellate courts, territorial jurisdiction and the number of judges in a particular court, appointed court presidents, and organized the training of judges. Since the 2002 reform, the Minister of Justice is still responsible for the day-to-day administration of the courts of first and appellate courts, through court managers, although the Minister of Justice needs the consent of the Council of Justice to exercise all of the above powers. In the literature, the period before the 2002 reform is characterized as "administration of the court by the executive", and the period after the 2002 reform is characterized by the administration of the court in cooperation with the executive and the judiciary. Timo Ligi,

named the fact that the joint administration model made it difficult to identify one responsible entity for decision-making. Also, the aim of the new reform is to extend the powers of the Council of Justice to cover the powers of the Minister of Justice, which will be related to the management of the staff (staff) of the courts. According to the draft, the function of technical administration of the court should also be transferred to the Council of Justice.[56]

In Hungary, in 2011 and in **Romania** prior to the reforms in2004, the criticism (in the first case) was the overly discretionary powers of court presidents in the selection process of judges, and (in the second case) the influence of the executive on the selection of judges. As a result, in both countries, the selected candidates were loyal to the executive and unqualified. Reforms have been carried out in both countries to strengthen the Councils of Justice. According to one of the authors, the strengthening of the Judicial Councils may have been explained by the fact that the Judicial Councils were seen as the main institutions that had the ability to protect the independence of the judiciary and at the same time effectively manage human resources.[57] However, the strengthening of the Judicial Councils in both countries has created problems for the personal independence of judges.[58] In the case of Hungary, some of the authors point out that the current political processes, in particular the ambition of the ruling party to gain control over the judiciary, take place through the instrumentalization of the governing bodies of the judiciary.[59]

Judicial Independence in Estonia, Judicial Independence in Transition (Anja Seibert-Fohr (ed.)), Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, 2012, page 741-746.

56 Ibid, 753-755. By 2011 the reform package of 2009 partially has was adopted. The work on the remaining part of the 2009 reform package continued.

57 Quality of Judicial Input and Independence of Judges in Hungary and Romania: Assessing Judicial Selections, p. 119.

58 David Kosar, Perils of Judicial Self-government in Transitional Societies, Cambridge University Press 2016, 334-339.

59 Quality of Judicial Input and Independence of Judges in Hungary and Romania: Assessing Judicial Selections, p. 119. Cf. Sonnevend P, Jakab A, Csink L, „The Constitution as an Instrument of Every Day Party Politics: the Basic Law of Hungary.

3. ROAD PASSED BY THE COUNTRIES TO REFORM SELECTION/APPOINTMENT/PROMOTION OF JUDGES ACCORDING TO DIFFERENT STAGES OF COMPETITION PROCEDURE

3.1. Eligibility for Competition

Despite the powers vested in the selection process, it was found that assigning a so-called gatekeeper function to the self-governing judges in the selection process caused problems with receiving outsiders with new knowledge and experience in the system (Poland, Czech Republic, Hungary); Dealing with the communist past and the introduction of new knowledge and training in the system was hindered by the career model of selecting judges in Bulgaria. Experience shows that even when regulating the selection of judges allows outsourcing, in practice, when judges have decisive power, judges always prefer to appoint candidates with the experience of working in judiciary (who have no legal practice outside the judiciary) to the position of judge.

Slovakia As a result of the 2001 reform, the function of selecting judges was distributed among the Council of Justice, the presidents of the courts and their advisory bodies, although judges played a crucial role in the selection. Candidates for the Council of Justice were nominated by the presidents of the courts through their advisory bodies - the Council of Judges. Councils of judges were formed in the regional and supreme courts, with a majority of judges.[60] After the establishment of the Judicial Council, before the 2011 reform, Slovakia had a system of judicial candidates (justicni cakatelia) [61], which meant that candidate status was acquired not by open selection but by persons trained and socialized in the judiciary.[62] The Council of Justice only formally agreed to nominate them by nominating candidates for the position of judge to the President. At the same time, the issues of promotion of judges were decided by the presidents of separate courts, and the Council of Justice approved their choice.[63] Because of such an arrangement, the role of the Council of Justice in the selection process was unclear. The question was how much influence it had on the selection of candidates if its role was only formal (serving to legitimize the selection) and actually decisions about who would be eligible for the competition were made elsewhere (opaque).[64] Interestingly, in the wake of the strengthening of the formal independence of the judiciary, the state of the country's judicial system was deteriorating, especially in 2006-2010. Some authors believe that, in the process of gaining independence from State actors, the judiciary has developed into a branch fulfilling personal interests with the lowest

60 Judges' councils consisted of a maximum of 15 judges, 2/3 of whom were elected by the general meeting of judges of the respective court, and 1/3 consisted of the president of the court and his appointed members https://rm.coe.int/1680747c83

61 The "candidate for judge" system meant that a career judge was promoted to the career level of the judiciary, from the lowest to the highest, in the Supreme Court, and senior judges had a decisive influence on their professional development. Most of these people had no experience other than working in court, which is seen as a tool to reinforce dogmatism and formalism in the new judges. Zdenek Kuhn, Judicial Administraction Reform in Central-Eastern Europe: Lessons to be Learned, Judicial Independence in Transition, (Anja Seibert-Fohr (ed.)), Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, 2012, page 615.

62 Samuael Spak, Katarina Sipulova, Marina Urbanikova, Capturing the Judiciary from Inside: The Story of Judicial Self-governance in Slovakia, 19 GERMAN LJ 1741 (2018), p. 1750.

63 Ibid.

64 Samuael Spak, Katarina Sipulova, Marina Urbanikova, Capturing the Judiciary from Inside: The Story of Judicial Self-governance in Slovakia, 19 GERMAN LJ 1741 (2018), p. 1750.

level of public trust.[65] This is evidenced by the composition of the Judicial Council (composed mainly of judges) and Selection Commissions, where only judges were represented. Judges at the level of selection commissions were selected only by the judges themselves, and at the level of the Council of Justice - mostly by judges. As an exception, candidates for judges who were eligible to become judges without participating in the selection process were also selected through a procedure administered by the judges themselves.[66] Many criticisms were heard about nepotism and corruption in the process of selecting judges. Sometimes the names of successful candidates were known before the selection procedure. Too many judicial candidates were associated with judges. The reform was presented against this background.[67] As a result of the 2011 reform, a system of commissions was introduced for the initial selection of judges, consisting of at least 3 judges (2 - nominated by the Judicial Council, 1 - nominated by the Judicial Council of the court where the vacancy was announced), with 2 members nominated by balanced political branches. Presence of majority of judges was ensured.[68] In practice, the process has shown that preference was still given to candidates who had ties to the court - kinship ties or links with members of selection commissions.[69] Because of this, in 2017 the selection procedure shifted from district courts to regional courts.[70] The selection commissions consist of 2 members nominated by the Council of Justice, 2 nominated by the Minister of Justice, and 1 member elected by the collegium of judicial boards of the respective region.[71] At the same time, the aim was to balance the power of judges' self-government by increasing the accountability of judges by increasing access to decisions and other information and introducing a system of judicial evaluation.[72]

In Poland, the function of selecting a judge is divided between the Council of Justice, the presidents of the courts, the panels of judges and the general assembly of judges of the respective courts. A person who meets the established requirements[73] submits his / her candidacy to the chairman of the regional or appellate

65 James E. Moliterno, Lucia Berdisova, Peter Curos, Jan Mazur, INDEPENDENCE WITHOUT ACCOUNTABILITY: THE HARMFUL CONSEQUENCES OF EU POLICY TOWARD CENTRAL AND EASTERN EUROPEAN ENTRANTS, Fordham International Law Journal, 2018 [Vol. 42: 2, 265-336], at 310.

66 James E. Moliterno, Lucia Berdisova, Peter Curos, Jan Mazur, INDEPENDENCE WITHOUT ACCOUNTABILITY: THE HARMFUL CONSEQUENCES OF EU POLICY TOWARD CENTRAL AND EASTERN EUROPEAN ENTRANTS, Fordham International Law Vol. 42: 2, 265-336], at 315.

67 Ibid.

68 Samuael Spak, Katarina Sipulova, Marina Urbanikova, Capturing the Judiciary from Inside: The Story of Judicial Self-governance in Slovakia, 19 GERMAN LJ 1741 (2018), p. 1755.
In the first phase of the 2011 reform there was an attempt to set up selection commissions where judges would not be in the majority, although the Slovak Constitutional Court declared such a composition unconstitutional: Independence Without Accountability: the Harmful Consequences of EU Policy Toward Central and Eastern European Entrants, James E. Moliterno, Peter Curos, Lucia Berdisova, Jan Mazur, Fordham International Law Journal, V. 42, Issue 2, Article 7, 2018, p. 533.

69 Ibid, 1756.

70 The Slovak court system consists of 54 district and 8 regional courts https://e-justice.europa.eu/content_judicial_systems_in_member_states-16-sk-en.do?member=1

71 Ibid.

72 Independence Without Accountability: the Harmful Consequences of EU Policy Toward Central and Eastern European Entrants, James E. Moliterno, Peter Curos, Lucia Berdisova, Jan Mazur, Fordham International Law Journal, V. 42, Issue 2, Article 7, 2018, p. 533.

73 In Poland, a person can become a judge in three alternative ways: by passing judicial training and passing a judicial examination; After a certain period of work as an assistant judge or clerk in court and in case of passing the examination; Or by transfer from another legal profession (prosecutor, lawyer, legal advisor, notary). A person appointed as a judge is required, among other formal requirements, to work in the profession for a variety of judicial positions for varying lengths (eg a lawyer should have at least 6 years of experience to be appointed as a regional court judge and 8 years in an appellate court). Adam Bodnar and Lukasz Bojarski, Judicial Independence in Poland, Judicial Independence in Transition (Anja Seibert-Fohr (ed.)), Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, 2012, page 679-680.

court where the vacancy has been announced. It is the role of the presiding judge to assess whether a candidate meets the established formal requirements. In case of affirmation, the chairperson of the court shall submit the candidate's application to the panel of judges with an[74] assessment of the candidate's qualifications. The presiding judge shall also set a date for the general meeting of judges of the relevant court to consider the nomination. The panel of judges will also evaluate the candidate and prepare a report before the date of the general meeting of judges. The General Assembly of Judges will evaluate all the candidates in one sitting. The General Assembly of Judges will evaluate the candidate by voting and submit a conclusion to the President of the Court. The President of the Court shall notify the Council of Justice and the Minister of Justice of the candidate and his assessments. The function of the Minister of Justice is to check whether the candidate meets the immaculate character criterion.[75] Despite the delegated powers, the appointment of a judge from outside the judiciary as a result of this procedure was very rarely used in practice.[76] Although Polish law provided for the appointment of a person as a judge from outside the judiciary, in practice the appointment of judges from outside was very rare. The reason for this was the promotion or transfer of a judge to a vacant position only after the incumbent judge had been seconded to a relevant court for the exercise of judicial powers (delegation of judges). The second reason was the system of evaluation of judges, which was also used to give preference to incumbent judges in the process of promotion and transfer to other courts who were already in the court environment and were no strangers to this system.[77] As for the School of Justice, this institution was established in Poland as a result of the abolition of the mechanism for the appointment of judges on probation. The rationale for legislative changes to the school model indicated analogy with the schools of law in France, Spain, and Portugal.[78]

The Czech Justice Council has not yet been established altough the discussions around establishing such council have been ongoing. Although all branches of government are involved in the selection/appointment process of judges (judges are appointed by the President of the country, by counter-signature of the Prime Minister, from the list updated twice a year by the Minister of Justice, the chairperson of the regional court has the authority to nominate a candidate for the Minister of Justice. Accordingly, it is the judges who have the main influence on the appointment of a judge in the first instance in the Czech Republic, in addition to the career system of appointment of judges, which means that judges in the appellate and cassation instances in the Czech Republic are indirectly promoted by promotion. The critics say that the system of appointment of judges gave no inflow of staff from outside. At the same time, there are very scarce public discussions and low transparency of the appointment process.[79] Although a candidate with work experience outside the

74 The panel of judges of the court is a special body that ensures the administration of the said court. Such panels of judges are established in the regional courts (4 to 8 members) and the appellate courts (3 to 5 members). The members of the panel are elected by general assambley of the relevant courts for 2 years.

75 To assess this criterion, the Minister of Justice cooperates with the police department, which investigates information about the candidate's violations (contacts with criminal groups, prostitution and other similar groups, information that indicates the candidate's dependence on alcohol and drugs). The Minister of Justice shall pass the information obtained to the candidate and the Council of Justice. Adam Bodnar and Lukasz Bojarski, Judicial Independence in Poland, Judicial Independence in Transition (Anja Seibert-Fohr (ed.)), Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, 2012, page 681-682

76 One of the ways to be appointed a judge in Poland is to select a candidate by transferring from another legal profession, however, this method was very rarely used for appointment as a judge and only in the case of appointment to higher instances. Adam Bodnar and Lukasz Bojarski, Judicial Independence in Poland, Judicial Independence in Transition (Anja Seibert-Fohr (ed.)), Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, 2012, page 679-680.

77 Adam Bodnar and Lukasz Bojarski, Judicial Independence in Poland, Judicial Independence in Transition (Anja Seibert-Fohr (ed.)), Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, 2012, page 685.

78 Adam Bodnar and Lukasz Bojarski, Judicial Independence in Poland, Judicial Independence in Transition (Anja Seibert-Fohr (ed.)), Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, 2012, page 683.

79 Michal Bobek, Judicial Selection, Lay Participation, and Judicial Culture in the Czech Republic: A Study in a Central

judiciary could be appointed as a judge, in practice only first-instance candidates with training experience in the judiciary were appointed, and appellate and cassation instances were appointed only as judges with first instance judicial experience. [80]

In Hungary the judge may be a person with 3 years of experience working in the legal profession. Experience of working in the profession includes experience of working as a court assistant, prosecutor, lawyer, notary, or legal advisor, in various public services, or as a judge. Nevertheless, the experience of working as an assistant judge is the most common way to become a judge. So for example, every judge appointed in 2016 previously worked as an assistant to judge.[81] This is due to the fact that despite the involvement of various actors, judges have a crucial role in the selection process of judges, and they always prefer to appoint young candidates who have no experience working in the legal profession other than working in the judiciary.[82] The 2011 reform, which was widely criticized, gave the President of the Judicial Council (NJO) discretionary power to nominate a candidate with a lower rating, or to cancel the entire selection process. Interestingly, although a reasoned decision by the President requires the consent of the Council of Justice, in practice these mechanisms do not effectively limit the discretionary powers of the President (consent or refusal of the Council of Justice to have binding force). However, the law leaves too much discretion for the president to annul the selection process.[83]

Bulgarian law establishes a career system for the appointment of judges, which includes: the appointment of junior judges by competition in the district courts; Appointment of a judge for the first time in district, regional and administrative courts through competition; Inner transfer and promotion procedures in appellate and cassation courts. For a position in the justice system (junior judge for the first time, junior prosecutor, junior investigating magistrate), the Judicial Council announces the competition centrally.[84] In addition to the standard requirements for eligibility of a candidate, a candidate (junior judge, district / district judge) is required to have a professional license. To the licensing procedure is devoted one chapter of the law[85] and consists of two components: A license applicant must undergo professional practice and pass a licensure exam for lawyers. The law establishes a uniform rule for the practice of those entering the legal profession. Those wishing to go through the internship apply to the Ministry of Justice.[86] Detailed rules of practice are determined by the Minister of Justice. After passing the internship, the person passes the qualification exam. Minister of Justice announces the exam, sets up a competition commission and determines other rules for conducting the exam. The junior judge will be appointed to the district court for a term of 2 years. For 2 years he works under the supervision of a specially appointed mentor (acting judge), after which he has to be appointed to the regional court without a competition.[87]

European (Non) Tranformatio, 03/2014, College of Europe, Department of European Legal Studies, chapter 3.3. and 3.4. http://aei.pitt.edu/63516/1/researchpaper_3_2014_bobek.pdf

80 Ibid.

81 Quality of Judicial Input and Independence of Judges in Hungary and Romania: Assessing Judicial Selections.

82 Zdenek Kuhn, Judicial Administration Reforms in Central-Eastern Europe: Lessons to be Learned, JUDICIAL INDEPENDENCE IN TRANSITION, page 612.

83 Quality of Judicial Input and Independence of Judges in Hungary and Romania: Assessing Judicial Selections.

84 The law mandates the announcement of a competition at least once a year and defines the terms of its announcement and holding. The Council of Justice determines the number of vacancies based on the information provided by the administrative chairmen of the respective courts. Up to 10% of the vacancies will be allocated for the primary appointment through a lottery.

85 Judicial Systems Act of Bulgaria, Chapter 14.

86 With the amendments of 2016, the law specified the topics of practice: general issues of the work of the judiciary (less than 2 months) and practice according to the individual plan (less than 4 months). Lawyers go through professional practice with a lawyer, notary, bailiff and other persons whose work requires the qualification of a lawyer.

87 The candidate who is first appointed to the position of a judge is required to have up to 3 years of experience working in the profession; Candidates to be appointed to a higher court must have the following work experience: 8 years - for regional Court Judge; 10 years - for the appellate instance; 12 years - for the Supreme Court.

In Estonia, in order for a person to be appointed a judge of the first instance, he or she must undergo pre-judicial training.[88] Unlike in Georgia, not only persons with experience of working as a judge are exempted from special training, but also a person with 2 years of experience as a lawyer or prosecutor who has passed the qualification exam for a judge after taking the oath of office. To be appointed a judge of the Court of Appeals, a person is not required to undergo special training, although he / she must have passed the Judge Qualification Exam and be an "experienced and recognized" lawyer.[89]

In Romania, before the 2004 reform, a candidate had to complete a compulsory training program to participate in a competition for judges. Interestingly, the circle of people exempted from compulsory education has expanded as a result of the 2004 reform, and not only former judges, inspectors general and legal advisers to ministries are exempt from compulsory education, but also any lawyer with 5 years of experience in the profession.[90]

3.2. Judicial Candidate Evaluation Criteria and Eligibility

The experience of the countries shows that even after numerous judicial reforms, the principle of objectivity of the criteria for selection of judges and the evaluation procedure has been incompletely reflected in the legislation. The main shortcomings remained: vague, insufficiently detailed evaluation criteria; The criteria are not accompanied by an evaluation methodology; The decision maker leaves too much discretionary assessment area; Problems arose where, on the one hand, the selection criteria were defined and explained, and on the other hand, the evaluation of the candidate was concentrated in the hands of one institution/entity.

Evaluation procedures for the selection of judges are not concentrated solely in the hands of the Council of Justice in any of the countries studied. Moreover, as a rule, the candidate's compliance with the criteria is not checked by the Council of Justice. In all the countries studied, in one way or another, temporary commissions/ groups have been set up to prepare candidates' assessments of their competence and good faith and submit them accordingly to the Judicial Council and/or other appointing authority. The candidate's professional skills and personal qualities are subject to assessment. Evaluation is carried out by scoring and ranking candidates. However, the practice of countries shows that objective selection remains a problem in countries where it is true that at different stages of the selection process (admissibility, evaluation, appointment) powers are divided between different institutions, although the so-called function of "blocker" remains in the hands of one institution / entity or when the decision-making entity on the appointment can deviate from the rating indicators set as a result of the evaluation and appoint as a judge a person who has earned a lower ranking in the objective evaluation process.

Regarding the institutions conducting the evaluation, we can conclude that neither the transfer of selection/evaluation powers to the Judicial Council or its collegial composition (as opposed to individual decision-making) nor the introduction of internal control and balance mechanisms in the selection process could ensure the objectivity of evaluation. On the other hand, in Estonia, which is the most successful example of judicial independence among the countries studied, members of the public participate in the selection process of judges along with judges. With a similar approach, judicial reform processes are underway in Ukraine with the involvement of civil society representatives in the selection process.

88 Candidates are trained in court by the decision of the relevant court chairperson. Candidates are nominated by the "Judges Examination Board" for enrollment in the preparatory course. The Board assesses the candidates' knowledge of law and conducts an interview. The duration of the preparatory period is 2 years and its completion does not guarantee the appointment of a person as a judge.

89 Timo Ligi, Judicial Independence in Estonia, Judicial Independence in Transition (Anja Seibert-Fohr (ed.)), Max -Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, 2012, page 757.

90 Quality of Judicial Input and Independence of Judges in Hungary and Romania: Assessing Judicial Selections, p. 115.

3.2.1. Evaluation Criteria

Under Hungarian law, there are two main groups of criteria for evaluating a candidate: general criteria (duration and assessment of practical experience; length of professional experience; aptitude tests results; legal qualification examination results) and additional criteria (specialized legal degree; language skills; published works, continuing professional training). Candidate's modern decision-making and communication skills are tested through a special test (aptitude examination), including specific skills such as analytical thinking, foresight, discipline, sense of responsibility, determination, fastidiousness, honesty, conflict management, independence (autonomy), problem to solving ability. The Minister of Justice establishes a points system with a separate act, according to which each criterion is evaluated by the Interview Commission, and the Council of Justice has the authority to clarify any issues related to the awarding of points during the evaluation process. The Minister of Justice, in agreement with the President of the Council of Justice, appoints a commission of experts responsible for conducting the said test.[91]

Recommendations made by the Venice Commission to Bulgarian legislature regarding the evaluation procedure of judges are[92] helpful in creating a clearer picture of the evaluation criteria. In particular, the Venice Commission emphasizes the importance of the evaluation of judges and clarifies the need for the law to ensure that the evaluation mechanism will not be abused to undermine the independence of the judiciary.

In particular:

- The evaluation criteria should be clearly set out in the law (and not in the Justice Council Act);
- The evaluation methodology should be sufficiently clear;
- According to the Venice Commission, the relationship between the evaluation criteria, indicators and special criteria established by Bulgarian law is very vague. In particular, it is difficult to determine if the indicator and the special criterion determine the main criterion or if the indicators and special criteria are additional elements of the main criterion.[93]
- The Venice Commission notes that one of the indicators indicates the source of the information (inspector's report) and does not indicate the factor to be assessed.
- The court workload should not be used as an indicator, but rather it should be a method of evaluating other indicators (e.g., compliance with deadlines).
- The Venice Commission recommends that the relative weight of the criterion, indicator and special criterion be determined by law.[94]

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91 Quality of Judicial Input and Independence of Judges in Hungary and Romania: Assessing Judicial Selections, p. 111.

92 Venice Commission, Opinion on the Judicial System Act of Bulgaria, CDL-AD(2017)018 https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)018-e

93 Bulgarian law determines evaluation criteria as follows: a. Knowledge And Skills; b. Efficiency and discipline; c. Ethics Rules observance. The law applies following indicators: compliance with deadlines; Decision-making statistics; Inspection results; And the court's overall workload; The law also sets out special criteria that can be used in assessing a judge: a. Maintaining the schedule of court hearings; B. Skills in conducting meetings and drawing up minutes; C. Case administration and session preparation; D. Number of appealed and quashed judgments.

94 More details on criteria and indicators: 95. In sum, the criteria for appraisal set out in Articles 197 - 199 are heterogeneous and partly overlapping. That makes the appraisal process less rational and less predictable. No methodology of appraisal is perfect; however, there is certainly room for improvement of the current system, if the following recommendations are followed. 96. First, it is necessary to explain the interrelationship between "criteria", "indicators" and "specific criteria" (for example, by attaching a number of indicators to each criterion). 97. Second, inspection reports should not be treated as criteria or indicators. Otherwise the Inspectorate becomes an additional appraising body, which is wrong. The Venice Commission notes that inspection reports are not subject to appeal, and that the SJC has virtually no control over their content. It should be clearly stated in the JSA that the results of the inspections (or reports of any other bodies external to the SJC, like ethics commission within the courts) have no predetermined

In one of its findings, the Venice Commission noted that "moral integrity" is a very general term and it is unclear how a candidate's good faith (integrity) can be assessed based on the documents required by law - the candidate's biography (CV) and cover letter; The Venice Commission considered it necessary to define the criteria on the basis of which the good faith of a candidate could be assessed, noting that the roles of the Council of Justice and the Competition Commission should be separated in this process.[95]

In the Czech Republic, the evaluation criteria were criticized on the grounds that they were aimed only at checking the candidate's current condition and skills and not at examining his / her past activities and behavior (background check). In this way, any qualified lawyer with defined work experience would meet the requirements for a judge. The requirements for a judicial candidate were mostly "technical" rather than "evaluative". The only "evaluation" criterion was related to the measurement of the candidate's moral qualities, for which a psychological test was used. Candidates were required to answer standardized, open-ended psychometric testing questions. Their responses were then compared with the standardized, expected responses considered normal. A significant shortcoming of such a test was that not only a candidate with a low score on the answers considered negative, but also a score with a better score than the norm deserved a negative evaluation. This excluded a candidate with above-standard skills from the competition. As a result

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weight for the SJC, and should be assessed critically. The power to appraise should remain with the SJC. 98. Third, it is important to separate quantitative and qualitative criteria. The CCEJ observed that "evaluation must be based on objective criteria. Such criteria should principally [italics added] consist of qualitative indicators but, in addition, may consist of quantitative indicators ".51 99. Speaking of quantitative criteria, the Venice Commission has already criticized systems of evaluation which rely too heavily on the mathematical assessment of quantitative performance of judges. 52 The law should stipulate clearly that appraising a judge's ability to manage the administration of justice, for example through the keeping of deadlines, complying with schedules etc., should take into account the work-load and other relevant circumstances. 53 100. The reversals rate (the number of decisions reversed / invalidated - see Article 199) should not be used as an important factor. The Venice Commission acknowledged the relevance of the criterion, but has always stressed that its "weight" in the appraisal should remain limited.54 Article 199 § 1 p. 4, which provides that the number of appealed decisions is a factor on which a judge is appraised on, may be misleading. A successfully appealed decision is not necessarily a negative reflection on the individual decision; the Committee of Ministers of the Council of Europe (CM / Rec (2010) 12 to member states on judges: independence, efficiency and responsibilities, p. 70) recommended that "judges should not be personally accountable where their decision is overruled or modified on appeal ".55 In sum, the Venice Commission recommends that the number of appealed judgments should only be utilized as an appraisal factor where it is established to arise from continued failure to follow clear legal rules. 101. Speaking of the qualitative indicators, there is a question of how to assess ethical behavior of a judge. From the JSA it appears that ethical matters are assessed either in connection with a specific behavior - and then this is a subject of disciplinary proceedings - or "in general". Thus, as was explained by the authorities to the GRECO, under the JSA "the indicators which need to be taken into account [for the purposes of appraisal] are: (i) […] (ii) […] identification of acts breaching the prestige of the judiciary […] as carried out by the SCJ Inspectorate; (iii) opinion of the ethics committees to the relevant body of the judiciary, which includes an assessment of the recusals and self-recusals under the [relevant procedural codes]. "56 102. For the Venice Commission, it is not correct to evaluate magistrates on the basis of general opinions about their personality, character etc. (see point iii above), without reference to specific ethical breaches.57 Furthermore, those specific ethical breaches ("acts breaching the prestige of the judiciary" in the formulation of the 2017 regulation - see p. ii above) should be established in disciplinary proceedings, not by the Inspectorate, but by the relevant chambers of the SCJ. Again, the Inspectorate should not assume the power to pronounce on the alleged grave violations of ethical rules. Such cases should be treated within the framework of disciplinary proceedings by the respective chambers of the SJC. 103. It is also open to doubt whether the number of recusals and self-recusals is a good criteria for assessing ethical behavior. First of all, it is not clear whether all recusals should be calculated, or only those that have been confirmed on appeal. Next, as regards self-recusals, their number may be related to the fact that the judge puts the threshold of impartiality very high, and withdraws from a case whenever there may be a slightest doubt in his / her impartiality. Unless clearly unreasonable, such behavior is laudable.

95 Venice Commission, Opinion on the Judicial System Act of Bulgaria, CDL-AD(2017)018, Para. 77. https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)018-e

of such criticism, the results of the psychological test have become not mandatory, but indicative only, which means that a candidate can be nominated despite a negative evaluation in a psychological test.[96]

In Romania, the problem with the reforms implemented in2004 and 2012 was that the detailed rule for checking the evaluation criteria was still not specified. There are two main selection criteria: the candidate's professional skills and a good reputation. Instead of specifying the criteria, the law seeks to ensure the objectivity of the selection by detailing the selection procedure. The lack of detailed rules for the evaluation of candidates and the extensive powers of the SCM hinder objective selection. One of the authors points out that the great influence of the judiciary on the selection process in a society where the accountability of the judiciary is a challenge creates a problem of constitutionality.[97] Also, under Romanian law, the power of SCM (which is a collegial body composed of judges of all levels of the court) to both explain and assess a candidate's compliance with a good reputation criterion is not balanced. The particular danger is that such an arrangement allows the leaders of the judiciary to select candidates on the basis of loyalty to them and not through objective evaluation.[98]

3.2.2. Determining the candidate's compliance with the criteria

Poland

The formal suitability of applications for candidates for judicial vacancies is verified by the President of the court in which the competition for the vacant position of Judge has been announced. After establishing the formal conformity, the qualification of the candidate is checked by the judge appointed for that purpose. The chairperson may assign a qualification assessment to more than one judge. The opinion on the qualification of a candidate for a judge is prepared by the Chamber / Panel of Judges of the relevant court, as well as by the General Assembly of Judges of the relevant court. The opinion is voted on by the relevant chamber, panel and general assembly of judges and submitted to the chairman of the court, after which the chairman nominates the candidates to the Judicial Council.[99]

The qualification of a candidate with judicial experience is assessed through the substantive evaluation of at least 20 cases of different categories considered by the candidate, which will be selected on a random basis, and in addition, through the substantive evaluation of 10 cases selected by the candidate himself. Also, the judge assessing the candidate's qualifications will additionally examine 10 pending cases of the candidate, in which there are signs of delay (cases with the longest registration time), or cases that have been returned from a higher instance in the last three years. Either it was considered delayed, or the final decision is known to have been made in violation of the law. Substantive aspects of the candidate's activities, as well as the effectiveness and organization of his activities are subject to evaluation. The workload of the judge and the complexity of the case will be taken into account during assessment.[100]

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96 Venice Commission, Opinion on the Judicial System Act of Bulgaria, CDL-AD(2017)018 http://aei.pitt.edu/63516/1/researchpaper_3_2014_bobek.pdf

97 Quality of Judicial Input and Independence of Judges in Hungary and Romania: Assessing Judicial Selections, p. 114-118.

98 Quality of Judicial Input and Independence of Judges in Hungary and Romania: Assessing Judicial Selections, p. 120. The author also notes that questionnaires regarding the good faith of SCM members reinforce such doubts. In particular, it discusses cooperation between SCM leaders and the Romanian Security Service to gather information that can be used to put pressure on judges in politically sensitive individual cases. This raises the question of whether the extension of the powers of the judiciary in the process of selecting judges ensures the objectivity of the selection.

99 Poland Law on the Organization of Common Courts, Article 57ah and Article 58. https://www.legislationline.org/download/id/7484/file/Poland_Law_Common_Court_Organisation_2001_am2017_en.pdf

100 Poland Law on the Organization of Common Courts, Article 57b.

The evaluation of the qualifications of the candidate holding the position of prosecutor is carried out in terms of the content, efficiency and accuracy of his / her activities, in terms of improving professional qualifications, work culture, including personal culture and attitudes towards participants and colleagues in the process. Similar to the evaluation of a candidate with experience as a judge, the evaluation of a prosecutor's performance is done by examining the cases produced by him.[101]

The evaluation of a candidate with the experience of a lawyer, jurist, notary is carried out in terms of the quality of his work, efficiency, timeliness, the quality of legal documents prepared by the candidate, the culture of his work. Here, too, the evaluation of the candidate's activities is carried out by examining at least 50 cases produced by him and a compiled document. The evaluator will examine both the cases submitted by the candidate and the cases found by the evaluator, considered by the candidate. Similarly in the case of a notary - the appraiser will examine at least 50 notarial acts performed by the notary.[102]

Evaluation of a candidate with scientific experience is carried out by studying the academic achievements of the candidate, the type and quality of published papers, the evaluation of a scientific reviewer.[103] A candidate employed in the field of science may be appointed to the position of a judge for a part-time job, not less than half-time.[104]

The chairperson of the court where the vacancy is announced will request all the information necessary for the evaluation of the candidate from the place of employment of the candidate (prosecutor's office, notary supervisory body, professional self-government body of universities, universities, scientific academy, research institute, etc.). The assessment of the candidate is accompanied by information about the ongoing disciplinary proceedings against him / her at the place of employment.[105]

Bulgaria

Judiciary Act of Bulgaria establishes two standing committees on the Judicial Council to evaluate judicial candidates - the Promotion and Competition Commission (CAC) and the Professional Ethics Commission (CPE). The CAC proposes the appointment, promotion, transfer and dismissal of judges to the Council of Justice (except for the presidents of two courts appointed by the President of the country upon submission to the plenary session of the Council of Justice).[106] The function of the Professional Ethics Commission is to seek information, conduct an investigation and prepare a report on a candidate's "moral integrity".[107] The CAC and CPE have a mixed composition: they include members of both chambers of the Judicial Council and external temporary members, who are elected by judges / prosecutors respectively. The ratio of internal to external members is determined by the Council of Justice. Due to the high importance of these commissions, a recommendation was issued by the Venice Commission to determine their composition by law.[108]

The Council of Justice establishes a five-member competition commission for the initial selection of judges. The commission includes: one member of the CAC, who is also a current judge; One member from the academy; Candidates for the three members shall be nominated to the Council of Justice by the judges of the court where the vacancy is announced (or by the judges of the superior court), and shall be selected by

101 Ibid, Article 57e.

102 Ibid, Article 57f.

103 Ibid, Article 57g.

104 Ibid. Article 62.

105 Ibid, Article 57i.

106 The Bulgarian Council of Justice consists of two chambers - judges and prosecutors. They are called a joint session of the plenary session of the Council of Justice.

107 Venice Commission, Opinion on the Judicial System Act of Bulgaria, CDL-AD(2017)018, para. 49. https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)018-e

108 Venice Commission, Opinion on the Judicial System Act of Bulgaria, CDL-AD(2017)018, para. 50. https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)018-e

the Board on a lottery basis. The 5-member competition commission will evaluate the candidates with points and compile their rating based on the results of written and oral exams. Points will be awarded to the Board of Justice. The CPE sets out a conclusion about the moral integrity of each candidate. Based on both of these pieces of information, the Competition Commission will nominate candidates for the initial appointment to the relevant court for approval by the Judicial Council.[109]

Candidates admitted to the initial appointment competition pass the written and oral exam and are evaluated with points. In accordance with the scores obtained on the written and oral examinations, the temporary Commission shall compile the rating of the candidates, which shall be submitted to the Council of Justice. The Professional Ethics Commission (CPE) prepares an assessment of each candidate's moral integrity and submits it to the Council of Justice. The Competition Commission shall publicly publish the ranking list of candidates, which includes the candidates who have earned at least 4 points out of a possible 6 points. As to the nominee rating list confirmation procedure - After receiving the Nominee Ratings, the Judicial Council will review the materials provided by the CAC and CPE on the Nominees and make a decision on the nominee rating list ratification.[110] The Council of Justice decides on the appointment of candidates in the ranking list according to their order until the vacancies are filled.[111]

In Bulgaria, the evaluation of a judge is a regular process and is used both for the first appointment and after the probationary period, for a permanent appointment of a judge every five years (until the judge receives two "good" or "best" grades in a row) for promotion, as well as , at the request of the inspector, when there is reason to believe that the quality of the judge's work has deteriorated or violates the rules of ethics.

Estonia

The selection of judges is done through competition, however, the selection / appointment of judges of the first and appellate instances on the one hand and judges of the Supreme Court on the other hand is regulated differently. The competition in the courts of first and appellate instance is announced by the Minister of Justice, and for the vacancy of a judge of the Supreme Court - by the Chairman of the Supreme Court. Judicial candidates are evaluated in a unified manner. The evaluation is carried out by the "Examination Board". The Examination Board[112] consists of 10 members: 6 judges elected from the judges of the respective court; Lawyer from the Faculty of Law of the University of Tartu; Representative of the Ministry of Justice; A lawyer appointed by the Bar Association; The prosecutor appointed by the Chief Prosecutor. The Examination Board is established for a term of 5 years. Prior to each competition or examination, the Chairman of the Examination Board shall establish a panel of five members, of which at least three shall be judges. The Examination Board will assess the candidate's personal characteristics and professional knowledge through a written examination and interview. Assessment is done through scores. The literature states that the participation of a lawyer, a prosecutor and

109 Venice Commission, Opinion on the Judicial System Act of Bulgaria, CDL-AD(2017)018, para. 75. https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)018-e

110 Confirmation Procedure implies that Justice Council Confirms (5) (Amended, SG No. 28/2016) When adopting the decision under Paragraph (4), the respective chamber of the Supreme Judicial Council shall verify whether the highest ranked candidate satisfies the requirements under Articles 162 and 164. The verification shall be carried out on the basis of the documents submitted by the candidate. Upon the verification, the respective chamber of the Supreme Judicial Council shall also take into account the opinion of the Commission on Professional Ethics with the respective chamber.
(6) (Amended, SG No. 28/2016, SG No. 62/2016, effective 9.08.2016) The respective chamber of the Supreme Judicial Council shall refuse by a decision to appoint a candidate whom it has found not to satisfy the requirements under Articles 162, 164, Article 184 (4) and Article 185 (1).

111 The respective chamber of the Supreme Judicial Council shall adopt a decision on the appointment of the candidates in the order of ranking until the vacancies for which the competition was announced are filled after three consecutive rankings.

112 See. Supra 66.

a representative of the Minister of Justice in the candidate selection process ensures the objectivity of the selection process and that the fairness of the process has not been disputed in practice. However, it does state that some criteria (eg, high moral qualities, personal characteristics and skills necessary to work as a judge) allow for a broad interpretation and that additional guidelines or explanations need to be developed to specify the requirements for a judge.[113] The evaluation of a candidate for a Supreme Court judge is based on only one criterion: a person must be an experienced and recognized lawyer.[114]

In Ukraine

As a result of the reform implemented in 2016, a competition for judges was held to form a new Supreme Court. Judges were selected by a special qualification commission and the Public Integrity Council.[115] The selection of judges lasted 1 year. The selection included tests of legal knowledge, writing a draft court decision, a psychological test in 4 methods, and interviewing them based on their previous results. The Public Integrity Council participated in interviews with candidates consisting of civil society representatives, mainly lawyers and investigative journalists. The selection process conducted by international representatives was positively assessed. The competition tested the professionalism, honesty and professional ethics of the candidates. Not only judges but also academics and lawyers could participate, adding new blood to the judiciary.

Deficiencies were also identified. For example, the Center for Political and Legal Reform has identified facts that reduce the credibility of the process. In particular: the competition was not conducted with due transparency as it was impossible to correlate the scores and evaluation criteria of the candidates; The sampling results were not valid as the experts could not verify them. The Qualification Commission for Judges has repeatedly deviated from the established methodology, which was most likely motivated to favor the candidates; The Qualification Commission of Judges and the High Council of Justice have ignored a number of facts against several candidates that precluded their honesty; The judges of the Supreme Court were mainly former chairmen of the specialized courts of appeal, which most likely reveals a biased attitude towards them in the selection process; The statutory deadline for the appointment of judges was not met[116].

3.3. Appointment of Judges

Interestingly, as at the selection and evaluation stage, as well as at the appointment of judges, powers in the countries studied are not concentrated exclusively in the hands of the Council of Justice or any other appointing authority. In the literature, this procedure is characterized as part of a system of control and balance between branches of government. At the same time, as a rule, making a decision against the results of the assessment of the candidate's compliance with the established criteria (so-called blocking of the candidate) requires proper justification from the appointing entity.

In Estonia, judges of the Court of First Instance and the Court of Appeal are appointed by the President of the country on the basis of a nomination of all members of the Supreme Court (en banc). One candidate will be nominated to the President for one vacant position. When nominating a candidate, the Supreme

113 Timo Ligi, Judicial Independence in Estonia, Judicial Independence in Transition (Anja Seibert-Fohr (ed.)), Max -Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, 2012, page 761.

114 Courts Act, Estonia, 2002 (with amendments as of March 2021) https://www.riigiteataja.ee/en/eli/ee/514022014001/consolide

115 The Public Integrity Council was established to assist the Judges Qualification Commission. Its authority includes reviewing the professional ethics and honesty of candidates for judges; It consists of 20 members, including representatives of civil society; Journalists; Human rights defenders. who enjoy a high reputation in the community. It does not include former judges, prosecutors and public officials. The term of office is 2 years. They have access to open sources, personal files of judges and, if there are grounds, they can prepare a negative opinion to be submitted to the High Council of Justice.

116 Id.

Court shall also take into account the views of all judges of the court where the appointment of a candidate as a judge is being considered.4 The literature clarifies that the power of the president to appoint a judge under this rule is part of a system of control and balance between the three branches of government. However, the power of appointment is limited to the candidate nominated by the Supreme Court so that the appointment procedure does not undermine judicial independence.[117] Judges of the Supreme Court are appointed by the Estonian Parliament on the recommendation of the President of the Supreme Court, who must take into account the views of the Supreme Court (en banc) and the Judicial Council on the candidate. The President of the Supreme Court is also appointed by the Estonian Parliament on the recommendation of the President of the country.

In Poland the role of the President in the appointment of judges was nominal until 2005, when he only formally nominated candidates proposed by the Council of Justice. Practices changed during the presidency of Lech Kaczynski in 2005, creating a problem with delays in the appointment of judges by the country's president. Because of this, an amendment to the law was made in 2009 and the President was given a 30-day deadline to appoint a judge. There was also a precedent when the President refused to appoint a nominated judge without any justification.[118] As a result of the 2017 reform, the increasing influence of the political branches on the appointment of judges was reflected in the fact that 15 members of the Judicial Council are elected by Parliament and not by the judges themselves.[119] In addition, the powers of the executive branch to administer the judiciary (both to the court and to individual judges) have been further expanded, which has been assessed by the Venice Commission as an external court administration, centralized by the Minister of Justice.[120] By this time, the Minister of Justice had already had significant authority in the selection of judges - to establish a detailed procedure for the selection of a candidate for a judge and a rule for assessing his / her qualifications.

In the Czech Republic, a judge is appointed by the President of the country, with a countersignature of the Prime Minister and from a list drawn up by the Minister of Justice, which is updated twice a year by the Minister. The candidate for a judge shall be nominated by the chairperson of the regional court under whose jurisdiction a vacancy for the position of a judge has been announced. The literature criticizes the Czech judge appointment model because it does not imply the involvement of the public, the direct participation of non-judges from the initial stages of the selection of judges. As to the participation of politicians in the process of selection of judges, it was noted that if equate participation of politicians with participation of non-judicial members in the selection procedure, the problem remains the involvement of politicians in later stage (as opposed to initial stage) and with veto power. This this cannot be considered as healthy element of lay participation in judicial selection.[121]

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117 Timo Ligi, Judicial Independence in Estonia, Judicial Independence in Transition (Anja Seibert-Fohr (ed.)), Max -Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, 2012, page 760-761.

118 Refusal to appoint a judge by the President of the country without any justification was interpreted as a threat to the independence of the judge, as it would be a signal that the career of a judge depends on the political process and the executive. Adam Bodnar and Lukasz Bojarski, Judicial Independence in Poland, Judicial Independence in Transition (Anja Seibert-Fohr (ed.)), Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, 2012, page 690.

119 Para. 19. https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)031-e

120 The Venice Commission noted that the powers of the Minister of Justice in relation to the judiciary were very broad even before the 2017 reform (Minister of Justice: defines new vacancies for judges in individual courts; creates and abolishes structural units in courts; Supervises the administrative activities of the presidents of the courts; imposes financial sanctions on the presidents of the courts; sets the detailed procedure for selecting a candidate for the judiciary and the assessment of his / her qualifications; Administration of the budget of the courts; sets the financial rules of the courts; etc.), and after the reform These powers have been further increased, which should be considered jointly (the appointment and dismissal of court chairpersons has become a discretionary power of the Minister of Justice and the Council of Justice no longer participates in it; The Minister of Justice is authorized to extend the term of office of a judge after reaching retirement age; etc). For. 96-127. https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)031-e

121 Michal Bobek, Judicial Selection, Lay Participation, and Judicial Culture in the Czech Republic: A Study in a Central European (Non) Tranformatio, 03/2014, College of Europe, Department of European Legal Studies, chapter 3.3. and

CONCLUSION

For countries like Georgia with a communist past, the main challenge in selecting / appointing judges is to transform the judiciary used to party obedience or cooperation to an independent judiciary that is useful to a democratic society.

In the process of transforming a judicial body with experience and habit of obedience, what is crucial is the composition of the existing body of judges, their past work, their professionalism and independent decision making skills. The experience of the countries studied clearly shows that the granting of independence and self-government to a judicial body with such a past and habit did not work out in practice - self-transformation did not occur.

Considering the reforms implemented in the studied countries, the way of reforming the rules of selection / appointment of judges can be conditionally divided into two stages: the first stage reforms, when the democratic transformation was carried out by strengthening judicial self-government as a counterbalance to the outside influences; And the second phase of reforms, when it was proved that the move through the strengthening of the judicial self-government did not quite work and an agreement on a new balance was needed to address the problem of internal independence weakened by strong self-government. It should be noted that the attempt to transform the judiciary through strengthening self-government has not been successful in countries where the power to select / appoint judges has not been concentrated in the hands of a single body. The internal deconcentration, without involvement of external actors did not bring about change, judges were again electing judges like themselves.

Reforms implemented in other countries show that the transformation was largely hampered by the introduction of selection / appointment models based on the selection and training of judges and prevented the entry of new staff from outside the judiciary, which was much needed in post-communist reality. In addition to the selection / appointment system, an obstacle for new people entering the judiciary was the system of promotion of judges in some countries, in response to which a system of appointment and promotion quotas was used in higher instances. The Estonian example is an exception due to the open model of eligibility for the competition. Not only lawyers with legal experience, but also lawyers with legal and prosecutorial experience are exempted from the obligation to study in a judicial school. A similar reform was carried out in Romania.

In turn, in the post-communist reality, the new and democratic legislation adopted in the countries also had significant shortcomings, which hindered the above-mentioned transformation. These were: insufficiently detailed legislative regulation of selection criteria and evaluation methodology; Or lack of evaluation methodology; Or, instead of specifying criteria, a detailed description of the selection procedure to ensure the objectivity of the selection allows the judge to be appointed on the basis of personal recommendations rather than objective evaluation. The problem has also emerged in countries where the evaluation process has been concentrated in the hands of one body, which did not have proper competence due to the rules of staffing that body.

In the process of transformation, it is important that none of the two existing models for the selection / appointment of judges is used in its purest form, allowing for the introduction of a context-appropriate selection system. The career model paves the way more for corporatism in the judiciary because in this model judges train future judges (the problem of internal independence). There is a greater risk of political influence in the professional model (the problem of external independence). Finally, for countries that do not have historical experience of judicial independence and democratic governance, a balance to reduce internal and external influence risks should be achieved by mixing the two models. However, international standards also provide some examples of the introduction of exceptional standards for court systems with a specific past and context, which again indicates the need for an individual approach.

3.4. http://aei.pitt.edu/63516/1/researchpaper_3_2014_bobek.pdf