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THE UNIVERSITY OF BARCELONA

International Round Table
**SHAPING JUDICIAL COUNCILS
TO MEET CONTEMPORARY CHALLENGES**

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(Hybrid format)

PRESENTATION

by

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**FUNCTION AND STATUS OF LAY MEMBERS:
LESSONS FROM THE IRISH EXPERIENCE**



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Brief intro to the Irish system. There are 3 formal structures.

Court Services Board. 1990s.

Deals only with management of the court operations and property and supports to judges. Not discipline, standards or appointment.

However, the establishment of this body gave the judges confidence that a structure of governance had advantages and need not undermine independence.

Majority judges but has outside reps and lay members.

Judicial Council. 2019 law but still at the implementation stage.

Made up of all the state's judges but is managed by a board of court presidents and elected judges. No non judges on the Board.

Deals with discipline, standards, training and sentencing guidelines.

JC has statutory sub committees for discipline and other issues which have non judges.

Appointments advisory Board. 1990s.

Deals with new appointments only, not promotions.

Power remains with the executive in accordance with the Constitution but in practice the executive follow the advice.

Board is all court presidents, reps of legal professions, some lay members and AG as head of the Bar and link to the executive.

The system of judicial appointment has been under review in parliament for many years. One major issue is the balance between judicial members and lay-members.

The Irish example shows that Judicial Councils and similar bodies dealing with judicial governance are judge led but cannot be an entirely internal process.

One of the functions of JCs and similar bodies is as an instrument for how the judiciary interacts with other interested parties and the wider community.

I note the longstanding Venice Commission view that:

'as a general rule, the composition of a council foresees the presence of members who are not part of the judiciary, who represent other state powers or the academic or professional sectors of society. This representation is justified since a council's objectives relate not only to the interests of the members of the judiciary, but especially to general interests. The control of quality and impartiality of justice is a role that reaches beyond the interests of a particular judge.' (opinion on Albania 1999).

These councils will be directly or indirectly part of the necessary dialogue with

- Parliament
- Government, Ministry and Minister
- Public accountability
- Consumers of the court system
- Legal community

If there are non-judges on the JC they might be the link for that dialogue with some of the above.

But often that is unclear, particularly as regards lay members.

When JCs are powerful rather than just advisory the role of the outsiders is even more important.

What is the function of lay members? If they are appointed or elected by Parliament they might be said to be part of political accountability even though at a remove.

If they are nominated or appointed from universities or the bar do they reflect legal expertise?

They might be lay persons chosen through some commission for such appointments at a distance from politics. Irish example. Do they then represent the 'public interest' and what does that mean?

Should there be exclusions so that the lay persons are not former lawyers or former judges or former politicians? Should members of political parties be excluded?

If they are so far removed from public life what do they represent?

Maybe the best we can say is that they give to the JC an external perspective, an understanding of external needs and demands. Sometimes having outsiders in the room improves behaviour.

In particular you see from the laws of different countries that lay members are often involved in the disciplinary function of the JC.

If they are appointed or nominated by NGOs or court users do they represent that interest alone?

As to status do they have the same level of stability as the judicial members? But they are not judges? There is a rationale that their role within the judicial power requires that they be protected from arbitrary interference or removal. But that protection might be differently designed from the protection of the judicial members.