The role and function of the High Council of Justice or analogous bodies in the organisation and management of the national judicial system

Preliminary consideration: Argentina has a federal, republican and representative political system. The country is divided into 23 Provinces (States) and the Autonomous City of Buenos Aires. In all cases, separation of powers has been established: Legislative, Judicial and Executive (Government), according to the regulations of the corresponding written Constitutions. This report will only refer to the federal judicial system, which includes Buenos Aires City and the federal jurisdiction of the rest of the country.

Constitution/Composition

1.1 Is there a Superior Council of the Judiciary or an analogous body, or bodies, in your Judicial System? (Please state title), Yes, there is. It was established in 1994, with the constitutional reform that took place in that year. It is called the Judiciary Council (Consejo de la Magistratura).

1.2 Give a brief summary of the role or function of such body or bodies. The Constitution, in section 114, stipulates the functions of the body, which include selecting the candidates and proposing the election of judges; administrating resources; executing the budget that law assigns to the administration of justice; it also has disciplinary functions and it decides when to open procedures to remove judges, by accusing them before the "Impeachment Jury" (Jurado de Enjuiciamiento); it dictates rules about the judicial organization, assuring judges independence and an efficient administration of justice.

1.3 Who are members of the body? (number, composition and qualifications of the members). The Council is constituted by 20 members and it is presided by the President of the Supreme Court.

1.4 How is the body constituted and what are the procedures for the appointment of members? The body is constituted by four judges, chosen by their colleagues, four senators and four representatives, chosen by the corresponding chambers of the Legislative body, two scientist and academic personalities, a member of the Executive Power and the President of the Supreme Court (chosen by the same Court).

1.5 Is there a majority of Judges on the body? No, there is not. See answer to question 1.4.

1.6 Are any of the members of the body elected by Judges and if so how many? What is the period of office of a member of the body and under what conditions does the term of office come to an end?. May a member be removed from office against his will and if so under what circumstances.? All judges who are members of the Council are chosen by their colleagues, except for the President of the body who is only elected by the members of the Supreme Court. The period of office is four years and members can be re-elected for one consecutive period. The term of office comes to an end when the member resigns to his position (judges) or when the term as a member of the Legislative or Executive Power finishes. A member of the body can be removed from office for wrongdoing, misbehavior or for committing
a crime, after the corresponding file is formed.

1.7 To what extent is there a de facto influence on the work of the body by the Executive (Government) or the Legislature, with particular regard to its composition, its judicial functions and non-judicial responsibilities. No proved cases are known about de facto influences on the work of the body by the Executive (Government) or the Legislative, besides the representation of these powers in the Council. The body does not have any judicial function.

2. Responsibilities of the Superior Council or the analogous body. (If the Superior Council or the analogous body does not have responsibility in a particular field referred to below, please indicate, by reference to it's name only, the authority, which has responsibility.) Besides the responsibility for wrongdoing or misbehaviour while office of each member, there are no other explicit responsibilities.

2.1 Is the Supreme Court subordinate to the Superior Council of the judiciary? If yes, describe in what respect. The Supreme Court is not subordinated to the Judiciary Council.

2.2 In so far as the role of the Superior Council or analogous body involves a sharing of judicial power with non-judicial persons or representatives, does the functioning of the Council/body conflict with a strict separation of powers between the judiciary and other state powers, the Executive and Legislative. The role of the Judiciary Council has not affected the separation of powers. In fact, there has been no influence of the Executive and Legislative over the Judicial Power, besides a very few exceptions which have been brought to the attention of the public by the media, but have not been proved certainly.

2.3 Does the Council/body have responsibility for the nomination or appointment of a judge? If yes, give a brief description. As it occurs in the United States, in Argentina federal judges are selected by the Executive Power with the Senate's agreement. The Executive is obliged to choose the candidate from a list prepared by the Judiciary Council, after capacity, experience and background of the candidates have been evaluated during an open and public test.

2.4 Does the Council/body have responsibility for the promotion of judges? If yes, give a brief description. See answer to question 2.3.

2.5 Does the Council/body have responsibility in the appointment of Presidents of Courts? If yes, give a brief description. Presidents of the inferior Courts are always elected by their own members and the Judiciary Council does not take part in this decision.

2.6 Does it have responsibility for organizing the training or continuing education of judges? If yes, give a brief description. The body is in charge of organizing the Judicial School in order to improve education of judges, clerks and judicial employees. Since the Council was created recently (in 1998), the Judicial School has not been organized yet.

2.7 Does the Council/body have responsibility for the initiation or conduct of a disciplinary procedure against a judge? If yes, give a brief description. Disciplinary trial of federal judges (with exception of the Supreme Court members) is in charge of the "Impeachment Jury" (Jurado de Enjuiciamiento), which is constituted by three judges, three lawyers and three members of the Legislature. According to point 1.2, the Judiciary Council is in charge of accusing judges as a previous step to the disciplinary trial.
2.8 Does such Council/body have responsibility in the evaluation of the work of a judge? If yes, give a brief description. The Council does not have this responsibility, except, of course, if evaluating the work of a judge is enough reason to form a disciplinary file.

2.9 Does it have responsibility for the drafting or preparation of the budget of the judiciary? (If yes, describe). National budget is annually established by law. The Supreme Court sends a project of the judiciary budget to the Executive which is afterwards sent to the Congress. This project budget is elaborated by the Administration and Financial Office of the Judiciary Council. This office can also make observations before the project is sent to the Executive, for the Supreme Court to consider.

2.10 Does it have responsibility concerning the allocation of resources (personnel and financial) within the budget approved by Parliament or Government? If yes, give a brief description. The body administrates and executes the budget of the judiciary, through the Administration and Financial Office, which is in charge of a General Administrator.

2.11 Are there any other significant responsibilities of the Council/body not already mentioned? (e.g. the drafting of a judicial code of ethics). There are no other responsibilities, besides those already mentioned.

3. Superior Council and (a) the independence of the judiciary and (b) its advantages and disadvantages (Note: In some countries the question whether a Superior Council should be created is the subject of continuing debate. In this respect the experience of judges associations of other countries may be of interest. One of the key issues may be the independence of the judiciary). No deep opinions can be given since the body's experience is very recent (1998). However, the Judiciary Council is destined for improving appointment of judges (by selecting those who are more capable). Therefore, these judges are expected to be truly independent, as they owe their election to their own capacity. Judges represent a minority regarding the composition of the body (5 over 20). This fact can be understood as an important limitation for the expression of judiciary opinion. Moreover, the political composition of the body (8 members of the Legislative and 1 of the Executive) allows to see the influence of this sector over the decisions of the Council, which not always benefit the judiciary or the administration of justice.

3.1 If you have such a body, please list, very briefly the advantages and disadvantages. Advantages: It improves the selection of judges. It establishes education for judges, clerks and judicial employees. It controls judges behavior (disciplinary and removal process) Disadvantages: The body's composition, with little representation of judges does not allow to consider adequately the judiciary's opinion.

3.2 If you do not have such a body:(a) Is the creation of such a body contemplated? (b) How do you view the advantages and disadvantages of such a body? Omisis.

4. Particularities/Criticisms

4.1 Are there some special features concerning the Superior Council or body in your country which might be of special interest to others from a comparative point of view? If yes, describe. There are no issues of interest that deserve to be considered in this report.
4.2 Are there particular fundamental problems concerning the role of the Council/body in your country? If yes, describe. There are no fundamental problems to consider.

4.3 Are reforms of such a Council/body under discussion or proposed? If yes, describe briefly. There are no reforms under discussion or proposed.

5. Topics

5.1 What topics do you propose for next year's meeting of the 1st Study Commission? Proposals in favour of and against the elaboration of an Ethical and Judicial Behavior Code.