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JUDICIAL SELECTION, APPOINTMENT AND CAREER: THEIR RELATIONSHIP WITH JUDICIAL INDEPENDENCE

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1. *Judicial Selection, Appointment and Career: Main Theoretical Approaches Across Legal Systems*

Using the words of the European Commission in its very recent 2026 *Rule of Law Report*,[1] we may say that "The procedures for appointing and dismissing judges, along with the powers and structure of the Councils for the Judiciary, are central to preserving judicial independence. Where Councils for the Judiciary exist, they serve as a buffer between the judiciary and other branches of power in areas such as appointments, career development and justice system management."[2]

Many European and international institutions have elaborated detailed rules on this matter, which we shall examine in the following pages. First and foremost, we must note that, from a general point of view, the selection, appointment and career of judges are organised in very different ways across legal systems throughout the world.[3] This variety is also present within

[1] EUROPEAN COMMISSION, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – 2026 Rule of Law Report, The rule of law situation in the European Union*, https://commission.europa.eu/publications/2026-rule-law-report-communication-and-country-chapters_en, p. 12. The report remarks (see pp. 13 ff.) that "Procedures for appointing and dismissing judges are key for judicial independence and for public perceptions. The Court of Justice of the European Union (CJEU) has set out that judicial independence requires that the conditions and rules governing judicial appointments must be sufficient to prevent reasonable doubts about whether judges are impervious to external factor." See CJEU judgments, including those of 15 July 2021, C-791/19 *Commission v Poland*; of 20 April 2021, C-896/19 *Repubblika and Il-Prim Ministru*; and of 2 March 2021, C-824/18 *AB and Others*, *Appointment of judges to the Supreme Court*. The *2026 Rule of Law Report* assesses as well recent evolutions in the European legal systems and their progresses or setbacks in safeguarding judicial independence. Same attention is given to the issue (see pp. 13 ff.) of the autonomy and independence of the prosecution service. Here the Commission remarks that "While the structure of national prosecution services differs from one Member State to another, institutional safeguards are necessary to ensure the autonomy of the prosecution service, so that it can act without interference. This autonomy is crucial for enforcing both national and European criminal laws."

[2] Also, the Court of Justice of the European Union (CJEU) has recognised that, where a Council for the Judiciary participates in an appointment procedure involving political bodies, it can contribute to making that process more objective. This was affirmed, for instance, in the judgment of 2 March 2021, in Case C-824/18, *AB and Others* (*Appointment of judges to the Supreme Court – Actions*).

[3] For a comparative assessment of the systems of recruitment, appointment, career and training of judges, see CAPPELLETTI, *The Judicial Process in Comparative Perspective*, Oxford, 1989; BARTOLE, *Per una valutazione comparatistica dell'ordinamento del potere giudiziario nei paesi dell'Europa continentale,* in *Studium juris*, 1996, pp. 531 ff.; BORGNA and CASSANO, *Il giudice e il principe. Magistratura e potere politico in Italia e in Europa*, Roma, 1997, pp. 107 ff.; OBERTO, VERARDI and VIAZZI, *Il reclutamento e la formazione professionale dei magistrati in Italia e in Europa,* in DOGLIOTTI, FIGONE, OBERTO (eds), *L'esame di uditore giudiziario,* Milano, 1997, pp. 41 ff.; CAIANIELLO, *Formazione e selezione dei giudici in una ipotesi comparativa*, in *Giurisprudenza italiana*, 1998, pp. 387 ff.; INTERNATIONAL ASSOCIATION OF JUDGES - "JUSTICE IN THE WORLD" FOUNDATION, *Traité d'organisation judiciaire comparée*, I, Zurich-Brussels, 1999; OBERTO, *Recrutement et formation des magistrats : le système italien dans le cadre des principes internationaux sur le statut des magistrats et l'indépendance du pouvoir judiciaire*, in *Rivista di diritto privato*, 2001, pp. 717 ff. (text available also on the following web page: https://www.giacomooberto.com/csm/rapport.htm); OBERTO, *Recrutamento e formação de magistrados: o sistema italiano no Âmbito dos princípios internacionais sobre o estatuto dos magistrados e da independência do poder judiciário*, in *Revista da EMERJ (Escola da Magistratura do Estato do Rio de Janeiro)*, vol. 5, n° 20, 2002, pp. 15 ff.; OBERTO, *Selection, Training, Career and Status of Judges: International Standards and the Italian Experience*, in *Contratto e impresa / Europa*, 2002, pp. 845 ff. (text available also on the following web page: https://www.giacomooberto.com/yerevan/report.htm); OBERTO, *Recrutement et formation des magistrats en Europe : une étude comparative*, Strasbourg, 2003; OBERTO, *La formazione dei magistrati alla luce dei principi internazionali e dei profili di diritto comparato*, Padova, 2008; OBERTO, *Indépendance de la magistrature, recrutement, formation et carrière des magistrats en Europe*, in OBERTO and ASSOUMA (eds), *L'indépendance de la magistrature – The Independence of the Judiciary – La independencia judicial*, Belo Horizonte, 2011, pp. 57 ff.; OBERTO, *Selection and Appointment of Judges: Constitutional and Legislative Protection and* de facto *practice*, 2019, https://www.giacomooberto.com/Oberto_Selection_and_Appointment_of_Judges.htm. For a general assessment of the judiciary systems of Europe, see as well COUNCIL OF EUROPE, *L'Europe judiciaire*, Strasbourg, 2000 (the book also contains information on the recruitment and training of judges). Of course, mention has to be done here also to EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE (CEPEJ), *European judicial systems - CEPEJ Evaluation report - 2024 Evaluation cycle (2022 data)*, available on the following web page: https://www.coe.int/en/web/cepej/special-file.

Europe, where virtually every conceivable system for the selection of candidates for the judiciary can be found, including election by popular ballot, as in certain Swiss cantons.

Each method, of course, has its advantages and its drawbacks.

a) The first method consists in conferring the choice of judges, and the crucial decisions concerning their career, upon the executive or legislative authorities. While this may, on the one hand, reinforce the legitimacy of judicial appointments, the heavy dependence of the judiciary on the other branches of power, together with the political implications, carries obvious risks. The Venice Commission of the Council of Europe has repeatedly warned that excessive executive influence over judicial appointments constitutes a structural threat to the separation of powers.[4]

b) Election by the electorate is the method that confers upon judges, at least ostensibly, a high level of legitimacy, as it derives directly from the people. However, this system obliges the judge to conduct a humiliating, and sometimes demagogic, electoral campaign, inevitably with the financial backing of a political party, which may sooner or later expect a favour in return. The Venice Commission of the Council of Europe has noted that, in practice, such systems risk exposing judges to the logic of political campaigning and electoral accountability, thereby weakening both the conditions for, and the perception of, impartiality and independence.[5] Furthermore, the judge might be tempted to tailor his or her judgments to the expectations of the electorate.[6] Empirical studies in the United States confirm that electoral pressures may influence sentencing patterns and undermine public confidence in impartiality.[7] The practice also raises concerns regarding campaign financing, political endorsements and the risk of "majoritarian justice." The recent introduction of such a system of judicial recruitment in a country like Mexico has stirred heated controversy and has led international institutions to take firm stands against this way of recruiting judges after having dismissed the previous ones.[8]

c) Co-option by the judiciary itself offers the advantage of enabling the selection of judges who are technically best prepared, but it carries a strong risk of conservatism, cronyism, opacity and insufficient external accountability.[9]

d) Nomination by a committee of judges and legal academics (preferably appointed by an independent body representing the judiciary) following a public competition constitutes the final method, currently applied in a number of countries. In this case, the crucial decisions

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[4] VENICE COMMISSION, *Report on the Independence of the Judicial System, Part I: The Independence of Judges*, CDL-AD(2010)004, Study No. 494 / 2008, https://www.coe.int/documents/268333607/300678634/CDL-AD%282010%29004-e.pdf/8dd8ce5f-0ce3-f4c2-82f3-19b8fc582a7e?t=1779972265488.

[5] VENICE COMMISSION, *Opinion No. 403/2006*, document CDL-AD(2007)028, https://www.coe.int/en/web/venice-commission/-/opinion-403, paragraphs 9 and 10.

[6] The *UN Human Rights Committee* has expressed concern that the election of judges may adversely affect the implementation of fair trial rights under article 14 of the *International Covenant on Civil and Political Rights* and has recommended that such systems be reconsidered with a view to replacing them with merit-based appointment by an independent body: see UN HUMAN RIGHTS COMMITTEE, *Report of the Human Rights Committee to the Fiftieth Session*, A/50/40, https://docs.un.org/en/A/50/40, p. 55; see as well SPECIAL RAPPORTEUR ON THE INDEPENDENCE OF JUDGES AND LAWYERS, *Visit to the Plurinational State of Bolivia. Report of the Special Rapporteur on the independence of judges and lawyers, Diego García-Sayán*, 2022, https://docs.un.org/en/A/HRC/50/36/Add.1, paragraph 102, p. 17.

[7] CHOI, MITU GULATI and POSNER, *Professionals or Politicians: The Uncertain Empirical Case for an Elected Rather than Appointed Judiciary*, in *The Journal of Law, Economics, and Organization*, Volume 26, Issue 2, August 2010, pp. 290 ff., https://doi.org/10.1093/jleo/ewn023.

[8] See UN SPECIAL RAPPORTEUR ON THE INDEPENDENCE OF JUDGES AND LAWYERS, *Communication OL MEX 11/2024*, 29 July 2024, expressing "serious concerns" that the proposed constitutional reforms — including the popular election of all judges, the abolition of the Federal Judicial Council, and the transfer of administrative and disciplinary functions to bodies elected by popular vote — "could undermine the independence of the Mexican judiciary." *See* also UN SPECIAL RAPPORTEUR ON THE INDEPENDENCE OF JUDGES AND LAWYERS, *Communication AL MEX 6/2025*, 3 June 2025, noting "serious deficiencies" in the implementation of the reform and the first judicial election of 2025, and warning that the new system eliminates merit-based selection, reduces professional requirements for judges, and exposes judicial appointments to political influence. The Mexican reform has also been sharply criticized by the International Association of Judges: see https://www.iaj-uim.org/iuw/iaj-presidency-committee-statement-on-mexico/.

[9] BELL, *Judiciaries within Europe. A Comparative Review*, Cambridge, 2009, pp. 298 ff.

concerning judicial careers should likewise be entrusted to a self-governing body of the judiciary, such as a High Council for the Judiciary. Its effectiveness depends on the composition, powers and transparency of the appointing authority.[10] Public competitions, combined with structured training, have proven effective in ensuring both competence and independence.

2. Judicial Selection and Career: A Brief Comparative Perspective Beyond Continental Europe

Wishing now to offer a very brief comparative overview of legal systems beyond continental Europe, and beginning with the Common Law jurisdictions, it may be observed that in the United Kingdom judicial appointments are made through the Judicial Appointments Commission (JAC), established under the *Constitutional Reform Act 2005*.[11] The JAC operates independently of the executive and judiciary, applying transparent criteria and competency-based assessments. Candidates typically have extensive professional experience as barristers or solicitors.

In the United States, federal judges are appointed by the President and confirmed by the Senate, while state judges may be appointed, elected, or selected through merit plans.[12] Electoral systems raise concerns regarding campaign financing and political influence. Canada, Australia and New Zealand rely on executive appointment with strong professional safeguards, including advisory committees and transparent criteria.[13]

Turning to Francophone Africa, judicial selection often follows the continental (French) model, with competitive examinations and judicial schools.[14] However, the independence of judicial councils varies significantly. In Anglophone Africa Judicial Service Commissions (JSCs) play a central role, conducting public interviews and professional vetting; South Africa's JSC is notable for its public hearings.[15] Common challenges across the region include executive interference, insufficient resources, politicised disciplinary proceedings and security risks.[16]

In Asia, Japan and South Korea employ competitive examinations and structured training.[17] China's judicial appointments remain heavily influenced by the Communist Party.[18] India's

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[10] See below, paragraph 10.

[11] *Constitutional Reform Act 2005* (UK), https://www.legislation.gov.uk/ukpga/2005/4/contents.

[12] U.S. Constitution, Art. II, §2.

[13] See INDEPENDENT ADVISORY BOARD FOR SUPREME COURT OF CANADA JUDICIAL APPOINTMENTS, *Report on the 2023 Process*, Ottawa, 2023. In Australia, advisory panels in judicial appointments are merit-based evaluation bodies used to assess expressions of interest, conduct interviews, and compile shortlists of suitable candidates for federal and state courts. They typically operate under an executive appointment model where the final choice remains with the Attorney-General or Cabinet: see AUSTRALIAN GOVERNMENT. ATTORNEY-GENERAL'S DEPARTMENT, *Judicial Appointments*, https://www.ag.gov.au/legal-system/courts/judicial-appointments. New Zealand does not have an independent Judicial Appointments Commission. Instead, judges are appointed by the Governor-General on the advice of the Attorney-General, managed through processes overseen by the Ministry of Justice and the *Crown Law Office*. The Attorney-General consults extensively with senior judges (such as the Chief Justice or relevant heads of bench) and legal bodies, like the *New Zealand Law Society*: see P.A. JOSEPH and T. JOSEPH, *Judicial system*, in *The Encyclopedia of New Zealand*, https://teara.govt.nz/en/judicial-system/print.

[14] HOURQUEBIE, *L'indépendance de la justice dans les pays francophones*, in *Les cahiers de la justice*, 2012, pp. 41 ff.; NONNOU, *Le conseil supérieur de la magistrature et l'indépendance du pouvoir judiciaire dans les États francophones d'Afrique*, in *Les cahiers de la justice*, 2018, pp. 715 ff. Some soft law principles on the issue of judicial selection are enshrined in the AFRICAN COMMISSION ON HUMAN AND PEOPLE'S RIGTS, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, 2003*, https://achpr.au.int/en/node/879.

[15] SOUTH AFRICAN JUDICIAL SERVICE COMMISSION, *Annual Report*, Pretoria, 2023/2024, https://www.judiciary.org.za/images/news/2025/JSC_Annual_Report_2023-2024.pdf.

[16] AFRICAN COMMISSION ON HUMAN AND PEOPLE'S RIGTS, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, 2003*, https://achpr.au.int/en/node/879.

[17] On the *Legal Training and Research Institute of Japan*, see the official information provided by the Supreme Court of Japan (https://www.courts.go.jp/english/institute_01/institute/index.html). For the *Korean Judicial Cooperation Center* (IJCC), see https://www.scourt.go.kr/jrti/eng/intro/intro_01.html. For the *Korean Judicial Policy Research Institute* (JPRI), see https://jpri.scourt.go.kr/main.do?lang=en.

Collegium System is unique, insulating appointments from political influence but criticised for opacity.[19] Singapore maintains a highly professional judiciary, though executive involvement remains significant.[20]

As for Latin America, this continent presents a rich and complex landscape, shaped by diverse constitutional traditions, periods of authoritarianism, transitions to democracy and ongoing

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[18] PEERENBOOM, *China's Long March toward Rule of Law*, Cambridge, 2002, p. 280 ff. See as well JUDICIARIES WORLDWIDE, *China*, https://judiciariesworldwide.fjc.gov/country-profile/china; CHINA JUSTICE OBSERVER, *Who Can Serve as Judges in China?*, https://www.chinajusticeobserver.com/a/who-can-serve-as-judges-in-china; GLOBAL ACCESS TO JUSTICE PROJECT, *People's Republic of China. National Report*, https://globalaccesstojustice.com/global-overview-china/?lang=en.

[19] The "collegium system" is the mechanism used to appoint and transfer judges of the higher judiciary in India. It did not originate from an act of Parliament or a specific article in the Constitution; rather, it evolved through a series of landmark Supreme Court judgments commonly referred to as the "Three Judges Cases." The recruitment and appointment framework operates differently across the various levels of the Indian judiciary.

1. The Higher Judiciary (Supreme Court and High Courts).

For the superior courts, the judiciary holds the primary power of selection, while the executive (government) plays a consultative and formal role.

- a. Composition of the Collegium.

Supreme Court Collegium: Comprises the Chief Justice of India (CJI) and the four senior-most judges of the Supreme Court.

High Court Collegium: Comprises the Chief Justice of the respective High Court and its two senior-most judges.

- b. The Appointment Process.

Recommendation: The High Court collegium initiates recommendations for High Court appointments. The Supreme Court collegium makes recommendations for Supreme Court appointments and transfers.

Vetting: The recommendations are sent to the Central Government (Ministry of Law and Justice), which conducts background checks through the Intelligence Bureau (IB).

- c. The Role of the Executive.

The *government* can accept the names or send them back to the collegium for reconsideration, raising specific objections.

Finality: If the collegium unanimously reiterates its recommendation, the government is bound by law to appoint that judge. The formal appointment is then made by the President of India.

2. The Subordinate Judiciary (District and Lower Courts).

The collegium system does not apply to the lower courts. Recruitment for these positions is strictly structured through exams and state-level governance.

- *Entri-level Subordinate Judges* are selected through a competitive civil service examination, commonly known as the PCS (J) – Provincial Civil Services (Judicial) examination. It is administered either by the State Public Service Commission or directly by the relevant High Court. Candidates must hold an LL.B. degree and pass a three-stage process (Preliminary, Mains, Interview).
- *District Judges – Promotion*. A large percentage of district judge posts are filled by promoting lower court judges on the basis of seniority and merit.
- *District Judges – Direct Recruitment*. A reserved quota is filled through direct recruitment from among practising advocates with at least seven years of continuous practice.
- *Appointment*. Formal appointments are made by the Governor of the State, acting in consultation with the State's High Court.

For a description of the Indian system, and for critical remarks about its opacity, see KANDARI, *Examining The Constitutionality of the Collegium System*: *A Constitutional Analysis*, in *Indian Journal of Law and Legal Research*, 2023, Volume V, Issue III, pp. 1 ff., available at: https://3fdef50c-add3-4615-a675-a91741bcb5c0.usrfiles.com/ugd/3fdef5_bc3bd8230a9f4997996853580be5750d.pdf; SAWHNEY, *Critiques of the Collegium System*, in *Indian Journal of Law and Legal Research*, 2023, Volume V, Issue III, pp. 1 ss., https://3fdef50c-add3-4615-a675-a91741bcb5c0.usrfiles.com/ugd/3fdef5_e22c1ed087134bb793b374dfbbf5c4a6.pdf; EDULA REDDY, *Judicial Appointments in India: A Comparative Analysis of the Collegium System and the NJAC*, in *Indian Journal of Law and Legal Research*, 2025, Volume VII, Issue I, pp. 4918 ff., https://3fdef50c-add3-4615-a675-a91741bcb5c0.usrfiles.com/ugd/3fdef5_c2bdde997b0d41e6a344e450c1ec3210.pdf; SURI, *The Collegium System and the Indian Judiciary: A Critical Analysis of Opacity, Accountability, and the Path to Constitutional Reform*, in *Indian Journal of Law and Legal Research*, Volume VIII, Issue III, 2026, pp. 10708 ff., https://3fdef50c-add3-4615-a675-a91741bcb5c0.usrfiles.com/ugd/3fdef5_dccc8db0a411484a9f9a00b1ef5d4afd.pdf.

[20] Constitution of Singapore, Art. 95. For an explanation on recrutement methods, see SINGAPORE JUDICIAL SERVICE, *Eligibility for Appointment as a JSO*, https://www.jsc.gov.sg/careers/eligibility-for-appointment/as-a-jso/.

institutional reforms. Judicial selection systems vary widely, but common themes include the struggle to balance independence with accountability, and the persistent risk of political influence.

Many Latin American countries have adopted judicial councils inspired by European models, particularly those of Italy and Spain. At present, in all Latin American countries—with the exception of Chile, Venezuela, Uruguay and Nicaragua—there exists a judicial council endowed with consultative or decision-making powers over the essential aspects of judges' careers. A comparative analysis of these experiences allows us to identify certain common features concerning their normative foundation, guarantees of irremovability and functions, while the area in which the greatest diversity is observed concerns the modalities of composition. With the exception of Panama and Costa Rica, the existence of judicial councils in the region is enshrined in the respective constitutional charters, marking a significant shift in the level of institutional protection compared with the past.[21] The *Ibero-American Charter of the Judge* (1995), adopted by the Ibero-American Group of the International Association of Judges (IAJ), has played a significant role in promoting regional standards on judicial independence, selection and career.[22]

Mexico has recently undertaken a complete reforme of its judicial selection system, introducing the popular election of judges and thereby raising international concern.[23]

Brazil employs a mixed model: (a) competitive examinations for entry-level judges; (b) appointment by the President for higher courts (Supreme Court of Justice—*Supremo Tribunal de Justiça* STJ, Supreme Federal Court—*Supremo Tribunal Federal* STF), subject to Senate confirmation.[24] The National Council of Justice (*Conselho Nacional de Justiça*—CNJ), created in 2004, has significantly improved transparency and oversight, though debates continue regarding its disciplinary powers. Argentina's Council of the Judiciary plays a central role in selection and discipline;[25] however, its partly political composition has raised concerns regarding potential influence over appointments and removals.

Chile, Colombia and Peru have implemented reforms aimed at strengthening merit-based selection and reducing political influence. Colombia's system, involving multiple bodies (Judicial Council, Supreme Court, President), has been criticised for fragmentation and opacity.[26] Chile's ongoing constitutional reform process includes proposals to restructure judicial governance and appointment procedures.[27]

Across the Latin-American region, recurring issues include politicisation of high-level appointments; lack of transparency in selection processes; insufficient training infrastructure; risks of corruption; tensions between judicial independence and accountability; influence of organised

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[21] PAFFARINI, *I consigli di giustizia in America Latina: un quadro comparativo tra continuità e instabilità dei modelli*, in *DPCE on line*, Vol. 45, No. 4, 2020, pp. 5114 ff., available at: https://www.dpceonline.it/index.php/dpceonline/article/view/1204/1157; RAGONE, *Judicial Councils and Judicial Independence in Latin America*, in *Revista de Derecho Público*, 2017, pp. 45 ff.; see as well POPKIN, *Efforts to Enhance Judicial Independence in Latin America: A Comparative Perspective*, in *Due Process of Law*, 2001, pp. 7 ff., https://biblioteca.cejamericas.org/server/api/core/bitstreams/11bbe32f-1926-41db-89fc-5e272e091895/content.

[22] IBERO-AMERICAN GROUP OF THE INTERNATIONAL ASSOCIATION OF JUDGES, *Estatuto del Juez Iberoamericano* (1995), https://www.iaj-uim.org/iuw/wp-content/uploads/2013/01/Estatuto-del-juez-iberoamericano.pdf; see as well below, paragraph 8.

[23] See above, paragraph 1, footnote 8.

[24] *Constituição Federal do Brasil*, Art. 101–104. See PANSIERI, *Conselho Nacional de Justiça*, in *Enciclopédia Jurídica da PUCSP*, 2017, https://enciclopediajuridica.pucsp.br/verbetes/conselho-nacional-de-justica/; RAGONE and TAVARES FERNANDES DOS SANTOS, *Relationship between High Courts and Judicial Councils: Classifying and Mapping their Dynamics in Latin American Countries*, in *Revista general de derecho público comparado*, 38, 2025, pp. 90 ff.

[25] CONSEJO DE LA MAGISTRATURA. PODER JUDICIAL DE LA NACIÓN (ARGENTINA), *Comisión de selección de magistrados y Escuela judicial, Reglamento de concursos públicos de oposición y antecedentes para la designación de magistrados del poder judicial de la nación*, 2024, https://consejomagistratura.gov.ar.

[26] REVELO-REBOLLEDO, *La independencia judicial en tiempos de Uribe*, in *Papel Politico*, vol. 13, no. 1, 2008, http://www.scielo.org.co/scielo.php?script=sci_arttext&pid=S0122-44092008000100003; PATIÑO ÁLVAREZ, *The role of constitutional courts in furthering democracy in Latin America. The cases of Colombia, Costa Rica and Mexico*, https://repository.uantwerpen.be/docman/irua/505429/184304.pdf, pp. 186 ff.

[27] COMISIÓN EXPERTA PARA LA NUEVA CONSTITUCIÓN DE CHILE, *Informe Final*, 2023, https://www.procesoconstitucional.cl/wp-content/uploads/2023/08/INFORME-FINAL-COMISION-EXPERTA.pdf.

crime in certain jurisdictions. Regional instruments—such as the *American Convention on Human Rights* and the jurisprudence of the Inter-American Court of Human Rights—have increasingly emphasised the need for objective, transparent and independence-enhancing appointment procedures.[28]

3. Judicial Selection, Appointment and Career: Common Trends and Divergent Models

Seeking now to draw a first set of conclusions from the overview that has been attempted of the various systems for the recruitment and career of judges, I propose to identify—while bearing in mind the principle of judicial independence—the categories into which these systems may be classified, together with some common denominators.

The first point to note is that a university qualification in legal studies is required almost everywhere. A minimum age, together with "good character," is likewise a requirement laid down by law in nearly all jurisdictions. That said, the system of competitive examination is certainly preponderant in Western and Southern Continental Europe (with some notable exceptions, such as the Swiss cantons, where—as it was already explained—judges are elected either by the people or by parliament). Such competitions may be open, in some cases, to any person holding a law degree (subject to the conditions established by the relevant legislation), or else to persons who might be termed "specialists," in that they possess not only a legal qualification but also some form of specialisation or practical experience.

Moreover, depending on the country concerned, the competition may give either direct access to the judiciary, subject to the completion of a period of initial training under the supervision of the High Council for the Judiciary (as was the case for a very long time in Italy, before the establishment in 2012 of the School for the Judiciary), or access to a training institution (as is the case, for example, in France, the Netherlands and Portugal). The result is practically the same in Germany, although there the selection is formally made by the Minister of Justice of each *Land* (Autonomous Region), on the basis of rigorously objective criteria and following a long and demanding period of training which precedes the choice of career and is common to judges, lawyers, notaries and academics. The system of competitive examination is also found in the Baltic States and in Turkey.

Countries where a Council for the Judiciary exists tend to entrust to such a body the crucial decisions concerning judicial promotions and careers.

By way of contrast, the Common Law systems and those of the European Nordic states are characterised either by the complete absence of any competition for access to the judiciary, or by the absence of a competition in the strict sense: here, appointment to the judiciary is primarily the culmination of a training process, a *cursus honorum*, which candidates complete in the field, even though the Judicial Appointments Commission[29]–which provides, in the U.K., an independent mechanism for applicants for judicial office who feel that their candidacy has not been considered fairly–and the setting up of a Judicial College[30], opened new perspectives in this field.[31]

Of course, this kind of system—an appointment by the Executive or the Legislature, sometimes "prepared" by a selection carried out by a special appointments commission composed of members of the judiciary, as well as representatives of the government and of civil society—is widely followed in Common Law systems throughout the world. A particularly distinctive case is that of the United States of America, where federal judges are appointed by the President and confirmed by

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[28] See Inter-American Court of Human Rights, *Apitz Barbera et al. v. Venezuela* (2008), https://www.corteidh.or.cr/docs/casos/articulos/seriec_182_ing.pdf.

[29] See above, paragraph 2.

[30] See https://www.judiciary.uk/about-the-judiciary/training-support/judicial-college/.

[31] Information on the *Judicial Appointments Commission* is available on the following web page: https://judicialappointments.gov.uk/; http://jac.judiciary.gov.uk.

a vote of the Senate, whereas State judges are either appointed by the Governor or elected by the people.[32]

Obviously, under the first type of system (those based on a public competition), it is the boards appointed to carry out the task of selecting candidates, together with the initial training institutions, that play the determining role in choosing new judges, even if the formal instrument of nomination bears the signature of the Minister of Justice or the President of the Republic. In the other systems, however, the influence of the executive is (or can be) very considerable. Yet in the Anglo-Saxon countries and in the Scandinavian countries, other factors—such as the legal tradition, the widespread respect for the judiciary, the social and economic position of judges, and the existence of the "contempt of court"—serve to guarantee, on the one hand, the quality of the selection process and, on the other, the maintenance of a situation of separation between the political authorities and an independent judiciary.

In the countries of the former communist bloc in Central and Eastern Europe, the situation appears somewhat complex and difficult to grasp. The comparative evidence available today confirms that, in many jurisdictions, the situation remains weighted too heavily in favour of the political authorities *lato sensu*, whether the executive or, in systems of judicial election, the legislature. Recent scholarship shows that many judicial appointment mechanisms in Central and Eastern Europe continue to exhibit structural vulnerabilities to political influence. As some Czech scholars observe, "many judicial councils in Europe remain vulnerable to political influence, especially those where political actors dominate the appointment process."[33]

While it is true that "qualifications boards" or similar bodies are often involved in the selection process (as in the Russian Federation), it is still frequently unclear how such bodies are composed, what criteria they apply, and what effective powers they possess when the number of eligible candidates exceeds the number of available posts. The Venice Commission of the Council of Europe has reiterated that advisory judicial councils do not provide sufficient guarantees against undue influence by the executive.[34]

The same applies to systems in which Judicial Councils retain only a consultative role (as in, for example, North Macedonia, the Czech Republic or Slovakia). Even today, consultative bodies do not provide a structural safeguard against politicisation. As for judges' associations, they may contribute to transparency and professionalism in selection procedures, but they cannot compensate for structurally weak appointment bodies. Their intervention may alleviate some of the more perverse effects of excessive executive or legislative influence, but it does not replace a robust institutional guarantee.

In countries such as Croatia, Romania and Slovenia, this institutional configuration still provides a reassuring guarantee.

It must be noted, however, that the situation in Poland has evolved negatively in the last years, when the National Council of the Judiciary was "transformed into a politically dependent body,"[35] illustrating that even councils with formal decision-making powers may be subject to political capture if their composition or appointment procedures are altered.

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[32] See https://ballotpedia.org/Judicial_selection_in_the_states.

[33] KOSAŘ, ŠIPULOVÁ and KADLEC, *Judicial Councils in Europe: A Comparative Perspective*, in *European Constitutional Law Review*, 2024, pp. 312 ff.

[34] See e.g. VENICE COMMISSION, *France. Joint opinion of the Venice Commission and the Directorate General of human rights and rule of law (DGI) of the Council of Europe on the Superior Council of Magistracy and the status of the judiciary as regards nominations, mutations, promotions and disciplinary procedures*, CDL-AD(2023)015, https://www.coe.int/en/web/venice-commission/-/cdl-ad-2023-015-f, p. 11 "Considering that the CSM is already screening all profiles of candidates (proposed and excluded), making the necessary comparisons to formulate recommendations and opinions, assessing the observations of excluded candidates, it should be possible, as a first step, to modify the organic law in order to entrust it with the power to modify the proposal of the Minister of Justice, by reintegrating or replacing certain candidates, where it considers it appropriate. The Venice Commission therefore recommends attributing to the CSM, at least, the power to modify the proposal of appointments made by the Minister of Justice."

[35] SADURSKI, *Poland's Constitutional Breakdown*, Oxford, 2019, p. 89.

Overall, the developments of the past decade confirm that where judicial councils lack decisive powers, or where their composition allows political dominance, the independence of judicial appointments remains at risk. Conversely, strong, autonomous councils with genuine decision-making authority continue to represent the most effective institutional safeguard.[36]

In fact, the involvement of a High Council for the Judiciary vested with genuine decision-making authority continues to constitute a markedly stronger safeguard, since bodies endowed with decisive powers in judicial appointments substantially diminish the risk of political interference. More recent comparative scholarship reinforces this conclusion, describing such institutions, for example, as "fourth-branch bodies" whose legitimacy is derived independently of both the executive and the legislature.[37]

Yet, the very fact that Judicial Councils have become a global phenomenon—exercising powers over judicial careers and court administration, and now found across Europe, Latin America and Asia, where in some regions they have even become the predominant model of judicial governance[38]—precludes any characterisation of them as external or "stranger" to the judiciary. Rather, they must be regarded as organs belonging to the judiciary as the third branch of the State, indeed as the apex institutional expression of that branch. It is clear that the principal motivation behind their creation and subsequent constitutional entrenchment was to depoliticise the processes of selecting and disciplining judges and to professionalise the management of courts.

4. Selection of Judges (and Public Prosecutors) in the Italian Legal System

Having provided a general description and assessment of the various systems for the recruitment and career of judges, and before addressing the international rules governing these matters, it may still be appropriate to examine in some detail an example which can, without fear of contradiction, be regarded as one of the most interesting for the level of autonomy and independence that it has succeeded in securing for the judiciary since the end of the Second World War.

The reference here is to the Italian model.

In order to understand the Italian system of judicial selection and career we must first of all keep in mind that in Italy judges and public prosecutors form part of the same institution, referred to as *la magistratura* (the judiciary). This means that in my country public prosecutors are considered as being part of the judiciary, even though their functions are naturally not the same as those of judges.

As it has been remarked by an Italian scholar, "The establishment of just a Council for both judges and public prosecutors was probably a backlash after the authoritarian regime. The goal was to increase the independence of public prosecutors, who were under the strict control of the executive power during the Fascist period, and to have a consistent group of values shared among judges and prosecutors."[39]

This peculiarity within the European landscape—derived in part from the French model, though with a significantly higher degree of independence for public prosecutors—has undoubtedly contributed to strengthening the autonomy and the capacity of judges and prosecutors to exert

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[36] For further details on this topic see OBERTO, *Selection, Training, Career and Status of Judges: International Standards and the Italian Experience*, in *Contratto e impresa / Europa*, 2002, pp. 845 ff., also available on the following web page: https://www.giacomooberto.com/yerevan/report.htm; OBERTO, *Selection and Appointment of Judges: Constitutional and Legislative Protection and* de facto *practice*, 2019, https://www.giacomooberto.com/Oberto_Selection_and_Appointment_of_Judges.htm.

[37] See e.g. KOSAŘ, ŠIPULOVÁ AND KADLEC, *The Case for Judicial Councils as Fourth-Branch Institutions*, in *European Constitutional Law Review*, 2024, Volume 20, Issue 1, pp. 82 ff., also available on the following web page: https://doi.org/10.1017/S1574019624000038:

[38] GAROUPA and GINSBURG, *Guarding the Guardians: Judicial Councils and Judicial Independence*, in *American Journal of Comparative Law*, 2009, 57, pp. 103 ff.; CASTILLO-ORTIZ, *Councils of the Judiciary and Judges' Perceptions of Respect to Their Independence in Europe*, in *Hague Journal on the Rule Law*, 2017, 9, pp. 315 ff. (also available on the following web page: https://eprints.whiterose.ac.uk/id/eprint/119096/10/Castillo%20Ortiz%202017.pdf).

[39] FABRI, *Regulating Judges in Italy*, https://www.ippapublicpolicy.org/file/paper/1432887610.pdf, p. 3.

political pressure as a single, powerful policy actor. In the Italian justice system, public prosecutors form part of the judiciary and have no institutional ties whatsoever with the executive branch. Both judges and prosecutors belong to the *magistratura* (judiciary) and, as members of the same body, are referred to as *magistrati*. This term should, of course, never be translated into English as "magistrates" (a term which, in the Italian context, would more appropriately refer to *giudici di pace*), but always as "judges and prosecutors" when referring to the Italian system.

Access to the professions of judge and public prosecutor in Italy takes place through a public competitive examination pursuant to Article 106(1) of the Constitution, which is exactly the same for future judges and future prosecutors, who will chose about their professional (either judicial or prosecutorial) destiny only after having successfully passed the competition. Over the past thirty years, the regulatory framework governing entry into the judiciary has undergone significant changes. Earlier reforms had sought, on the one hand, to simplify and expedite the examination procedure and, on the other, to promote a shared cultural foundation among the principal legal professions—judges, prosecutors, notaries and lawyers. To this end, Legislative Decree No. 398/1997 had established the *Scuole di Specializzazione per le Professioni Legali* (SSPL), or Specialisation Schools for Legal Professions, postgraduate schools within the universities intended to provide a common training pathway for law graduates wishing to enter the legal professions.

For a number of years, attendance at these schools and the award of the final diploma constituted one of the prerequisites for admission to the judicial competition, alongside alternative routes such as passing the bar examination or completing an eighteen-month traineeship in a court. However, subsequent legislative reforms have progressively dismantled this system. The specialisation schools no longer play any role in access to the judiciary and can now be regarded as effectively defunct.

Similarly, the computer-based preliminary test—introduced by Legislative Decree No. 398/1997 and linked to the amendment of Article 123 of the judicial system—was conceived as a means of rationalising and accelerating the selection process. It temporarily accompanied the traditional written and oral examinations, testing candidates on the subjects covered in the written papers. This mechanism was subsequently abandoned without regret following the adoption of Act No. 48/2001, and it has not been reinstated in any of the later reforms, including Legislative Decree No. 160/2006 and Law No. 111/2007.

Today, the competitive examination for judges and prosecutors consists of three written papers—civil law, criminal law and administrative law—and an oral examination covering the principal legal subjects ([40]). The competition is announced by the Minister of Justice on the basis of a resolution of the High Council for the Judiciary, which determines the number of available positions. As the attendance of a public Specialisation School is no longer required, any law graduate can try to pass this competition.

The examination board for the ordinary judiciary is composed of one judge or prosecutor who has attained the sixth professional evaluation (acting as chair), twenty-three judges or prosecutors with at least the third professional evaluation, six university professors, and four lawyers. Its composition and functioning are governed by Legislative Decree No. 160 of 2006 and subsequent amendments, including Decree-Law No. 118 of 2021. Individuals who, in the previous ten years, have taught in private preparatory schools for the judicial examination may not serve as members of the board. Appointments to this commission are made by decree of the Minister of Justice, following a resolution of the High Council for the Judiciary.

5. Career Progression of Italian Judges (and Public Prosecutors)

The career structure of Italian *magistrati*—judges and public prosecutors—is governed by a detailed statutory framework designed to balance two constitutional principles: the independence of the judiciary and the assessment of professional merit. To understand how a judge or prosecutor

[40] Article 1, Legislative Decree No. 160 of 2006, as subsequently amended.

"advances" in Italy, it is essential to distinguish between two legally separate dimensions that are often conflated by external observers, namely: (a) Career Position (professional status and salary) and (b) Judicial Function (the actual role performed within the courts).

Historically, Italy operated under a system of automatic seniority. Today, following Legislative Decree No. 160/2006—the principal statute governing the judicial profession—*career rank* (status and remuneration) and *judicial role* are formally distinct.

- Career Position (Status and Salary): refers to the judge's personal standing within the judiciary. It is determined exclusively through periodic *professional evaluations* (*valutazioni di professionalità*). Progression is automatic, based on time and merit assessments, and occurs irrespective of the court in which the concerned judge (or public prosecutor) serves.
- Judicial Function (Actual Role): denotes the concrete duties performed on a daily basis—for example, serving as a trial judge in a given tribunal or as President of a Court of Appeal, etc.

A crucial feature of the Italian system is that a judge or prosecutor may attain the highest career position (and corresponding salary) while continuing to serve as an entry-level trial judge. Advancement in personal status does not require promotion to a higher court or appointment to a managerial role. Judicial and prosecutorial status is determined through seven professional evaluations (*valutazioni di professionalità*), conducted every four years from appointment until the twenty-eighth year of service. These assessments are carried out by the *Consiglio Superiore della Magistratura* (CSM)—the High Council for the Judiciary.

The CSM is the constitutional body responsible for the self-government of the judiciary. It is composed of two-thirds *magistrati* (judges and prosecutors) and one-third members (legal professionals such as lawyers or professors) elected by Parliament. Its constitutional mandate is to safeguard judicial independence from the executive and legislative branches.

The CSM exercises exclusive authority over all decisions concerning the professional life of judges and public prosecutors, including:

- Recruitment through public competitive examinations,
- Assignment to judicial offices and transfers,
- Promotions and periodic professional evaluations,
- Training and authorisation of extrajudicial activities,
- Leave, secondments, and retirement,
- Appointment to managerial and semi-managerial positions (with the Minister of Justice participating *in concerto* only for managerial posts).

These powers ensure that career progression remains insulated from political influence.

The CSM also adjudicates cases of disciplinary misconduct by magistrates, pursuant to the constitutional framework and Law No. 195/1958.

Periodic assessments (*valutazioni di professionalità*: once every four years until the 28th year of service) are conducted on the basis of rigorous performance parameters, including:

- Capacity (*Capacità*): Legal knowledge, analytical ability, and clarity of reasoning.
- Laboriousness (*Laboriosità*): The volume of cases handled.
- Diligence (*Diligenza*): Compliance with statutory deadlines for drafting and filing judgments.
- Commitment (*Impegno*): Professional availability, continuing education, and contribution to the organisation of the court.

As far as the Career Timeline is concerned, the evaluation framework may be summarised as follows:

- Initial Entry: Trainee Judge (*magistrato in tirocinio*).
- 1st Evaluation (Year 4): Acquisition of full judicial status.
- 3rd Evaluation (Year 12): Eligibility to serve on the *Commissione del Concorso* (the board assessing candidates in the initial competitive examination) and to apply for intermediate functions.
- 5th Evaluation (Year 20): Equivalent to Court of Appeal status.

- 7th Evaluation (Year 28): Attainment of the highest professional rank (equivalent to Supreme Court of Cassation status).

As for the Functional Advancement, judges and public prosecutors who wish to "advance" in the traditional sense must compete for specific *functions*. Under Article 10 of Legislative Decree No. 160/2006, judicial and prosecutorial functions are classified according to the level of jurisdiction:

- First Instance (*Primo grado*): Tribunal judges and prosecutors.
- Second Instance (*Secondo grado*): Court of Appeal judges and general prosecutors.
- Legitimacy (*Legittimità*): Judges and prosecutors serving at the Supreme Court of Cassation.

Coming finally to leadership positions, we may observe that these may be of two kinds:

- Semi-Directive Functions (*Funzioni semidirettive*): Heads of specific court sections (e.g., President of the Family Law Division of a Tribunal or Court of Appeal, etc.).
- Directive Functions (*Funzioni direttive*): Heads of judicial offices, such as Presidents of Tribunals or Courts of Appeal, or Chief Prosecutors (*Procuratori della Repubblica*).

6. Judicial Selection and Career under Recommendation No. R (2010) 12: A Comparative Reading through ECtHR and CJEU Case-Law

Recommendation No. R (2010) 12 of the Council of Europe[41] devotes an entire section of Chapter VI ("Status of the Judge") to the issues of judicial selection and career progression.

In light of the possible models outlined in the preceding paragraphs, Articles 44–48 of the 2010 Recommendation express a clear preference for removing executive influence from the appointment of judges. The general principle is stated explicitly in Article 46: "The authority taking decisions on the selection and career of judges should be independent of the executive and legislative powers. With a view to guaranteeing its independence, at least half of the members of the authority should be judges chosen by their peers."

This standard has acquired renewed significance in view of recent developments in several Central and Eastern European states, where constitutional amendments and legislative reforms have expanded executive control over judicial appointments. The Venice Commission, the European Court of Human Rights and the European Commission have repeatedly emphasised that formal compliance with independence guarantees is insufficient: independence must be ensured in practice, not merely proclaimed in statutory or constitutional texts.[42]

Article 47 is, by contrast, clearly conceived as an exception to the principle laid down in Article 46. In other words, the Recommendation appears to treat as exceptional those systems in which "the constitutional or other legal provisions prescribe that the head of state, the government or the legislative power take decisions concerning the selection and career of judges." This is precisely where a serious difficulty arises for many countries of Central and Eastern Europe, where historical "tradition" has not always been grounded in democratic constitutionalism, and where the constitutions and laws adopted after the fall of the Berlin Wall—often influenced by Common Law models—have produced appointment systems and career-management mechanisms that leave judges insufficiently protected against attempts at undue political influence.

It is true that Article 47 seeks, in its second part, to propose certain expedients aimed at limiting the discretionary power of the executive (or legislative) authorities. This is particularly evident in the suggestion to establish "an independent and competent authority drawn in substantial part from the judiciary (without prejudice to the rules applicable to councils for the judiciary contained in Chapter IV)." Yet it is precisely the absence of detailed and reliable information on the actual practice followed that gives rise to concern. The author of this essay is well aware—having visited nearly all the European countries concerned—that between the letter of the law and the daily reality of judicial work, between official speeches and private conversations, there often lies an abyss.

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[41] See: https://www.giacomooberto.com/coe_raccomandazione_2010/coe_rec_2010_12_e.htm.

[42] ECtHR, *Baka v. Hungary* (2016).

The concerns expressed in Article 47 resonate strongly with the recent case-law of the European Court of Human Rights, which has repeatedly emphasised that judicial independence must be guaranteed in fact as well as in law.[43]

In *Baka v. Hungary* (Grand Chamber, 2016), the Court held that the premature termination of the mandate of the President of the Supreme Court, following criticism of governmental reforms, constituted a violation of Articles 6 and 10 ECHR. The judgment underscored that structural arrangements allowing the political branches to influence judicial careers—even indirectly—pose a systemic threat to judicial independence.

Similarly, in *Guðmundur Andri Ástráðsson v. Iceland* (Grand Chamber, 2020), the Court articulated a three-step test for assessing whether flaws in judicial appointment procedures undermine the right to a "tribunal established by law" under Article 6 §1 of the ECHR. The Court stressed that even seemingly technical irregularities in appointment processes may compromise the legitimacy of the judiciary if they reveal a pattern of executive interference or disregard for procedural safeguards.

More recently, in *Grzęda v. Poland* (Grand Chamber, 2022), the Court found a violation of Article 6 where a judge was removed from the National Council of the Judiciary before the expiry of his mandate, in the context of broader reforms increasing governmental control over judicial appointments. The Court reiterated that judicial councils must operate free from political pressure, and that judges must enjoy effective guarantees against arbitrary removal from bodies involved in judicial governance.

Poland itself subsequently offered the Court of Justice of the European Union, in 2025, an opportunity to affirm the principle according to which "If a court of last instance fails to satisfy the requirements of independence, impartiality and establishment by law, the decision it delivers must be regarded as non-existent, where such a consequence is indispensable in order to safeguard the primacy of Union law."[44] Of course, the manner in which judges are appointed is always a fundamental element in assessing the degree of judicial independence within any given legal system.

According to the Court, although the organisation of the judiciary and the judicial system does not fall within the competences of the European Union, national systems entrusted with the application of European law—pursuant to the principle of loyal cooperation between judicial bodies, as derived from Article 19(2) TEU—remain subject to scrutiny as regards compliance with Article 47 of the Charter of Fundamental Rights of the European Union (the so-called "Charter of Nice"). That provision requires the establishment of appropriate institutional mechanisms safeguarding the autonomy and independence of the judiciary, as well as the availability of effective remedies capable of challenging decisions delivered by a body that is merely formally judicial, yet dependent upon (and even directly appointed by) the political authorities.[45]

For several years now, in the case-law of the Court of Justice of the European Union, the independence of a judicial body from the political authorities has been regarded as an indispensable precondition for effective judicial protection.[46]

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[43] On this subject see MOLBAEK-STEENSIG and QUEMY, *Judicial Independence and Impartiality: Tenure Changes at the European Court of Human Rights*, in *European Journal of International Law*, 2023, 34, pp. 581 ff.

[44] CJEU, 4 September 2025, Case C-225/22, *R S.A. vs T sp. z o.o.*, judgment delivered upon a request for a preliminary ruling from the *Sąd Apelacyjny w Krakowie* (Court of Appeal, Kraków). For a commentary of this judgement see KHABIRPOUR, NABIL and SMITH, *Who Guards the Guardians? On Lawful Tribunals, Primacy, and Effective Judicial Protection*, in *European Human Rights Law Review*, 2026, 2, pp. 222 ff., available also at SSRN: https://ssrn.com/abstract=6712038, or http://dx.doi.org/10.2139/ssrn.6712038; for the Italian legal doctrine see DE CESARE, *Sentenza resa* a non iudice *e cedevolezza del giudicato: ultime da Lussemburgo*, in *Giurisprudenza italiana*, 2026, pp. 1539 ff.

[45] Court of Justice of the European Union, 4 September 2025, Case C-225/22, *R S.A. vs T sp. z o.o.*

[46] On this point, see CJEU, 16 February 2022, Case C-157/21, *Poland v Parliament and Council*, para. 198; CJEU, 20 April 2021, Case C-896/19, *Repubblika*, para. 64. In the literature, see CANZIAN, *Independence of Judges and the Prohibition of Regression in the* Repubblika *Judgment*, in *Quaderni costituzionali,* 2021, pp. 715 ff. In the sense that a judicial body may be considered independent only insofar as it adjudicates "on the basis of the law," without yielding to external pressures in order to satisfy the desiderata of other actors, see BARRON, *Judicial Independence: Origins and Contemporary Challenges*, in *Roger Williams University Law Review*, 2020, 25, pp. 10 ff.; VOETEN, *International*

Already in 2023, in the well-known *Krajowa Rada Sądownictwa* case, the Court of Justice held that the Review Chamber which had submitted the request for a preliminary ruling could not be regarded as an independent, impartial and law-established court, owing to the manner in which its members were appointed. Consequently, it lacked the requisite standing to refer a question for a preliminary ruling.[47]

Accordingly, the decisions delivered by that body are not binding upon lower courts, which must, where necessary, disapply the national provision requiring them to comply with such decisions, and must, if need be, depart even from the interpretation upheld by the Constitutional Court that reaffirms their binding force in breach of Articles 19 TEU and 47 of the Charter of Nice.

This entails that decisions which have become final and are delivered by a judicial body that does not constitute an independent, impartial and law-established court within the meaning of Union law are incapable of generating, for the successful party, any legitimate expectation worthy of protection—a fortiori where that party is itself a public authority. The authority of *res judicata* cannot be invoked in order to prevent a lower court from treating as *tamquam non esset* a determination that is only formally irrevocable, "where such a consequence is indispensable […] to safeguard the primacy of Union law."[48]

Two years before the *Krajowa Rada Sądownictwa* case, the CJEU held that a national court must (where this is needed to uphold the primacy of EU law) regard as null and void "an order by which a court, ruling at last instance and comprising a single judge, has dismissed [an] action" if, *inter alia*, the procedure for appointing that judge gives "rise to reasonable doubt in the minds of individuals as to the independence and impartiality of the judge concerned, with the result that that order may not be regarded as being made by an independent and impartial tribunal previously established by law, within the meaning of the second subparagraph of Article 19(1) TEU." [49]

7. Selection and Career of Judges under the Principles Elaborated by the United Nations

The *United Nations Basic Principles on the Independence of the Judiciary*, adopted by the General Assembly in 1985,[50] devote a specific provision (see Article 10) to the issues of "Qualification, selection and training."

According to this provision, "Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement that a candidate for judicial office must be a national of the country concerned shall not be considered discriminatory."

Clearly, no position is taken on the delicate question of the bodies responsible for selecting and appointing judges. Moreover, no guidance is offered as to what should be regarded as the most appropriate methods. In 1985, as indeed today, the United Nations were fully aware that very different systems are known and practised across the world. Not all of them are capable of securing appointments for the most qualified candidates, nor of ensuring full compliance with the principle

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Judicial Independence, in DUNOFF and POLLACK (eds), *Interdisciplinary Perspectives on International Law and International Relations: The State of the Art*, Cambridge, 2012, pp. 421 ff.

[47] See CJEU, 21 December 2023, Case C-718/21, *Krajowa Rada Sądownictwa*.

[48] See CJEU, 4 September 2025, Case C-225/22, *R S.A. vs T sp. z o.o.*, para. 68.

[49] See Court of Justice of the European Union, Judgment of 6 October 2021, in the Case C-487/19, *W.Ż.*, request for a preliminary ruling from the *Sąd Najwyższy* (Supreme Court, Poland). Importantly, *W.Ż.* concerned a horizontal relationship between the national court doing the assessing and the court being assessed (both were different chambers of the same court), whereas, in *R S.A. vs T sp. z o.o.*, the relationship was vertical (the national court doing the assessing was hierarchically inferior to the court it was assessing).

[50] See https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-independence-judiciary.

of judicial independence. Nevertheless, the sole recommendation contained in the Basic Principles is that such methods should "safeguard against judicial appointments for improper motives".

Regrettably, no explanation is provided as to what constitutes an "improper motive." However, taking into account the other principles set out in the document and its overall spirit, it appears evident that "improper motives" are those capable of undermining judicial independence.

No rules are laid down either in the above-mentioned provisions concerning judicial career.

If it is true that the 1985 Basic Principles have remained unchanged for more than forty years, despite the efforts made by the International Association of Judges, in coordination with various United Nations bodies, to update the text,[51] it is equally true that those provisions have been complemented by an extensive body of soft-law instruments developed by the Office of the UN Special Rapporteur on the Independence of Judges and Lawyers.

As a very recent and significant example, the current UN Special Rapporteur, Professor Margaret Satterthwaite, submitted her report to the UN Human Rights Council (Sixty-second session, 15 June–10 July 2026, Agenda item 3) on the subject of *Principles for Judicial Appointments*.[52]

This highly significant document sets out principles designed to ensure that judicial selection and appointment reinforce independence and impartiality and sustain public confidence in the administration of justice. Drawing on international human rights law, regional norms and jurisprudence, and guidance from authoritative expert bodies, the principles establish minimum safeguards applicable across a range of institutional models.

The document organises these principles into three areas.

First, the principles address the institutional prerequisites for judicial selection and appointment, including the need for a clear legal framework, independent and impartial selection authorities, and strict limits on provisional or temporary appointments that may expose judges to undue influence.

Second, the principles articulate the criteria governing individual judicial selection, emphasising merit as the central standard within broader systems designed to ensure diversity. Selection processes should rely on objective and pre-established criteria, incorporate integrity screening and impartiality safeguards, and promote diversity and representativeness so that the judiciary reflects the society it serves.

Third, the principles set out process guarantees. These include transparency at key stages of the procedure, equality of access to judicial office, structured and fair assessment methods, reasoned decision-making, timely completion of appointments and assumption of office, effective mechanisms for challenging irregularities, and opportunities for meaningful civil-society participation.

Particular attention is devoted to the role of Judicial Councils. The report underscores that "common strategies to make appointment processes more politically permeable include rewriting appointment rules to allow for political considerations, [and] changing the composition of

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[51] See e.g. the international conference on the subject "Contemporary Challenges on the Independence of Judges and Lawyers from a Global Perspective," organised by the Office of the United Nations Special Rapporteur on the Independence of Judges and Lawyers, in co-operation with the Konrad-Adenauer-Stiftung, the New York City Bar Association and the International Association of Judges (IAJ), New York, 9-11 February 2019: https://www.iaj-uim.org/iuw/contemporary-challenges-on-the-independence-of-judges-and-lawyers-from-a-global-perspective-int-l-conference-in-ny/. For an opinion of the UN Special Rapporteur of that time on the need to update the 1985 Basic Principles, see DIEGO GARCÍA-SAYÁN, *The UN Special Rapporteur on the Independence of Judges and Lawyers*, https://www.google.com/search?q=%E2%80%9CContemporary+Challenges+on+the+Independence+of+Judges+and+Lawyers+from+a+Global+Perspective%2C%E2%80%9D&sca_esv=3469be4bb7334307&rlz=1C1FKPE_itIT1195IT1195&sxsrf=APpeQnuIcph5lo8c6GkOYKa2on4TkQLhuQ%3A1785341972469&ei=FChqapCdHM2L9u8Pu6-VuAc&start=0&sa=N&sstk=AU9db-AQiWj12FoUGJARuOma2-7J_z0sQufolSwHwrVmY5apBFXdwg6lssDumWV4DNtcsffF4Rak-1wBjvWOYBm2xqAHvYqTRCad7FvqiF16CqVOpOdLqdDsqJh6zKykrgCg&ved=2ahUKEwiQ98iQpfiVAxXNhf0HHbtXBXc4ChDy0wN6BAguEAQ&biw=1707&bih=791&dpr=1.5#fpstate=ive&vld=cid:34b8443f,vid:qyCdXcctPYk,st:0.

[52] *See* UN SPECIAL RAPPORTEUR ON THE INDEPENDENCE OF JUDGES AND LAWYERS, *A/HRC/62/43: Principles for judicial appointments - Report of the Special Rapporteur on the independence of judges and lawyers*, 2026, https://docs.un.org/en/A/HRC/62/43.

appointment bodies such as judicial councils to increase the influence of elected or appointed political actors."[53]

Furthermore, the documents stresses that a "Good practice is to entrust judicial selection processes to an independent body, such as a judicial council. The independence of this body should be guaranteed by law and in practice. Its composition, mandate and functioning should be such as to shield it from undue influence or political capture. The nature of the independent body should inspire public confidence that judicial careers are governed by objective, merit-based considerations rather than partisan or other extraneous concerns."[54]

A meaningful warning is also provided, namely that "the existence of a council is not, in itself, a safeguard. Its composition, mandate, internal allocation of powers, and actual practice must be such that it is not amenable to capture, whether political, economic or criminal. Dominance by political actors or their appointees, including where executive officials hold positions *ex officio*, creates opportunities for strategic leverage over selection. The safeguard depends on whether the council has a genuinely decisive role in selection, rather than serving as procedural cover for political influence. This is especially critical where final appointment decisions are not subject to judicial review, in which case the independence of the selection body and the availability of review of its proposals become central guarantees against arbitrariness."[55]

The document also takes a clear position in stating that "councils should be composed of a majority of judges elected by their peers, ensuring the widest possible representation across court levels and reflecting diversity (including with regard to gender and region). At the same time, a mixed composition, including non-judicial members, may be justified, not to dilute independence, but to reduce the risks of corporatism, 'cronyism' and the perception that judicial governance is a closed system. (…) Accordingly, executive involvement in the selection of council members should be avoided. Where, as in a number of systems, the minister of justice or another government official sits *ex officio* to facilitate institutional dialogue, the role of such an official should be strictly limited so as not to enable the risk of domination by the political majority. The minister should neither vote nor participate in decisions concerning selection and promotion."[56]

8. The Universal Charter of the International Association of Judges. General Framework of the Charter

In the current process of internationalising the principles on the independence of the judiciary, an increasingly significant role is played by the International Association of Judges (IAJ).[57]

The IAJ—founded in Salzburg (Austria) in 1953—is a professional, non-political international organisation bringing together national associations of judges, rather than individual judges, approved for admission by the Central Council. The principal aim of the organisation is to safeguard the independence of the judiciary, an essential requirement of the judicial function and a guarantee of human rights and freedom.[58] The IAJ currently encompasses 93 national associations or representative groups from the five continents.[59]

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[53] *See* UN SPECIAL RAPPORTEUR ON THE INDEPENDENCE OF JUDGES AND LAWYERS, *A/HRC/62/43: Principles for judicial appointments - Report of the Special Rapporteur on the independence of judges and lawyers*, 2026, p. 4.

[54] *See* UN SPECIAL RAPPORTEUR ON THE INDEPENDENCE OF JUDGES AND LAWYERS, *A/HRC/62/43: Principles for judicial appointments - Report of the Special Rapporteur on the independence of judges and lawyers*, 2026, p. 8.

[55] *See* UN SPECIAL RAPPORTEUR ON THE INDEPENDENCE OF JUDGES AND LAWYERS, *A/HRC/62/43: Principles for judicial appointments - Report of the Special Rapporteur on the independence of judges and lawyers*, 2026, pp. 8 f.

[56] *See* UN SPECIAL RAPPORTEUR ON THE INDEPENDENCE OF JUDGES AND LAWYERS, *A/HRC/62/43: Principles for judicial appointments - Report of the Special Rapporteur on the independence of judges and lawyers*, 2026, p. 9.

[57] All relevant events concerning the International Association of Judges are published in its official web site: https://www.iaj-uim.org. Further information (in Italian) on the Universal Charter, a comprehensive bibliography on the subject of judicial independence and a full version of this contribution is available in OBERTO, *Un nuovo statuto per un nuovo giudice*, in *Contratto e impresa/Europa*, 2019, pp. 49 ff., also available on the following web page: https://www.giacomooberto.com/Oberto_Un_nuovo_statuto_per_un_nuovo_giudice_2017.htm.

[58] According to Article 3 of IAJ's Statutes, "1. The objects of the Association are as follows:

During its seventy-three years of existence, the IAJ has consistently deployed its efforts to safeguard judicial independence, as a cornerstone of the rule of law, addressing delicate cases and situations in all parts of the world.

Between 1993 and 1995, the different regional components of the IAJ adopted charters on the statute of judges, namely:

(a) the "Judges' Charter in Europe," adopted by the European Association of Judges (European Regional Group of the IAJ) in 1993;[60]

(b) the "Judges' Charter in Ibero-America" (*Estatuto del Juez iberoamericano*) adopted in 1995 by the Ibero-American Group of the IAJ;[61]

(c) the "Judges' Charter in Africa," adopted in 1995 by the African Group of the IAJ.[62]

Some years later, in 1999, after an extensive period of reflection, the Central Council of the IAJ, meeting in Taiwan, adopted a Universal Charter of the Judge.[63]

As of 1999, substantial work on the minimum standards of judicial independence was undertaken by the IAJ. This was particularly true of the First Study Commission, which, after 2000, examined virtually all subjects pertaining to judicial independence.[64] In addition, the four Regional Groups and the Central Council adopted a number of resolutions which, by referring to these standards, gradually established a compilation of rules specific to the organisation and, at the same time, contributed to the creation of an international *corpus juris* on the status of judges worldwide.

The need for a new Universal Charter became evident in light of the many changes occurring in recent years: the number of IAJ member countries increased from 43 (in 1999) to 87 (in 2017), bringing new experiences, legal systems and traditions; at the same time, several international organisations issued charters, recommendations and declarations on matters relating to judicial status.[65]

(a) to safeguard the independence of the judicial authority, as an essential requirement of the judicial function and guarantee of human rights and freedom.

(b) to safeguard the constitutional and moral standing of the judicial authority.

(c) to increase and perfect the knowledge and the understanding of Judges by putting them in touch with Judges of other countries, and by enabling them to become familiar with the nature and functioning of foreign organizations, with foreign laws and, in particular, with how those laws operate in practice.

(d) to study together judicial problems, whether these are of regional, national or universal interest, and to arrive at better solutions to them."

[59] The list of the IAJ current member associations is available at: https://www.iaj-uim.org/member-associations/.

[60] See https://www.iaj-uim.org/iuw/wp-content/uploads/2013/01/Statuto-Giudice-EAJ.pdf.

[61] See https://www.iaj-uim.org/iuw/wp-content/uploads/2013/01/Estatuto-del-juez-iberoamericano.pdf.

[62] See https://www.iaj-uim.org/iuw/wp-content/uploads/2013/06/Statuto-Giudice-AFR.pdf.

[63] See https://www.iaj-uim.org/universal-charter-of-the-judges/.

[64] All documents and conclusions issued by the IAJ's 1st Study Commission are available on the following web page: https://www.iaj-uim.org/study-commissions/.

[65] See e.g. the following documents:

- UN Basic Principles on the independence of the judiciary, adopted in 1985, http://www.ohchr.org/Documents/Publications/Handouts/Handout4-2.pdf;
- Recommendation 94/12 of the Committee of ministers of the Council of Europe, elaborated in 1994 and updated in 2010 (Recommendation CM/Rec(2010)12 "On judges: independence, efficiency and responsibilities", https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CM/Rec(2010)12&Language=lanEnglish&Ver=original&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383&direct=true;
- European Charter on the statute for judges, elaborated by the Council of Europe in 1998, https://rm.coe.int/16807473ef;
- Various opinions of the Consultative Council of European Judges (CCJE) since 2001 and particularly the "Magna Carta of European judges," which is a compilation of the above mentioned opinions, drafted in 2010, https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE-MC(2010)3&Language=lanEnglish&Ver=original&Site=&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864&direct=true;
- Bangalore Principles on judicial conduct (2002) and the resolution 2006/23 of the Economic and Social Council of the UN, http://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf; https://www.unodc.org/pdf/corruption/corruption_judicial_res_e.pdf;

Accordingly, during the IAJ meeting in Foz do Iguaçu in 2014, the Central Council approved the proposal of the Presidency Committee to update the Charter adopted in Taiwan in 1999. At the Barcelona meeting in 2015, a working group was established with the task of preparing a draft for a new Charter.[66] The draft Universal Charter was discussed within the working group during the meeting in Mexico City in October 2016 and during the spring meetings of the Regional Groups in April and May 2017. The Presidency Committee examined and validated the proposals in June 2017. The formal adoption took place during the annual meeting of the Central Council on 14 November 2017 in Santiago de Chile.[67]

This is the general framework within which the new Universal Charter of the Judge was drafted, discussed and adopted by the IAJ.

The document consists of nine articles, addressing the following subjects:

(1) General Principles;
(2) External Independence;
(3) Internal Independence;
(4) Recruitment and Training;
(5) Appointment, Promotion and Assessment;
(6) Ethics;
(7) Discipline;
(8) Remuneration, Social Protection and Retirement;
(9) Applicability of the Charter.

The main new features of the 2017 Charter, compared with its 1999 version, may be summarised as follows:

- Devoting an entirely new chapter to Internal Independence;
- Recognising and emphasising the role played by Councils for the Judiciary;
- Focusing on the principles of tenure and security of office;
- Prohibiting the so-called "reappointment procedures";
- Recognising the pivotal role of initial and in-service training activities;
- Emphasising the importance of judicial efficiency;
- Enucleating a series of autonomous principles of judicial ethics, highlighting the role of Judicial Codes of Conduct;
- Recognising the applicability of the main rules of the Charter not only to all persons exercising judicial functions, including non-professional judges, but also to members of the public prosecution service.

- Report of the Venice Commission on the independence of the judicial system (study n. 494/2008), http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)004-e;
- Kiev recommendations on the independence of the judiciary in Eastern Europe, adopted in 2010, http://www.osce.org/odihr/KyivRec;
- Opinions of the European Network of Councils for the Judiciary (ENCJ), http://www.encj.eu/index.php?option=com_content&view=category&layout=blog&id=24&Itemid=98&lang=en.

Other organizations, such as the Commonwealth Judges and Magistrates Association, have adopted as well standards aiming at assuring the independence of the judiciary (see in particular the "Victoria Falls Declaration" in 1994, or the statute of Commonwealth judges in 2013). For a full list of such declarations *see* OBERTO, *Un nuovo statuto per un nuovo giudice*, in *Contratto e impresa/Europa*, 2019, pp. 49 ff., also available on the following web page: https://www.giacomooberto.com/Oberto_Un_nuovo_statuto_per_un_nuovo_giudice_2017.htm.

[66] The working group was composed of Mr Christophe Régnard, President of the IAJ (France), President of the working group; Mr Giacomo Oberto, Secretary-General of the IAJ (Italy); Ms. Janja Roblek (Slovenia); Ms. Julie Dutil (Canada); Ms. Allyson Duncan (USA); Mr Walter Barone (Brazil); Mr. Mario Morales (Porto Rico); Ms. Marie Odile Thiakane (Senegal); Mr Scheik Kone (Mali). To this work was also associated Mr Günter Woratsch, Honorary President of the IAJ (Austria), in his quality of President of the Council of Honorary Presidents.

[67] The current text of the Charter is available on the following web page: https://www.iaj-uim.org/iuw/universal-charter-of-the-judge-2017/, in the five official languages of the IAJ: English, French, German, Spanish and Italian.

9. Rules of the Universal Charter of the International Association of Judges on Judicial Selection, Appointment and Career

Selection (or recruitment) and appointment of judges are addressed in two distinct articles of the Universal Charter (Articles 4-1 and 5-1, respectively), as in many legal systems they may result from different procedures, often carried out by different bodies.

Article 4-1 provides that "the recruitment or selection of judges must be based only on objective criteria, which may ensure professional skills; it must be done by the body described in Article 2.3. Selection must be done independently of gender, ethnic or social origin, philosophical and political opinions, or religious beliefs."

Article 5-1 further states that "the selection and each appointment of a judge must be carried out according to objective and transparent criteria based on proper professional qualification. The selection should be carried out by the independent body defined by Article 2-3 of this Charter, or an equivalent body."

It is therefore clear that, as far as selection (or recruitment) and appointment of judges are concerned, both procedures must be guided by the same basic principles: they must be "based only on objective criteria, which may ensure professional skills" (Article 4-1), or "carried out according to objective and transparent criteria based on proper professional qualification" (Article 5-1). Both procedures must be conducted by, or under the supervision of, the Council for the Judiciary or another independent body described in Article 2-3.

With regard to judicial career, reference may be made to Article 5-2, which provides that: "When it is not based on seniority, promotion of a judge must be exclusively based on qualities and merits verified in the performance of judicial duties through objective and contradictory assessments. Decisions on promotions must be pronounced in the framework of transparent procedures provided for by the law. They may occur only at the request of the judge or with his consent. When decisions are taken by the body referred to in Article 2-3 of this Charter, the judge whose application for a promotion has been rejected should be allowed to challenge the decision."

Another subject related to judicial career is the assessment of judicial activity. Article 5-3 states that: "In countries where judges are evaluated, assessment must be primarily qualitative and be based on the merits, as well as on the professional, personal and social skills of the judge; as for promotions to administrative functions, it must be based on the judge's managerial competencies. Assessment must be based on objective criteria, which have been previously made public. Assessment procedure must involve the concerned judge, who should be allowed to challenge the decision before an independent body. Under no circumstances can judges be assessed on the basis of judgments rendered by them."

A further relevant rule concerning judicial career is the provision conferring upon the Council for the Judiciary the power to organise not only recruitment, training, appointment and discipline, but also the promotion of judges. Article 2-3, paragraph 5, of the Charter states that: "The Council for the Judiciary must be endowed with the largest powers in the fields of recruitment, training, appointment, promotion and discipline of judges."

10. Councils for the Judiciary in the Universal Charter of the International Association of Judges

It is self-evident, after what has been explained in the previous paragraphs, that a crucial role in the selection and appointment process of judges must be played by the Councils for the Judiciary or by equivalent bodies.

Article 2-3 of the Charter provides for as follows:

"Article 2-3 – Council for the Judiciary

In order to safeguard judicial independence a Council for the Judiciary, or another equivalent body, must be set up, save in countries where this independence is traditionally ensured by other means.

The Council for the Judiciary must be completely independent of other State powers.

It must be composed of a majority of judges elected by their peers, according to procedures ensuring their largest representation.

The Council for the Judiciary can have members who are not judges, in order to represent the variety of civil society. In order to avoid any suspicion, such members cannot be politicians. They must have the same qualifications in terms of integrity, independence, impartiality and skills of judges. No member of the Government or of the Parliament can be at the same time member of the Council for the Judiciary.

The Council for the Judiciary must be endowed with the largest powers in the fields of recruitment, training, appointment, promotion and discipline of judges.

It must be foreseen that the Council can be consulted by the other State powers on all possible questions concerning judicial status and ethics, as well as on all subjects regarding the annual budget of Justice and the allocation of resources to the courts, on the organisation, functioning and public image of judicial institutions."

The opening statement on the subject of the Councils for the Judiciary marks a clear difference with the existing international documents in the field of judicial independence. Actually, the IAJ Charter provides that "In order to safeguard judicial independence a Council for the Judiciary, or another equivalent body, must be set up, save in countries where this independence is traditionally ensured by other means" (see Article 2-3, Para. 1).

A comparison with Article 26 of the Recommendation No. R 2010/12 of the Council of Europe may be interesting. Whereas the latter document only says that Councils of Justice are organs "that seek to safeguard the independence of the judiciary and of individual judges and thereby to promote the efficient functioning of the judicial system," with no recommendation or prescription to set up such bodies, the new IAJ Universal Charter is closer to other and more advanced European developments. For example, Resolution No. 1685 (2009) of the Parliamentary Assembly of the Council of Europe on "Allegations of politically motivated abuses of the criminal justice system in Council of Europe member states"[68] calls on Germany to "consider setting up a system of judicial self-administration, taking into account the federal structure of the German judiciary, along the lines of the judicial councils existing in the vast majority of European states, as a matter of securing the independence of the judiciary in future."

As far as the composition of such bodies is concerned, the Universal Charter clearly states that they "must be composed of a majority of judges elected by their peers, according to procedures ensuring their largest representation" (Article 2-3, Para. 3). This provision is more advanced than its equivalent within the already mentioned Recommendation No. R 2010/12, according to which (only) "Not less than half the members of such councils should be judges chosen by their peers from all levels of the judiciary and with respect for pluralism inside the judiciary" (see Article 27). The rule about a majority of judges is also enshrined in the already mentioned resolution of the Parliamentary Assembly of the Council of Europe, which invited, among other things, France to "consider restoring a majority of judges and prosecutors within the *Conseil supérieur de la magistrature* or ensuring that the members appointed by political bodies also include representatives of the opposition and making the *Conseil supérieur de la magistrature*'s opinion binding also for decisions concerning prosecutors."

Also Article 13 of the already mentioned "Magna Carta of European Judges" (*CCEJ*) prescribes that "To ensure independence of judges, each State shall create a Council for the Judiciary or another specific body, itself independent from legislative and executive powers, endowed with broad competences for all questions concerning their status as well as the organisation, the functioning and the image of judicial institutions. The Council shall be composed either of judges exclusively or of a substantial majority of judges elected by their peers. The Council for the Judiciary shall be accountable for its activities and decisions."

Another important provision of the Universal Charter approved by the IAJ states that "No member of the Government or of the Parliament can be at the same time member of the Council for

[68] See http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17778&lang=en.

the Judiciary" (Article 2-3, Para. 4). Actually, we know that in some legal systems of countries, belonging to the former Communist Block, the Minister of Justice is at the same time member (or even President) of the Council of Justice: a practice which has already been condemned by the European Court for human rights.[69]

Finally, according to the IAJ Universal Charter, Councils for the Judiciary cannot be merely advisorial bodies, as they "must be endowed with the largest powers in the fields of recruitment, training, appointment, promotion and discipline of judges" (Article 2-3, Para. 5). The reference to "the largest powers" marks the need for a body which actually, instead of only issuing opinions, takes binding decisions on judges' careers.

11. Beyond Judicial Appointments and Careers: Emerging Challenges for the World Judiciary and for the International Association of Judges

In recent years, the world judiciary, judges national associations and the International Association of Judges (IAJ) have been confronted with several unprecedented and rapidly evolving challenges. Rebelliousness, antagonism and extremism have become the defining features of the protracted phase in which we live, generating consensus and producing populist and sovereigntist governments centred on the predominance of the leader rather than on the balance of powers. The rule of law, which until now we had regarded as the framework within which political and institutional debate unfolded, has itself become a matter of contention and is today being called into question within the very systems that once nurtured it.

Today more than ever, Talleyrand's celebrated definition of politics seems remarkably apt: "it is but a particular way of agitating the people before making use of them." ("La politique, ce n'est qu'une certaine façon d'agiter le peuple avant de s'en servir"). The populist movements currently in power in various countries across the world have understood this mechanism all too well, and the instrument for agitating the populace has been found in the identification of alleged 'dangers' said to loom over society, often associated with specific groups of people (the Jews, a century ago; migrants, today). As recently denounced by the enlightened voice of one of the greatest living writers, Salman Rushdie, "It is not migrants who deepen ever-widening conflicts. The so-called 'foreigners' are the public sacrifice consumed by the power of terror. The aim of authoritarian regimes is the control of wealth to be apportioned among the few: hence the deliberate excavation of social divisions and the systematic obstruction of direct dialogue."[70]

In this political and social framework, a growing number of jurisdictions have witnessed disciplinary actions being used as instruments of political pressure on judges. The ECtHR's judgment in *Baka v. Hungary* remains a landmark decision condemning such practices.[71] A further and more troubling development is the use of criminal accusations and prosecutions directly against judges. The case of Turkey—particularly the prosecution of Murat Arslan, President and founder of the local association YARSAV—is highly significant.[72] More recently, more or less the same pattern has been replicated in the persecution of the Tunisian Association of Judges and its President, Anas Hmedi.[73]

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[69] See e.g. ECtHR, *Volkov vs Ukraine* (2013), http://hudoc.echr.coe.int/eng?i=001-115871; ECtHR, *Gerovska Popčevska v. the former Yugoslav Republic of Macedonia* (2016), http://hudoc.echr.coe.int/eng?i=001-159769.

[70] See VISETTI, *Salman Rushdie: "Il mondo è uno, non lasciamoci dividere dai fascismi*," https://naufraghi.ch/salman-rushdie-il-mondo-e-uno-non-lasciamoci-dividere-dai-fascismi/?print=print.

[71] ECtHR, *Baka v. Hungary* (2016).

[72] For a comprehensive collection of documents on this issue, see the following sections of the IAJ web site: https://www.iaj-uim.org/iuw/platform-for-an-independent-judiciary-in-turkey/, https://www.iaj-uim.org/iuw/solidarity-news-and-documents-about-yarsav/, https://www.iaj-uim.org/iuw/free-murat-arslan/. Murat Arslan was released on 18 October 2026, after ten years of unjust imprisonment, having served his sentence in full; see https://eaj.iaj-uim.org/murat-arslan-is-free/.

[73] For a comprehensive collection of documents on this issue, see the following section of the IAJ web site: https://www.iaj-uim.org/iuw/solidarity-news-and-statements-about-tunisia/.

A second challenge arises from digitalisation and algorithmic risks. Digital case-allocation systems, AI-assisted decision-making and algorithmic profiling raise new concerns regarding transparency, accountability and internal independence.[74]

Finally, judges increasingly face public scrutiny, online harassment and coordinated campaigns aimed at influencing judicial behaviour. Pressure exerted through media and social media has become one of the most insidious threats to judicial independence.

In recent years, judges have been exposed to forms of pressure originating not from traditional institutional actors but from the media ecosystem and, in particular, from social media platforms. These pressures—ranging from sensationalist reporting to coordinated online harassment—pose significant risks to both the independence and the perceived impartiality of the judiciary.

The phenomenon commonly referred to as *trial by media* has evolved into a decentralised and participatory process in which judicial decisions are scrutinised, debated and often distorted in real time. Social media platforms have become "arenas for justice and judgment, sometimes blurring the lines between seeking truth and perpetuating harassment," with consequences for privacy, reputation and institutional trust.[75] This dynamic affects judges directly: media narratives may frame judicial decisions as politically motivated, incompetent or biased, thereby generating public pressure capable of influencing the conditions under which judges operate.

Beyond diffuse criticism, judges increasingly face organised online harassment. The Global Judicial Integrity Network warns that misuse of social media "may have an impact on the public perception of all judges and confidence in judicial systems generally."[76] Similarly, scholars warn that online attacks can create a "chilling effect" on judicial behaviour.[77]

A landmark case illustrating these dynamics is *Danileț v. Romania*, in which the European Court for Human Rights held that disciplinary sanctions imposed on a judge for social-media posts violated Article 10 ECHR, noting that judicial speech on matters of public interest "enjoys a high degree of protection."[78]

In several jurisdictions, media outlets have been used to delegitimise judges involved in politically sensitive cases. Polish scholars describe how, in Poland, state-aligned media have repeatedly targeted judges critical of judicial reforms, portraying them as "political actors seeking to undermine the will of the nation," or as "enemies of the nation and agents of foreign interests."[79]

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[74] See EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE, *CEPEJ European Ethical Charter on the use of artificial intelligence (AI) in judicial systems and their environment*, 2018, https://www.coe.int/en/web/cepej/cepej-european-ethical-charter-on-the-use-of-artificial-intelligence-ai-in-judicial-systems-and-their-environment. On this issue see as well the international conference organised by CEPEJ in Baku, in 2019, on the subject "Artificial Intelligence and Human Rights:" https://www.iaj-uim.org/iuw/artificial-intelligence-and-human-rights-international-conference-in-baku-azerbaijan/ and the international conference organised by the International Association of Judges in Cape Town, in 2024, on the subject "Artificial Intelligence: its Impact on the Judicial Activities," https://www.iaj-uim.org/iuw/international-conference-in-cape-town-2024/, https://www.iaj-uim.org/iuw/international-conference-cape-town-2024/; see also OBERTO, *Artificial Intelligence and Judicial Activities: The Position of the European Commission for the Efficiency of Justice (CEPEJ)*, https://www.iaj-uim.org/iuw/wp-content/uploads/2024/09/Giacomo_OBERTO_ARTIFICIAL_INTELLIGENCE_AND_JUDICIAL_ACTIVITIES.pdf.

[75] See LEV-ON, *The Complexities of Trial by Social Media: Examining the Connection Between Self-exposure and Harassment*, in GIES (ed.), *Trial by Media: Participatory Justice in the Digital Media Age*, Cham, 2025, pp. 103 ff.

[76] UNODC, *Non-Binding Guidelines on the Use of Social Media by Judges*, Vienna, 2019, https://track.unodc.org/track/uploads/res/import/international_standards/social_media_guidelines/Social_Media_2020.pdf, p. 2.

[77] PENNEY, *Internet Surveillance, Regulation, and Chilling Effects Online: A Comparative Case Study*, in *Internet Policy Review*, 2017, volume 6, issue 2, https://policyreview.info/articles/analysis/internet-surveillance-regulation-and-chilling-effects-online-comparative-case; JAHN, *Social Media Communication by Judges: Assessing Guidelines and New Challenges for Free Speech and Judicial Duties in the Light of the Convention*, in ELÓSEGUI, MIRON and MOTOC (eds), *The Rule of Law in Europe: Recent Challenges and Judicial Responses*, Berlin, 2021, pp. 137 ff. On the peculiar relations between the so called "chilling effect" and the protection of judicial independence, see PECH, *The concept of chilling effect. Its untapped potential to better protect democracy, the rule of law, and fundamental rights in the EU*, Brussels, 2021, pp. 20 ff.

[78] ECtHR, *Danileț v. Romania*, Grand Chambre Judgment of 12 June 2025, paras. 78–82. The case also documents the intense public and media scrutiny directed at the judge, demonstrating how online reactions can escalate into pressure capable of affecting judicial independence.

[79] SADURSKI, *Poland's Constitutional Breakdown*, Oxford, 2019, pp. 142, 145.

The participatory nature of social media blurs the line between legitimate public debate and improper pressure. As some scholars note, judges must navigate "the blurred lines between their private and public personas," since online interactions may expose them to targeted criticism or harassment.[80] This exposure may discourage judges from engaging publicly or from deciding controversial cases without fear of backlash, thereby creating a chilling effect on judicial behaviour. The cumulative effect of media pressure, online harassment and coordinated campaigns constitutes a tangible threat to judicial independence.

The UN Special Rapporteur on the Independence of Judges and Lawyers has expressed concern "about challenges to judicial independence linked to digital technologies, especially disinformation, online harassment and threats," underlying that "digital platforms are well-established public squares," where online attacks are "carried out as part of broader efforts to undermine the independence of the judiciary." As a consequence, the UN Special Rapporteur "will seek to support individual judges who face online abuse, highlight patterns and identify and disseminate best practices for combating such abuse while upholding human rights."[81]

In fact, the response to such phenomena cannot come from individuals alone. As the recent Italian experience during the 2026 constitutional referendum on the judiciary demonstrates, a well-coordinated action by the national judges' association, in co-ordination with citizens' movements and associations, the International Association of Judges and the Office of the UN Special Rapporteur on the Independence of Judges and Lawyers can make a decisive difference. In that case, such coordinated action overturned a shameful, defamatory and hostile campaign directed by the government against the judiciary, aimed at introducing reforms that would have substantially limited judicial independence.[82]

The judiciaries of the world must therefore be able to confront these new and demanding challenges, fully aware that the way forward lies in the hard and sustained work of national associations, in close cooperation with the IAJ and with those international bodies and organisations

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[80] BOSKOVIC and NOVAKOVIC, *Freedom of Expression of Judges and the Influence of Social Media*, in *Bratislava Law Review*, 2025, pp. 135 ff.

[81] UN SPECIAL RAPPORTEUR ON THE INDEPENDENCE OF JUDGES AND LAWYERS, *Reimagining Justice: Confronting Contemporary Challenges to the Independence of Judges and Lawyers. Report of the Special Rapporteur on the independence of judges and lawyers, Margaret Satterthwaite*, A/HRC/53/31, 2023, https://docs.un.org/en/A/HRC/53/31, pp. 7 ff.

[82] A constitutional referendum on the reform of the judicial system was held in Italy on 22 and 23 March 2026. Its purpose was to amend the part of the Constitution of the Italian Republic concerning the Judiciary. Voters were asked whether they approved a constitutional law that would modify the Constitution in several respects, most notably by introducing the constitutional separation of career paths between judges and public prosecutors, dividing the High Council of the Judiciary (CSM) into two distinct bodies, selecting their members by sortition rather than by traditional election, and establishing a so-called "High Disciplinary Court" to oversee disciplinary proceedings (instead of the currently existing Disciplinary Section of the CSM). The government-initiated constitutional bill was decisively rejected by popular vote. During the referendum campaign, several members of the government implicitly acknowledged that the true aim of the reform was to curtail the independence of the judiciary by reducing the powers of judges and prosecutors and by increasing political control over the justice system. The chief of staff to the Minister of Justice even stated that the reform was intended to "get the judiciary out of the way," describing the courts as "firing squads" (*sic*), in reference to investigations and trials involving politicians, mostly from the far-right majority, as well as to judicial decisions concerning migrants and other sensitive matters. Both the Central Council of the IAJ and the General Assembly of the EAJ issued, over the months immediately preceeding the referendum, several highly critical assessments of the proposed reform. On 23 October 2025, the UN Special Rapporteur on the Independence of Judges and Lawyers, Prof. Margaret Satterthwaite, addressed a letter to the Italian Government concerning the proposed constitutional amendments on the separation of the careers of judges and prosecutors. In her communication, the Special Rapporteur expressed detailed concerns regarding the reform. She concluded by urging a careful review of the proposed amendments to ensure that they strengthen judicial independence and safeguard individuals' rights to a fair and public hearing by a competent, independent and impartial tribunal. All referred documents are available on the following web page: https://www.iaj-uim.org/iuw/italian-constitutional-referendum-on-the-judiciary-rejects-the-governments-anti-judge-reform/. On this issue see as well OBERTO, *Le rôle de l'Association nationale italienne de la magistrature (ANM) dans le référendum sur la (prétendue) réforme de la justice en Italie*, 2025, https://www.giacomooberto.com/Oberto_ANM_et_r%C3%A9f%C3%A9rendum.pdf.

that are actively engaged in safeguarding what remains of the rule of law in this modern "age of predators."[83]

[83] On the current "age of predators," see the DA EMPOLI, *The Hour of the Predator: Encounters with the Autocrats and Tech Billionaires Taking Over the World*, London, 2025.