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Article Title

The Selection of Constitutional Justices through the Judicial Commission: Independence and Merit within the Framework of Distribution of Powers in Indonesia

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ABSTRACT

The distribution of authority to nominate constitutional justices among the Supreme Court, the House of Representatives, and the President allows differences in eligibility assessments and risks influence by nominating institutions over judicial independence. This prescriptive normative legal study examines the foundations of independent judicial selection, evaluates appointment mechanisms through Constitutional Court decisions and institutional comparisons, and formulates a reconstruction of authority based on the merit principle. Philosophical, conceptual, statutory, case-based, and comparative legal approaches are employed to assess the attribution of authority, final candidate selection, accountability, and risks of institutional domination. The findings indicate that standardized selection criteria and joint selection panels leave the three nominating institutions the authority to determine nominees. Centralizing selection within the Judicial Commission requires constitutional amendments and safeguards for the Commission's independence. The proposed reconstruction assigns the selection, final determination, and nomination of one candidate for each judicial vacancy to the Judicial Commission. The House of Representatives would conduct a declaratory acknowledgment, while the President would be legally required to make the formal appointment based on a valid selection decision. Integrity is a fundamental eligibility requirement, constitutional reasoning is a component of professional competence, and diversity of expertise informs the Court's composition. Transferring these powers requires amendments to Article 24B section (1) and Article 24C section (3) of the 1945 Constitution. Eliminating the House of Representatives' approval authority over appointments to the Judicial Commission would also require amending Article 24B section (3). Implementing legislation must regulate legality review, appointment deadlines, and security of judicial tenure.

Keywords: *Constitutional Justices; Distribution of Powers; Judicial Commission; Judicial Independence; Merit Principle.*

INTRODUCTION

The Constitutional Court's authority to review legislation and adjudicate disputes concerning constitutionally conferred powers of state institutions requires constitutional judges to decide cases involving the interests of state institutions. Article 24 section (1) of the 1945 Constitution guarantees the independence of judicial power, while Article 24 section (2) establishes the Constitutional Court as one of the institutions exercising that power. Exercising this jurisdiction requires justices who can justify their legal reasoning independently of the institutions responsible for their nomination (Arifin, 2023; Rezah & Sapada, 2023). Appointments to the Constitutional Court involve both administrative requirements and the need to protect judicial independence. The authority to determine nominees is directly relevant to the risk of institutional influence during the selection process.

Article 24C section (1) of the 1945 Constitution authorizes the Constitutional Court to review laws against the Constitution, adjudicate disputes concerning the authority of state institutions whose powers are conferred by the Constitution, decide on the dissolution of political parties, and resolve disputes over general election results. Article 24C section (2) of the same Constitution requires the Court to decide on opinions submitted by the House of Representatives concerning alleged constitutional violations by the President and/or Vice President. The House of Representatives

and the President may have institutional interests in the constitutional review of laws enacted through their joint legislative authority, while the Supreme Court has institutional interests in administering judicial power (Arizona, 2024; Muttaqin et al., 2026). Judicial appointment procedures must therefore ensure both procedural legality and justices' independence in adjudicating cases.

Article 24C section (3) of the 1945 Constitution provides for nine constitutional justices formally appointed by the President, with three nominated by the Supreme Court, three by the House of Representatives, and three by the President. These constitutional provisions are implemented through Article 18 to Article 20 of Law Number 24 of 2003, as amended several times, lastly by Law Number 7 of 2020. Each nominating institution determines its selection procedures, subject to requirements that nominations be transparent and participatory and that selection be objective, accountable, transparent, and open. These principles may be implemented differently across nominating institutions, although all constitutional justices exercise the same judicial authority and do not represent the institutions that nominated them (Satriawan et al., 2023).

Appointment procedures may continue to affect judicial independence throughout a justice's tenure. The replacement of Constitutional Justice Aswanto illustrates the importance of distinguishing the authority to nominate a candidate from the authority to remove an incumbent justice (Pambudi et al., 2025). Assessing a justice's loyalty to a nominating institution's political interests conflicts with protecting judicial tenure. Studies of appointment procedures, terms of office, and changes in judicial composition show that regulating constitutional appointments can affect both individual and institutional judicial independence (Kosař & Šipulová, 2023; Rishan, 2024; Febriyanto & Ayuni, 2026). Protection against interference after appointment must therefore be connected to the allocation of authority during selection.

Assigning the selection of constitutional justices to the Judicial Commission raises two principal issues. Article 24B section (1) of the 1945 Constitution authorizes the Commission to propose candidates for appointment as Supreme Court justices, but not to nominate constitutional justices. Beyond this limitation on constitutional authority, concentrating selection powers in one institution creates risks of political or professional influence through the appointment of Commission members and the Commission's decision-making procedures (Kosař et al., 2024; Ulum, 2025). Political participation in judicial appointments may be justified by democratic legitimacy and the objective of achieving diversity in judicial composition. Accordingly, removing political institutions' authority to select candidates requires an alternative basis of legitimacy (Sethi, 2025). The evaluation must distinguish selection authority, final candidate determination, and the legal oversight of selection decisions.

Previous studies have proposed several reform approaches. Integrated selection procedures and assessments of the qualifications required of statespersons have been

examined in studies of constitutional justice selection (Lutfi & Nur, 2022). Researchers have also examined proposals to expand the Judicial Commission's authority through amendments to Article 24B and Article 24C of the 1945 Constitution (Fauzan et al., 2023). Subsequent research has addressed standardized selection criteria, independent selection institutions, and greater procedural openness (Pangestu et al., 2025). A comparative study of South Korea, Germany, and France has proposed a National Selection Committee to conduct integrated candidate assessments (Fajriant et al., 2026). Research on selection by the House of Representatives and the positions taken by constitutional justices in judicial review decisions further supports examining the relationship between selection transparency and judicial independence after appointment (Safa'at et al., 2024).

Existing scholarship has therefore addressed the Judicial Commission's potential involvement, the standardization of selection procedures, and the establishment of a national selection committee. Further consideration is needed on the binding effect of selection decisions and safeguards against domination by the institution authorized to determine nominees. Nomination, selection, approval, acknowledgment, and formal appointment perform distinct functions and produce different legal consequences. This study contributes an integrated analysis of merit-based selection decisions, limitations on the powers of the House of Representatives and the President, the independence of Judicial Commission members, legality review, and transitional provisions. The proposed allocation of functions is intended to protect judicial independence while ensuring accountability in the selection process.

This study first examines the philosophical and constitutional foundations of independence and merit in appointing constitutional justices. It then evaluates the authority of nominating institutions and alternative selection mechanisms under existing law, Constitutional Court decisions, and comparative institutional arrangements. On that basis, the study formulates a constitutional reconstruction of the selection process through the Judicial Commission. The proposed reconstruction addresses the binding effect of selection decisions, declaratory acknowledgment, formal appointment, the Commission's independence, and legality review.

METHOD

This prescriptive normative legal study examines the constitutional attribution of authority over the selection, nomination, and formal appointment of constitutional judges (Qamar & Rezah, 2020). The philosophical approach evaluates the distribution of powers, the rule of law, legitimacy, and judicial independence. The conceptual approach distinguishes institutional and individual independence, judicial impartiality, the merit principle, and the processes of nomination, approval, acknowledgment, and formal appointment. The statutory approach examines the relationship between constitutional provisions and the regulation of selection procedures under the laws

governing the Constitutional Court and the Judicial Commission, including their amendments.

The case approach examines Constitutional Court Decision Number 27/PUU-XI/2013 concerning approval by the House of Representatives of candidates for appointment as Supreme Court justices; Constitutional Court Decision Number 1-2/PUU-XII/2014 concerning the Expert Panel and the constitutionally attributed authority to nominate constitutional justices; and Constitutional Court Decision Number 96/PUU-XVIII/2020 concerning the limits of the nominating institutions' authority to regulate selection procedures. The analysis covers the challenged provisions, the Court's legal reasoning, the operative parts of the decisions, and their legal consequences, taking account of differences in the subject matter and allocation of authority addressed in each case.

The comparative legal approach examines the appointment of justices to the Constitutional Court of South Africa under Section 174(4) of the Constitution of the Republic of South Africa, 1996, and the appointment of justices to the Constitutional Court of Korea under Article 111 of the Constitution of the Republic of Korea and the Constitutional Court Act. It also examines the relationship between Malaysia's Judicial Appointments Commission and the officials exercising appointment powers under the Federal Constitution and the Judicial Appointments Commission Act 2009. The appointment of the Chief Justice of South Africa and the institutional arrangements of judicial councils in Nordic countries provide additional comparisons concerning public participation and institutional capacity, while accounting for differences in judicial offices and institutional mandates.

Primary legal materials comprise the 1945 Constitution; Law Number 24 of 2003, as amended; Law Number 22 of 2004, as amended; the three Constitutional Court decisions; and the relevant provisions of the comparator jurisdictions. Books and journal articles constitute secondary legal materials. Systematic interpretation, analysis of judicial reasoning, and functional comparison are employed to examine the validity of constitutional attribution, judicial independence, final decision-making authority, accountability, and risks arising from concentrated institutional power (Irwansyah, 2020). The findings provide the basis for formulating the proposed allocation of authority and its implementing provisions (Sampara & Husen, 2016).

RESULTS AND DISCUSSION

A. Philosophical and Constitutional Foundations of Independence and Merit in the Selection of Constitutional Justices

The distribution of powers limits the exercise of state authority and protects citizens against arbitrary governmental action. Montesquieu (1900) distinguishes legislative, executive, and judicial functions to prevent the unrestricted

concentration of lawmaking and adjudicative powers. Hamilton et al. (1787) link judicial independence to the security of judicial office and the judiciary's comparatively limited means of exercising its authority. Dicey (1893) identifies the supremacy of law as a constraint on official discretion. These perspectives support selecting judicial candidates on legal grounds rather than according to the preferences of political officeholders. The involvement of several institutions does not necessarily achieve that objective when candidate selection remains susceptible to the interests of parties whose actions may subsequently be subject to constitutional adjudication.

Judicial appointments involve establishing eligibility requirements, receiving candidacies, assessing qualifications, determining nominees, and formally appointing the selected individuals. General requirements establish criteria applicable to all applicants. Selection procedures assess compliance with those criteria. Final candidate determination must be supported by reasons that can be examined, while formal appointment confers judicial office. Interference may occur through restrictions on participation, changes to selection criteria, rejection of candidates, or expectations concerning future judicial decisions. Public interviews do not ensure independence when candidates can subsequently be replaced for reasons unrelated to their qualifications. Procedural efficiency must be evaluated by each stage's function rather than by duration alone. The number of procedural stages does not determine selection quality. Each stage must serve a distinct evaluative purpose and apply criteria that can be justified. Repeated assessments without additional evidence increase opportunities for interference. Procedural simplification must nevertheless preserve background investigations, candidates' opportunities to respond to allegations, and mechanisms for remedying procedural violations. Assessing the independence of selection requires identifying the institution with final decision-making authority and the legal mechanisms that limit its exercise.

Article 24C section (3) of the 1945 Constitution distributes nomination authority among the Supreme Court, the House of Representatives, and the President. Article 24C section (5) of the same Constitution requires constitutional justices to possess integrity and impeccable character, be just, demonstrate the qualities of statesmen with a thorough understanding of the Constitution and constitutional governance, and refrain from concurrently holding office as state officials. The authority exercised by nominating institutions over selection, candidate determination, and nomination does not confer a right to demand a justice's loyalty after appointment. Removal from judicial office must comply with the legally prescribed grounds under Article 23 of Law Number 7 of 2020. Distinguishing nomination from removal protects justices against expectations that their decisions should serve the interests of the institutions that nominated them. Individual judicial independence must therefore be protected from the

selection stage and sustained through security of tenure (Febriyanto & Ayuni, 2026).

The legitimacy of judicial appointments also differs from the legitimacy derived from general elections. Electoral legitimacy underpins the authority of political institutions to establish policies within constitutional limits. Judicial legitimacy underpins the authority of courts to determine compliance with those limits. Arguments supporting political participation in judicial appointments emphasize representing differing perspectives and safeguarding against domination by a single group (Sethi, 2025). Nevertheless, a justice's obligation to provide constitutionally grounded reasons cannot depend on support for the nominating institution's political agenda. An independent selection institution can derive legitimacy from constitutional authorization, equal access to candidacy, transparent assessments, and decisions explaining the relationship between evidence and qualifications. The House of Representatives may consequently perform a public accountability function without undertaking a second selection of the successful candidate.

Protection of judicial independence does not exempt selection procedures from oversight. The selecting institution's independence must be matched by accountability for the legality of its authority, equal treatment of applicants, adequate reasons, and the management of conflicts of interest. Research concerning Constitutional Court decisions on the independence of other Indonesian courts demonstrates the relationship between institutional safeguards and institutional accountability (Butt, 2023). Public submissions concerning candidates' records may provide relevant information once their accuracy has been verified. However, the number of expressions of public support does not determine a candidate's eligibility. The selection institution must examine the information, allow candidates to respond, and explain its reasons for accepting or disregarding submissions. Following appointment, legality review of selection procedures must not provide a basis for directing a justice's legal reasoning or judicial decisions.

The distinction between representative and adjudicative mandates also informs the assessment of diversity within the Constitutional Court. Representative institutions perform functions associated with representing interests, whereas justices resolve disputes according to the Constitution and applicable legal facts. Scholarship concerning the structure of representative institutions helps distinguish representative legitimacy from the obligation of judicial impartiality (Wardani, 2023). Nominations by three different institutions may broaden access to candidacy, but they do not guarantee diversity in professional experience, academic disciplines, or constitutional perspectives. The three institutions may nominate individuals with similar backgrounds. Conversely, centralized selection can accommodate expertise in adjudication, legal scholarship, legal practice,

legislative drafting, and public administration through open candidacy and verifiable reasons concerning the Court's composition.

Diversity of expertise does not require loyalty to nominating institutions or uniformity in constitutional interpretation. Justices may adopt different interpretive approaches when assessing the limits of state authority while maintaining integrity and professional competence. A selection institution that prioritizes agreement with its members' preferred legal interpretations restricts candidates' intellectual independence. Candidates must therefore be assessed by their ability to develop legal arguments, respond to objections, and understand the constitutional consequences of their positions, rather than by their willingness to promise particular judicial outcomes. Scholarship on judicial virtues connects personal character, intellectual competence, and the exercise of adjudicative responsibilities as components of judicial qualifications (Widłak, 2025). Merit-based selection must preserve candidates' independence of legal reasoning while ensuring that competence is assessed on objective grounds.

Compliance with formal eligibility requirements does not necessarily establish the ability to resolve constitutional questions involving competing constitutional rights, institutional powers, and the scope of governmental policymaking. Integrity constitutes a fundamental requirement that cannot be replaced by academic achievement. Competence is assessed through the quality of legal reasoning, while diversity of expertise is considered among candidates who have satisfied the eligibility requirements. This distinction preserves each criterion's separate evaluative function. Educational credentials and professional experience provide evidence relevant to eligibility and professional competence. Reputation must be assessed through verifiable information and cannot determine eligibility on its own. The relationship between legal requirements and substantive assessment establishes whether the authority to select candidates serves the adjudicative function of the Court.

The Judicial Commission possesses independent constitutional status under Article 24B section (1) of the 1945 Constitution, but formal independence does not eliminate potential institutional influence. Judicial councils may face political pressure, professional domination, and internal conflicts of interest (Kosař et al., 2024). Institutional capacity also affects the quality of judicial eligibility assessments (Ulum, 2025). Transferring substantive selection authority must therefore be accompanied by rules governing Judicial Commission appointments, preventing conflicts of interest, ensuring evaluator qualifications, and reviewing the validity of selection decisions. A permanent commission provides continuity in selection experience and institutional capacity, along with clear responsibility for final decisions. Its principal vulnerability is the risk that a particular group may dominate its membership and decision-making processes.

These principles provide five criteria for institutional evaluation. Constitutional attribution identifies the lawful holder of authority. Independence concerns the possibility of interference before and after appointment. Final decision-making authority identifies the institution empowered to determine nominees. Accountability requires decisions supported by verifiable evidence and adequate reasons. The risk of concentrated influence concerns possible political or professional domination. These criteria must be assessed together because a mechanism may perform well under one criterion while remaining deficient under another. Distributing authority among institutions may reduce concentration but permit inconsistent application of selection standards. Conversely, centralized selection may improve consistency while increasing the risk of interference with the selecting institution. The evaluation must therefore address both the validity of constitutional attribution and the legal consequences of distributing authority.

B. Evaluation of Nomination Authority and Mechanisms for Selecting Constitutional Justices

Constitutional Court Decision Number 96/PUU-XVIII/2020 explains the relationship between the authority to nominate constitutional justices under the 1945 Constitution and its implementation through legislation. Consideration [3.19] states that the Supreme Court, the House of Representatives, and the President exercise selection and nomination authority under Article 24C section (3) of the 1945 Constitution while remaining subject to Article 19 of Law Number 24 of 2003 and Article 20 of Law Number 7 of 2020. Consideration [3.20] limits each nominating institution's authority to regulate its procedures by requiring compliance with statutory and constitutional provisions. All three nominating institutions are subject to the same governing principles. Equivalent assessment quality, however, depends on how eligibility requirements and evidentiary standards are applied.

Existing constitutional arrangements confer candidate determination and nomination powers on three institutions, each responsible for its own decisions. This distribution derives directly from the Constitution. Nevertheless, institutional discretion over procedural arrangements may produce differences in background investigations, competency examinations, the transparency of assessment weights, and the reasons supporting final nominations. Distributing nomination authority does not prevent several institutions from selecting candidates according to similar preferences. In their examination of eight decisions concerning the constitutional review of legislation, Safa'at et al. (2024) found that justices selected through transparent and participatory processes adopted differing positions toward the interests of the House of Representatives, whereas justices selected through processes lacking transparency and participation tended to adopt positions favorable to that institution. This finding identifies a tendency within

the eight decisions examined. Lawful constitutional attribution must therefore be accompanied by rigorous assessments of candidates' qualifications.

Constitutional Court Constitutional Court Decision Number 1-2/PUU-XII/2014 clarifies the limits of modifying selection procedures through ordinary legislation. In reviewing Law Number 4 of 2014, the Court determined that the Expert Panel established by the Judicial Commission, which was authorized to determine candidates' eligibility, had diminished the authority constitutionally attributed to the nominating institutions under Article 24C section (3) of the 1945 Constitution. The Court's reasoning distinguishes technical assistance in evaluating candidates from transferring authority to decide which candidates may be nominated. An internal committee established by a nominating institution differs from an external Expert Panel empowered to screen candidates through binding decisions. While the Constitution retains the three nominating institutions, authority to make binding eligibility determinations restricting their nominations cannot be transferred to another institution through ordinary legislation. Transferring final candidate determination from the three nominating institutions to another body therefore requires an amendment to the attribution of authority under the 1945 Constitution. Altering a panel's name or procedures does not modify that constitutional allocation.

The Court's consideration of diversity must also be examined against the mechanisms intended to achieve it. Nominations from three institutions may produce candidates with varied professional backgrounds, but this arrangement does not ensure diversity in the expertise of those ultimately appointed. Diversity can be promoted through broad access to candidacy, consideration of the expertise required within the Constitutional Court, and publicly stated reasons for decisions concerning judicial composition. Assigning selection authority to one institution remains compatible with diversity when the Court's composition is considered and safeguards prevent a single preference from dominating the Commission. Every candidate must satisfy the same individual eligibility requirements. Considerations concerning judicial composition apply only to candidates who meet those requirements. Differences in professional backgrounds cannot justify lowering constitutional qualifications.

Constitutional Court Decision Number 27/PUU-XI/2013 concerning Supreme Court justices clarifies the distinction between nomination and legislative approval in judicial appointments. The Court distinguished approval by the House of Representatives from selecting candidates from several names and changed the requirement from submitting three candidates to submitting one candidate for each vacancy. Eliminating the choice among several candidates restricted the House of Representatives' opportunity to select individuals according to its own preferences. Nevertheless, approval remains legally distinct from a mandatory

acknowledgment without a power of rejection. The authority to reject a single nominee still enables the House of Representatives to influence candidate selection by granting or withholding approval. Accordingly, a model under which the House of Representatives performs only a declaratory acknowledgment in constitutional justice appointments requires a separate change in the constitutional attribution of authority. The operative part of the decision concerns Supreme Court appointments and does not eliminate the three institutions' nomination powers under Article 24C section (3) of the 1945 Constitution.

Constitutional Court Decision Number 27/PUU-XI/2013 and Constitutional Court Decision Number 1-2/PUU-XII/2014 concern different constitutional questions, but both treat constitutional attribution as a basis for limiting institutional authority. For Supreme Court appointments, Article 24A section (3) of the 1945 Constitution assigns candidate proposals to the Judicial Commission, approval to the House of Representatives, and formal appointment to the President. For constitutional justice appointments, Article 24C section (3) of the same Constitution distributes nomination authority among three institutions. The limitation imposed on the House of Representatives in the first case and the rejection of a transfer of selection authority to the Expert Panel in the second both follow the applicable constitutional allocation. Differences in the subject matter and legal basis determine the scope of each ruling. The implication is that the distinction among candidate assessment, final selection, and formal appointment must be expressly established in the legal provisions governing the proposed institutional reconstruction.

Standardizing selection criteria across the three nominating institutions offers one reform option without amending Article 24C section (3) of the 1945 Constitution. Methods for investigating integrity, assessing competence, and publishing reasons for decisions could be standardized through rules applicable to all three institutions. The limitation is that each institution would retain final authority over its nominees. Identical criteria may receive different weights or be applied to evidence of differing quality. Individual institutions may also emphasize different considerations based on their institutional priorities, provided they remain within applicable legal limits. Standardization can improve procedural accountability, but responsibility for candidate determination and the overall composition of the Constitutional Court would remain divided among the three nominating institutions.

A temporary joint selection panel could consolidate candidate assessments and involve evaluators with different professional backgrounds. Nonbinding panel recommendations would preserve the nominating institutions' authority to determine their candidates. Giving binding effect to an external panel's recommendations would raise the constitutional limitations identified in

Constitutional Court Decision Number 1-2/PUU-XII/2014. A temporary panel also requires appointing members, establishing assessment standards, making budgetary arrangements, and setting procedural rules for each vacancy. Those controlling the panel's composition may influence the assessment process before it begins. Consequently, assessment by a single panel does not necessarily ensure independent final decisions or continuity of institutional capacity. A selection institution requires clearly established authority and continuing accountability.

South Korea's constitutional appointment mechanism illustrates how institutions share judicial appointment powers. Article 111(2) and Article 111(3) of the Constitution of the Republic of Korea provide for nine justices of the Constitutional Court appointed by the President. Three are selected by the National Assembly, and three are nominated by the Chief Justice of the Supreme Court, subject to further provisions in the Constitutional Court Act. This arrangement maintains several institutions responsible for determining candidates while distinguishing those functions from formal appointment by the President. The comparison with Indonesia reveals similarities in distributing candidate nomination powers and differences in the allocation of political and judicial authority (Satriawan et al., 2023). South Korea's system shows how distributing authority limits institutional concentration, but it does not directly resolve the need for uniform standards and centralized accountability in selection.

South Africa allocates appointment authority differently. Section 174(4) of the Constitution of the Republic of South Africa, 1996 requires the Judicial Service Commission to prepare a list of candidates for appointment to the Constitutional Court containing three more names than the number of vacancies. The President selects appointees from that list following the constitutionally prescribed consultations. Where a nominee is considered unacceptable, the President must provide reasons, and the Commission must supplement the list for the remaining appointments. The list restricts presidential choice without transferring formal appointment authority to the Commission. Section 174(3) of the same Constitution establishes a separate procedure for appointing the Chief Justice of South Africa. Research on public participation in appointing the Chief Justice shows the importance of examining both the information presented through public proceedings and the authority of the final decision-maker, rather than treating public hearings as sufficient in themselves (Ntlama-Makhanya, 2024). These two procedures show how the relevant office and the legal effect of the candidate list determine the allocation of appointment powers.

Malaysia involves the Judicial Appointments Commission in selecting judges for the superior courts under the Judicial Appointments Commission Act 2009. The Federal Constitution retains the respective powers of state officials in the judicial appointment process. The Commission identifies qualified candidates for

the Prime Minister's consideration, but its recommendations do not independently constitute appointment decisions binding on all officials involved in subsequent appointment stages. The relationship between the Commission and the executive has also been examined in comparative research on appointments to the highest courts in Indonesia and Malaysia (Satriawan et al., 2022). This comparison demonstrates that establishing a professional selection commission does not necessarily eliminate discretion at later stages. The allocation of authority must be evaluated according to the Commission's mandate, the legal effect of its recommendations, and the decisions of officials exercising appointment powers.

Judicial councils in Nordic countries illustrate another institutional distinction: responsibility for judicial administration does not necessarily include authority to determine judicial nominees. Institutions responsible for budgeting, court services, or judicial personnel management do not invariably exercise the same appointment powers (Aarli & Sanders, 2023). Expanding the Judicial Commission's mandate must therefore be supported by specialized capacity to assess constitutional law, integrity, and candidates' legal reasoning. Institutional status or experience in judicial administration alone is insufficient. Applying comparative arrangements requires consideration of differences in constitutional provisions, institutional functions, and appointment procedures. South Korea distributes selection powers among institutions, South Africa limits executive choice through candidate lists, Malaysia retains executive participation in appointments, and Nordic arrangements illustrate the importance of aligning institutional mandates with administrative and professional capacity.

The comparison also clarifies the distinction between public participation and final decision-making authority. Where selection procedures permit public submissions, accountability depends on the obligation to verify the information received, allow candidates to respond, and explain how the information affects decisions. Eligibility is determined through the assessment process, while public submissions provide information that must be verified before it can be treated as evidence. Public hearings are less effective in securing accountability when the officials responsible for determining nominees are not required to explain their final decisions. The evaluation must therefore extend from candidate assessment through the final appointment decision.

The evaluation identifies three alternatives. Distributing authority among three institutions preserves the existing constitutional attribution but allows differences in assessing candidates' qualifications. A joint panel can improve assessment consistency without transferring final candidate determination. Centralizing selection within the Judicial Commission can standardize merit-based assessments and accountability for selection decisions, provided the Constitution is amended and safeguards against the Commission's domination are established.

The third alternative better suits assigning final candidate determination to an institution with a specialized selection mandate. Its decisions would bind political institutions while remaining subject to legality review. Unlike a newly established permanent commission, the Judicial Commission already has constitutional status and experience proposing Supreme Court candidates. A new commission would require an independent legal mandate, institutional expertise, and accountability arrangements. The advantages of using the Judicial Commission nevertheless depend on reforming how its members are appointed and strengthening its capacity to assess constitutional justice candidates. Centralized selection must therefore be accompanied by stronger safeguards for independence and oversight. These considerations provide the basis for reconstructing the authority to select and appoint constitutional justices.

C. Reconstruction of the Authority to Select and Appoint Constitutional Justices through the Judicial Commission

The proposed reconstruction assigns the selection, final determination, and nomination of all constitutional justice candidates to the Judicial Commission. Its final selection decisions would be binding before the declaratory acknowledgment and formal appointment stages. The Constitutional Court would continue to consist of nine justices, but the allocation of three nominations each to the Supreme Court, the House of Representatives, and the President would be removed through an amendment to Article 24C section (3) of the 1945 Constitution. Expanding the Commission's selection mandate would also require amending Article 24B section (1) of the same Constitution, ensuring its authority over constitutional justice appointments derives directly from the Constitution. Granting the Commission new powers without removing the existing attribution to the three nominating institutions would create overlapping constitutional authority. The President would retain the formal appointment function, while the Commission's selection decision would identify the candidate whom the President is legally required to appoint.

The merit principle would be implemented through assessment stages serving distinct evidentiary functions. Preliminary screening would establish compliance with Article 24C section (5) of the 1945 Constitution and the additional qualifications prescribed by Article 15 of Law Number 7 of 2020. Integrity would constitute a fundamental eligibility requirement assessed through background investigations and relevant evidence. The absence of proven misconduct would not, by itself, establish every element of integrity. Academic achievement or professional experience could not substitute for compliance with integrity requirements. Background investigations must rely on verified information and allow candidates to respond to relevant objections or allegations. Once the fundamental requirements have been satisfied, intellectual competence and

experience in constitutional matters may be compared. This sequence preserves the distinct functions of assessing integrity, professional competence, and reputation.

Professional competence would be evaluated through candidates' ability to identify constitutional questions, select appropriate methods of interpretation, construct consistent legal arguments, and explain the implications of decisions for state institutions and the protection of rights. Simulated constitutional problems permitting different interpretive approaches could be used to assess the quality of legal reasoning without requiring candidates to declare positions on particular cases. Assessment of the qualities expected of statespersons could examine candidates' understanding of the limits of the Constitutional Court's authority in reviewing legislation and the constitutionally protected powers of lawmakers. Relevant criteria would focus on the quality and consistency of legal reasoning, rather than agreement with the evaluators' preferred interpretations. Competency assessments based on judicial qualifications must protect candidates' independence of legal reasoning after appointment.

Diversity in the Court's composition would be considered only after individual eligibility had been established. The Commission should identify differences in judicial experience, academic expertise, legal practice, legislative drafting, and constitutional governance across the Court's membership. Expertise underrepresented among incumbent justices could inform the choice between candidates with comparable qualifications. Criteria concerning the Court's composition must be announced before selection begins. Introducing such criteria after assessment results are known would risk allowing personal preferences to influence final decisions. Selection decisions must therefore distinguish evidence of individual eligibility from reasons concerning the Court's overall composition. Applying identical fundamental qualifications remains compatible with professional diversity without allocating judicial positions by nominating institution.

The selection process must produce one successful nominee for each judicial vacancy rather than a list of candidates from which another institution may make a further choice. The Judicial Commission would open applications, examine administrative qualifications, assess competence, investigate integrity, facilitate public participation, and make final selection decisions. If no applicant met the eligibility requirements, the selection process would have to be repeated with written, reviewable reasons. Fundamental requirements could not be lowered, nor could the decision be transferred to the House of Representatives or the President. The reasons supporting the final decision would identify the applicable criteria, decisive evidence, findings on objections, and considerations concerning judicial composition. Personal information unrelated to eligibility would remain

protected. Nominating one candidate for each vacancy would reflect assessments conducted under common eligibility standards.

Accountability in collective decision-making requires documenting each evaluator's reasons. Individual evaluators could first assess candidates using identical criteria and then discuss differences in evidence and evaluation through documented internal deliberations. Changes in an evaluator's position following deliberation must be explainable, while dissenting assessments must be recorded with appropriate protection for candidates' personal information. Quantitative scores may promote consistency, but they cannot replace written reasons addressing qualities that cannot be fully measured numerically. Periodic reports could compare the application of standards across successive selection processes. These arrangements would preserve professional judgment while requiring the Commission to explain its final decisions and prevent personal preferences, internal pressure, and conflicts of interest from improperly influencing outcomes.

Concentrating selection and final candidate determination within the Judicial Commission also requires reform of the appointment procedures for its members. Article 24B section (3) of the 1945 Constitution currently provides that Judicial Commission members are appointed and removed by the President with the approval of the House of Representatives. Discretion exercised by the President and the House of Representatives in determining the Commission's membership according to personal or political preferences creates a risk of indirect political influence over constitutional justice selection. Accordingly, a reconstruction that removes the House of Representatives' approval authority over appointments to the Judicial Commission would require an amendment to Article 24B section (3), together with amendments to Article 24B section (1) and Article 24C section (3) of the same Constitution. These constitutional changes must consistently protect the Commission's independence and its selection procedures.

Appointment to the Judicial Commission would require professional expertise, integrity, open candidacy, safeguards against conflicts of interest, and security of tenure. A panel responsible for selecting Commission members could include specialists from different professional backgrounds without assigning them representative mandates from their respective organizations. Random selection from a previously qualified pool of panel candidates could be considered to reduce domination by particular groups. Such a procedure must ensure an appropriate balance of expertise and require panel members to recuse themselves from assessments involving conflicts of interest. Professional domination may also arise at the earlier stage of determining who qualifies for inclusion in the panel's candidate pool. The list of eligible panel candidates must therefore be open to public objections, reviewed by evaluators from different disciplines, and established through written reasons. Random selection cannot guarantee

independence when the initial pool is not determined by objective qualifications. An alternative would be open selection conducted by a legally constituted group of independent institutions. The establishment and selection procedures for the panel would be regulated by law. Constitutional safeguards must limit political discretion in determining Judicial Commission membership according to personal preferences.

The Commission's independence also requires adequate resources and regulated relationships with the judicial profession. Selection budgets must be based on ascertainable needs, administered under laws and regulations governing public finance, and subject to audit without linking budgetary approval to the identities of particular candidates. Commission members with judicial backgrounds may contribute practical knowledge, but domination by one professional group may restrict participation by others or favor personal associations. Membership rules should ensure diverse professional expertise, require disclosure and avoidance of conflicts of interest, stagger member replacements, and prohibit changes to eligibility requirements immediately before appointments. Diversity among information sources and evaluators would help prevent domination of the Commission's decisions and improper influence over the Constitutional Court's composition.

Under the proposed appointment framework, the House of Representatives would conduct a public declaratory acknowledgment. During that proceeding, the Judicial Commission would explain the basis and outcome of its selection to the public through the House of Representatives. The House would have no authority to select, approve, reject, replace, or reassess the nominee's qualifications. This role differs from the approval exercised by the House of Representatives in Supreme Court appointments under Article 24A section (3) of the 1945 Constitution. The proposed acknowledgment would not constitute a condition determining the validity of the Commission's selection decision. Delays or failure to convene a hearing would therefore give the House of Representatives no authority to reject the nominee. Procedures, publication requirements, and deadlines must ensure public accountability without permitting a second assessment or selection by the House.

The President would formally appoint the candidate the Judicial Commission lawfully selected and nominated. Presidential appointment would confer the legal status of constitutional justice. The President would have no authority to select between competing candidates, request a substitute nominee, or alter the Commission's eligibility determination. Legislation must establish a deadline for formal appointment and the legal consequences of a presidential failure to perform that duty. Under the proposed framework, failure to complete the House of Representatives' acknowledgment within the prescribed period would not obstruct appointment. A President's failure to make the required appointment

would require a legal mechanism to ensure performance of the constitutional duty. Implementing provisions must determine when the Commission's selection decision takes legal effect, how legal challenges affect appointment deadlines, and how vacancies are filled without unnecessary disruption. An official's failure to act cannot create an authority to select candidates that the Constitution does not confer.

Binding selection decisions would remain subject to legality review. The grounds for review would include procedural violations, discrimination, conflicts of interest, abuse of authority, and reliance on reasons unrelated to the announced criteria. Implementing legislation must identify the court with jurisdiction, claimants' legal standing, time limits for review, interim legal relief to prevent harm that would be difficult to remedy, and judges' obligation to recuse themselves from cases involving conflicts of interest. Proven legal defects would justify repeating the affected selection stages before evaluators free from the relevant conflicts. A court conducting a legality review would not be authorized to select a replacement nominee or assume the Commission's responsibility for assessing professional qualifications. This distinction would protect applicants' rights without compromising the Commission's independence.

Constitutional amendments would require corresponding changes to Article 18 to Article 20 of Law Number 24 of 2003, as amended several times, lastly by Law Number 7 of 2020, and to the relevant provisions of Law Number 22 of 2004, as amended. Article 24C section (6) of the 1945 Constitution provides the constitutional basis for regulating, by law, the appointment and removal of constitutional justices, judicial procedures, and other matters concerning the Constitutional Court. The Constitution must establish the institution holding selection authority, the binding effect of selection decisions, the function of declaratory acknowledgment, the duty of formal appointment, and the principal safeguards for the Commission's independence. Legislation would regulate selection procedures, assessments, public participation, deadlines, dispute resolution, and remedies. This allocation of regulatory matters would ensure certainty concerning constitutional authority while permitting procedural adjustments.

The proposed constitutional provision on appointment may be formulated as follows: "Candidates for appointment as constitutional justices shall be selected and nominated by the Judicial Commission in accordance with the merit principle. The House of Representatives shall conduct a declaratory acknowledgment, and the President shall formally appoint the candidate based on a valid selection decision of the Judicial Commission." This constitutional provision would require corresponding arrangements governing the Commission's authority and the appointment of its members. Acknowledgment by the House of Representatives would not determine candidate eligibility, while formal appointment by the

President would confer judicial office without any power to conduct a further selection. The selection decision would remain subject to review for legal defects. Constitutional attribution would allocate authority, legislation would govern the performance of legal duties, and the competent reviewing court would determine the legal consequences of unlawful selection procedures.

Transitional provisions must regulate the application of the new system to vacancies lawfully arising after the constitutional amendments, implementing legislation, and revised selection procedures have entered into force. Incumbent justices' terms of office and the legally prescribed grounds for their removal must remain protected. The number of constitutional justices would remain nine. The new system could not be used to terminate judicial tenure unlawfully or create artificial vacancies. Eligibility requirements must not be altered after selection begins for the purpose of influencing candidate determination. Requirements must be published before applications open and remain applicable until selection concludes, subject to corrections necessary to remedy legal violations. Prospective implementation would prevent constitutional amendments from replacing justices whose terms have not expired. The reconstruction thus combines merit-based selection, binding decisions, legality review, and safeguards against improper institutional influence.

CONCLUSIONS AND SUGGESTIONS

The independence of constitutional justices requires protection against improper influence from nomination through the exercise of judicial authority. The distribution of powers must be evaluated according to the functions and legal consequences of each institution's actions. The legitimacy of judicial appointments must rest on constitutional attribution, equal access to candidacy, and reasoned accountability. The merit principle requires distinct assessments of integrity, constitutional competence, and diversity of professional experience without treating justices as representatives of the institutions that nominated them.

The analysis of judicial decisions and comparative institutional arrangements establishes the distinction between procedural standardization and the transfer of substantive authority, and between restricting the choice among several candidates and eliminating a power of veto. Under the existing Constitution, three nominating institutions exercise separate authority and bear separate responsibility for their nominations. A joint selection panel may standardize candidate assessments without transferring final decision-making authority. Centralizing selection within the Judicial Commission would allow more consistent eligibility assessments but would require safeguards against the Commission's domination. This alternative therefore depends on a new constitutional attribution of authority and safeguards proportionate to the binding effect of the Commission's decisions.

The proposed reconstruction assigns the selection, final determination, and nomination of one candidate for each vacancy to the Judicial Commission. The House of Representatives would conduct a public declaratory acknowledgment, and the President would formally appoint the candidate based on a valid selection decision. Legality review would remain available without transferring candidate selection powers to the judiciary or political institutions. Transferring selection authority would require amendments to Article 24B section (1) and Article 24C section (3) of the 1945 Constitution. Eliminating the House of Representatives' approval authority over appointments to the Judicial Commission would additionally require an amendment to Article 24B section (3) of the same Constitution.

The laws governing the Constitutional Court and the Judicial Commission must be brought into conformity with the proposed constitutional amendments. Implementing provisions should regulate assessment standards, integrity investigations, written reasons for decisions, procedural transparency, the resolution of objections, deadlines for declaratory acknowledgment and formal appointment, and remedies for unlawful selection procedures. Transitional provisions must preserve the nine positions on the Constitutional Court, protect the tenure of incumbent justices, and ensure prospective implementation. The independence of Judicial Commission members, safeguards against conflicts of interest, and auditable financial management are necessary to prevent centralized selection from creating new forms of institutional dependence.

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