

Judicial Governance: Is there a one-size- fits-all model?

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This policy brief focuses on judicial governance, which has a central role in the functioning of democracies. It also discusses the different models of judicial governance represented in EU member states, the challenges they currently face, and the model represented in North Macedonia.

Introduction

Judicial independence is one of the key elements of the rule of law and is one of the basic fundamental values on which the European Union (EU) is based. Considering the separation of powers and the system of checks and balances, the judiciary acts as a corrective to the executive branch and the actions of the political parties comprising the government. Hence, the courts should protect the rule of law, thus contributing to a democratic society. Additionally, judges are tasked with the obligation and the responsibility to guarantee and enforce the rights of citizens. Their rights cannot be enforced if the courts do not operate independently and adhere to the Constitution and laws. The model of judicial governance is intended to ensure that these two functions of the judicial branch are correctly carried out by independent judges.

In that search for a model of judicial governance which would provide sufficient safeguards for an independent judiciary, most European countries, including North Macedonia, have turned to judicial self-governance by establishing a strong judicial council, which has been promoted by the EU. Although this model might seem adequate to achieve its intended purpose on paper, there are many examples of countries where it has failed to do so. This resulted in the judiciary being separated but not independent from the other branches of power, which led to a lack of judicial ownership over the process of judicial governance.¹ Hence, European countries have explored other models of judicial governance to achieve genuine judicial independence and increase citizens' trust in the court system.

Judicial governance: definition and models

Judicial governance may be defined as the set of institutions, rules, and practices in a jurisdiction that organise, facilitate, and regulate the judicial branch's function of applying the law to concrete cases.² This includes oversight of the quality of the court system, allocation of cases to judges, appointment, promotion, and dismissal of judges, imposing disciplinary sanctions on judges, as well as allocation of resources and judicial budget, among others.

¹ Denis Preshova, "Separate but Not Independent: The (In)Compatibility of the Judicial Culture with Judicial Self-Governance in North Macedonia" (Institute for Democracy "Societas Civilis" – Skopje, April 2022), https://idscs.org.mk/wp-content/uploads/2022/05/B5_Separate-but-not-Independent-The-InCompatibility-of-the-Judicial-Culture-with-Judicial-Self-Governance-in-North-Macedonia.pdf, p. 7.

² Pablo Castillo-Ortiz, "The politics of implementation of the judicial council model in Europe" (European Political Science Review, 2019), <https://bit.ly/3QAbkDI>, p. 503.



There are several different models of judicial governance that have been identified in the EU. Three main models are identified as follows: the judicial council model, the courts service model, and the Ministry of Justice model.³ When looking at the map of the EU, currently, the most frequent model of judicial governance is the judicial council model (otherwise known as the South European Council model), followed by the courts service model (otherwise known as the North European Council model). At the same time, the least represented is the Ministry of Justice model.⁴ However, there are other models of judicial governance beyond these, which have been identified worldwide. These include a model where an administrative entity manages the judiciary, such as a Director of Courts,⁵ a Supreme Court model,⁶ as well as more decentralised models where the role of court presidents and chief justices is key in regulating and overseeing the courts.⁷ Nevertheless, the classification of judicial governance as concrete models is difficult because many countries within the EU and worldwide exhibit differing characteristics, thus making it impossible to identify one of the aforementioned models in those countries. Such systems can be classified as either *sui generis* or hybrid models.

The following analysis covers the three main models of judicial governance identified in the EU, providing examples of member states for each model to illustrate the challenges and shortcomings they face.

- Judicial council model

The most frequent model of judicial governance in the EU entails the establishment and functioning of an institution independent from the other branches of power—a judicial council. Such an institution bears powers over judicial careers regarding their appointments and promotions, but it may also impose disciplinary sanctions on judges. In addition, it is also responsible for the management of the judiciary. Those powers cover certain aspects, such as the management of the computer software used by the judiciary, receiving citizens' complaints related to the justice system, and management of judicial workloads.⁸

Suppose the judicial council performs its role without allowing any interference from other state institutions or political party figures. In that case, it may be considered the most comprehensive model of judicial governance, albeit not without shortcomings. In general, judicial councils are regulated by national constitutions in order to preserve their independence and prevent frequent changes of their regulation by the executive and legislative branches in case it is prescribed by law. However, such an arrangement also entails a risk. If a genuine need arises to change the composition or role of a judicial council, it would be very difficult to achieve the political consensus required to amend the constitutional provisions regulating it.

A frequent issue concerning judicial councils is their actual independence from the other branches of power. Depending on which institutions appoint the members of the judicial council and whether they have the power to dismiss them, the council might be influenced by the government, the parliament, or the president of the country. Since it bears many powers of judicial governance, it may be pressured by influential members of political parties that hold office to adopt certain decisions regarding judicial careers.

Moreover, there may be judicial corporatism, which occurs when judges on the council make decisions collectively, preventing non-judge council members from expressing their views. This internal influence differs from politicisation, which is an external form of influence over the council. In both cases, the judiciary's overall functioning is jeopardised, and the democratic values of the country may deteriorate, as seen in the countries analysed below.

3 Pablo Castillo-Ortiz, "Judicial governance and democracy in Europe" (SpringerBriefs in Law, 2023), https://doi.org/10.1007/978-3-031-20190-5_1, p. 2.

4 Map of EU member states, with the parameter of judicial governance model applied. Judiciary Hub (Democracy Reporting International gGmbH), Available at: <https://judiciaryhub.eu/map/>.

5 Yair Sagy, Guy Lurie, and Amnon Reichman, "A history of the administration of courts in Israel" (Journal of Israeli History, 2022), <https://www.tandfonline.com/doi/full/10.1080/13531042.2023.2235784>, p. 356.

6 Gloria Orrego Hoyos, "Judicial power and high courts in Latin America" (Hauser Global Law School Program, New York University School of Law, 2021), https://www.nyulawglobal.org/globalex/Judicial_Power_High_Courts_Latin_America.html.

7 Castillo-Ortiz, "Judicial governance and democracy in Europe", p. 6.

8 Ibid, p. 3.

The Italian Judicial Council represents one of the first examples of this model.⁹ The High Council of Magistracy counts thirty members, twenty of which are elected by their peers, while ten are elected by the Parliament. The members of this body cannot be dismissed other than through a disciplinary process, and there is a lack of possibility of immediate re-election. The High Council is tasked with powers regarding recruitment, promotion, transfers and disciplining magistrates, selection and appointment of court presidents, adopting the rules for creating work schedules and drafting opinions on legislation. The 2022 reform¹⁰ of the judiciary in Italy tackles serious concerns about the politicisation of the High Council. On the one hand, the members of the Council elected by the Parliament were selected based on party affiliations rather than merits, opening the door to the risk of politicisation.¹¹ On the other hand, there have been concerns about the influence of professional associations of magistrates on decision-making in the High Council. Namely, the magistrates were previously grouped based on their membership in those associations. Hence, they could informally influence decision-making through coordinated voting within these groups and vote trading between various groups, ultimately leading to judicial corporatism.¹² These trends have attributed to the low level of perceived judicial independence among Italian citizens.¹³ The new rules introduced in 2022 transformed the composition and the manner of election of the High Council, aimed at reducing the influence of political parties and professional associations. The candidates for members of the Council no longer need to collect a minimum of twenty-five signatures from colleagues of the same judicial district. Thus, they do not need to be supported by an association of their peers, and they cannot be members of political parties during their tenure. However, this reform is relatively recent, having been implemented during the elections of Council members in September 2022 for magistrate members elected by their peers and in January 2023 for non-magistrate members elected by Parliament.¹⁴ Thus, it remains to be seen whether it will yield successful results for the independence of this body or if further efforts will be necessary.

In Poland,¹⁵ the National Council of the Judiciary of Poland is composed of twenty-five members, including fifteen judges, four MPs, two senators, one representative of the president of Poland, the first president of the Supreme Court, the president of the Supreme Administrative Court and the Minister of Justice. This body has the power to select and recommend candidates for judicial positions and promotions, to perform professional evaluation of judges, to reassign judges to other posts, to adopt ethical rules and supervise their compliance, as well as to comment on legislative drafts, including on the budget and other legal acts. In 2018, the mandates of the Council members were terminated, and Parliament introduced a new model for appointing judges to the Council.¹⁶ The new Council members were appointed by the previous ruling coalition in Parliament and are perceived as representing and defending their backing party's political interests over the judiciary's independence and integrity.¹⁷ Since 2018, the Council's actions have led to breaches of the European Convention on Human Rights and EU law, contributing to judges' vulnerability to external pressures and affecting their independence and impartiality. Consequently, judges have engaged in various activities to defend themselves from political pressure, forming judicial associations and initiating cases before the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU) regarding their status and broader issues.¹⁸

Following the 2023 parliamentary elections,¹⁹ the new government decided to address the rule of law crisis and reverse the reform of the Council member election process.²⁰ However, this effort may be hindered by the Constitu-

9 Country profile: Italy, Judiciary Hub (Democracy Reporting International GmbH), Available at: <https://judiciaryhub.eu/country/italy/>.

10 Francesco Palermo, "Judicial Reform in the Midst of Crisis," Legal Tribune Online, August 2, 2022, <https://www.lto.de/recht/justiz/j/judicial-system-reform-italy-overlong-proceedings-judges-independence/>.

11 Simone Benvenuti and Davide Paris, "Judicial Self-Government in Italy: Merits, Limits and the Reality of an Export Model" (Cambridge University Press, March 6, 2019), <https://www.cambridge.org/core/services/aop-cambridge-core/content/view/6802EA8FD4BCFF18FA18DC35B3D2361C/S2071832200023191a.pdf/judicial-self-government-in-italy-merits-limits-and-the-reality-of-an-export-model.pdf>, p. 1657.

12 Simone Benvenuti, "The Politics of Judicial Accountability in Italy: Shifting the Balance" (Cambridge University Press, July 4, 2018), <https://bit.ly/3VY1aht>, p. 383.

13 "2023 Rule of Law Report - Country chapter on the rule of law situation in Italy" (European Commission, 2023), https://commission.europa.eu/system/files/2023-07/29_1_52611_coun_chap_italy_en.pdf, p. 3.

14 *Ibid.*, p. 4.

15 Country profile: Poland, Judiciary Hub (Democracy Reporting International gGmbH), Available at: <https://judiciaryhub.eu/country/poland/>.

16 Christian Davies, "Hostile takeover: How law and justice captured Poland's courts" (Freedom House, 2018), <https://freedomhouse.org/report/analytical-brief/2018/hostile-takeover-how-law-and-justice-captured-polands-courts>, p.5.

17 *Ibid.*, p.6.

18 Claudia Matthes, "Judges as activists: How Polish judges mobilise to defend the rule of law" (East European Politics, 2022), <https://doi.org/10.1080/21599165.2022.2092843>, p. 473-477.

19 Piotr Maciej Kaczyński and Dariusz Dybka, "Liberal Poland is back: The impact on Europe of the 2023 Polish vote," Royal Institute Elcano (blog), February 13, 2024, <https://www.realinstitutoelcano.org/en/analyses/liberal-poland-is-back-the-impact-on-europe-of-the-2023-polish-vote/>.

20 "Polish Government approves changes to remove political influence over Judicial Council," Notes from Poland, February 21, 2024, <https://notesfrompoland.com/2024/02/21/polish-government-approves-changes-to-remove-political-influence-over-judicial-council/>.

tional Tribunal, which is perceived as politicised and lacking independence,²¹ and by the President of Poland, who is hostile to reforming the judiciary and annulling the changes he endorsed.²² One of the first steps of this reform was the issuing of a non-binding resolution by the Parliament, which declared the National Council of the Judiciary to lack independence.²³ Subsequently, it concluded the first phase of adopting a law reinstating the procedure whereby the majority of members of the National Council of the Judiciary are elected in secret and direct elections by their peers.²⁴ The analysis of the judicial council model through Poland's experience shows that although the judicial council is established as an independent body on paper, the reality does not reflect such independence. Political parties may exert influence on the judicial council by appointing its members, exposing judges to pressure, leading to subjective judgments, and ultimately deteriorating the rule of law.

Such political influence is also present in Bulgaria's Supreme Judicial Council.²⁵ It previously consisted of two colleges: judicial and prosecutorial. The Judicial College had fourteen members: six elected by judges from among their ranks, six elected by the National Parliament, and two ex officio members—the president of the Supreme Court of Cassation and the president of the Supreme Administrative Court. The Group of States against Corruption of the Council of Europe (GRECO) has raised concerns about the appointment process for members of the Judicial College of the Council, warning that the significant number of members appointed by the national parliament²⁶ could politicise decision-making and undermine the Council's independence. These members tend to act in line with governmental preferences, raising the question of whether the Council's independence exists only on paper while, in practice, it is captured by the executive.²⁷ Pursuant to this remark, the European Commission (EC) recommended that Bulgaria change the composition of the Council to include more judges elected by their peers. Initially, the government informed the EC that making such a change would require a constitutional amendment, which could not be easily achieved in the political context at the time.²⁸ However, to remedy this situation, the Parliament adopted the amendments to the Constitution of Bulgaria in December 2023.²⁹ These amendments provide for the division of the Supreme Judicial Council into two separate entities, the Supreme Prosecutorial Council and the Supreme Judicial Council, which are intended to exercise their powers independently. The Supreme Judicial Council retained its powers related to appointments, promotions, transfers and dismissals of judges, and it is also tasked with the responsibility of periodically certifying judges, imposing disciplinary penalties, resolving organisational matters relating to court activities, approving the court system's draft budget and overseeing the budget's implementation. The aforementioned remarks on the appointment of the members of the Judicial Council are addressed with the constitutional amendments, which change its composition. There will be fifteen members in the Council, eight of whom will be elected directly by judges, five members will be elected by the National Parliament, and the two ex-officio members will remain the same. It remains to be seen whether these amendments will indeed increase the independence of the Supreme Judicial Council in such a manner for it to be able to exercise its powers in the interest of the citizens and the country and not to comply with the demands of ruling political parties.

Another interesting example of the judicial council model is Slovakia,³⁰ where this institution has been criticised for judicial corporatism for almost two decades. Currently, it consists of eighteen members, with nine judges elected by their peers. The remaining members are appointed by the president of the republic, the government, and the National Council, creating a balance between judges and non-judges on the Council. Hence, it should increase the

21 Tomasz Tadeusz Konciewicz, "Why Europe must never forget about the Polish Constitutional Court: On the importance of European institutional memory" *Verfassungsblog* (blog), July 10, 2023, <https://verfassungsblog.de/why-europe-must-never-forget-about-the-polish-constitutional-court/>, p. 19.

22 Rob Schmitz, "Poland's judiciary was a tool of its Government. New leaders are trying to undo that," *National Public Radio* (blog), February 26, 2024, <https://www.npr.org/2024/02/26/1232834640/poland-courts-judicial-reform-donald-tusk>.

23 "Polish Parliament votes for court reform resolution," *Reuters*, December 21, 2023, <https://www.reuters.com/world/europe/polish-parliament-votes-court-reform-resolution-2023-12-21/>.

24 "Polish Parliament Passes Bill to Reverse Previous Government's Reform of Judicial Council," *Notes from Poland* (blog), April 13, 2024, <https://notesfrompoland.com/2024/04/13/polish-parliament-passes-bill-to-reverse-previous-governments-reform-of-judicial-council/>.

25 Country profile: Bulgaria. *Judiciary Hub* (Democracy Reporting International GmbH), Available at: <https://judiciaryhub.eu/country/bulgaria/>.

26 "Fourth evaluation round: Corruption prevention in respect of members of parliament, judges and prosecutors, Second Compliance Report Bulgaria" (GRECO, January 17, 2020), <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of-16809981f2>, p. 4.

27 Radosveta Vassileva, "The Polish Judicial Council v the Bulgarian Judicial Council: Can you spot the difference?" *Verfassungsblog* (blog), September 22, 2018, <https://verfassungsblog.de/the-polish-judicial-council-v-the-bulgarian-judicial-council-can-you-spot-the-difference/>, p. 2.

28 "2023 Rule of Law Report—Country chapter on the rule of law situation in Bulgaria" (European Commission, 2023), https://commission.europa.eu/system/files/2023-07/10_1_52568_coun_chap_bulgaria_en.pdf, p. 8.

29 Iana Fremer, "Bulgaria: New constitutional amendments introduce judicial reform and abolish requirement for senior public officials to hold only Bulgarian citizenship," *Law Library of Congress*, January 31, 2024, <https://bit.ly/4aQItCN>.

30 Country profile: Slovakia. *Judiciary Hub* (Democracy Reporting International GmbH), Available at: <https://judiciaryhub.eu/country/slovakia/>.

public control of the judiciary and prevent the judge members from overpowering their colleagues in the Council. Its tasks include proposing candidates eligible to be appointed judges to the president of the republic, as well as candidates to be appointed chairman and deputy chairman of the Supreme Court and the Supreme Administrative Court, deciding on the assignment and transfer of judges, proposing candidate judges who should represent the republic in international judicial bodies to the government, commenting on a draft budget of the courts, issuing the principles of judicial ethics, in cooperation with the bodies of judicial self-administration, participating in the management and administration of the courts, adopting measures to strengthen public confidence in the judiciary, etc.

Before introducing the Judicial Council, the executive held the powers related to judicial careers. Thus, there was great hope that with its work, this institution would relieve the judges of external influences and politicisation. However, once deemed the solution to that problem, this initiative went in a different direction than expected. It contributed to the rise of judicial elites and reduced democratic accountability.³¹ Prior to the constitutional amendments in 2020,³² there were no regulations governing the balance between judges and non-judges on the Council. This led to a predominance of judges: initially, they constituted two-thirds of all members in the first term, increasing to 16 members in the second term.³³ Consequently, judge members had the majority votes in the Council, which led to decisions made based on their interests rather than quality and impartial decisions made in the interests of the entire judiciary and, ultimately, the citizens of Slovakia. While this issue has been tackled with the constitutional amendments, there are still some remaining concerns that have been emphasised by the EC. Namely, the prerequisites for the dismissal of non-judge members of the Council are still not regulated by law, which enables an environment where they might be removed from office prematurely and arbitrarily. The EC has made a recommendation, which has been reiterated in 2023, that the members of the Judicial Council need to be subject to sufficient guarantees of independence regarding their dismissal, considering the European standards on the independence of judicial councils.³⁴ However, Slovakia has not yet introduced these legal amendments, arguing that the absence of such regulations has not been exploited in practice. Moreover, achieving the constitutional majority required to adopt such amendments appears impossible in the current political context.³⁵

- Courts service model

While the courts service model also entails the presence of a separate institution that manages the judiciary as in the judicial council model, the main difference between these two models is that the courts services' powers are mostly related to court administration and management. In contrast, its powers over judicial careers are much more limited. The courts service model envisages an independent intermediary organisation whose functions are focused on administration (supervision of judicial registry offices, caseloads, flow rates, the promotion of legal uniformity, quality care, etc.), court management (housing, automation, recruitment, training, etc.), and budgeting of the courts.³⁶

Accordingly, the courts services have a limited role in the appointment and promotion of judges, as well as in imposing disciplinary sanctions on judges. In the countries that have adopted this model of judicial governance, such roles are vested in independent organs, such as commissions, that function independently from the court service. Hence, it could be argued whether this model is a separate model in itself or a hybrid one encompassing elements

of the judicial council model combined with other characteristics. In addition, considering that the court service model does not have all the powers of the judicial council, its effectiveness can be questioned. The decision-making power regarding judicial careers is arguably the most important aspect of judicial governance influencing the overall independence of the judiciary; thus, an adequate regulation of that issue is necessary.

31 Samuel Spáč, Katarína Šipulová, and Marína Urbániková, "Capturing the Judiciary from Inside: The Story of Judicial Self-Governance in Slovakia" (Cambridge University Press, March 6, 2019), <https://bit.ly/3zluall>, p. 1741.

32 Peter Čuroš, "Panopticon of the Slovak Judiciary – Continuity of Power Centers and Mental Dependence" (Cambridge University Press, October 27, 2021), <https://bit.ly/3zK47dX>, p. 1278-1279.

33 Simona Farkašová, "The Constitutional Reform of the Judicial Council in the Slovak Republic from the European Comparative Context" (Bucharest Academy of Economic Studies, June 2022), <https://tribunajuridica.eu/arhiva/An12v2/1%20Simona%20Farkasova.pdf>, p. 169.

34 "2023 Rule of Law Report—Country chapter on the rule of law situation in Slovakia" (European Commission, 2023), https://commission.europa.eu/document/download/bb-c910bb-df4a-49df-a86e-3b6c7b7ebb83_en?filename=56_1_52633_coun_chap_slovakia_en.pdf, p. 5.

35 "EUROPEAN RULE OF LAW REPORT 2023: Input of the Slovak Republic" (European Commission, July 2023), https://commission.europa.eu/system/files/2023-07/103_1_52820_input_mem_slovakia_en.pdf, p. 2.

36 Michal Bobek and David Kosař, "Global solutions, local damages: A critical study in judicial councils in Central and Eastern Europe" (German Law Journal, 2014), <https://bit.ly/49LBKIM>, p. 1266.

One of the EU member states which has adopted this model is Belgium.³⁷ There, the High Council of Justice represents the courts service, and it is composed of forty-four members, including judges, lawyers, university professors, and civil society representatives, who hold four-year mandates. This institution is tasked with organising examinations, preparing general guidelines for judicial traineeships and continuous training, external oversight on the functioning of the judicial order and receiving initiatives and providing advice for improving the functioning of the justice system. Additionally, there are two disciplinary tribunals and two appeal courts, which are competent for trying judges and other members of the judiciary and are tasked to produce reports on disciplinary cases. The challenge that this model faces in Belgium is connected to the linguistic divide in the country and its political system, which is also reflected in the High Council of Justice and has caused blockages in judicial appointments.³⁸ If not resolved as soon as possible, this issue could affect the functioning of the courts and the quality of justice, as well as lower the public's trust in the court system.

Another EU member state with the same judicial governance model is the Netherlands.³⁹ However, the distribution of responsibility in the judiciary is much more complicated than in Belgium. In the Netherlands, the Council for the Judiciary is composed of three to five members, and it is tasked with the preparation of budgets for the courts, distributing funds among courts, supervising the implementation of budgets, supporting and supervising the operations at the courts, helping to secure the quality of justice, etc. Each court has its own court management board composed of three members, including a court president, who is responsible for adopting internal regulations on working methods, allocating cases, managing cases, daily managing of the courts, deciding on judicial promotions in district and appeals courts, etc. The National Selection Committee comprises six judges and six non-judge members, and it initially selects the candidate judges. At the same time, the Minister of Justice and Security signs the appointment decision, which is also signed by the King. However, judges do not elect judge members of the governing bodies, such as the Council for the Judiciary, which opens room for influence by the executive branch. Currently, the possibility of amending the selection procedure for Council members to limit the influence of the Minister of Justice and Security is being considered.⁴⁰

- Ministry of Justice model

The third model of judicial governance, which is the least represented within the EU member states, is the Ministry of Justice model. It is also very different from the two aforementioned models, with the most notable difference being that the institution responsible for governing the judicial system is the Ministry of Justice, as part of the executive branch rather than an independent institution. In such systems, the Ministry of Justice plays a key role in the appointment and promotion of judges and in the court administration and management.⁴¹ Nevertheless, in the countries where this model has been adopted, there has been an increased influence of the judges in judicial governance as a counter-balance to the prevailing influence of the executive branch.⁴²

While this is the longest-standing model of judicial governance, its main shortcoming is evident. With the Ministry of Justice as a pivotal actor, there is a risk that the ruling political party could exert control over the judiciary, including decisions on judge appointments and dismissals. This could undermine judicial independence, weaken the system of checks and balances, and ultimately contribute to the erosion of the rule of law in the country.

One of the EU member states that has adopted this model of judicial governance is Germany.⁴³ It has consistently opposed the judicial council model because establishing such a council where judges elected by their peers have the majority to decide on judicial careers would be unconstitutional. This is because their administrative mandate

³⁷ Country profile: Belgium. Judiciary Hub (Democracy Reporting International GmbH), Available at: <https://judiciaryhub.eu/country/belgium/>.

³⁸ "Tensions between Dutch and French speakers paralyze the High Council of Justice" La Libre, October 11, 2023, <https://www.lalibre.be/belgique/judiciaire/2023/10/11/les-tensions-entre-neerlandophones-et-francophones-paralysent-le-conseil-superieur-de-la-justice-2FINE02IEFGPC4WBXPDTGZDLY/>.

³⁹ Country profile: Netherlands. Judiciary Hub (Democracy Reporting International GmbH), Available at: <https://judiciaryhub.eu/country/netherlands/>.

⁴⁰ "2023 Rule of Law Report - Country chapter on the rule of law situation in the Netherlands" (European Commission, 2023), https://commission.europa.eu/system/files/2023-07/44_1_52625_coun_chap_netherlands_en.pdf, p. 5.

⁴¹ Bobek and Kosař, "Global Solutions, Local Damages: A Critical Study in Judicial Councils in Central and Eastern Europe", p. 1265.

⁴² Castillo-Ortiz, "Judicial governance and democracy in Europe", p. 4.

⁴³ Country profile: Germany. Judiciary Hub (Democracy Reporting International GmbH), Available at: <https://judiciaryhub.eu/country/germany/>.

would not be derived from the German people.⁴⁴ Within this model, the federal Ministry of Justice is responsible for administering federal courts, while competent ministries oversee courts at the state level. In addition, the Ministry of Justice is also responsible for judicial appointments, including the appointments of court presidents. Furthermore, there are appointment councils established at the level of the state, which participate in the appointment process by preparing a written opinion containing a judge's personal and professional aptitude. Similarly, at the federal level, an appointment committee is composed of the competent federal minister, state ministers, and members selected by the Bundestag. This committee appoints federal court judges, but its composition raises concerns about the potential politicisation of the process, which could undermine judicial independence.

While the influence of the executive branch is to a greater extent in Germany, there are still possibilities for judicial participation in judicial governance. There are councils of judges, which participate in all questions relevant to the professional lives of judges, except in the appointment process. However, the powers of such councils depend on the state because they are not regulated at the federal level. Although there are other practices that have been set up in Germany to prevent the undermining of judicial independence and the deterioration of the rule of law,⁴⁵ the judicial associations in the country have continued to call for increased judicial involvement through establishing a judicial council. Thus far, there is no movement in that direction aiming at reducing or ending the influence of the government on the judiciary and the appointment of judges to top positions due to their connection to the big political parties.⁴⁶

Another EU member state which has adopted the Ministry of Justice model is the Czech Republic.⁴⁷ In this country, a major reform of the selection process in the judiciary has been introduced with the amendments to the Act on Courts and Judges, which entered into force on 1 January 2022.⁴⁸ These amendments introduced a new system of selection of judges and court presidents, with the aim of correcting the previous selection method, where the court presidents handpicked judges. In such a process, the court presidents displayed different levels of transparency, and it provided grounds for favouritism and selection based on criteria other than merits, ultimately endangering the independence of appointed judges.

Following the 2022 reform, selection committees now choose judicial candidates and court presidents through open competitions starting in January 2022. The Ministry of Justice is responsible for presenting judicial candidates and recommending high and regional court presidents to the president of the republic for appointment. Furthermore, the ministry appoints district court presidents, makes decisions on promotions and secondments, and prepares the judiciary's budget. The Ministry also initiates disciplinary proceedings together with the court presidents, and disciplinary panels can impose disciplinary sanctions on judges. There are also judicial boards which provide opinions on the promotion and secondment of judges, the court's case load, and the system of case assignment. While relatively recent, the aforementioned reform seems to limit the influence of the court presidents on the judicial selection and reduces the risk of internal pressure on the judges and the risk of diminishing judicial independence. Nevertheless, the new appointment system is deemed impractical by presidents of several courts in the Czech Republic because they are not allowed to be members of the selection committees. Thus, they concluded that transparency prevailed over practicality and that new reforms should aim in that direction.⁴⁹ Such opinions run counter to efforts to combat favouritism and subjective decision-making within the judiciary, issues that persist in other aspects of judicial governance in the Czech Republic. Specifically, in a case concerning disciplinary action against an enforcement officer, the ECtHR highlighted significant flaws in the Czech criminal justice system, including lack of impartiality and judicial independence, as well as non-transparent judge selection processes.⁵⁰ This underscores how subjective relationships and opinions can also influence disciplinary proceedings. It suggests that a more comprehensive reform of the judiciary may be necessary to ensure objective and impartial decision-making.

44 Fabian Wittreck, "German judicial self-government—institutions and constraints" (German Law Journal, 2018), <https://www.cambridge.org/core/journals/german-law-journal/article/german-judicial-selfgovernment-institutions-and-constraints/6COEDAD79794CC792C5E7D34DFA14CD1>, p. 1946.

45 Anne Sanders and Luc von Danwitz, "The Polish judiciary reform: Problematic under European standards and a challenge for Germany" *Verfassungsblog* (blog), March 28, 2017, <https://verfassungsblog.de/the-polish-judiciary-reform-problematic-under-european-standards-and-a-challenge-for-germany/>, p. 3 - 4.

46 "Liberties Rule of Law Report 2024" (Civil Liberties Union for Europe, 2024), https://dq4n3btxm8c9.cloudfront.net/files/oj7hht/Liberties_Rule_Of_Law_Report_2024_FULLL.pdf, p. 248.

47 Country profile: Czech Republic. Judiciary Hub (Democracy Reporting International GmbH), Available at: <https://judiciaryhub.eu/country/czechia/>.

48 "Fourth evaluation round: Corruption prevention in respect of members of parliament, judges and prosecutors, Second Compliance Report Czech Republic" (GRECO, June 16, 2023), <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of-1680ab9d42>, p. 6.

49 "Liberties Rule of Law Report 2023" (Civil Liberties Union for Europe, 2023), https://dq4n3btxm8c9.cloudfront.net/files/-3lkvi/Liberties_Rule_of_Law_Report_2023_EU.pdf, p. 138.

50 ECtHR, "Case of Grosam v. the Czech Republic (A.no. 19750/13)", June 1, 2023, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-225231%22%7D>.

Perceived independence of the judicial governance models

While a universally ideal judicial governance model for every country in the world, or even only in the EU, cannot be identified, the selected models in the countries above may be assessed according to their contribution to the perceived independence of the judiciary in those countries. Effective and independent justice systems are essential for the application and enforcement of EU law and the fundamental values of the EU, as well as for building the trust of the citizens in the judiciary. One informative tool of the EU that measures the parameters of efficiency, quality, and independence of the justice systems in the EU member states is the EU Justice Scoreboard.⁵¹ Its purpose is to aid the member states in improving the effectiveness of their national justice systems by providing data on the abovementioned parameters.

According to the latest data from the EU Justice Scoreboard⁵² regarding the countries analysed earlier, the general public perceives the courts and judges in Germany as the most independent, while Bulgaria is seen as having the least independent judiciary, with Poland and Italy closely competing for similar rankings. The Czech Republic is somewhere in the middle of this range, while Belgium and the Netherlands are perceived as having a slightly less independent judiciary than Germany. This data leads to the conclusion that the citizens of the countries having a courts service model or a Ministry of Justice model of judicial governance believe their judicial systems are more independent in comparison to those living in countries with a judicial council model.

Model of judicial governance in North Macedonia

As a candidate country for accession, North Macedonia must comply with the EU's values and fulfil the Copenhagen criteria. This includes respecting the rule of law in the country by establishing public institutions that provide quality services for the citizens and function independently from political influence, with the aim of providing adequate conditions for exercising the citizens' rights. In that sense, a functioning judiciary is essential in upholding those rights, and the chosen model of judicial governance significantly impacts its effectiveness. In North Macedonia, a judicial council was introduced through a series of constitutional amendments on the judiciary adopted in 2005,⁵³ with the institution formally established in 2006. Currently, it comprises fifteen members, of which eight members are judges elected by their peers, three members are elected by the Parliament, and two members are proposed by the president of the Republic of North Macedonia and elected by the Parliament. In contrast, the president of the Supreme Court and the minister of justice are ex officio members of the Judicial Council.⁵⁴ It bears all the powers that characterise this model: monitoring and evaluating the work of judges, appointing, promoting and dismissing judges and presidents of the courts, determining the disciplinary responsibility of judges, deciding on the caseload and acting on petitions and complaints of citizens and legal entities concerning the work of judges, presidents of courts, and courts.

The aim of introducing this model of judicial governance in the country was to create an institution that is isolated from the influence of the executive and legislative branches, and that will make decisions regarding judicial careers and the functioning of the courts in an independent manner. North Macedonia was one of the first candidate countries to introduce this type of reform in the judiciary, and it is deemed to have achieved a high level of alignment of its legal framework with the EU standards on judicial independence.⁵⁵ Nevertheless, it is evident that the functioning of the judicial system has not substantially improved. There have been past allegations of politically motivated appointments, promotions, and dismissals of judges, along with government and political party influence

51 "EU Justice Scoreboard 2024 Shows That Perception of Judicial Independence Has Improved," European Commission, June 11, 2024, https://ec.europa.eu/commission/presscorner/detail/en/ip_24_3164.

52 Figure 51, "2024 EU Justice Scoreboard" (European Commission, June 11, 2024), https://commission.europa.eu/document/download/84aa3726-82d7-4401-98c1-fee04a7d2dd6_en?file-name=2024%20EU%20Justice%20Scoreboard.pdf, p. 45.

53 Amendment XX-XXX to the Constitution of the Republic of Macedonia (Official Gazette of the Republic of Macedonia No. 107/2005).

54 Law on the Judicial Council of the Republic of North Macedonia (Official Gazette of the Republic of North Macedonia No. 102/2019).

55 Denis Preshova, Ivan Damjanovski, and Zoran Nechev, "The effectiveness of the 'European model' of judicial independence in the Western Balkans: Judicial councils as a solution or a new cause of concern for judicial reforms" (Centre for the Law of EU External Relations, T.M.C. Asser Instituut inter-university research centre, 2017), https://www.asser.nl/media/3475/cleer17-1_web.pdf, p. 25.

over high-profile court verdicts.⁵⁶ More recently, the former president of the Judicial Council cited pressure from the judicial business elite as a reason for her resignation.⁵⁷ Subsequently, a series of concerning events in the Judicial Council beginning in December 2022, including the controversial dismissal of the current President of the Council and the administrative court dispute regarding it, have been noted by the EC.⁵⁸ It resulted in the recommendation for the country to revise the legislative framework and overall functioning of the Council in order to protect it from undue political influence and to enhance its transparency and independence. Following this assessment made by the EC, a peer review mission from the EU analysed the work of the Judicial Council and the aforementioned events,⁵⁹ after which it prepared a report on the functioning of the Council with forty short-term and medium-term recommendations for improving its work. Seventeen of those recommendations refer to the improvement of the practice and operation of the Judicial Council itself. They can be implemented without any legislative amendments. In contrast, the others encompass constitutional or legislative amendments and refer to the composition of the Council, the responsibility of the members of the Council and the length of their mandate, the procedure and decision for sanctioning judges, as well as other aspects of judicial governance.⁶⁰ The current members of the Judicial Council have refused to resign despite the criticism of the EU and the civil society organisations in the country,⁶¹ but have expressed their intent to work on implementing the recommendations received from the peer review mission,⁶² by introducing amendments to its Rules of Procedure in that direction.⁶³

Conclusion

This analysis examines eight different EU member states that have adopted one of the three most common models of judicial governance. By reviewing their experiences, it becomes clear that there is no perfect model of judicial governance without shortcomings. Each system has encountered challenges that threaten the rule of law and democracy. Including North Macedonia in this assessment, with its complex issues surrounding the judicial council, reinforces the understanding that no model is flawless. Each country must carefully consider its approach to judicial governance and adapt to current judicial circumstances, aiming to safeguard judicial independence and uphold the principles of the rule of law and democracy in their societies.

56 Ibid.

57 “Crvenkovska with resignation and accusations of influence of the judicial-business elite on the Judicial Council,” Telma TV, November 29, 2022, <https://telma.com.mk/2022/11/29/crvenkovska-so-ostavka-i-obvinuvanja-za-vlijanie-na-sudsko-biznis-ELITATA-vrz-sudskiot-sovet/>.

58 “North Macedonia 2023 Report” (European Commission, 2023), https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_693%20North%20Macedonia%20report.pdf, p. 18.

59 “The peer review mission of the EU for the Judicial Council has ended, measures are expected” 360 Stepeni, September 23, 2023, <https://360stepeni.mk/otsenskata-misija-na-eu-za-sudskiot-sovet-zavrshi-se-ocjekuvaat-merki/>.

60 “The Judicial Council is preparing a new communication strategy,” Kanal 5, April 26, 2024, <https://kanal5.com.mk/sudskiot-sovet-podgotvuva-nova-komunikaciska-strategija/a637440>.

61 “Collective resignation and public election of new members of the Judicial Council are requested by civil society organizations,” Radio Slobodna Evropa, June 9, 2023, <https://bit.ly/4dclpi9>.

62 “The Judicial Council announces the implementation of the recommendations of the EU peer review mission,” Radio Slobodna Evropa, April 26, 2024, <https://www.slobodnaevropa.mk/a/32922184.html>.

63 Rules of Procedure amending and supplementing the Rules of Procedure on the work of the Judicial Council of the Republic of North Macedonia (Official Gazette of the Republic of North Macedonia no. 117/2024).

