



Judicial Associations Across Europe: Balancing the Narrative

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Abstract

While in some countries judicial associations have long been objects of scholarly interest, the burgeoning debate over judicial independence in Europe and the growing interconnection between associations of different states have broadened the discussion beyond strictly domestic borders. The adoption of a specific opinion on judicial associations by the Consultative Council of European Judges on November 6, 2020 (No. 23/2020) is further evidence of the increasing transnational attention to the topic. To draft such an Opinion, questionnaires were submitted to Council of Europe (CoE) Member States. By analysing and classifying the replies of the CoE Member States, we first intend to offer a comprehensive assessment of the European experiences to highlight convergences and divergences. Secondly, we aim to juxtapose the representation of judicial associations as it emerges from the replies with the one debated in legal scholarship. To this end, we will try to understand the role of judicial associations in promoting and upholding judicial independence, with particular emphasis on the Italian Case.

Keywords Associations of judges · Judicial independence · Comparative judicial systems · Judicial self-government

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1 Introduction

The human drive to association does not spare judges, and there is hardly a reason why it should. After all, judges make for a highly skilled professional class with shared economic and social interests, and there are apparent motives to suppose that their collective, coordinated action shall further those very interests more effectively than individual judges could aspire to do alone.¹ Hence the formation of associations of judges, which have been aptly described as “voluntary organizations designed to serve the professional interests of judges” that “exist outside the formal constitutional structure of the judiciary” and are generally “neither legally mandated nor endowed with formal legal authority over the careers of judges.”² Although in some countries political or even union-like associations happen to be outlawed for judges at the constitutional or legislative level,³ judicial associations seem nonetheless apt to develop comparatively liberally to the extent that the institutional restraints barring judges from joining other types of networks—be it political parties, activist organizations, or other kinds of lobbying groups—do not apply when judges partner among themselves. The current flourishing of judges’ associations and their growing importance as bulwarks against threats to judicial independence are thus not institutionally surprising.⁴

However, also in light of the ever-aggrandizing role of judiciaries in modern constitutional democracies,⁵ the expanding influence wielded by associations of judges calls at the same time for greater scrutiny and scientific objectivity. As a comparatively under-researched “power structure” of the justice system, judicial associations do seem to miss adequate conceptual elucidation.⁶ What is specifically lacking, to be sure, is the role of judges’ association in the grand scheme of judicial governance

¹ Cf. Garoupa and Ginsburg (2015, p. 112).

² See Beers (2012, p. 51). The CCJE Opinion No. 23 (2020) defines judicial associations as “self-governing non-profit organisations with or without legal personality composed of members who voluntarily apply for membership”. See CCJE Opinion No. 23 (2020) (“The role of associations of judges in supporting judicial independence”), para 10.

³ In Italy, *e.g.*, membership in a political party is a disciplinary misconduct (Italian Code of Discipline for Judges and Public Prosecutors; legislative decree No. 109/2006). Additionally, art. 127.1 of the Spanish Constitution prohibits judges from joining political parties or unions, while officially recognizing professional associations (*asociaciones profesionales*). In this regard, it bears emphasizing that we did not dwell on the distinction between union-like associations and purely professional associations. Since our aim is judicial associations’ relevance for judicial governance and independence, in particular, the distinction did not seem crucial. Moreover, as one goes beyond the formal labels the boundaries tend to get quite blurred, with judicial unions partaking in much of what is considered professional associations’ core activity, and vice versa. See Knežević Bojović and Misailović 2022, pp. 397–398. Of course, that does not rule out the convenience of distinguishing between the two types of organizations in other circumstances: for example, it is reasonable to think that only judicial unions would engage in collective bargaining with the Government.

⁴ To name one obvious example, judicial associations played a key role in the “Polish judiciary saga.” See Matthes (2022).

⁵ See Tate and Vallinder (1995), Hirschl (2004), Bork (2010).

⁶ On the underresearched status of judicial associations, see Castillo Ortiz (2017, 317), Knežević Bojović and Misailović (2022, p. 388). For the conceptualization of judicial associations in terms of “power structures” see the discussion in Benvenuti (2023a).

in order to understand in practice how judicial independence is implemented. In this paper, we aim to shed some light on judicial associations' involvement in judicial governance by critically examining the Consultative Council of European Judges' Opinion No. 23 on "The role of associations of judges in supporting judicial independence," adopted on November 6, 2020. In and of itself, the adoption of a dedicated opinion by the CCJE is further evidence of the need to come to grips with judicial associations, as well as a remarkable comparative contribution to their study. In fact, as is always the case, the writing of Opinion No. 23/2020 followed a round of questionnaires submitted to the Council of Europe (CoE) Member States to report on judicial associations' status at a domestic level. Whereas the Opinion does an excellent job of detecting many key points, we saw untapped potential in the respondents' accounts of their own countries. We thus decided to sift through the questionnaires for additional evidence and an autonomous analysis of the role of judicial associations in contributing to judicial independence.

So far, the limited interest in judicial associations has generally been confined to their contribution to judicial independence in context-specific settings, such as the already mentioned Polish case.⁷ At least at first blush, our research question here has a broader and slightly more theoretical target. We are interested in detecting broader, overarching regularities between different types of judicial governance and the characteristics of judicial associations within them. In other words, we aim to understand if a given model of judicial governance correlates with peculiar dynamics in the organization, prominence, and activities of judicial associations. To do so, we needed a classification of judicial systems and eventually opted for Castillo Ortiz's recent, comprehensive taxonomy of European models of judicial governance.⁸ Two limitations, however, ought to be noted. First, within the said classification, we limited our analysis to the three main models of judicial governance: those revolving around a judicial council, those with traditional ministerial organization, and those in which a court-service administration discharges mainly managerial functions—with notable examples provided for each governance system. "Hybrid models" were not included to avoid inaccurate comparisons. Despite being a typical example of the council model, France was not included in the analysis merely because it did not respond to the CCJE questionnaire. Secondly, it is also worth reminding that, as generally acknowledged, ideal-typical models of judicial administration are exactly that: models, much needed and useful for research purposes, but oftentimes more articulated and nuanced in practice.

According to this first research aim, Sects. 2, 3, and 4 deal with the role of judicial associations in the three systems of judicial governance. Each Section follows a common scheme: after an introductory explanation of the governance model, we focus the analysis around four conceptual pillars: the interplay between associations and judicial governance entities—*e.g.*, their role in appointing of judicial councils' members—their influence on disciplinary proceedings, their overall contribution to

⁷ See footnote no. 4

⁸ See Castillo Ortiz (2023). Castillo Ortiz's typology is based on Bobek and Kosař (2014, pp. 1265–1269) which in turn relied on Picardi (1999).

judicial training, and their ties with the political forces and parties. In confronting comparative models, our baseline expectation was that judicial systems with pronounced self-governance elements would be host to more prominent, power-wielding associations. By contrast, we expected ministerial and court service models to provide an environment less conducive to associations' activism and influence over judicial matters and society. As will be shown, however, the results somewhat defy clear-cut classifications, hereby suggesting that other institutional elements—*e.g.*, recruitment, education, mentality, etc.—may be playing a great role in determining the attitude of judicial associations in each legal system.

By zeroing in on the Italian experience, Sect. 5 deliberately deviates from the general scheme. The rationale for a dedicated analysis of one specific domestic case lies in a secondary, additional research aim: to confront the understanding of judicial associations as it transpires from the CCJE questionnaires with the one offered by the scholarly debate, to see if they yield converging results. Besides our familiarity with the domestic experience, the choice of the Italian case lies in the fact that its judicial associations have long been the object of study and debate. In Italy, scholars have frequently voiced concerns about the associations' unbridled influence over judicial career advancements and disciplinary proceedings, as well as on the degree of politicization they bring to the judiciary. The stark disagreement between the Italian respondent's favorable account and the more nuanced, problematizing one offered by legal scholarship raises questions as to the objectivity and epistemic value of CCJE questionnaires. As will be shown, it is only in light of some controversial aspects concerning judicial associations that it is possible to make sense of CCJE Opinion's rather judicious alertness to the risk of politicization, which was not emphasized in almost all of the replies to the questionnaire.⁹ This circumstance also calls for a more balanced, disenchanting scholarly approach to CCJE materials. While in institutional terms we do not advance here any cut-and-dried solution to offset the possible drawbacks of more powerful judicial associations—which are certainly otherwise useful to enhance external judicial independence—we highlight the importance of analyzing what are often entrenched, yet informal practices.

⁹ There are exceptions, which ought to be emphasized. Poland stands out as the only one case in which the respondent foreshadows a degree of politicization. In the case of Switzerland, in remarkably frank manner the respondent acknowledges that representation in the board of the Swiss Judges' Association mirrors to an extent the political representation in the Federal Parliament. Other instances are rather less conspicuous. In Estonia, the respondent conceded that "from time to time" party politics influences the only one existing judicial association. The Finnish and Norwegian respondents recognized that associations occasionally contact political parties to steer their agenda in ways beneficial to the judiciary as a whole. While denying connections with political parties, the respondent for Germany states that one association—the *Neue Richtervereinigung* (NRV)—displays "some political objectives like *e.g.* the democratization and socialization of the judicial system."

2 The Judicial Council Model: Role and Features of Judicial Associations

Judicial councils are characterized as separate institutions with authority over judicial careers, including appointments, promotions, and disciplinary actions. Their functions and structure are typically defined by national constitutions to ensure regulated and non-arbitrary operations. The judicial council model is currently the most common form of judicial governance on the European continent.¹⁰ Among the thirty-four states that responded to the questionnaire, fifteen use this model of governance: Bosnia and Herzegovina, Bulgaria, Croatia, Estonia, Italy, Lithuania, Montenegro, North Macedonia, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, and Ukraine.¹¹ Italy will not be analyzed in this paragraph, as it has been given separate consideration (see Sect. 5).

In exploring the complex landscape of judicial governance, it is important to consider the role that judicial associations play within this framework. These associations might contribute to decisions regarding judicial careers and court administration, particularly through their interactions with judicial councils. While the nature of this interaction varies across member states, it has the capacity to subtly influence judicial governance. Examining these relationships can provide valuable insights into the mechanisms that may support or challenge judicial independence.

In general, most of the states have multiple judicial associations; only six states, in fact, have a single judges' association.¹² Moreover, in all states except Romania,¹³ prosecutors are not members of these associations, usually having their own. Typically, associations have their own statutes, which are based on and supplemented by national and supranational regulations.¹⁴ The statutes govern their internal organization, functioning, and objectives, among the most prioritized of which are the defense and promotion of judicial independence, the rule of law, and the economic safeguards of judges. Most associations are funded through donations or voluntary contributions,¹⁵ membership fees,¹⁶ sponsorships,¹⁷ editorial activities, or other initiatives organized by the associations,¹⁸ funds provided by the judicial

¹⁰ Castillo Ortiz (2023, p. 6).

¹¹ Greece is not mentioned in the list because, according to the respective questionnaire, no council for the judiciary exists. This, however, does not comply with Castillo Ortiz's classification (nor international literature), which ascribes the country to the judicial council model. It is, therefore, a controversial case.

¹² Croatia, Estonia, Montenegro, North Macedonia, Portugal and Slovenia.

¹³ In Romania, out of six associations, prosecutors are members of only one, namely the Romanian Magistrates' Association (AMR).

¹⁴ Reference is made, *inter alia*, to the European Charter on the Statute of Judges adopted by European Association of Judges (EAJ) in Strasbourg on July 8th-9th, 1998, and to the The Universal Charter on the Statute of Judges adopted by the IAJ Central Council in Taiwan on November 17th, 1999 and updated in Santiago de Chile on November 14th, 2017.

¹⁵ Bosnia Herzegovina, Bulgaria, North Macedonia, Poland, Romania, Spain and Ukraine.

¹⁶ Bosnia Herzegovina, Croatia, North Macedonia and Slovakia.

¹⁷ Lithuania.

¹⁸ Bulgaria, North Macedonia, Poland, Portugal, Romania and Ukraine.

council, Ministry of Justice or by law for specific purposes,¹⁹ and/or through financing received for participation in international projects.²⁰

From the perspective of the development and strengthening of the profession, associations in various states commonly organize seminars, conferences, and workshops for their members.²¹ These activities, sometimes held in collaboration with judicial councils or national training bodies, provide an additional layer of training that complements the formal education offered by national institutions. According to the questionnaire responses, this aspect is generally perceived positively, as judicial training is crucial for maintaining high standards of competence and performance, and it can play a significant role in promoting judicial independence, upholding the rule of law, fostering diverse legal cultures, and protecting the rights of all individuals.²² The main objectives of the associations are pursued not only through solid training provided to their members but also through rich libraries often made available to associates, as well as the drafting of handbooks and articles written and published by the associations. Furthermore, it is common for associations in various states to actively contribute to the creation, implementation, and promotion of the judicial code of ethics.²³ In some cases,²⁴ associations have adopted ethical codes for their member judges, which were later extended to all judges.

When it comes to the interactions of associations with state institutions and political parties, there are variations between countries. Even though in many cases the interaction of the judiciary with the institutions (Parliament and Government) takes place through the judicial council (whose members are generally elected with the support of the associations, see *infra*), associations can nevertheless propose laws or amendments, often regarding the judicial system, through written comments, round tables, and discussions.²⁵ In certain cases, associations also participate in advisory councils²⁶ or are directly involved in the legislative process.²⁷ Other times, interactions may be informal or infrequent,²⁸ with associations providing opinions on draft laws or specific issues only at the request of the Minister of Justice.²⁹ These contributions, however, are limited to legislation concerning the judiciary or judicial

¹⁹ Croatia, Estonia, North Macedonia, Slovakia and Spain.

²⁰ Montenegro, Romania and Slovenia.

²¹ Except for Estonia, whose questionnaire does not mention such activities.

²² See Article 1 in International Organization for Judicial Training, *Declaration of Judicial Training*, adopted on 8th November 2017 High-Level Conference of Minister of justice and Representatives of Judiciary, Opening and concluding remarks, key speeches and General Rapporteur's report, CoE, June 2018, p. 46.

²³ On this topic, see also the contribution from the European Network of Councils for the Judiciary (ENCJ), in the report titled "Development of Minimum Judicial Standards (2010–2011)", p. 28 e ss., available at https://www.ency.eu/images/stories/pdf/workinggroups/ency_report_project_team_minimum_standards.pdf

²⁴ Bulgaria, Croatia and Slovenia.

²⁵ Bosnia Herzegovina, Estonia, North Macedonia, Slovakia, Slovenia and Ukraine.

²⁶ Bulgaria and Lithuania.

²⁷ In Montenegro, the President of the sole judicial association is a member of various working groups.

²⁸ Poland, Portugal and Spain.

²⁹ Croatia, Montenegro and Romania.

matters and have an advisory nature, thereby avoiding any separation of powers issues.

Generally, interactions between judicial associations and political parties are minimal and often avoided by the associations. This strategic choice generally reflects a commitment to preserving judicial independence, avoiding ties that could generate conflicts of interest and compromise the integrity of the judicial system. However, responses to questionnaires indicate that instances of interaction between political parties and associations occur in Estonia, Poland, and Spain. Notably, the Estonian and Spanish questionnaires highlight instances of political influence on associations. In Spain, major judicial associations frequently act as intermediaries between the judiciary and political parties.³⁰ This dynamic has led to significant politicization of the Consejo General del Poder Judicial (CGPJ), whose judicial members are largely influenced by the ties between major political parties and judicial associations.³¹ Members reflect the political preferences of the parties and the associations that supported them. *De iure* the election is in the control of the Parliament, while *de facto* judicial associations still play an important role. It is no surprise that after finishing their term, members of the CGPJ are sometimes appointed to other constitutional positions or move into political careers.³² This situation raises concerns about the potential erosion of judicial independence, as the transition from judicial to political roles can blur the lines between the two spheres. Similarly, mostly in 2015–2018, extensive Polish scholars address the undue influence of politics on judicial decision-making processes, the appointment of judges, and their responsibilities.³³ These scholars have emphasized that judges have frequently addressed such challenges not through isolated actions but through their professional associations.³⁴ In this regard, judicial associations are particularly advantageous, as they often cultivate a strong corporate identity that can enhance judges' willingness to act when their independence is at risk.³⁵

Regarding interactions with the judicial council, the survey responses indicate that judicial associations collaborate with these councils, attend conferences and working meetings, provide opinions on significant issues concerning the status of judges, promote professional dialogue, and contribute to the training and independence of judges. The most notable aspect of this interaction is the influence of associations in the election of judicial council members. Except for a few cases where associations report no involvement,³⁶ in many states, judicial associations actively participate in the election or in the appointment of court presidents, either by supporting candidates or by providing opinions on them. For example, in Romania,

³⁰ For a more comprehensive exploration of this topic, refer *inter alia* to the following scholarly works: Terol Becerra (2003), Serra Cristóbal (2008), Nieto (2010).

³¹ Torres Pérez (2018, pp. 1773–1774).

³² Torres Pérez (2018, p. 1781).

³³ For a more comprehensive exploration of this topic, refer *inter alia* to the following scholarly works: Sadurski (2018), Zoll and Wortham (2019), Duncan and Macy (2020).

³⁴ Puelo and Coman (2023, p. 52).

³⁵ Brown and Waller (2017, pp. 820–821).

³⁶ Bosnia Herzegovina, Montenegro, Slovenia and Ukraine.

judicial associations can support the candidacies of certain judges or prosecutors seeking election to the Superior Council of the Magistracy (SCM). Their representatives may also attend SCM meetings, offering their perspectives on the issues at hand.³⁷ A similar role of the associations is equally apparent in Spain—judges who are part of the most influential judicial associations have greater chances of promotion due to the significant influence these associations have in the selection of council members³⁸—and in France. Although France did not respond to the questionnaire, there is sufficient literature on the role of judicial associations to warrant their inclusion in the discussion. In France, it is generally argued that judicial associations, often affiliated with specific political parties, wield significant influence over the composition of judicial self-governance bodies and in shaping their decisions on key issues.³⁹ These dynamics suggest that, in certain states, judicial associations could play a crucial role in affecting judicial governance, raising intriguing considerations about the real implications of this influence for the independence of the judiciary.

Even in states where association involvement in candidate selection is not recognized, there is still evidence of interdependence between the election of judicial council members and associative affiliation; for instance, in Croatia, seven judges of the judicial council (out of eleven members) are affiliated with the country's sole judicial association. Conversely, fewer states report association involvement in disciplinary procedures against judges. Only Lithuania, Poland, Slovakia, and Romania affirm that judicial associations may represent their members in disciplinary proceedings. This could be seen positively, especially in jurisdictions where judicial responses to political overreach have led to disciplinary actions.⁴⁰ Conversely, Spain acknowledges an indirect influence of associations over disciplinary matters due to their role in appointing members to the judicial council, which holds disciplinary authority over judges. It remains unclear whether this influence ensures fairness and impartiality in disciplinary proceedings or whether association dynamics might unduly affect the evaluation of misconduct.

In conclusion, according to the questionnaire responses, in the judicial council model, judicial associations appear to play a relevant role in the governance of the judiciary, particularly through their involvement in professional training, the promotion of ethical and disciplinary standards, and the continuous development of judges' professional qualifications. Their actual contribution to safeguarding judicial independence, however, remains more nuanced and context-dependent. While such activities may indirectly foster judicial independence, the academic literature presents divergent views, and in some contexts, concerns persist regarding the risk of undue politicization of the judiciary. These differing dynamics are also reflected in the nature of associations' interactions with political institutions and their

³⁷ Doroga and Bercea (2023, p. 1398).

³⁸ For a more comprehensive exploration of this topic, refer inter alia to the following scholarly works: Hernández (2014), Bustos Gisbert (2016).

³⁹ For a more comprehensive exploration of this topic, refer to Vauchez (2018).

⁴⁰ For a more comprehensive exploration of this topic, refer to Matthes (2022).

involvement in disciplinary procedures, which vary considerably across national systems. While some countries see judicial associations actively involved in governance, others experience more limited or indirect involvement. In many CoE Member States, the presence of multiple judicial associations suggests that these bodies provide vital input into the functioning of judicial councils. It is common for associations to exert direct influence on the election of judicial council members and in some countries in the selection of courts' president. In Italy, for example (see Sect. 5), the role of judicial associations is very pervasive. However, in recent years, some countries (*e.g.*, Poland) have experienced a troubling shift toward authoritarian governance, which has led to the redistribution of powers from independent judicial bodies to the executive branch. This shift has often resulted in significant interference with judicial associations, undermining their ability to operate freely and effectively. These developments illustrate how, beyond their positive contribution to judicial training and professional development, the direct involvement of associations in governance—particularly regarding career or disciplinary matters—raises delicate institutional issues, affecting the balance between strengthening judicial self-governance and avoiding risks of politicization.

The diverse national approaches and evolving political dynamics confirm the need for a careful equilibrium between the independence of the judiciary and the influence exerted by associations, emphasizing their dual role in enhancing professional competence and safeguarding judges, while also increasing the potential for politicization.⁴¹ As stated in the CCJE Opinion, while judicial associations should maintain a constructive dialogue with judicial governance bodies, their involvement should focus on ensuring adherence to established procedures and standards (para 26), without directly influencing the career of judges. It is crucial that membership in these associations does not lead to advantages or disadvantages in judicial careers (para 57), thus preserving the integrity of the judicial process. This nuanced relationship between judicial associations and judicial councils is essential for upholding the principles of judicial independence and ensuring that the judiciary remains resilient in the face of external pressures.

3 The Ministerial Model: Role and Features of Judicial Associations

The ministerial model is based on the role of the Minister of Justice as the primary institution in charge of judicial governance and court administration. In general terms, the Minister and senior judges retain the main functions. This model reflects the judiciary's traditional "bureaucratic organization" based on a hierarchical structure under the direction of the Ministry of Justice. The Ministry usually cooperates with judicial boards or other commissions partly composed of judges' representatives. So, even though the power of the Executive is pervasive, it is de facto mitigated by different bodies and committees which participate, usually with advisory powers, in the decision-making activity concerning judicial governance

⁴¹ Šipulová (2024, p. 16).

(recruitment, professional evaluations, etc.) and court administration.⁴² Despite the absence of a centralized self-governing body (which serves as the main “collector” of the associations’ interests, partly because its members are generally elected with the associations’ support), judicial associations participate to various extent in judicial governance.

First of all, judicial associations interact with Parliament in the law-making process. They are regularly heard in drafting new legislation (Austria, Germany), delivering formal opinions, and sometimes participating as legal experts in commissions.⁴³ They also have regular contact with the Minister of Justice representatives, especially on certain issues regarding court administration, and are invited to working groups (Austria). In Germany, the main association also exerts union-like functions: it is involved in negotiations with the Executive with respect to judicial remuneration. Finally, they are in some way involved in the administration of justice. In Germany, for example, they exert indirect influence on judicial boards at local and district courts (co-managing workload, staff, salary, IT, etc.) since members of those boards may also be members of the associations.⁴⁴ Judicial associations are involved in training activities and the development of ethical standards. In Germany, they actively participate in the Academy for Judges’ professional training.

Finally, in general terms, judicial associations participate in public discussion and debate; they comment on draft legislation affecting the judiciary and represent its interest *vis-a-vis* the Ministry of Justice, Parliaments and the general public. In Germany, for example, the two largest associations have been very active in advocating reform in judicial governance. They have joined forces with judicial associations from Italy, Spain and other European countries, arguing that the ministerial model of judicial administration has been abolished in the rest of Europe. Although there is no public perception that independence is under urgent threat, such actions have prompted political initiatives to enhance self-administration as a potential alternative through centralized judicial councils. Whether such a change can be reconciled with democracy under the German Constitution is controversial, as all State authority, including judicial power, shall be derived from the people and thus requires some form of democratic accountability.⁴⁵

⁴² The existence of a Ministry of Justice model does not always mean that the executive monopolizes all powers over judicial governance. Even in countries where political branches still have the major say (Austria, Czechia, and Germany), the power of judges in judicial governance has increased gradually. See Kosář (2018, pp. 1574 and 1587).

⁴³ In Germany, the two most relevant associations gather judges and prosecutors. The main association includes 17.000 members of all levels and jurisdictions (out of 20.740 judges and 5.500 prosecutors), except administrative judges. Such a vast size gives the association particular importance in the political arena.

⁴⁴ Despite the ministerial model, the German judiciary disposes of different institutions and mechanisms securing a certain influence of judges on court administration (especially in personnel matters), among which the Presidia, the Councils for judicial appointment, the *Richterräte* (councils of judges, competent in all other questions regarding judges’ professional live), the Service courts. See Wittreck (2018, p. 1932).

⁴⁵ Seibert-Fohr (2012, p. 495).

The information gathered on the role of associations in the ministerial model is mostly based on the CCJE questionnaires by Austria and Germany and the relevant literature.⁴⁶ In these systems, as mentioned above, judicial associations interact with Parliament and the Minister of Justice, participate in public debate, and are involved in training activities and ethical standards. In addition, they exert influence on local governing bodies, such as judicial boards at local and district courts. Their influence is, therefore, distributed among different bodies. This is a consequence of the ministerial model, in which the government of the judiciary has a more polycentric and decentralized structure.

4 The Court Service Model: Role and Features of Judicial Associations

While not properly a mixed model, court service systems can be framed as a middle ground between ministerial and judicial council models. In his taxonomy, Picardi identified the archetype of a court service system in the Irish judiciary.⁴⁷ On the one hand, Ireland displayed the classical common law, non-bureaucratic judicial selection system which taps into already established legal professionals for recruitment; on the other, and differently from the United Kingdom, independent state agencies were created to serve the administration of the judiciary in some auxiliary tasks, from taking care of some basic aspects of court management like budgeting or building maintenance to more prominent roles such as vetting judicial candidates and proposing salary adjustments. At the same time, court services lack the typical directive and control powers of judicial councils. Besides Ireland, countries considered in the CCJE questionnaire that conform to the court service model are Belgium,⁴⁸ Denmark, Finland, Iceland, Malta, Norway, Sweden, and the United Kingdom.

With regard to judicial governance, the replies to the CCJE questionnaire portray a picture of a clear sky with a few clouds. In general, interactions between associations and the court service are described as ordinary and important, with frequent meetings and consultations on several topics (best practices, ethics and independence issues, seminar organizations, etc.). Judicial associations often have a role in appointing members and experts for court service positions (e.g., Belgium, Denmark, Finland, United Kingdom). While to some extent comprehensible, this role is not devoid of issues, most notably when court services in turn play a part, albeit minor, in the recruitment of judges, most generally by vetting potential candidates. In this instance, to the extent that associations influence court service appointments, they could affect judicial selection *per se*. Whereas only in Norway is the association

⁴⁶ Norway, traditionally a country belonging to this model, has recently switched to the court service model; therefore, it has been considered in the following session.

⁴⁷ Picardi (1999, pp. 292–294).

⁴⁸ Belgium is another example of a judicial governance system which hardly squares with traditional classification. Castillo Ortiz (2023, p. 70) himself calls it a “borderline case” because of its “shared competences over judicial careers, with virtually no disciplinary competences.” However, other scholars treat it as a judicial council model: see, e.g., Aarli and Sanders (2023, p. 6).

explicitly called upon to suggest members for the judicial appointment board, the case of the United Kingdom seems to foreshadow another instance of possible indirect interference between the association and the recruitment of judges: in noting that the two judicial members of the appointment commission sit there only “in their individual capacities” the respondent implicitly acknowledges the ever-present risk that the dynamics within the association could reverberate into the judicial selection process by means of the associated judges. Similar considerations roughly apply in the selection of court presidents and other judicial appointments. While disputing any influence on factual designations, the respondent for Ireland notes that the association may occasionally offer remarks, though only in relation to the appointment process itself or its potential reform. In this respect, it is surprising that other countries where judges sit in bodies variously involved in judicial appointments do not mention this issue (*e.g.*, Belgium, Denmark, Finland, Iceland, Malta).

In addition to their connections with the court administration, judicial associations in court service systems are relevant for individual judges. Encroachments on one judge’s independence are expected to be met with swift reaction and protest by associations of all countries. However, that resistance more likely translates into official remonstrations toward other branches of Government, or protest and activism on the media, rather than strict legal assistance or representation in court. Besides protecting against egregious instances of attacks against independence, judicial associations are intended to address all other requests of individual judges, such as concerning labor issues. What is generally excluded of judicial associations in court service systems is their meddling in disciplinary proceedings: Respondents firmly denied any influence in this respect. However, just as with judicial selection, interferences cannot theoretically be ruled out when the association factually plays a role, if secondary, in the appointment of members of disciplinary bodies such as in the case of Iceland, Norway or the United Kingdom.⁴⁹

A slightly stronger and more overt engagement can be found in training and education of judges, as only in Finland and Malta judicial associations do not seem to play a peculiar role in judicial training. In all other cases, the associations partake in some fashion in the professional education of judges. However, associated judges engaged in training activities in Belgium, Ireland, Norway, and the United Kingdom do so out of their role in other formal institutions or via general suggestions to such entities, whereas independent training by the association is less frequent. Only in Denmark, Sweden, and Iceland, a more vigorous contribution of associations to the training of judges can be registered. Iceland stands out as the only court service system in which judicial associations seem more involved in the institutional training of judges. In this respect, it is fair to say that the training role of judges’ associations appears similar throughout the court service, the judicial council and the ministerial model.

Finally, as for the relationships with political parties and the risk of politicization writ large, it can be said that associations in court service systems seem to

⁴⁹ While in Norway the association of judges is invited to propose candidates, in Iceland it directly appoints one of the three members of the disciplinary body.

successfully steer clear of the political overtones that occasionally mark the life of judicial associations in other systems. In general terms, formal, direct interactions between associations and political parties are excluded, sometimes with stark wordings for the obvious fear that they may in any way harm impartiality or engender the appearance of partisanship.⁵⁰ However, quite surprisingly, Belgium, Finland, and Norway represent three exceptions. In Norway, interactions seem to take place as the need occurs, whereas in Finland judicial associations would be most active after the elections when they try to influence the government program so that it fully takes into account the interests of the judiciary. In Belgium, on the opposite, most contacts between parties and associations seem to occur during the political campaign. In all cases, however, the associations of judges are strictly concerned with the interests of justice administration as a whole and do not involve themselves with political or other broader social issues. By contrast, formal hearings of associated judges in parliamentary debates do happen and are somehow encouraged, especially when the topic of discussion is related to the administration of justice. The relationships with NGOs display similar dynamics, with mostly informal ties and collaboration happening in institutional venues, such as parliamentary hearings. Remarkably, Norway associations described the collaboration with NGOs as a way to sustain foreign judicial associations in their effort against breaches of judicial independence.

In sum, judicial associations within court service systems appear to exert an overall beneficial effect on judicial governance without any apparent drawbacks or conflicts of interest. In the court service model, associations are well-positioned to act as safeguards against threats to judicial independence, while at the same time not intruding on recruitment, career advancement, or disciplinary proceedings. This is especially remarkable given that the potential for inappropriate influence is not entirely absent, as demonstrated by the cases of Norway and the United Kingdom. One possible explanation for this favorable circumstance may lie in the court service model's defining characteristic: delegating competencies over judicial governance to non-judicial actors.

As a quick comparison of the three models should suggest, despite some differences, such as the more overt involvement in governance within judicial council systems, associations of judges happen to play an appreciable role in all the models considered. More importantly, what emerges from all the questionnaires is somewhat of a rosy picture of judges' associations, which are almost always posited to display beneficial effects on judicial governance. However inspiring and to some extent certainly true, this favorable view seems at odds with some of CCJE Opinion's very own concerns and, namely, the repeated recommendation that judicial associations do not allow for any "politicization" of the judiciary. The Opinion does in fact mention such risk both in the context of associations' involvement in the appointment of members to the judicial council (para 32), the collaboration with

⁵⁰ For example, the respondent for the UK motivated the absence of judicial associations' interactions with political parties by saying that "[t]he Code of Conduct prohibits any appearance of political bias." In the same vein, the respondent for Iceland replied that under the Ethical Principles of the association members "are required to refrain from all political activity."

NGOs (para 46), and the nexus with traditional unions and thereby political parties (para 69). But then one may ask: why address a problem that was not explicitly broached in the questionnaire? To explain the inconsistency, it is necessary to turn our attention to the national scholarly debates, which offer a more fragmented and controversial view of judicial associations. Perhaps more sharply than any other the Italian case contains remarkable signs of politicization and corporatism in judicial association and thus aptly justifies the CCJE's recommendations.

5 A Double-Edged Sword: The Complex Role of Italian Judicial Associations.

The judicial associations in Italy are numerous⁵¹ and, like other European realities with a judicial council, are founded on statutes, pursue specific ideals, and carry out various programmatic activities. However, despite some similarities with other countries regarding certain degenerative associative phenomena,⁵² Italian associations, also known as “*correnti*”, have been heavily criticized by scholars, politicians, and even some internal members. This criticism arises from the significant, often controversial, role they have played in the Italian judicial system over decades. These *correnti* can be described as organized factions of judges and prosecutors with distinct programmatic profiles, operating within the *Associazione Nazionale Magistrati* (ANM). Some might even refer to them as “judicial parties” loosely united as a confederation-like structure.⁵³

To fully grasp the phenomenon of judicial associations and the subsequent emergence of internal factions, it is crucial to review the key historical developments that have influenced Italian history in the past century. Although this is not the appropriate place for an exhaustive review—despite the substantial national scholarship on the topic⁵⁴—it is important to note that the origins of the judicial association phenomenon can be traced back to 1904. The establishment of various factions and associations, however, is generally linked to the mid-1960s and 1970s. Initially created to advocate for salary improvements and to ensure judicial independence and impartiality, these associations have achieved numerous significant milestones. They have contributed to raising collective awareness of constitutional values, promoting the democratization of the judiciary, supporting the principle of the natural judge, and combating terrorism. These contributions continue to be relevant today. For instance, the cultural efforts of these factions are evident in their extensive publications, the organization of conferences and seminars on judicial matters, and their involvement in both initial and continuing judicial education through partnerships,

⁵¹ Italy.

⁵² For a more comprehensive exploration of this topic, refer *inter alia* to the following scholarly works: Polizzi and Gherargi (2023), Hamřík (2023).

⁵³ Guarnieri (2024, p. 148).

⁵⁴ For a more comprehensive exploration of the history and evolution of judicial association in Italy, refer *inter alia* to the following scholarly works: Papa (1973), Scalabrino (1984), Venturini (1987), Bruti Liberati (2009), Meniconi (2015), Melis (2020), Volpi (2020).

particularly with the *Scuola Superiore della Magistratura* (Superior School of the Magistracy), the national institution dedicated to judicial training. These milestones, achieved through extensive reflection and analysis, were not the work of single individuals. Instead, they emerged from the combined efforts, experiences, and ideas of a diverse collective, including associations that bring different viewpoints and ensure that proposals have a meaningful impact. This highlights the crucial role of collaborative efforts and the value of associations.⁵⁵

Despite the undeniable positive aspects associated with judicial associations, several negative aspects also emerged. Over time, these enduring social organizations have often resulted in “ambiguous power structures”⁵⁶ which can manifest as undue influences of associations on the governance of the judiciary, the fair administration of justice, and interactions with other branches of Government.

Firstly, the influence of associations is apparent in the composition of the Superior Council of the Magistracy (SCM), which is responsible for the self-governance of both judges and prosecutors. (We will refer here to “judges” and “judicial functions,” but it should be noted that the same regulations also apply to prosecutors as they belong to the same body.) Since the late 1970s, there has been an increasing “monopolization” of the election of members of the SCM by these associations. It is very rare to find a non-affiliated judge among the members elected to the Council. The associations, in fact, play a crucial role in supporting candidates to the Council.⁵⁷ Despite numerous attempts to limit this influence, the problem persists. Since its establishment in 1958, the SCM’s electoral system has undergone eight reforms,⁵⁸ the most recent in 2022. However, this latest reform appears to have failed in preventing the SCM from being influenced by these associations, which continue to use it as a vehicle for their political agendas. In the September 2022 elections, only one out of twenty seats was awarded to an “independent” candidate. Recently, among other initiatives, the current Minister of Justice has proposed a reform that involves the random selection of members of the SCM. This initiative aims to sever the aforementioned ties between *correnti* and the elected members of the Council. The dissolution of such ties would arguably enable judges serving on the SCM to operate with greater independence from their original associations or even to choose not to affiliate with any associations at all, thereby avoiding the obligation to adhere to a form of mandate binding.

Secondly, due to the election system, another critical issue is the impact of judicial associations on professional evaluations and appointments to chief positions, both of which fall under the SCM’s purview. This dynamic often results in reduced

⁵⁵ Castelli (2019, p. 59).

⁵⁶ Melis (2020).

⁵⁷ For a more comprehensive exploration of this topic, refer *inter alia* to the following scholarly works: Bernabei and Filippi (2020), Ferri (2021), Biondi (2021). Instead, the response to the questionnaire (D9, D19b) highlights only their participation in elections, downplaying the lasting influence that persists after the election.

⁵⁸ It is referred to law March 24th 1958 n. 195, law December 18th 1967, n. 1198, law December 22nd 1975, n. 695, law January 3rd 1981, n. 1, law November 22nd 1985, n. 655, law April 12th 1990, n. 74, law March 28th 2002, n. 44 and law June 17th, n. 71.

objectivity and rigour in professional assessments. A faction that does not align with the electors' career expectations risks being electorally disadvantaged. Consequently, it is not surprising that over 99% of judges and prosecutors in Italy receive a "positive" evaluation in their periodic assessments.⁵⁹ Furthermore, the lack of effective quality controls also affects the selection process for chief positions. The SCM ends up choosing from candidates who are, at least formally, equally qualified. This situation often leads to a distribution of chief positions based on judicial affiliation due to the judiciary's relatively pluralistic composition and decision-making mechanisms that favour the associations.⁶⁰ This phenomenon is significant, especially considering the high rate of quashed appointments, frequently driven by factional affiliations rather than merit.⁶¹

Thirdly, some argue that the association phenomenon can lead to informal influence on disciplinary proceedings.⁶² The disciplinary section consists of six members—two lay members and four judicial members—elected by the Council from among its members by a two-thirds majority. Because of this composition, decisions can be swayed by shifting majorities within the disciplinary body, especially during election renewals. This influence allows for decisions that may deviate from constitutional principles, accommodating ideological motives and factional interests.⁶³

Lastly, there is a notable interconnection between the associations and the political sphere.⁶⁴ Key positions in the Ministry of Justice are often occupied by judges/prosecutors affiliated with specific associations. Moreover, an increasing number of judges have been elected to Parliament.⁶⁵ To address this, the 2022 reform sought to curb the "revolving door" phenomenon between the judiciary and politics by preventing judges who have held elected political office from returning to judicial roles once their mandate ends.⁶⁶

In its response to the question about public perception, the Italian questionnaire respondent actually acknowledges that judicial associations "are sometimes subject to heated criticism." The degenerative phenomena described earlier have impacted citizens' views on the independence and impartiality of judges. The "Palamara affair"⁶⁷ has exacerbated this issue, increasing distrust in judicial institutions and

⁵⁹ Di Federico (2019, p. 343).

⁶⁰ Benvenuti (2023b, p. 1382).

⁶¹ For a more comprehensive exploration of this topic, refer to Fabri (2022). Differently, the response to the questionnaire (D8) mentions only "indirect influence" of associations on appointments, without addressing these systemic distortions.

⁶² Zagrebelsky (1977, p. 857), Tamburino and Mazzamuto (2011, p. 111), Zanon (2012, p. 2), Ferri (2014, pp. 560–563).

⁶³ In contrast, the questionnaire response (D9) explicitly denies any association involvement in disciplinary procedures, which does not align with concerns raised by legal scholars.

⁶⁴ For a more comprehensive exploration of this topic, refer to Di Federico (2013).

⁶⁵ Mangione (2021, p. 102).

⁶⁶ Nevertheless, the questionnaire responses (D16–D18c) portray only formal, limited interactions between associations and political institutions, omitting these deeper ties.

⁶⁷ The "Palamara case," which erupted in 2019, refers to the revelation of meetings between Luca Palamara—a public prosecutor, formerly a member of the SCM and then leader of the faction *Unità per la Costituzione*—and several members of the autonomous governing body, including parliamentarians Luca Lotti (deputy of *Partito Democratico*) and Cosimo Ferri (a magistrate on leave, former SCM member,

questioning the true independence of judges. Furthermore, the existence of different *correnti* within the judiciary, each with its own ideologies, highlights the varying degrees of discretion in judicial governance, which risks undermining the perceived independence of judges. Various legislative measures have attempted to address this endemic crisis in the justice system and its public perception. However, these reforms, while advisable, will not be effective unless accompanied by a renewal of practices both at a personal level and within the entire judicial community.⁶⁸ Associations should recover their cultural and ideological value rather than engage in lobbying activities. When they operate as power players to gain influence over the SCM, they risk compromising their fundamental role as advocates for ideas and defenders of judicial independence. It is crucial to resist this shift and keep their true purpose at the forefront.

In conclusion, the Italian case, as part of the judicial council model—the most widespread governance model in Europe—offers a particularly telling example of how discrepancies can arise between the official narratives provided through institutional questionnaires and the more complex dynamics observed in practice. This divergence underscores the need for a cautious and critical reading of survey data, avoiding overly linear or idealized interpretations.

6 Conclusion

A first general conclusion of this inquiry is the confirmation of judicial associations' eminent role in modern judicial governance to uphold judicial independence. In nearly every country, judicial associations are important entities when it comes to the education and training of judges, to guard against impingement on judicial independence and to provide valuable expertise on justice-related matters.⁶⁹ For the respondents to the CCJE's questionnaire, these are all established institutional functions that associations are understood to discharge. By contrast, judicial associations are described as independent from political parties and effectively irrelevant to promotions, appointments, and disciplinary proceedings. Nevertheless, the questionnaire responses offer only a partial, and at times overly formal, depiction of the associative phenomenon. While they highlight the institutional functions of

Footnote 67 (continued)

and secretary of the *Magistratura Indipendente* faction). These meetings, uncovered through telephone and environmental wiretaps, aimed to influence the appointments of the chief prosecutors in Rome and Perugia. These offices were crucial because they were handling criminal proceedings against Palamara and Lotti themselves. For a more comprehensive exploration of this topic, see Catino et al. (2023), Vinceti (2022).

⁶⁸ As stated by the former Italian Minister of Justice, Marta Cartabia, during the conference “Beati i Giusti” organized by the ANM in honor of Judge Rosario Livatino, held in Rome on July 18, 2021.

⁶⁹ Judicial associations have many other interesting functions that vary from country to country. In North Macedonia, for example, an advisory council has been established within the association to promote cooperation and dialogue between judges and journalists on issues of common interest. In some countries (Azerbaijan, Bosnia-Herzegovina, Croatia, Greece, Lithuania, etc.) they provide personal, financial and housing assistance to judges.

associations—especially regarding training, professional development, and safeguarding judicial independence—they tend to understate more controversial aspects, such as informal influence on judicial careers or the risk of politicization in appointments to self-governing bodies.

As for our first research question, however, it would be hard to trace a clear-cut correlation between one specific model of judicial governance and the characteristics of judicial associations. As a rule of thumb, the judicial council model strikes as more conducive to a heightened role than the ministerial or the court service model, but the heterogeneity among the judicial council experiences does not lend itself to an absolute assessment. In general terms, judicial associations play a more prominent role in countries where there is a centralized, strong, broadly empowered judicial council, elected with their support (see, *e.g.*, Italy). At the same time, in this context, associations may more easily represent a channel for the politicization of the judiciary. In contrast, when judicial governance is allocated among different bodies, the influence of associations, while present, seems less evident and problematic.

Additionally, other interesting elements emerge from national experiences. In some countries, for example, associations have been formally elevated to an “advisory” role via the creation of a dedicated institutional forum. In Belgium, they are members of an advisory body, separate from the council, representing them before public authorities. In Azerbaijan, they participate in the council meetings and make proposals; promotions of judges, however, remain the sole responsibility of the council. In Lithuania, too, the council consults associations on various topics of interest. Such a formal role, it can be argued, could enhance the transparency of both the associations’ actions and the council policies. In all these cases, the associations remain “outside” the council and its decision-making authority, although they are granted consultation. This could be helpful for countries (like Italy) in which judicial associations have a more informal and ambiguous role, affecting to various extents the council’s decision-making processes with little transparency. In Italy, however, the most critical issue remains the election of the SCM. As long as associations play a decisive role in this election, the politicization of the Council is difficult to avoid.⁷⁰ This finding raises broader questions concerning the role and optimal configuration of judicial associations within different governance systems. In this perspective, and based on the comparative evidence emerging from the analysis, it can be argued that the forms of judicial associationism most conducive to strengthening the independence and efficiency of the judiciary are those primarily focused on training, professional development, and the promotion of shared ethical standards. Conversely, the direct involvement of associations in the processes of judicial selection or career advancement appears likely to foster dynamics of affiliation and politicization, potentially undermining the autonomy of judicial self-governing bodies.

What is even more surprising, however (with regard to the second research question), is the divergence between the account of judicial associations given in the questionnaires and the one found in some national legal scholarship, where domestic

⁷⁰ In such contexts, associations may represent a channel for the politicization of the judiciary. See Kosar (2018).

scholars have voiced a series of concerns about the activity of judicial associations and their sway over judicial administration. This contrast is clearly evidenced by the Italian case. While the Italian respondent claims that ethical provisions are expected to counter the possible indirect influence over career promotions and denies any meddling with disciplinary proceedings, Italian scholars continue to express concern over the associations' informal influence over judicial promotion and disciplinary proceedings. This gap between the CCJE replies and the scholarly debate thus points to a methodological and general conclusion. This discrepancy between survey responses and national academic debates, particularly evident in Italy, highlights the limitations of relying exclusively on the CCJE questionnaire when assessing the functioning of judicial associations. Although we demonstrated this discrepancy only with reference to the judicial council model—namely, the Italian case—comparable evidence, if minor, seems to exist in the case of the ministerial model.⁷¹ By contrast, a cursory probe into scholarly work on the court service model does not signal manifest differences with the account depicted by questionnaires.⁷²

Scholars should therefore use a healthy dose of prudence in taking the responses as conclusive evidence of the factual behavior of associations in certain systems. While generally anonymous, in the meritorious instances where respondents disclosed their identities, it was always judges authoring the replies (Finland, North Macedonia, Portugal, Romania).⁷³ In this respect, one cannot help wondering if judges may be biased toward a benevolent account of their professional associations. More than that, one can contemplate the possibility of judicial associations' own role in selecting the respondents,⁷⁴ especially in countries in which the Ministry of Justice is staffed with many judges (*e.g.*, Italy). In this respect, the CCJE could consider enforcing greater transparency over the way respondents are selected and their professional status. While anonymity certainly serves the goal of eliciting more candid accounts from repliers, it decreases external assessment and accountability. Drawing on a more heterogeneous pool of respondents could provide the CCJE with more reliable information.

Against the praising account of associations in the replies, the CCJE Opinion actually strikes as balanced and conscious of some of the controversies discussed in the scholarly debate. In showing alertness to the risk of politicization, the Opinion arguably drew on sources beyond the respondents' account of national experiences—rightly so, since the questionnaires at times seem to offer an overly candid,

⁷¹ See, *e.g.*, Wittreck's discussion on the "de facto-coalitions of judges' associations and political parties" and the repercussions on the advancement process (Wittreck 2018, 1939, 1941) which offer a different perspective from the questionnaire respondent for Germany.

⁷² This aligns with longstanding scholarly consensus about the strictly professional, restrained, and non-unionized role of judicial associations in common law countries (Shetreet 1985, p. 631).

⁷³ Specifically: For Finland, two judges, one from the Court of Appeal and one from the Supreme Court Justice; for North Macedonia, a Judge of Supreme Court; for Portugal, a Supreme Court judge and former President CCJE, in Romania, a Judge from the High Court of Cassation. In Ireland, the response was submitted "on behalf of the Judiciary".

⁷⁴ In the case of Romania and Switzerland, respondents acknowledged reach out to with domestic judicial associations to discuss the topic, but this kind of disclosed consultation is clearly different, and less of an issue, than the informal one we adumbrate with reference to Italy.

benevolent portrayal of judicial associations, which neglects possible drawbacks from their involvement in judicial governance. If we read the questionnaires alongside evidence from the scholarly literature, a sobering, albeit more realistic account emerges of judicial associations as “means to an end.” While these associations may indeed be formidable allies in protecting judicial independence, they also risk becoming self-serving entities that could impinge on the very independence they are meant to safeguard. In this respect, consideration of the informal practice is crucial and highly recommended for a fair assessment. Further research efforts should therefore be directed toward elucidating the formal and informal institutional arrangements that preserve the independence-enhancing role of these associations and in turn make it “highly desirable that in every justice system, at least one such association of judges exists.”⁷⁵

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Declarations

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⁷⁵ CCJE Opinion No. 23 (2020), p. 14.

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