

The dilemma of generalist constitutional adjudication in the exploration of artificial intelligence

by Béla Pokol

From 1803 onwards, constitutional justice gradually developed in the USA, where, unlike in European countries, there was no specialization of the courts and the specialization of certain areas of law (criminal law, private law, labor law, etc.) narrowed jurisdiction of the Constitutional Court, and thus the Federal Supreme Court becoming more and more a constitutional court, and thus its decision in cases belonging to all areas of law, was and is still being carried out by the always new constitutional judges after the necessary changes after aging. Here, lawyers were primarily specialised in certain areas of law, but the courts and their judges remained with decisions based on generalist jurisdiction, such as constitutional justice. On the other hand, this generalist constitutional court - i.e. covering all areas of law at the same time - spread in European countries - mainly from the 1980s and then from the 1990s - with judges specializing in this area, lawyers and university lawyers, i.e. the entire legal profession in each country cannot perform the generalist decision-making tasks of the Constitutional Court by becoming judges of the Constitutional Court after their election by the parliament, but the permanent decision-making apparatus that has been performing this task for many years is decided in their place.

My question is, which authors have already explored this problem in the individual countries of Europe and East-Southeast Asia, where this constitutional court has been taken over, and what solutions do they try to solve this dilemma? Please describe in great detail the studies published in any language and analysing this topic.

(ChatGPT5.6)

Summary Conclusion

There is considerable literature on the phenomenon you described, but the mainstream does not usually say that **constitutional judges from European, specialized lawyers are incapable of generalist constitutional justice, so the permanent apparatus decides instead of them.** Rather, international literature examines four problems that need to be separated from each other:

1. the asymmetry of expertise **between the judge of the Constitutional Court and his or her legal colleague;**
2. the agenda-setting power **resulting from the screening of submissions;**
3. the framing and anchoring effect of the **first report or the first draft decision;**

4. the dual nature of **the institutional memory and doctrinal continuity** carried by the permanent apparatus.

The most direct, almost literal formulator of your thesis is **Béla Pokol**. In Germany, the concept of the "third senate", in France the secretary general as the "tenth member", in the Court of Justice of the European Union the "ghost-writer", and in Korea the concept of the Constitutional Court research judge who develops an independent professional opinion, approaches the same problem. On the whole, however, empirical research **shows a significant but conditional apparatus influence**, rather than a general and complete substitution for decision-making. For example, the Polish interview research published in 2025 is an explicit counterexample: according to the judges of the Constitutional Court, the staff helped prepare the drafts, but did not substantively shape the deliberative coalitions or the votes of the judges.

1. Clarification of historical comparison

1.1. The American model is not a "generalist judiciary without an apparatus" either

Marbury v. Madison in 1803 was the first case in which the U.S. Supreme Court declared a provision of Congressional law unconstitutional and formulated the principle of judicial review in a classic form. However, the American model did not create a separate constitutional court: constitutional review operates in a diffuse manner in the ordinary judicial system, in connection with specific legal disputes.

However, the American court system is not completely devoid of specialization. There are federal forums with special jurisdictions, and the Federal Circuit is also a special, partly specialized court of appeals. In addition, the work of the judges of the US Supreme Court is supported by a significant apparatus: a judge usually employs up to four law clerks who research, prepare notes and drafts, and participate in the preparatory work for the reception of cases. Thus, the American model did not abolish the delegation of decision-making; rather, **he organized it** into an elite co-worker model appointed for a short period of time, personally tied to the judge.

Todd C. Peppers, Christopher Zorn, Artemus Ward, David L. Weiden, and other American authors have shown that law clerks of the Supreme Court can exert measurable influence through inclusion recommendations, legal memorandums, and drafts. In the American model, this is partly limited by the short length of service of the staff, the judge's personal power to select and dismiss, and the fact that the clerk usually belongs to only one judge. At the same time, it is precisely this personal relationship that can create a strong influence of trust, ideology or "alter ego".

1.2. The European Constitutional Court did not start in the 1980s and 1990s

The first institutional versions of the European model of a separate constitutional court were established as early as 1920 in Austria and Czechoslovakia. After World War II, it spread

widely in Germany and Italy, then in Southern Europe, and finally after 1989 in Central and Eastern Europe. The 1980s and 1990s are therefore primarily another great wave of expansion for the model, not the beginning.

1.3. Individual and collective generalism

The "generalist" nature of the Constitutional Court can be understood in two ways:

- **individual generalism:** each judge of the Constitutional Court is able to independently deal with the full range of issues of criminal law, private law, tax law, labour law, administrative law and international law;
- **Collective generalism:** individual judges bring different expertise, cases are assigned according to professional profiles, but the body as a whole decides on the basis of a common constitutional standard.

Most European constitutional courts actually operate according to the second logic. Therefore, the decisive question is not whether all judges of the Constitutional Court are experts of the same level in all areas of law, but **who determines the issues to be decided, who develops the first position and who controls the first draft in the division of labour between the specialised reporting judge, the other judges and the decision-making apparatus.**

2. Through what mechanisms can the apparatus become a "hidden decision-maker"?

2.1. Case screening and agenda setting

If the staff member or the central secretariat is the first to decide whether a complaint is manifestly inadmissible, repetitive or worth bringing before a judge, it does not necessarily determine the final legal position, but it does influence **which issues reach the judges at all**. This is a particularly powerful power where tens of thousands of constitutional complaints have to be dealt with every year. Russian research describes this as "moderate agenda power": the influence of the secretariat is real, but it is not unlimited due to the possibilities of judicial review and circumvention.

2.2. Anchor effect of the first note and the first draft

The first person to systematize the facts, indicate the relevant precedents and describe the possible operative part determines the basic coordinates of the dispute. Judges are legally free to deviate from the draft, but due to lack of time and information, the first draft becomes the "default" solution to the hearing. Opinion No 22 of the CCJE therefore specifically warns that a first memorandum or draft prepared without judicial guidance may have a disproportionate influence. Holvast-Mascini research conducted in Dutch courts examined the same mechanism from an empirical and experimental perspective, although not specifically in constitutional courts.

2.3. Asymmetry of expertise

A newly elected judge of the Constitutional Court may be confronted in a short period of time in cases in which a member of the apparatus has been following the given precedent line for years or decades. Not only can the employee know more about the case group, but he or she can also know:

- previous internal compromises;
- the doctrinal exceptions that have not been publicly explained;
- the expected position of each judge;
- the usual language of decisions;
- which argument is accepted by the majority.

This knowledge is an indispensable institutional memory, but it is also a resource of power. Katalin Kelemen, Anne Sanders, Toader and Safta, as well as CCJE, all emphasize this dual nature.

2.4. Effective delegation resulting from workload

The formal rule that only the judge can decide is not enough in itself if the judge receives a large number of case files of hundreds of pages every day. In such cases, the "help" can gradually transform:

- from preliminary legal research to the formation of a legal opinion;
- from sketching to full drafting;
- from a summary of admissibility to an actual screening decision;
- from editing to the independent creation of the justification of the decision.

The CCJE therefore states not only that the decision cannot be delegated, but also that the judge is obliged to effectively control the facts and the legal problem.

2.5. Lack of transparency and asymmetry of responsibility

The name of the judge is known to the public, but often not that of the colleague who prepared the draft. The judge bears the responsibility of public law, professionalism and reputation, while a significant part of the text of the decision may be written by someone else. That is why the following terms appear in the literature:

- German "**Dritter Senat**", i.e. the Third Senate;
- french "**tenth member**", tizedik tag;
- "**ghost-writer**" or ghostwriter;
- "latent chamber";
- "hidden judiciary".

For the most part, they do not claim that the employees vote formally, but that actual authorship and formal responsibility are separated.

3. The most important general and comparative works

3.1. Béla Pokol: the most direct formulation of the problem

Béla Pokol "**General Jurisdiction versus Specialized Court System. On a Dilemma of the Constitutional Court**" was published in the 2014/2 issue of *the Journal of Legal Theory*, pp. 226–243. This study is the closest to the thesis you have raised. According to Pokol, constitutional justice is a generalist decision-making task that encompasses all areas of law, while European legal careers are increasingly divided into specialized branches of law. Therefore, the newly elected judge of the Constitutional Court may easily need the knowledge of the experienced staff apparatus "inherited" from his predecessor, and in extreme cases, the relationship can be reversed: it is not the judge who uses the colleague, but the colleague uses the judge as the institutional representative of his or her own position.

Pokol suggests several solutions:

1. the body should have an appropriate proportion of judges with experience in the higher courts;
2. cases are preferably divided into areas of presentation, so-called decrees, adapted to the judges' previous experience in specialised law;
3. the new judge of the Constitutional Court should not be a reporting judge in his first year;
4. according to his more radical proposal, he should not be given his own decision-making staff in the first year to independently learn the case law of the Constitutional Court;
5. Before the plenary session, each judge should prepare his or her own written position, so that the draft of the reporting judge and his colleague should not be the starting point of the debate.

The strength of the proposal is that it accurately recognizes the **asymmetry between the legacy apparatus, the first draft and the new judge**. Its weak point is that the complete withdrawal of staff assistance in the first year may further increase the information backlog of the new judge, slow down the court, and do not solve the situation where the influence does not come from a personal colleague, but from the central case management and screening system.

Pokol's article entitled "The Sociological Observation of the Constitutional Court" **published in the 2014/3 issue**, as well as his later study in English, place the same problem in the sociology of the decision-making organization and the judicial apparatus.

3.2. Endre Orbán and Kinga Zakariás

Endre Orbán and Kinga Zakariás's study entitled "**The Role of Constitutional Court Staff in Hungary**" published in 2016 and its English version, "**Are Law Clerks a Latent Chamber of the Constitutional Court?**", in addition to the Hungarian system, it also provides an international typology. They are distinguished:

- staff assigned to the judge personally and working in the central pool;
- those appointed for fixed and indefinite terms;
- staff selected personally by the judge and recruited by competition;
- the roles of mere researcher, the author of the report and the writing of the entire draft;
- administrative filtering and substantive legal filtering.

The study also cites László Sólyom's concern: if a colleague participates in the deliberations or prepares the case too comprehensively, it may relieve the judge of the obligation to process the material independently and deeply. The essential requirement for Sólyom is that the judge does not only "approve" the position established by the professional apparatus, but actually knows and dominates the case.

3.3. Katalin Kelemen

Katalin Kelemen's work entitled **"The Decision-Making Process of European Constitutional Courts: A Comparative Perspective"** compares the entire decision-making process of European constitutional courts. It notes that practically all European constitutional courts employ legal staff, but that the status, selection and influence of staff varies greatly. Of particular importance are cases in which the Secretary-General or the Secretariat carries out the first screening, or where the staff member writes the report of the Judge-Rapporteur and the first draft of the decision.

One of Kelemen's important realizations is that in the constitutional courts of the new democracies, the staff were often not merely technical helpers, but in addition to the rapidly changing composition of the judiciary, they guarded the continuity of the institution in case law. This is both a stabilizing factor and a possible source of the apparatus' autonomy described by Hell.

3.4. Anne Sanders

Anne Sanders' 2020 study **"Judicial Assistants in Europe – A Comparative Analysis"** is one of the best European overviews. Sanders said a personal judicial cabinet would create a strong sense of trust and a clear accountability, but it could also create "little kingdoms" around judges. The central pool can provide a more uniform practice and more equal access to expertise, while at the same time increasing the risk of the development of a permanent professional bureaucracy that is partly independent of the judges of the day.

An important conclusion is that influence is not determined solely by a formal to-do list. The same rule, for example, that a colleague can "prepare a draft", can mean secretarial assistance in the case of a strong, actively controlling judge, but in the case of an overburdened or uncertain judge, it can mean the creation of a nearly independent decision text.

3.5. Toader, Safta and the 2016 Bucharest Comparison

The study "Judges and assistant-magistrates within constitutional courts" by **Tudorel Toader and Marieta Safta, as well as The Role of Assistant-Magistrates in the Jurisdiction of Constitutional Courts, edited by Augustin Zegrean and Mihaela-Senia Costinescu** (2016), present the institutional practice of 28 constitutional courts and the Court of Justice of the

European Union. The reports are particularly valuable in terms of the number, selection, location and responsibilities of the individual apparatuses.

According to the general recommendation of the volume, the Constitutional Courts should employ a number of highly qualified legal staff commensurate with the caseload. Staff may prepare admissibility reports and draft decisions, but the decision on the merits and the final declaration of inadmissibility must remain within the jurisdiction of the judiciary. The volume often relies on institutional self-descriptions, so it is a good source of formal operation rather than an independent empirical proof of informal influence.

3.6. CCJE Opinion No 22

Opinion 22 of the Consultative Council of European Judges of the Council of Europe (2019) is the most important normative document. Main Theses:

- judicial decision-making cannot be delegated;
- the judge must have effective knowledge of the facts and legal issues;
- the first draft should preferably be prepared on the basis of the judge's prior guidance;
- clearly define which tasks can be delegated;
- staff members must be selected in a transparent, merit-based procedure within the judiciary;
- a balance must be struck between the institutional memory resulting from long periods of service and the avoidance of excessive apparatus influence;
- rules on conflicts of interest, confidentiality and ethics.

4. European countries

4.1. Hungary

In Hungary, in addition to Pokol, Orbán and Zakariás, recollections and institutional analyses of the early operation of the Constitutional Court also indicate the dual role of substantive collaborators. In addition to the frequently changing judges of the Constitutional Court, the apparatus:

- preserves the internal coherence of previous decisions;
- it searches for the relevant Hungarian, German and Strasbourg precedents;
- helps to filter cases;
- draw up a note of the Judge-Rapporteur;
- to a greater or lesser extent in the writing of the first draft.

According to the Hungarian descriptions, the degree of decision-making influence depends to a large extent on the judge: some write themselves, some give detailed oral or written instructions, and some start from a draft developed by a colleague. Therefore, in the Hungarian system, it is not the existence of the employee in itself that is the decisive variable, but the instructions, the control and the actual revision of the draft.

Hell's peculiar package of solutions – a first-year moratorium on rapporteurs, a delay in its own staff, a preliminary written opinion of all judges – has not become a generally followed

European model. At the same time, the idea behind it, i.e. that the new judge **should not automatically inherit the interpretative framework of his predecessor's apparatus**, is reflected in the personnel rotation, joint selection and second lecturer solutions of several countries.

4.2. Germany: the debate of the "Third Senate"

The German Bundesverfassungsgericht is the most comprehensive example of this issue. According to the court's current official information, the 16 judges of the Constitutional Court are each supported by four scientific staff members – *wissenschaftliche Mitarbeiter*. These are usually professionals with several years of judicial or other legal experience, seconded for a fixed period of time. So it is not a question of a permanent central mass apparatus of young clerks, but mostly experienced lawyers assigned to the specific judge of the Constitutional Court.

The most important German authors and works:

- **Rüdiger Zuck:** "Der '3. Senat' des Bundesverfassungsgerichts" and his later, highly critical writings. Zuck criticizes the opaque influence of employees and *Dezernate*'s inadequate legislation.
- **Harald Klein:** "Der Dritte Senat am Bundesverfassungsgericht" – one of the classic elaborations of the concept of the "third Senate".
- **Joachim Wieland:** „The Role of the Legal Assistants at the German Federal Constitutional Court” – részletes intézményi leírás.
- **Otwin Massing:** discusses the staff apparatus as the "black box" of research.
- **Uwe Kranenpohl:** *Hinter dem Schleier des Beratungsgeheimnisses* – an empirical analysis of the decision-making and deliberation process.
- **Mayeul Hiéramente:** "Der 'Dritte Senat' des Bundesverfassungsgerichts" – another normative and liability investigation.
- **Vanessa Hellmann:** Modern institutional research on scientific staff at the Bundesverfassungsgericht.
- **Gertrude Lübke-Wolff:** *Beratungskulturen* – a comparative examination of the culture of board deliberation.

Kranenpohl's research was based on 30 anonymized interviews with active or former Constitutional Court judges. It can be seen from this that the report and draft of the staff member are extremely important, but the deliberative culture of the plenary session, the professional authority of the reporting judge and the control of the other judges usually prevent the staff member from becoming an independent decision-making centre.

Built-in solutions of the German model:

- the assignment of staff mostly for a fixed period;
- employing experienced judges and civil servants;
- personal judicial selection and management;
- judicial *dezernate according to* areas of law;
- lack of voting rights of the employee;
- the deliberation of the Senate and scrutiny by several judges.

The weak point of the model is that due to personal trust and the heavy workload, the employee's draft can strongly determine the position of the reporting judge even in the case of a fixed-term employment. Hellmann's recent research therefore nuances the polemical picture of the "third senate": the staff are significant contributors, but they do not formally or de facto form a unified decision-making body competing with the two senates.

4.3. France: the Secretary-General and the Central Legal Service

The French Conseil constitutionnel is particularly close to the state of emergency you described, because traditionally there is no personal legal cabinet next to each member; The Central Legal Service and the Secretary General play a prominent role in the preparation of decisions.

Alexandre Ciado 's 2008 study, '**Un acteur spécifique du procès constitutionnel: le secrétaire général du Conseil constitutionnel**', presents the Secretary-General as an institutional actor in its own right. The Secretary General participates in the coordination of the preparation of decisions, is present at the meeting, but does not vote. Because of his importance, he was also called the "tenth member" of the Conseil in French literature.

Laurence Gay's study, "**De la Cour suprême junior au dixième membre du Conseil constitutionnel. Le pouvoir des services et assistants juridiques...**", directly analyses the power of the services and legal staff. The advantage of the central apparatus is the support of a uniform language of judgment and collegiality; disadvantage is that judges may be dependent on a single institutional information channel in the absence of a personal professional apparatus.

Samy Benzina's 2020 study, "**L'article 56 de la Constitution et le droit constitutionnel**", links the composition and actual functioning of the Conseil. Benzina sharply formulates the problem in such a way that the danger is not necessarily that the legally less prepared member judges badly, but that **he does not judge** by relying on the services. In the system he examined, the five-member Central Legal Service prepared detailed notes and drafts, and personal clerks were not available to the members.

According to the official report of the Conseil in 2018, the legal memorandum of the Secretary-General analyses the case and possible solutions; the reporting member, the Secretary-General and the Legal Service work together to set the direction of the decision, and then the service contributes to the drafting of the text. An important counterbalance is that the other members can request or submit counter-drafts, *contre-projects*. The official reason for the central model is the uniformity of decisions and the fact that the employee does not serve the personal position of a single member exclusively.

The solutions that emerged in the French debate:

- strengthening the legal professional requirements of the members;
- providing personal staff in addition to the central service;
- institutional support for counter-drafts;
- greater publicity of the role of the Secretary-General and the Legal Service;

- the list of questions and the direction of the decision recorded in advance by the presenting member.

4.4. Italy: personal assistenti di studio

The Italian Corte costituzionale uses a more personal, judge-bound staff system. According to the official report of 2018, there were three academic staff members for each judge of the Constitutional Court, and four for the president. Among the staff were ordinary and administrative judges, university lecturers and other experienced lawyers; Their selection is mostly based on personal trust, not a general competition. Their tasks included processing admissibility issues, Italian and European law, the practice of the ECtHR and the CJEU, as well as foreign solutions, and preparing alternatives for decisions.

The main Italian works:

- **Adele Anzon:** "The study assistants of constitutional judges";
- **Barbara Randazzo:** "Behind the scenes of the Constitutional Court: study assistants";
- **Elisabetta Lamarque:** "Who are the study assistants of constitutional judges";
- **Alessandro Pizzorusso:** "From the 'speaker' to the 'editor'...";
- **Roberto Chieppa:** he wrote about the issue of authorship and signature of the resolution.

Lamarque criticizes in particular the limited publicity of informal selection and rules. The advantage of the Italian model is a clear personal responsibility relationship: a colleague follows the instructions of a judge directly. Its disadvantages are the selection of patrons, the different practices between cabinets and the fact that due to personal trust, it is difficult to check the actual impact of the employee from the outside.

4.5. Czech Republic

According to the study "The Constitutional Court of Czechia" by **David Kosař and Ladislav Vyhnánek**, three staff members worked in addition to each Czech constitutional judge during the period under review. The staff formed personal cabinets and prepared the first drafts of a significant number of resolutions. The authors consider the collaborators to be the "backbone" of the court, but do not conclude that the judges have become mere name-giving ghostwriters.

In addition to the personal cabinets, there is a separate analysis department dealing with EU law, the practice of the ECtHR, international and comparative law. This mixed system is interesting because the central unit provides the expertise available to all judges, while the draft of the case is prepared by the personal cabinet. The publication of the names of staff on the court website is one of the more transparent elements of the system.

The danger here is not the independence of a single central apparatus, but the fact that the individual judicial cabinets may become "mini-courts" that differ from each other. The antidote to this is the central analytical service, the plenary debate, the multiple checks of drafts and the disclosure of staff personal data.

4.6. Poland: important evidence to the contrary

Mauro Arturo Rivera León and Piotr Tuleja's study "**Informal Institutions in Judicial Decision-Making: A Study of the Polish Constitutional Tribunal (2012–2016)**", published in 2025, examined the informal decision-making processes of the Polish Constitutional Court based on judicial interviews. The interviewees unanimously stated that the staff did not exert significant influence on either the judicial deliberations or the formation of voting coalitions.

At the same time, the staff were involved in the drafting of the Judge-Rapporteur and their role was highly dependent on the judge in question. In significant cases, it happened that the judges held a preliminary deliberation before the preparation of the entire draft. This is an important solution against the anchor effect: the employee no longer starts from his own first interpretation, but from the judges' pre-established discussion framework.

The limitation of the research is that it primarily interviewed judges, not also colleagues in parallel. Judges may understandably tend to perceive their own decision-making autonomy as stronger. Nevertheless, the study is a serious counter-argument against all general theories according to which the permanent apparatus necessarily takes over the role of constitutional judges.

4.7. Russia

Aryna Dzmitryieva's 2017 study "**Case Selection in the Russian Constitutional Court: The Role of Legal Assistants**" is based on observations and interviews with judges and staff. According to the research, the secretariat exercises moderate but real agenda-setting power by filtering a large number of submissions. The staff decides which cases to recommend for judicial examination based on legal and organisational considerations. However, judges can review the screening and there are mechanisms in place to circumvent the secretarial route.

Ivan S. Grigoriev's study "**Law clerks as an instrument of court–government accommodation under autocracy**" approaches it from a different direction: the secretariat can act as an "insulating layer" to protect the court from politically risky cases and open conflicts. This points out that the influence of the apparatus can come not only from the expertise of the legal branch, but also from the political risk management of the institution.

4.8. Austria, Belgium, Romania, Slovenia, Croatia, Spain, Turkey and Serbia

The country reports of the 2016 comparative volume reveal several additional solutions.

Austria: According to a report by Stefan Leo Frank, legal advisers are among the most important professional interlocutors before a meeting, and therefore they can have a significant, albeit non-formal, influence on decisions.

Belgium: *référéndaires* operate on a more permanent service relationship and through competitive selection. This provides a strong institutional memory and professional independence, but increases the weight of permanent professional bureaucracy.

Romania: the assistant-magistrate can prepare reports and drafts, participate in the technical support of the meeting, and become formally visible by signing it. Signing increases transparency of responsibility and actual contribution.

Slovenia: the Central Legal Advice Department may carry out a pre-screening, but the inadmissibility is determined by a panel of three judges. This is one of the usable patterns of screening under judicial control.

Croatia: it is particularly interesting that the consultant can also submit a written internal dissenting opinion if he or she does not agree with the instructions of the judge-rapporteur. This does not give the staff the right to vote, but it makes the alternative legal position visible and weakens the monopoly position of the single draft.

Spain: *letrados* play a major role in legal research and drafting; the "ghost-writer" problem has also appeared in Spanish literature.

Turkey and Serbia: they prefer to use centralised or semi-centralised referential structures, which ensure continuity of screening and legal preparation with a high case backload.

4.9. The Court of Justice of the European Union

Michal Bobek's study "**Inside the Factory: Judges, Advocates-General, and Ghost-Writers**" examines the role of *référéndaires in the CJEU's personal cabinets of judges and advocates-general*. Activities range from background research and the drafting of memoranda to drafting a significant number of judgments or opinions of the Advocates-General. Since the authorship of judgments is collective, the identity of the actual author of the text is usually not visible. According to Bobek, the intellectual influence of the staff is undeniable, while it has been barely studied by the literature and the public for a long time.

This system is important for your thesis because CJEU judges have to deal with all branches of EU law, several legal systems and several working languages at the same time. Apparatus involvement is therefore functionally unavoidable; The question is how to keep professional assistance under judicial control and multiple control.

5. East and Southeast Asia

5.1. South Korea: the purest model of permanent expertise

The nine judges of the Constitutional Court of South Korea are assisted by so-called rapporteur judges, or Constitutional Court research judges, in Korean 헌법연구관. These are not simply newly graduated secretaries assigned to a judge. In the Korean system, a professional faculty with a longer service and a significant amount of expertise has emerged, which partly supports the entire court and partly specific judges or groups of cases.

A 2024 study by Eun Joo Chun, "**The Role of Rapporteur Judges in the Korean Constitutional Adjudication System**," analyzes both the benefits and risks of the system. The selection of research judges is not exclusively a personal decision of a single judge of the Constitutional Court; It also involves the court and senior research judges. The research judge is obliged and entitled to present an independent legal conclusion even if it differs from the preliminary opinion of the judge responsible for the case.

Its advantages:

- enduring expertise;
- stable institutional memory;
- the professional safety of the investigating judge;
- partial independence from the personal or political preferences of each judge;
- specialized constitutional law research.

Risks:

- the research judiciary may develop its own bureaucratic hierarchy and organisational culture;
- a judge of the Constitutional Court appointed for a shorter period of time may be at a disadvantage in terms of information;
- a ready-made apparatus position may deter a judge from expressing an uncertain or minority opinion;
- The autonomy of the body of initiative may gradually slip to the professional apparatus.

Hwanghee Lee's 2021 Korean-language study, "**Models of Judicial Assistants at Constitutional Courts,**" classifies systems along three axes:

1. short or long service time;
2. support for a single judge or the entire panel;
3. strong or weak judicial subordination.

According to Lee, long service accumulates expertise, but short service disseminates knowledge of the Constitutional Court more widely and reduces organizational rigidity. The personal model creates trust, the central model creates unity. Korea has essentially developed a longer-term, mixed personal and collegial, relatively independent expert model.

Korean solutions include:

- a joint, not merely personal, selection;
- recognition of the independent professional opinion of the research judge;
- distinguishing between research units assigned to cases and research units assigned to specialised law;
- the exclusive voting rights of judges;
- the organisational distribution of the expertise of the research judges.

At the same time, Korea clearly shows that independent professional opinion has a double edge: it can protect against the personal arbitrariness of the judge, but at the same time it can strengthen the constitutional bureaucracy that is partly separate from the judiciary.

5.2. Taiwan

Hong-Cheng Chang' s 2016 study "**The Sorcerers' Apprentices: A Comparative Study on Law Clerks at the U.S. Supreme Court and Taiwan Constitutional Court**" compares the U.S. and Taiwanese staff systems. The work analyzes separately:

- the choice between the staff member assigned to each judge of the Constitutional Court and the central pool;

- the appointment of research judges;
- the role of the staff in legal research, case processing and drafting;
- the problem of the "assistant justice", i.e. the employee who actually performs a judicial function.

Chang's criticism is partly the opposite of Pokol's. In his view, in Taiwan, the weakening of the staff personally assigned to the Constitutional Court Judge and the increase in the weight of the central pool and the seconded research judges may reduce the actual control of the Constitutional Court judge. As a solution, he suggests more personal colleagues and a stronger mentor-student relationship. The essence of the argument is that the personal cabinet of the judge can not only be a source of delegation, but also a tool of judicial autonomy against the central professional bureaucracy.

This clearly shows that there is no single organizational solution that can be applied everywhere. The personal cabinet may increase the power of the staff dependent on the judge, while the central pool may increase the institutional power that is partially independent of the court.

5.3. Japan: an important counterexample without a separate constitutional court

Japan does not have a specific constitutional court of the European type; the review of constitutionality is carried out by the Supreme Court, which is at the top of the ordinary judicial hierarchy. Still, a very significant professional background structure has emerged.

According to Masako Kamiya's study "**Chōsakan: Research Judges Toiling at the Stone Fortress**", in 2010 there were 37 research judges, *chōsakans*, working at the Supreme Court in Japan. Most of them were career judges with at least ten, or sometimes twenty years of judicial experience. They worked in civil, criminal and administrative case groups, usually returning to the ordinary court system after four or five years. They took notes, participated in the preparation of cases and supported judicial conferences.

David S. Law "**Why Has Judicial Review Failed in Japan?**" and "**The Anatomy of a Conservative Court**" highlight the staffing power of the judicial administration surrounding the Supreme Court and the General Secretariat. According to Law, a unified career judge bureaucracy can maintain a conservative, self-reproducing organizational culture by controlling staff promotion, secondments, and institutional resources.

Japan is therefore a strong counter-example to the assumption that apparatus influence is solely a consequence of a special constitutional court of the European type. **Even with a generalist supreme court, a strong professional bureaucracy consisting of career judges can be created.**

Solutions that emerge in Japanese literature:

- the limitation of the staff powers of the General Secretariat;
- the professional and social diversification of judicial appointments;
- greater publicity on the role of research judges;
- making the allocation of cases and the career system more transparent;

- Involving external professional perspectives.

5.4. Indonesia: initially a problem of too little substantive aid

According to a 2023 study by Rafsi Azzam Hibatullah Albar, Eugenia F. N. Siregar and Haekal Al Asyari entitled **"Nurturing Tomorrow's Jurists: Rethinking the Indonesian Constitutional Court's Clerkship System through a Comparative Lens"**, the Indonesian constitutional court clerk system has long played an administrative rather than substantive decision-making role. The authors called for the increase of the professional role of the staff, the institutionalization of legal research and drafting.

An internal Constitutional Court regulation in 2024 already defined the tasks of the expert board of directors such as:

- a deeper legal analysis of cases;
- drafting legal positions;
- coordinating case research;
- quality assurance of decision preparation.

Indonesia therefore shows the other side of the dilemma: without an apparatus or with an apparatus that is too weak, judges do not necessarily become more autonomous; It may happen that the professional quality, consistency and comparative legal basis of decisions deteriorate. The task ahead of the Indonesian system is to build judicial management, transparency and rotation guarantees in time in addition to the now strengthening professional apparatus.

5.5. Thailand, Cambodia, Myanmar and Mongolia: research gap

Eugénie Mérieau, Khemthong Tonsakulrungruang and more recently William J. Jones write in detail about the court's political role, party dissolution, judiciary and the problem of "lawfare". However, these works do not reveal the internal division of labor between judges, the secretariat and drafting lawyers in the same detail as German, French or Korean research.

In the case of Cambodia, Taing Ratana and other authors describe the history, powers and secretariat of the Constitutional Council, but there is little independent empirical data on the actual draft-shaping effect of the secretariat. In the case of Myanmar, Melissa Crouch examines the political and institutional role of the Constitutional Tribunal and constitutional dialogue, rather than the internal decision-making influence of legal staff.

The public organizational information of the Mongolian Constitutional Court indicates separate judicial assistants and a research center, but in the English-language literature I have identified, I have not found a study based on interviews, draft analysis, or participant observation on the actual decision-making influence of the apparatus, which is based on interviews, draft analysis, or participant observation. The existence of organizational units does not in itself prove either the lack of influence or its excessive extent.

There are probably three reasons for this lack of research in Southeast Asia: the secrecy of deliberations, the limited transparency of the institutions, and the fact that the literature was more concerned with the political interventions of the courts than with their internal working organization.

6. What institutional solutions emerge?

6.1. Not every judge has to be a full expert in all areas of law

The realistic goal is not individual omniscience, but **collective generalism**. Its elements are:

- appointing judges from different legal backgrounds;
- balancing experience as a judge, lawyer, academia and public administration;
- Presenter liability according to areas of law;
- periodic rotation of the performing areas;
- the effective participation of the entire body in the formation of constitutional standards.

Thus, specialization is not the opposite of the constitutional court, but can be its internal resource. The danger arises when specialization is concentrated exclusively in the apparatus instead of the body.

6.2. Regulating the integration of the new judge

The first annual moratorium on Hell is the most striking proposal, but more moderate solutions are also possible:

- the new judge should initially be a co-rapporteur rather than a sole rapporteur;
- do not automatically inherit the entire staff cabinet of your predecessor;
- select at least one staff member and receive one from the central system of the court;
- receive mandatory case law and institutional training in the first months;
- a second judge or second cabinet to draw up a memorandum of verification in its first important cases;
- the first position of the new judge should be recorded before the entire apparatus draft.

Completely excluding legacy staff can cause you to lose on-premises memory. Therefore, a temporary, dual team may be better: a former experienced colleague and a new lawyer selected by the judge.

6.3. Judicial guidance before the first draft

One of the strongest guarantees that follows from the CCJE's warning and Polish practice:

1. the reporting judge should first record the issues to be decided;
2. judges hold a preliminary debate on an important case without a draft;
3. only then should a detailed staff memorandum be prepared;

4. The entire draft decision is written on the basis of the judge's express guidance.

This does not prevent the colleague from indicating a different point of view, but it does prevent the judge's first encounter with the case from being a ready-made solution.

6.4. Breaking the monopoly of the single draft

The French counter-draft and the Croatian internal collaborators' counter-opinion are particularly valuable solutions. These can be improved versions:

- compulsory second reader;
- separate admissibility and substantive report;
- the simultaneous elaboration of a majority and a negative alternative in a significant case;
- precedent checking by the Central Research Department, independent of the rapporteur's cabinet;
- a secret internal "red team" that looks for the weakest points of the draft;
- archiving the written professional reservation of the employee.

The counter-opinion of the colleague cannot become a quasi-vote, but it can ensure that the reporting judge and the panel are aware of the serious alternative legal argument.

6.5. Mixed organisational model

Both the personal cabinet and the central pool carry risks.

Personal cabinet

Advantages:

- direct judicial control;
- trust;
- a clear chain of responsibility;
- judicial autonomy from the central bureaucracy.

Risk:

- "small kingdoms";
- ideological or personal identification;
- cabinets of different quality;
- excessive loyalty to the judge;
- informal patronage.

Central pool

Advantages:

- uniform professional standards;
- common institutional memory;

- equal access for all judges;
- more efficient specialization.

Risk:

- independent specialist bureaucracy;
- the socialization of the new judges in the apparatus;
- a single central channel of interpretation;
- the power of the Secretary-General or Head of Department.

The most balanced solution is usually the **mixed model**: a small personal cabinet next to each judge, and a research, comparative legal and linguistic service next to it, which serves the entire body but does not determine the outcome of cases alone.

6.6. Combining long and short periods of service

The long-term employee:

- knows precedents;
- fast;
- preserves institutional memory;
- it can resist the momentary arbitrariness of a judge.

At the same time:

- develop their own doctrinal preferences;
- it can survive a whole series of judges;
- informally determine "how the court is accustomed";
- he or she may acquire institutional authority independent of the new judge.

A short-term employee is less able to accumulate institutional power, but knowledge is lost with him, and due to his inexperience, he can rather follow the judge's preferences mechanically. The solution supported by CCJE is a combination of:

- a smaller permanent institutional nucleus;
- a larger staff of judges or other lawyers seconded for two to four years;
- assignments expiring at different times;
- limited automatic re-employment;
- For the new judge, it is a real say in the composition of his or her own cabinet.

6.7. Case screening should always remain under judicial control

The employee:

- classify the submission;
- identify gaps;
- you can look for a precedent;
- propose inadmissibility.

But for the final filtration it is necessary:

- the approval of one or more judges;
- the possibility of bypassing filtering;
- regular random judicial audit;
- public admissibility criteria;
- a clear distinction between recurrent cases and new constitutional issues;
- Statistics on how many staff screening recommendations are changed by judges.

The Slovenian three-member panel and the Russian judicial review facility are partial examples of this.

6.8. Employees should not vote, but this alone is not enough

The exclusion of voting rights is a necessary element of any system, but it does not solve the problem in itself. In fact, the decision can be strongly determined by those who:

- selects relevant facts;
- decides which precedents should be included in the record;
- drafts the first version of the operative part;
- after the plenary session, it rewrites the explanatory memorandum "technically";
- decides how to incorporate which judicial remarks.

Therefore, in addition to the formal voting monopoly, documented judicial instructions, multiple checks and traceability of amendments are needed.

6.9. Transparency and authorship trace

The following may be made public even if the secrecy of the meeting is maintained:

- the names and professional backgrounds of the employees;
- method of selection;
- length of service;
- personal or central position;
- the rules of staff duties;
- the conflict of interest regime;
- the number of staff in the apparatus;
- the principle of case allocation;
- who was the reporting judge and who was the judicial author of the decision.

In a stronger version, the decision may also indicate the substantive contributor, as the signature of the assistant-magistrate appears in certain systems. This is not necessary to classify the employee as a judge, but so that the actual contribution does not remain completely invisible. Italian criticisms of transparency, Czech name publicity and Romanian signatures offer different solutions.

6.10. Merit-based selection and ethical rules

It is not advisable to fill staff positions solely on the basis of personal acquaintances or political connections. Based on the recommendation of the CCJE, it is necessary:

- a public or at least documented application;
- professional criteria;
- the decisive role of the judiciary in the selection;
- a declaration of conflict of interest;
- managing lawyer, political and business relationships;
- confidentiality;
- regulating the immediate advocacy activity after the employee's job;
- professional pluralism.

Personal judicial trust is a legitimate selection criterion, but it cannot replace professional suitability and documentability.

6.11. Handling of the case load

The most important structural reason for the excessive power of the background apparatus is often not the weakness of judges, but the unprocessable case burden. Solutions:

- reasonable constitutional complaint acceptance conditions;
- shortened management of repetitive cases;
- judicial panels of three or five judges for obvious cases;
- maintaining a plenary session for precedent-setting issues;
- the automatic and administrative classification of submissions, but without an automated decision on the merits;
- more judges and an adequate number of staff;
- standardization of employee reports so that they also include counter-arguments as a must.

Reducing the number of staff members with the same case backlog does not necessarily increase judicial autonomy; it easily leads to a more superficial or delayed judgment.

7. In which countries is the literature that supports your thesis the strongest?

Directly supporting or very close to it

Hungary: Béla Pokol; Endre Orbán and Kinga Zakariás. The conflict between specialized lawyers, the new judge of the Constitutional Court and the inherited permanent apparatus is explicitly formulated.

Germany: Zuck, Klein, Wieland, Massing, Kranenpohl, Hellmann, Hiéramente. The "third senate", the drafting and the *Dezernat* issue are in focus, although recent research disputes the thesis of the replacement of the entire apparatus.

France: Ciaudo, Gay, Benzina. The main problem is the asymmetry between the central legal service, the Secretary-General and the legally heterogeneous Conseil.

CJEU: Bobek. The Separation of Actual Authorship and Formal Judicial Authorship.

South Korea: Chun and Lee. Advantages and bureaucratic autonomy of a permanent faculty of experts.

It shows a significant role as an apparatus, but not a complete substitute

Czech Republic: Kosař and Vyhnánek. The staff is the "backbone" of the court, they write many drafts, but the control of the judges remains.

Italy: Anzon, Randazzo, Lamarque. Strong personal assistant contribution, mainly with transparency and selection problems.

Russia: Dzmitryieva and Grigoriev. Agenda, screening and political "isolator" role.

Japan: Kamiya and Law. Strong career judge background bureaucracy without a separate constitutional court.

Taiwan: Chang. The balance of power between the central pool and the personal co-worker model.

The empirical result weakening the categorical thesis

Poland: Rivera, León and Tuleja. The judges examined did not attribute any significant deliberative or coalition-forming role to the staff, although they participated in the drafting of the draft.

Inadequate research

Thailand, Cambodia, Myanmar, Mongolia:

There is much more research on the political and constitutional role than on the decision-making of internal staff.

8. Selected, annotated bibliography

General and comparative works

1. **Béla Pokol:** "General judiciary versus specialized court system. About a dilemma of constitutional justice." *Journal of Legal Theory*, 2014/2, 226–243. Az The most direct formulation of your thesis and your specific proposals for reform.
2. **Béla Pokol:** "The Sociological Observation of the Constitutional Court." *Review of Legal Theory*, 2014/3. Organizational and sociological analysis of constitutional justice.

3. **Endre Orbán – Kinga Zakariás:** "The Role of the Constitutional Court's Substantive Staff in Hungary." *Constitutional Court Review*, 2016/2, 108–115. Hungarian Practice and International Organizational Typology.
4. **Endre Orbán – Kinga Zakariás:** "Are Law Clerks a Latent Chamber of the Constitutional Court?" In English, he discusses the Hungarian problem with the concept of "latent advice".
5. **Katalin Kelemen:** "The Decision-Making Process of European Constitutional Courts: A Comparative Perspective." A comprehensive comparison of the European decision-making process, Reporting Judges, Secretaries-General and staff.
6. **Anne Sanders:** "Judicial Assistants in Europe – A Comparative Analysis." *International Journal for Court Administration*, 11(3), 2020. The best comparative typology of personal cabinet, central pool, length of service, and influence.
7. **Tudorel Toader – Marieta Safta:** "Judges and assistant-magistrates within constitutional courts." *Constitutional Law Review*, 2/2016. Comparison based on country reports.
8. **Augustin Zegrean – Mihaela-Senia Costinescu eds.:** *The Role of Assistant-Magistrates in the Jurisdiction of Constitutional Courts*. Universul Juridic, 2016. Description of the practice of twenty-eight courts and the CJEU.
9. **CCJE Opinion No. 22 (2019):** *The Role of Judicial Assistants*. The most important European normative standard on delegation, selection, length of service and judicial responsibility.
10. **Nienke Holvast:** "The Power of the Judicial Assistant/Law Clerk." 2016. Empirical study of the actual influence of colleagues.
11. **Nienke Holvast – Peter Mascini:** "Is the Judge or the Clerk Making the Decision?" 2020. An examination of the first draft and the decision-making influence; It is not constitutional court, but it is important in its mechanism.
12. **Sally J. Kenney,** "Beyond Principals and Agents: Seeing Courts as Organizations by Comparing Référéndaires at the European Court of Justice and Law Clerks at the U.S. Supreme Court." 2000. Instead of the mere client-agent model, it offers an organizational sociological approach.

Germany

13. **Harald Klein:** "Der Dritte Senat am Bundesverfassungsgericht." 1984. Classic "Third Senate" analysis.
14. **Joachim Wieland:** "The Role of the Legal Assistants at the German Federal Constitutional Court." Institutional presentation of the role of the staff.
15. **Otwin Massing:** on the staff apparatus of the Bundesverfassungsgericht as a research "black box".
16. **Uwe Kranenpohl:** *Behind the Veil of Advisory Secrecy. The decision-making and decision-making process of the Federal Constitutional Court*. 2010. Harminc alkotmánybírói interjúra épülő döntésszociológiai monográfia.
17. **Mayeul Hiéramente:** "Der 'Dritte Senat' des Bundesverfassungsgerichts." *Zeitschrift für Rechtspolitik*, 2020. Modern critique of responsibility and transparency.
18. **Vanessa Hellmann:** studies and monograph on scientific staff at the Bundesverfassungsgericht. One of the latest, balanced German empirical treatments.

France and Italy

19. **Alexandre Ciaudo:** "A specific actor in the constitutional process: the secretary general of the Constitutional Council." *Revue française de droit constitutionnel*, 73, 2008.
20. **Laurence Gay:** "From the Junior Supreme Court to the tenth member of the Constitutional Council. The power of legal services and assistants..." 2016.
21. **Samy Benzina:** "Article 56 of the Constitution and Constitutional Law." *Revue de droit d'Assas*, 20, 2020, 37–52.
22. **Adele Anzon:** "Gli assistenti di studio dei giudici costituzionali." A classic analysis of the Italian co-worker system.
23. **Barbara Randazzo:** "Dietro le quinte della Corte costituzionale: gli assistenti di studio." About the background role of personal assistants.
24. **Elisabetta Lamarque:** "Chi sono gli assistenti di studio dei giudici costituzionali." In particular, the problem of selection and transparency.
25. **Alessandro Pizzorusso:** "Dal 'relatore' al 'redattore'..." On the relationship between the reporting judge and the actual decision-maker.

Central and Eastern Europe and the CJEU

26. **David Kosař – Ladislav Vyhnánek:** "The Constitutional Court of Czechia." 2020. Detailed decision-making and cabinet structure.
27. **Mauro Arturo Rivera León – Piotr Tuleja:** "Informal Institutions in Judicial Decision-Making: A Study of the Polish Constitutional Tribunal (2012–2016)." *European Constitutional Law Review*, 2025. An important counter-evidence against the general thesis of apparatus dominance.
28. **Aryna Dzmitryieva:** "Case Selection in the Russian Constitutional Court: The Role of Legal Assistants." *Laws*, 6(3), 2017. Observational and interview research on case screening.
29. **Ivan S. Grigoriev:** "Law clerks as an instrument of court–government accommodation under autocracy." *Post-Soviet Affairs*, 34(1), 2018, pp. 17–34. On the Political and Reputational "Isolator" Role of the Secretariat.
30. **Michal Bobek:** "Inside the Factory: Judges, Advocates-General, and Ghost-Writers." 2014. An actual drafting role of the CJEU's référendaire.

East and Southeast Asia

31. **Eun Joo Chun:** „The Role of Rapporteur Judges in the Korean Constitutional Adjudication System.” *Journal of Korean Law*, 23(1), 2024, 77–100. A koreai permanens kutatóbírói kar eddigi egyik legrészletesebb elemzése.
32. **Hwanghee Lee:** "Models of Judicial Assistants at Constitutional Courts." *Public Law*, 49(4), 2021, pp. 81–109. Korean Language, Three-Dimensional Comparative Typology.
33. **Hong-Cheng Chang:** „The Sorcerers’ Apprentices: A Comparative Study on Law Clerks at the U.S. Supreme Court and Taiwan Constitutional Court.” *National Taiwan University Law Journal*, 45(2), 2016, 501–607. A személyes és központi munkatársi modell összehasonlítása.
34. **Masako Kamiya:** „Chōsakan: Research Judges Toiling at the Stone Fortress.” *Washington University Law Review*, 88, 2011, 1601–1629. A japán Supreme Court tapasztalt kutatóbíráiról.

35. **David S. Law:** "Why Has Judicial Review Failed in Japan?" *Washington University Law Review*, 88, 2011. An analysis of the Japanese judicial administration and conservative organizational culture.
36. **Rafsi Azzam Hibatullah Albar – Eugenia F. N. Siregar – Haekal Al Asyari:** „Nurturing Tomorrow’s Jurists: Rethinking the Indonesian Constitutional Court’s Clerkship System through a Comparative Lens.” *Journal of Indonesian Legal Studies*, 8(2), 2023. Az indonéz rendszer szakmai megerősítését szorgalmazó tanulmány.

Final Verdict

Based on the comparative literature, the dilemma you raised **is real, but it is not a necessary and equal consequence of the European constitutional courts**. The decisive variable is not simply the specialization of civil law law. The risk of apparatus dominance is greatest if it is simultaneously fulfilled that:

- Judges of the Constitutional Court arrive for shorter periods of time and have little institutional experience;
- staff remain permanently in court;
- a central apparatus filters the cases;
- the same apparatus prepares the first substantive position and the first draft;
- judges do not discuss the case before drafting it;
- no second memorandum or counter-draft;
- because of the caseload, judges are unable to process the file independently;
- The selection and contribution of employees is invisible.

Therefore, the best solution is not to abolish the specialized apparatus. The modern constitutional court could hardly function properly without the help of experts due to the combined treatment of EU law, ECtHR law, international law, economic regulation, technology and all domestic branches of law. The appropriate model **is judge-led, transparent, debatable and multi-channel peer support**:

- mixed personal and central apparatus;
- combination of long and short service times;
- prior judicial guidance;
- second reading and counter-draft;
- case screening under judicial control;
- public selection and conflict of interest rules;
- documented, actual judicial responsibility.

Thus, the real dividing line is not between the American "generalist judge" and the European "specialist lawyer", but between the **professional help dominated by the judge** and the **apparatus with its own monopoly on information, filtering and textual creation**.

You are right that **I did not process Béla Pokol's relevant work in accordance with its weight, in an independent author's block.** However, I did not leave it out literally: in the previous answer, I described separately the "**General Court versus Specialized Court System. On a Dilemma of the Constitutional Court**" in 2014, and I also mentioned his article entitled "**The Sociological Observation of the Constitutional Court**". I have returned to it again in several later sections, in the context of Hungary, the comparison of countries, the proposals for reforms, and the bibliography.

The justified feeling of absence is probably caused by the fact that I placed Pokol only as one of the important authors in the international field, even though **he is the most direct and comprehensive theoretical formulator of the problem you formulate.** I didn't separate it enough:

- Pokol's general thesis on the division of the legal profession into professional law;
- his statement about the asymmetry of knowledge between the judges of the Constitutional Court and the permanent decision-making apparatus;
- his own observations on the operation of the Hungarian Constitutional Court;
- and concrete reform proposals.

What is the specific and original thesis of Hell?

Pokol is not simply claiming that legal staff influence judges. This is also examined in the American law clerk literature, the German "third senate" debate, or works on the role of the French Secretary General. His argument is more comprehensive.

Its starting point is that in modern continental legal systems, the legal profession **has been divided into specialized sub-systems.** Criminal lawyers, civilians, labour lawyers, tax lawyers or administrative lawyers usually acquire in-depth knowledge in a narrower field during their long career. However, the decision of the Constitutional Court may affect all branches of law, therefore, in his opinion, the constitutional court is necessarily **a general court.**

From this comes structural tension:

The judge of the Constitutional Court, who was elected by the parliament for nine or twelve years and previously worked as a specialist lawyer, will be assigned to an apparatus whose members have been familiar with the precedents of the Constitutional Court, the internal decision-making habits and the individual case groups for a long time.

According to Pokol, this way, the formal decision-making power of the judge and the actual information power of the colleague can be separated. The employee:

- selects relevant precedents;
- defines the framework of the legal issue;
- Prepare the first record;
- often also writes the draft resolution;
- is aware of the Board's previous, sometimes unspoken compromises;
- and may have a longer institutional memory than the newly elected judge.

Pokol's strongest claim is therefore that in extreme cases, **the formal relationship of subordination can be reversed**: it is not simply the judge who makes use of the expertise of the colleague, but the colleague gives his or her professional position to the position of a decision-maker through the constitutional position of the judge.

Pokol's Reform Proposals

In the previous answer, I listed them, but I did not explain the connection between them sufficiently.

1. Increase in the proportion of high court judges

According to Pokol, the body of judges of the Constitutional Court should include a greater proportion of people who previously participated in collegiate decision-making covering several areas of law as high court judges. A university professor may be an outstanding specialist lawyer in his or her own right, but this does not necessarily mean that he or she has the judicial experience necessary to handle a large amount of heterogeneous case material.

This proposal does not mean the exclusion of university lawyers, but the functional balancing of the composition of the body.

2. Decrees, i.e. case allocation adapted to the professional profile

The assignment of rapporteurs in cases should be partly adapted to the judges' previous experience in professional law. A judge of the Constitutional Court with a criminal law background would be given criminal proceedings more often, a civil judge would receive cases of property law or private law, and an administrative judge would receive administrative and official cases.

This does not eliminate the generalist responsibility of the entire body, but it reduces the risk that even the reporting judge will be completely dependent on the expertise of the apparatus.

3. The first annual moratorium on the referencing of the new judge of the Constitutional Court

One of Pokol's most original proposals is that the newly elected judge of the Constitutional Court should not be given independent rapporteurs in the first period. First, learn:

- the dogmatics of the Constitutional Court;
- the structure of the decisions;
- the internal debate culture of the Board;
- previous precedents;
- and the constitutional connections of the various branches of law.

The aim is that the new judge does not immediately learn the operation of the institution through cases prepared by the apparatus, because in this case the interpretative schemes of the apparatus can determine his thinking from the very beginning.

4. Delayed provision of your own employee

According to Pokol's more radical suggestion, the new judge will initially study the previous case law without his or her own decision-making staff. The aim of this is to develop an independent thinking of the judges of the Constitutional Court.

This proposal is debatable. Withdrawing assistance completely does not necessarily make the judge more autonomous; informational disadvantage. Institutionally, it would probably be a better compromise:

- limited initial case load;
- a co-presenter system;
- an experienced employee, but not automatically inherited from the predecessor;
- and compulsory independent precedent study in the first months.

However, the recognition of Pokol is still important: **the staff cabinet inherited from his predecessor can impose doctrinal continuity on the new judge in addition to institutional continuity.**

5. Preliminary written opinion of all judges of the Constitutional Court

Pokol also suggests that not only the draft of the reporting judge should be available before the plenary debate. The other judges should also prepare a short, independent written statement.

This is to break the so-called anchor effect. If everyone first reads the entire draft prepared by the Judge-Rapporteur – in fact, often by the Assistant Judge-Rapporteur – the debate necessarily starts within its conceptual framework. Even the dissenting opinion is mostly formulated in relation to the finished draft.

A preliminary position of their own would force judges to:

- independently identify the decisive constitutional issue;
- not rely solely on the precedents chosen by the draft;
- and to form at least a provisional opinion before the deliberation.

This is probably the strongest practical consequence of Pokol's problem diagnosis.

What I really missed

The previous analysis was deficient in three respects.

First, I have not independently reconstructed Pokol's entire chain of arguments:

specialisation in the legal branch → the divergence between the generalist task of the judge of the Constitutional Court and individual expertise → information dependency → the institutional superiority of the permanent apparatus → the danger of the separation of formal and actual decision-making.

Secondly, I did not sufficiently separate the theorem of Pokol from the general law clerk literature. In the case of Pokol, it is not only a problem of work organization or client-agent,

but **of a constitutional judicial contradiction arising from the professional structure of the continental legal system.**

Third, I have not examined in detail the possible criticisms and empirical justification of Pokol's thesis. The most important of these are:

1. The American Supreme Court is not without apparatus either; There, too, there is a significant law clerk influence.
2. American judges are not specialists in all areas of law, and the federal judiciary is not completely unspecialized.
3. The generalism of the Constitutional Court can be collective, it is not necessary for each judge to be an individual expert in all branches of law.
4. The permanent apparatus is not only a threat to power, but also a source of institutional memory and consistency.
5. In order to prove the actual dominance of the apparatus, it is necessary to compare internal drafts, interviews, case allocation data and text versions; The mere length of service of employees does not automatically mean that "they decide".

So the exact wording is that **I did not omit Pokol, but I did not make it clear enough: the theoretical core of your question was formulated by Béla Pokol the most among the authors examined.** In the previous answer, I should have presented this as a central thesis, not as one of many authors.