



MODELS OF THE SUPREME COURT IN THE EU MEMBER STATES

2

Judiciary



GEORGIAN
YOUNG
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Georgian Young Lawyers' Association

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1. INTRODUCTION

On December 16, 2018, the new version of the Constitution of Georgia came into force. The changes also affected the judiciary. The number of judges of the Supreme Court was set at a minimum of 28;¹ Instead of the President, they are submitted by the High Council of Justice for approval;² Judges of the last instance are elected for life, and the Chairperson is elected by the parliament for a term of 10 years.³ It is useful to assess the strengths and weaknesses of the model by reviewing the practices of member states of the EU with a similar judicial system.

2. RESEARCH METHODOLOGY

The doctrinal method of research has been used in this paper, which involves the analysis of legislation and other primary or secondary sources. The main part of the paper is based on a comparative legal method.

The study covers the following countries: **Latvia, Hungary, Slovakia, Slovenia, and Romania**. They were selected according to several criteria: 1) the form of territorial arrangement, like Georgia, is unitary (which excludes the existence of a Supreme Court at the level of federal entities); 2) Common Courts have no constitutional control function and there is an independent body for constitutional oversight; 3) Common Courts are included in a unified system; 4) There is a body similar to the Council of Justice, established to ensure the independence and efficiency of the Common Courts.

In Latvia, the Supreme Court is the head of the unified system of Common Courts.⁴ The first and second instances are Regional (city) and District Courts.⁵ The Council of Justice functions in the country,⁶ which is a collegial body and participates in the development and improvement of policies and strategies of the judiciary, ensures the organization of the work of the system.⁷

¹ Constitution of Georgia, Article 61, Paragraph 1.

² Ibid.

³ Ibid, Paragraph 3.

⁴ The Constitution of the Republic of Latvia, section 82.

⁵ Ibid.

⁶ On Judicial Power, Section 89¹.

⁷ Ibid.

In Hungary, Common Courts have a four-tier hierarchy: District Courts, Regional Courts, Regional Appellate Courts, and the Curia.⁸ An important role in the system is played by **the self-governing bodies - the National Office for the Judiciary (NOJ) and the National Judicial Council (NJC)**.⁹ They are involved in the administration of the justice system.¹⁰

There are three instances in the Common Courts of **Slovakia**: District, Regional and Supreme Courts.¹¹ The **Judicial Council** is part of the judiciary, which nominates candidates for the President of the Republic and performs other important functions in the judiciary.¹²

In Slovenia, Courts of General Jurisdiction (Common Courts) consist of a Local, District,¹³ Higher Court¹⁴ and the Supreme Court as a court of last instance.¹⁵

The Judicial Council is a state body. According to the Constitution, it is not subject to any other state body¹⁶ and plays an important role in the process of appointing judges.

In Romania, common courts consist of military tribunals, specialized tribunals, district courts (listed, representing the first instance), and appellate courts,¹⁷ with the last instance being **the Supreme Court of Justice and Cassation**.¹⁸ The Superior Council of the magistracy is the guarantor of the independence of the judiciary.¹⁹

⁸ The Judicial system, court of Hungary, website of the Court of Hungary, accessible: <https://birosag.hu/en/judicial-system>, updated: 22.04.2021.

⁹ The Judicial system, National Office for the Judiciary, website of the Court of Hungary, accessible: <https://birosag.hu/en/national-office-judiciary>, updated: 22.04.2021.

¹⁰ Ibid.

¹¹ The Slovak Political and Legal System in a nutshell, Legal Research in Slovakia, website of the Globalex, accessible: <https://bit.ly/3ni9l6y>, updated: 22.04.2021.

¹² Judicial Council of the Slovak Republic, website of Judicial Council, accessible: <http://www.sudnarada.gov.sk/powers/>, powers, updated: 22.04.2021.

¹³ Local and district courts are courts of first instance.

¹⁴ Slovenian Legal System, website of MRVA law firm, accessible: <http://www.mrva.si/en/Courts.html>, updated: 22.04.2021.

¹⁵ Constitution of the Republic of Slovenia, Article 127.

¹⁶ Judicial Council, website of GOV.SI, accessible: <https://www.gov.si/en/state-authorities/other-institutions/judicial-council/>, updated: 22.04.2021.

¹⁷ Judicial systems in Member States – Romania, website of E- JUSTICE, accessible: https://e-justice.europa.eu/content_judicial_systems_in_member_states-16-ro-en.do?member=1, updated: 22.04.2021.

¹⁸ Constitution of Romania, Article 126.

¹⁹ Ibid, Article 133.

3. MODELS OF SUPREME COURTS OF SELECTED STATES

3.1 Latvia

Staffing: Candidates for judges of the Supreme Court of Latvia are introduced to the Seimas by the Chairperson of the Supreme Court, who in turn considers the recommendations²⁰ of the Qualification Committee of Judges.²¹ The legislative body elects judges for life, by a majority of those present.²²

Structure: The supreme body of the Supreme Court is the Senate, which includes all judges of the instance. It includes the Departments of Civil, Criminal and Administrative Law.²³ The Supreme Court system also includes a Disciplinary Court²⁴ consisting of six members elected for a five-year term.²⁵ The Disciplinary Court is staffed by current judges of the Supreme Court.²⁶

Composition: As of 2017, the number of judges is 36.²⁷ The number of judges is determined by the Seimas on the recommendation of the Council of Justice, and the number of judges in each department is determined by the Council of Justice.²⁸ According to the decision of the Council of Justice, there should be 17 senators in the Department of Civil Affairs, 8 in the Department of Criminal Affairs, and 10 in the Department of Administrative Affairs.²⁹

The plenary session of the Supreme Court proposes **the candidacy of the**

²⁰ The Qualification Committee of Judges is a self-governing body of the judiciary that evaluates the professional performance of judges. See Supreme Court, Senate, Judicial Self-government Institutions, Judicial Qualification Committee, website of the Supreme Court, accessible: <http://at.gov.lv/en/tieslietu-padome/tiesnesu-pasparvaldes-institucijas/tiesnesu-kvalifikacijas-kolegija>, updated: 28.04.2021.

²¹ Appointing of Supreme Court Judges Examination of Situation in Individual Countries, accessible: https://www.network-presidents.eu/sites/default/files/Report_Hirsch_eng%5B1%5D.pdf, updated: 28.04.2021.

²² Constitution of Latvia, section 2, Article 24.

²³ Supreme Court Senate, structure, website of the Supreme Court, accessible: <http://www.at.gov.lv/en/par-augstako-tiesu/struktura>, updated: 28.04.2021.

²⁴ The Supreme Court of the Republic of Latvia the senate, Disciplinary Court, p.14, accessible: http://www.at.gov.lv/files/uploads/files/2_Par_Augstako_tiesu/Informativie_materiali/SEN-ATS2020_web_ENG.pdf, updated: 28.04.2021.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Supreme Court Senate, about the Supreme Court, senators, website of the Supreme Court, accessible: <http://www.at.gov.lv/en/par-augstako-tiesu/senatori>, updated: 28.04.2021.

²⁸ Ibid.

²⁹ Ibid.

Chairperson to the Sejm from among its members.³⁰ They will be elected for a term of five years.³¹ The same person can be appointed only twice in a row in this position.³² **The Chairperson of the Supreme Court** directs the activities of the Supreme Court.³³

Council of Justice: The Council has a total of 15 members.³⁴ It includes Chairperson of the Supreme Court, Chairperson of the Constitutional Court, Minister of Justice, Prosecutor General, Chairperson of the Board of Advocates, Chairperson of the Board of Notaries, Chairperson of the Executive Board; The judge elected by the Supreme Court and the six judges elected by the Conference of Judges.³⁵

3.2 Hungary

Staffing: Curia³⁶ judges are appointed by the President of the country.³⁷ The President of the National Office of Justice will nominate the candidates to the President of the Republic.³⁸ The criteria according to which the President of the National Office of Justice selects the candidates are determined by the National Office of the Court.³⁹ Judges will be appointed for life.⁴⁰

Structure: The Curia consists of the Departments of Criminal, Civil and Administrative-Labor Law.⁴¹ Each includes several chambers: Chambers of Hearing Appellate Cases, Chambers of Passing Uniformity Decisions, and Chambers of Issuing Decisions on Principles.⁴²

³⁰ Authority of the Chief Justice, Chief Justice About Supreme Court, website of the Supreme Court, accessible: <http://www.at.gov.lv/en/par-augstako-tiesu/priekssedetajs/priekssedetaja-kompetence>, updated: 28.04.2021.

³¹ Ibid.

³² Ibid.

³³ Ibid.

³⁴ On Judicial Power, Law of the Republic of Latvia, Section 89.1.

³⁵ Ibid.

³⁶ The Supreme Court of Hungary.

³⁷ The Fundamental Law of Hungary, Article 26, Paragraph 2.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Courts of Hungary, Curia of Hungary, website of the Courts of Hungary, accessible: <https://birosag.hu/en/curia-hungary>, updated: 27.04.2021.

⁴² Ibid.

Composition: A total of 83 judges serve in Curia.⁴³ The Department of Administration and Labor includes 8 Judicial Boards, the Civil Department contains 7 Judicial Boards, and the Criminal Department has 3 Judicial Boards.⁴⁴ The cases are heard by a panel of three judges. If this is justified by the extraordinary complexity of the case or the special social significance, the case may be heard by five judges.⁴⁵

The President of the Curia is elected by the National Assembly (legislature) from among the judges on the recommendation of the President of the Republic for a term of nine years,⁴⁶ by a two-thirds majority of the members of the Assembly.⁴⁷

Under the 2012 amendments, two bodies were involved in administering the common court system: **the National Office for the Judiciary (NOJ)**,⁴⁸ which administers the judiciary, and **the National Judicial Council (NJC)**, which oversees the National Office of Justice.⁴⁹

3.3 Slovakia

Staffing: Judges (without a specific time⁵⁰) are appointed and dismissed by the President of the Republic on the proposal of the Judicial Council.⁵¹

Structure: The Supreme Court exercises its jurisdiction through departments and divisions.⁵² There are 4 departments: Criminal, Civil, Commercial and Administrative Law.⁵³

⁴³ Network of the Presidents of the Supreme Judicial Courts of the European Union, Hungary, accessible: <https://www.network-presidents.eu/page/hungary>, updated: 28.04.2021.

⁴⁴ Ibid.

⁴⁵ Act CXXX of 2016 on the Code of Civil Procedure, Article 4, Paragraph 5.

⁴⁶ Ibid, Paragraph 3

⁴⁷ Ibid.

⁴⁸ Courts of Hungary, National Office for the Judiciary, website of the Courts of Hungary, accessible: <https://birosag.hu/en/national-office-judiciary>, updated: 17.04.2021.

⁴⁹ Ibid.

⁵⁰ Network of the presidents of the supreme judicial courts of the European Union, Slovakia, accessible: <https://www.network-presidents.eu/page/slovakia-0>, updated:26.04.2021.

⁵¹ Ibid.

⁵² Legal Research in Slovakia (Including a Brief Description of Slovak Political and Legal system), Hauser Global Law School Program, website of Globalex, accessible: <https://www.nyulawglobal.org/globalex/Slovakia.html#theslovakpoliticalandlegalsystem>, updated: 25.04.2021.

⁵³ The Supreme Court of the Slovak Republic, The Supreme Court divisions, website of the Supreme Court, accessible: <https://www.nsud.sk/the-supreme-court-divisions/>, updated: 26.04.2021.

Composition: There are a total of 90 judges in the Supreme Court, 19 of them in the Criminal Department; In the Civil Department - 29; In the Commercial Department - 14; In the Administrative Department - 28.⁵⁴

The Chairperson of the Supreme Court and their Deputy are appointed by the President of the Republic, from among the judges of the Supreme Court, for a term of five years, on the proposal of the Judicial Council.⁵⁵ The same person may be elected Chairperson/Deputy Chairperson only twice in a row.⁵⁶

Judicial Council: The main authority of the Judicial Council is to resolve the staffing issues of judges.⁵⁷ It consists of 18 members, both judges and non-judges.⁵⁸ 9 members are elected by the judges, while 3-3 members are appointed: the President of Slovakia, the Government, and the Parliament.⁵⁹

3.4 Slovenia

Staffing: When a vacancy appears in the Supreme Court, the candidates apply to the Ministry of Justice, therefore the list of candidates is determined by the Ministry.⁶⁰ The list is sent to the Chairperson of the Supreme Court, who forms a reasoned position on the candidates' suitability for the position.⁶¹ This position, together with the candidate's comments, is sent to the Council of Justice and it decides who will be nominated to the National Assembly (Parliament). The views of the Chairperson of the Supreme Court are recommendatory to the Council.⁶² Judges are appointed for life.⁶³

Structure: The Supreme Court has 6 departments: Criminal Law, Civil Law, Commercial Litigation, Labor and Social Security Disputes, Administrative

⁵⁴ Network of the Presidents of the Supreme Judicial Courts of the European Union, Slovakia, accessible: <https://www.network-presidents.eu/page/slovakia-0>, updated: 26.04.2021.

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ The Judicial Council of the Slovak Republic, accessible: <http://www.sudnarada.gov.sk/the-judicial-council-of-the-slovak-republic/>, updated: 26.04.2021.

⁵⁸ Ibid.

⁵⁹ Constitution of Slovakia, Article 141.

⁶⁰ Network of the Presidents of the Supreme Judicial Courts of the European Union, Slovenia, accessible: <https://www.network-presidents.eu/page/slovenia-0>, updated: 25.04.2021.

⁶¹ Ibid.

⁶² Ibid.

⁶³ Constitution of Slovenia, Article 129.

Hearing and Registry.⁶⁴

Composition: There are currently 31 judges in the Supreme Court.⁶⁵

The Chairperson of the Supreme Court is appointed by the National Assembly of Slovenia on the proposal of the Minister of Justice.⁶⁶ The Minister submits them after hearing the opinions of the Supreme Court and the Judicial Council.⁶⁷

Judicial Council: The Council provides for cooperation between the legislature, the executive, and the judiciary on judicial matters.⁶⁸ Its tasks include protecting the independence of judges and the judiciary, as well as ensuring the accountability, efficiency, and quality of the judiciary.⁶⁹ The main responsibility of the Judicial Council is to select candidates for the judiciary.⁷⁰

The council consists of 11 members, 6 of whom are appointed by the judiciary, and five are elected by Parliament on a proposal from the President.⁷¹

3.5 Romania

Staffing: The third instance in Romania is the Supreme Court of Justice and Cassation.⁷² Applications for Judicial Candidates are reviewed by the Board of Directors of the Supreme Court.⁷³ The next stage is the interview, which is conducted by the Plenum of the Superior Council of Magistracy.⁷⁴ Judges are appointed by the President of the country.⁷⁵ Judges are appointed for life.⁷⁶

⁶⁴ CEPEJ – Organization of the Judicial System of the Republic of Slovenia, p.3, accessible: <https://rm.coe.int/cepej-organisation-of-the-judicial-system-of-the-republic-of-slovenia/168078f5b1>, 25.04.2021.

⁶⁵ Network of the Presidents of the Supreme Judicial Courts of the European Union, Slovenia, accessible: <https://www.network-presidents.eu/page/slovenia-0>, updated: 25.04.2021.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ The Republic of Slovenia, Judicial Council, accessible: <https://www.gov.si/en/state-authorities/other-institutions/judicial-council/>, updated: 25.04.2021.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Constitution of Romania, Article 126.

⁷³ Appointing of Supreme Court Judges Examination of Situation in Individual Countries, accessible: https://www.network-presidents.eu/sites/default/files/Report_Hirsch_eng%5B1%5D.pdf, updated: 28.04.2021.

⁷⁴ Ibid.

⁷⁵ LAW no. 303/2004, On the Statute of Judges and Prosecutors, art 2.

⁷⁶ Constitution of Romania, art 126.

Structure: The Supreme Court of Cassation consists of four divisions: the First and Second Chambers of Civil Cases, the Chamber of Administrative and Tax Cases, and the Chamber of Criminal Cases.⁷⁷

Composition: Currently the court consists of 112 judges. Of these, 26 judges are included in the First Chamber of Civil Cases, 23 - in the Second Chamber, 33 - in the Chamber of Criminal Cases, and 30 - in the Administrative and Tax Chambers.⁷⁸

The President of the Court, the Vice-President and the Head of the Division of the Supreme Court of Cassation and Justice are appointed by the President of Romania, on the proposal of the Superior Council of Magistracy.⁷⁹ In cases provided by law, they have the right to refuse to appoint the nominated candidate.⁸⁰

Superior Council of Magistracy: The Superior Council of Magistracy has an obligation to protect judges and prosecutors from interference in their professional activities that may affect their independence or impartiality.⁸¹ Also, a plenary session of the Superior Council of Magistracy proposes candidates for judges and prosecutors to the President of Romania.⁸² The Council consists of 19 members, 16 of whom are elected by the Romanian Senate (14 judges or prosecutors and 2 neutral members) and the rest by the Minister of Justice, the Prosecutor General and the Chairperson of the Supreme Court of Justice and Cassation.⁸³

⁷⁷ Administrative Justice in Europe Romania report, p.3 accessible: http://www.aca-europe.eu/en/eurtour/i/countries/romania/romania_en.pdf, updated: 24.04.2021.

⁷⁸ High Court of Cassation and Justice of Romania, website of the Supreme Court, accessible: <http://www.scj.ro/en>, updated: 28.04.2021.

⁷⁹ European Commission for Democracy through Law (Venice Commission), Opinion No. 924 / 2018, Romania - Opinion on Amendments to Law no. 303/2004 on the Statute of Judges and Prosecutors, Law no. 304/2004 on Judicial Organization, and Law no. 317/2004 On the superior council for magistracy, website of the Venice Commission, p.8, accessible: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2018\)017-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2018)017-e), updated: 28.04.2021.

⁸⁰ Ibid.

⁸¹ Superior Council of Magistracy, SCM competencies, website of the Superior Council of Magistracy, accessible : <https://www.csm1909.ro/263/Competențele-CSM>, updated: 24.04.2021.

⁸² Superior Council of Magistracy, The Attributions of the SCM plenum - the Career of Magistrates, website of the Superior Council of Magistracy, accessible: <https://www.csm1909.ro/263/3559/Atribu%C5%A3iile-plenului-CSM-cariera-magistra%C5%A3ilor>, updated: 24.04.2021.

⁸³ Romania, Consiliul Superior al Magistraturii, accessible: https://www.encj.eu/images/stories/pdf/factsheets/csm_romania.pdf, updated: 18.04.2021.

4. SUMMARY

In the countries discussed above, two models for the appointment of judges can be distinguished: in the first the final decision on the appointment of a candidate is made by the President (Hungary, Slovakia, Romania), and in the second by the legislature (Latvia, Slovenia). The categories are the same for the Chairperson of the Court. In Latvia, Hungary and Slovenia, the Chairperson of the Supreme Court is appointed by the Parliament, and in Slovakia and Romania by the President.⁸⁴ In all selected countries, judges hold office for life.

In all five countries, the judiciary is divided according to the main branches of law (criminal, civil and administrative). Accordingly, in Hungary and Romania, there is only this type of division of the judiciary. In Latvia, the Disciplinary Board and the Senate are added, in Slovakia the Commercial Department, and in Slovenia the Commercial; Labor and Social Security Disputes; Administrative Hearing; and Registry Departments.

The number of judges in Latvia and Slovenia does not exceed 40, as for Hungary, Slovakia, and Romania, where the composition of the cassation instance is quite numerous and exceeds eighty.⁸⁵

The composition of the Common Court administration bodies - councils, ex-official members, their powers are similar (personnel issues, protection of the independence and impartiality of judges, etc.) Except for Hungary, where the administration of the judiciary is divided by two bodies. As for the representation of the Supreme Court in such councils, this is directly ensured in Latvia (the Chairperson of the Supreme Court is an ex officio member) and Romania (the Chairperson appoints one member of the Council of Magistracy).

⁸⁴ In Latvia, a candidate is nominated to the Sejm by a judiciary plenary court, in Hungary by the President, and in Slovenia by the Council of Justice. In Slovakia and Romania, a candidate is nominated to the President by the Judicial Council.

⁸⁵ Latvia - 36, Hungary - 83, Slovakia - 90, Slovenia - 31, Romania - 112.