

December 1997

CDL-STD(1997)020

Engl. only

Science and technique of democracy, No. 20

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**THE COMPOSITION OF
CONSTITUTIONAL COURTS**

**EUROPEAN COMMISSION
FOR DEMOCRACY THROUGH LAW**

TABLE OF CONTENTS

I. REPORT ON THE COMPOSITION OF CONSTITUTIONAL COURTS	3
1. Appointment of judges of constitutional courts	4
1.1. Systems of appointment	4
1.2. Aims of the appointment procedure	6
1.3. Conclusion	7
2. Selection of constitutional judges	7
2.1. Eligibility requirements	7
2.2. Representation of minority groups	9
2.3. Conclusion	10
3. The president of the constitutional court	10
3.1. Appointment of the president	10
3.2. Term of office, re-election and dismissal of the president	11
3.3. Functions of the president	11
4. Age and terms of office	12
4.1. Age	12
4.2. Terms of office and re-election of judges	13
4.3. Mechanisms for appointment by default	14
4.4. Conclusion	15
5. Offices incompatible with that of a constitutional judge	15
6. Constitutional judges' immunity	16
7. Dismissal	18
8. Relationship between the nature of composition and the powers exercised	19
9. Constitutional judges' wish for improvement in their status or in the functioning of the court	20
10. Conclusion	21
II. QUESTIONNAIRE ON THE COMPOSITION OF CONSTITUTIONAL COURTS	23
III. COMPARATIVE TABLE OF REPLIES TO THE QUESTIONNAIRE ON THE COMPOSITION OF CONSTITUTIONAL COURTS	35

I. REPORT ON THE COMPOSITION OF CONSTITUTIONAL COURTS

At its 23rd plenary meeting (May 1995), the Venice Commission decided to undertake a study on the composition of constitutional courts. The purpose of the study is to identify - beyond a simple description of rules governing composition - the techniques employed to ensure the constitutional court's independence and to maintain the representation and balance of different political and legal tendencies within the courts. At its 25th plenary meeting (November 1995), the Commission adopted a first version of the Questionnaire on the Composition of constitutional courts (CDL-JU (95) 15). A final version of the questionnaire was prepared in May 1996 (CDL-JU (96) 5) and sent out to members, associate members and observers of the Commission. The liaison officers at the various constitutional courts and equivalent tribunals were asked to comment on the draft report. In the rare cases in which both a member and a liaison officer submitted answers to the questionnaire, the members' comments involving an evaluation of the established practice were included in this report.

On the basis of information available from the Documentation Centre on Constitutional Justice, and with the assistance of liaison officers and Commission members, the Secretariat had prepared a preliminary information note in the form of synoptic tables on the composition of constitutional courts (CDL-JU (96) 8). The information presented in the tables relates to the appointment of constitutional judges, eligibility criteria, term of office, incompatible concurrent offices, and dismissal. This information was to be supplemented by the replies to the questionnaire.

It was acknowledged that a comparative analysis of the information provided would only serve a limited purpose if the powers exercised by the various courts differ. As a consequence, this report makes a distinction, on certain issues, between constitutional courts *proper* and superior courts which also exercise ordinary jurisdiction.¹ Basic differences in composition may generally be observed between these two types of court.

Replies were obtained from members, associate members and observers of the European Commission for Democracy through Law in 40 countries.² The differences and similarities among them allowed the following trends to be recognized:³

¹ Countries in *italics* are those which do not have a constitutional court proper; this is done in order to highlight this jurisdictional difference within a given group of countries to which a phenomenon applies. Note, however, that *Estonia's* Constitutional Review Chamber is a Chamber within the Supreme Court. Some courts have only very recently been established, as in the case of Latvia and Ukraine as well as in Bosnia and Herzegovina. *Finland* and *Sweden* both have two supreme jurisdictions: a supreme court and a supreme administrative court, which share constitutional jurisdiction. Wherever information on jurisdiction was missing from the replies to the questionnaire, it was taken either from the Venice Commission's Bulletin on Constitutional Case-Law, Special Edition vols 1-4, and from material for the forthcoming volume.

² These were the following members: Albania, Austria, Belgium, Bulgaria, Croatia, Czech Republic, *Cyprus*, *Denmark*, *Estonia*, *Finland*, France, Germany, *Greece*, Hungary, *Iceland*, *Ireland*, Italy, Latvia, Liechtenstein, Lithuania, *Malta*, *Norway*, Poland, Portugal, Romania, Slovakia, Slovenia, *Sweden*, *Switzerland*, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine. The following associate members of the Commission also responded to the questionnaire: Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Russia. The following observers of the Commission contributed to the study: *Argentina*, *Canada*, *Japan*. (For the replies to the questionnaire, see documents CDL-JU (97) 4, 4 Add, 4 Add.II, 4 Add.III, 4 Add.IV/Corr). For a schematic presentation of the replies, see the comparative table on the composition of constitutional courts, which is in the appendix of this report.

³ The present report is based almost entirely on the replies to the Questionnaire on the Composition of constitutional courts. The degree of detail provided varied greatly from one answer to another. In some cases,

1. Appointment of judges of constitutional courts

1.1. Systems of appointment⁴

There are generally two main systems of judicial appointment, plus the most common, which is a hybrid of the two.⁵

A – the direct appointment system:

The first is the **direct appointment** system, which does not involve any voting procedure⁶ (*Canada, Cyprus, Denmark, Finland, France, Iceland, Ireland, Malta, Norway, Sweden, Turkey*).

Only in the case of the French Constitutional Council does the appointing authority have virtually complete discretion to appoint. The appointments are shared equally between the three presidents of the Republic, the Senate and the Lower House. As for the other courts of this category, the authority vested with the power of appointment must take particular proposals into account. The President of Turkey makes the judicial appointments, but on the basis of specific quotas from particular pools of professions.

The common law systems typically involve a rubber stamp appointment by the Head of State or his/her representative pursuant to a binding executive nomination (*Canada, Ireland*) the power of nomination thus being decisive. Judges of the superior courts of *Malta*, from among whom the judges of the Constitutional Court are selected, are also appointed in the same fashion. *Ireland*, for its part, has a Judicial Appointments Advisory Board whose recommendations are taken into account.⁷ All the nordic supreme courts are also part of this group. It is the Head of State who appoints the judges upon the nomination by the minister of Justice in *Denmark, Iceland, and Norway*. In *Norway*, Supreme Court judges are appointed by the King in Council upon the recommendation of the Ministry of Justice. The Supreme Court gives an informal expression of opinion to the Ministry of Justice. In *Denmark*, the Supreme Court has a *de facto* right to veto appointments. In *Finland*, the court concerned makes the nominations, then the President of the Republic appoints new judges after consulting the Minister of Justice and the Council of Ministers. In *Sweden*, the government appoints the judges on the proposal of the Minister of Justice.

information beyond the scope of the questions was volunteered, which was found relevant and included in this survey. Therefore, it may well be that a phenomenon or tendency actually applies to more countries than appear in the lists provided, but that the necessary information had not been supplied for the missing country to be included.

⁴ A note on terminology for these who make use of both versions of this report appears to be necessary. The English term "nomination" means "proposition" in French, whereas "appointment" corresponds to the French "désignation".

⁵ The Greek Special Supreme Court does not fit into these three categories. It is composed of three *ex officio* members, i.e. the presidents of the Council of State, the Court of Cassation and the State audit court, and, on the other hand, four members of the Court of Cassation are appointed by drawing lots every two years. This procedure also applies for the appointment of the two law professors who form part of the bench in jurisdictional disputes or where the constitutionality of laws is in question.

⁶ Except where a court proposes its candidate by vote (for example Turkey).

⁷ In fact, if the Government decides to appoint a candidate who was not recommended by the Board, it must make this known.

B – the elective system:

The second system is the **elective** system, which tends towards greater democratic legitimacy.

The electing authority is most often the sole chamber of Parliament (Azerbaijan, *Estonia*, Hungary, Latvia, Liechtenstein, Lithuania, Portugal, Slovenia, "the former Yugoslav Republic of Macedonia"), the Lower House of Parliament (Croatia, Poland), both Houses of Parliament (Germany) or a Joint Sitting of the two (*Switzerland*).

In the case of Germany, the *Bundestag* elects its half of the judges indirectly through its Judicial Selection Committee, which is a proportional representation of the political parties at the *Bundestag*. Another particular example is Portugal, where ten out of thirteen judges are elected by Parliament, whereas the three remaining judges are co-opted by the first ten judges. This constitutes an element of self-completion by the Court.

The most obvious difference among elective systems is the variety of authorities which have the task of proposing candidates for election. The proposals may come from the President (Azerbaijan, Slovenia), the Upper House (Croatia), a mixture of Parliament, the Executive and either the supreme judiciary (Latvia) or judicial council ("the former Yugoslav Republic of Macedonia") or proposals may simply be made by political parties in Parliament (Liechtenstein). In Lithuania, proposals are made by the three presidents of the Republic, of Parliament and of the Supreme Court. In the case of *Estonia*, the President makes the proposal for the Chief Justice, then the Chief Justice makes the proposals for the remaining justices: this is another example of a court's co-opting its members. Once Parliament has elected the judges of the Supreme Court, the Chief Justice of the Supreme Court is *ex officio* Chief Justice of the Constitutional Review Chamber, for which he proposes candidates from among the judges of the Supreme Court, who in turn elect the judges of the Constitutional Review Chamber.

C – the hybrid system:

The third system is the **hybrid** between election and direct appointment, which is the most common, though it appears in many variations and sometimes in the guise of a direct appointment system which simply rubber stamps proposals from both an elective and an appointment component (Austria,⁸ Spain). In some systems the elective component may be equal in weight to the appointment one but usually the elective component will be predominant (Albania, Armenia, Belgium, Romania, Spain).

In the hybrid category, nominating authorities such as judicial authorities or boards may also perform a direct appointing function (Bosnia and Herzegovina, Bulgaria, Georgia, Italy, Ukraine). In Bulgaria, Georgia, Italy and Ukraine, the power of appointment is split three ways between the President of the country, the parliamentary elective authority⁹ and a judicial authority. Instead in Bosnia and Herzegovina, the power of appointment is divided between two elective authorities (the Lower House of the Federation and the Parliament of the Republika Srpska) and the judicial authority in the person of the President of the European Court of Human Rights after consulting the presidency of Bosnia and Herzegovina.

⁸ However, there may be exceptions to the convention of rubber-stamping proposals, such as happened in Austria, when the President diverged from the expected practice of appointing the first of the three proposals by choosing the second (presently the issue is being examined, whether one or three candidates should be nominated by the competent organs to the President of the Republic).

⁹ In Italy, the elective component requires a two-thirds majority of a joint meeting of the two Houses of Parliament, thus invariably including the opposition into the appointment procedure.

A second variant is a direct appointment which is, however, subject to approval by an electing authority (*Argentina, Czech Republic, Japan*,¹⁰ Russian Federation). A similar style is one in which the elective authority (e.g. National Council, Slovakia) narrows down the short-list of candidates, from which the appointing authority may then choose.

1.2. Aims of the appointment procedure

One of the primary aims of the appointment procedure is usually to ensure the **independence** of the court from political influences once the appointment procedure is over (*Albania, Argentina, Belgium, Bulgaria, Canada, Denmark, Hungary, Iceland, Italy, Lithuania, Malta, Poland, Portugal, Russia, Switzerland, "the former Yugoslav Republic of Macedonia", Turkey*), despite the fact that political institutions may have the power to make nominations and appointments. Another common aim mentioned was the recruitment of a **competent and experienced** body of **judges** (*Austria, Belgium, Denmark, Estonia, Germany, Hungary, Latvia, Lithuania, Norway, Portugal, Russia, "the former Yugoslav Republic of Macedonia"*), or that the court itself and its administration of justice be **balanced and legitimate** (*Japan, Romania, Spain*). In Germany one aim is to ensure the democratic legitimacy of judicial elections. Furthermore, in Federal States, the appointment procedure is also aimed at ensuring the **representation of the different entities**.¹¹

According to the majority of countries surveyed, their appointment procedures make no express provision for **political representation**. In *Canada* the relevance of political influences to the aims of the appointment procedure was even expressly denied. On the other hand some systems do strive towards a balance of political representation on the court (*Belgium, Hungary, Italy, Portugal, Switzerland*). This aim is seen as pursued in practice (*Austria, Slovenia, Switzerland*) or indirectly (*Lithuania, Slovakia*), e.g. through the lack of requiring the highest past professional accomplishments, thereby allowing for the consideration of competent candidates who may have been precluded from advancing in their scholarly or legal career due to their political activity (*Czech Republic*).

The representation of various **legal professions** was seen as an aim of the appointment procedure (*Austria, Spain, Sweden, Switzerland*), or that there be at least *some* representation of lawyers on the bench (*Liechtenstein*). In Belgium, on the other hand, half of the court's judges must be former members of parliament.

In Armenia, a fair balance between the executive and the legislature is pursued by giving the latter a slight preponderance in the number of judges it has to appoint. In some countries the appointment procedure is aimed at reflecting the three branches of state power (*Spain*), whereas in Georgia the procedure is geared at an *equal* balance among the branches.

Contributors' appraisals of the appointment procedure were mostly positive [*Armenia, Belgium, Canada, Czech Republic, Finland, France, Georgia, Germany, Japan, Lithuania, Portugal, Romania, Russia, Slovakia, Slovenia, Switzerland, "the former Yugoslav Republic of Macedonia", Ukraine* (though it is too soon to judge)], even though the balance achieved was not necessarily perceived to be a product of legislative intent (*Germany*). Some contributors

¹⁰ In *Japan* the Cabinet appoints judges to the Supreme Court, then the electorate reviews the appointment by vote at the first general election of members of the Lower House of Parliament following the appointment, and subsequently at 10-year intervals.

¹¹ Furthermore, in Austria, three effective and two substitute members are appointed upon the nominations of the Upper House, which is composed of representatives of the provinces (*Bundesländer*).

identified a power imbalance (Albania, Bulgaria, Hungary, Italy, Spain), particularly in the event of an over-representation of a party within the group of nominating authorities (France). The *Norwegian* government has recently appointed a commission to analyze the problems inherent in the appointment procedure. The problem of lack of transparency in Austria has also been addressed by a reform amending the Statute of the Court so as to require vacant seats to be publicised. Furthermore, it is currently being considered whether to introduce a hearing of candidate prior to their nomination. The most recent appointment of a judge to the Belgian Court of Arbitration was made following such a hearing.

A possible flaw in the appointment process is that if it does not provide for default mechanisms, political opposition to the court may prevent new appointments from taking place (Hungary). In Portugal, Germany, Spain and Bulgaria, for example, judges continue to serve on the court after the expiry of their term of office and until their successor is appointed. This effectively prevents a stalemate in the appointment process from destabilizing the composition of the court.

1.3. Conclusion

The evaluation of the appointment systems and of the realisation of their objectives, i.e. a composition of independent, competent and experienced judges and a balanced and legitimate composition and administration of justice was generally positive. The direct appointment system is notably most common among the supreme courts. The appointment procedure of the nordic and common law supreme courts, which does not distribute the power of appointment among the different public authorities, must be viewed in the context of the constitutional tradition and the personality of the constitutional judge in these systems. In France, each appointing authority makes his choice in full discretion, without any nomination being made by another authority. The elective system appears to be aimed at ensuring a more democratic representation. However, this system is reliant on a political agreement, which may endanger the stability of the institution if the system does not provide safeguards in case of a vacant position.

2. Selection of constitutional judges

2.1. Eligibility requirements

As expected, several answers differ according to whether the court in question is a constitutional court proper or a supreme court exercising, *inter alia*, constitutional jurisdiction. This applies in particular to the appointment requirements, whereby supreme courts are, in most cases, entirely made up of lawyers (*Argentina, Canada, Denmark, Estonia, Greece, Iceland, Ireland, Malta, Norway*). *Finland* forms a qualified exception: its Supreme Court and Supreme Administrative Court alter their composition in certain cases. In court-martial cases before the Supreme Court, two generals participate in the decision; where water rights and patent cases come before the Supreme Administrative Court, specialists in engineering take part in the decision. The supreme jurisdictions of *Sweden* also differ slightly: all members of the Supreme Court must be lawyers, whereas only two thirds of judges on the Supreme Administrative Court must have legal qualifications.¹² Another exception is *Switzerland's* Federal Court (being also the final stage of appeal for ordinary jurisdiction), which does not require its judges to have had a legal education. In practice, however, the judges of the Federal

¹² In practice all the judges are lawyers at this court.

Court are all lawyers. Up to five out of fifteen judges need not have professional legal qualifications on the *Japanese Supreme Court*.¹³

The general preference for lawyers may be observed in many constitutional courts as well (Albania, Austria,¹⁴ Bulgaria, Germany, Italy, Latvia, Lithuania, Poland, Portugal, Romania, Russia, Slovakia, "the former Yugoslav Republic of Macedonia"). At least some constitutional courts, however, expressly allow for non-lawyers to become members of the court in order to bring together the widest possible span of human experiences and to avoid an excessive specialisation of the court (Armenia, France, Liechtenstein, Turkey). In practice, however, these courts are largely made up of lawyers. In Belgium half of the judges must be former members of parliament, though the overwhelming majority of them are lawyers.

Where legal qualifications are required, the kind of experience expected varies from long-standing service in the judiciary (Albania, *Estonia*¹⁵) to experience in any kind of legal profession (*Argentina*, Bosnia and Herzegovina, Bulgaria, *Canada*, Croatia, Czech Republic, Georgia, Hungary, Latvia, Lithuania, *Norway*, Romania, Russia, Slovakia, Slovenia, Spain, "the former Yugoslav Republic of Macedonia", Ukraine). In Belgium those judges who are not former members of parliament must be judges from the highest jurisdictions of the State, legal academics or auxiliary judges (assistants) of the Court. Some countries have a quota of recruitment from the judiciary (Germany, Portugal), or a requirement that the candidate have either judicial experience or legal professional experience, whereby the years of experience required are generally fewer for judges than for other lawyers (*Canada*, *Ireland*, Italy,¹⁶ *Japan*¹⁷). Similarly in *Finland* the experience in the judiciary required for appointment to the supreme jurisdictions need not be long if it is supplemented by experience as a law professor or prominent advocate. In Austria, the president, the vice-president, three effective and three substitute members of the Court (nominated by the Federal Government) must be selected from among judges, high officials and university law professors.

Liechtenstein and Bosnia and Herzegovina provide for the appointment of a number of foreign judges. In the case of Liechtenstein, the practice is that one judge comes from Austria and one from Switzerland, whereas in Bosnia and Herzegovina, the three judges appointed by the President of the European Court of Human Rights shall not be citizens of Bosnia and Herzegovina or of any neighbouring country.

On the whole, the eligibility requirements for constitutional judges were seen as appropriate and effective (this was mentioned expressly in the answers of: Belgium, Bulgaria, *Canada*, Czech Republic, *Finland*, France, Georgia, Hungary, *Ireland*, Italy, *Japan*, Liechtenstein,¹⁸ Lithuania, Romania, Slovakia, Slovenia, Spain, *Switzerland*, Ukraine¹⁹). Only in Bulgaria²⁰ and Russia

¹³ In practice, only one or two judges are usually not lawyers.

¹⁴ The Constitution requires all members of the Constitutional Court to have a university law degree and to have at least ten years of experience in a profession for which such a degree is required.

¹⁵ In *Estonia*, because the Constitutional Review Chamber is a Chamber of the Supreme Court, the judges must already be judges of the Supreme Court.

¹⁶ In Italy, fewer years of experience are required of law professors, too.

¹⁷ Again, this principle only applies where legal qualifications are required at all.

¹⁸ Here, the contributor approved of the enrichment of the State Council's jurisprudence through the practice of appointing foreign judges.

¹⁹ However, it is still too soon for a comprehensive evaluation.

²⁰ In Bulgaria a spirit of political confrontation reigned in the past between the authorities involved in the appointment of constitutional judges.

was general dissatisfaction with the system voiced. In *Estonia* steps have been taken towards widening the scope of eligibility in reaction to the fact that government interests carry too much weight in the present system.

2.2. Representation of minority groups

The representation of minority groups on the bench seems not to be a common goal. This may depend upon a number of factors, such as the size and status of these groups in the country in question. Several contributors stated that minorities do not present a problem or that their discrimination is prevented by other means. For these reasons (*Argentina*, Armenia, Azerbaijan, Bulgaria, Czech Republic, France, Hungary, Italy, *Japan*, Liechtenstein, *Malta*, Romania, Slovakia, Ukraine) or for reasons not stated (Albania, Austria, Bosnia and Herzegovina,²¹ *Denmark*, *Estonia*, *Iceland*, Latvia, *Norway*, Poland, Portugal, Slovenia, *Sweden*, Turkey), no provision is made for minority group representation.

Linguistic differences form the principal exception to this trend. *Switzerland*, *Canada* and Belgium, being countries which have more than one official language, cater for linguistic differences *de jure*. In the case of *Switzerland*, Article 107 of the Constitution requires that Parliament, when it elects the judges of the Federal Court, should ensure a balance in the representation of the country's different linguistic groups. Since decisions are handed down in the official language of the decision appealed against, and the judges express themselves in their mother language, it is necessary for candidates for the position of judge of the Federal Court to have at least a passive knowledge of the other two languages. In *Finland*, a *de facto* representation of Swedish and Finnish linguistic groups is strived for.

Apart from the requirement that *Canada's* Supreme Court judges be largely bilingual, they must also represent a mixture of common law and civil (ie continental European) law jurisdictions (this combination is particularly significant for private law). Three judges must be chosen from among the legal profession or the judiciary in Quebec and be of civil law training, whereas the remaining 6 judges must have had common law training. *De facto* the representation is also of the various provinces, the common law quota being distributed among Ontario (3 judges), the Western provinces (2 judges) and the Eastern coastal provinces (1 judge). In Russia, too, 2 of the 19 judges belong to constituent nations other than Russian. Federalism as such also leads to quotas of representation: in Austria, residence requirements prescribe that a fourth of the judges must be domiciled outside Vienna.

De facto national or ethnic minority representation on the court was also observed in Spain, Croatia (1 out of 11 judges), "the former Yugoslav Republic of Macedonia" (3 out of 9 judges) and Lithuania (1 out of 9 judges).

The representation of women on the court is also worthy of note. Although women do not form a minority group, several contributors mention women in this context. Although no female quota was observed as a legal requirement, a *de facto* representation of women on the court was observed in the case of Italy (one woman out of fifteen judges), Belgium (one woman out of twelve judges), Austria (two women out of fourteen effective, and one woman out of six substitute members), France, Armenia, Lithuania (each having one woman out of nine judges), *Canada*, (two women out of nine judges), Slovakia (two women out of ten judges), Germany (five women out of sixteen judges) and Latvia (three women out of six judges, the seventh

²¹ In this country the representation of the different constituent groups is *de facto* ensured since four judges are elected by the parliament of the Federation and two are elected by the parliament of the Republika Srpska.

judge being yet to be appointed). A gender balance is also strived for in *Finland*, though the lack of experienced female candidates presents a problem.

The *de facto* representations outlined above can arguably be the mere product of the differences themselves, rather than of an effort to afford a balanced and truly representative court composition. This point was made by the French contributor, who, in particular, commented on the French Constitutional Council's tradition of having at least one protestant on the bench, adding that such group representations surely happen by chance and not design (the Romanian, Czech and Georgian contributors echoed this view). In *Ireland* there is also the practice of ensuring the presence of one non-Catholic on the Supreme Court, and in Germany a *de facto* Protestant-Catholic balance is traditionally achieved.

2.3. Conclusion

The qualities required of a constitutional judge reflect in most cases the necessity of legal qualifications in order to ensure a competent court composition. On the other hand, an excessive legal specialisation could undermine the diversity of the composition of some constitutional jurisdictions. Nevertheless, a distinction should be made between the desire for a certain diversity and the creation of quotas in order to allow certain professions or minority groups to be represented on the court. The search for a balanced representation in order to redress inequality or discrimination may usually be formal in federal or multilingual societies, since these are particularly conscious of the issue of their different constituent groups' equal representation and access to the law.

3. The president of the constitutional court

3.1. Appointment of the president

Two main modes of selection of the president or chief justice of the court may generally be observed. On the one hand, there is the internal ballot by the judges themselves who elect a president from among their number (Albania, *Argentina*, Belgium, Bulgaria, Croatia, *Denmark*, Georgia,²² Hungary, *Iceland*, Italy, Latvia, Portugal, Romania, Russia, Slovenia, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine). An absolute majority is normally required, but in some cases there must be a two-thirds majority (Portugal).

On the other hand, there is the election of a president of the court either by Parliament (Azerbaijan, *Estonia*, Lithuania²³, Germany²⁴, Liechtenstein²⁵, Poland²⁶, *Switzerland*²⁷), or by the country's Head of State (Austria²⁸, *Canada*²⁹, Czech Republic³⁰, *Finland*³¹, Spain³², France, *Ireland*³³, *Japan*³⁴, *Norway*³⁵ and Slovakia).

²² Nominations are made on consensus between the President of Georgia, the parliamentary Chairman and the Chairman of the Supreme Court.

²³ All upon nominations by the President of the Republic.

²⁴ The power alternates between the Federal Council and the Federal Diet.

²⁵ The election requires the confirmation of the Prince of Liechtenstein.

²⁶ Nominations are made by the judges of the Tribunal from among their number.

²⁷ The judges make nominations from among their number, then the Joint Chamber of the Federal Parliament elects the president.

²⁸ The federal Government nominates a candidate for the positions of president and vice-president.

In Armenia, the Parliament has the principal power to appoint a president of the Court, and if it fails to do so, the power devolves upon the President of Armenia. Other default mechanisms exist in Italy, Portugal and Spain, whereby the appointment procedure is simplified following a number of failed attempts. In *Sweden* the senior judge is appointed Chairman. In *Greece* the eldest of the two presidents of the Council of State and the Court of Cassation is *ex officio* the president of the Special Supreme Court.

The office of Chief Justice of the Supreme Court of *Canada* alternates between a francophone civil lawyer and an anglophone common lawyer. In Belgium the function of president is exercised by two presidents who alternate in the exercise of the effective presidency each year. Each president is elected from among his linguistic group within the Court.

3.2. Term of office, re-election and dismissal of the president

Although details of the president's term of office or the possibility of his or her being re-elected or dismissed were not specifically requested in the Questionnaire, this information was nevertheless provided in a number of responses.

The presidential term ranges from 2 years (*Iceland*, Portugal, *Switzerland*), to 3 years (Albania, Bulgaria, Hungary, Italy, Latvia, Romania, Russia, Slovenia, Spain, "the former Yugoslav Republic of Macedonia") to 4 years (Croatia, Turkey), to 5 years (Georgia), to 7 years (Slovakia), to 9 years (France) and sometimes with the right of re-election [Albania, Bulgaria, Hungary, Italy, Latvia, Portugal, Romania (albeit not expressly), Russia, Spain, Turkey). The presidential term is often indistinguishable from that of a constitutional judge (for example in Armenia, Austria, Belgium, *Estonia*, *Finland*, France, Lithuania, *Norway* and Slovakia). In *Finland* the presidents of the two supreme jurisdictions serve until retirement. In Austria, all the members (effective and substitute), including the president and the vice-president, are appointed until the age of retirement. The president may sometimes be dismissed early from the presidential office, eg by secret ballot on the initiative of at least five judges and by a two-thirds majority of the 19 judges (Russia). In *Norway* and *Malta* the president is appointed for life. In actual fact, they cease to serve on the court at the statutory retirement age (70). In the case of the Armenian Constitutional Court, the same rules as to term of office, re-election and dismissal apply to the presidency as to the other judges of the Court, i.e. the president remains in office until the age of 70.

3.3. Functions of the president

The president of a constitutional court is usually *primus inter pares*, merely presiding over the court, and not exercising any jurisdictional function higher than that of the other judges (Albania,

²⁹ Nomination by the Prime Minister.

³⁰ Ratification by the Upper House of Parliament.

³¹ Upon nomination by the Council of Ministers.

³² Upon nominations by the Court.

³³ Upon the Government's nomination.

³⁴ By the Emperor as designated by the Cabinet; the Emperor is bound by the proposal.

³⁵ By the King in Council.

Argentina, Armenia, Canada, Czech Republic, Denmark, Germany, Hungary, Iceland, Ireland, Japan, Latvia, Norway, Poland, Portugal, Slovenia, Sweden, Switzerland, "the former Yugoslav Republic of Macedonia", Ukraine), with the occasional exception of crucial issues of competence (Germany). The president will sometimes have the casting vote in case of a tie (Belgium, Lithuania, France, Italy, Spain), or in most matters (*Finland*³⁶). In Austria the president of the Court only votes when unanimity has not been reached and one opinion receives at least half of the votes. Sometimes the president will have the power to instruct the other judges on their work (Armenia, Romania, Russia, Ukraine), or to distribute the cases to be dealt with individually by one of the judges as rapporteur (Armenia, Lithuania, France, Italy, Romania). In *Estonia*, the president of the Constitutional Review Chamber plays a part in the selection of the other members of the Chamber. In Belgium each president may submit a case to the plenum of the Court. For some courts the president will even be in charge of disciplinary action against the other constitutional judges (Czech Republic, Slovakia, Spain), or against collaborators of the court with respect to minor sanctions (Belgium).

The function of representative of the court, either in its domestic or its external affairs, was also noted on numerous occasions (*Armenia, Belgium, Czech Republic, Finland, France, Denmark, Germany, Hungary, Italy, Latvia, Malta, Norway, Poland, Portugal, Romania, Russia, Slovenia, Spain*,³⁷ *Sweden*, "the former Yugoslav Republic of Macedonia", Turkey).

The president will often see to the administration or organisation of the court's activities (*Armenia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Hungary, Italy, Ireland, Japan, Latvia, Lithuania, Malta, Norway, Portugal, Romania, Russia, Slovakia, Slovenia, Spain, Sweden, Switzerland*, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine) or will notify the competent authorities of a vacancy of a seat on the court (*Austria, Romania, Slovenia*).

Ex officio functions may also be observed on occasion, eg as advisory to (*Ireland*), or co-representative of, the President of the State in case of absence, death or incapacitation (*Iceland, Ireland*), as depository of applications for the position of the President of State or presiding over meetings to review the validity of the President of State's election (Portugal), or calling and setting the agenda for the meetings of the Governmental Commission (Spain, *Junta del Gobierno*).

4. Age and terms of office

4.1. Age

The maximum age of constitutional judges ranges from 65 (*Malta, Turkey, Ukraine*), to 67 (*Finland, Sweden*), to 68 (Germany, *Switzerland*), to 70 (*Armenia, Austria*,³⁸ *Belgium, Bosnia and Herzegovina, Denmark, Hungary, Iceland, Ireland, Japan, Latvia, Norway, Russia*), to 75 (*Argentina, Canada*) and to no limit at all (*Albania, Bulgaria, Czech Republic, France, Georgia, Italy, Liechtenstein, Lithuania, Poland, Portugal*,³⁹ *Romania, Slovakia, Slovenia, Spain*, "the

³⁶ Exceptions are criminal or disciplinary matters, in which the opinion more favourable to the accused shall prevail.

³⁷ The president of the Spanish Constitutional Court is the fifth authority of the State; the president of the French Constitutional Council is the fifth personality of the State.

³⁸ The judge's term actually ends on the 31st December following the judge's attaining 70 years of age.

³⁹ However, the age of retirement for other judges is 70, thus the judges to be selected from the judiciary cannot be over 70.

former Yugoslav Republic of Macedonia"). In *Estonia* judges may remain in office up to five years after reaching the age of retirement.

4.2. Terms of office and re-election of judges

The duration of a constitutional judge's term of office combined with the issue of re-election is very significant to the make-up of the court. These criteria may affect issues of turnover, the possibility of a political shift in the court, the independence of the judges and institutional stability. From an appraisal of the contributions it appears that the system to be preferred would provide for relatively long terms of office with no opportunity for re-election or only one potential re-election.

A - appointment for an undetermined period:

Several countries do not fix a term for constitutional judges, thus allowing the judges to serve until the age limit set for the exercise of the function of constitutional judge, e.g. the age of retirement (*Argentina, Armenia,*⁴⁰ *Austria, Belgium, Bosnia and Herzegovina,*⁴¹ *Canada,*⁴² *Cyprus, Denmark, Estonia,*⁴³ *Finland, Iceland, Ireland, Japan, Malta, Norway, Sweden, Turkey*). The judges of supreme courts exercising constitutional jurisdiction may all serve until they reach this age limit. This also applies to the *Swiss Federal Court*, to which the judges are elected for a six-year term and re-election is virtually automatic, within the limits of the age of retirement; even if the possibility of non re-election exists *de jure*, re-elections are *de facto* ensured, which constitutes a guarantee of the judges' independence. Although the lack of a fixed term appears to involve risks of the over-ageing of a court, a limited turnover of judges and a general excess of institutional stability, this type of system must be viewed in the context of judicial power and the role of the judge in the relevant legal system.

B - appointment for a non-renewable term:

If one leaves differences in legal system aside in the interest of establishing a generally acceptable model, a fixed and relatively long term with no scope for re-election appears to be the most appropriate model. Examples are as follows: 9-year terms: Bulgaria, France, Italy, Lithuania (though there *is* scope for a re-election if the term is interrupted and after an interval), Poland,⁴⁴ Portugal (after the 1997 revision of the Constitution), Romania, Slovenia, Ukraine; 10-year terms: Georgia; 12-year terms: Germany, Russia. Nevertheless, the renewal procedure may pose some problems.⁴⁵

⁴⁰ In Armenia the members of the Court exercise their functions from the time of their appointment until the age of 70. There is no fixed term, nor is a re-appointment possible.

⁴¹ The first composition of judges shall serve for a term of five years without the right of re-election.

⁴² Nevertheless, a judge may retire at any time.

⁴³ The judges may, however, remain in office for up to five years after they have reached the age of retirement.

⁴⁴ Prior to the constitutional reform, the term was for eight years and renewable.

⁴⁵ In Bulgaria, for example, a partial renewal of the Court takes place every three years by drawing lots to select the post of the judge who is to be replaced. The judges appointed at the previous renewal could be included in the drawing of lots. These judges might, therefore, be replaced after only three years of service even though the judges should normally serve for a 9-year term. This problem has been avoided: the judges appointed at the first renewal three years after the establishment of the Court did not take part in the second drawing of lots, six years after the establishment of the court.

C - appointment for a renewable term:

The option of re-election may undermine the independence of a judge. Nevertheless, the possibility of only one further appointment following a long term also appears favourable in order to allow for the continuing service of excellent judges. Examples are as follows: Azerbaijan (15-year term, with a possible further term of 10 years) and Hungary (9-year term). However, it appears that in the interests of institutional stability, the duration of a judge's term of office should not be reduced in favour of the possibility of re-election. This is clear in the case of Hungary, where there is debate about abolishing the possibility of re-election and introducing a 12-year term in order to increase the stability of the Court.

Only a few contributors identified an aim to establish a certain balance of representation from their court's rules on terms of office and on the possibility of re-election to office (Albania, Armenia, Lithuania). For other courts, simply a good turnover of judges was aimed at (Czech Republic) and achieved (*Canada*), but by no means was a *political* balance aimed at. Some identified freedom of thought or the independence of the judges as the primary aim (France, Germany, Lithuania, Romania, Ukraine), especially considering the additional possibility of delivering dissenting judgments (Germany). Others still, did not identify any aim at a balance of representation from the rules (*Estonia*, Liechtenstein, *Norway*, Portugal, Russia, Slovakia, *Switzerland*, "the former Yugoslav Republic of Macedonia", Turkey). Romania also recognised that its constitutional judges' fixed term of 9 years with no possibility for renewal effectively prevents the Court's composition from ageing excessively.

4.3. Mechanisms for appointment by default

These considerations must be supplemented by the provision of default mechanisms in case of a failure to elect, re-elect or replace a judge. Sound and apparently reliable provisions for terms of office and re-election of constitutional judges may prove to be futile in the face of political opposition to the court. A mechanism must be in place to ensure the stability or even subsistence of constitutional jurisdictions.

A possible solution is to adopt the system in place in Bulgaria, Germany, Portugal and Spain, which allows judges to continue to serve after their term of office has ended and until their successor has been appointed. Three months prior to the expiration of a judge's term, the president of the Bulgarian Constitutional Court calls upon those responsible for nominating and electing constitutional judges - the National Assembly, the President of the Republic and the presidents of the Supreme Court of Cassation and the Supreme Administrative Court - to nominate or elect a new judge. A judge whose term has expired continues to serve on the Court until his or her successor enters office. In *Greece*, if an effective or substitute member of the Court leaves office or dies, then another member is appointed, always by drawing lots. Until the appointment of the new member, the Special Supreme Court can function with the remaining members. The drawing of lots always takes place within the Council of State, in plenary session.

In Romania a new judge must be appointed at least a month before the expiration of a judge's term of office. Where the term has ended prior to the expiration of the period for which the judge was appointed and the remaining time exceeds three months, the president of the Court will call upon the authority which had appointed the judge to appoint a new one. The term of this new judge expires at the time the predecessor's term should have ended. Where the new judge's

period of service is shorter than three years, he or she may be appointed for a full 9-year term when the renewal procedure of the Court takes place.

The absence of such a mechanism is criticised in Italy and is also a cause of instability of the Constitutional Court of Hungary. Nevertheless, the possibility for a judge to continue to serve until the appointment of a successor is not a long-term solution. In Spain, for example, delays in electing constitutional judges have become more and more common; a possible solution would be to allow the Court itself to propose candidates to a House of Parliament which fails to elect a candidate to be appointed by the King.

4.4. Conclusion

The possibility of re-election may well be such as to undermine the independence of a judge. In order to avoid this risk, it appears advisable to provide for long terms of office or for appointment until retirement. In the former case, reappointment would be possible either only once or even not at all. Where no appointment has been made, default mechanisms should be put in place in the interest of the court's institutional stability. It is true that not every possible failure requires a special remedial provision and that it may normally be resolved by a constitutional system capable of assimilating conflicts of power. Nevertheless, default mechanisms already exist in certain elective (Germany, Portugal, Spain) or semi-elective (Bulgaria) appointment systems, in which the importance of the stability of the court is such that a possible political failure to appoint a constitutional judge would be prevented from affecting this stability. This contingency should be seen as an exception, so as to prevent it from becoming an institution.

5. Offices incompatible with that of a constitutional judge

Constitutional judges are usually not allowed to hold another office concurrently. This general rule serves the purpose of protecting judges from influences potentially arising from their participation in activities in addition to those of the court. At times an incompatibility between the office of constitutional judge and another activity may not be apparent, even to the judge in question. Such conflicts of interests can be prevented from the outset by way of strict incompatibility provisions.

On one end of the scale there is the blanket incompatibility with any other public or private activity (*Argentina*, *Bulgaria*, *Canada*, *Croatia*, *Italy*, *Spain*, "the former Yugoslav Republic of Macedonia", *Turkey*) except occasional expertise with the court's permission (*Switzerland*), teaching [*Armenia*, *Azerbaijan*, *Belgium*, *Czech Republic*, *Estonia*, *Georgia*, *Germany*, *Hungary*, *Latvia*, *Lithuania*, *Portugal*, *Romania*, *Russia*, *Slovakia*, *Slovenia*, *Switzerland* (always subject to authorization by the Court), *Ukraine*], research (*Armenia*, *Azerbaijan*, *Czech Republic*, *Estonia*, *Georgia*, *Hungary*, *Latvia*, *Portugal*, *Russia*, *Slovakia*, *Slovenia*, *Ukraine*), creative activities (*Armenia*, *Azerbaijan*, *Hungary*, *Latvia*, *Lithuania*, *Russia*, *Ukraine*), or the management of personal assets (*Czech Republic*, *Slovakia*) or business activities that are not at the executive level (*Estonia*); sometimes no remuneration for these exceptional activities is allowed (*Ireland*, *Portugal*) or remuneration exceeding a specified amount must be turned over to the court (*Switzerland*). Members of the Supreme Court of *Japan* may only hold another salaried position if the Court gives them permission. In the case of the judges of the *Danish* superior courts, such permission must be obtained from a special council of the presidents of the High Courts and the Supreme Court. *Armenian* and *Polish* constitutional judges may not hold a public office or exercise an activity that could be detrimental to a judge's independence

or impartiality. In some cases the only explicitly stated incompatibility is with the office of Member of Parliament (*Finland*⁴⁶) or with any political (France) or public office (*Sweden*). Constitutional judges of Liechtenstein may be members of parliament or other courts but where a matter before the State Council is one in which the judge was involved during the exercise of this other function, the judge will be precluded from participation. In Austria, members of the Constitutional Court cannot hold offices in federal or regional government, in the national or regional parliament or in a municipal council. The president and vice-president cannot have held such an office during the four years preceding their appointment.⁴⁷ On the other hand, since the Constitutional Court does not operate on a full-time basis (at least three sessions of three weeks are held each year), there is no formal incompatibility with the exercise of another profession (with the exception of government officials, who are seconded to the Court during sessions and may exercise no other profession). In practice, the president, the vice-president and the permanent rapporteur judges (*ständige Referenten*) exercise their functions at the Constitutional Court generally on a full-time basis.

Membership of a political party is not allowed in many countries (*Albania, Azerbaijan, Canada, Croatia, Czech Republic, Estonia, Georgia, Hungary, Italy, Latvia, Romania, Russia, Slovakia, Slovenia, Turkey, Ukraine*), or at least no active participation in a political party or public association is permissible (*Argentina, Armenia, Finland, France, Ireland, Japan, Latvia, Lithuania*). However, past political involvement is often permissible either expressly or implicitly (*Armenia, Belgium, Finland*,⁴⁸ *France, Iceland, Ireland, "the former Yugoslav Republic of Macedonia", Norway*,⁴⁹ *Sweden, Switzerland, Turkey*). Active political involvement by such judges after their appointment is unlikely to come about, since this would be generally seen as inappropriate. Sometimes there is only a bar from taking an executive, leading or professional role in a political party (*Germany, Portugal, Spain*), but even then judges must show some restraint in their enjoyment of this freedom. In Austria, public officials and employees of a political party cannot be members of the Constitutional Court (for the president and vice-president this incompatibility extends to the four years preceding their appointment).

One criticism of strict incompatibility requirements was that they tend to produce a court composition of *retiring* members of society (France).

6. Constitutional judges' immunity

Rules on immunity serve the main purpose of protecting the judge against pressure exerted through unfounded accusations raised in order to influence his or her judgment. On the other hand the judge is required to observe a very high standard of professional but also private behaviour. As Article 6 of the Fourth Protocol to the General Agreement on Privileges and

⁴⁶ However, the general restrictions forbidding judges from exercising activities that would compromise judicial impartiality would also apply.

⁴⁷ In Hungary, constitutional judges cannot have held the office of Minister or Head of a political party at any time during the 5 years preceding their appointment.

⁴⁸ In *Finland* it is being officially discussed at present whether the availability of judges to act as arbitrators should be restricted.

⁴⁹ In *Norway* there are no formal rules on the question of incompatibility with other offices. In practice the problem does not seem to arise much. However, a Commission which has been appointed for this purpose, will also examine the nature and extent of tasks and supplementary duties undertaken by judges, assess them according to the criteria of independence and autonomy, and consider other questions of principle and of a practical nature. The Commission will assess the need for guidelines regarding the types of tasks, etc., that the judges should be permitted to undertake, and, if appropriate, present a proposal for such guidelines. It will also assess whether an official registration of extra activities or income should be introduced.

Immunities of the Council of Europe of 1960 puts it in relation to the judges of the European Court of Human Rights:

Privileges and immunities are accorded to judges not for the personal benefit of the individuals themselves but in order to safeguard the independent exercise of their functions. The Court alone, sitting in plenary session, shall be competent to waive the immunity of judges; it has not only the right, but is under a duty, to waive the immunity of a judge in any case where, in its opinion, the immunity would impede the course of justice, and where it can be waived without prejudice to the purpose for which the immunity is accorded.

Most courts surveyed reserve at least partial immunity from prosecution of their members (Albania, *Argentina*, Armenia, Bulgaria, Croatia, Georgia, Lithuania, Poland, Portugal, Romania, Russia, Slovakia, "the former Yugoslav Republic of Macedonia", Turkey), except perhaps where the judge is caught in the act of committing an offence (Hungary, Italy, Poland, Russia, Slovenia) or where a crime attracting a heavy prison sentence is involved (Turkey, Slovenia). In *Switzerland* a magistrate may find any other judge, including those of the Federal Court, incapable of filling his or her office for lack of trustworthiness for being found guilty of an offence. Complete criminal and civil immunity is also available in several countries (Azerbaijan, *Estonia*, Latvia, Lithuania). In Lithuania, this blanket immunity is afforded to judges even in a state of war or emergency. In Romania the judges of the Constitutional Court cannot be held responsible for opinions and votes expressed in the course of performing their judicial functions and they enjoy criminal immunity, including for summary offences. Some constitutional judges do not enjoy criminal immunity (Belgium, *Canada*, Germany, *Ireland*, *Japan*, *Sweden*). It should be noted that the supreme courts tend to fall in this category. Criminal immunity against prosecution for indictable offenses may also be conditional (Czech Republic) or qualified (Ukraine).

Judicial immunity may normally be lifted by the court itself (Albania, Bulgaria, Croatia, Georgia, Hungary, Italy, Lithuania, Poland, Portugal, Russia, Slovakia, *Switzerland*, "the former Yugoslav Republic of Macedonia", Turkey) and sometimes only by application of the Attorney-General (Bulgaria, Lithuania). Other authorities with the power to revoke a judge's immunity are the original appointing authority, eg. either the National Assembly or the President of the Republic, upon a conclusion delivered by a two-thirds majority of the Constitutional Court's members (Armenia), the Council of the Judiciary (*Canada*), the Legal Chancellor with the consent of a parliamentary majority (*Estonia*), the House of Representatives (*Argentina*, Ukraine), the Upper House of Parliament (Czech Republic⁵⁰), the single chamber of Parliament (Latvia, Slovenia⁵¹), the President or a Permanent bureau of the Lower House or the Senate, whichever authority originally appointed the judge in question, and only by application of the Attorney-General (Romania) or by act of Parliament or consent of the President of the Republic (Azerbaijan).

In several jurisdictions no special provision is made for judicial immunity (*Austria*, *Finland*,⁵² France, *Iceland*, *Japan*, Liechtenstein, *Malta*, *Norway*, *Sweden*). In *Norway* judges may be sentenced by ordinary courts, whereas in other jurisdictions the supreme court hears criminal cases against members of the constitutional court (Lithuania, Spain). In Belgium constitutional judges are given the same jurisdictional privilege as all members of the judiciary: they are

⁵⁰ This applies only with respect to the conditional immunity against prosecution for indictable offenses.

⁵¹ However, here the National Assembly shall take into consideration the opinion of the Constitutional Court.

⁵² However, charges for offences committed by judges of the supreme jurisdictions in their official capacity may be brought to the High Court of Impeachment only by the Chancellor of Justice or the Parliamentary Ombudsman, thus preventing private complainants from bringing directly any charges in such matters.

judged at first and last instance by the Court of Appeal. In *Sweden* criminal proceedings against members of the Supreme Court and members of the Supreme Administrative Court for offences committed by judges in their official capacity shall be brought before the Supreme Court by the Parliamentary Ombudsman or Justice Chancellor. In *Norway* such cases are dealt with by a special Court of Impeachment, which pronounces judgment on Supreme Court judges in the first and last instance.

7. Dismissal

Rules on the dismissal⁵³ of a judge are very restrictive. It is not permissible for political bodies which perceive themselves to be disadvantaged by the opinions or decisions of a judge to put pressure on the judge. Stringent rules on dismissal can effectively protect the judge from this kind of pressure.

The possible reasons for the dismissal of a judge will vary considerably from one jurisdiction to another. In general, the more dishonourable the cause for dismissal, the more stringent the procedural requirements for dismissal, and normally it is only possible to dismiss a judge for very serious reasons. One example is Germany's Federal Constitutional Court, the members of which may only be dismissed by the President of the Republic, if authorised by a two-thirds majority of the Court in plenary session and only on the grounds of dishonourable conduct or a prison sentence exceeding six months. For detail on the various grounds for dismissal, see the comparative table in the appendix of this report.

The dismissal of a judge by an authority other than the court itself is impossible in most jurisdictions (Albania, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, *Denmark*, Germany, Hungary, *Iceland*, Italy, Latvia, Liechtenstein, *Malta*, Poland, Portugal, Romania, Spain, *Sweden*,⁵⁴ *Switzerland*,⁵⁵ Turkey). In France dismissals can be made by the Constitutional Council. In some jurisdictions, it is the court that makes the preliminary decision to revoke a judge's powers, then the final decision to dismiss must come from the relevant nominating authority (Armenia, Lithuania, Slovakia, "the former Yugoslav Republic of Macedonia"). In other responses the dismissing authority was the House of Representatives (Poland, Slovenia), the Senate upon an accusation by the Lower House (*Argentina*) or the Lower House and the Senate (*Canada*).

In *Ireland*, the President of the Republic may dismiss a judge following a resolution by both Houses of Parliament calling for his or her removal.

Impeachment proceedings may also form part of the dismissal process (*Denmark*, *Finland*,⁵⁶ *Japan*, Lithuania). In *Japan*, the Impeachment Court is composed of members of Parliament.

In several jurisdictions the dismissing authority will depend on the reasons for a judge's dismissal. In Russia, the Constitutional Court is responsible for dismissals for loss of eligibility requirements, on the basis of a criminal conviction, for failure to fulfil duties or for incapacity, whereas the Federation Council - upon the proposal of a two-thirds majority of the Court - is

⁵³ The term "dismissal" denotes all the possibilities of putting an end to a judge's office.

⁵⁴ The Supreme Court has competence with respect to the dismissal of both Supreme Court and Supreme Administrative Court judges.

⁵⁵ In *Switzerland* a magistrate may find any other judge, including those of the Federal Court, incapable of filling his or her office for lack of trustworthiness for being found guilty of an offence. Nevertheless, this provision has never been applied to federal judges.

⁵⁶ However, impeachment proceedings may only be held in cases of misconduct in office, whereas each supreme jurisdiction is responsible in the case of illness or incapacity of its members.

responsible for dismissal in cases of violation of the appointment procedure or where a judge has committed a dishonourable act. In Ukraine the Constitutional Court has competence over dismissals except when incompatibility or the violation of the judicial oath is concerned: these issues are the competence of the Parliament.

In the Czech Republic *Estonia* and *Iceland*, constitutional judges may be dismissed by the ordinary courts.⁵⁷ However, a sentence for disciplinary proceedings will sometimes require the consent of the court (*Estonia*).

Only in one response was a case of dismissal registered (*Iceland*). This seems to confirm that in general constitutional judges are worthy of the onerous responsibilities they bear and that their position is respected by the competent authorities. Another consideration is the importance of the image of constitutional justice. The fact that justice must not only be done, but also seen to be done stresses the need for transparent, credible justice supported by the electorate's confidence in the court, in its role as guardian of the Constitution and of constitutional rights.

8. Relationship between the nature of composition and the powers exercised

The most obvious link between the composition of a court and its powers is the number of judges required to handle the workload resulting from the exercise of these powers. A connection was observed on several occasions between an aspect of the court's composition and the number of cases it hears (Czech Republic, Germany, *Ireland*, Portugal, *Switzerland*).

In a selection of responses a direct causal connection was identified between the rules of composition and the powers exercised by the court in question (Albania, Italy, Lithuania, Romania, Turkey, Ukraine), and in particular with respect to the number of court members (*Argentina*, Poland, Russia), the high status of its members (*Canada*) or the qualifications required of judges (Armenia, Germany).

The responses on the extent to which composition is attributable to competencies varied according to the type and degree of jurisdiction exercised by the court in question. On the one hand, there are the constitutional courts, exercising special constitutional jurisdiction.⁵⁸ On the other hand, there are the supreme courts, that is the final appellate courts which exercise ordinary jurisdiction.⁵⁹ Turkey's Constitutional Court only has constitutional jurisdiction. *Estonia* has a Constitutional Review Chamber within its Supreme Court. Usually, constitutional courts proper which do not have power to hear individual appeals tend to have a considerably lower caseload (e.g. Armenia, France, Turkey) than supreme courts (*Finland*, *Ireland*) and constitutional courts with individual appeal (especially in Austria and Germany), cf. Belgium. In the latter cases the need for a large bench is often urgent.

⁵⁷ However, for reasons other than the commission of an indictable offence, judges of the Croatian Constitutional Court may only be dismissed by the Court itself.

⁵⁸ Albania, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, France, Georgia, Germany, Hungary, Italy, Latvia, Liechtenstein, Lithuania, Poland, Portugal, Romania, Russia, Slovakia, Slovenia, Spain, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine.

⁵⁹ *Argentina, Canada, Cyprus, Denmark, Estonia, Finland, Greece, Iceland, Ireland, Japan, Malta, Norway, Sweden, Switzerland.*

Furthermore, one might expect the possibility of individual complaint as opposed to jurisdiction only with respect to institutional complaints to warrant a difference in composition with regard to representation. Presumably, it would make sense for courts which can hear individual complaints to have a composition reflecting a wide spectrum of society, whereas the appointment procedure of courts without the possibility of individual appeal would tend to reflect a balance in representation of institutions.

An interesting observation can be made in regard to Russia where a sufficient number of staff is identified as a means to cope with the workload. The requirement of leave to appeal was also identified as stemming from the need to control or reduce the Court's workload (*Finland, Germany, Sweden*).

Although a general distinction between the two types of court may be made, a considerable range of different levels of competencies will become evident upon closer examination. Thus, for example, the powers of a constitutional court proper may be limited by the fact that it can only exercise constitutional control by *a priori* judicial review of laws *before* they are finally passed and proclaimed by Parliament (*Finland, France*) or by the fact that citizens cannot appeal directly to the court (Bulgaria, France, Portugal), as opposed, for example, to the German Federal Constitutional Court, which is not limited by either of these factors, but, as a consequence, receives around 5000 applications per year and has a considerable backlog of cases; cf. Belgium.

In *Finland*, the competencies of the supreme jurisdictions (Supreme Court and Supreme Administrative Court) are modest compared to the role of the President of the Republic or the Parliamentary Constitutional Committee; the supreme jurisdictions apply preventive measures of constitutional control.

The fact that the Austrian Constitutional Court is to uphold, *inter alia*, the federal system is related to the requirement that three effective and two substitute members must be domiciled outside the capital, Vienna.

9. Constitutional judges' wish for improvement in their status or in the functioning of the court

Of the replies which provided information on constitutional judges' criticisms, some indicated the judges' wish for improvement in their status (*Armenia, Finland, Lithuania, Romania*), but most criticism was directed at the functioning of the court (*Georgia, Romania, Switzerland*), calling, in particular, for reform of the court's statute (*Albania, Estonia, Liechtenstein, Russia*), for their decision-making powers to be widened (*Hungary, Slovakia*), for the appointment procedure to be made more workable (*Hungary, Italy, Portugal, Spain*), or for the problem of their workload to be solved (*Argentina, Germany, Iceland, Ireland, Spain*). In Spain, for example, it has been suggested to raise the number of judges to fifteen. The odd number would also prevent the problem of a tie and a controversial casting vote by the president of the Court. In *Argentina* and *Sweden* there is talk of instituting a constitutional court with exclusive constitutional jurisdiction. However, this would require an amendment of the Constitution. In *Estonia*, too, it is suggested that an entirely separate constitutional court should be instituted. Conversely, some critics in Spain have voiced the wish to create a Chamber within the Constitutional Court to deal with cases of individual recourse.

10. Conclusion

Notwithstanding the complexity of the various systems of the composition of constitutional courts, three main fields of legislative concern could be identified. These are balance, independence and effectiveness.

Society is necessarily pluralist - a field for the expression of various trends, be they philosophical, ethical, social, political, religious or legal. Constitutional justice must, by its composition, guarantee independence with regard to different interest groups and contribute towards the establishment of a body of jurisprudence which is mindful of this pluralism. The legitimacy of a constitutional jurisdiction and society's acceptance of its decisions may depend very heavily on the extent of the court's consideration of the different social values at stake, even though such values are generally superseded in favour of common values. To this end, a balance which ensures respect for different sensibilities must be entrenched in the rules of composition of these jurisdictions.

Constitutional jurisdictions may, by some of their decisions, appear to curb the actions of a particular authority within a State. The Constitution will often confer to the constitutional court the power to deliver its opinion on issues concerning the separation of powers or the relationships between the organs of the State. Even though constitutional courts largely ensure the regulation of these relationships, it may well be appropriate to ensure in their composition a balanced consideration of each of these authorities or organs.

The pursuit of these balances is limited by the indispensable maintenance of the independence and impartiality of constitutional court judges. **Collegiality**, i.e. the fact that the members adjudicate as a group, whether or not they deliver separate opinions, constitutes a fundamental safeguard in this respect. Even though the rules on the composition of constitutional courts may reflect the coexistence of different currents within a given nation, the guarantees of independence and the high sense of responsibility attaching to the important function of constitutional judge effectively ensure that constitutional judges will act in such a way as to dismiss all grounds of suspicion that they may in fact represent particular interests or not act impartially.

Given the diversity of constitutional justice systems, it is difficult to identify a set of minimum guarantees of independence to be provided in the composition of constitutional courts. Broadly, the following points may provide some guidance, though specific circumstances in a State may well justify a variation of these measures.

- A ruling party should not be in a position to have all judges appointed to its liking. Hence, terms of office of constitutional judges should not coincide with parliamentary terms. One way of accomplishing this can be by long terms of office or office until the age of retirement. In the former case, reappointment would be possible either only once or indeed not at all;
- The rules of incompatibility should be rather strict in order to withdraw the judge from any influence which might be exerted via his/her out-of-court activities;
- Disciplinary rules for judges and rules for their dismissal should involve a binding vote by the court itself. Any rules for dismissal of judges and the president of the court should be very restrictive.

Furthermore, special provision might be necessary in order to maintain the effective functioning of the court when vacancies arise:

- Rules on appointment should foresee the possibility of inaction by the nominating authority and provide for an extension of the term of office of a judge until the appointment of his/her successor. In case of prolonged inaction by this authority, the quorum required to take decisions could be lowered.
- The effectiveness of a constitutional court also requires there to be a sufficient number of judges, that the procedure not be overly complex and that the court have the right to reject individual complaints which do not raise a serious issue of constitutional law.

All of these points remain necessarily vague and will have to be adapted to each specific case. Taken together, they can, however, provide an idea of some issues to be tackled in order to create a balanced, independent and effective court.

II. QUESTIONNAIRE ON THE COMPOSITION OF CONSTITUTIONAL COURTS

1. What are the aims pursued through the rules of designation of the members of constitutional jurisdictions?
2. Does the procedure for appointing constitutional judges aim to guarantee a representation of different political and legal tendencies in the composition of the constitutional court?
 - 2.1 By what means does the law attempt to ensure such representation? How are these measures implemented? What is the role, if any, of political organs (Parliament, President, government, political parties)?
 - 2.2 Is there an established practice particularly concerning the manner in which candidates are proposed to the authority or authorities called upon to appoint (whether by election or nomination) the judges of the constitutional court?
 - 2.3 To what extent does the procedure followed succeed in ensuring a balanced representation, as desired?
3. What are the legal constraints imposed on the institutions which appoint constitutional judges?
 - 3.1 In particular, must the constitutional court be composed wholly or in part of lawyers or judges?
 - 3.2 In practice, is a certain representation of lawyers or judges ensured even in the absence of a legal obligation to that effect?
 - 3.3 What are the reasons for such regulation or for such a practice?
 - 3.4 What evaluation can be made of the current system?
4. Must the constitutional court include members of linguistic, religious, ethnic or other groups?
 - 4.1 In practice, is a certain representation of such groups ensured even in the absence of a legal obligation to that effect?
 - 4.2 What are the objectives sought to be achieved by any such regulation or practice as seeks to ensure a representation of these groups on the constitutional court? Are these objectives met in practice?
5. How is the President of the Court appointed? What are his or her functions?
 - 5.1 To what extent does the mode of appointing the President (whether elected from among the court's members or appointed by another State organ) aim to establish a balance between the different political and legal tendencies represented on the Court?

6. Is the function of constitutional judge incompatible with other activities? Is that incompatible with membership (either past or continuing) of a political party?
7. Is there an age limit for the exercise of the function of constitutional judge? What is the average age of a constitutional judge?
8. Do the terms of office of members, and the question of whether they can be re-elected, aim to establish or to maintain a certain balance of representation?
9. Do members benefit from an immunity from prosecution? What is the competent body for lifting such immunity?
10. Can members of the constitutional court be dismissed from office by a decision of other authorities? Which is the competent authority for deciding upon such dismissal? Does the constitutional jurisdiction intervene in the process of revocation? Have there been cases of dismissal?
11. To what extent is the composition of the highest court in your country attributable to the powers which it exercises (in particular the exercise of ordinary jurisdiction) or to the number of appeals which it hears?
12. Would constitutional judges wish an improvement of their status or of the functioning of their Court?

III. COMPARATIVE TABLE OF REPLIES TO THE QUESTIONNAIRE ON THE COMPOSITION OF CONSTITUTIONAL COURTS**TABLE A**

Column 1	The country in question and its court exercising constitutional jurisdiction
Column 2	Appointment procedure for judges of the court
Column 3	Appointment procedure for the president of the court
Column 4	Established practice concerning the appointment procedure
Column 5	Aims of the appointment procedure
Column 6	The various functions of the president of the court
Column 7	Evaluation of the appointment procedure
Column 8	Qualifications and other personal pre-requisites for appointment
Column 9	<i>De facto</i> requirements
Column 10	The reasoning behind the pre-requisites for appointment

Country	Appointment procedure - <i>de jure</i> - JJ (Q 2.1)	<i>De jure</i> - President of the Court (Q 5)	<i>De facto</i> procedure (Q 2.2)	Aims (Q 1;2)	Function of the President of the Court (Q 5)	<i>Evaluation</i> of appointment procedure (Q 2.3; 5.1)	Appointment requirements - <i>quals de jure</i> (Q 3; 3.1)	<i>Quals de facto</i> (Q 3.2)	<i>Rationale</i> for pre-requisite (Q 3.3)
Albania Constitutional Court	4jj are appointed by President of the Republic; 5jj by Parliament (Art. 18)	Secret ballot by the 9jj. Term: 3yrs Right of re-election	None established	To achieve an organ independent from political alliances - no aim at balanced representation	<i>Primus inter pares</i> - balance of political powers difficult.	Power imbalance, because President's party holds majority of parliamentary seats.	Must be eminent lawyer, at least 10 years judicial experience, of high moral standing (Art. 20)	No <i>de facto</i> pre-requisites mentioned	In order to produce a competent and impartial Constitutional Court
Argentina Supreme Court	The Executive appoints judges, subject to approval by a 2/3 majority of those present at the Senate (representation of the Provinces)	Elected by members of the Supreme Court.	None	the future impartiality of the designated members but no rules as to political representation	No differentiated jurisdictional function	NC	Must be lawyer of Argentina with 8 yrs' experience in practice, have the qualities required for the office of Senator, ie be at least 30 yrs old and have had citizenship for at least 6 years.	No <i>de facto</i> pre-requisites mentioned	NC
Armenia Constitutional Court	National Assembly elects 5 judges including the Chief Justice. Armenian President appoints 4 judges at his discretion.	National Assembly. If National Assembly doesn't elect a Chief Justice within 30 days of the President of National Assembly's submission of candidates, President of	President of National Assembly consults the presidents of the permanent parliamentary commissions, then presents to National Assembly the 5 judges for election by the majority of those present.	To attain a balance between Executive and Legislature, giving primacy to the latter.	Apart from performing judicial functions, the President represents Constitutional Court; convenes and presides over Court sessions; appoints the rapporteur(s) for each case; may also instruct the	The first appointments reflected an over-all accord surrounding the votes, regardless of party politics.	Citizenship, 35 years or above, with the right to vote, higher education; 10 years' prof experience, with experience in the legal sphere in either political or scientific	<i>De facto</i> 7 out of 9 members are lawyers	The reasoning behind the <i>de jure</i> rule is the wish not to create a council of jurists, but a court which takes into account political and social issues. The <i>de facto</i>

Country	Appointment procedure - <i>de jure</i> - JJ (Q 2.1)	<i>De jure</i> - President of the Court (Q 5)	<i>De facto</i> procedure (Q 2.2)	Aims (Q 1;2)	Function of the President of the Court (Q 5)	<i>Evaluation</i> of appointment procedure (Q 2.3; 5.1)	Appointment requirements - <i>quals de jure</i> (Q 3; 3.1)	<i>Quals de facto</i> (Q 3.2)	<i>Rationale</i> for pre-requisite (Q 3.3)
		Republic then appoints the Chief Justice			other judges; performs administrative functions for the court; administers its budget; nominates candidate for CC vice-presidency.		institutions; impeccable moral standing; having mastered the Armenian language. <i>De jure</i> needn't be lawyers, in fact called 'members', not jj.		over-representation of jurists is considered necessary.
Austria Constitutional Court	President of Austria appoints on the nomination by: - Federal Govt: for the positions of CC President, Vice-President, 6 members and 3 substitutes, selected from among judges, State Administration officials and law professors. - Lower House of Parliament: for 3 CC members and 2 substitutes. - Upper House of Parliament: for 3 members	Federal Govt nominates and President of Austrian Federation appoints.	The positions to be filled must now be advertised by the nominating authority, following the 1995 Amendment to the CC Statute (made in order to improve the transparency of the appointment procedure).	- Representation of different legal professions - To ensure the professional experience of the CC - To uphold the federal system In practice, the appointment of CC members is related to the relative importance of political parties and different legal tendencies.	-presides over the CC and its functioning; -sets time of hearing; -votes only in case of a lack of unanimity, where one opinion receives at least half of the votes. -checks that the drafting and wording of the decision is in conformity with the votes cast; -must inform federal Chancellor of any vacancy on the CC; -administers staff recruitment, and the members' holidays.	Pursuant to criticism that the appointment procedure lacked transparency, the CC Statute was amended so as to require the vacation of a seat to be publicised.	3 members and 2 substitutes must be domiciled outside of Vienna. The President or Vice-Pres of the CC must be domiciled in Vienna, and so, too, must at least two other substitutes. All CC members must have completed their studies in law and have at least 10 yrs' professional experience for which their	Although a political science background was technically permissible, most if not all members have a legal background.	Residence requirements are aimed at upholding the federal system.

Country	Appointment procedure - <i>de jure</i> - JJ (Q 2.1)	<i>De jure</i> - President of the Court (Q 5)	<i>De facto</i> procedure (Q 2.2)	Aims (Q 1;2)	Function of the President of the Court (Q 5)	<i>Evaluation</i> of appointment procedure (Q 2.3; 5.1)	Appointment requirements - <i>quals de jure</i> (Q 3; 3.1)	<i>Quals de facto</i> (Q 3.2)	<i>Rationale</i> for pre-requisite (Q 3.3)
	and 1 substitute.						degree is required. The members nominated by the Federal Govt must be chosen from among judges, public officials and professors of law.		
Azerbaijan Constitutional Court (not yet established)	Upon the submission of nominations by the President of Azerbaijan, Parliament appoints	After the appointment of the judges, the President of Azerbaijan submits to Parliament for election his nominations of the CC President and Vice-Presidents	NC	NC	NC	NC	Citizenship, no less than 30 years of age, holding the right to vote, higher legal education, over 15 years of experience in a law-related profession.	NC	NC
Belgium Court of Arbitration	King appoints the 12 judges upon nominations (double list of candidates) alternating between House of Representatives and Senate, by 2/3 majority vote.	2 presidents: one French-speaking, the other Dutch-speaking. Each is appointed from within the corresponding linguistic group of judges on the Court. The	None.	-independence of the judges; - their high level of qualification; -to achieve a level of consensus within the assemblies called upon to nominate the judges; -a certain correspondence	<i>Each president</i> is always part of the bench; presides over cases originating in the language of his linguistic group; may submit case to the plenum of the Court (obligatory if 2/7 of the members of	No criticism of lack of balance between the different political movements. From the time of their appointment, the judges enjoy total independence,	40 years old. Half of the judges must be French-speaking, the other half Dutch-speaking. Half must be highly qualified lawyers (from superior courts,	NC	Half of the jj highly qualified lawyers: due to the Court's eminent status in Belgium. Half of the jj former parliamentary members: in an effort to prevent a 'government

Country	Appointment procedure - <i>de jure</i> - JJ (Q 2.1)	<i>De jure</i> - President of the Court (Q 5)	<i>De facto</i> procedure (Q 2.2)	Aims (Q 1;2)	Function of the President of the Court (Q 5)	<i>Evaluation</i> of appointment procedure (Q 2.3; 5.1)	Appointment requirements - <i>quals de jure</i> (Q 3; 3.1)	<i>Quals de facto</i> (Q 3.2)	<i>Rationale</i> for pre-requisite (Q 3.3)
		2 presidents alternate every year: each exercises effective presidency 1 year out of two.		between the political balances within the federal legislative assemblies and the Court's composition. Since the electoral system is proportional, these mechanisms are aimed at guaranteeing an equitable representation of the currents of thought. -equal representation of the two cultural and linguistic communities; -half of the judges should be former members of parliament.	the bench request it); establishes the list of jj of his linguistic group; Functions of the <i>effective president</i> : administration, representation of the Court; receives oath of employees; casting vote in plenary sessions (10 or 12 jj); disciplinary powers over employees; other special powers granted by law, eg selects jj for special co-operational jurisdictions for disputes about execution of agreements on co-operation between the State, the communities and the regions.	therefore there is no representation of movements.	University, auxiliary (assistant judges of the Court), the other half must be former parliamentary members, i.e. not necessarily lawyers.		of judges', also experience in drafting and revising legislation.
Bosnia and Herzegovina Constitutional Court (The CC has	9 members - 4 jj are appointed by the Lower House of the Federation - 2 jj are ap-	As the Court has not adopted its Court Statute yet, the only provision for	NA	NC	NA	NA	The judges shall be distinguished jurists of high moral standing. Any eligible voter	NA	NC

Country	Appointment procedure - <i>de jure</i> - JJ (Q 2.1)	<i>De jure</i> - President of the Court (Q 5)	<i>De facto</i> procedure (Q 2.2)	Aims (Q 1;2)	Function of the President of the Court (Q 5)	<i>Evaluation</i> of appointment procedure (Q 2.3; 5.1)	Appointment requirements - <i>quals de jure</i> (Q 3; 3.1)	<i>Quals de facto</i> (Q 3.2)	<i>Rationale</i> for pre-requisite (Q 3.3)
just been established)	pointed by the Assembly of the Republika Srpska - 3 jj are appointed by the President of the European Court of Human Rights after consultation with the Presidency of Bosnia and Herzegovina.	the Court is Article VI of the Constitution, which does not mention the President of the Court.					so qualified may serve as a judge of the CC. The jj selected by the President of the European Court of Human Rights shall not be citizens of Bosnia and Herzegovina or of any neighbouring state.		
Bulgaria Constitutional Court	12 members: 4jj - elected by Nat Ass 4jj - Pres of the Republic 4jj - joint meeting of the jj of the Supreme Court of Appeal and the Supreme Court of Administration.	CC JJ elect (by secret ballot) Pres of the CC by absolute majority.	Too early to speak of an established practice	Balanced representation of the various political and juridical movements of the time.	NC	The spirit of political confrontation which reigns in the institutions of public authority renders the prospects of a balanced representation dim.	The constitutional requirement is that the jj be jurists of high professional and moral standing, with at least 15 years' professional experience	<i>As de jure</i>	Presumption is that such a requirement will limit to a certain extent the scope of political pressure and will contribute towards the impartiality of the CC JJ's decisions.
(second opinion for Bulgaria)			<i>De jure</i> practice is followed	Independence of the Constitutional Court and its members		Fully ensures balance of representation.			High professional and moral standing would be assured.
Canada	9 jj, appointed	Appointed by	Prime Minister	There is no real	Apart from per-	Balanced rep-	Must be mem-	Mixture of	No school of

Country	Appointment procedure - <i>de jure</i> - JJ (Q 2.1)	<i>De jure</i> - President of the Court (Q 5)	<i>De facto</i> procedure (Q 2.2)	Aims (Q 1;2)	Function of the President of the Court (Q 5)	<i>Evaluation</i> of appointment procedure (Q 2.3; 5.1)	Appointment requirements - <i>quals de jure</i> (Q 3; 3.1)	<i>Quals de facto</i> (Q 3.2)	<i>Rationale</i> for pre-requisite (Q 3.3)
Supreme Court	by the Federal Govt (Governor-General, upon the nomination of the Prime Minister).	the Prime Minister. Alternates from anglo-phone common lawyer to franco-phone civil lawyer.	may consult the Minister of Justice and the Premier of the Province in question, but is not obliged to.	political influence exerted by Parliament or political parties.	forming judicial functions, the President sees to the good functioning & management of the Court with the help of a lawyer / secretary.	representation of regions and provinces At present, 7 men & 2 women.	member of the Bar in a Province or Territory for 10 years or be member of the judiciary	private practitioners, professors (since 1974) & magistrates	magistrature as in USA & UK
Croatia Constitutional Court	Chamber of Counties nominates and Chamber of Delegates elects the 11 judges.	CC JJ elect their President from among their number.	The CC does not have a long history, and therefore has no established practice yet.	There are no constitutional or other regulations on the representation of various political or legal tendencies, for the election of neither judges nor the President	NC	NC	Pursuant to the Constitution, judges are elected among eminent jurists, especially jj public prosecutors, lawyers and university law professors.	<i>As de jure</i>	To ensure the judges' utmost expertise and extensive experience as lawyers.
Cyprus Supreme Court	Thirteen judges - appointed by the President of the Republic.	Appointed by the President of the Republic.	The President of the Republic may consult the Supreme Court, but he is not bound to do so.	Parliament and the political parties do not exercise any political influence at all.	The President of the Supreme Court is <i>primus inter pares</i> , and has no specific competence of his own, except to secure administratively the proper functioning of the Court.	NC	Must be of high moral standards and have practised as an advocate for 12 years, or have been for the same length of time a member of the judiciary or of the Prosecution Service of the Republic.	NC	To ensure the impartiality and efficacy of the administration of constitutional justice.

Country	Appointment procedure - <i>de jure</i> - JJ (Q 2.1)	<i>De jure</i> - President of the Court (Q 5)	<i>De facto</i> procedure (Q 2.2)	Aims (Q 1;2)	Function of the President of the Court (Q 5)	<i>Evaluation</i> of appointment procedure (Q 2.3; 5.1)	Appointment requirements - <i>quals de jure</i> (Q 3; 3.1)	<i>Quals de facto</i> (Q 3.2)	<i>Rationale</i> for pre-requisite (Q 3.3)
<p>Czech Republic</p> <p>Constitutional Court</p>	<p>15 judges President appoints the judges, with the consent of the Upper House of Parliament (by simple majority vote). No professional organizations have a share in the selection process.</p>	<p>Chairman of the Constitutional Court is appointed from among the CC judges by the President of the Czech Republic in his full discretion. The current judges were appointed in 1993-1994, so it is difficult to recognize a practice. The task of approving the President's appointments was performed by the Lower House, before the Upper House came into existence in 1996, so the Upper House's practice may well vary considerably from the Lower House's, which</p>	<p>In 1993 the President formed a commission composed of representatives from universities, Parliament, the Govt, the ordinary courts, the Ministry of Justice, etc., which advises him on candidates and tends to select a representation of legal professions. Political parties are also allowed to express their views on candidates before the constitutional committee and the Lower House.</p>	<p>No formal requirements aimed at ensuring a wide representation. But the rules do not require the highest past professional accomplishments, leaving open the possibility of choosing persons of the highest moral and professional quality who may have been prevented from advancing in their careers for political reasons. Czech President is not supposed to have any strong political affiliations, so his choice (supported by a substantially non-political Upper House) should be representative of a</p>	<p>-represents the CC -is in charge of managing the CC -organizes the Court's schedule -presides at meetings of the Plenum -appoints Chairmen of the Panels -appoints assistants to JJ -initiates disciplinary proceedings against Justices</p>	<p>The 15 current judges represent a wide spectrum of views. Several are former members of parties now in the coalition, two are former members of the communist party, and several judges are not affiliated to any party at all. All judges must cease to be members of a political party once they are appointed.</p>	<p>lic. Must: -have attained 40 years of age -be of high moral standing -have a university legal education -have had ten years of professional experience</p>	<p>Several judges were also previously judges, but this is not due to any formal requirement.</p>	<p>The rules do not require the highest past accomplishments, leaving open the possibility of choosing persons of the highest moral and professional quality who may have been prevented from advancing in their careers for political reasons.</p>

Country	Appointment procedure - <i>de jure</i> - JJ (Q 2.1)	<i>De jure</i> - President of the Court (Q 5)	<i>De facto</i> procedure (Q 2.2)	Aims (Q 1;2)	Function of the President of the Court (Q 5)	<i>Evaluation</i> of appointment procedure (Q 2.3; 5.1)	Appointment requirements - <i>quals de jure</i> (Q 3; 3.1)	<i>Quals de facto</i> (Q 3.2)	<i>Rationale</i> for pre-requisite (Q 3.3)
		is more dominated by political parties.		variety of political and legal perspectives.					
Denmark Supreme Court, High Court, District Courts	Monarch appoints on recommendation by Minister of Justice (advised by Pres of Supreme Court and Presidents of the two High Courts)	President of the Supreme Court elected from among its members; Monarch appoints Presidents of High Court and District Courts.	<i>De facto</i> , Supreme Court has right of veto concerning appointment of Supreme Court jj.	No specific aims, but skill, unmarred reputation and impartiality are the essential qualities aimed at.	administrative and representative responsibilities in addition to functions of judge; no higher jurisdictional function.	Reform proposal has been put before Parliament, according to which appointment is made by Minister of Justice on the basis of a recommendation by an independent board.	Law degree.	For Supreme Court: Recruitment generally among persons who have been acting either as High Court judges, President of a District Court, DPP, barrister at Supreme Court, secretary of state or law academic for at least three years.	A bill has been introduced in order to provide for a broader recruiting.
Estonia Constitutional Review Chamber of	The President of the Republic proposes the candidate for Chief Justice of	Parliament appoints the Chief Justice of the Supreme Court	The established tradition is that the Chief Justice, prior to proposing a new candidate	To achieve a body of competent judges. The basic criteria for the appointment	The Chairman of the Constitutional Review Chamber (who is also Chief Justice of the Su-	No aim at establishing a balanced representation.	The members of the Constitutional Review Chamber must already	NA	The reasoning has nothing to do with the representation of political

Country	Appointment procedure - <i>de jure</i> - JJ (Q 2.1)	<i>De jure</i> - President of the Court (Q 5)	<i>De facto</i> procedure (Q 2.2)	Aims (Q 1;2)	Function of the President of the Court (Q 5)	<i>Evaluation</i> of appointment procedure (Q 2.3; 5.1)	Appointment requirements - <i>quals de jure</i> (Q 3; 3.1)	<i>Quals de facto</i> (Q 3.2)	<i>Rationale</i> for pre-requisite (Q 3.3)
the Supreme Court	the Supreme Court. Parliament appoints the Chief Justice and, on proposal by the Chief Justice, all other members of the Supreme Court. The Chief Justice is <i>ex officio</i> Chairman of the Constitutional Review Chamber. The other members of the Constitutional Review Chamber (one j from each of the civil, criminal and administrative law chambers) are elected by the Supreme Court on proposal by the Chief Justice.	on the proposal of the President of the Republic. The Chief Justice of the Supreme Court is <i>ex officio</i> Chairman of the Constitutional Review Chamber.	for the office of judge, seeks the approval of the plenary session of the Supreme Court. The members of the Constitutional Review Chamber are elected by the members of the Supreme Court, without any outside interference.	of the Chief Justice are expert knowledge and good repute. No aim at establishing a balanced representation.	preme Court) proposes the other members of the Constitutional Review Chamber for election by the Supreme Court.		be members of the Supreme Court. One judge is picked from each of the civil, criminal and administrative law chambers.		parties. The basic criteria are the experience of judges and their higher legal education.
Finland Supreme Court	Court nominates new judges and President of the Republic appoints 15 jj or more (consults	By President of the Republic, upon the proposal of the Council of Ministers	President of Republic only very rarely departs from the nominations by the Court.	No express aim at a balanced political representation	Apart from performing judicial functions, the President leads the Court's work, presides over ses-	Criteria have been fulfilled. Salaries are comparatively low.	Skill, ability, proven civic merit, experience from service in the judiciary,	Even though long judicial experience may not be a <i>de</i>	Criteria ensure a representation of different professional experience. Professional

Country	Appointment procedure - <i>de jure</i> - JJ (Q 2.1)	<i>De jure</i> - President of the Court (Q 5)	<i>De facto</i> procedure (Q 2.2)	Aims (Q 1;2)	Function of the President of the Court (Q 5)	<i>Evaluation</i> of appointment procedure (Q 2.3; 5.1)	Appointment requirements - <i>quals de jure</i> (Q 3; 3.1)	<i>Quals de facto</i> (Q 3.2)	<i>Rationale</i> for pre-requisite (Q 3.3)
	the Minister of Justice & Council of Ministers)	(prepared in the Ministry of Justice). Need not already be a member of the respective Court - may be appointed as President directly to the Court.			sions & represents the Court at home or abroad. President is one of 15 or more judges. The President has the casting vote in case of a tie, except in criminal or disciplinary matters, where the opinion more favourable to the accused will apply.		which needn't be long if eg also has experience as a law professor or a prominent advocate. They must be lawyers, except in court-martials, where 2 generals participate.	<i>jure</i> requirement, <i>de facto</i> a clear majority has decades of experience in the judiciary.	skills are regarded as essential for such positions.
Finland Supreme Administrative Court (where it differs from the Supreme Court)							Skill, ability, proven civic merit, experience from service either in the judiciary or in public administration. They must be lawyers, except in water rights and patent cases, where 2 specialists in engineering participate.	Criteria ensure a representation of different professional experience. Apart from a few law professors, the appointees are either from the (administrative) judiciary or high-ranking officials from Govt	

Country	Appointment procedure - <i>de jure</i> - JJ (Q 2.1)	<i>De jure</i> - President of the Court (Q 5)	<i>De facto</i> procedure (Q 2.2)	Aims (Q 1;2)	Function of the President of the Court (Q 5)	<i>Evaluation</i> of appointment procedure (Q 2.3; 5.1)	Appointment requirements - <i>quals de jure</i> (Q 3; 3.1)	<i>Quals de facto</i> (Q 3.2)	<i>Rationale</i> for pre-requisite (Q 3.3)
								or municipal service.	
France Constitutional Council	3jj - President of the Republic 3 jj - President of the Senate 3jj - President of the National Assembly	President of the Republic appoints.	Every 3 years each nominating authority chooses a member at his own discretion. Sometimes 2 of the nominating authorities will belong to the same party, but their discretion is still unhindered, despite the risk of their collaborating.	No political balance aimed at.	Apart from performing judicial functions, the Pres administers the Constitutional Council, represents it at home & abroad; Attends conferences; appoints the rapporteur for each case. Has the casting vote in case of a tie.	Depends on politics of nominating authorities. If same, then no real balance.	There are no express conditions.	Cases of <i>non-jurists</i> are rare.	The <i>de jure</i> lack of jurist requirement is aimed at enriching the field of decisions on the constitutionality of laws. The <i>de facto</i> importance of legal qualifications is crucial.
Georgia Constitutional Court	9 members: -3jj elected by the Parliament. -3jj appointed by the President of Georgia by decree -3jj designated by the Supreme Court.	Chairman of the CC is elected by the members of the Constitutional Court from among their number. The candidate is nominated by consensus between the President of Georgia, the parliamentary Chairman and the Chairman	-For the 3jj elected by Parliament, the Chairman of the Parliament, a parliamentary faction and a group of ten MPs have the right to nominate a candidate. -For the 3jj designated by the Supreme Court, Chairman of Supreme Court nominates candidates.	Procedure ensures equal rights for three branches of authority in the composition of the CC and is aimed at the participation of different political forces in the process. Appointment of a Chairman requires a consensus of the nominating authori-	NC	Contributors confident that the system is legally valid.	Must have a tertiary legal education, but needn't have been a judge. Must have reached the age of 35. CC JJ are absolutely independent in their decision-making and they must uphold the Constitution.	NC	Independence of the judges is entrenched in the Constitution of Georgia, which states that the Constitutional Court is an independent organ of authority.

Country	Appointment procedure - <i>de jure</i> - JJ (Q 2.1)	<i>De jure</i> - President of the Court (Q 5)	<i>De facto</i> procedure (Q 2.2)	Aims (Q 1;2)	Function of the President of the Court (Q 5)	<i>Evaluation</i> of appointment procedure (Q 2.3; 5.1)	Appointment requirements - <i>quals de jure</i> (Q 3; 3.1)	<i>Quals de facto</i> (Q 3.2)	<i>Rationale</i> for pre-requisite (Q 3.3)
		of the Supreme Court.		ties.					
Germany Federal Constitutional Court	16 judges. Both Federal assemblies participate. Federal Diet indirectly selects its half of judges through Judicial Selection Committee (12 members of Federal Diet with proportional party representation, 8 votes necessary). Federal Council votes for its half as a whole (by 2/3 majority vote).	President of Federal Constitutional Court is alternately elected by the Federal Diet & the Federal Council.	Minister of Justice draws up list of eligible federal jj plus candidates submitted by Parliament and Government (State or Federal). The lists are submitted to organs. If fails to vote within 2 months of vacancy, eldest member (chairman) of Judicial Selection Committee or President of Fed. Council decides (upon Const. Court suggestions). Convention: seats 'assigned' to 1 of 2 polit. parties are filled by that party when vacant.	To produce best qualified person & to accord democratic legitimacy to the election of judges.	Apart from performing judicial functions, the President represents the Federal Constitutional Court in its external relations. Administers & presides over 1 senate (8 jj) & Vice-President presides over other senate. <i>Primus inter pares</i> except in issues as to a senate's competence.	Ensures balanced representation of major 2 parties and balanced regional representation This balance was probably not intended by the legislator. The mode of selecting the President guarantees that the chief justices are not selected from same institution at the same time.	Must be of at least 40 years of age, be eligible for election to the Federal Diet, have stated in writing that willing to become a member, be qualified to be a German judge. 6 jj must be selected from the 5 highest Federal Courts.	Routine recruitment from law faculties (public law). At least 3 judges are professor-judges.	To ensure jj's profound knowledge of constitutional law To ensure that the Court has experienced judges among their number.
Hungary Constitutional	11 members. Elected by a two-thirds ma-	The CC members elect a President and	Candidates are proposed by a selection commit-	The aims are to ensure on the one hand that	<i>Primus inter pares</i> . The President's role is not	There is discrepancy between the-	Must have Hungarian citizenship, le-	The candidates must all be law-	NC

Country	Appointment procedure - <i>de jure</i> - JJ (Q 2.1)	<i>De jure</i> - President of the Court (Q 5)	<i>De facto</i> procedure (Q 2.2)	Aims (Q 1;2)	Function of the President of the Court (Q 5)	<i>Evaluation</i> of appointment procedure (Q 2.3; 5.1)	Appointment requirements - <i>quals de jure</i> (Q 3; 3.1)	<i>Quals de facto</i> (Q 3.2)	<i>Rationale</i> for pre-requisite (Q 3.3)
Court	<p>majority of National Assembly members. Before the law was changed, there were to be 15 members, elected gradually so as to prevent a politically one-sided composition. The first 5 members were appointed in late 1989; the CC began work in 1990. The 5 following members were elected mid-1990 (by a newly elected Nat Ass). The 5 final members were never appointed; then the law changed, reducing the no. of jj to 11, including the Pres and Vice-Pres.</p>	<p>a Vice-President from among their number.</p>	<p>tee of which 1 representative from each political party in the National Assembly is a member. The candidates are heard by the legal, administrative and judicial council of the National Assembly. Parliament makes its decision taking the opinion of this council into consideration.</p> <p>The CC presently has 9 members and the election of the 2 missing members is a subject of political debate.</p>	<p>the members do not belong to a political party, ie that they are neutral and independent from political parties, and on the other hand, that they represent a high level of professionalism. There is no aim to guarantee a representation of different legal movements. A diversity of political movements is, however, guaranteed by the system. Membership to the selection committee must be approved by all political parties.</p>	<p>to maintain a balance, but to administer the internal affairs of the CC. Co-ordinates CC's activities, calls and directs plenary meetings, represents the CC.</p>	<p>theory and practice. The selection committee is a political organ. It is, however, supposed to advise according to professional criteria, but in practice it only follows political considerations. Appointment is a political act. There is no guarantee of any balance. Pursuant to an agreement in 1989, the political parties proposed two pro-government candidates, two candidates for the opposition and a common candidate.</p>	<p>legal qualifications, no criminal record, be at least 45 yrs old, to be eligible for the position of CC member. The choice is made from among highly competent lawyers with a sound theoretical background, university professors or academics of law or political science, or professionals with at least 20 yrs' experience in an activity requiring legal qualifications. A candidate is barred from appointment if, during the four years preceding the appointment, he or she had</p>	<p>years, but they need not be judges. The composition reflects a mixture of law-related professions.</p>	

Country	Appointment procedure - <i>de jure</i> - JJ (Q 2.1)	<i>De jure</i> - President of the Court (Q 5)	<i>De facto</i> procedure (Q 2.2)	Aims (Q 1;2)	Function of the President of the Court (Q 5)	<i>Evaluation</i> of appointment procedure (Q 2.3; 5.1)	Appointment requirements - <i>quals de jure</i> (Q 3; 3.1)	<i>Quals de facto</i> (Q 3.2)	<i>Rationale</i> for pre-requisite (Q 3.3)
						Appointment is always the result of a political competition.	been a member of the government or an employee of a political party or had been an official in public administration.		
Iceland Supreme Court	9jj, appointed by the President of the Republic, on recommendation by Minister of Justice (who must consult, but is not bound by, the other jj on the Supreme Court).	Elected by and from among the members of the Supreme Court.	NC	Aims are: - independence of the Court; - appointment of competent candidates.	Primary function is to preside over the Court. <i>Ex officio</i> exercises, together with Prime Minister and Speaker of the Parliament, the authority of President of Iceland, when the Presidency becomes vacant, the President is abroad or is unable to exercise presidential power for some other reason.	NC	Must be at least 30 yrs old; have a very good law degree; be qualified to practise law; have at least 3 yrs' experience as a magistrate, Supreme Court barrister, Registrar of the Supreme Court, law professor, District Governor, public prosecutor, permanent secretary in a ministry, deputy permanent secretary in Ministry of Justice, or	NC	NC

Country	Appointment procedure - <i>de jure</i> - JJ (Q 2.1)	<i>De jure</i> - President of the Court (Q 5)	<i>De facto</i> procedure (Q 2.2)	Aims (Q 1;2)	Function of the President of the Court (Q 5)	<i>Evaluation</i> of appointment procedure (Q 2.3; 5.1)	Appointment requirements - <i>quals de jure</i> (Q 3; 3.1)	<i>Quals de facto</i> (Q 3.2)	<i>Rationale</i> for pre-requisite (Q 3.3)
							Ombudsman. Must have spotless reputation. May not be bankrupt.		
Ireland Supreme Court	President of Ireland appoints 8jj on government's nomination (President can't reject nomination) Consideration of Judicial Appointments Advisory Board (Attorney-General, a barrister, a solicitor & 3 members of the public).	Govt nominates & Pres. appoints the Chief Justice. The Government has complete discretion. Judicial Board has no function here.	Board recommends at least 7 persons who have applied for the position. The government must disclose when it decides to nominate someone who was not recommended. There is a practice of usually selecting 1 non-Catholic.	No aim of balance is stipulated. The practice of usually selecting 1 non-Catholic is aimed at ensuring that the Court reflect more than 1 ethical outlook.	Apart from performing judicial functions, the Pres presides at sittings, administrative functions. By virtue of his office, he is also member of Council of State (advises President on some matters) & of Commission which carries out President's functions when absent, dead or incapacitated.	NC	High Court or Circuit Court judge of 4 years' standing or barrister of 12 years' standing.	NA Juries play an important decision-making role.	NC
Italy Constitutional Court	15 judges Five jj - joint meeting of the two Houses of Parliament with a 2/3 majority (after 3 attempts, 3/5 majority ok). Five jj - President of Italy. Five jj - su-	By secret ballot by the judges among their number. An absolute majority is required. After a second failed ballot, a third one is held between the two candidates	The convention between the political parties was that Parliament would elect its 5jj on the basis of a pre-ordained proportional representation. Sometimes parties would boycott each other's	To guarantee a balanced composition of the Court in such a way that its impartiality is ensured by the presence of jj of different political and legal tendencies. Requirement of	Internal Court rules provide for the President's function. Apart from performing judicial functions, the Pres is the representative of the Court, speaks in the Court's name, calls and chairs its meetings	The practice of the first 30 years of the Court was very successful in achieving the desired balance. In recent times, appointments by the President	Must have been either a judge from an ordinary or administrative court (may already be retired), a university professor of law, or a legal practitioner with	NC	To guarantee a competent composition.

Country	Appointment procedure - <i>de jure</i> - JJ (Q 2.1)	<i>De jure</i> - President of the Court (Q 5)	<i>De facto</i> procedure (Q 2.2)	Aims (Q 1;2)	Function of the President of the Court (Q 5)	<i>Evaluation</i> of appointment procedure (Q 2.3; 5.1)	Appointment requirements - <i>quals de jure</i> (Q 3; 3.1)	<i>Quals de facto</i> (Q 3.2)	<i>Rationale</i> for pre-requisite (Q 3.3)
	preme judicial bodies : 3jj Court of Cassation ; 1j Council of State; 1j Court of Accounts - each requiring an absolute majority (after 1 attempt, ballot between two candidates placed highest in the 1st ballot). The five appointments by the head of state must be countersigned by the President of the Council of Ministers, but they do not depend on a Cabinet proposal.	who fared best in the second ballot.	nominations because a candidate is considered over-involved in politics. The convention is expected to continue with the new political parties in power. The President's nominations should complement Parliament's by reflecting the political and legal tendencies which Parliament's nominations have left out.	special majorities in the appointments by Parliament should guarantee a wide level of acceptance by a large range of political forces. These appointments are then balanced out by those by the President and the judicial bodies. Election of President of the CC is not political. Rather, the post is given to the j serving longest on the CC.	and controls the internal administration of the institution. He appoints the judges as rapporteurs on cases submitted to the Court, and decides when the meetings for the discussion of cases should take place. He has the casting vote in case of a tie.	have been criticised for their being influenced by political power. Recently one President was accused of having appointed too many jj who were very close to the positions of the political party of the incumbent President of the Council of Ministers, and another President is supposed to have favoured candidates connected with the majority of the Cabinet then in power.	over 20 years' experience.		
Japan Supreme	15 jj. Cabinet appoints. The people review	Appointed by Emperor as designated by	None.	To guarantee balanced sense of society in real-	Apart from performing judicial functions, the Pres	No controversy.	Broad vision & learned in law. At least 40	In practice 1-2 jj. are not lawyers	This accounts for a broader vision (mixture

Country	Appointment procedure - <i>de jure</i> - JJ (Q 2.1)	<i>De jure</i> - President of the Court (Q 5)	<i>De facto</i> procedure (Q 2.2)	Aims (Q 1;2)	Function of the President of the Court (Q 5)	<i>Evaluation</i> of appointment procedure (Q 2.3; 5.1)	Appointment requirements - <i>quals de jure</i> (Q 3; 3.1)	<i>Quals de facto</i> (Q 3.2)	<i>Rationale</i> for pre-requisite (Q 3.3)
Court	judicial appointments by vote at the first general election of the House of Representatives following the appointment and subsequently at 10-year intervals.	Cabinet.		ising justice. No political balance aimed at.	is the presiding judge, in charge of administration. Procedure is not aimed at establishing political balance.		years of age. 10 jj (or more) must be j of 10 years' standing or other lawyer/ prof. of law for a total of 20 years or more. Thus 5 jj. need not have legal qualifications.	eg. diplomats or senior government officials.	of legal backgrounds) A majority of JJ with legal qualifications is necessary for the Court's competence as final arbitrator
Latvia Constitutional Court	Seima (Parliament) elects the 7 jj. 3 jj are nominated by at least 10 members of Seima; 2jj upon nomination of Cabinet of Ministers; & 2 jj upon nomination of Plenum of Supreme Court (only from among Latvian jj)	CC judges elect a President by secret ballot among themselves, by absolute majority.	The candidates recommended by members of parliament are nominated by parliamentary groups and members. No special procedure for nominations from Government.	To establish a professional & valuable Constitutional Court. No aim to establish a balanced representation between different tendencies.	-presides at CC sessions; -organises CC work; -represents CC; -may delegate some duties to another j; -may direct other jj only with regard to the organisation of work.	President of CC is quite independent.	Latvian citizen University legal education, 5 years' legal experience in profession or research / educational establishment.	No practice yet. Constitutional Court recent. Only 2 judges were already previously judges.	CC, as highest and independent Constitutional jurisdiction, requires highly qualified, experienced lawyers and combination of theoretical and practical approach towards constitutional issues.
Liechtenstein State Council	Parliament appoints the five judges and their substitutes.	The President of the Council, elected by Parliament, is confirmed by the Prince of Liechtenstein.	Parliament relies on nominations by political parties represented in Parliament. Foreign candidates are presented by	To guarantee that at least 2 out of 5 members are lawyers, on the one hand, and a majority of judges of Liech-	NC	No political or legal balance is aimed at.	Two jj (and two replacements) must be lawyers. The majority of the jj, including the President and	No further <i>de facto</i> pre-requisites.	To guarantee a minority of lawyers, on the one hand, and a majority of judges of Liechtenstein

Country	Appointment procedure - <i>de jure</i> - JJ (Q 2.1)	<i>De jure</i> - President of the Court (Q 5)	<i>De facto</i> procedure (Q 2.2)	Aims (Q 1;2)	Function of the President of the Court (Q 5)	<i>Evaluation</i> of appointment procedure (Q 2.3; 5.1)	Appointment requirements - <i>quals de jure</i> (Q 3; 3.1)	<i>Quals de facto</i> (Q 3.2)	<i>Rationale</i> for pre-requisite (Q 3.3)
			the Government for election by Parliament. In practice, two posts are reserved for a Swiss and an Austrian.	tenstein nationality on the other hand. No political or legal balance aimed at by the procedure for appointment of judges or the Council President.			Vice-President of the Council, must be of Liechtenstein nationality (since birth). A minority of the jj may be of foreign nationality.		nationality on the other hand. No political or legal balance aimed at.
Lithuania Constitutional Court	The 9 jj are appointed individually and by secret ballot by the Seimas (Parliament) upon nominations for 1/3 of the members by each of the following: President of Lithuania; Chairperson of Seimas; and Chairperson of Supreme Court. Rotation every 3 years of 1/3 of the jj.	Seimas appoints Chairperson of Constitutional Court from among the jj thereof, and on the President's nomination.	Influential legal institutions (Ministry of Justice, Supreme Ct, Vilnius University Department of Law, etc.) publish list of desirable candidates in press. But decision of competent bodies is not bound by this list.	Competent Court, independent & impartial. Approval of public & legal institutions of the proposed candidates. Ensure confidence of highest institutions of CC. Aim not political but indirectly, yes.	Apart from performing judicial functions, the Pres has the casting vote in case of a tie, directs & presides over CC work, proposes issues to be examined and appoints rapporteurs to deal with individual cases. Administrative work, issues orders & directives, administers CC funds.	Ensures equal representation of 3 State powers in the CC. Chairperson: dependent on President & Parliament.	Citizenship. Impeccable reputation. Training in law. 10 years' experience in law (or related to legal qualifications).	Only experienced lawyers (doesn't need to be a specific legal profession).	CC, as highest jurisdiction, requires highly qualified, experienced lawyers.
Malta Constitutional Court	3 jj. Appointed by the President of Malta on advice of the	Appointed by President of the Republic on the advice	Prime Minister may seek advice of Commission for the Admini-	No aim at guaranteeing representation of different political	Chief Justice also presides over Court of Appeal. -representative of	NA	Chosen from among jj who serve in the superior	NA	NA

Country	Appointment procedure - <i>de jure</i> - JJ (Q 2.1)	<i>De jure</i> - President of the Court (Q 5)	<i>De facto</i> procedure (Q 2.2)	Aims (Q 1;2)	Function of the President of the Court (Q 5)	<i>Evaluation</i> of appointment procedure (Q 2.3; 5.1)	Appointment requirements - <i>quals de jure</i> (Q 3; 3.1)	<i>Quals de facto</i> (Q 3.2)	<i>Rationale</i> for pre-requisite (Q 3.3)
	Prime Minister.	of the Prime Minister.	stration of Justice. Normally, two most senior jj sit with the Chief Justice, but appointments are <i>de facto</i> the result of a choice made by the jj themselves.	and legal tendencies, despite Maltese President's role. Independence from political and legal tendencies is very important and is guaranteed.	the Court -controls internal administration.		courts. In order to qualify as a j, must have practised as an advocate for a minimum of 12 years. Thus the Court is entirely composed of lawyers.		
Norway Supreme Court	Appointed by King-in-Council, upon nomination by Ministry of Justice.	Appointed by King-in-Council, upon nomination by Ministry of Justice.	NC	Competence, independence, impartiality, etc. No explicit concern to ensure a political balance	Administrative function apart from judicial ones. Spokesman for the Court. No balance aimed at.	Govt has recently appointed a commission to analyze the problems of appointing jj	Lawyer with first class degree; Must be at least 30 years old.	High legal qualifications.	To ensure a composition of judges from different legal professions.
Poland Constitutional Tribunal	15 jj elected by the Sejm, Lower House of parliament.	Upon proposal by the jj themselves from among their number, Sejm elects president and vice-president.	NC	- to achieve independent organ - dignity of office of judge - rule against re-election to office is to guarantee representation of different legal and political tendencies.	Apart from performing judicial functions, the President has representative duties and presides at plenary sessions. <i>Primus inter pares</i> .	NC	Legal qualifications; distinguished jurists; fulfils the requirements necessary to hold the office of a j of the Supreme Court or the Chief Administrative Court.	NC	NC
Portugal	13 jj Parliament, by	Constitutional Court jj elect	NC	Ensure: -specific & qualified le-	Apart from exercising judicial	Succeeds in achieving a	Citizenship with full civil &	NA	NC

Country	Appointment procedure - <i>de jure</i> - JJ (Q 2.1)	<i>De jure</i> - President of the Court (Q 5)	<i>De facto</i> procedure (Q 2.2)	Aims (Q 1;2)	Function of the President of the Court (Q 5)	<i>Evaluation</i> of appointment procedure (Q 2.3; 5.1)	Appointment requirements - <i>quals de jure</i> (Q 3; 3.1)	<i>Quals de facto</i> (Q 3.2)	<i>Rationale</i> for pre-requisite (Q 3.3)
Constitutional Court	2/3 qualified majority elects 10 jj. 3jj are then co-opted by the 10 elected jj.	President from among their members by secret ballot without discussion or debate. Must receive at least 9 votes. If they fail to elect after 5 attempts, the 1st with 8 votes is President.		legitimacy of members; -technical qualifications of the jj suited to their function; -independence of the jj; -legal & political balance of representation (also with respect to the election of President, to a lesser extent).	functions, the President represents the Court; receives applications for the position of President of Republic; presides at the meeting regarding the validity of the President's election; presides at Court sessions; administrates	balance of political and legal tendencies.	political rights Either graduate or PhD in Law or a judge 6 judges of the Constitutional Court must come from the judiciary.		
Romania Constitutional Court	9 jj 3 jj: elected by House of Representatives 3 jj: elected by Senate 3 jj: appointed by Pres. of Romania	CC jj elect President among their number by secret ballot and for a 3-year term. Each of the three groups of jj select a candidate among their no.	For the elections by the two parliamentary houses, candidates are presented by parliamentary groups, members and senators before the Judicial Committee. The Jud Comm and the two parliamentary houses brought together in plenary session will then hear the candidates.	To achieve and maintain a certain balance, stability and authority of the institution. To reflect the different branches of the law and the relation of power between the different political forces.	Apart from performing judicial functions, the President co-ordinates CC activities and distributes the disputes to be solved; represents CC; handles budget and administration.	Succeeds in guaranteeing reasonable balance in the composition of the CC. The renewal of 1/3 of jj every 3 years also helps ensure this balance.	Must have tertiary legal education and high level of professional competence. Must have at least 18 years' experience in legal profession or teaching law at tertiary level.	The professor-judges form the largest group.	Due to nature of CC's competencies, it is necessary to ensure in-depth knowledge of Constitution and its relationship to other statute. Must be a body of professionals with skills in Constitutional control.
Russia	Federation	By the jj by	Proposals are	Ensure a) selec-	Apart from per-	System	Citizenship, at	They must	CC is the high-

Country	Appointment procedure - <i>de jure</i> - JJ (Q 2.1)	<i>De jure</i> - President of the Court (Q 5)	<i>De facto</i> procedure (Q 2.2)	Aims (Q 1;2)	Function of the President of the Court (Q 5)	<i>Evaluation</i> of appointment procedure (Q 2.3; 5.1)	Appointment requirements - <i>quals de jure</i> (Q 3; 3.1)	<i>Quals de facto</i> (Q 3.2)	<i>Rationale</i> for pre-requisite (Q 3.3)
Constitutional Court	Council (ie Upper House) appoints 19jj, upon the proposal of the Russian President, individually and by secret ballot.	secret ballot for a 3-year term. May be re-elected for the next term.	made to the Federation President by members of the Federation Council, MPs of the State Duma, as well as by legislative bodies of constituent entities of the Russian Federation, supreme judicial bodies, federal legal departments, legal research and educational institutions. In practice, list of candidates is drawn up in the Pres's administration, but choice is made by Pres himself.	tion of specialists possessing high qualifications and b) as far as possible, the depoliticisation of the CC. No balance of representation of political or legal tendencies is aimed at. As regards the appointment procedure of the chairman, its aim is to ensure the Chairman's position of authority.	forming judicial functions, the President directs plenary sessions, submits for CC's consideration Qs to resolve at plenary and chamber sessions. - represents CC -administrative work and personnel management. May be dismissed early by secret ballot on initiative of no less than 5 jj and by a 2/3 maj decision of plenum.	allows avoidance of political fervour. Federal Council (Upper House) has voted down some candidates proposed by the President due to their over-involvement in politics.	least 40 years old, impeccable reputation, higher legal education, 15 years' experience in the legal profession, recognised legal qualifications	be lawyers, but needn't previously have been jj. At present only 2jj were previously jj of general jurisdiction.	est stage of constitutional jurisdiction, therefore members should be legal specialists with high level of qualifications.
Slovakia Constitutional Court	10 jj National Council collects proposals, selects 20 "official" candidates and submits list to the President of the Slovak Republic, who ap-	President of Republic selects President and Vice-President of CC, from among his choice of JJ.	Proposals of candidature are accepted from: - Deputies of the National Council - Slovak Government; - CC President; - Supreme Court President; - Attorney-General;	To regulate both process of choosing and appointing the JJ in compliance with the eligibility requirements. No express guarantee of balance of different	Apart from performing judicial functions, the President holds organisational duties, and is in charge of disciplinary proceedings against CC jj.	It appears that only legal rather than political tendencies may bear some significance on the bench.	- Citizenship - eligible for election to the National Council - having reached 40 years of age - University Law degree	Any kind of legal profession is ok, not necessarily the judiciary. At present: 3jj are judges/practitio-	Special competence of CC as independent judicial body requires combination of theoretical and practical approach to-

Country	Appointment procedure - <i>de jure</i> - JJ (Q 2.1)	<i>De jure</i> - President of the Court (Q 5)	<i>De facto</i> procedure (Q 2.2)	Aims (Q 1;2)	Function of the President of the Court (Q 5)	<i>Evaluation</i> of appointment procedure (Q 2.3; 5.1)	Appointment requirements - <i>quals de jure</i> (Q 3; 3.1)	<i>Quals de facto</i> (Q 3.2)	<i>Rationale</i> for pre-requisite (Q 3.3)
	points 10jj.		- lawyers' associations; - academic institutions	political and legal tendencies. But may be reflected indirectly through the different authorities submitting nominations.			- 15 years experience in legal profession.	ners; 2 jj are legislative sections of ministries; 5jj are law professors and academics.	wards each constitutional case.
Slovenia Constitutional Court	9 judges elected by the National Assembly (by secret ballot and absolute majority) and on the nomination of the President of Slovenia.	The President (and Vice-President) shall be elected by secret ballot of the judges among their number. The candidate must receive five out of the nine votes.	As a rule, key legal professional organisations are also consulted and invited to make their proposals.	No aim at a balanced representation of different political or legal tendencies.	Apart from performing judicial functions, President must notify President of the Republic and the National Assembly of the expiry of a j's term of office six months in advance; presides over CC sessions, represents the CC and is also the head of the administration; is considered <i>primus inter pares</i> among the jj.	The Constitutional Court reflects in a balanced way the composition of the Parliament.	Citizens who are legal experts and have reached at least 40 years of age are eligible for election to the position of judge of the CC.	Approximately half of the Constitutional Court judges were previously judges and the other half were law professors.	To guarantee a balance of the two types of legal background.
Spain Constitutional Court	12 judges appointed by the King, pursuant to the following nominations: -4 jj by a 3/5 maj of the members	King appoints President of CC from among, and upon the nomination of an absolute	The nominations by the Council of the Judiciary must be made on a 3/5 maj of its members (just as for the	To ensure a pluralistic representation of the State's institutions. To highlight democratic legitimacy of the	External functions: -representative role as fifth authority of the State; - communicates with other State	With the exception of the two members nominated by the judiciary (though there, too, the law	The candidates must; -be Spanish citizens (either of origin or naturalised,	NA	To ensure neutrality and effectiveness of constitutional justice.

Country	Appointment procedure - <i>de jure</i> - JJ (Q 2.1)	<i>De jure</i> - President of the Court (Q 5)	<i>De facto</i> procedure (Q 2.2)	Aims (Q 1;2)	Function of the President of the Court (Q 5)	<i>Evaluation</i> of appointment procedure (Q 2.3; 5.1)	Appointment requirements - <i>quals de jure</i> (Q 3; 3.1)	<i>Quals de facto</i> (Q 3.2)	<i>Rationale</i> for pre-requisite (Q 3.3)
	of the Lower House. -4 jj by a 3/5 maj of the members of the Senate. -2 jj by the Government -2 jj by the General Council of the Judiciary.	majority of its members. If no such majority is attained, the candidate with the most votes in the 2nd ballot is then the President. In the case of a tie, a third ballot is then held. If the tie persists, then it's the j serving longest on the bench. If the tie still persists, then it's the eldest j.	nominations by the Lower House and the Senate). There is no special procedure for the Government nominations. The first 2 CC Presidents were voted practically unanimously; every stage of the default procedure was required for the 3rd President.	CC in addition to institutional pluralism. Moreover, the CC enjoys a great degree of dignity and importance. The appointment procedure also appears to be aimed at achieving a representation of a number of legal professions, but this is a less important aim. Prior practice of selecting a Vice-President of different tendency than that of CC President reflected aim of pluralistic representation.	organs; Internal functions: -in the event of a tie, has the casting vote -presides at plenary sessions; -calls and sets agenda for plenary sessions; - directs the deliberations of the First Chamber; - calls and sets agenda for meetings of the Governmental Commission; - appoints staff and authorises the recruitment of administrative staff; - directs disciplinary action	has changed), the ten remaining appointments are dependent on a certain degree of agreement among the political forces. Although in theory mechanisms are in place aimed at avoiding political partiality, in practice a system of 'prior consensus' enables the political parties to get their candidates elected.	though there is a question whether persons of dual citizenship should be included) -be selected from among judges, prosecutors, university professors, public officials and attorneys; -be recognized as highly competent lawyers; -have exercised their profession for over 15 years, or be active in such a position.		
Sweden Supreme Court	Government appoints. Minister of Justice makes the proposals to the Government. Parliament has no influence at	Senior judge is appointed Chairman.	NC	No aims stated No guarantee of political balance. In practice appointments are made due to the person's legal profession	Apart from performing judicial functions, the President has representative duties and presides at plenary sessions.	NC	All members must be lawyers.	NC	NC

Country	Appointment procedure - <i>de jure</i> - JJ (Q 2.1)	<i>De jure</i> - President of the Court (Q 5)	<i>De facto</i> procedure (Q 2.2)	Aims (Q 1;2)	Function of the President of the Court (Q 5)	<i>Evaluation</i> of appointment procedure (Q 2.3; 5.1)	Appointment requirements - <i>quals de jure</i> (Q 3; 3.1)	<i>Quals de facto</i> (Q 3.2)	<i>Rationale</i> for pre-requisite (Q 3.3)
	all.			(barristers, law professors, public prosecutors, etc.) or speciality (tax law, family law, etc.).					
Sweden Supreme Administrative Court (where it differs from the Supreme Court)							Two thirds of the judges must be lawyers.	In practice, however, all members are lawyers.	
Switzerland Federal Court	JJ appointed by the Federal Assembly.	Federal Assembly appoints the President of the Federal Court from among the JJ and upon the JJ's proposal. 2-year term, taking into consideration the JJ's seniority, regardless of language or politics.	On the proposition of a parliamentary commission composed of representatives of the major parties. Representation is traditionally proportionate.	Balanced representation of regions and linguistic minorities. High level of appointment. To guarantee a representation of the different legal and political tendencies. Balanced representation of the three official languages. Independence of the judges. Respect for the doctrine of the separation of powers.No express provi-	Apart from performing judicial functions, the President presides at plenary sessions, sees to the administration of Tribunal affairs and personnel.	System successfully fulfills its aims.	Non-denominational citizen with the right to vote. Need not have a legal education.	Only in rare exceptions is a judge not a jurist. They are mostly recruited from the academic world or from the cantonal judiciary or the bar.	The requirement of competence for the position.

Country	Appointment procedure - <i>de jure</i> - JJ (Q 2.1)	<i>De jure</i> - President of the Court (Q 5)	<i>De facto</i> procedure (Q 2.2)	Aims (Q 1;2)	Function of the President of the Court (Q 5)	<i>Evaluation</i> of appointment procedure (Q 2.3; 5.1)	Appointment requirements - <i>quals de jure</i> (Q 3; 3.1)	<i>Quals de facto</i> (Q 3.2)	<i>Rationale</i> for pre-requisite (Q 3.3)
				sion for the guarantee of a balanced representation of different legal and political tendencies, but in practice, the judges represent the political parties in proportion to the composition of the Federal Assembly. Also retiring judges are replaced according to the appointment by the same party. Also, tendency to represent different legal professions.					
"The former Yugoslav Republic of Macedonia" Constitutional Court	9 judges: elected by Parliament. President of Republic proposes 2 jj. Republican Judicial Council proposes 2 jj. Members of Parliament propose 5 jj.	Constitutional Court elects a President from its own ranks (for a term of 3 years)	Majority vote of total number of Members of Parliament	Protect constitutionality & legality & provide independent & competent constitutional justice	Apart from performing judicial functions, the President represents Constitutional Court; administrative work	System is good (judging from the fact that there were no disagreements about the first composition) Balanced representation	Outstanding member of legal profession	NA	To maintain a highly qualified composition of the Constitutional Court
Turkey	11jj + 4 reserve jj. President se-	President of CC is elected	The respective Courts from	To ensure independence and	Apart from performing judicial	NC	Members appointed from	Procedure guarantees	Legal training preferable.

Country	Appointment procedure - <i>de jure</i> - JJ (Q 2.1)	<i>De jure</i> - President of the Court (Q 5)	<i>De facto</i> procedure (Q 2.2)	Aims (Q 1;2)	Function of the President of the Court (Q 5)	<i>Evaluation</i> of appointment procedure (Q 2.3; 5.1)	Appointment requirements - <i>quals de jure</i> (Q 3; 3.1)	<i>Quals de facto</i> (Q 3.2)	<i>Rationale</i> for pre-requisite (Q 3.3)
Constitutional Court	lects: - 2jj + 2 reserve jj from Court of Cassation; - 2jj + 1 reserve j from Council of State; - 1j from Military Court of Cassation; - 1j from Supreme Military Administrative Court; - 1j from Court of Accounts; 1j from teaching staff of higher educational institutions; 3jj + 1 reserve j from among high-ranking administrators and lawyers	among its members by secret ballot and absolute majority. 4-year term. Re-election possible.	which President must choose elect three candidates for each position by absolute maj. Three candidates for the academic-judge position are nominated by the High Education Council from among academics who are not members of the High Education Council.	political neutrality of members. No aim to guarantee a representation of different political and legal tendencies, notwithstanding the role played by the President of the Republic. No part played by any other political organ.	functions, the President of CC administers and represents the Court. Mode of election has no relation to the aim of ensuring a balance of political and legal tendencies.		among high-administrators need not be lawyers. The member appointed by the High Education Council also need not be a law professor, but also may be an economist or political scientist. Member from Supreme Administrative Court may be a regular military officer without any legal training, though this has never happened so far.	at least a majority of the composition will come from the ranks of lawyers and judges.	
Ukraine Constitutional Court (The CC has only just been instituted)	18 jj President of Ukraine, the Parliament and the Ukrainian Congress of Judges each appoint six jj.	The President of the CC is elected by the CC jj from among their number on a majority of votes cast by secret ballot	Too early for a procedure to be described as established, but appointments by the: -President are made by presidential decree	Aims: (1) to achieve a balance of interests among the executive, legislative and judicial branches of power; (2) to ensure a	-Organises the CC's activities, including the work of the board of judges, the commissions and the secretariat of the CC -calls and con-	To date there appears to be general satisfaction that most regional and political interests are represented. But because	Must - be a Ukrainian citizen; -have attained the age of 40; -have a law degree; -have no less than ten years	NA	The system is designed to promote high quality and professionally deliberated decisions in a field of law in which there is

Country	Appointment procedure - <i>de jure</i> - JJ (Q 2.1)	<i>De jure</i> - President of the Court (Q 5)	<i>De facto</i> procedure (Q 2.2)	Aims (Q 1;2)	Function of the President of the Court (Q 5)	<i>Evaluation</i> of appointment procedure (Q 2.3; 5.1)	Appointment requirements - <i>quals de jure</i> (Q 3; 3.1)	<i>Quals de facto</i> (Q 3.2)	<i>Rationale</i> for pre-requisite (Q 3.3)
		from a list of candidates proposed by the CC jj.	upon consultation and signature of the Prime Minister and the Minister of Justice; -Parliament are made by secret ballot majority from a list of candidates submitted by the Chairman of the Parliament or from candidates submitted by at least 1/4 of all MPs. A parliamentary Committee reviews the candidate's suitability. -Congress of Judges are made by majority secret ballot vote from candidates proposed by delegates to the Congress in an open forum.	democratic, objective and transparent manner of appointment in order to enhance the CC's credibility; (3) to attract and select candidates of the highest quality. Appointment procedure for the President of the CC is designed to avoid the accumulation of too much centralised power in the hands of one individual for a prolonged period of time, yet, at the same time promoting the efficient management of the CC.	ducts the sessions and plenary sessions of the CC; -administers the CC's budget.	the Court has not yet begun delivering decisions, the effect of the decisions of the CC remains to be seen.	of practical, research or teaching experience; -have command of the State language; -have been a resident of the Ukraine for at least 20 years preceding appointment.		no jurisprudential experience in the Ukraine.

**III. COMPARATIVE TABLE OF REPLIES TO THE QUESTIONNAIRE ON THE
COMPOSITION
OF CONSTITUTIONAL COURTS**

TABLE B

Column 1	The country in question and its court exercising constitutional jurisdiction
Column 2	Evaluation of the eligibility requirements for the appointment of judges of the court
Column 3	Requirements for the representation of minority groups on the court
Column 4	Actual practice of minority group representation on the court
Column 5	Evaluation and aims of the requirements or practice of securing minority group representation on the court
Column 6	Activities incompatible with the office of a judge of the court
Column 7	The age limit for judges and the average age of the composition of the court
Column 8	The term of office to be served by a judge
Column 9	The possibility of re-election or re-appointment
Column 10	The aims behind the rules governing the term of office and re-election

Country	Qual's - Evaluation (Q 3.4)	Minority Group Representation - <i>de jure</i> (Q 4)	<i>de facto</i> (Q 4.1)	Aims / Evaluation (Q 4.2)	Incompatibility with office of Judge (Q 6)	Age limit - Average age (Q 7)	Term of office (Q 8)	Re-election (Q 8)	Aim -Evaluation (Q 8)
Albania Constitutional Court	Good	None	None	NC	Cannot be member of parliament, Council of Ministers, ordinary judge, public prosecutor, member of a political party or trade union. No activity that could be detrimental to a J's independence or impartiality.	No age limit NC re average	NC	NC	To establish a certain balance of representation.
Argentina Supreme Court	NC	No regard made to group differences.	None	Not necessary, because there is no discrimination in Argentina.	No political or professional activity, public or private.	New nomination upon reaching 75... NC re average age	...but if member is nominated at 75 years or above, their office will run for 5 years (this is the only limit to office).	See preceding two answers.	NC
Armenia Constitutional Court	Jurists are over-represented	No regulation.	None of the jj belongs to a minority group. 1 female on the Court.	Equality entrenched in Constitution. Minorities comprise only 4% of the population.	No other public function or remunerated activity, except scientific, pedagogic or creative. However, may have an active political past.	Minimum age: 35 Maximum age: 70 (At present, youngest is 37 and eldest is 63) Average: 50.	No fixed term. The CC j remains in office from appointment until the retirement age of 70.	No re-election.	Aim to establish certain balance of representation.
Austria Constitutional Court	NC	None	None	NA	Can't be member of Govt (Fed. or Land), Parliament (Upper or Lower House) or other general representative assembly for the duration of	When a CC member reaches the age of 70, his or her	CC members serve until retirement.	NA	NC

Country	Qual's - Evaluation (Q 3.4)	Minority Group Rep- resentation - <i>de jure</i> (Q 4)	<i>de facto</i> (Q 4.1)	Aims / Evaluation (Q 4.2)	Incompatibility with office of Judge (Q 6)	Age limit - Average age (Q 7)	Term of office (Q 8)	Re-elec- tion (Q 8)	Aim - <i>Evaluation</i> (Q 8)
					the term of this other office, even if renounces early. Can't be CC Pres or Vice-Pres if held any of the above posi- tions in the 4 previous years. Can't hold any position, sala- ried or otherwise, in a political party.	judicial functions cease on 31 December of the same year. Average age: 59.7 Average age of substitutes: 56.6			
Azerbaijan Constitutional Court (not yet estab- lished)	NC	None.	NC	No regard to differences of sex, ori- gin, race, social status or member- ship to lin- guistic, relig- ious or ethnic mi- nority in the appointment procedure.	No other government or par- liamentary post, business ac- tivity, except research, teach- ing or other creative activity. No membership or participa- tion in any political activity, party or movement.	NC	15 years	Re-ap- pointment for a fur- ther 10- year pe- riod is possible.	NC
Belgium Court of Arbitration	Positive.	Equal repre- sentation of the two large cultural com- munities within the Court.	Philosophical balance.	Positive.	Very wide: no public or private office, except teaching at tertiary institution.	Age limit: 70 Average age: 61	Appointment for life.	NA - ap- pointment for life.	NC
Bosnia and	NA	The Court has	NA	NA	There are no Court Rules yet.	The age	The term of	Re-elec-	NC

Country	Qual's - Evaluation (Q 3.4)	Minority Group Representation - <i>de jure</i> (Q 4)	<i>de facto</i> (Q 4.1)	Aims / Evaluation (Q 4.2)	Incompatibility with office of Judge (Q 6)	Age limit - Average age (Q 7)	Term of office (Q 8)	Re-election (Q 8)	Aim -Evaluation (Q 8)
Herzegovina Constitutional Court (The CC has just been established)		not adopted its Court Rules yet, because this may only be done by a majority of the Court and no judges have been elected yet. The only provision regarding the Court is Article VI of the Constitution, which does not mention minority representation.			There is no provision for incompatibility in the Constitution.	limit is 70 (however, the term of the first composition of judges shall be five years, irrespective of age).	the jj initially appointed shall be 5 years, unless they resign or are removed for good cause by consensus of the other jj. As for jj subsequently re-elected, they shall serve until the age of 70, unless they resign or are removed for good cause by consensus of the other judges.	tion is not possible for the judges initially appointed, and it is not applicable to the judges subsequently re-elected, as they serve until the age of retirement.	
Bulgaria Constitutional Court	Not a success story because of professional and moral standards' losing their significance in the conditions of	None	None	Bulgaria is a unitary country. Minorities are represented through other institutions and by political	Incompatible with other activities: public office, political party or trade union, freelance, commercial or other remunerated activity. Aim: to guarantee judicial independence	No age limit. Average age is 45 - 70.	President's term: 3 years JJ's term: 9 years.	President has right to re-election. JJ have no right to be re-appointed. A partial renewal of	NC

Country	Qual's - Evaluation (Q 3.4)	Minority Group Representation - <i>de jure</i> (Q 4)	<i>de facto</i> (Q 4.1)	Aims / Evaluation (Q 4.2)	Incompatibility with office of Judge (Q 6)	Age limit - Average age (Q 7)	Term of office (Q 8)	Re-election (Q 8)	Aim -Evaluation (Q 8)
	deep-seated contradictions and political confrontation.			means.				the court takes place in alternating order from each of the three quotas, every 3 years.	
(second opinion for Bulgaria)	Fulfils the drafter's expectations and functions well.			Effective equality before the law					
Canada Supreme Court	Excellent system Controlled by Council of the Judiciary	3jj must be from Québec and of civil law training. The other 6jj must have a common law training. Also bilingual for the most part.	3 jj from Ontario; 2 jj from Western provinces; 1 j from the maritime provinces	To represent duality of private law system. Representation is balanced.	No other activity or membership to a political party Judges retain the right to vote. They must be & be seen to be independent & impartial.	Age limit: 75 Average age: 65	Until the age of 75. But some quit after a 15-year term.	No re-election Average term: 15 years	Good turnover of judges. No aim to establish political balance.
Croatia Constitutional Court	NC	No express provision for minority group representation.	There is one member of the Serbian national minority on the Court	To afford the representation of minority groups on the Court.	Judges are not allowed to be members of any political party. They shall not perform any other public or professional duties.	NC	A judge's term is of 8 years. The President's term is of 4 years.	Re-election is possible.	NC
Cyprus Supreme Court	NA	NA	NA	NA	Judges of the Supreme Court cannot perform any other professional activity and should not be involved in anything which would prevent them	Age limit: 68 Average age: 55	Some judges retire prematurely after completing	NA	No political balance aimed at or involved.

Country	Qual's - Evaluation (Q 3.4)	Minority Group Representation - de jure (Q 4)	de facto (Q 4.1)	Aims / Evaluation (Q 4.2)	Incompatibility with office of Judge (Q 6)	Age limit - Average age (Q 7)	Term of office (Q 8)	Re-election (Q 8)	Aim -Evaluation (Q 8)
					from being, and from being seen to be, independent and impartial.		25 years' service in the Judiciary.		
Czech Republic Constitutional Court	Although the system has not been in place long enough for it to be assessed, it appears satisfactory.	None	There is one member of Slovak origin, but his origin was not relevant to his appointment, but rather to his high qualifications.	As the Czech Republic has no large ethnic or linguistic minority there is no requirement to have various linguistic, religious or ethnic groups represented on the Court.	May not -be members of a political party -hold any other public office. Their external activities are limited to the management of their own assets and activities of an academic, scholarly or teaching nature.	There is no age limit. The oldest Justice is 73 and the youngest is 44. The average of the judges is 58 years.	The term of office is 10 years	Re-appointment is possible.	10-year limit would give a newly elected President or Upper House a greater opportunity to appoint new candidates. On the other hand, the possibility of re-appointment also allows excellent judges to be re-appointed despite a change in the political climate.
Denmark Supreme Court, High Court, District Courts.	NC	None.	NC	NC	Can fill permanent position concurrently to that of judge only with permission from a council made up of the presidents of the two High Courts and the Supreme Court. Remuneration is allowed.	Age limit: 70. Average age of jj on the Supreme Court: 57	Serves until retirement.	NA	NC
Estonia Constitutional Review Chamber of the Supreme Court	The new draft law on procedure provides for the extension of the circle of possible	None	None	NC	No judge may: work in fields outside the administration of justice, with the exception of teaching or research; be a member of Parliament or local govt representative body; be a member of a political party,	May remain in office for up to five years after they attain the age of retirement.	Until five years after the age of retirement.	NA	No balance of representation is aimed at by the rules.

Country	Qual's - Evaluation (Q 3.4)	Minority Group Representation - <i>de jure</i> (Q 4)	<i>de facto</i> (Q 4.1)	Aims / Evaluation (Q 4.2)	Incompatibility with office of Judge (Q 6)	Age limit - Average age (Q 7)	Term of office (Q 8)	Re-election (Q 8)	Aim -Evaluation (Q 8)
	applicants, in reaction to the fact that the present system is too state-oriented.				movement or group; participate in activities which violate the judge's oath; be a founding member or part of the executive of a corporation or joint-stock company.	Average age is 45			
Finland Supreme Court and Supreme Administrative Court	Important to stress the need for good qualifications.	No express requirements	Linguistic & gender balance are strived for.	Finnish or Swedish languages Gender equality important in present-day Finland. Lack of experienced female candidates.	Can't be Members of Parliament. No express restrictions on membership to a political party. Those few who belong to a party don't participate in party activities. Furthermore, the restrictions which apply generally to all judges or public officials also apply to the judges of supreme jurisdictions. <i>Inter alia</i> , a judge may not engage in an activity which would make him/her biased in the exercise of judicial functions or would put his/her impartiality at risk. Currently, there is debate as to whether to forbid judges from acting as arbitrators.	Age limit: 67 Average age: 55	Until retirement, 67 years.	NA Both the Presidents and the Justices of the two supreme jurisdictions are appointed until the retirement age of 67 years.	Nothing to do with political representation.
France Constitutional Council	Contributor approves of the system	No express requirements, in fact would be unacceptable to have such a requirement.	There's always been 1 protestant member. But these minority group representations happen by chance & not design.	This fits with France's centralist outlook.	No public office. No incompatibility with membership to a political party. But can't exercise responsibilities, can't take public political stance. Can't state opinion in violent, polemical way, compromising dignity of office.	NC	President's term: 9 years Other judges' term: 9 years	Every 3 years a renewal & replacement of 3 jj occurs. No re-election: this is a guarantee	Freedom of thought aimed at. Incompatibility requirements tend to produce a Court composition of retiring members of society.

Country	Qual's - Evaluation (Q 3.4)	Minority Group Representation - <i>de jure</i> (Q 4)	<i>de facto</i> (Q 4.1)	Aims / Evaluation (Q 4.2)	Incompatibility with office of Judge (Q 6)	Age limit - Average age (Q 7)	Term of office (Q 8)	Re-election (Q 8)	Aim -Evaluation (Q 8)
								of independence	
Georgia Constitutional Court	Contributors confident that the system is legally correct and valid.	No express provision.	One of the three members appointed by the President is of Russian ethnicity, but this is not necessarily an indication of <i>de facto</i> minority representation.	NC	May not exercise any other occupation or remunerative activity, except research or teaching activity. May not be a member of a political party or participate in political activities.	There is no upper age limit. The average age is 52.	The term of office is ten years. The Chairman's term is for five years.	There is no right of re-election The Chairman cannot be re-elected.	NC
Germany Federal Constitutional Court	NC	No express provision.	Protestant & Catholic balance. Only 5 jj are female. There is a concern to increase female representation on the bench.	Women are under-represented.	Can't simultaneously hold a government office or perform other professional activities, except teach law at a German Univ. <i>Can</i> be member (but without exercising a professional activity) in a political party. Must be restrained when being an 'active' member.	Age limit: 68 years Average age: 48-53 at time of election.	12-year term, but not extending beyond 68 years of age.	No re-election.	To ensure independence (also may deliver dissenting opinions).
Hungary Constitutional Court	Mixture of law-related professions is achieved.	No express provision for religious, linguistic or ethnic minorities.	No <i>de facto</i> representation, either.	The representation on the CC of the negligible linguistic minorities in Hungary would serve no purpose. Religious	Cannot be a member of any political party, participate in any political activity or make any political declarations beyond the exercise of judicial duties. Cannot be an MP or member of Council, fill any other State office or be on the executive of an interest group. May not perform any remun-	Age limit: 70 years. Average age: 61 years.	Term: nine years. President and Vice-President's term: three years.	Re-election is possible once. President and Vice-President may be re-elected.	There is a debate about abolishing re-election and increasing the term to 12 yrs. In 1998 the terms of 5 members will come to an end.

Country	Qual's - Evaluation (Q 3.4)	Minority Group Representation - <i>de jure</i> (Q 4)	<i>de facto</i> (Q 4.1)	Aims / Evaluation (Q 4.2)	Incompatibility with office of Judge (Q 6)	Age limit - Average age (Q 7)	Term of office (Q 8)	Re-election (Q 8)	Aim -Evaluation (Q 8)
				differentiation has no tradition in Hungary.	nerated activity except research, teaching, literary or artistic activity. Any incompatible activity must be abandoned within 10 days after appointment.				In 1999, 3 more terms will end. If supported by political will, the staggering of appointments may be re-introduced.
Iceland Supreme Court	NC	None	NC	NC	Cannot hold another office concurrently. Cannot be a candidate for parliament, but can run for other elected posts, eg Presidency. No bar from membership to a political party or other association.	Age limit: -minimum: 30 yrs old. -maximum: 70 yrs old (retirement)	JJ- No term. Must leave at 70, i.e. age of retirement. President: 2 year term.	NA	NC
Ireland Supreme Court	Good system Public opinion is not that State is favoured over citizen by the Court. No great tension between the government and the Court.	None	Practice: one non-catholic is always appointed.	To allow for more than one (ie the Catholic) ethical outlook.	Can't be a member of Parliament or hold any other office or remunerative activity; earlier political participation is permissible; it is inappropriate for a j to manifest their political party sympathy or participation in a public controversy (this is also rare).	Age limit: 70 Only 1 of the 8 jj is aged less than 60.	No term. Hold office until retirement.	NA	NC
Italy Constitutional Court	Very good. System guarantees legal scholarship and experience of all CC jj. Moreover, while Parlia-	None.	In 1996 a woman was appointed to the CC by the President of the Republic for the first time.	Law and practice on this point are founded in the political doctrine that Italy is an homogenous country	Cannot hold another public or private function. Cannot be a legal practitioner or keep his academic post. Cannot be a member of a political party or stand for elections for political or administrative posts.	No age limit. NC with respect to average.	9 years President's term: 3 years, or when judicial term ends, whichever is earlier.	No re-election to office as a judge. President of the Court may	NC

Country	Qual's - Evaluation (Q 3.4)	Minority Group Rep- resentation - <i>de jure</i> (Q 4)	<i>de facto</i> (Q 4.1)	Aims / Evaluation (Q 4.2)	Incompatibility with office of Judge (Q 6)	Age limit - Average age (Q 7)	Term of office (Q 8)	Re-elec- tion (Q 8)	Aim - <i>Evalua- tion</i> (Q 8)
	ment gives preference to lawyers with political experience, the supreme judicial bodies favour judicial experience. In the past, the President preferred to choose university professors, thereby enriching the theoretical foundations of the Court.			from an ethnic and religious point of view, and that linguistic differences do not bear relevance to the rules of composition. Concept that the Italian nation is made up of people with common civic and constitutional values, leaving aside social differences.				be re-elected to the Presidency.	
Japan Supreme Court	No controversy	None	None	NC	Can't be a member of Parliament, hold another salaried position (unless has the Supreme Court's permission), or carry out commercial position for gain. No active participation in politics.	Age limit: 70 Average age at appointment: 62.8	No limit	NA	NC
Latvia Constitutional	The new amendments to the CC Statute pro-	No express provision	Three out of the six judges elected so far	NC	May not hold another office or other paid position except teaching. Can't be member of a political party or association.	Age limit: 70 NC about	10 years CC President's office	May infer from the Statute that re-	NC

Country	Qual's - Evaluation (Q 3.4)	Minority Group Representation - <i>de jure</i> (Q 4)	<i>de facto</i> (Q 4.1)	Aims / Evaluation (Q 4.2)	Incompatibility with office of Judge (Q 6)	Age limit - Average age (Q 7)	Term of office (Q 8)	Re-election (Q 8)	Aim -Evaluation (Q 8)
Court	vide for the extension of the circle of possible applicants, considering that the existing system is too state-oriented.		are women.		May be a member of a public organisation or association, but must not harm dignity or reputation of judicial office, CC's independence or impartiality.	average.	is of 3 years	election is possible after an interval between terms. No limitation on re-election for the President of the CC.	
Liechtenstein State Council	The possibility to elect foreign judges, in particular, considerably enriches the jurisprudence of the State Council.	None	None	The Liechtenstein population is very homogenous as far as language, religion and ethnicity are concerned.	Cannot be a member of the government or a high functionary or a judge of first instance. Council jj who also sit on another court or are MPs are excluded from serving on a matter in which they had previously participated in a decision or in which they otherwise have a vested interest.	There is no age limit. The average age of the judges is about 50 years.	The term is of five years.	Re-election is possible	Thus there is no guarantee of a balanced representation.
Lithuania Constitutional Court	The practice shows that this is rational and reasonable.	No such provision.	Of the 9jj, one is a woman and one belongs to the Polish minority group.	No express objectives.	No other activity, except creative or educational. No participation in a political party's activities.	No age limit. Average age: 52.2	9 years	No re-election. If term is prematurely interrupted at up to 6 years of service, then J can serve in a new term after a 3-year inter-	Seek to ensure independence of CC and the jj. Periodical rotation also helps ensure a balance of representation.

Country	Qual's - Evaluation (Q 3.4)	Minority Group Representation - <i>de jure</i> (Q 4)	<i>de facto</i> (Q 4.1)	Aims / Evaluation (Q 4.2)	Incompatibility with office of Judge (Q 6)	Age limit - Average age (Q 7)	Term of office (Q 8)	Re-election (Q 8)	Aim -Evaluation (Q 8)
								val.	
Malta Constitutional Court	NA	None.	None.	Malta is a homogenous country from an ethnic, linguistic and religious point of view.	No other salaried position, permanent or temporary, except judicial office in an international court or tribunal or as an examiner at University of Malta. Cannot act as arbitrator, accept tutorship or other administration. Generally unacceptable to engage in political activity but might have prior to taking office.	Age limit: 65.	JJ serve until retirement Chief Justice's term: until retirement.	NA - JJ serve until retirement.	NC
Norway Supreme Court	A discussion has been going on lately, concerning the procedure of appointment.	No such provision	None.	No express objectives.	No specific provisions regarding incompatibility. Problem has not arisen much in practice.	Age limit: 70. At present, the average age is 58 years.	Appointment for life, until the statutory retirement age of 70 years.	NC	No aim at balance of representation through terms of office and re-election rules.
Poland Constitutional Tribunal	NC	No such legal provision	No such practice	NC	Cannot be a member of parliament or Senate, hold any office in any state organ or engage in any occupation which would compromise performance of duties, be inconsistent with the dignity of office, or undermine confidence in the j's judicial impartiality.	No age limit Average age: 59	9 years	No re-election	Previously, the term was 8 years <i>with</i> re-election. The new Constitution should allow for a greater balance in representation
Portugal Constitutional Court	NC	No such provision	NC	NC	No other public or private office except teaching or legal research; but without remuneration. Can't belong to the executive in a political party, association or related institution. JJ can't publicize their politics.	No express minimum or maximum age limit. Minimum can be gauged from	JJ: 6 years, with the possibility of re-election. However, the law will change in	The re-election of judges is possible but will be abolished in 1997.	No apparent relation to balance in representation.

Country	Qual's - Evaluation (Q 3.4)	Minority Group Rep- resentation - <i>de jure</i> (Q 4)	<i>de facto</i> (Q 4.1)	Aims / Evaluation (Q 4.2)	Incompatibility with office of Judge (Q 6)	Age limit - Average age (Q 7)	Term of office (Q 8)	Re-elec- tion (Q 8)	Aim - <i>Evaluation</i> (Q 8)
					May participate in discourse, but not when it's highly politi- cal, such as regarding consti- tutional reform.	eligibility require- ments of ex- perience. Age of re- irement for JJ of other jurisdictions is 70, so these JJ can't be ap- pointed to the Consti- tutional Court past their age of retirement. Average age: 52	1997 so that a j's term will be of nine years, with no possibility of re- election. After the term expires, the j continues to serve until a replacement is found, for which there are often delays due to Parlia- ment's in- ability to come to an agreement. President's office: 2 yrs.	President may be re- elected.	
Romania Constitutional Court	Operates at a high stan- dard.	No such legal provision.	Possible, that a j belongs to an ethnic group, but appointment would not be at all depen- dent on eth- nic origin	NA	No other public or private of- fice except teaching law at University level. No member- ship to a political party.	No limit. Average age: 59.	9 years	No re- election or renewal. (But a re- newal of a third of the Court takes place every 3 years, ie some bal-	To avoid risk of excessive age- ing of Constitu- tional Court. No re-election in order to ensure jj's inde- pendence.

Country	Qual's - Evaluation (Q 3.4)	Minority Group Representation - de jure (Q 4)	de facto (Q 4.1)	Aims / Evaluation (Q 4.2)	Incompatibility with office of Judge (Q 6)	Age limit - Average age (Q 7)	Term of office (Q 8)	Re-election (Q 8)	Aim -Evaluation (Q 8)
								ance)	
Russia Constitutional Court	System is unacceptable	No such provision	2jj belong to constituent nations of Federation.	To avoid politicization of Constitutional Court, which would be undesirable.	Can't be a member of Parliament or hold other representative, public or social office. Can't have private practice or other entrepreneurial or remunerative activity except teaching, academic or creative. Can't render legal representation or patronage to someone in their claim of rights or of exemption from duties. No membership to or support of a political party or movement.	Age limit: 70. Average age: 54.	12 years	No re-election (but term of Presidency may be renewed)	No balance aimed at by these rules.
Slovakia Constitutional Court	Procedure produces good mixture of legal backgrounds.	No such provision.	Nothing prevents a political party representing a minority group in the National Council from proposing such a j for nomination. 2 jj of the CC are women.	NA	No membership to a political party. No business or remunerative activity, except re administration of own property, academic, literary or publishing activity; No public office. Disciplinary action possible.	Only minimum age limit of 40 years; No fixed retirement age. Average age: 55.	For judges or for the president of the CC the term is 7 years.	Re-appointment possible	No real aim at balance of representation through these rules.
Slovenia Constitutional Court	Good. Satisfactory.	None.	No such practice.	NA	Cannot hold public office or positions in political parties, trade unions, public or private corporations, or any business or profit-making activity except	There is no upper age limit. The average age of a consti-	Term of a judge is of 9 years The President's term	No re-election is possible.	NC

Country	Qual's - Evaluation (Q 3.4)	Minority Group Representation - de jure (Q 4)	de facto (Q 4.1)	Aims / Evaluation (Q 4.2)	Incompatibility with office of Judge (Q 6)	Age limit - Average age (Q 7)	Term of office (Q 8)	Re-election (Q 8)	Aim -Evaluation (Q 8)
					that of a University academic or expert.	tutional j is 56 years.	is of three years.		
Spain Constitutional Court	The qualification requirements appear satisfactory. It may be that such a high position should require a minimum age limit. Despite the 15 years of experience required, the law allows candidates to accede to the CC before they have reached 40 years of age.	No express provision for minority group representation.	In practice, several judges have obtained their posts at the CC with the support of the more important nationalist parties.	The aim was to promote the integration of the Autonomous Communities into the State institutions. It would not be incorrect to favour a representation of linguistic, ethnic, etc., groups, considering the CC's role and exclusive jurisdiction, but this would be politically difficult in Spain.	Cannot exercise any other activity, according to the principles of ineligibility: ie cannot stand for public office; and incompatibility: ie cannot hold representative function, either political or administrative, or exercise other professional or commercial activity; or any other activity incompatible with membership in the judiciary. However, unlike other members of the judiciary or public administration, CC jj need not give up (non-active) membership to political party or union. The j has ten days to renounce incompatible position, otherwise he is considered to have renounced his position as j.	There is no minimum or maximum age for members of the Constitutional Court. The average age: around 55-60 years of age. There have been some very young appointments, eg at 38 or 39 years of age.	Term of judges is nine years. The composition of the CC is renewed by thirds every three years. Term of President is of three years.	Re-election is possible, but only after an interval between one term and another. Re-election of the President is possible once.	The regular, partial renewal of the composition of the court is aimed at achieving a degree of heterogeneity and pluralism, by allowing a changing parliamentary majority to appoint judges of one tendency or another. This is also a subject of political contest.
Sweden Supreme Court and Supreme Administrative Court	NC	No such stipulations	NC	NC	Cannot hold another official position, but nothing prevents him or her from being a member of a political party.	Retirement age: 67	NC	NC	NC
Switzerland	The system has held	Balanced representation of	For the good functioning of	The practical necessity	Can't be member of Parliament or member of Federal	Age limit was recently	Term: 6 years	Re-election is	There's no basis for

Country	Qual's - Evaluation (Q 3.4)	Minority Group Representation - <i>de jure</i> (Q 4)	<i>de facto</i> (Q 4.1)	Aims / Evaluation (Q 4.2)	Incompatibility with office of Judge (Q 6)	Age limit - Average age (Q 7)	Term of office (Q 8)	Re-election (Q 8)	Aim -Evaluation (Q 8)
Federal Court	good.	linguistic differences. In particular, the representation must be by native speakers.	the Court, the jj must have, in addition to their native language, an at least passive knowledge of the other two official languages.	that goes with having three official languages combined with an independent and balanced jurisdiction. One may consider this aim as achieved.	Council or hold any other public office. Can't exercise other professional, or private remunerative activity. May, with Court's permission, act as an expert on occasion. However, may belong to a political party, but in practice the jj have not undertaken a political career in the past.	fixed at 68. (Previously the custom was for a j to retire at 70). Average: 55-53.	President: 2 years	systematic, as long as the j re-applies and the age limit is observed. ie independence is assured by the fact that re-election is not normally called into question.	claiming that term or re-election practice is aimed at ensuring a balanced representation. Balance has more to do with the moment of election.
"The former Yugoslav Republic of Macedonia" Constitutional Court	NC Too soon to evaluate	None	3 out of 9 judges belong to minorities	To ensure the participation of minorities in public life	No other public office or profession or continuing membership to a political party	No age limit Average age: 59	Term of President of Constitutional Court is 3 years NC with respect to term of other jj	No re-election to office of President	No aim to establish or maintain a balance of representation
Turkey Constitutional Court	NC	No such legal requirement	No such requirement in practice.	NA	No other public or private activity. No continuing membership to a political party, though past membership is permissible.	Retirement at 65. NC about average.	JJ serve until retirement. President's term: 4 years.	No re-election. JJ serve until retirement.	No relationship between rules on term of office and aim to ensure balanced representation.
Ukraine Constitutional	There seems to be general satisfaction	There is no express provision for the	Informally, the current composition	The issue of ethnic representation in	Cannot perform any other activity, except research, teaching or creative pursuits. The	The minimum age is 40.	The term is of nine years.	No re-election is possible.	The exclusion of the possibility of re-election

Country	Qual's - Evaluation (Q 3.4)	Minority Group Rep- resentation - <i>de jure</i> (Q 4)	<i>de facto</i> (Q 4.1)	Aims / Evaluation (Q 4.2)	Incompatibility with office of Judge (Q 6)	Age limit - Average age (Q 7)	Term of office (Q 8)	Re-elec- tion (Q 8)	Aim - <i>Evalu- ation</i> (Q 8)
Court (The CC has only just been instituted)	regarding the CC's com- position. However, it is difficult to make an evaluation since the CC has only just begun func- tioning.	appointment of members of a particular linguistic, re- ligious, ethnic or other group.	of the CC re- flects a desire on the part of each of the branches of power to promote regional representa- tion on the bench.	the judicial or state structure is not of par- ticular sig- nificance in the Ukraine. No member of a particu- lar group is prevented from becom- ing a CC j.	Statute on the CC expressly prohibits membership to a political party or participation in any form of political activity.	JJ must re- tire at 65 years of age. The average age of the bench is 54.			reflects the le- gislative inten- tion to ensure judicial quality by maintaining a degree of flexibility in the composition of the bench in the transition from an authoritarian to a democratic justice system. This is in tune with the current trend against long term ap- pointments in any area. How- ever, institu- tional consis- tency in the CC's work is preserved.

**III. COMPARATIVE TABLE OF REPLIES TO THE
QUESTIONNAIRE ON THE COMPOSITION
OF CONSTITUTIONAL COURTS**

TABLE C

Column 1	Country in question and its court exercising constitutional jurisdiction
Column 2	Immunity afforded to judges of the court
Column 3	Authority which is competent to lift the immunity of a judge
Column 4	Possible dismissal by an authority other than the court itself
Column 5	Cases of dismissal of judges of the court
Column 6	The highest jurisdiction of the country in question
Column 7	The scope of jurisdiction of the court in question
Column 8	The relationship between the nature of composition and the powers of the court
Column 9	Criticism voiced by judges of the court as to their status or powers

Country	Immunity for JJ (Q 9)	Authority competent to lift immunity (Q 9)	Dismissal by external authority (Q 10)	Cases of dismissal (Q 10)	Highest Court (Q 11)	Jurisdiction (Q 11)	Relation between composition and powers (Q 11)	Criticism by constitutional JJ (Q 12)
Albania Constitutional Court	Immunity from prosecution, arrest, detention, sentence.	Constitutional Court may lift the immunity	Impossible for external authority to dismiss.	There have only been cases of resignation during the 4 years of the Constitutional Court's history.	Court of Cassation (Court of final Appeal).	NC	JJ pre-requisites: Albanian citizenship, degree in law, 7 years experience as a jurist/ law lecturer. Court composition is attributable to its powers.	JJ would wish for a consolidating Court statute to improve its organisation and functioning.
Argentina Supreme Court	Judges have immunity	Lower House of Parliament	Lower House may accuse Judge before the Senate of misconduct, abuse of power, or of offence. 2/3 majority of Senators present may then dismiss the judge in question.	NC	Supreme Court	NC	Number of members justified by the Court's competencies.	No public debate, but efforts have been made to relieve the Court's workload. There is also discussion, mainly in the judicial sphere, of instituting a Constitutional Court with exclusive constitutional jurisdiction. This would entail a constitutional reform.
Armenia Constitutional Court	Judges have immunity	Upon application of the authority which had originally elected or appointed the judge in question, the CC may express its opinion to lift the	Under the Constitution, judges are not dismissable, but CC, upon application by the original appointing/ electing authority may give its opinion (by 2/3 maj) in	None	Constitutional Court	constitutional jurisdiction	Professional legal qualifications are necessary due to the highly legal character of the Constitutional Court's work.	All agree that an improvement in their status would be desirable, but there is no concrete criticism due to the only recent composition of the Court.

Country	Immunity for JJ (Q 9)	Authority competent to lift immunity (Q 9)	Dismissal by external authority (Q 10)	Cases of dismissal (Q 10)	Highest Court (Q 11)	Jurisdiction (Q 11)	Relation between composition and powers (Q 11)	Criticism by constitutional JJ (Q 12)
		immunity by a 2/3 majority of its members. Ultimate decision lies to lift immunity with the original appointing or electing authority.	favour of revoking a j's powers, then the final decision to dismiss must come from the initial appointing or electing authority.					
Austria Constitutional Court	None	NA	A dismissal can only be made on the basis of a judicial decision and only in cases foreseen by the law. The divesting of judicial functions may only occur on the basis of a decision by the CC itself, on a 2/3 majority at the least.	None	Constitutional Court	In principle the CC only sits in plenary session. However, under certain circumstances (pecuniary claims, non-public cases, in particular appeals against an administrative decision, and the rejection of a claim for inadmissibility), the presence of the President and four voting members will suffice for a quorum. In fact, this smaller composition is usually applied due to the large number of claims, even though it was only intended as an exception.	In principle, the rules of composition bear no relation to the CC's powers or to the number of cases it hears. By virtue of its competence to uphold the federal system (especially with respect to decisions regarding the competencies or controls exercised by Federal and Land governments), 3 members and 2 substitutes must be domiciled outside of Vienna.	NC

Country	Immunity for JJ (Q 9)	Authority competent to lift immunity (Q 9)	Dismissal by external authority (Q 10)	Cases of dismissal (Q 10)	Highest Court (Q 11)	Jurisdiction (Q 11)	Relation between composition and powers (Q 11)	Criticism by constitutional JJ (Q 12)
Azerbaijan Constitutional Court (not yet established)	Judicial immunity is available to all Azerbaijani judges. No criminal responsibility, detention or arrest, nor are they subject to administrative penalties or personal searches. This includes the judge's house, office, vehicle, correspondence of any form, private property and files.	Prosecution or detention only possible upon the consent of the President of Azerbaijan and by act of Parliament.	Termination of office on the grounds of: death, resignation, failure to participate in CC sessions 3 times in a row or 10 times in a year for insufficient reasons, failure to vote on matters before the CC, commission of a crime and enforcement of sentence, loss of pre-requisites for office, adoption of the nationality of, or obligations to, another state, persistent incapacity for health or other reasons.	NC	NC	NC	NC	NC
Belgium Court of Arbitration	None, but privilege of jurisdiction in criminal matters.	NA	No: only by the Court itself.	None.	NC	No special constitutional jurisdictional chamber, but automatic referral to 7-member bench. However: 1) preliminary hearing for admission to the Court - by 3-member bench; 2) important cases go to the full bench (12 judges).	None.	None.
Bosnia and	The Court Rules	NA	By consensus of the	NA	Constitutional	Exclusive consti-	NA	NA

Country	Immunity for JJ (Q 9)	Authority competent to lift immunity (Q 9)	Dismissal by external authority (Q 10)	Cases of dismissal (Q 10)	Highest Court (Q 11)	Jurisdiction (Q 11)	Relation between composition and powers (Q 11)	Criticism by constitutional JJ (Q 12)
Herzegovina Constitutional Court (The CC has just been established)	have not been adopted. There is no provision for immunity as yet.		other judges, a judge may be removed from office for good cause.		Court	tutional jurisdiction regarding disputes between the Entities, between Bosnia and Herzegovina and an Entity or Entities, or between institutions of Bosnia and Herzegovina. Case referrals are to come from a President, the Chair of the Council of Ministers, the Chair or Deputy of either chamber of the Parliamentary Assembly or 1/4 of its members, from 1/4 of the members of either chamber of an Entity's legislature, or from another court regarding issues of a law's compatibility with the Constitution, the ECHR, other laws of Bosnia and Herzegovina, or with international norms. The CC		

Country	Immunity for JJ (Q 9)	Authority competent to lift immunity (Q 9)	Dismissal by external authority (Q 10)	Cases of dismissal (Q 10)	Highest Court (Q 11)	Jurisdiction (Q 11)	Relation between composition and powers (Q 11)	Criticism by constitutional JJ (Q 12)
						also has constitutional appellate jurisdiction.		
Bulgaria Constitutional Court	Yes, immunity akin to that of members of parliament.	CC's secret ballot (by a qualified majority), by application of the Attorney-General and in light of sufficient indication of a serious offence.	No dismissal by external authority	None	Constitutional Court	No ordinary jurisdiction (no access to the Constitutional Court by citizens) Constitutional jurisdiction.	NC	No public debate at present
Canada Supreme Court	Civil immunity. No criminal immunity. But there have been no cases of criminal action against a judge..	Complaint against a J may be brought to Council of Judiciary, which may admonish and invite the J to step down.	Senate and Lower House.	None (nor has any j been the subject of a complaint), nor at the Federal Courts.	Supreme Court of Canada.	Highest instance of general jurisdiction, including constitutional. Enjoys wide discretion.	Status of members corresponds to the degree of power the Court exercises.	JJ seem satisfied.
Croatia Constitutional Court	Judges enjoy immunity like that of Members of Parliament.	Only the Constitutional Court may lift the judicial immunity	Judges of the Constitutional Court may be relieved of office by their own request, if a prison sentence is imposed on them or if they become permanently unable to perform their judicial duties, which the Court itself must determine.	NC	Constitutional Court	The CC decides on the constitutionality of laws, upholds constitutional rights and freedoms, determines jurisdictional disputes among branches of power, decides on the impeachment of the President of the Republic, super-	Currently, the Constitutional Court is coping with the volume of work it must perform, however, the number of matters on which it must decide is steadily growing.	NC

Country	Immunity for JJ (Q 9)	Authority competent to lift immunity (Q 9)	Dismissal by external authority (Q 10)	Cases of dismissal (Q 10)	Highest Court (Q 11)	Jurisdiction (Q 11)	Relation between composition and powers (Q 11)	Criticism by constitutional JJ (Q 12)
						vises the constitutionality of the activities of political parties and may ban their work, supervises elections and referenda and determines electoral disputes.		
Cyprus Supreme Court	No immunity regarding civil or criminal proceedings.	The disciplinary organ for judges of the Supreme Court is the Supreme Council of Judicature which consists of all the judges of the Supreme Court.	Only the Supreme Council of Judicature can terminate the services of a Judge. No other organ of the Republic has such competence.	None.	The Supreme Court.	The Supreme Court is the highest Court regarding all jurisdictions, including constitutional matters.	The Judges of the Supreme Court enjoy a status commensurate with their powers and independence.	The judges of the Supreme Court are generally satisfied with their status and powers.
Czech Republic Constitutional Court	Justices enjoy complete immunity from prosecution for misdemeanours and conditional immunity from prosecution for indictable offences.	The Upper House may vote to remove a judge's conditional immunity from prosecution for indictable offences.	A CC Justice may be removed from office: 1) by the CC itself, by resolution of the Plenum, depriving the Justice of his or her seat; or 2) by ordinary courts, if they find a Judge guilty of intentionally committing an indictable offence, whereupon the decision automatically results in the Justice's loss of office.	None	No Court is the highest court, as the judicial power is divided among three 'supreme' courts, each covering different legal issues: constitutional, administrative (the Supreme Administrative Court has not yet been established)	The Constitutional Court exercises abstract control of legal acts (not very many cases), but it also handles constitutional complaints, within which it may review the decisions or actions of practically all other state actors. The CC is mostly concerned with constitutional complaints.	It is quite possible that there are 15 judges and no fewer, because many constitutional complaints were expected.	In view of the short time in which the Czech Court has been active, its members have not yet expressed any concrete proposals aimed at improving their status.

Country	Immunity for JJ (Q 9)	Authority competent to lift immunity (Q 9)	Dismissal by external authority (Q 10)	Cases of dismissal (Q 10)	Highest Court (Q 11)	Jurisdiction (Q 11)	Relation between composition and powers (Q 11)	Criticism by constitutional JJ (Q 12)
					and general.			
Denmark Supreme Court, High Court, District Courts	No immunity	NA	Special Court of Indictment and Revision (1j from Supreme Court, 1j from High Court, 1j from a lower court)	None in modern times.	No specific CC in Denmark.	Constitutional jurisdiction is exercised by Supreme Court, High Courts, District Courts and lower courts.	NC	NC
Estonia Constitutional Review Chamber of the Supreme Court	Criminal charges may be brought only on the proposal of the Legal Chancellor and by consent of a parliamentary majority.	Legal Chancellor, by consent of a parliamentary majority.	Any court may dismiss a justice of the Constitutional Review Chamber. Disciplinary proceedings are also possible and the sentence must be approved by at least 11 judges of the Supreme Court.	None	Both the Supreme Court in plenary session and the Constitutional Review Chamber of the Supreme Court may function in the capacity of a constitutional court.	The Constitutional Review Chamber exercises constitutional jurisdiction.	NC	Presently a new statute is being drafted. The status of the constitutional jurisdiction is peculiar, as it is an independent chamber within the Supreme Court. The formation of a separate Constitutional Court would be out of the question in the foreseeable future.
Finland Supreme Court and Supreme Administrative Court	No express immunity from prosecution. However, charges can be brought by the Chancellor of Justice or the Parliamentary Ombudsman to the High Court of Impeachment for acts and omissions the jj have committed in their official capacity.	NA	For illness or loss of working capacity, the Supreme Court or the Supreme Administrative Court have jurisdiction to dismiss, each with respect to its own members. In cases of misconduct in office, the High Court of Impeachment is responsible for dis-	No cases of dismissal since the foundation of these Courts in 1918.	Supreme Court Supreme Administrative Court	The Supreme Court and the Supreme Administrative Court play a part in the application of preventive measures employed by the Parliamentary Constitutional Committee. The Government may ask either Court for its opinion on a draft Bill. After the	Powers with respect to constitutional law are modest. The Supreme Court mostly deals with civil and criminal cases, whereas the Supreme Administrative Court mainly deals with issues of administrative law. Only a small portion of the	Salaries are comparatively low. Supreme jurisdictions are relatively self-critical and conscious of the potential for improvement. Endeavours are constantly made in order to improve the functioning of the jurisdictions.

Country	Immunity for JJ (Q 9)	Authority competent to lift immunity (Q 9)	Dismissal by external authority (Q 10)	Cases of dismissal (Q 10)	Highest Court (Q 11)	Jurisdiction (Q 11)	Relation between composition and powers (Q 11)	Criticism by constitutional JJ (Q 12)
			missals.			adoption of a Bill by Parliament, the President of Finland may ask either Court for its opinion on the Act before deciding whether to sign it or return it for reconsideration by Parliament. The opinion is not binding in either case. The Courts have no power to declare a duly passed or signed Bill unconstitutional. They must, however, adopt a constitution-friendly interpretation of statute.	issues they cover are constitutional. In order to cope with the workload, the number of judges had been increased over the years and compositions of fewer than five jj have been gradually introduced to handle simple matters. Furthermore, the requirement of leave to appeal has also been gradually introduced.	
France Constitutional Council	No special immunity.	NA	Revocation only for failure to fulfil obligations of office. Constitutional Council proposes revocation to Council of Ministers or simply by absolute majority of Constitutional Council. Also non-voluntary resignation of office due to	None	Constitutional Council	Competencies are not so broad. There are 30 Act referrals per year. Court only receives <i>a priori</i> questions of unconstitutionality.	The introduction of an <i>ex post facto</i> constitutional control would require a total reorganisation of the Council. There is no option to deliver a dissenting opinion.	The statutes governing the Constitutional Council should be amended in order to improve the logistics of the Council or to extend the 1-month limit imposed on the Council to answer referrals to examine the constitutionality of a Bill.

Country	Immunity for JJ (Q 9)	Authority competent to lift immunity (Q 9)	Dismissal by external authority (Q 10)	Cases of dismissal (Q 10)	Highest Court (Q 11)	Jurisdiction (Q 11)	Relation between composition and powers (Q 11)	Criticism by constitutional JJ (Q 12)
			conflicts of interest by Constitutional Council.					
Georgia Constitutional Court	Members enjoy immunity from prosecution.	May be lifted only by an absolute majority decision of the CC itself.	The judicial authority of a member is terminated for: a) inability to perform duties for an uninterrupted period of 6 months; b) the enforcement of a 'guilty' verdict against the member; c) disclosure of professional secrets; d) incompatibility with office; e) loss of citizenship; f) disability as recognized by the CC; g) death; h) resignation.	NC	Supreme Court and Constitutional Court	Supreme Court has ordinary jurisdiction, whereas CC has special constitutional jurisdiction.	NC	<p>The status of the judges is satisfactory for the implementation of their activities.</p> <p>As for the improvement of the functioning of the CC, this is part of a constant process in the work of the CC members.</p>
Germany Federal Constitutional Court	No immunity from prosecution	NA	Court must file motion (by 2/3 maj) in plenary session, but only with respect to dishonourable conduct or a prison sentence of more than six months. This 2/3 maj having been obtained, the	None	Federal Constitutional Court	Federal Constitutional Court has special constitutional jurisdiction.	Therefore composition from mixture of judicial / legal backgrounds more relevant to this jurisdiction. Very high number of cases. Application for leave to appeal	<p>Case overload (5000 p.a.)</p> <p>Ministry of Justice has recently appointed a commission to propose way to tackle this problem.</p>

Country	Immunity for JJ (Q 9)	Authority competent to lift immunity (Q 9)	Dismissal by external authority (Q 10)	Cases of dismissal (Q 10)	Highest Court (Q 11)	Jurisdiction (Q 11)	Relation between composition and powers (Q 11)	Criticism by constitutional JJ (Q 12)
			final decision as to dismissal lies with the President of the Republic.				stage is designed to reduce load.	
Hungary Constitutional Court	Members enjoy same immunity as MPs.	The plenary of the CC must consent to the arrest, prosecution or other police enforcement measure, except where the member is caught in the act of committing an offence. Suspension of immunity automatically results in the suspension of a member's judicial functions.	Only the CC is competent.. The office of a j ends when: the j reaches the age of 70; the j has served his term of office; the j dies; the j resigns; incompatibility of office is ascertained; the j is divested of judicial functions (ie, for reasons beyond the j's control, the j cannot fulfil the tasks required); the j is expelled (ie for reasons attributable to the j, the j cannot fulfil the tasks required, or if j commits an offence ascertained and sentenced by judicial decision and the plenary of the CC dismisses the j for this reason). These last two categories require the consent of the CC.	None	NC	Special constitutional jurisdiction	NC	The appointment procedure should be improved so that professional aspects may prevail, rather than political ones. Moreover, the constitutional complaint should be developed. At present, constitutional complaints are only well-founded in cases concerning rights entrenched in the Constitution when the cases arise by virtue of the application of an unconstitutional act and where all other avenues of legal recourse have been exhausted.

Country	Immunity for JJ (Q 9)	Authority competent to lift immunity (Q 9)	Dismissal by external authority (Q 10)	Cases of dismissal (Q 10)	Highest Court (Q 11)	Jurisdiction (Q 11)	Relation between composition and powers (Q 11)	Criticism by constitutional JJ (Q 12)
			The CC must expel a j who has stopped taking part in the CC's work for a year.					
Iceland Supreme Court	No immunity.	NA	Temporary dismissal by Minister of Justice bc j 1) no longer fulfils prerequisites; 2) is guilty of, and has already been reprimanded once before for, misconduct in the course of performing judicial duties; or 3) is no longer fit to hold office as a j due to morally tarnished reputation. Dismissal is then tried at the municipal court (appealable before Supreme Court).	The Supreme Court has on one occasion approved a decision of the Minister of Justice to dismiss a Supreme Court j on the grounds of morally tarnished reputation.	Supreme Court	Final appellate Court. Does not have exclusive constitutional jurisdiction. Cases may not be referred directly from Parliament or Executive. Of the 9jj, usually 3 or 5jj form the bench for constitutional cases, but they increase to 7 in very important cases.	NC	NC
Ireland Supreme Court	No criminal immunity	NA	Only by President after each House of Parliament has passed a resolution calling for removal for incapacity or misbehaviour.	None	Supreme Court	Final appellate Court	Increase of no. of judges from 5 to 8 is attributable to the increase in workload	Arrears of work & delays (there are now three more judges on the Court)

Country	Immunity for JJ (Q 9)	Authority competent to lift immunity (Q 9)	Dismissal by external authority (Q 10)	Cases of dismissal (Q 10)	Highest Court (Q 11)	Jurisdiction (Q 11)	Relation between composition and powers (Q 11)	Criticism by constitutional JJ (Q 12)
Italy Constitutional Court	Same immunity as afforded to MPs. No liability for votes cast or opinions expressed within the exercise of their functions. JJ may not be arrested, detained, searched, nor may their house or premises be searched without the authorization of the CC, unless pursuant to a binding judicial decision or to being caught in the act of committing an offence requiring an immediate arrest. Wiretapping and interception of correspondence also require special authorization.	Only the Court may lift the immunity.	Only the Court may dismiss a judge for health reasons, legal incapacity or for failure to perform the duties of his office. If a judge has not attended the Court's meetings for six months, he will lose his seat.	NC	NC	NC	The importance of the CC's functions certainly influences the choice of its jj. This is confirmed by the attention paid by political commentators to the appointments made by Parliament and the President of Italy. Recent debate surrounding the CC's decisions has also produced criticism of the selection of these jj. On the other hand, appointments made by the supreme judicial bodies have been less contentious.	The judges voice complaint about the rule preventing them from exercising their functions after the end of their term and before the election or appointment of their successors. This rule is, in fact, a source of problems in the Court's functioning, when Parliament has been unable to reach agreement sufficiently quickly on the election of a new judge.
Japan Supreme Court	No immunity from prosecution.	NA	By public impeachment for failure to or neglect in performing duties or for degrading oneself. Impeachment Court composed of MPs - No influence of Supreme Court.	None	Supreme Court	Final appellate Court	NC	Not an issue in Japan.
Latvia	Judges enjoy immunity.	Parliament may lift judicial im-	Ruling of CC for: health; criminal	NA	Constitutional Court	Court of special constitutional ju-	NC	NA

Country	Immunity for JJ (Q 9)	Authority competent to lift immunity (Q 9)	Dismissal by external authority (Q 10)	Cases of dismissal (Q 10)	Highest Court (Q 11)	Jurisdiction (Q 11)	Relation between composition and powers (Q 11)	Criticism by constitutional JJ (Q 12)
Constitutional Court		immunity	verdict; shameful act incompatible with jj status; regular failure to perform duties; failed in disciplinary action			jurisdiction		
Liechtenstein State Council	There is no immunity afforded to judges.	NA	No possibility of dismissal by an external authority.	No cases of dismissal.	NC	NC	NC	The Parliament has voted, after prior consultation with the Council, for a new State Council Statute. The Act has not yet been approved by the Prince.
Lithuania Constitutional Court	Personal immunity (civil and criminal). Also can't be searched, etc, even in a state of war or emergency.	Constitutional Court itself may lift immunity, but only upon the motion of the Prosecutor-General. The Supreme Court hears criminal cases against CC jj	Impeachment proceedings and removal by Seima for: - gross violation of the Constitution - breach of oath - committing a felony. 3/5 maj of Seima's plenary session.	None.	Constitutional Court operates by a single panel, ie all cases are heard by plenary session.	Special constitutional jurisdiction	Reasonable correlation between powers and composition of Constitutional Court.	Social guarantees should be expanded (eg special pensions, extension of vacations, etc).
Malta Constitutional Court	No immunity from prosecution; may be sentenced by ordinary courts.	NA	May be removed from office by the President of Malta upon a request by the House of Reps supported by the votes of not less	None. Motions have been brought for the impeach-	CC is an appellate court at the top of the judicial structure.	CC mainly hears appeals from decisions by the First Chamber of the Civil Court (breach of individual's rights and	Composition is of 3 judges. One cannot associate the composition of the CC with the power it exercises or the number of	Judiciary relies on Executive for the supply of the necessary infrastructure and relevant services. Constant improvement in this area is

Country	Immunity for JJ (Q 9)	Authority competent to lift immunity (Q 9)	Dismissal by external authority (Q 10)	Cases of dismissal (Q 10)	Highest Court (Q 11)	Jurisdiction (Q 11)	Relation between composition and powers (Q 11)	Criticism by constitutional JJ (Q 12)
			than 2/3 of all members, on the grounds of proven inability to perform the functions of office, or proven misbehaviour.	ment of a judge (but not of CC) before the House of Reps.		freedoms), but also appeals from any other court of original jurisdiction as to validity of laws, interpretation of the Constitution. Its ordinary jurisdiction is re validity of parliamentary election or Q of election or dismissal of MP.	appeals it hears.	encouraged and required, in order to provide the judiciary with the necessary tools to deal with the increased work load.
Norway Supreme Court	No immunity. May be sentenced by ordinary courts, except for offences committed in their official capacity, in which case the High Court of Impeachment is responsible.	NA	Dismissal by ordinary courts, but for offences committed in their official capacity, dismissal by High Court of Impeachment.	None	NC	Competence to review constitutionality of legislation.	No reliable answer to question of correlation between powers and composition.	No reliable answer possible.
Poland Constitutional Tribunal	Immunity from criminal responsibility or detention, unless CC gives its prior written consent. No detention, unless caught in the act of committing an offence, or the de-	Only the CC itself may lift the immunity.	The Sejm may dismiss a j where that j has -been convicted by a court -broken his/her oath -been sentenced to removal from office by proper discipli-	None	Constitutional Tribunal - highest constitutional jurisdiction.	Institution of <i>actio popularis</i> has been introduced. This will provide for discussion in the debate on the new law on the constitutional tribunal.	Status of members corresponds to degree of power the tribunal exercises. The number of judges has increased from 12 to 15.	The new law on the constitutional tribunal will be debated after the new constitution has been passed. One of the issues will be the <i>actio popularis</i> , which has been introduced into the Polish

Country	Immunity for JJ (Q 9)	Authority competent to lift immunity (Q 9)	Dismissal by external authority (Q 10)	Cases of dismissal (Q 10)	Highest Court (Q 11)	Jurisdiction (Q 11)	Relation between composition and powers (Q 11)	Criticism by constitutional JJ (Q 12)
	attention is necessary for securing proper proceedings. In such cases, the President shall be notified and may order an immediate release.		nary proceedings.					legal system.
Portugal Constitutional Court	Immunity similar to that of the members of the Supreme Court of Justice.	Constitutional Court itself may decide that a judge is incapable or has exercised his functions inappropriately. May take disciplinary action.	Constitutional Court itself may dismiss.	NC	NC	NC	The 13 jj are divided into 2 sections of 6 jj plus the President, mainly to cope with the number of constitutional referrals from ordinary and administrative jurisdictions.	There is some suggestion to have all 13 jj elected by the Assembly or to increase the terms of office to 9 years.
Romania Constitutional Court	Immunity against responsibility for votes or opinions expressed while performing judicial function; against arrest or criminal or civil justice.	Permanent bureau of the Lower House and the Senate or the President (depending on the nominating authority) and only by application of the Attorney-General.	The Constitutional Court itself.	None.	Constitutional Court	NC	Composition corresponds to the Constitutional Court's powers.	JJ would contemplate the possibility to judge everything in the plenary, especially the constitutionality of laws prior to their promulgation, as well as considering questions of unconstitutionality of laws raised before other courts. Would also like the power to approve of own budget in plenary session, that the budget be included in the State budget and

Country	Immunity for JJ (Q 9)	Authority competent to lift immunity (Q 9)	Dismissal by external authority (Q 10)	Cases of dismissal (Q 10)	Highest Court (Q 11)	Jurisdiction (Q 11)	Relation between composition and powers (Q 11)	Criticism by constitutional JJ (Q 12)
								have any changes by the government to the budget discussed and approved by Parliament.
Russia Constitutional Court	Criminal or civil immunity, unless caught <i>in flagranti</i> - then the authority must notify Constitutional Court, which then decides whether to authorise further measures. No responsibility for opinion expressed or decision made by Constitutional Court.	Constitutional Court may lift immunity and give consent to the judge's arrest or to have the judge brought to criminal justice.	CC may terminate a j's office for; - loss of citizenship; - decision to convict the J; - incompatible activities; - failure to fulfil duties;- incapacity for health reasons. Upon submission by 2/3 maj of the CC, the Federation Council may terminate judge's powers if the appointment procedure was violated or when J has committed a dishonourable act.	None	Constitutional Court, Supreme Court, High Court of Arbitration.	NC	Sufficient staff to fulfil competencies.	Judges are deliberating on a modification of the Constitutional Court statute aimed at perfecting the competence and procedure of the Constitutional Court.
Slovakia Constitutional Court	Immunity from prosecution akin to that of parliamentarians. JJ cannot be held responsible for opinions expressed while performing judicial functions. Principle of inviolability applies. On the other hand, there is no provision as to	Constitutional Court can lift immunity.	President of Republic may dismiss for (over 12-month long) failure to perform duties or if CC has ruled so or for a conviction for a malicious offence. If dismissal is due to conduct inappropriate for the office of a J, 7 or more CC	No such cases.	NC	NC	The Court's composition is not attributable to its powers.	There is no serious or public discussion on this as yet. Amendments have been made to improve the Constitutional Court's decision-making procedure and to solve the problems of the application of other statutes before the Constitutional Court.

Country	Immunity for JJ (Q 9)	Authority competent to lift immunity (Q 9)	Dismissal by external authority (Q 10)	Cases of dismissal (Q 10)	Highest Court (Q 11)	Jurisdiction (Q 11)	Relation between composition and powers (Q 11)	Criticism by constitutional JJ (Q 12)
	immunity. A j cannot be detained or arrested unless caught in the act of committing an offence or by express authorization of the competent judge. Immunity effectively forms part of jj's personal status.		judges must propose dismissal to the President of the Republic.					
Slovenia Constitutional Court	Same immunity as that of MPs. JJ may not be held criminally liable for opinions expressed or votes cast at a public hearing or session. JJ may not be detained or prosecuted (provided the j claims immunity), without the permission of the National Assembly, unless the j is caught in the act of a crime attracting a sentence of at least 5 years' imprisonment.	The National Assembly may decide to lift a j's immunity on a prescribed ground upon the request of a relevant State body, taking into consideration the opinion of the CC, and within a period of 30 days from the request. The National Assembly also has discretion to recognize a j's immunity even when the judge has not claimed immunity.	The National Assembly may dismiss a judge for permanent incapacity, or if the judge is sentenced to imprisonment for a criminal offence.	No cases of dismissal.	NC	NC	NC	The conditions are satisfactory both in relation to status and to the functioning of the Court.
Spain Constitutional	The personal status of members of the judiciary does afford	In case of criminal prosecution of CC jj, their	Dismissal or suspension is only possible under the fol-	No cases of dismissal.	The Supreme Court is the final stage of	The Constitutional Court has special constitutional ju-	Individual recourse is in urgent need of reform.	The Lower House and the Senate should either be

Country	Immunity for JJ (Q 9)	Authority competent to lift immunity (Q 9)	Dismissal by external authority (Q 10)	Cases of dismissal (Q 10)	Highest Court (Q 11)	Jurisdiction (Q 11)	Relation between composition and powers (Q 11)	Criticism by constitutional JJ (Q 12)
Court	immunity against detention or arrest (except for cases of being caught in the act of committing an offence, or by express waiver of immunity by the relevant judge). But this regime has not formally been extended to constitutional judges. No question has yet been raised on this point.	special forum is the Criminal Chamber of the Supreme Court.	Following circumstances: 1) if President of the CC accepts the j's resignation; 2) if the term expires; 3) if a cause for judicial incapacity arises; 4) if incompatibility occurs; 5) for failure to fulfil the duties of judicial office diligently; 6) for breaching the duty of confidentiality attaching to his office; 7) for a finding against the j, either of an intentional, civil tort, or for an indictable or serious offence; 8) if the j dies. 3) and 4) resolutions are taken by simple majority of CC. For all other cases, 3/4 CC majority required.		appeal for ordinary jurisdiction.	jurisdiction.	Around 70% of individual recourse cases are appeals from decisions by lower courts. This 'invasion' of the CC was the origin of the conflict in Feb 1994, when the First Chamber of the Supreme Court accused the CC of encroaching on its competencies. Some critics would advocate the creation of a Chamber within the CC which would relieve the CC of claims of constitutional violations within ordinary jurisdiction. Others insist on the need to develop a priority and summary procedure of protection of fundamental rights.	forced to observe the election procedure or the procedure should be changed in order to ensure the greatest heterogeneity and independence of its members, especially as far as the Executive is concerned. -JJ are too few considering their competencies and workload. Critics advocate an increase to 15, though this would require a constitutional amendment. -An odd number of jj would also facilitate resolutions, ie the cases of a tie requiring the President's casting vote (and the prejudice against this) would be avoided.
Sweden Supreme Court	No criminal immunity	Parliamentary Ombudsman or Justice Chancellor may bring be-	No dismissal by external authority possible.	No cases of dismissal	Constitutional control is a matter for 'a court or any	Only <i>a priori</i> control is possible. If a provision has already been ap-		Many participants in the legal-political debate consider the two supreme courts to be

Country	Immunity for JJ (Q 9)	Authority competent to lift immunity (Q 9)	Dismissal by external authority (Q 10)	Cases of dismissal (Q 10)	Highest Court (Q 11)	Jurisdiction (Q 11)	Relation between composition and powers (Q 11)	Criticism by constitutional JJ (Q 12)
		<p>for the Supreme Court criminal proceedings or other questions of removal from office, suspension from duty or obligation to undergo a medical examination.</p>			<p>other public body'. However, the more important constitutional matters will be dealt with by the Supreme Court and the Supreme Administrative Court.</p>	<p>proved by Parl or Govt, then it may only be set aside if the error is manifest. Can pronounce a provision invalid, but still then remains in force until it is finally amended or repealed by Parl or Govt. 'manifest error' limits control. There have been no acts of Parl declared invalid and only 3 statutory orders by Govt declared inapplicable (of the Const'n's history since 1975). Once the Sup Ct ruled certain provisions were made by Govt <i>ultra vires</i> bc would have required parl'y approval. Twice Sup Admin Ct found a statutory provision to be in conflict with an act of law.</p>		<p>incapable of handling constitutional questions, due to a lack of constitutional experts on the courts and due to the courts' lack of binding power. There is, therefore, a great demand for the institution of a Constitutional Court.</p>
<p>Sweden Supreme Administrative</p>			<p>Supreme Court competent over members of the Supreme Administra-</p>					

Country	Immunity for JJ (Q 9)	Authority competent to lift immunity (Q 9)	Dismissal by external authority (Q 10)	Cases of dismissal (Q 10)	Highest Court (Q 11)	Jurisdiction (Q 11)	Relation between composition and powers (Q 11)	Criticism by constitutional JJ (Q 12)
Court (where it differs from the Supreme Court)			tive Court.					
Switzerland Federal Court	Immunity at criminal law and torts.	Federal Court may lift immunity.	Dismissal impossible, unless on the basis of a criminal sentence, which may be appealed against right up to the Federal Court itself. No external body may be involved, only non-re-election is possible.	No case of dismissal from office.	Federal Court	Final stage of appeal. Constitutional jurisdiction is diffuse. Federal Court consists of 5 benches, normally requiring 3 jj to sit at the same time. Only if the dispute raises a question of constitutional principle, will the bench consist of five jj. The public law benches will consist of seven jj in cases of a public or administrative dispute which is expected to have a considerable political impact.	The number of Federal Court members was increased by the legislature due to the Federal Court's growing workload.	Another increasingly frequent effort at pragmatism is for the Federal Court to deliver a single opinion with which every judge simply concurs whenever the jj's opinion is unanimous and no j requests an oral deliberation (which would have to be public).
"The former Yugoslav Republic of Macedonia"	Immunity akin to that of members of Parliament.	Constitutional Court itself lifts immunity according to its Rules of Procedure.	Parliament can dismiss for permanent loss of ability to perform office as determined by the	None	NC	NC	NC	No controversy so far.

Country	Immunity for JJ (Q 9)	Authority competent to lift immunity (Q 9)	Dismissal by external authority (Q 10)	Cases of dismissal (Q 10)	Highest Court (Q 11)	Jurisdiction (Q 11)	Relation between composition and powers (Q 11)	Criticism by constitutional JJ (Q 12)
Constitutional Court			Constitutional Court.					
Turkey Constitutional Court	Criminal immunity, except in cases of serious crimes involving a heavy prison sentence.	Constitutional Court itself may lift immunity. May decide to appoint 3 judges to carry out investigations as interrogatory judges.	Only CC is competent with respect to dismissals. Membership is automatically terminated if a judge is convicted of a crime entailing expulsion from the judiciary. If incapacitated for reasons of health, office is terminated by absolute majority vote of CC.	No cases.	NC	NC	Number of cases it hears is limited, therefore composition seems directly related to the powers of the Constitutional Court.	No major demands have been publicised.
Ukraine Constitutional Court (The CC has only just been instituted)	CC jj enjoy a qualified form of immunity, ie from detention or arrest, but which does not preclude the investigation or prosecution of an action. There is no provision for suspension of duties pending an investigation or trial.	The Parliament may lift a j's immunity against arrest or detention	Dismissal is regulated exclusively by the CC, except where incompatible activities are involved or the j violates his or her oath of office: in such cases the Parliament is competent, but no procedure is set out.	There have been no cases of dismissal to date.	The Supreme Court is the highest stage of appeal in ordinary jurisdiction, whereas the CC has supreme constitutional jurisdiction.	The CC was created to ensure the protection of individual rights and freedoms in the transition from totalitarian justice to democratic justice. Exclusive constitutional jurisdiction was considered necessary to resolve issues of conflicts between state powers and the constitutional rights and freedoms of citizens.	It is anticipated that a large number of cases will be heard by the Court as the Constitution develops, hence the requirement for the large composition of the bench	As the work of the CC is only just beginning, it is too early to ascertain issues for the improvement of CC jj's status and CC functioning.

Key to abbreviations

J	Judge
JJ	Judges
NC	No Comment made by contributor
NA	Not Applicable
CC	Constitutional Court
Q	Question (from Questionnaire)