| Chapter 17 |

The Constitutional Challenges of the Judiciary in the Post-socialist Legal Systems of Central and Eastern Europe

Attila BADÓ

ABSTRACT

Despite theoretical experimentation, although one cannot speak of a separate post-socialist legal family,[1] it is without a doubt that CEE, post-socialist countries – and more precisely, the countries aspiring for EU membership – have had to cope with similar problems since the 1990s. Among the difficulties concerning the transition from dictatorship to democracy,[2] a political – or rather, professional – discourse that mostly occurs in constitutional courts and is aimed at the true nature and the method of ensuring judicial independence has been and is now given more emphasis in Western countries as well. Independence from party politics or governmental authority plays an increasingly important role in CEE countries since the collusion of the single-party state and courts frequently had tragic consequences during the Stalinist period[3] (the later and milder phase of the dictatorship in some countries was not always associated with an unfailing prevalence of judicial independence either, although direct political pressure could not be detected in a considerable part of legal disputes.[4]) In light of this saddening historical period, it is understandable that the chances of party political aspects that appear are more resounding than usual in post-socialist societies. Such fears are predominant in a narrow social stratum since the system of CEE political traditions, a weakened democratic legacy and frail or malfunctioning autonomies result in indifference towards institutional changes concerning the judicial independence as well.

In this study, the most important constitutional foundations of the judicial systems of post-socialist CEE countries are presented. The judicial system of the assessed legal systems is presented by defining the constitutional bases and the rules laid down in the most important laws through the presentation of the literature on the institution. Having clarified the structural issues and the constitutional status of the courts – the central forms of administration – an assessment is conducted as to how well-known aspects of judicial independence and accountability play a role in the administration of justice of a given legal system. At the heart of the analysis is the much-misunderstood concept of judicial independence. Within this, the organisational independence of the judiciary, which determines the relationship of courts with other branches of power, on the one hand, determines the actual margin of appreciation of judges, and on the other hand, it may shed light on the reforms of

1 See, e.g., Fekete, 2010, p. 209.
2 Anderson, Bernstein and Gray, 2005, p.132.
3 Kahler, 1993, p. 291; Graver, 2015, p. 301.
4 Fleck, 2001, p. 276.

Badó, A. (2022) 'The Constitutional Challenges of the Judiciary in the Post-socialist Legal Systems of Central and Eastern Europe' in Csink, L., Trócsányi, L. (eds.) *Comparative Constitutionalism in Central Europe: Analysis on Certain Central and Eastern European Countries.* Miskolc–Budapest: Central European Academic Publishing. pp. 339–359. https://doi.org/10.54171/2022.lcslt.ccice_18

CEE judicial systems on their way to democracy following dictatorship and the single-party system. The above may also reveal how these systems tried to meet the requirements of European accession and how they responded to societal needs. Although the system of the organisation of the judiciary in post-socialist countries has also undergone changes, mainly due to constitutional amendments aimed to enforce the principle of access to justice, no analysis of the changes is conducted here due to a lack of space. Although we can talk about a broader and narrower meaning of the concept of justice, in this chapter, the situation of CEE legal systems based on the narrower concept is also presented for reasons of length. Thus, we specifically deal with courts, which are the central actors in the application of the law. We also dispense with the presentation of constitutional courts' activities, to which this volume devotes a separate chapter. At the beginning of this chapter, we conduct an analysis of how the Court of Justice of the European Union and the Council of Europe, which connects the wider Europe, interpret the concept at its heart: judicial independence. Afterwards, we discuss the constitutional fundations and the central administration of courts. As a conclusion, we outline possible ways of development in post-socialist judicial systems.

KEYWORDS

Judiciary, Constitutional challanges, Post-socialist legal systems, Judicial Councils, Administration of justice.

1. Judicial independence and judicial organisational independence across the European area

Judicial independence is still a vague concept, even though almost every constitution in Europe – but especially post-communist constitutions – obligatorily enshrine this principle. Howewer, its exact content is difficult to determine as a principle and phenomenon of judicial independence can be examined from various aspects: the organisational independence of the judiciary, the existential security of the judge, or the independence and impartiality of the judge performing their judicial functions.[5] International agreements as well as international and domestic jurisprudence have managed to establish basic yet occasionally highly restrictive and vague standards concerning judicial independence.

The institutions of the European Union are endowed with limited competences and even more limited tools to safeguard judicial independence in the member states, but a number of unexploited institutional possibilities are available in the EU for the effective monitoring of judicial independence and signalisation or other active involvement if needed. Pursuant to Art. 2 of the Treaty on European Union (TEU),

> the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

Art. 6 TEU also underlines that "fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as

5 Russel and O'Brien, 2001, p. 326.

they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law". An alternative argument for EU involvement is the creation of an Area of Freedom, Security and Justice that is based, *inter alia*, on the automatic mutual recognition of judicial decisions rendered in other member states. Mutual recognition is based on mutual trust, and a crucial component of this trust is the conviction that a judgement rendered in another member state has been adopted by an independent and impartial tribunal in a fair procedure. Despite an unequivocal theoretical commitment to uphold the rule of law, the EU actually has very few tools to effectively implement it. The European Council, acting by unanimity on a proposal by one-third of the member states or by the European Commission and after obtaining the consent of the European Parliament, may determine the existence of a serious and persistent breach by a member state of the values referred to in Art 2, after inviting the member state in question to submit its observations (Art. 7 TEU).[6]

The EU Charter of Fundamental Rights might serve as another basis of EU action. Pursuant to Art. 47 of the Charter, everyone whose rights and freedoms guaranteed by EU law are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented. However, Art. 51 of the Charter limits the scope of these provisions by stating that they are addressed to the institutions, bodies, offices and agencies of the EU with due regard for the principle of subsidiarity and to the member states only when they are implementing EU law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties. In addition, the Charter does not extend the field of application of EU law beyond its powers, establish any new power or task for the EU or modify powers and tasks as defined in the Treaties. As a consequence, the Charter is not very likely to prove an effective tool to promote the independence of domestic courts in member states. However, since 2010, the Commission has published an annual report on the implementation of the Charter and can also initiate infringement procedures, but these are usually not based exclusively on the Charter.[7] Another important European initiative on judicial independence, including the organisational

6 Based on the unsatisfactory experiences related to the application of Art. 7 TEU as a nuclear option, on 11 March 2014, the Commission presented a new initiative for addressing systemic threats to the rule of law in member states that was supposed to be complementary to the infringement procedures and Art. 7 procedural activities on monitoring the 'rule of law' in member states and taking proportionate and effective action if needed.

7 For example, when – as mentioned above – the Commission contested the early retirement of around 274 judges and public prosecutors in Hungary caused by a sudden reduction of the mandatory retirement age for this profession from 70 to 62, the Court of Justice of the European Union upheld the Commission's assessment that this mandatory retirement was incompatible with EU equal treatment law (the Directive prohibiting discrimination on the basis of age and Art. 21 of the Charter) – and not on considerations related to the independence of the judiciary.

independence of the judiciary, is the action plan[8] proposed by the Council of Europe's Committeee of Ministers in 2017, which includes recommendations and the monitoring of member states. The action plan aims to depoliticise courts but continues to respect the specificities of the member states. It does not require the establishment of judicial councils everywhere; however, it articulates the need to avoid the election of members of the councils or other judicial bodies. [9] Overall, there are many different views and ideas in the EU about what the independence of the judiciary entails. The analysis and examination of the different solutions used in various EU member states must also consider the specificities of each country's domestic political institution.

For CEE countries, it is often difficult to understand the criticisms from EU institutions or human rights organisations that call into question a court action. This is most noticeable in connection with the administration of justice and the selection and disciplinary accountability of judges, for which stable Western European democracies also show various solutions. For decades, individual legal systems in Europe have been experimenting with ways and means of ensuring the separation of powers, mutual control and a balance of independence and accountability in the judiciary. Although a clear trend is that the former ministerial powers are gradually being taken over in most countries by so-called judicial councils, which are designed to establish judicial self-government, the competences and composition of these councils still show considerable variation. In addition, some European countries (Austria and Germany) do not follow the indicated trend and still include the external administration of courts in governmental competence.[10]

Thus, even judicial systems with centuries of continuous legal traditions may employ institutional solutions that might arouse doubts concerning the independence and impartiality of judges. However, it is quite possible that due to the peculiarities of the legal and political culture, these solutions do not lead to the violation of the fair trial principle at all in practice. Nevertheless, that of political and legal culture is also a vague concept, based on which it would be extremely difficult to make an informed decision due to the violation of judicial independence.

2. Constitutional foundations: Central administration of courts.

After the collapse of the Soviet Bloc, almost everywhere, the courts of the post-socialist countries of Central and Eastern Europe faced the problem of how to transpose the institutional structures rooted in Western democracies after World War II and the

8 Council of Europe Action Plan on strengthening judicial independence and impartiality (CM(2016)36 final).

9 "Measures should be taken t de-politicise the process of electing or appointing persons to judicial councils, where they exist, or other appropriate bodies of judicial governance" (Appendix, explanatory note p. 19).

10 Rieger, 2011, p. 209.

principles governing the functioning of the judiciary into a legal system defined for decades by a dictatorial framework.

Since the 1990 regime change, CEE, post-socialist countries have been struggling with how to meet the judicial independence requirement with a view to accession to the European Union. To this end, certain legal systems pushed through several reforms under which the judicial organisation has been restructured several times.[11] One could witness the expansion of the application of the judicial self-administration bodies in accordance with Western European trends. Since the accession of CEE, post-socialist countries to the EU proved to be successful, a new development occurred. The EU has rather limited means to exert influence over the judicial administration systems of its member states; thus, considerable leeway is given to post-socialist countries where the democratic traditions and the frailness of the politico-legal culture provide fertile ground to orientate towards the creation of an opportunist judiciary loyal to the government or, even better, the court management in case of the existence of a political intention to this effect. Regarding enforcement attitudes, the dictatorial state apparatus that lasted for almost half a century left an indelible mark in these countries.

In the post-socialist countries of the regime change, the ongoing rule of law reforms were guided by the fact that judicial independence could be realised in the face of decades of party statehood, when communist governments intervened to a greater or lesser extent in the substantive issues of the administration of justice. In the initial euphoric state, the political elite of democratising societies placed much more emphasis on this than on the question of the accountability of judges. Moreover, accountability seemed to be more of an obstacle to the realisation of judicial independence. However, in post-socialist countries, similarly to Western European countries, regime change parties experimented with varied solutions to achieve the above goals. Since the government had been responsible for the external administration of courts everywhere in the past, in addition to the degree of external pressure already mentioned after the change of regime, it was up to politicians to decide when and to what extent they would allow more judicial self-government.

Western European (ministerial, self-government and mixed) administrative models can thus also be found in the assessed post-socialist legal systems. In this chapter, the aim is to briefly present these varied solutions. Although important empirical studies have been conducted on the effectiveness of the administrative models introduced in post-socialist countries, describing them is beyond the scope of this study.[12]

In Hungary, 7 years after the change of regime, a judicial council with a judicial majority council was established in the framework of the 1997 comprehensive justice reform, with which the council took over almost all the powers of the government

11 See, e.g., Anderson and Gray, 2007, pp. 329–355.

12 See, e.g., the work on the operational experience of the Czech ministry and the Slovak local government model: Kosař, 2016, p. 488.

over the administration of justice.[13] In addition to the Minister of Justice, the Council also included the Prosecutor General representing the Public Prosecutor's Office, and the President of the Bar, but the majority of the judges elected by their representative bodies provided full self-government. Prior to that, ongoing political battles had begun, mostly over the appointment of court heads. However, since the formation of the council, professional criticism has emerged and gradually intensified in Western European countries over the full self-administration of justice: administrative managers elected by judges induce a barely controllable corporate system, leading to an increase in nepotism within the judiciary. The government, which gained a two-thirds parliamentary majority in 2010, implemented judicial reform, entrusting the administration of the courts to an administrative body with broad powers and headed by a leader appointed by a two-thirds parliamentary majority. The supervision of this body was entrusted to the Judicial Council, composed exclusively of judges but with less substantial powers. The new organisational form has been widely criticised for giving a single person exceptional power over the courts.[14] The National Office for the Judiciary (NOJ) is responsible for practically all matters related to the selection of judges and court leaders, and it supervises the administrative activities of all courts except the Hungarian Supreme Court – the Curia. The task of the Council in the field of central administration is basically to control the activities of the NOJ.[15] The service courts in Hungary have the right to adjudicate disciplinary cases; since 1997, the influence of the ministry of justice on the day-to-day operation of the courts has only been informal.

In Romania, immediately after the fall of Ceausescu's regime, the Judicial Council was established in 1991 with a historical predecessor (in 1909, well before the French Judicial Council, first recorded in the literature, a judicial council was established to assist the minister in the promotion of judges and to have competencies in the disciplinary matters of judges.) The Council, established in 1991, had weak powers compared to the Minister of Justice; therefore, one of the key issues in the European accession process until 2007 was the extent to which the government was able to relinquish control of the judiciary, thus increasing the Council's powers, and in parallel, what institutional guarantees the government managed to establish to tackle corruption, which is a particular problem in Romania. Under pressure from the EU, a comprehensive reform took place in 2003. Following lengthy political debates, together with other constitutional and legal rules related to European accession, an extremely broad, judicial majority body of 19 members representing the wider judiciary has emerged. In addition to the 14 judge members elected by the general meetings of the magistrates, there were two renowned lawyers elected by the Senate, the Minister of Justice, the President of the High Court of the Court of Cassation and the Attorney General. The Council has been given full power over virtually all matters affecting

13 Act LXVII of 1997 on the Organisation and Administration of Courts.
14 By the end of the 2010s, there had been a change of staff at the Head of the Office due to increasing conflicts between the Judicial Council and the Head of the Office.
15 Section 103(1)(a) of Act CLXI of 2011 on the Organisation and Administration of Courts.

the careers of judges. Judges and prosecutors are appointed by the president of the republic on a proposal from the Council. The reform has fundamentally changed the status of the judiciary, and the government has almost completely lost control of this branch of power. Although the Minister of Justice has become a member of the council, he cannot, for example, take part in the adjudication of disciplinary matters. The Council has been given full power not only in matters concerning judges but also in those regarding prosecutors. This significant change was associated with typical 'side effects'. The full independence required by the European Commission has resulted in a lack of external control and strengthened the corporate nature of the system.[16] To counter this, the process of judicial reform between 2017 and 2019, which intensified the conflicts between the government and the judiciary, can also be seen as such. The acts of parliament on the appointment of prosecutors and the prosecution of judges have also been brought before by the European Court of Justice (ECJ), at the end of which judges found certain elements of the reform to be incompatible with EU law and the independence of the judiciary.[17] The central administration of the Romanian judiciary is the subject of more extensive and detailed debates than those described above, which, as in the countries of the region, continue to reflect a state of searching for a way forward.[18]

Poland also took some time to form the Judicial Council following the regime change. Although initiatives had been proposed, the creation of a body that took over a significant part of the government's powers in the administration of courts was finally incorporated into the Polish constitution in 1997, at the same time as Hungary. Since 1997, the National Council of the Judiciary has had 25 members: 15 judges elected by their peers, a representative of the President of Poland, the Minister of Justice, six members of parliament, the President of the Supreme Court of Poland and the President of the Supreme Administrative Court of Poland.[19] The Polish solution belongs to the so-called mixed system. In addition to the Council, the ministry of justice has retained significant powers in administrative matters, from the issue of the courts' budget to the appointment of heads of court. Although several conflicts of competence have arisen as a result of the Council's work, the serious debate between the government and the judiciary – and later EU institutions – unfolded far beyond the

16 For details on 'side effects', see Selejan and Gutan, 2018, pp. 1707–1740.
17 On 18 May 202,1 the ECJ ruled on the legal nature of the Cooperation and Verification Mechanism and the EU Commission's progress reports and their binding effect for the Romanian courts.
18 See: https://verfassungsblog.de/failing-to-struggle-or-struggling-to-fail-on-the-new-judiciary-legislation-changes-in-romania/;
https://verfassungsblog.de/new-challenges-against-the-judiciary-in-romania/; https://muse.jhu.edu/article/698921/pdf ;
https://medelnet.eu/images/2018/Romanian_Judges_Union_-_Report_on_the_unlawful_involvement_of_the_Romanian_secret_intelligence_agencies_through_secret_protocols_in_the_Romanian_judiciary_system.pdf;
https://www.iacajournal.org/articles/10.36745/ijca.350/; https://ec.europa.eu/info/sites/default/files/ro_rol_country_chapter.pdf.
19 The council was established in Arts. 186 and 187 of the Constitution of Poland.

particular problem in the late 2010s.[20] The problem of accountability/independence of the judiciary in Poland has come to the forefront of political battles with the aim of changing the composition of the Judicial Council at the government's initiative. The argument was to strengthen accountability, which was sought to be achieved by changing the interpretative practice for the selection of Council members. Until then, the judge members of the judicial majority panel had been elected by the municipal judicial panel. The government took the view that the way of election is also constitutional if these members are elected by the legislature, thus strengthening parliamentary control. The Polish opposition considered this step, together with other measures taken in the field of justice, to be a serious violation of judicial independence. A draft law in 2017 aimed at reforming the National Council of the Judiciary: the 15 judges nominated by the self-governments wouldbe elected by the *Sejm* instead; however, the law was vetoed by President Andrzej Duda.[21] The European Commission subsequently initiated a unique measure against Poland by triggering Art. 7 of the Treaty of the European Union, following which it was proposed to suspend Poland's voting rights due to certain elements of the judicial reform. The Polish president responded with the immediate signing of the previously vetoed law. Voicing the violation of Polish sovereignty, the government raised the idea of "Polexit" following a European Court of Justice ruling on the disciplinary liability of Polish judges. The European Commission took the matter to the EU Court of Justice in October 2019 because it considered that Poland had failed to fulfil its obligations under EU law through a disciplinary system established in 2017. In the Commission's view, several elements of the disciplinary reform infringe EU law. Once the concept of a disciplinary offence had been broadened, this could, in their view, increase the number of cases in which court judgements can be brought under political control. Following the court ruling, the Polish Constitutional Court even handed down a judgement declaring the supremacy of Polish law over EU law.[22] In 2018, a disciplinary chamber for judges was set up within the Supreme Court, in response to which the European Commission launched infringement proceedings against Poland. The chamber is composed entirely of judges selected by the National Council of the Judiciary, whose members are appointed by the Sejm. An important milestone in the dispute between Poland and the EU was the 12-2 Decision of the Constitutional Court, which ruled that the ECJ's interference in the Polish judicial system violated the rules guaranteeing the primacy of the constitution and EU rules respecting sovereignty. According to the ruling, Art. 1 and 4 of the

20 For the history of conflict see Mazur and Wortham, 2019, p. 875.

21 See Mazur and Żurek, 2017, p. 56; Matczak, 2018; Matczak, 2018, pp. 6–7.

22 The second subparagraph of Art. 4(3) TEU in conjunction with Art. 279 TFEU-in so far as the Court of Justice imposes *ultra vires* obligations on the Republic of Poland in the context of interim measures related to the justice system and jurisdiction of Polish courts as well as the mode of proceedings before them – is incompatible with Art. 2, Art. 7, Art. 8(1) and Art. 90(1) in conjunction with Art. 4(1) of the Constitution of the Republic of Poland, and accordingly, it is not covered by the principles of primacy and direct effect referred to in Art. 90(1)–90(3) of the Constitution (P 7/20/14 VII 2021).

Treaty on European Union are not in line with Art. 2 and 8 of the Polish Constitution and with Art. 90(1).[23] The dispute is therefore based on the fact that the Polish Constitutional Court does not recognise the primacy of EU law, which is established by the Member States in the joint exercise of certain elements of their sovereignty, by invoking Art. 8 of the Polish constitution, which states that the constitution is the supreme law of Poland and that its provisions are directly applicable unless the constitution itself provides otherwise.[24] There still seems to be no resolution on the debate on the central administration of justice, either at home or at the EU level.

For a long time after the change of regime, the Slovak judiciary continued to operate in an almost unchanged form under the administration of the ministry of justice. The Report of the European Commission Expert Mission and the Slovak ministry of home affairs of November 1997 concluded that the Slovak judiciary did not comply with the rule of law as the courts were completely dependent on the executive from an administrative point of view. Due to the lack of judicial self-government, the report called for a review of the system. An amendment to Chapter 7 of the constitution and the establishment of the Judicial Council were therefore mainly due to external influences in 2001.[25] At the same time, the Slovak political elite was reluctant to completely let go of the judiciary by strengthening the role of judicial self-government. The council does not necessarily have a majority of judge members. Among the 18 members, nine judges are delegated by the judges, and the government, the president of the republic and parliament can also delegate three members each to the panel,[26] although for the latter nominations, a professional judge may be delegated

23 EU charges Poland's Constitutional Tribunal with violating EU law (see David R. Cameron, 2022). Comp.: Opinion of the National Council of the Judiciary of 30 January 2017 on the government Draft Act amending the Act on the National Council of the Judiciary and certain other acts (UD73). Opinion No. 904/2017. European Commission for Democracy Through Law (Venice Commission) Poland – Opinion on the Draft Act Amending the Act on the National Councul of the Judiciary. File No III PO 7/18 Judgement in the Name of the Republic of Poland.

24 The Polish argument is somewhat contradicted by the fact that Art. 90(1) of the constitution states that the Republic of Poland may, on the basis of international agreements, delegate the powers of the organs of state power in certain matters to an international organisation or institution. It would appear that the status of judges and the independent functioning of the courts do not fall within this specific scope. Art. 178(1) of the constitution states that judges are independent in the exercise of their office, subject only to the constitution and the law, and Art. 190(1) states that the judgements of the Constitutional Court are generally binding and final. Thus, while the Polish constitution itself recognises that the Republic of Poland may delegate certain powers to an international organisation or cooperation on the basis of an international agreement, these powers or competencies do not extend to areas that affect the system of judicial organisation.

25 Art. 141a of the constitution concerning the Judicial Council of the Slovak Republic was inserted by Act No. 90/2001 Coll. entering into effect on 1 June 2001. On 11 April 2002, the National Council of the Slovak Republic approved the Act No. 185/2002 Coll. on the Judicial Council of the Slovak Republic as amended.

26 Nine judges elected and recalled by judges of the Slovak Republic:
three members elected and recalled by the National Council of the Slovak Republic (parliament); three members appointed and recalled by the President of the Slovak Republic; three members appointed and recalled by the Government of the Slovak Republic.

to the panel, as evidenced by the current composition of the council. The creation of the Judicial Council resulted in a significant change in the Slovak Republic. Based on the changes, the judicial self-government bodies are involved in the procedure of appointment, removal, transfer of judges.[27] In any case, the Slovak solution seeks a balance typical of Western European mixed models, which can ensure mutual control of the branches of power over the judiciary, so that management of a self-government character is also realised. Scandals, debates and the resulting reform efforts in the Slovak judiciary intensified in the late 2010s, when the new coalition government declared an anti-corruption fight after 13 judges were indicted with serious crimes. Subsequently, the government made proposals to strengthen the accountability of judges, change the composition of the Judicial Council, establish the Supreme Administrative Court and other proposals requiring constitutional amendment.[28]

Court administration in the Czech Republic is the only one of the countries analysed in which the ministry of justice plays a dominant role. The 'executive model' has survived only in this post-socialist country in Central and Eastern Europe, with the element of judicial self-government largely missing. Judicial councils have an exclusively consultative role but do not participate in decision-making.[29] The judicial administration of the eight regional and 86 district courts is conducted by the ministry of justice directly or indirectly through the presidents of these courts. The two supreme courts (the Supreme Court and the Supreme Administrative Court) are administered exclusively through their presidents, who are nominated by the ministry of justice and appointed by the president of the republic. The appointment of court presidents in the supreme courts is for a term of 10 years (for a term of 7 years in district and regional courts) and cannot be reappointed to the same court.[30]

Each year, the president of the relevant court is responsible for determining the court's work plan for the following year, setting out the composition of the judicial bodies and the mechanisms for allocating cases.[31] Functions related to human resources and financial management are divided between the ministry of justice and the presidents of the courts. The presidents direct the professional training of the trainees and determine the number of lay judges. The presidents of the regional courts detail the state budget available for the operation and management of the respective regional and related district courts. As a result, the presidents of the district courts do not participate in the preparation and planning of the budget, but their task is to ensure the functioning of the given court by taking into account organisational, personal, economic, financial and educational aspects.[32] Each court employs a person

27 The Judicial Council of the Slovak Republic is constituted by the Constitution of the Slovak Republic. Competences of the Judicial Council are stipulated by the Constitution in Art. 141a, para. 4 and by Act No. 185/2002 Coll. on the Judicial Council of the Slovak Republic.
28 Domin, 2020.
29 Smith, 2008, pp. 85–93.
30 Contini, 2013, p. 82.
31 Blisa, Papousková and Urbániková, 2018, pp. 1951–1976.
32 Fabri, 2013, p. 101.

known as a court director, who deals with court administration. Court directors are appointed by the presidents of the courts based on a competitive examination. They do not have a law degree, and economists usually fill this position. Their employment is regulated by the Labour Code, and they can fill their positions without any time limit. In disciplinary cases, the councils in the higher courts act in the first instance and the disciplinary council of the Supreme Court in the second instance. Disciplinary proceedings may be initiated by the president of the court concerned or by the Minister of Justice. The request may be submitted within a period of 60 days from the knowledge of the act giving rise to the disciplinary proceedings but no later than 2 years from the date of the act. Judges are appointed by the president of the republic on the basis of a multi-stage appointment procedure. Given that most new judges are essentially appointed to the court of first instance, the initial step in the appointment procedure is taken by the president of the court in which the vacancy occurs. The president of the court shall propose to the ministry of justice the appropriate candidates; thereafter, the Minister of Justice is entitled to accept or reject the proposal received about the candidates.[33] Given that the president of the republic may exercise the power to appoint a judge with the government's consent, the list of candidates shall be forwarded to the government. If the government agrees with the candidates on the list, the president of the republic shall appoint the candidate(s).[34]

It is characteristic of each of the emerging states of the former Yugoslavia that, following their independence, they reformed their judicial systems to join the EU and set up judicial councils everywhere.[35] The foundations of Croatia's judicial system, including the Judicial Council, were established in 1993. The last significant changes were made with the new court law, which came into force on 1 January 2019.[36] The administration of the Croatian courts can be classified as a mixed administration system, as while the powers related to the selection and disciplinary responsibility of judges were transferred to the Judicial Council with one exception,[37] the executive retained powers in other administrative matters of the courts. The State Judicial Council (SJC) is an independent and autonomous body within the meaning of Art. 121 of the constitution, which guarantees the independence and autonomy of the judiciary of the Republic of Croatia.[38] It decides independently on the appointment, promotion, transfer, dismissal of judges and court presidents (except the President of the Supreme Court), disciplinary

33 Law on Courts and Judges No. 6/2002.

34 Art. 63(1) of the Constitution of the Czech Republic.

35 For an analysis of the situation in the former Yugoslav countries, see Dietrich, 2008, p. 11.

36 The objective of the legislator was to solve the problems related to the administration of large courts as well as the difficulties related to small courts with comprising less than 10 judges and therefore difficult to manage effectively.

37 The President of the Supreme Court is elected by the Parliament on the proposal of the president of the republic after consulting the General Council of the Supreme Court and the competent committee of the Parliament.

38 Ustav Republike Hrvatske. Pročišćeni tekst. Narodne novine 56/90, 135/97, 08/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14, see https://www.zakon.hr/z/94/Ustav-Republike-Hrvatske.

proceedings and the further training of judges and members of the judiciary.[39] It consists of 11 members, seven of whom are judges, two professors of law and two members of parliament, elected for a 4-year term subject to re-election on a single occasion. The presidents of the courts may not be members of the SJC. The president of the SJC is elected by the members from among their ranks.[40] All administrative matters which do not fall within the competence of the council are the responsibility of the ministry of justice, which it addresses in cooperation with the president of the courts. In this context, the Minister of Justice has the right to terminate, repeal or annul any unlawful administrative provision (Section 71). The Minister adopts the Rules of Court, which set out the organisation and administration of courts and determine the number of judges presiding each court. The Minister keeps a register of judges, can ask for any information and may also ask the sentencing judge for an explanation of certain lawsuits.

The establishment of the Slovenian judicial self-government was motivated by the transition to a constitutional democracy and, pragmatically, by its admission to the Council of Europe, which was also strongly supported by the academic sphere.[41][42] Self-government manifests itself in the mutual control of the three branches of power and their influence on the judicial power. The main feature of the system is that in addition to the establishment of judicial self-government, the role of the executive branch (budget, preparation of legislation related to courts etc.) cannot be neglected either. What is interesting, however, is that all Slovenian judges, on a proposal from the Judicial Council, are appointed judges following a decision by the parliament. Afterwards, however (apart from the President of the Supreme Court), the Judicial Council decides on judicial promotions and the appointment of court presidents and vice presidents. The Council for the Judiciary [*Sodni svet*] was established in 1990, immediately after independence,[43] and it consisted of nine members: five judges, three respected lawyers and the minister of justice, who have yet to obtain their mandate from the socialist Parliament. The Council possessed only a weakened role. The constitution – and then the subsequent laws on the courts[44] and those on the service of judges[45] – already pro-

39 Appointment of judges, appointment and dismissal of court presidents, transfer of judges, disciplinary proceedings and decisions on the disciplinary responsibility of judges, decisions on the dismissal of judges, participation in the training of judges and judicial officers, conduction of the registration of candidates to the State School for Judicial Officials and the process of taking final exams, adoption of methodologies for evaluating judges, recording of judges and management and control of assets declarations of judges.

40 Its composition is regulated in more detail in Section 4 of the latest amendment in force since 1 September 2018, prescribing that the members elected from among the judges are as follows: two judges of the Supreme court, one judge of a higher court (one judge), three judges of county courts and one judge from a court of first instance (usually district court). Judges elected to the SJC have a reduced duty in their courts: 75% for the President of the Council and 20% for the members of the council.

41 Kosař, 2016, p. 488.

42 See, for example, Guasti, Dobovšek and Ažman, 2012, pp. 175–190.

43 Fišer, 2001.

44 OJ RS 94/07.

45 OJ RS 94/07.

vided for the establishment of a strong judicial self-government body, which already gives broader powers to the central judicial council (some ideas would have extended the powers of the council to the prosecutor's offices, but this was ultimately rejected by the political parties.) Art. 131 of the constitution provided for the establishment of a Judicial Council with a majority membership of judges. In addition to the six elected judges, five members are elected by the parliament on the proposal of the president of the republic. In terms of its status, as confirmed by the Slovenian Constitutional Court, the council is a *sui generis* body independent of other branches of power, which is also not a representative body of judges.[46] To ensure the independence of judges, the constitution establishes two guarantee provisions, namely that a judge may be appointed and dismissed only based on a proposal by the council.[47] Although some initiatives have transferred the appointment of judges from the parliament to the president of the republic due to the risk of politicisation, this initiative has become a moot point due to the strong and independent powers of the Judicial Council and the unwillingness of political parties. The powers of the council were strengthened in 2017, in a separate law[48] on the Judicial Council, in which four main competence groups were detailed: (1) selection, appointment and removal of judges, court presidents and vice presidents[49]; (2) other powers related to judicial human resources policy[50]; (3) the role of the council in disciplinary matters. The council shall set up a disciplinary committee, initiate disciplinary proceedings and ensure that disciplinary action is taken. The fourth group includes the competences that allow the implementation of the previous ones.[51] It shall, in consultation with the Minister for Justice, adopt the criteria for the selection of judges and the evaluation of judges already appointed. It shall create a code of ethics and integrity, and the Minister of Justice shall consult the council on the necessary number of judges and organisational issues.

Serbia is the only legal system among those analysed that is merely seeking to join the EU. The European Commission's Strategy for the Western Balkans predicts this could happen in 2025 at the earliest, but in the meantime, several reforms are needed, including in the judiciary. Following the secession of Serbia and Montenegro and the simultaneous declaration of the independence of Serbia, a national strategy for the

46 Constitutional Court of Slovenia Case U-I-224/96, par. 11.
47 Constitution, Arts. 130 and 132.
48 Official Gazette of the Republic of Slovenia 23/17.
49 Art. 23/1 of the Judicial Council Act. In this context, the council shall have the right to make proposals to the person of the President of the Supreme Court, and it shall also propose the identity of supreme court judges. It shall have the power to appoint all other presidents and vice-presidents of the court and also decide on all judicial promotions. It shall propose the appointment of new judges, and Parliament shall decide on the appointment of judges. It shall deliver an opinion on the procedure for removing the President of the Supreme Court. Proposing the removal of judges shall also fall within its competence.
50 Judicial Council Act, Art. 23/2. Conflicts of interest, promotions, the award of higher judicial titles and the upgrade to a higher remuneration category are also included, and the council ultimately decides on the negative assessment of judges and on complaints against judges, the transfer of judges and other matters relating to their status.
51 Judicial Council Act, Art. 23/4.

transformation of the judiciary was adopted in 2006, which would lead to the adoption by 2010 of the law laying the foundations for a post-socialist Serbian administration of justice. The High Judicial Council (HJC) was established, which also played an important role in the selection, disciplinary matters and dismissal of judges. A mixed system was adopted, in which the administration of justice is jointly conducted by the HJC and the ministry of justice (Section 70). The latter oversees the administrative work of the courts, collects statistical and other data, maintains facilities, decides on budgetary matters and oversees the financial activities of the former beyond the courts. The HJC had an eleven-member body: the President of the Supreme Court, the Minister of Justice and the chair of the competent committee of the parliament, with eight members elected by the parliament: six judges (from the Autonomous Province of Vojvodina) and two prestigious lawyers with at least 15 years of work experience.[52] The council had the right to elect and withdraw the judges having been finalised.[53] As in Slovenia, efforts to establish mutual control between the branches of power were apparent. In addition to the ministry and the council, the legislature was given significant powers to appoint judges and select members of the council. The latter was a critical element of the judiciary in the EU accession process as the legislature elected almost two-thirds of the members of the council; in this way, the parliament had an indirect influence not only on the election of judges on probationary period but also on the appointment of all judges.

European integration efforts have prompted the Serbian government to change the situation, initiating a constitutional amendment.[54] The draft ended up significantly limiting the role of the legislature. On 16 January 2022, Serbia held a referendum on the constitutional reform, which confirmed the changes initiated by the government. The council's powers have increased considerably; its composition has also been changed, and judges elected by their peers now enjoy a majority in the body. Six judges out of 11 members are elected by their peers, and four members are elected by the National Assembly from the 'eminent jurists'. The President of the Supreme Court is the seventh judge to sit on the panel. The justice minister will not be a member of the council. The Constitutional Amandment guarantees that judges and prosecutors are elected without the direct involvement of the National Assembly, and judges and court presidents are elected exclusively by the HJC.[55] The 3-year probationary mandate for judges was also abolished (parliament elects only the Supreme State Prosecutor and five out of 15 Constitutional Court judges.)[56]

For comparability, Table 1 summarises the key features of the judicial councils of the countries under analysis.

52 Zakon o Visokom savetu sudstva ("Sl. glasnik RS", br. 116/2008, 101/2010, 88/2011 i 106/2015).
53 See https://vss.sud.rs/sites/default/files/attachments/Zakon%20o%20sudijama%20 01.01.2016..pdf.
54 EWS, 2021, see https://europeanwesternbalkans.com/2021/06/08/serbian-parliament-votes-to-trigger-amending-the-constitution-in-the-field-of-the-judiciary/.
55 Prosecutors will be elected by the High Council of Prosecutors.
56 USTAV REPUBLIKE SRBIJE ("Sl. glasnik RS", br. 98/2006 i 115/2021).

Questions	Hungary	Poland	Romania	Croatia	Slovenia	Serbia	Slovakia	Czech Republic
Is there Judicial Council responsible for judicial administration?	✔	✔	✔	✔	✔	✔	✔	No (only with consultative role)
Type of administration	Administration by Council and Judicial Office	Council + Executive	Council + Executive	Council + Executive	Council + Executive (Parliament has special role in appointing judges)	Council + Executive	Council	Executive
Total number of members	15	25	19	11	11	11	18	X
Is there a possibility to be renewed as a member?	No	Yes, but no more than twice	No	Yes, but no more than twice	Yes, but not right after the former term	No	Yes, but not more than for 2 subseqent terms	X
Make up	1 – President of the Curia – delegated; 1 – judge from a Regional Court of Appeal; 5 judges from Regional Courts; 7 judges from District Courts; 1 judge from and Administrative and Labour Court The other 14 judge members are elected by secret ballot with a simple majority.	15 judges elected by their peers; 1 representative of the President of Poland; 1 – the Minister of Justice; 6 members of Parliament; 1 – the President of the Supreme Court; 1 – the President of the Supreme Administrative Court	14 magistrates (9 judges and 5 prosecutors) – elected by the general assemblies of magistrates; 2 lay members (elected by the Senate); 3 ex officio members (the President of the High Court of Cassation and Justice, the minister of justice, the general prosecutor of the Prosecutor's Office)	2 judges of the Supreme Court; 2 county court judges; 2 municipal court judges; 1 judge of the specialised court; 2 university professors of law; 2 members of Parliament – one of them from the opposition	6 judges – elected by their peers; 5 members elected by Parliament on the proposal of the President of the republic	1 – President of the Supreme Court of Cassation; 6 judges elected by their peers; 4 eminent lawyers nominated by Parliament	9 judges – elected by their peers; 3 members – elected by the Parliament; 3 members – appointed by the President; 3 members – appointed by the Government	X
Is there a majority of judges?	Yes	Yes (15 out of 25)	Yes (10 out of 19)	Yes (7 out of 11)	Yes (6 out of 11)	Yes (7 out of 11)	By law, at least 50 %	X
Is ultimately responsible for judicial appointment?	No – makes proposal to the President of the Republic	No – makes proposal to the President of the Republic	No – makes proposal to the President of the Republic	Yes	No – makes recommendation to Parliament	Yes	Yes	X
Is ultimately responsible for removing judges?	No (Judicial Office proposes for the President of the republic)	No (Disciplinary chamber at the Cassation Court of Poland)	No (Appeal before the High Court of Cassation is possible)	Yes	No – makes recommendation to Parliament	No (appeal to constitiutional court is permitted)	Yes	X
Main competences	•Gives opinion on the candidates of the President of the National Judicial Office and that of the Curia. •Decides in the question of a renewed nomination of a President or a deputy President of the regional court of appeal, the tribunal, the administrative and labour court, and the local court. •Nominates the President and the members of the official court. •Coordinates Judicial training	•Consideration and evaluation of candidates to serve offices of judges and submission to the President of the Republic of Poland of motions for appointment of judges of the Supreme Court, the Supreme Administrative Court, common courts, provincial administrative courts and military courts; •adoption of a catalogue of professional ethical rules of judges and monitoring of their observation.	•Appointment into leading positions, transfer, secondment, proposals for appointment into and the release from the leading positions within the High Court of Cassation and Justice, advice on the proposal of the minister of justice for the appointment into and release from leading positions within the Prosecutor's Office by the High Court of Cassation and Justice). •Coordinates Judicial training	• Appoints judges; •Appoints and dismisses of court Presidents; •Decides on the immunity of judges; •Reassess judges; •Conducts disciplinary proceedings and deciding on the disciplinary liability of judges; •Decides on the dismissal of judges; •Decides on the transfer of judges; •Participates in the training and professional development of judges and court staff	•Appoints judges based on opinion of the responsible person within the institution where the judge will be appointed; •Appoints and dismisses Presidents of courts (except for the President of the supreme Court of Republic of Slovenia); •Decides on promotion to higher judicial positions and on faster promotion within wage grades; •Decides on the incompatibility of judicial office	• Appoints, selects judges, court presidents; • Decides on the dismissal of judges – pass the Code of Ethics – determine the number of judges and lay judges for each court; – perform affairs of the judicial administration within its remit; – rule on issues of immunity of judges and Members of the Council	• Adopts opinion on adequacy of candidates; • Presents candidates for appointment and proposals to recall judges to the President; •Decides on assignment and transfer of judges; •Presents candidates to the Government who should act on behalf the country within international judicial bodies; Judicial traning – determine the subject matters of judicial education, propose members of the pedagogical staff and examination committees	X

Table 1. Comparison of judicial councils in East Central Europe (Attila Badó, 2021)

3. Challenges of post-socialist judicial systems: Conclusion

Despite the shared history in the Soviet Bloc and the identical features of the subsequent regime change, the diversity of institutional solutions is what characterises East Central European countries today. Apart from diversity, the most paramount identical feature may constitute the fact that the relationship between independence and accountability[57] reveals inconsistencies and confusion in the judicial system, despite regularly occurring reforms.[58] One may conclude from the reforms that the settlement of the relationship between independence and accountability is omnipresent in disputes relating to the distribution of powers.[59] Constant reference to independence is often paired with a lack of preparation and with seclusion, increasing corporate elements and the lack of transparency in courts. Councils for the judiciary that established following Western examples show significant differences in certain legal systems regarding both their composition and competences. In Hungary, a Council composed exclusively of judges controls a president elected by the legislature, who heads the Judicial Office. In Romania, Poland and Slovenia, the council of a majority of judge members has taken over the administration of justice, but the latter also provides an example of the importance of the legislature in the process of appointing judges. The same has been the case in Serbia, which has so far seceded from the former Yugoslavia and has not yet joined the EU; here, the legislature not only elected the majority of the members of the council, but it also played a decisive role in the appointment of judges. Until recently, a new constitutional amendment proposed by the Venice Commission to facilitate the EU accession process has given considerable support to the organisational independence of the judiciary.

The Slovak solution is characterised not only by a balance in the composition of the council but also by a division of responsibilities between it and the ministry of justice. As for the Czech ministerial administration, it provides an example that even in a post-socialist country, the Austrian/German model may become acceptable to the EU if this solution is acceptable to the domestic political elite.

It is clear that most of the controversy in post-socialist Central European legal systems is in the area of judges' appointment as well as the promotion and selection of judges, although recently, the issue of holding judges accountable has been hotly debated in some countries, prompting EU criticism about Romania and Poland. Of course, selection is not a specific problem of these countries; however, the judicial culture rooted in the dictatorial past and the one-party system reinforces fears about the vulnerability of judicial independence.

In the twenty-first century, the legitimacy of the administration of justice came from a deep conviction shared by the society that in bringing decisions, the courts

57 Solomon, 2012, pp. 909–937.
58 Piana, 2009.
59 Fleck, 2011, p. 33; Fleck, 2012, pp. 793–835.

are not influenced by an inappropriate connection to external actors (e.g. political parties, government, lobbyists, judicial leaders or voters) but are founded exclusively on professional legal considerations and a legal sense of justice.[60] The question of selecting judges and court management is a recurrent subject in disputes. The culture of relying heavily on social capital can be traced in every post-socialist country. This attitude of capitalising on liaisons was necessarily strengthened everywhere by the shortage economy characteristic of socialism, engulfing justice in the process as well. Where corruption does not prevail in deciding court cases (Hungary, Czechia and Poland), it is more or less dominant in the selection of judges and court management. Similarly to Romania, this is even traceable where in the framework based on the French example the introduction of a competitive examination is made mandatory in the case of judicial (and prosecutorial) appointments. The EU accession process played an unequivocally positive role in increasing merit-based elements. More objective forms of judicial selection appeared in various instances. Be that as it may, whether it is about ministerial administration, a Central Council for the Judiciary or the fortified role of local judicial self-governments, the acceptable degree of objectivity of the system of selection procedures is being questioned everywhere, and one may hear about either party political or selection distorting effects that come from within the judiciary. Where no nationwide and mandatory introduction of the competitive examination takes place, the situation may even be bleaker.[61]

It is in vain that fine-worded requirements are included in the recommendations of various international organisations concerning judicial recruitment[62] without binding EU norms, member states may easily divert the enforcement of merit-based elements in the selection of judges and court management. This special situation is emphasised by Ramona Coman and Cristina Dallara in their work on the Romanian judicial independence.[63] Under such circumstances, beside the aforementioned historical traditions, the judges may become more easily defenceless and opportunistic, which may provide a great scope for internal or external attempts at influencing them.

60 Badó, 2014, pp. 27–58.

61 Michal Bobek, in his 2014 study on the Czech selection system according to which applying the competitive examination is only optional in the selection of candidates, writes the following: "Today, the greatest problem still lies in the absence of any open, transparent and clear criteria according to which new candidates will be picked by the presidents of regional courts…" (Bobek, 2014, p. 12).

62 See, for example, Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia, 2010.

63 Coman and Dallara, 2012, pp. 835–855.

Bibliography

Anderson, J., Bernstein D., Gray, C. (2005) *Judicial Systems in Transition Economies: Assessing the Past, Looking to the Future.* Washington, DC: World Bank [Online]. Available at: https://doi.org/10.1596/978-0-8213–6189-4 (Accessed 30 June 2022).

Anderson J., Gray, C. (2007) 'Transforming Judicial Systems in Europe and Central Asia', in Bourguignon, F., Pleskovic, B. (eds.) *Annual World Bank Conference on Development Economics – Regional 2007: Beyond Transition*. Washington, DC: World Bank. pp. 329–355 [Online]. Available at: https://doi.org/10.1596/978-0-8213–6843-5 (Accessed 30 June 2022).

Badó, A. (2014) '"Fair" Selection of Judges in a Modern Democracy' in Badó, A. (ed.) *Fair Trial and Judicial Independence. Hungarian Perspectives.* New York: Springer, pp. 27–58.

Bárd, K. (2002) 'Bírói függetlenség az Európai Unió társult országaiban. Hol állunk mi magyarok?' [Judicial Independence in Countries Associated with the European Union. Where Do Hungarians Stand?], *Fundamentum*, 6(1), pp. 5–15 [Online]. Available at: http://real.mtak.hu/id/eprint/65951 (Accessed 30 June 2022).

Blisa, A., Papousková, T., Urbániková, M. (2018) 'Judicial Self-Government in Czechia: Europe's Black Sheep?', *German Law Journal*, 19(7), pp. 1951–1976; https://doi.org/10.1017/S2071832200023294.

Bobek, M. (2014) 'Judicial Selection, Lay Participation, and Judicial Culture in the Czech Republic: A Study in a Central European (Non) Transformation', *Department of European Legal Studies Research papers is Law*, 2014/3, pp. 1–27 [Online]. Available at: http://aei.pitt.edu/63516/ (Accessed 30 June 2022).

Cameron, D. R. (2022) 'EU charges Poland's Constitutional Tribunal with violating EU law', *Yale Macmillan Center* [Online]. Available at: https://macmillan.yale.edu/news/eu-charges-polands-constitutional-tribunal-violating-eu-law (Accessed: 6 March 2022).

Coman, R. Dallara, C. (2012) 'Judicial Independence in Romania' in A. Seibert-Fohr (ed.). *Judicial Independence in Transition*. Heidelberg: Springer, pp. 835–884.

Contini, F. (2013) *Report on the finding of the research conducted on judicial functions of Court President and Court manager in selected Council of Europe member States*. pp. 77–101 [Online]. Available at: https://rm.coe.int/joint-project-on-strengthening-the-court-management-system-in-turkey-j/16807895a0 (Accessed: 6 March 2022).

Dietrich, M. (2008) EWMI, *A Comparative Review of Judicial Councils in the Former Yugoslavia,* East-West Management Institute [Online]. Available at: https://policycommons.net/artifacts/1655675/a-comparative-review-of-judicial-councils-in-the-former-yugoslavia-by-mark-k/(Accessed: 6 March 2022).

Domin, M. (2020) 'Judicial Reform in Slovakia: How to deal with "bad judges"?' *IACL-AIDC Blog* (30 July 2020) [Online]. Available at: https://blog-iacl-aidc.org/2020-posts/2020/7/30/judicial-reform-in-slovakia-how-to-deal-with-bad-judges (Accessed: 19 March 2021).

Fabri, M. (2013) *Exparatory study on the position of Court President, Court Manager, Judicial Assistant, and Media Spokespersons in Selected Council of Europe Member States*. pp. 1–76 [Online]. Available at: https://rm.coe.int/joint-project-on-strengthening-the-court-management-system-in-turkey-j/16807895a0 (Accessed: 19 March 2021).

Fekete, B. (2010) *A modern jogösszehasonlítás paradigmái*. Doctoral thesis. Budapest: PPKE.

Fišer, Z. (2001) 'Sodni ali pravosodni svet' in Zalar, A. (ed.) *Normativne spremembe na področju sodstva v Republiki Sloveniji: Zbornik razprav in referatov*. Ljubljana: Slovensko sodniško društvo.

Fleck, Z. (2001) *Jogszolgáltató mechanizmusok az államszocializmusban*. Budapest: Napvilág Kiadó.

Fleck, Z. (2011) 'Bírósági szervezetek és alapjogok' in Badó, A. (ed.) *A bírói függetlenség, a tisztességes eljárás és a politika*. Budapest: Gondolat Kiadó.

Fleck, Z. (2012) 'Judicial Independence in Hungary' in Seibert-Fohr, A. (ed.) *Judicial Independence in Transition*. Heidelberg: Springer, pp. 793–834.

Graver, H. (2015) *Judges Against Justice: On Judges When the Rule of Law Is Under Attack*. Heidelberg: Springer.

Guasti, P., Dobovšek, B., Ažman, B. (2012) 'Deficiencies in the Rule of Law in Slovenia in the Context of Central and Eastern Europe', *Varstvoslovje*, 14(2), pp. 175–190 [Online]. Available at: https://www.researchgate.net/publication/288635924_Deficiencies_in_the_Rule_of_Law_in_Slovenia_in_the_context_of_Central_and_Eastern_Europe_Varstvoslovje (Accessed 30 June 2022).

Kahler, F. (1993) *Joghalál Magyarországon*. Budapest: Zrínyi.

Kosař, D. (2016) *Perils of Judicial Self-Government in Transitional Societies*. New York: Cambridge University Press; https://doi.org/10.1017/CBO9781316282519.

Macke, P. (1999) 'Die Dritte Gewalt als Beute der Exekutive', *Deutsche RichterZeitung*, pp. 481–487.

Matczak, M. (2018) *Poland's Constitutional Crisis: Facts and interpretations*. Oxford: The Foundation for Law, Justice and Society. [Online] Available at: https://www.fljs.org/polands-constitutional-crisis-facts-and-interpretations (Accessed 30 June 2022).

Matczak, M. (2018a) *The Strength of the Attack or the Weakness of the Defence? Poland's Rule of Law Crisis and Legal Formalism*. pp. 12–13 [Online]. Available at: https://doi.org/10.2139/ssrn.3121611 (Accessed: 30 June 2022).

Mazur, D., Żurek, W. (2016) 'So-Called "Good Change" in the Polish System of the Administration of Justice', *Public Prosecutor*, 2016/6, pp. 1–56 [Online]. Available at: https://www.jura.unibonn.de/fileadmin/Fachbereich_Rechtswissenschaft/Einrichtungen/Lehrst uehle/ Sanders/Dokumente/Good_change_-_7_October_2017_-_word.pdf (Accessed: 31 January 2019).

Piana, D. (2009) 'The Power Knocks at the Courts' Back Door – Two Waves of Postcommunist Judicial Reforms', *Comparative Political Studies*, 42(6), pp. 816–840; https://doi.org/10.1177/0010414009333049.

Rieger, A. (2011) *Verfassungsrechtliche Legitimationsgrundlagen Richterlicher Unabhängigkeit*. Frankfurt: Peter Lang.

Russel, P., O'Brien, D. (ed.) (2001) *Judicial Independence in the Age of Democracy. Critical Perspectives from Around the World*. Charlottesville: University Press of Virginia.
Selejan-Gutan, B. (2018) 'Romania: Perils of a "perfect Euro-Model of Judicial Council"', *German Law Journal*, 19(7), pp. 1707–1740 [Online]. Available at: https://doi.org/10.1017/S207183220002321X (Accessed: 30 Jun 2022).
Smith, B. C. (2008) 'Models of Judicial Administration and the Independence of the Judiciary: Comparison of Romanian Self-Management and the Czech executive model', *Public Administration and Development*, 28(2), pp. 85–93; https://doi.org/10.1002/pad.483.
Solomon, P. H. (2012) 'The Accountability of Judges in Post Communist States: From Bureaucratic to Professional Accountability' in Seibert-Fohr, A. (ed.). *Judicial Independence in Transition*. Heidelberg: Springer, pp. 909–936; https://doi.org/10.1007/978-3-642-28299-7.
Zoll, F., Wortham, L. (2019) 'Judicial Independence and Accountability: Withstanding Political Stress in Poland', *Fordham International Law Journal,* 42(3), pp. 875–948 [Online]. Available at: https://ir.lawnet.fordham.edu/ilj/vol42/iss3/5 (Accessed 30 June 2022).

Legal Sources

The Czech Republic
Constitution of the Czech Republic

Croatia
Ustav Republike Hrvatske. Pročišćeni tekst. Narodne novine 56/90, 135/97, 08/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14

Hungary
Act LXVII. of 1997 on the Organisation and Administration of Courts
Act CLXI of 2011 on the Organisation and Administration of Courts

Poland
Constitution of Poland
Law on Courts and Judges No. 6/2002
Opinion of the National Council of the Judiciary of 30 January 2017 on the government Draft Act amending the Act on the National Council of the Judiciary and certain other acts (UD73)
Opinion No. 904/2017. European Commission for Democracy Through Law (Venice Commission) Poland –Opinion on the Draft Act Amending the Act on the National Councul of the Judiciary. File No III PO 7/18 Judgement in the Name of the Republic of Poland

Serbia
Ustav Republike SrbijeIJE (br. 98/2006 i 115/2021)
Zakon o Visokom savetu sudstva (“Sl. glasnik RS”, br. 116/2008, 101/2010, 88/2011 i 106/2015)

Slovakia
Act No. 90/2001 Coll.
Act No. 185/2002 Coll.

Slovenia
OJ RS 94/07
Constitutional Court of Slovenia Case U-I-224/96
Official Gazette of the Republic of Slovenia 23/17

European Union
Treaty on European Union
CM(2016)36 final