

“THE PORTRAIT OF A JUDGE” – A MULTI-DIMENSIONAL MODEL OF COMPETENCIES TO BE MEASURED DURING
THE PROCEDURES OF SELECTION, EVALUATION AND PROMOTION OF JUDGES

**Comparative analysis on selection, evaluation and promotion of judges:
current criteria and methodology used in EU and beyond**

REPORT

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A. Executive summary

The comparative research confirms the existence of a multitude of approaches related to selection, evaluation and promotion of judges in EU countries and abroad. The differences and concrete models depend on the legal culture, tradition of each country and they need for reforms. No framework is developed until now which would allow the easy comparison of various approaches and singling out of the most promising good practices.

Some general standards and principles for the selection, evaluation and promotion of judges are developed (accepted) by relevant international bodies: Council of Europe and Consultative Council of European Judges (CCJE) under its umbrella, European Commission for Democracy Through Law (hereinafter – the Venice Commission), Organization for Security and Co-operation in Europe Office for Democratic Institutions and Human Rights (hereinafter – ODHIR) and European Network of Councils for the Judiciary (hereinafter – ENCJ).

The main international standards and principles could be summarized as such:

- The international standards strongly advocate for depoliticization of the processes of selection, appointment, evaluation and promotion of judges. In order to achieve this goal, main principles of each of the abovementioned procedures have to be established on the level of primary legislation. The selection and career of judges should be based on objective criteria pre-established by law or by competent authorities. The substantive and procedural rules should also be established and published publicly;

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- The criteria should be based on merit, having regard to the qualifications, skills and capacity required for the adjudication of cases by applying the law;
- The principle of the independence of judges must be ensured in all procedures;
- The selection, evaluation and promotion of judges should be either entirely in the hands of an independent body comprised fully or in significant part from the judiciary (Judicial Council) chosen by its peers for a fixed term, or this body should play a significant or decisive role in these processes;
- The procedures followed by the independent authority should be transparent and the reasons for the decisions made should be provided;
- Selection, evaluation and promotion should be carried out in a manner that does not discriminate the candidates. The decision on the selection (and evaluation) of judges should be free from the considerations outside their professional competence. Disability of a candidate, when it does not affect the candidate’s capacity to perform judicial duties, should not be considered as an impediment.
- There is the need to ensure the diversity in the judiciary, meaning that in general, the composition of the judiciary should reflect the composition of the population as a whole. Underrepresented groups should be encouraged to acquire the necessary qualifications for becoming a judge.
- As far as evaluation of judges is concerned, international bodies tend to lean towards the promotion of informal evaluation. In instances, when the evaluation of judge is carried out in a formal manner, it should be based on objective, clearly defined criteria, known in advance, and should together with the possible consequences of the evaluation be set out in the primary regulation. Peer-review based evaluation is advocated for, the right to provide the view (opinion) of a judge both on his/her activities and their evaluation should be provided. A possibility to contest the decision of the evaluation (in a formal evaluation system) should be ensured.

The main findings from the comparative research of various European countries show that despite the variety of the approaches there is the clear tendency in countries undergoing the reform in the area of the judiciary towards transparency and ensuring the principle of non-discrimination;

General conclusion regarding the legal framework on the selection, evaluation and promotion of judges is that in countries which recently undergone or are undergoing through judiciary reforms there is tendency to set very high and very detailed requirements (criteria) for the selection, evaluation and promotion of judges but lesser focus is on the methodology how to check these requirements. The attention to requirements but on the methodology can cause doubts about the objectivity of the procedures. Therefore the focus of the future research should be on the concrete methodologies and tools allowing to understand how the decisions are being made whether a person corresponds to these detailed requirements (e.g. how the “integrity” is being measured and how to ensure that these procedures are transparent and non-discriminatory in nature);

It is important to ensure the high level of perceived fairness of the persons undergoing through the selection, evaluation and promotion of judges procedures. Otherwise people can be deterred from participating at lengthy and not as fair understood procedures which will cause the smaller pool of candidates to be chosen from;

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In order to increase the level of objectiveness and eliminate conscious or/and unconscious biases the subjects involved in the decision making procedures of selection, evaluation and promotion of judges need to undergo specific trainings on how to conduct these procedure in a fair, transparent and non-discriminatory way, based on merits and quality information; There are 3 models of acquisition of (access to) a professional place of judge in European states, specifically:

1st model: This is candidacy to a place of judge based on many years of professional activity in other legal professions. It is applied in England, Ireland, Wales and Malta. In this sense, it is required from a future judge to work some number of years (e.g. at least 7 years as an attorney-at-law);

2nd model: The so called competition one, when the procedure is based on competition examinations organized by a certain body after fulfilment of the organized training. The system is applied for example in Spain, Austria and Romania. In some countries it is also necessary to undergo an internship at a court (at least 5 months in Austria, and preparation period of 4 years);

3rd model: So called mixed model, which is based on competition examination on one part and also on other legal practice on the other part. This applies in Germany, Netherlands, Portugal, Slovakia, Poland and Czech Republic;

Selection of candidates for judicial office should be based on objective criteria, pre-established by law or by independent judicial authorities. The criteria should be based on merit, having regard to the qualifications, skills and capacity, required for the adjudication of cases by applying the law. The substantive and procedural rules of the selection should also be clearly established and publicly available. The weight of the criteria or different stages of selection procedure towards the final result should be clear to the candidates. Selection should entail transparent procedures and reasons for the decisions taken should be provided. Both a competitive examination and hiring of experience lawyers are regarded as possible selection methods. An interview is a desirable tool in an overall selection process. A possibility to challenge the decision of a selection body should be available;

The countries differ widely in their approach regarding the evaluation of judges: from the almost non-existent formal procedures (informal approach) (e.g. Scandinavian countries) up to extremely formal approach with very detailed technocratic procedures (e.g. Ukraine, also Lithuania). In some countries the results of formal evaluation define the carrier of a judge and can bear sanctions (negative evaluation can result in initiating the procedures of dismissal from office etc., in countries reforming their judicial systems and combating corruption). There is also an emerging hybrid model with the tendency towards formalization procedures but ensuring that the results can be used only for encouraging the judge to better fulfill her/his role. Despite their differences all these approaches are legitimate and their use is based on the traditions, culture of the concrete country and trust relationships between judiciary and other branches of powers. Non-formal evaluation approach allows the flexibility and effectiveness of procedures, but does not offer any safeguards against misuse of powers and provides no solution how to deal if someone is not playing according the rules therefore it is not recommended for countries aiming to fight the possible corruption and misuse of offices in their countries. On the other hand, too lengthy and complicated procedures are contra productive: they narrow the pool of potential candidates, make the profession not attractive and can cause unwanted delays in the procedures. Therefore as the most promising up to date approach would be to strike the balance between the transparency and effectiveness of the procedures in combining the setting of clear criteria with the methodology how to check

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them. Too lengthy procedures are contra productive: they narrow the pool of potential candidates and make the profession not attractive.

Comparative research shows that countries aiming at transparency have formed variety of criteria for judges which are used sometimes only in selection procedures, sometimes in both: selection and evaluation or also in promotion and could be summarised and assigned to these categories:

- professional competence (capacity to write reasoned decisions, ability to properly conduct court proceedings etc.),
- personal competence (ability to decide, to work under stress, openness to new technologies etc.),
- social and communication competences (ability to mediate, respect for parties, ability to lead, ability to explain one selves etc.)
- integrity competence (ability to resist undue influence, respect of professional ethics etc.) and
- other optional sets of competencies. (e.g. social engagement of a judge, learning agility).

Most of the countries acknowledge the importance of the soft competences in selection and evaluation of judges. Among practices to be considered as progressive and addressing society's expectations from judges the Dutch approach towards essential (circumstances) as a part of competences and skills to be assessed. Among the essential circumstances, awareness of the environment should be emphasized as an example to be considered in development of competence model. Awareness of the environment means that a candidate observes social developments and forms his/her own understanding relevant in the context of judicial activities; seeks familiar, new and contradictory information and diverse perspectives that may influence decision and process of deciding; is aware of the influence of differences and the background of the parties.

As example of innovative modern requirement few skills are identified: social engagement of a judge, which may be seen from the participation in various social activities (for example volunteering), but also from the interest of the person to follow the current trends (events): reading the news portals, listening to the news, other and Learning agility esp. for the candidates to the managerial positions, but also for ordinary judges ((ability to constantly develop qualifications, being aware of innovations and developments in society); good skills of IT (it is not a choice anymore, it is a must, which became obvious in pandemic situation, when online solutions for justice administration became vital).

With regard to the systems of promotion to leadership, there are several approaches: no specific criteria and competence assessment (e. g. Estonia, Spain, Scandinavian countries); basic criteria and tools of assessment (e. g. the Netherlands, Finland); precise criteria, methodology and procedure (e. g. Latvia, Kosovo, Lithuania). Also, there is an example of election vs selection of chairpersons of the courts (Ukraine), which could be criticized for the lack of objective assessment of candidate's competences; possible pressure and favouritism, reluctance in taking „unpopular”, though necessary decisions, etc.

Regarding the promotion of judges applying to a higher court and (or) managerial (leadership) positions the clear promotion procedures and criteria should be set and known in advance. In addition to the qualifications for ordinary judges seeking career, the capacity to lead, to manage and organize the activities of the court may be regarded as a proper requirement, when choosing the president of the court. It is nonetheless important to take into account that

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a person who is a first-time-candidate for a president of the will not have had the opportunity to show his or her managerial abilities.

In addition the abovementioned competences, the developments in modern world have brought specific requirements for the leaders of courts, as for example: strong performance and decision-making in critical situations (pandemic situation has revealed shortcomings in this area, when courts had to find the best possible solutions in order to ensure access to justice in critical environment); ability to introduce necessary measures for ensuring mental health of judges and employees; understanding and introduction of the policies of equality, diversity, inclusion.

Alongside with the system of recruitment of judges, which ensures the selection of the best candidates with the best qualities, not less important is to establish the system of monitoring of judges' performance and development of skills in order to help a judge to encounter risks (including psychological burnt-out, etc.), shortcomings and to take measures to manage the risks and to improve performance. For this, the effective regular evaluation of judges performance is necessary.

Manner in which criteria for judicial excellence are assessed differs widely throughout the European countries, with most states assigning ratings for the evaluated judges, some use grades ('very good', 'good', 'sufficient' and 'insufficient' or A, B, C) or a productivity factor through percental comparison to the performance of other judges is determined. Various methods (procedures) for carrying out evaluation may be used ranging from self-assessment, a more or less formal interview with an evaluator, taking into account the observations of colleagues, to formal, regular inspections.

In Scandinavian countries there are no formalized or 'advanced practices' making use of psychological testing, specific methods for integrity check, conclusion of court president about the quality of the judge's performance and procedural communication, questionnaires of peers and court staff on judge's daily communication and behavior, specific software, e-tools, facilitating the process. The interviews of applicants and referees may serve some of the same purposes. Expert findings and recommendations on the best practices and main aspects mainly relate to the need for establishing guarantees for the independence of the appointments process. It is of paramount importance that the procedures and criteria maintain and support this principle.

In systems aiming at improving the judges capacities via the evaluation the references (peer to peer evaluation) could be seen as a valuable tool as the referees are requested to list both – the good qualities and the points of attention of a judge based on the concrete examples from the evaluation period. It is significant that these reviews are carried out relatively often – at least every year and are informal as much as possible in nature. The referees should undergone trainings on how to deliver the feedback in a most acceptable way.

As good practice example singled out are the use of professionals for measuring the „personality“ of a judge. The results should be only of recommended character. (Netherlands, Lithuania – project); ensuring the transparency not only for the candidates but also for the civil society by providing publicly the main information; Trainings for the persons who are involved in the selection, evaluation and promotion of judges based on practical guidelines illustrating the problems with the examples. As a good practice example see the Netherlands, where

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there is a relatively small size and the manner of functioning of the National Selection Committee, which allows its members to gain more experience in selecting the future judges and councilors. The appointed members are trained and the manner of composition of the Committee allows the transfer of knowledge with former selectors acting as deputy selectors.

The specific tools used in the selection, evaluation and promotion procedures need to be described with more clarity and the potential candidates should be aware of them (this ensures the possibility to plan one's career moves): e.g. how the analytical thinking capacity will be checked, how the integrity test will be done (for example, both as a presentation of the certificate of conduct and as a reservation to google the candidate), if the procedure of interview with the psychologist or personality assessment through tests will be used etc.

Based on the concluded comparative analysis, three countries were chosen for consideration to arrange study visits in order to check how the selected approaches of selection, evaluation and promotion of judges are working in practice: The Netherlands as example of very innovative, balanced and up to date system, Estonia as example of more informal approach and the Slovak Republic as one of the most detailed and, apparently, the most transparent system of selection and evaluation of judges in Central European region. This Report will be updated after the study visits with the practical insights.

B. Methodology of comparative analysis

Project experts conducted the comparative analysis using the variety of social research methods: field research, secondary data analysis, surveys, interviews. The primary results were presented during the international conference and adjusted based on additional information and insights from the scientific discussions.

After studying the primary material it was decided to cover the whole European region by conducting the in-depth analysis of selected countries from each geographical region: Baltic (Lithuania, Latvia, Estonia), Scandinavian, Balkan (Albania, Kosovo, North Macedonia), Central Europe (Czech Republic, Poland, Slovakia) and Western Europe (Germany, Spain and Netherlands) and Ukraine as example of the country outside EU where currently a lot of reforms in the analysed area are happening and additionally looking for examples of good practices in other chosen countries which will serve as material for generating final conclusions on the best practices approach (see Chapter C6. “Additional comparative analysis on selected countries” covering various aspects related to Austria, Belgium, France, Croatia, Italy, G. Britain and Slovenia).

This report will be adjusted after conducting the study (fact-findings) tours in selected countries.

It should be noted that the legal frameworks analysed rarely were available in an authoritative English language version. Unofficial translations were relied upon whenever available, to the extent that their suggested translations truly reflect the semantic meaning of the authoritative text. Where needed the competent persons in the analysed countries were contacted for checking the accuracy of the information. For the purpose of this report (identification of status quo in the selection, evaluation and promotion of judges and identification of the best practices for the future) the minor legal details are not of significance

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the focus being laid on the identification (from the practical point of view) of criteria, methodologies and tools used in the selection, evaluation and promotion of judges.

C. Comparative analysis

1. Selection, evaluation and promotion of judges: general legislative framework and competent authorities

1.1 International standards, principles and recommendations

Standards and principles for the selection, evaluation and promotion of judges developed (accepted) by relevant international bodies, either in the form of general recommendations or as a response to the legislative changes in a particular country serve as a solid background for the comparative analysis and comparison of the mechanisms enacted in particular countries. Thus, first we aim to provide an overview of the standards set out in the selected instruments/acts of Council of Europe and Consultative Council of European Judges (CCJE) under its umbrella, European Commission for Democracy Through Law (hereinafter – the Venice Commission), Organization for Security and Co-operation in Europe Office for Democratic Institutions and Human Rights (hereinafter – ODHIR) and European Network of Councils for the Judiciary (hereinafter – ENCJ).

The principles concerning selection (appointment), evaluation and promotion of judges are considered as the principles ensuring the independence of the judiciary. The right to have access to an independent and impartial judiciary is guaranteed under the right to a fair trial, enshrined in the European Convention on Human Rights (ECHR) Article 6. Judicial independence should not be regarded as a prerogative or privilege but is an essential element of a democratic state and a pre-condition of the rule of law¹. Political involvement in the selection and appointment procedure could be endangering, therefore, it is recommended that the main principles regulating the procedure of selection (appointment) would be set out in the **Constitution**².

The standard, concerning the regulatory framework for selection, evaluation and promotion of judges, set out by various international bodies indicates that the main criteria (and steps of procedure) for the selection, evaluation and promotion of judges should be **set out in primary legislation**³ and may be **further detailed in the regulations (by-laws) of an independent judicial authority** (usually an independent Judicial Council or a specific commission (committee) therein)⁴.

¹ See CDL-AD(2017)002, Amicus Curiae Brief for the Constitutional Court of Moldova on the Criminal liability of judges, §16.

² See CDL-AD(2010)004, Report on the Independence of the Judicial System Part I: The Independence of Judges, §22; CDL-AD(2019)003, Opinion on the proposed revision of the Constitution of Luxembourg, §106; CDL-AD(2007)028, Report on Judicial Appointments by the Venice Commission, §§2-3, 59 and 12-17.

³ Explanatory memorandum to CM/Rec(2010)12, para 49.

⁴ See CDL-AD(2009)023, Opinion on the Draft Criteria and Standards for the Election of Judges and Court Presidents of Serbia, §12.

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Competent authorities. Venice Commission acknowledges the existence of a multitude of systems related to the appointing bodies and their involvement in the appointment of judges. The international standards are clearly in favor of depoliticisation of these processes, yet no single model, ideally in line with the principle of separation of powers, is singled out as models vary greatly throughout the legal systems and countries. Even more, there may be different models in the same country depending on the type of judge to be appointed.⁵

In general, the recommendations of various international bodies stress that the selection, evaluation and promotion of judges should be either entirely in the hands of an **independent body comprised fully or in significant part from the judiciary (Judicial Council)** chosen by its peers for a fixed term⁶, or this body should play a significant or decisive role in these processes⁷. Therefore, the main principles of the composition of Judicial Council (appointment and (or) election) should be set out in the primary legislation⁸ or even in the constitution⁹.

Composition of the independent authority. One of the fundamental principles, entrenched in various recommendations, is that independent authority (or a large portion of it) should be constituted from judges, elected by their peers, including the chairperson¹⁰. Some of the recommendations go a step further and provide for non-judicial members of the council as well. A participation of law professors and members of the bar is viewed as desirable and as means to promote greater transparency and inclusiveness. On the other hand, prosecutors and members of other law enforcement agencies should be excluded (barred) from the authority¹¹.

Composition of the judicial council should ensure the widest possible representation¹² and be comprised in a manner aimed at ensuring gender balance, geographical balance and balance on the hierarchical level¹³. Judges from the first tier of courts should also be represented in the judicial council¹⁴.

In instances, when an independent authority sets up **commissions or committees** tasked with the selection and (or) evaluation of judges, their members should be appointed by the Judicial Council from the ranks of judiciary, but the inclusion of other professional groups (such as attorneys and law professors) is also desired¹⁵. The term of such commission or

⁵ See CDL-AD(2007)028, Report on Judicial Appointments by the Venice Commission, §§2-3, 59 and 12-17.

⁶ Council of Europe Recommendation CM/Rec(2010)12 ‘Judges: independence, efficiency and responsibilities’ (hereinafter – CM/Rec(2010)12), para. 46, Explanatory memorandum to CM/Rec(2010)12, para 51.

⁷ CDL-AD(2007)028, Report on Judicial Appointments by the Venice Commission, §§23 and 25.

⁸ See CDL-AD(2011)019, Opinion on the introduction of changes to the constitutional law ‘on the status of judges’ of Kyrgyzstan, §31.

⁹ See CDL-AD(2005)003, Joint opinion on a proposal for a constitutional law on the changes and amendments to the Constitution of Georgia by the Venice Commission and OSCE/ ODIHR, §102.

¹⁰ Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia, by ODIHR and Max Planck Minerva Research Group on Judicial Independence (further referred to as ODIHR Kyiv Recommendations), para. 7.

¹¹ *Ibid.*

¹² CM/Rec(2010)12, para. 48.

¹³ Explanatory memorandum to CM/Rec(2010)12, para 53.

¹⁴ ODIHR Kyiv Recommendations, para. 7.

¹⁵ There also are certain specific criteria concerning the composition of the independent authorities, which are voiced in some recommendations, but not reiterated in others. For example, in one of the documents it is noted that in instances, when a chairperson of a court is appointed as a member of the

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committees should also be fixed and prescribed either in primary or in the detailing regulations, they should be accountable towards the public¹⁶.

The **procedures** followed by the independent authority should be **transparent** and the **reasons for the decisions made should be provided**¹⁷.

Judicial selection models in which the **executive branch of the government** has a strong influence over the judicial appointments also exist. Although such a model may work well in older democracies, where the executive is restrained by legal culture and traditions¹⁸, **appointment of all tiers of judges by the executive** (e. g. president of the state or monarch) **and even more by legislative branch** (e. g. parliament of specific body therein) of government is viewed as problematic, albeit not necessarily incompatible with the principle of judicial independence at the outset.

The most important issue to consider in such models is the extent to which an appointing authority is free to decide on the appointment. Venice Commission notes that in the parliamentary systems, where the executive (president or monarch) is relatively withdrawn from the politics and acts in a formal manner, the influence is to be regarded less of a danger for the judicial independence¹⁹. Anyhow, an independent judicial authority should play a relevant (significant) role in the selection and appointment processes in such models. A significant role, for example, is regarded, when the appointing authority would be either bound by the proposal of the judicial council or follow them in practice²⁰; i. e. acting in a merely ceremonial manner of formalizing the decision of the council²¹. When a final appointment is made by the president of the state, his or her discretion should be limited to the candidates nominated by the selection body. The proposals of the judicial council should only be rejected in exceptional circumstances²² and refusal to nominate the candidate should be limited to procedural grounds and be motivated (reasoned)²³. Any involvement in a more than merely a formal way is regarded as problematic, as it may cast a doubt over the independence or impartiality of a judge²⁴.

Judicial Council, he or she has to resign from a position of a chairperson of the court. ODHIR Kyiv Recommendations, para. 7-8.

¹⁶ ODHIR Kyiv Recommendations, para. 21.

¹⁷ CM/Rec(2010)12, para. 48.

¹⁸ See CDL-AD(2007)028, Report on Judicial Appointments by the Venice Commission, §§2-3, 59 and 12-17.

¹⁹ *Ibid.*

²⁰ CM/Rec(2010)12, para. 47.

²¹ CDL-AD(2013)034, Opinion on proposals amending the draft law on the amendments to the constitution to strengthen the independence of judges of Ukraine, §16.

²² CDL-AD(2005)023, Opinion on the Provisions on the Judiciary in the Draft Constitution of the Republic of Serbia, §17.

²³ ODHIR Kyiv Recommendations, para. 23. See also CDL-AD(2007)028, Report on Judicial Appointments by the Venice Commission, §§2-3, 59 and 12-17.

²⁴ See CDL-AD(2002)032, Opinion on the Amendments to the Constitution of Liechtenstein proposed by the Princely House of Liechtenstein, §§29 and 30. It is argued that a possibility for the selection body should be given to overrule a veto of the executive by a qualified majority vote. ODHIR Kyiv Recommendations, para. 23. Arguments are also put forward that when the executive fails to act upon (in line with) the decision of the council, the selection body should be given an opportunity to revisit its decision and it should be done within a short time limit as defined by law or enter into force automatically, if the executive does not act within the prescribed time limit. See CDL-AD(2013)034, Opinion on proposals amending the draft law on the amendments to the constitution to strengthen the independence of judges of Ukraine, §16

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Although appointment of judges by the **parliament** (upon the recommendation of a judicial council) is not contrary to the European standard at the outset, it is regarded as having major shortcomings due to the possible politization of the process. Venice Commission stresses that appointments of ordinary (not constitutional judges) is not an appropriate matter for the vote by the parliament²⁵. This is reiterated in several more opinions of the Venice Commission, which elaborate by noting that there is a danger in such instances that political considerations could prevail over the merit of the candidate²⁶ and could result in political bargaining within the parliament²⁷. When comparing the appointment by the legislative or executive branch of government, the appointment linked to the head of the state is considered more appropriate as normally a ‘greater political reserve and neutrality’ would be demonstrated²⁸. It is desirable that the involvement by the parliament should be merely ceremonial, the decisive vote resting with the independent judicial authority²⁹.

Appointment of the president of the Supreme Court by the parliament has been found troubling more than once by the Venice Commission³⁰.

1.2 Baltic region

Comparative analysis covered three Baltic countries: Lithuania, Latvia and Estonia.

1.2.1 Lithuania

All questions related to selection, evaluation and promotion procedures are rather strictly regulated in several levels of legislations - laws and other legal acts (secondary legislations). The Constitution of the Republic of Lithuania, Article 111, defines that "The formation and competence of courts shall be established by the Law on Courts of the Republic of Lithuania". So already in Constitution the regulatory framework is foreseen.

Law on courts³¹ establishes the court system of the Republic of Lithuania, the jurisdiction, organisation, activities, administration and self-governance of courts, their principles, the status of judges, the procedure of selection of candidates to judges, appointment of judges, their promotion and liability, the social guarantees of judges and other issues relating to courts.

²⁵ See CDL-AD(2007)028, Report on Judicial Appointments by the Venice Commission, §§2-3, 59 and 12-17; CDL-AD(2002)033, Opinion on the draft amendments to the Constitution of Kyrgyzstan, §10.

²⁶ See CDL-AD(2007)028, Report on Judicial Appointments by the Venice Commission, §§2-3, 59 and 12-17; See CDL-AD(2002)026, Opinion on the Draft Law on Judicial Power and Corresponding Constitutional Amendments of Latvia, §§13 and 21-23.

²⁷ See CDL-AD(2015)008, Preliminary Opinion on the Draft Law on amending the Law on the Judicial System and the Status of Judges of Ukraine

²⁸ See CDL-AD(2002)026, Opinion on the Draft Law on Judicial Power and Corresponding Constitutional Amendments of Latvia, §§13 and 21-23.

²⁹ CDL-AD(2015)008, Preliminary Opinion on the Draft Law on amending the Law on the Judicial System and the Status of Judges of Ukraine.

³⁰ CDL-INF(2000)005, Opinion on the draft law of Ukraine on the judicial system, p.3 See also CDL-AD(2013)005, Opinion on Draft amendments to Laws on the Judiciary of Serbia, §71; CDL-INF(1998)015, Opinions on the constitutional regime of Bosnia and Herzegovina, Chapter B.I, §9; CDL-AD(2012)024, Opinion on two Sets of draft Amendments to the Constitutional Provisions relating to the Judiciary of Montenegro, §§16-17

³¹ The Law on Courts of the Republic of Lithuania, adopted on the 31st May 1994, No. I-480 (a new version of the 24 January 2002 No. IX-732); see official publication <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.187988?jfwid=191fum7vkm>.

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So the main source for the selection procedure is the Law on Courts of the Republic of Lithuania, however there are also a few secondary acts governing the procedure in a very detailed matter. Those acts are referenced further in the analysis.

More detail edthe evaluation activities are regulated by the Law on Courts of the Republic of Lithuania. Direct regulation on evaluation procedures, including its tasks, principles, requirements and more are regulated by separate chapter of the Law, Section three "Assessment of activities of judges"³², **Goals of Assessing the Activities of Judges:**

The activities of judges shall be assessed seeking to reveal the level of professional activities and skills possessed by the judges, also Chairmen of Courts, Deputy-chairmen of Courts, Chairmen of the divisions (hereinafter in this Section together referred to as judges), the capacities to use in practice theoretical knowledge and skills, to participate in the administrative work of the court and to organise it, to establish the strengths and weaknesses of the activities of judges and to promote them, to improve professional skills.

The results of assessing the activities of judges shall be used for the following purposes:

- 1) when organising adequate training of judges (establishing the trends of teaching, compiling and improving the programmes of teaching of the judges, tailoring teaching, etc.);
- 2) objectively deciding the issues of promotion of judges and appointment for a new term of office of judges and Chairmen of courts, Deputy-chairmen of courts, Chairmen of the divisions, seeking to establish whether the judge who is a candidate to promotion or the Chairman of Court, Deputy-chairman of court, Chairman of the division who is a candidate to a new term of office meets the requirements put to the candidate, as well as objectively comparing several candidates between one another;
- 3) promoting the improvement of the judge's qualifications;
- 4) developing the administration of courts.

Types of Assessment of the Activities of judges

- 1) periodical assessment of the activities of judges;
- 2) extraordinary assessment of the activities of judges.

The first assessment of the judge's activities shall be after the lapse of three years following his appointment to judge's office. Thereafter the activities of the judge shall be assessed periodically every seven years, until the judge turns 64 years old.

An extraordinary assessment of a judge's performance is performed at the request of the judge himself or herself or when the shortcomings of the judge's activity are repeated more than once. The extraordinary assessment of the judge's activities shall also be carried out when deciding on the promotion of the judge or appointment of the Chairman of the court or Deputy-chairman of the court, Chairman of the division of the court for appointment for a new term of office, except where less than three years have elapsed since the last periodic or extraordinary assessment of the judge's performance.

Procedure for Assessment of the Activities of Judges. During the assessment of the activities of judges the judge's professional activities and personal qualities shall be assessed in a complex manner.

The procedure for assessment of the activities of judges shall be established by the Judicial Council. The procedure for assessment of the activities of judges shall comply with the principle of legal certainty and efficiency, legitimate expectations and other principles specified

³² All cited laws are presented with latest amendments.

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in this Law, provide conditions for a comprehensive and objective assessment of the judges' professional activities.

The legal acts regulating the assessment of the activities of judges shall, in addition to other provisions, state the following in a clear and exhaustive manner:

- 1) the periodicity of assessment of the activities of judges;
- 2) exhaustive framework of special assessment of the activities of judges;
- 3) entities entitled to initiate special assessment of the activities of judges;
- 4) assessment thresholds of the activities of judges;
- 5) methodology, duration and procedure of assessment of the activities of judges;
- 6) criteria of assessment of the activities of judges;
- 7) methods of obtaining the data required for assessing the activities of judges.

The assessment of the activities of judges shall be performed by the Assessment Commission. The Assessment Commission shall be formed for the term of office of the Judicial Council from seven members: three of them must be not judges. Four members of the Commission shall be elected from the judges by the Judicial Council, three shall be appointed by the President of the Republic. The Chairman of the Assessment Commission is elected by the Judicial Council from among the appointed members of the Assessment Commission. Persons of impeccable reputation, as defined in the Law on Civil Service, may be appointed as members of the evaluation commission for a maximum of two consecutive terms. The activities of the Assessment Commission shall be serviced by the National Courts Administration. Members of the Judicial Council may not be appointed as members of the Assessment Commission. The work of the members of the assessment commission in the assessment commission shall be paid in accordance with the procedure established by the Law on Remuneration of Employees of State and Municipal Institutions and Members of the Commissions.

The Chairman of the court, Deputy-chairman of the court or Chairman of the division, having initiated extraordinary assessment of the activities of the judge (hereinafter in this Article - the initiator of extraordinary assessment), if he is a member of the Assessment Commission, has to withdraw from the assessment of activities of this judge. The initiator of the extraordinary assessment and the member of the assessment Commission, who participated in assessing the activities of this judge, may not adopt decisions on judicial promotion.

When assessing the activities of the judges, qualitative and quantitative professional performance indicators of the judge, his subject and character requirements, jurisdictional and non-jurisdictional activities of the judge must be taken into account.

The right to initiate the extraordinary assessment of the judges' activities shall rest with:

- 1) of the Chairman of the court – the Judicial Council, the Chairman of the court of the higher level or the Chairman of the court himself;
- 2) of the Deputy Chairman of the court – the Judicial Council, the Chairman of the court in which the judge to be assessed is employed, the Chairman of the court of higher level, his Deputy or the Deputy of the Chairman of the court himself;
- 3) of the Chairman of the section – the Judicial Council, the Chairman of the court in which the judge to be assessed is employed, his Deputy, the Chairman of the court of the higher level, his Deputy or the Chairman of the division or the Chairman of the division himself;
- 4) of other judges - the Judicial Council, the Chairman of the court in which the judge to be assessed is employed, his Deputy or Chairman of the division, the Chairman of the court of the higher level, his Deputy or the Chairman of the division or the judge himself.

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Appealing against the Results of Assessment of Activities of Judges. The judge, whose activities were subject to assessment, shall be acquainted against receipt with the results of assessment of his activities. The judge, whose activities were subject to assessment, shall be entitled to appeal against the results of assessment to the Judicial Council within ten days of the day on which the assessment results were concluded.

Separate chapter of the Law, section four is dedicated for the trainings and education of judges. This is a consistent part of evaluation procedures - the commission evaluated the fulfilment of said obligations.

The secondary legislation regulating the activities of the evaluation procedure is issued by the Judicial Council, and they are - The Rules of the Permanent Commission for the Assessment of Activities of Judges; The Description of the Assessment of Activities of Judges. The content of said regulation will be disclosed more details in following paragraphs.

Constitution of the Republic of Lithuania³³ shall establish the institutions responsible for the appointment of judges (Article 112);

Regulations for the selection of persons seeking the career as a judge³⁴ (approved by the Judicial Council) shall establish, *inter alia*, the procedure for the selection of persons seeking a career as a judge (judges, doctors of social sciences and habilitated doctors of law) - candidates for the positions of judges of a regional court, the Regional Administrative Court, the Court of Appeal of Lithuania and the Supreme Administrative Court of Lithuania; the procedure for selecting candidates for the positions of a chairperson, vice-chairperson, chairperson of a division of a district court, a regional court, the Regional Administrative Court, the Lithuanian Court of Appeal and the Supreme Administrative Court of Lithuania in the courts of the same level.

Description of the rules of procedure of the Commission for the selection candidates to judicial office³⁵ (approved by the President of the Republic) shall establish general provisions of the rules of procedure of the Selection commission; composition, rights and obligations of the Selection commission; the rules of meetings and rules of procedure of making decisions of the Selection commission; servicing the Selection Commission, drawing up, management and recording of documents.

Description of the procedure for announcing and organizing the selection of judges³⁶ (approved by the President of the Republic) shall establish the rules of the announcing and organizing of the selection for vacant positions of judges, chairmen, vice-chairmen and chairmen of divisions of district courts, regional courts, regional administrative courts, the Court of Appeal of Lithuania, the Supreme Administrative Court of Lithuania or the Supreme Court of Lithuania.

³³ Constitution of the Republic of Lithuania (Adopted by citizens of the Republic of Lithuania in the Referendum of 25 October 1992) <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.21892>.

³⁴ Regulations for the selection of persons seeking the career as a judge, approved by the Judicial Council by Resolution No. 13P-144-(7.1.2)

³⁵ Description of the rules of procedure of the Commission for the selection candidates to judicial office approved by the President of the Republic of Lithuania by Decree No. 1K-243 of 2 April 2020.

³⁶ Description of the procedure for announcing and organizing the selection of judges, approved by the President of the Republic of Lithuania by Decree No. 1K-242 of 2 April 2020.

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Assessment criteria for persons pursuant to the career of judges, transferred or appointed to another court³⁷ (approved by the Judicial Council) shall establish determine the quantitative and qualitative criteria for persons (judges, doctors of social sciences) wishing to become judges of regional courts, regional administrative courts, Lithuanian Court of appeal, Lithuanian Supreme Administrative Court and Supreme Court of Lithuania (hereinafter referred to as "higher court"), as well as the criteria for assessing the selection of persons seeking a career in the same court or wishing to be transferred to another court of the same or lower level.

Competent authorities. Regarding the selection. If a person meets all abovementioned requirements formal requirements prescribed by the Law on Courts, he or she is evaluated by the Selection Commission of Candidates for Judges (hereinafter – Selection Commission) considering legal work experience and professional skills. The Selection Commission has seven members and is formed for a period of three years by the President of the Republic of Lithuania. Three members of the Selection Commission shall be judges and four members shall be the representatives of the society. Members of the Judicial Council may not be appointed members of the Selection Commission.

Regarding the evaluation. Evaluation procedures are performed by permanent commission. Article 913 of the Law, regulating Procedure for Assessment of the Activities of Judges, indicate in part 4 The assessment of the activities of judges shall be performed by the Assessment Commission. The Assessment Commission shall be formed for the term of office of the Judicial Council from seven members: three of them must be not judges. Four members of the Commission shall be elected from the judges by the Judicial Council, three shall be appointed by the President of the Republic. The Chairman of the Assessment Commission is elected by the Judicial Council from among the appointed members of the Assessment Commission. Persons of impeccable reputation, as defined in the Law on Civil Service, may be appointed as members of the evaluation commission for a maximum of two consecutive terms. The activities of the Assessment Commission shall be serviced by the National Courts Administration. Members of the Judicial Council may not be appointed as members of the Assessment Commission. The work of the members of the assessment commission in the assessment commission shall be paid in accordance with the procedure established by the Law on Remuneration of Employees of State and Municipal Institutions and Members of the Commissions.

Therefore, the Assessment Commission is formed for the term of office of the Judicial Council (for two years period) from seven members: three of them must be not judges. Four members of the Commission shall be elected from the judges by the Judicial Council, three members shall be appointed by the President of the Republic. The Chairman of the Commission from the appointed members shall be elected by the Judicial Council. The activities of the Assessment Commission shall be serviced by the National Courts Administration.

Goals of assessing the activities of judges – analyse the capacities of judges to use in practice theoretical knowledge and skills, to establish the strengths and weaknesses of the activities of judges and use the negative results for the preparation of judicial training and qualification courses as well as promote the improvement of the judge's qualification. The goal of assessing the activities of chairmen, vice chairmen and chairmen of divisions shall be to determine their management, organisational and administrative skills.

³⁷ Assessment criteria for persons pursuant to the career of judges, transferred or appointed to another court, approved by the Judicial Council by Resolution No.13P-160-(7.1.2) of 27 September 2019

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Assessment of the activities of judges – procedure performed by the beforehand and clearly established criteria for obtaining information about the quality and efficiency of judicial activities that helps to determine the weaknesses of the professional, organisational and administrative activities of judges, which necessitate judges to improve their qualification and professional level.

As was mentioned above, there are two forms of assessment periodic assessment of activities of judges' and extraordinary assessment of activities of judges.

First periodic assessment take place three years after the appointment as judge and afterwards - every 7 years. The assessment conclusion is valid for three years.

The procedure for assessment is the same for both forms of assessments and it shall comply with the principle of legal certainty and efficiency, legitimate expectations and other principles specified in the Law on Courts, provide conditions for all-round and objective assessment of the judges' professional activities.

The Competencies and administrative provisions of the commission activities are defined in Regulations of the Permanent Commission for the Assessment of Activities of Judges, approved by Judicial council (Resolution of 31 October 2014 no. 13P-134- (7.1.2)).

Chairperson of the Commission:

1. shall be responsible for organizing the activities of the Commission in the performance of the functions assigned to it;
2. shall convene and chair meetings of the Commission;
3. shall appoint a member of the Commission who shall present at the meeting of the Commission information on the judge whose performance is being evaluated;
4. shall determine the agenda, place and time of the meeting of the Commission;
5. shall sign letters sent on behalf of the Commission;
6. shall appoint tasks to the members of the Commission and the Secretary of the Commission related to the activities of the Commission;
7. shall represent the Commission in other institutions, bodies, offices or agencies or shall authorize another member of the Commission to represent him/her;
8. shall sign the decisions of the Commission on the results of the evaluation of judicial performance.

If the Chairperson of the Commission is unable to perform his duties, he or she shall be replaced by another member of the Commission or, in the absence of such appointment, by the oldest judge of the Commission.

A member of the Commission has the following rights and obligations:

1. to participate in the meetings of the Commission; A member of the Commission who is unable to attend the meetings of the Commission must inform the Chairperson of the Commission or the Secretary of the Commission in advance, not later than 2 working days prior to the meeting of the Commission, and indicate the reasons for absence;
2. to receive and collect information on the professional activities and personal characteristics of the judge being evaluated in accordance with the procedure established by legal acts;
3. By order of the Chairperson of the Commission to present information on the judge whose judicial performance is being evaluated at the meeting of the Commission;
- 10.4. to present one or more variants of the conclusions regarding the evaluation of judicial performance;
5. if a member has another opinion on the adopted Commission decision or disagrees with the conclusion of the Commission on the results of the evaluation of judicial performance,

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to submit it in writing as a separate opinion no later than the next working day after the adoption of the decision or conclusion;

6. to carry out the legitimate tasks appointed by the Chairperson of the Commission in relation to the activities of the Commission;

7. to withdraw from consideration of the matter if there are circumstances which cast doubt on the Commissioner's impartiality. The Chairperson and Vice-Chairperson of a Court or the Chairperson of a Division of the court who has initiated the evaluation of judicial performance, must withdraw from the evaluation if he/she is a member of the Commission.

A judge whose performance is being evaluated or a person authorized by him or her before the commencement of the substantive examination of the matter shall have the right to ask for dismissal of a member of the Commission. Subsequent dismissals shall be admissible only in cases where the person requesting the removal becomes aware of the grounds for dismissal of the member of the Commission during the proceedings.

A member of the Commission shall be deemed to have been removed or has withdrawn from the evaluation of the judge's performance and shall not participate in the decision-making if this is approved by the Commission. The Commission shall vote on each member of the Commission who has been removed or who has declared his or her removal. A member of the Commission whose removal or withdrawing is being decided shall not vote

Commission meetings are usually convened on a monthly basis. (Usually, they are organised in direct form, but due to the COVID-19 situation - for a moment they take place in remote manner).

The agenda for a Commission meeting shall be set by the Chairperson of the Commission. The agenda of the commission meeting shall indicate the place and time of the commission meeting, the issues to be considered during the meeting, the judges whose performance will be evaluated and the members of the commission assigned to present information about the activities of the evaluated judge at the commission meeting.

The Secretary of the Commission shall inform the members of the Commission and the persons invited to participate in the meeting by e-mail to the e-mail addresses indicated by them not later than 7 calendar days in advance. The members of the Commission shall be provided with the agenda of the meeting of the Commission together with all information received regarding the issues to be discussed.

The Secretary of the Commission publishes information about the meeting of the Commission and its agenda on the website www.teismai.lt not later than 3 working days before the meeting. A meeting of the Commission is valid if at least four members of the Commission are present.

A judge whose judicial performance is being evaluated, a person authorized by the President of the Republic, the Chairperson of the court where the judge whose performance is being evaluated works, the Chairperson of a higher court, an entity that has initiated the evaluation of judicial performance, or his or her representative are allowed to attend the meeting.

Decisions of the Commission shall be determined by a simple majority of the members of the Commission present and voting. A member of the Commission may not abstain from voting on a decision. In the event of a tie, the decision voted for by the Chairperson of the Commission shall be deemed to have been adopted.

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The proceedings of the meeting of the Commission shall be recorded by an audio recording made by the Commission, which shall be the protocol of the meeting. If the Commission so decides, the proceedings may also be recorded on video by the Commission.

The Judicial Council.

Articles 119, 120 of the Law on courts³⁸ provides that The Judicial Council shall be an executive body of the self-governance of courts ensuring independence of courts and judges. The Judicial Council shall be composed of 17 members: 1) by virtue of their office - the Chairman of the Supreme Court, the Chairman of the Court of Appeals, the Chairman of the Supreme Administrative Court; 2) Judges elected by the General Meeting of Judges: three from the Supreme Court, two from the Court of Appeals and one Supreme Administrative Court, three from all regional courts, one from all regional administrative courts and four from all district courts. Only judges working in different courts may be elected to the Judicial Council from the district courts and district courts.

The candidates shall be nominated and elected during the General Meeting of Judges by the representatives of the relevant courts. The term in office for the member of the Judicial Council shall be four years. Judges may be elected as members of the Judicial Council for a maximum of two consecutive terms. The Chairman of the Judicial Council, the Deputy Chairman and secretary shall be elected by secret ballot for two years by the Judicial Council from the Judicial Council members.

The competence and decision-making procedure

Article 120 of the Law on courts provides that The Judicial Council shall, *inter alia*, give an informed advice to the President of the Republic in respect of the appointment of judges, their promotion, transfer and removal from office; give an informed advice to the President of the Republic in respect of the appointment and removal from office of Chairmen, Deputy Chairmen, Chairman of divisions of courts.

Article 121 of the Law on courts provides that a meeting of the Judicial Council shall be the main form of the activity of the Judicial Council.

Meetings of the Judicial Council shall be convened, as a rule, once a month. After the entry into force of the Decree of the President of the Republic on addressing the Judicial Council to advise the President of the Republic on the appointment, promotion, transfer or dismissal of judges, a meeting of the Judicial Council shall be convened no later than within fourteen days. A meeting of the Judicial Council is valid when more than half of the members of the Judicial Council are present.

The Judicial Council makes decisions in the performance of its functions. Decisions of the Judicial Council are adopted by open vote. A resolution of the Judicial Council is adopted if it is approved by more than half of all members of the Judicial Council. Resolutions of the Judicial Council are signed by the Chairman and the Secretary of the Judicial Council. Once decided, the Judicial Council may take decisions by secret ballot. All rulings adopted by the Judicial Council shall be published on the website of the National Courts Administration not later than within three days.

³⁸ The Law on Courts of the Republic of Lithuania, adopted on the 31st May 1994, No. I-480 (a new version of the 24 January 2002 No. IX-732); see official publication <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.187988?jfwid=191fum7vkm>.

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The Judicial Council shall adopt resolutions advising the President of the Republic on the appointment, promotion, transfer or dismissal of judges only by open vote. Resolutions adopted by the Judicial Council advising the President of the Republic to appoint a person as a judge, to promote, transfer, dismiss a judge or to advise a person not to be appointed as a judge, not to be promoted, not to be removed from office (and when it is advised to nominate him or her to the Seimas when appointing, promoting, transferring or dismissing the Chairman of the Supreme Court, the Chairman of a division or a judge of this court or the Chairman of the Court of Appeal, the Chairman of a division or a judge of this court), must be reasoned.

The President of The Republic of Lithuania

Article 70 of the Law on courts³⁹ provides that a judge of a regional court and of a regional administrative court shall be appointed by the President of the Republic from among the persons entered in the register of persons seeking judicial office. When a regional administrative court is composed of court chambers, the President of the Republic shall appoint a judge of the regional administrative court to a specific court chamber. 2. The President of the Republic shall be advised by the Judicial Council in respect of the appointment of a judge of a regional court and of a regional administrative court.

Article 71 of the Law on courts⁴⁰ provides that a judge of the Supreme Administrative Court shall be appointed by the President of the Republic from among the persons entered in the register of persons seeking judicial office. The President of the Republic shall be advised by the Judicial Council in respect of the appointment of a judge of the Supreme Administrative Court.

Article 72 of the Law on courts⁴¹ provides that a judge of the Court of Appeals shall be appointed by the President of the Republic from among the persons entered in the register of persons seeking judicial office, with the concurrence of the Seimas.

Article 73 of the Law on courts⁴² a judge of the Supreme Court shall be appointed by the Seimas on the nomination of the President of the Republic. The Judicial Council advises the President of the Republic on the appointment of a judge of the Supreme Court.

The Parliament of the Republic of Lithuania - Seimas

Article 72 of the Law on courts⁴³ provides that a judge of the Court of Appeals shall be appointed by the President of the Republic from among the persons entered in the register of persons seeking judicial office, with the concurrence of the Seimas.

Article 73 of the Law on courts⁴⁴ a judge of the Supreme Court shall be appointed by the Seimas on the nomination of the President of the Republic. The Judicial Council advises the President of the Republic on the appointment of a judge of the Supreme Court.

The Supreme Court of Lithuania

³⁹ The Law on Courts of the Republic of Lithuania, adopted on the 31st May 1994, No. I-480 (a new version of the 24 January 2002 No. IX-732); see official publication <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.187988?ifwid=191fum7vkm>.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Ibid.*

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Article 55¹ (part 9) of the Law on courts⁴⁵ provides that: applicant who participated in the selection for judicial position or judicial position to become vacant [in the district court]⁴⁶, has the right to file a complaint with the Supreme Court within seven days after the announcement of the findings of the Selection Commission regarding material procedural violations that may have affected the objective assessment of the candidates who participated in the selection.

The Supreme Court, having accepted the appeal, has the right to suspend the procedure for the appointment of a judge to that district court, immediately notifying the Office of the President of the Republic of such decision.

These appeals are heard in the Supreme Court by a panel of three judges. A complaint alleging material procedural irregularities which may have affected the objective assessment of the successful candidates must be examined by the Supreme Court no later than thirty days from the date of receipt of the complaint.

The Supreme Court, having found that there had been substantial procedural irregularities in the selection to vacant judicial positions or judicial positions to become vacant in district court, objective assessment of the candidates who took part in the selection, may oblige the Selection Commission to re-evaluate the candidate who participated in the selection and lodged the complaint or annul the conclusion of the Selection Commission. In that case, the selection for the vacant judicial positions or judicial positions to become vacant in that district court shall be repeated.

1.2.2 Latvia

Law on Judicial Power⁴⁷ establishes the judicial system of the Republic of Latvia. All the main principles regulating selection, evaluation and promotion of judges are set by “roof law” Law on Judicial Power. Therefore, all the regulations are issued based on the law.

The purpose of the selection of candidates for the post of judge is to ensure that highly qualified lawyers with an impeccable reputation, appropriate professional skills and personal qualities become judges, i.e. persons who are familiar with the entire legal system respect for human dignity, respect for human rights and the strengthening of Latvia as a democracy and the rule of law, persons who are able to take responsibility and are aware of the impact of their actions on the judiciary as a whole, and both the professional activity of a judge and his or her private life can be assessed in society, and form an idea of the judiciary as a whole. Thus, The Judicial Council approved **Procedure for Selection of Candidates for the Position of a Judge of a District (City) Court and a Regional Court**⁴⁸ rules (hereinafter – Selection rules). These rules shall establish the procedure for the selection of candidates for the position of a judge of a district (city) court and a regional court; appointment, composition, rules of making decisions, rights and obligations of the Selection Commission; assessment criteria for candidates for the position of a judge.

⁴⁵ *Ibid.*

⁴⁶ The requirements set in Article 55¹ of this Law shall be applied to selection of persons seeking judicial office.

⁴⁷ Law on judicial power 15.12.1992; <https://likumi.lv/ta/en/en/id/62847>

⁴⁸ Procedure for Selection of Candidates for the Position of a Judge of a District (City) Court and a Regional Court, approved by the Judicial Council Decision of 15 April 2020; <http://at.gov.lv/files/uploads/files/9>.

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Procedures for Selection, Internship and Qualification Examination of Candidates for the Position of a Judge of the Supreme Court⁴⁹ (approved by the Judicial Council) shall establish the procedure for the selection of candidates for the position of senator, the course of the competition, the internship, the passing of the qualification examination and the criteria for the opinion of the general meeting of senators of the department as a candidate.

Regarding the evaluation it is indicated, that according to the Constitution, judicial appointments are irrevocable. Once appointed to an unlimited term, judges are guaranteed tenure until a mandatory retirement age. However, judges are not given tenure until three to five years into their service, and the final decision to grant them tenure is based, in part, on their performance in office and in part on the Ministry of Justice’s and Parliament’s discretion, which inevitably creates incentives for judges to avoid adjudicating in ways which might displease the executive. Judges are initially appointed to a three-year term. On completion of the initial term, a judge may be confirmed by Parliament for an unlimited term in office or re-appointed for an additional two-year term. The Minister of Justice proposes candidates for reappointment based on assessments provided by the Judicial Qualification Committee; the Minister may refuse to re-nominate a judge.

So, there are ordinary and extraordinary evaluations of judges’ activities. Law on Judicial powers indicates that:

Objective and Frequency of the Assessment of the Professional Activities of a Judge

The objective of the assessment of the professional activities of a judge is to promote the continuous professional growth of a judge throughout his or her career, thereby improving the quality of the work of the judge and the court.

The Judicial Qualification Committee shall make the regular assessment of the professional activities of a judge once every five years following the approval of the judge for the office with an unlimited term of office.

The Judicial Qualification Committee shall also make the regular assessment of the professional activities of a judge before the re-nomination of a district (city) court judge as a candidate for the re-appointment or re-approval to office with an unlimited term of office.

Extraordinary Assessment of the Professional Activities of a Judge. The extraordinary assessment of the professional activities of a judge shall be made in the cases specified in this Law, when deciding on the transfer or substitution of the judge, and based on the decision of Judicial Disciplinary Committee in accordance with the Judicial Disciplinary Liability Law. When making the extraordinary assessment of the professional activities of a judge, the Judicial Qualification Committee shall inspect the professional knowledge of the judge.

When making the extraordinary assessment of the professional activities of a judge, in addition to the inspection of the professional knowledge of the judge, the Judicial Qualification Committee shall also make the regular assessment of the professional activity of the judge, if more than three years have passed since the last assessment.

⁴⁹Procedures for Selection, Internship and Qualification Examination of Candidates for the Position of a Judge of the Supreme Court, approved by the Judicial Council Decision of 11/13/2020; <http://at.gov.lv/files/uploads/files/9>.

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When making the extraordinary assessment of the professional activities of a judge, the judge whose professional activities are being assessed shall participate in the meeting of the Judicial Qualification Committee.

When making the extraordinary assessment of the professional activities of a judge, the Judicial Qualification Committee shall provide a favourable or unfavourable opinion.

Procedure for Selection of Candidates for the Position of a Judge of a District (City) Court and a Regional Court⁵⁰ (approved by the Judicial Council) shall establish the procedure for the selection of candidates for the position of a judge of a district (city) court and a regional court; appointment, composition, rules of making decisions, rights and obligations of the Selection Commission; assessment criteria for candidates for the position of a judge.

Procedures for Selection, Internship and Qualification Examination of Candidates for the Position of a Judge of the Supreme Court⁵¹ (approved by the Judicial Council) shall establish the procedure for the selection of candidates for the position of senator, the course of the competition, the internship, the passing of the qualification examination and the criteria for the opinion of the general meeting of senators of the department as a candidate.

Procedure for nomination and Appointment of the Chairperson, Deputy Chairperson and Chairperson of a Court House of a District (City) Court and Regional Court⁵² (approved by the Judicial Council) shall establish the procedure for the nomination and appointment of a candidate for the position of the chairperson of a district (city) court and a regional court, as well as the deputy chairperson of these courts and the chairperson of a court building.

Rules of procedure of the Judicial Qualification Board⁵³ (approved by the Judicial Council) shall establish the procedure by which the assessment of the professional activity of a judge, the extraordinary assessment of professional activity, the course of the qualification examination for a candidate for the position of a judge, as well as other career issues of judges are considered by the Judicial Qualification Board.

Competent authorities. The Judicial Council. According to section 89(1) of Law on Judicial Power, the Judicial Council is a collegial authority which participates in the development of the policies and strategies for the judicial system, as well as the improvement of the organisation of the work of the judicial system. According to section 54(1) para 1 of Law on Judicial Power, The Judicial Council establishes the rules on procedures for selection, apprenticeship and examination for candidates to become judges.

⁵⁰ Procedure for Selection of Candidates for the Position of a Judge of a District (City) Court and a Regional Court, approved by the Judicial Council Decision of 15 April 2020; <http://at.gov.lv/files/uploads/files/9>.

⁵¹ Procedures for Selection, Internship and Qualification Examination of Candidates for the Position of a Judge of the Supreme Court, approved by the Judicial Council Decision of 11/13/2020; <http://at.gov.lv/files/uploads/files/9>.

⁵² Procedure for nomination and Appointment of the Chairperson, Deputy Chairperson and Chairperson of a Court House of a District (City) Court and Regional Court, approved by the Judicial Council decision of 3/15/2019; <http://at.gov.lv/files/uploads/files/9>.

⁵³ Rules of procedure of Judicial Qualification Board, approved by the Judicial Council Decision of 11 December 2018; <http://at.gov.lv/files/uploads/files/9>.

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The Commission. According to section 9 of Selection rules, for the selection of candidates for the position of a judge of a district (city) court and a regional court, the Judicial Council shall establish for three years a Commission consisting of three senators, three judges of regional courts and three judges of district (city) courts. The President of the Judicial Council or his authorized representative may take part in the work of the Commission in an advisory capacity. The chairman and his deputy of the Commission shall be elected by a majority of the members. In the absence of the President of the Commission, his duties shall be performed by the Vice-President of the Commission. The Commission shall have a quorum if the Chairman of the Commission or his or her Deputy and at least five members of the Commission participate in its work.

The Minister of Justice. According to section 57 of Law On Judicial Power, The Minister for Justice shall nominate candidates to be appointed to or approved in the office of a judge of the district (city) court or of a judge of a regional court on the basis of the opinion of the Judicial Qualification Committee.

Candidates for regional court judges are proposed by the Minister of Justice.

The parliament (Saeima). According to section 61 of Law on Judicial Power, judges of a regional court shall be approved by the Saeima, upon a proposal of the Minister for Justice, for an unlimited term of office. Based on the decision of the Saeima to approve a judge to the office of a judge of a regional court, the Judicial Council shall determine the specific regional court or courthouse in which the duties of the judge are to be fulfilled.

According to section 62 of Law on Judicial Power, candidates for the Supreme Court Judges shall be approved by Saeima.

The Supreme Court. According to Section 49 paragraph 5 of Law on Judicial Power, the Plenary Session of the Supreme Court shall select the candidates for the position of a judge of the Supreme Court from

1.2.3 Estonia

The main source regulating selection of judges in Estonia is Courts Act.⁵⁴ It sets the primary rules for selection of judges.

The procedure of examination of a candidate is regulated by the rules of judges' examination committee.⁵⁵

The criteria for selection of judges were approved at the joint meeting of the Judges' Examination Committee and the Training Committee.⁵⁶ The criteria form the basis for the development of procedures for the selection of candidates for the office of judge and the preparation of candidates for the office of judge.

Evaluation of judges is prescribed by § 73 and 100 of Courts Act. Judges of courts of first instance and courts of appeal (circuit courts) within three years after appointment to office shall be evaluated. The main method used for the evaluation procedures are qualitative and quantitative conclusion based on the supervision data.

⁵⁴ Courts act, adopted on the 19th June 2002, No I 2002, 64, 390 (a new version of the 28 January 20201 No. I, 28.01.2021, 1);

⁵⁵ The rules of examination committee, adopted 11th November 2016

⁵⁶ Criteria approved on 25th of April 2014

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Regarding the promotion the Courts Act⁵⁷ shall establish requirements for judges, general requirements on evaluation of legal knowledge of candidates for judicial office, assessment of suitability of personal characteristics of candidates for judicial office, procedure on selection and appointment of judges are regulated by §-s 47, 50, 51, 52, 54, 53, 55, 66 of the Courts Act.

Criteria for selecting among the judges applying for the position of circuit court judge and procedure for collecting information on candidates (approved by the Supreme Court *en banc* on 15 December 2020).

Competent authorities. Regarding the selection of judges and according to article 53 paragraph 2 of Courts act, the minister of Justice announces public competition for a vacant position of a judge of a county, administrative and circuit courts. The public competition for a vacant position of a justice of the Supreme Court is announced by the Chief Justice of the Supreme court.

According to article 54 paragraph 1 of Courts act, personal candidate's characteristics are assessed by the judge's examination committee. The judge's examination committee shall evaluate the compliance of a candidate for judicial office with the requirements for judge. The committee shall evaluate law work experience of a candidate for judicial office; the legal knowledge of a candidate for judicial office and the ability to use these; the suitability of the personal characteristics of a candidate for judicial office.

The judge's examination committee has ten members and is formed for five years. It is comprised of two judges of the court of first instance elected by the Court *en banc*, two circuit court judges, two justices of the Supreme Court, one jurist designated by the council of the Law Faculty of the University of Tartu, a representative of the Ministry of Justice designated by the Minister of Justice, a sworn advocate designated by the leadership of the Bar Association and a public prosecutor designated by the Chief Public Prosecutor.

According to article 54 paragraph 2 of Courts act, candidates for a judge's position must pass security check. The security check of a candidate for judicial office is performed by the Estonian Internal Security Service.

According to article 55 paragraph 1 of Courts act, judges of a court of the first instance and judges of a court of appeal are appointed by the President of the Republic on the proposal of the Supreme Court *en banc*.

Justices of the Supreme Court shall be appointed to office by the Parliament (*Riigikogu*) on the proposal of the Chief Justice of the Supreme Court. The Chief Justice of the Supreme Court shall first consider the opinion of the Supreme Court *en banc* and the Council for Administration of Courts concerning a candidate.

The procedure of evaluation of judges and of evaluation of the compliance of a candidate for judicial office with the requirements set for law work experience is also regulated by the rules of procedure. The rules of procedure of the judge's examination committee are defined in special ruling, approved by Judicial examination commission. It is indicated there that the Judicial Examination Commission (the Commission) operates on the basis of the Courts Act (KS).

⁵⁷ Courts Act Passed 19.06.2002 RT I 2002, 64, 39

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The Commission shall consist of four Judges of the Court of First Instance elected by the full Court, four circuit judges and four Supreme Court judges elected by the Supreme Court *en banc* and one from the University of Tartu a jurist appointed by the council of the Faculty of Law, appointed by the minister responsible for the field A representative of the Ministry of Justice, a sworn advocate appointed by the Board of the Bar Association and the Attorney

General appointed public prosecutor. Commission is formed for three years term.

The commission tasks related to evaluation:

establish a term of office of less than three years for the presidents of courts and supervising judges form for the opinion on the judge and consolidate the suitability of the judge for office opinions and other information necessary for the assessment of suitability for the post; and hear, if necessary, the judge whose suitability is to be assessed;

give an opinion to the Supreme Court *en banc* to the office of a judge with up to three years of service suitability if the person or body empowered to initiate disciplinary proceedings has done so a proposal to dismiss a judge with less than three years' service on the grounds of unfitness;

The ruling regulates assessment procedures of judicial suitability in following way:

The Commission shall appoint a Judge to serve on the Presidents of the Court and up to three years' service supervisors to submit an opinion on a judge with less than three years' service.

If the person or body entitled to initiate disciplinary proceedings proposes to release a judge with three years' service due to unfitness, the Commission shall evaluate that judge suitability for the office of judge. To that end, the Commission shall hold a hearing at which a judge shall be heard suitability is assessed. The Commission will assess whether the judge considers the post to be suitable or not, and submits its opinion to the Supreme Court *en banc*.

The time and place of the hearing to be held to assess suitability for office shall be notified to the Judge by telephone, e-mail or letter, and the Commission's decision in writing.

Evaluation **Performing institutions**. A judge supervising a judge less than three years length of service (judge- supervisor), chairmen of court of first instance and circuit courts, the judge's examination committee and the Supreme Court *en banc*.

Regarding the promotion a full court (which is comprised of all the judges of the relevant court) gives *opinion concerning candidates for the vacant position* of judge of the relevant court for the Supreme Court *en banc*.

The chairman of the court shall be appointed by the minister responsible for the area after having considered the opinion of the full court, the chairman of which the judge is appointed, and after the approval by the Council for Administration of Courts.

In the case of selection of a judge of court of appeal - if the Supreme Court *en banc* decides to promote the judge in the service of a court of first instance, the judge shall be transferred to the position of a judge of court of appeal by a resolution of the Supreme Court *en banc*. The Supreme Court *en banc* shall first consider the opinion of the full court of the court for which the person runs as a candidate.

The Chief Justice of The Supreme Court

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Justices of the Supreme Court shall be appointed to office by the Parliament (Riigikogu) on the proposal of the Chief Justice of the Supreme Court.

The President of The Republic

A person acquires the *status of the candidate for the Chief Justice* of the Supreme Court after *the President of the Republic* has proposed to the person to apply for the office and the person agrees to it in writing.

The Parliament (Riigikogu)

Justices of the Supreme Court shall be appointed to office by the Parliament (Riigikogu) on the proposal of the Chief Justice of the Supreme Court. The Chief Justice of the Supreme Court shall first consider the opinion of the Supreme Court en banc and the Council for Administration of Courts concerning a candidate.

Council For Administration Of Courts (§ 40, 41 of the Courts act)

is comprised of the Chief Justice of the Supreme Court, five judges elected by the Court *en banc* for three years, two *members of the Riigikogu*, a *sworn advocate* appointed by the Board of the Bar Association, the *Chief Public Prosecutor* or a public prosecutor appointed by him or her, and the *Chancellor of Justice* or a representative appointed by him or her. *The Minister of Justice* or a representative appointed by him or her shall participate in the Council with the right to speak

Justices of the Supreme Court shall be appointed to office by the Parliament (Riigikogu) on the proposal of the Chief Justice of the Supreme Court. The Chief Justice of the Supreme Court shall first consider the opinion of the Supreme Court en banc and the Council for Administration of Courts concerning a candidate.

The chairman of the court shall be appointed by the minister responsible for the area after having considered the opinion of the full court, the chairman of which the judge is appointed, and after the approval by the Council for Administration of Courts.

Minister of Justice

The chairman of the court shall be appointed by the minister responsible for the area after having considered the opinion of the full court, the chairman of which the judge is appointed, and after the approval by the Council for Administration of Courts.

Conclusions. The legal framework in 3 Baltic countries share some similarities but also has significant differences. Therefore we cannot talk about specific Baltic model. The similarities mostly end with the fact that the main procedural rules are stated in the primary legislation.

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1.3 Scandinavian region

The Scandinavian countries are different from the European countries with major systemic changes, in particular the post-fascist and post-communist countries. The Scandinavian countries are also less court oriented than the common law countries. The Scandinavian countries have been oriented towards the executive and the legislative process. Courts have in practice shown a high degree of deference to the executive, and not challenged the legislative by reviewing the constitutionality of legislation. At the same time as the Scandinavian countries share much history and some characteristic features of their judiciaries and court systems, they represent different models and are divided by different traditions. Finnish and Swedish administrative courts have scrutinized administrative decisions to a higher degree than the general courts of the other countries (that have no separate administrative judiciary).

Judicial careers and the court systems differ, with different approaches to hierarchy and specialization. There are administrative courts in Sweden and Finland. None of the countries have constitutional courts. There are no investigating magistrates. The criminal justice systems have different degrees of integration of prosecution and police.

All countries have seen major reforms to secure the independence of the courts around the end of the last century (in the 1990s and early 2000s). In most countries courts were seen to be too close to the Ministry of Justice. Milestones were the Danish court reform 1999, following the 1996 Report of the Court Commission chaired by the then Supreme Court President. It features an independent court administration and appointments commission. The need for this was compounded by judicial review of administrative action, human rights, discretionary framework legislation, human rights conventions and the EU. Another milestone was the Norwegian reforms also following from a Report of a Court Commission chaired by the then Supreme Court President. Its proposals for an independent court administration and judicial appointments commission were accepted and implemented.

The impact of the European Convention on Human Rights (ECHR) and the European Union (EU) and the European Economic Area Agreement with the EFTA states (EEA) were profound. To comply with judgments by the European Court of Human Rights from the 1970s, the Swedish administrative courts have been pushed towards a clearer court model, and the general courts have taken over functions (for instance concerning pre-trial detention) from the independent prosecutors.

Also more recently, the national court systems themselves have been subject to ECHR review, and one case concerning judicial independence concerned Iceland. Another, before the EFTA Surveillance Authority, concerned Norway and appointments to the EFTA Court.

All countries have reviewed criminal cases and miscarriages of justice have led to the establishment of mechanisms for dealing with such cases, including review of criminal cases commissions.

Sweden has a judicial career path. This is very different for the system in Norway, Denmark and Iceland with mid career entry of legal professionals/civil servants into the judicial career. The Swedish career entails entry after law degree, assessment for permanent appointment after two years. There is interaction with appellate levels and central administration, drafting legislation, including by fixed term postings. There is also a later entry of law professors and professionals.

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The judicial system in Norway.

The Norwegian Constitution of 1814 builds on a separation of powers model in the terms of Montesquieu. The courts are secured independence by provisions barring the overruling by the executive or legislative, and by guaranteeing the tenure of judges.

The Norwegian judiciary consists of the ordinary courts and a small handful of special courts, including the land consolidation courts, the Uncultivated Land Tribunal for Finnmark, the Employment Tribunal and the Court of Impeachment.⁵⁸ The ordinary courts are markedly generalist in their subject-matter jurisdiction, and there are no administrative or constitutional courts. All ordinary courts are authorized to review the constitutionality and legality of laws and executive actions, a power they have wielded for more than 200 years.⁵⁹ Judicial review was long considered as a customary constitutional rule but has now been constitutionalized in article 89 of the Constitution. The Norwegian ordinary judiciary has been divided into three appellate levels, the District Courts, the Appellate Courts, and the Supreme Court. In the last year, the ordinary courts have undergone some significant geographical reorganization, the primary aim of which was to reduce the amount of district courts in order to improve efficacy. Currently, there are 23 district courts, six appellate courts, and one Supreme Court.⁶⁰

The ordinary courts are manned by a combination of professional and lay judges. Juries were abolished in 2018. Civil suits are normally determined by professional judges alone.⁶¹ Professional judges can be appointed both on a permanent, and on a temporary basis, with the latter being widely used. There are two kinds of temporary professional judges; acting judges, meaning fully authorized temporary, and deputy judges, meaning temporary judges in training, usually employed for a period of two years. An estimated 30 % of the total body of judges consisting of deputy judges.⁶² The judicial corpus consists of some 800 individuals, 20 of whom are Supreme Court justices.

Let us now turn to the Norwegian judicial administration. For many years, the administration of the courts was a responsibility divided between the local court administration, headed by a chief judge, and the executive branch. In the late nineties, an expert commission was appointed, henceforth known as the First Court Commission, for the purposes of recommending new models for judicial administration. The first Court Commission recommended that the Ministry be almost entirely stripped of its administrative functions, aside from those which had been constitutionally designated to the executive.⁶³ Instead, the powers previously wielded by the Ministry were to be divided amongst three new and independent governmental bodies; the Norwegian Court Administration (the NCA), tasked with overseeing the central administration of the courts, the Norwegian Judicial Appointments Board (the JAB), tasked with recommending candidates for judicial positions, and the Norwegian Supervisory Committee for Judges (the SCJ), tasked with issuing miscreant judges with formal reprimands. The first Court Commission’s recommendations were, by-and-large, supported by the Ministry

⁵⁸ Rudaa, pp. 18-19.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ The Dispute Act section 9-12.

⁶² NOU 2020: 11 p. 136.

⁶³ Namely the appointment of judges, and the institution of removal proceedings against them, and the power to suspend judges pending removal proceedings, see the Constitution’s articles 21 and 22.

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of Justice and by parliament, resulting in a legislative overhaul of the main Act on judiciary, namely the Courts of Justice Act of 1912. These amendments took effect in 2002.

In 2017, a second expert commission (henceforth known as the second Court Commission) was appointed, for the purposes of evaluating the regime adopted in 2002 and for proposing a new Courts of Justice Act. The second Commission has proposed certain minor adjustments, but for the most part, the system established hence will prevail.

Regarding Judicial appointment in Norway. The Norwegian Constitution’s article 21 stipulates that the King-in-Council is responsible for the appointment of civil and military “public officials.”⁶⁴ The term public official is an ancient constitutional conception, used to denote senior official positions of some import. However, the only formal criteria in place for a public official, is that they must be appointed *as such* according to the article 21 procedure, and that they are given a commission of appointment.⁶⁵ The Constitution is silent on the matter of what *sort* of senior officials need to be appointed according to this procedure.

Permanent professional judges of the Employment Tribunal and the Uncultivated Land Tribunal for Finnmark are public officials.⁶⁶ The CJA section 55, first subsection furthermore stipulates that “judges” of the Supreme, Appellate, District, and Land Consolidation Courts are to be appointed as public officials. The CJA operates with a very wide definition of the term “judge” in its section 52, according to which all who participate in the determination of judicial disputes are considered judges. However, not all judicial decision-makers who fit this description are indeed appointed by the King-in-Council, as section 55 might suggest. The appointment of lay judges to the ordinary courts and conciliation board members is the responsibility of the municipalities⁶⁷, and only some *temporary* professional judges are appointed as public officials. All deputy judges are hired by the chief judge at their court of employment, and short-term acting judges are appointed by the JAB or the NCA.⁶⁸ Consequently, the King-in-Council is chiefly responsible for the appointment of permanent professional judges, as well as appointments to leadership positions.⁶⁹

Type of (professional) judge	Appointment authority
Permanent judges at the ordinary and land consolidation courts	The King-in-Council

⁶⁴ The Ministry of Justice has published an unofficial translation of the Norwegian constitution, available through the Lovdata.no database. The translation was last updated 15.06.2021. <https://lovdata.no/pro/#document/NLE/lov/1814-05-17?searchResultContext=1383&rowNumber=1&totalHits=17214>

⁶⁵ A “bestalling”, which is simply the name for the formal document of employment given to public officials.

⁶⁶ The Labour Dispute Act (lov 28. januar 2012 nr. 9 om arbeidstvister) section 37, second subsection and FOR-2007-03-16-277 section 4 a.

⁶⁷ The Norwegian Courts of Justice Act (henceforth the CJA) section 57, first subsection and section 66, first subsection. The NCA has provided an unofficial translation of said act, available at <https://www.domstol.no/globalassets/upload/da/domstol.no/domstoladministrasjonen/internasjonalt/courts-of-justice-act-english-translation-uten-paragrafinnledning.pdf>.

⁶⁸ The CJA section 55 g, first subsection and section 55 f, second subsection.

⁶⁹ Jakhelln, Henning “Domstollederstillingene ved domstolenes omorganisering. Konstitusjonelle og arbeidsrettslige problemstillinger», Utredning til justisdepartementets lovavdeling april 2002, III.4, available at Lovdata.no, https://lovdata.no/pro/#document/JUS/jakhelln-h-2002-07/KAPITTEL_2

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Permanent judges at the Employment Tribunal	The King-in-Council
Permanent judges at the Uncultivated Land Tribunal for Finnmark	The King-in-Council
Acting judges serving a term of less than one year	The JAB or the NCA
Acting judges serving a term of more than one year	The King-in-Council
Deputy judges	The local chief judge
Leadership positions	The King-in-Council

While the final appointment thus is often a task left to the executive branch, the abovementioned JAB has played a key role in the selection of candidates to judicial positions since its establishment in 2002. We return to the exact composition of the JAB in later chapters. For now, it suffices to say that the JAB is an independent governmental body. Prior to its establishment, the task of recommending candidates was undertaken by an informal consultative organ for judicial appointments, consisting of three members appointed by the Ministry of Justice following the recommendation of the Norwegian Association for Judges.⁷⁰

The JAB’s mandate has been laid out in sections 55 a-c of the CJA. The JAB has two principal functions: it is to recommend candidates to judicial positions, and it is to itself appoint short-term temporary judges.⁷¹ According to section 55 b, the JAB makes recommendations prior to the appointment of a judge pursuant to section 55 CJA, meaning prior to the appointment of permanent and temporary professional judges to the ordinary and land consolidation courts by the King-in-Council.⁷² The only exception is the appointment of temporary judges to the Supreme Court, which requires no prior endorsement from the JAB.⁷³ Permanent judges at the Uncultivated Land Tribunal for Finnmark are also appointed following the JAB’s recommendation⁷⁴, however the permanent judges of the Employment Tribunal are not.⁷⁵ The JAB also recommends candidates to leadership positions, with the exception of the position of Chief Justice of the Supreme Court.⁷⁶

The JAB is responsible for gathering the information necessary in order to recommend a candidate, and must then should provide a reasoned recommendation of three candidates to the vacant judicial positions in question, in prioritized order.⁷⁷ If it chooses to recommend fewer than three candidates, it must provide justification.⁷⁸ The Chief Justice of the Supreme Court must provide a statement to the Ministry of Justice regarding any recommendation to Supreme Court positions.⁷⁹ The King-in-Council is however not strictly bound by the JAB’s

⁷⁰ NOU 1999:19 subchapter 7.2.

⁷¹ The CJA section 55 a, first subsection.

⁷² The CJA section 55 f, second subsection explicitly stipulates that the King must consult the JAB before appointing acting judges.

⁷³ The CJA section 55 f, second subsection.

⁷⁴ FOR-2007-03-16-277 section 4 a.

⁷⁵ Prop. 134 L (2010-2011) subchapter 3.3.4.

⁷⁶ The CJA section 55 b, last subsection and NOU 2020:11 p. 106.

⁷⁷ The CJA section 55 b second and third subsection and Ot.prp.nr.44 (2000-2001) p. 190.

⁷⁸ The CJA section 55 b third subsection.

⁷⁹ The CJA section 55 b fourth subsection.

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recommendations, and may appoint a different candidate, provided that the JAB is consulted.⁸⁰ A candidate who has been recommended by a minority of the JAB, is also considered a recommended candidate.⁸¹ In practice however, the JAB’s recommendations are always followed.⁸²

Regarding professional evaluation of Norwegian judges. There is an important distinction to be made between evaluations of judicial performance at the institutional level, meaning assessments of the judiciary’s output as a whole, versus at the individual level, meaning the quality of an individual judge’s performance. When it comes to the *institutional* level, there are many governmental oversight bodies in place, authorized to monitor the functioning of the courts. For one, the Auditor General can, and indeed has, assessed the efficacy of Norway’s judiciary.⁸³ The NHRI’s jurisdiction also encompasses the courts, although the Parliamentary Ombudsman’s competences have been circumscribed so as to not include the judiciary, although she may scrutinize judicial administration bodies.⁸⁴

It is however the NCA that has been chiefly tasked with ensuring that the Norwegian judiciary operates smoothly. Its efforts for quality control may be perused in its annual report for 2020: <https://www.domstol.no/arsrapport-2020/aktiviteter-og-resultat/>

The Ministry of Justice’s yearly allocation letter to the NCA also supplies the NCA with certain expectations regarding quality and efficiency.⁸⁵ The NCA does not systematically review the output of *individual* judges however, at least not to my knowledge. This however is not unnatural, as the NCA has no formal say in promotions. The closest thing to such an effort at the individual level by the NCA is perhaps the so-called KRUT project, initiated by the NCA in 2013.

<https://www.domstol.no/globalassets/upload/da/domstol.no/domstoladministrasjonen/om-domstoladministrasjonen/styret/styremoter-2016/26.-27.-september-2016/da-sty16-sak-64-kvalitetsutvikling--krut.pdf>

This project was underlined in Norway’s response to an ENCJ questionnaire in 2015, see https://www.ency.eu/images/stories/pdf/workinggroups/independence/ency_report_indacc_an_nex_i_summary_replies_quality_20_june.pdf on p. 16

The new ENCJ survey for 2020 contained a question concerning professional evaluation, see question 5 d on p. 102. <https://pgwrk-websitemedia.s3.eu-west-1.amazonaws.com/production/pwk-web-ency2017-p/Reports/ENCJ%20report%20IAQ%202019-2020%20adopted%20GA%202020.pdf>

The closest thing Norway likely has to an evaluation body at the individual level, is the Supervisory Committee for Judges, responsible for issuing judges with informal reprimands

⁸⁰ The CJA section 55 c.

⁸¹ The CJA section 55 c.

⁸² NOU 2020: 11 p. 107.

⁸³ See the Office of the Auditor General Act (riksrevisjonsloven) section 9 and Dokument 3:3 (2019-2020) <https://www.riksrevisjonen.no/globalassets/rapporter/no-2019-2020/Domstolene.pdf>

⁸⁴ Norwegian National Institution for Human Rights, see the NRHI Act section 3 and the Act on the Parliamentary Ombudsman section 4, second subsection.

⁸⁵ NOU 2020:11 p. 206.

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for the breach of good judicial practice, and for more broadly fostering a culture of good behaviour amongst Norway’s body of judges.

See also the role of the press and the publicity of judicial proceedings:

<https://brill.com/view/book/edcoll/9789004438248/BP000008.xml>

Regarding Judicial promotion in Norway. The Norwegian judiciary is non-career based. Consequently, there is no internal channel of promotion to increasingly more desirable judicial positions, and the career paths of judges do not normally follow along appellate lines. A position as a deputy judge can be considered an admission ticket to the Norwegian judiciary, but appointment as a deputy judge is not required in order to be appointed as a permanent judge.⁸⁶ In fact, only 37 % of those appointed to a judgeship in 2019, already held a judicial position.⁸⁷

Be this as it may, there are, to my mind, three ways in which a Norwegian judge can become *de-facto* promoted; firstly, by successfully applying for a judgeship at a court higher up in the appellate hierarchy, secondly, by successfully applying for a judgeship at a different and more sought-after judicial district, and thirdly, by way of appointment to an administrative leadership position.⁸⁸ However, each of these *de facto* promotions will be dependent on a new appointment by the King-in-Council, following the recommendation of the JAB. Therefore, none of them constitute a promotion as such, rather a secondary appointment.

Because promotion is dependent on whether one is able to successfully apply for a new position, there are no special rules at play for when a judge qualifies for a promotion. Rather, one must simply fulfil the minimum requirements for judgeship, and be in possession of better qualifications than one’s competitors. The JAB’s policy document nonetheless provides some indications regarding required and desired qualifications for leadership positions.⁸⁹

Competent authorities. As indicated above, the formal appointment of permanent professional judges is a task left in the hands of the executive, sitting in King-in-Council. There are special procedural rules in place regarding when the King-in-Council has been properly established.⁹⁰ The King-in-Council however makes its decisions on the basis of recommendations provided by the JAB. The JAB is formally an administrative agency, and thus a part of the executive branch. Public administration agencies are, as a rule, subject to an administrative chain of command, and may be instructed by officials and bodies superior to them in the organisational hierarchy.⁹¹ However, the JAB has been granted a particularly independent status vis-à-vis the other branches, and cannot be instructed by any other means than legislative decree.⁹² The JAB is also independent from the other organs of judicial administration, although the task of recruitment has largely been left to the NCA, and the JAB’s secretariat is administratively, but not professionally, subordinate to the NCA.⁹³ A

⁸⁶ Aarli, <https://brill.com/view/book/edcoll/9789004438248/BP000008.xml>, p. 622.

⁸⁷ Innstillingsrådets årsrapport 2019, p. 5.

⁸⁸ Urban and Eastern judicial districts are the most coveted; see Innstillingsrådets årsrapport 2019, p. 4.

⁸⁹ Innstillingsrådets praksisnotat pp. 19 et seq.

⁹⁰ See the Constitution’s articles 27-32.

⁹¹ The Constitution’s article 3 and Graver, Forvaltningsrett (2019) p. 178.

⁹² NOU 1999:19 7.5.3.

⁹³ NOU 2020:11 p. 107.

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representative from the NCA is furthermore normally present during interviews with candidates.⁹⁴

The JAB consists of a total of seven members; three ordinary court judges from any of the three appellate levels, a lawyer, a jurist employed in the public sector, and two lay members.⁹⁵ Representatives from the land consolidation courts also participate when the JAB considers candidates to land consolidation court positions.⁹⁶ All members have personal deputies, and all are appointed by the King-in-Council following the recommendations of the Ministry of Justice, including the JAB’s head.⁹⁷ The Norwegian Bar Association, the Norwegian Association for Judges, the trade union for jurists Juristforbundet, and the NCA, are routinely consulted by the Ministry of Justice prior to the appointment of members.⁹⁸ The appointment of lay members has been left to the executive’s discretion, although the preparatory works indicate that they must be trustworthy.⁹⁹ The preparatory works furthermore prescribe that members should have some experience with recruitment and personnel selection, although this guideline has not been systematically adhered to in practice.¹⁰⁰

Members of the JAB are guaranteed a tenure of four years, with the possibility of reappointment for one additional term.¹⁰¹ However, a member may be removed at any time if she is “unable or unwilling” to execute her functions in an “appropriate” manner.¹⁰² The Ministry described the removal power as a “safety valve”, a term often used in Norwegian legal contexts to denote a rule or exemption that is only to be used in exceptional circumstances so as to avoid plainly unreasonable outcomes.¹⁰³ The first Court Commission indicated that an appointment could not be withdrawn simply because the executive disagreed with the member’s recommendations, and that while the power could be used in order to remove members who fall ill, it should otherwise be reserved for “extraordinary situations.”¹⁰⁴

When a judicial position becomes vacant, typically because a judge has asked to be released of her duties or because she has reached the mandatory retirement age¹⁰⁵, the vacancy must be publicly announced.¹⁰⁶ The lists of resultant applicants is then made publicly available.¹⁰⁷ The preparatory works indicate that potential judges should be interviewed, and that references should be obtained.¹⁰⁸ The JAB interviews candidates in so-called interview groups, consisting of two to three JAB members, one of whom must be a judge, a member of

⁹⁴ NOU 2020: 11 p. 107.

⁹⁵ The CJA section 55 a, first subsection.

⁹⁶ The CJA section 55 a, first subsection.

⁹⁷ The CJA section 55 a, first subsection and NOU 2020:11 p. 107.

⁹⁸ NOU 2020:11 p. 107.

⁹⁹ NOU 1999:19 p. 263.

¹⁰⁰ Ot.prp.nr.44 (2000-2001) p. 100 and NOU 2020:11 p. 109.

¹⁰¹ The CJA section 55 a, second subsection.

¹⁰² The CJA section 55 a, third subsection.

¹⁰³ Ot.prp.nr.44 (2000-2001) p. 189.

¹⁰⁴ NOU 1999:19 p. 266.

¹⁰⁵ The Constitution’s article 22, second and third subsections. Judges can also be forcibly removed on either civil or criminal grounds, but this happens only very rarely, see Rudaa pp. 7-8. Most judges remain in their positions for the remainder of their careers, see Innstillingsrådets praksisnotat p. 28.

¹⁰⁶ The Civil Service Act (statsansatteloven 2017) section 4, first subsection and NOU 1999:19 subchapter 7.5.3.5.

¹⁰⁷ The Freedom of Information Act (offentleglova) section 25 second subsection. The FIA has been made applicable to judicial appointment procedures by way of section 55 CJA.

¹⁰⁸ NOU 1999:19 subchapter 7.5.3.5 and Ot.prp.nr.44 (2000-2001) 8.9.2.

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the secretariat, as well as a member of the NCA and the chief judge of the relevant court.¹⁰⁹ If one of the applicants is handicapped and unemployed, they are always called in for an interview.¹¹⁰ All candidates to leadership positions are issued with a personality test constructed by a private recruitment firm prior to the interview.¹¹¹ Following the interview, one of the JAB’s members present collects references.¹¹² The interview group then makes its recommendations, which are made available to all members of the JAB.¹¹³ The chief judge has been given the right to make a written statement to the JAB prior any appointment.¹¹⁴ The final recommendation is then decided upon by the JAB sitting in plenary.¹¹⁵ The JAB’s prioritized list of recommended candidates are made public, but its justifications are not.¹¹⁶

There are certain particularities regarding the procedure for appointing Supreme Court justices. The CJA clearly states that the JAB is just as authorized to recommend candidates to such positions.¹¹⁷ However, according to section 55 b fourth subsection, the Chief Justice is entitled to give her opinion on the JAB’s recommendations, which is to be communicated directly to the Ministry of Justice. The Chief Justice herself decides whether to offer a preference on any of the candidates proposed. The Chief Justice, as head of her court, participates during interviews, along with a senior member of the Supreme Court.¹¹⁸ It should be noted that the composition of the Supreme Court has been criticized for its homogeneity. The typical justice is (still) a man, educated at the University of Oslo, who has most likely been raised in Oslo or else has spent the majority of his professional career there, and who started his career at one of two elite offices, namely either the Legislation Department of the Ministry of Justice, or the Attorney General’s office.¹¹⁹

Still more peculiar is the procedure for appointing a new Chief Justice of the Supreme Court.¹²⁰ As indicated, the JAB does not provide any recommendation at all, instead leaving the selection entirely to the executive’s discretion. The first Court Commission reasoned that the vote of a Chief Justice counted equally when the Court adjudicates individual cases, and that, due to the particularities of the position, the King-in-Council should be given more leeway when deciding on its candidate.¹²¹ The first Commission also pointed out that any disagreement between the government and the JAB on who should be selected, might result in a politically delicate situation.¹²² The procedure for electing the Chief Justice has been criticized, in particular due to its opacity. Following the most recent election of a new Chief

¹⁰⁹ NOU 2020: 11 p. 107 and Innstillingsrådets praksisnotat p. 41 and 46.

¹¹⁰ Innstillingsrådets praksisnotat p. 48.

¹¹¹ Innstillingsrådets praksisnotat p. 48

¹¹² Innstillingsrådets praksisnotat p. 41.

¹¹³ Innstillingsrådets praksisnotat p. 42.

¹¹⁴ The CJA section 55 b, second subsection.

¹¹⁵ Innstillingsrådets praksisnotat p. 42 and 76. The CJA’s strict rules on recusal have been made applicable to the JAB’s members, see the CJA section 55 b

¹¹⁶ NOU 2020: 11 p. 123.

¹¹⁷ The CJA section 55 b, read in conjunction with section 55.

¹¹⁸ NOU 2020:11 p. 126.

¹¹⁹ Marthinussen, Hans Fredrik «Vi trenger en ny prosedyre for dommerutnevninger» 20.09.2019. *Rettt24.no*. <https://rett24.no/articles/-vi-trenger-en-ny-prosedyre-for-dommerutnevninger>. In the article, Marthinussen points out that a whopping 15 out of the 20 justices started their careers at either of the two offices. Today, 14 out of the 20 have this background.

¹²⁰ This was last done in 2016, when Ms. Toril Marie Øie, as the first woman ever, took over the mantle. Chief Justices normally sit for a period of around ten years, before reaching the mandatory retirement age.

¹²¹ NOU 1999:19 subchapter 7.5.4.

¹²² NOU 1999:19 subchapter 7.5.4

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Justice in 2016, journalists filed a motion under the Norwegian Freedom of Information Act, requesting access to reports from interviews with the applicants, carried out by three experts hired by the Minister of Justice.¹²³ The three experts were a senior official at the Ministry of Justice, the head of the Bar Association, and the head of the JAB.¹²⁴ The request was denied by the Minister. The Parliamentary Ombudsman gave an opinion on the matter, in which he held that, while denying access was in accordance with the law, the current state of affairs, in which the proceedings leading up to the election of the Chief Justice were more secretive than what is normally the case when electing justices, was unsatisfactory.¹²⁵ It should be lastly noted that, while the general view in the late nineties was that parliament should be consulted before a new Chief was elected, this view appears to since have been abandoned by the Storting’s Presidium.¹²⁶

The second Court Commission has recommended to largely maintain the current state of affairs concerning judicial appointments, with certain modifications.¹²⁷ To start, the executive’s ability to diverge from the JAB’s recommendations should, in the Commission’s view, be curtailed. Under the second Commission’s proposals, the executive may still diverge from the JAB’s *prioritization*, and elect one of the recommended candidates that were not the most preferred by the JAB. When doing so, the executive must provide the JAB with a public justification for why it has decided not to elect the JAB’s primary endorsement.¹²⁸ Furthermore, the executive will no longer be able to elect a candidate who has *not* been recommended by the JAB at all.¹²⁹ The executive may nonetheless reject a recommendation once, and remit the case for reassessment. If the JAB upholds its prior recommendations, the vacant position must be re-advertised. After the new call for applicants has been sent out and a new round of interview has been completed, the executive cannot then refuse the JAB’s resultant recommendations.¹³⁰

For another, the second Commission has recommended certain compositional adjustments. The Commission has noted that the current workload of the JAB is considerable, and that its membership therefore should be increased from a total of seven members to eleven.¹³¹ This is to be accomplished, firstly by making the representative from the land consolidation courts a permanent member.¹³² However, the Commission was divided on the issue of whether judges should constitute a majority of the future JAB.¹³³

The majority of the Commission felt that judges should be in the *minority*, citing the need for democratic legitimacy. A selection procedure in which judges themselves have the decisive

¹²³ Johnsen, Alf Bjarne «Kritiserer hemmelighold I Høyesterett-utnevningen.» *Verdens Gang*, 17.02.2016, <https://www.vg.no/nyheter/innenriks//zmq21/kritiserer-hemmelighold-i-hoyesterett-utnevningen>.

¹²⁴ Sivilombudsmannens uttalelse av 17.02.2016, SOM-2016-112, SOM-2016-131 and SOM-2016-151, available at <https://www.sivilombudsmannen.no/uttalelser/innsyn-i-rapport-om-kandidater-ved-utnevning-av-ny-justitarius-i-hoyesterett/>

¹²⁵ Sivilombudsmannens uttalelse av 17.02.2016, SOM-2016-112, SOM-2016-131 and SOM-2016-151, available at <https://www.sivilombudsmannen.no/uttalelser/innsyn-i-rapport-om-kandidater-ved-utnevning-av-ny-justitarius-i-hoyesterett/>

¹²⁶ NOU 2020:11 p. 128.

¹²⁷ NOU 2020:11 p. 114.

¹²⁸ NOU 2020:11 p. 114.

¹²⁹ NOU 2020:11 p. 114.

¹³⁰ NOU 2020:11 p. 114.

¹³¹ NOU 2020:11 p. 119.

¹³² NOU 2020: 11 p. 116.

¹³³ NOU 2020:11 p. 119.

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say, is better suited for career-based systems, in which constitutional control is carried out by specialized constitutional courts. In career-based systems, judges are regularly evaluated by other judges, and this evaluation constitutes an important basis for promotions. Members of constitutional courts are normally selected on the basis of a holistic assessment of a plethora of different considerations. However, in the non-career based Norwegian system, all judges are constitutional judges, in the sense that they are all authorized to review the constitutionality of laws and executive acts. This constitutional role entails that the selection of judges should be based on a system which safeguards the democratic legitimacy of the judiciary. A system in which no trade group has the decisive say would, in the majority’s opinion, provide the best safeguard of democratic legitimacy, and would provide protections against internal recruitment.¹³⁴ In order to increase the total amount of members without sacrificing the judicial minority, the majority of the Commission has proposed adding one representative from the legal profession, one of which must be from the private sector, increasing the amount of lay members from two to three, and including *either* the chief judge of the relevant court of employment or the NCA, depending on whether the JAB is considering applicants to ordinary judicial positions or to leadership positions.¹³⁵

The minority on the other hand, felt that judges should usually be in the majority, citing the need to safeguard judicial independence.¹³⁶ The professional assessments of other judges should in any case be given significant weight in the selection of candidates, and Norway is the only Nordic country still operating with a consultative council for judicial appointments in which judges are in the minority.¹³⁷ The other Nordic jurisdictions also pursue a principle of broad and open recruitment to judicial positions, and their judiciaries have also been endowed with the power to test the constitutionality of state actions.¹³⁸ By establishing a judge majority, one would furthermore bring the Norwegian system in line with international soft law regarding judicial selection. The judicial majority would be achieved by adding one judicial member, one representative from the legal profession, and alternatively the chief judge of the court of employment or the NCA. The minority of the Commission thus accepted that judicial members should be in the minority when considering candidates for *leadership* positions.¹³⁹

The second Commission has furthermore proposed certain changes to the rules on appointment of JAB members. The power to appoint judicial members is to be transferred to the board of the NCA, and the executive’s choice of representative from the legal profession will be limited to candidates proposed by the Norwegian Bar Association.¹⁴⁰ The selection of the remaining members will still largely be left to the executive’s discretion, although representation from the Sami population should be pursued.¹⁴¹ The lay members cannot be members of parliament or cabinet, nor can they be employees of the same, nor of any ministries, the prime minister’s office, or the NCA.¹⁴²

The JAB’s procedure will also be somewhat altered. A representative from court employees should be able to give a statement when the JAB considers candidates for leadership positions, and the NCA will be given a vote when the JAB decides on recommendations to the

¹³⁴ NOU 2020:11 p. 119-120.

¹³⁵ NOU 2020:11 p. 120.

¹³⁶ NOU 2020:11 p. 120.

¹³⁷ NOU 2020:11 p. 120.

¹³⁸ NOU 2020:11 p. 120.

¹³⁹ NOU 2020:11 p. 120.

¹⁴⁰ NOU 2020: 11 p. 115-116.

¹⁴¹ NOU 2020: 11 p. 116.

¹⁴² NOU 2020: 11 p. 117.

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same.¹⁴³ However, the NCA will no longer be able to participate in the selection of *ordinary* judicial positions.¹⁴⁴ Instead, and as noted above, the chief judge at the relevant court of employment is to be given a vote in the JAB’s recommendations of such candidates.¹⁴⁵ The NCA will still be able to participate during the interview stage.¹⁴⁶ Similarly, the Chief Justice will not be able to speak or cast a vote when the JAB votes on its recommendation, however, she will still be able to participate during the interview stage.¹⁴⁷ She may also provide her opinion on the JAB’s selection, which is to be public.¹⁴⁸

Regarding the appointment of the Chief Justice, the second Commission has considered three different models for reform; firstly, including the position in the JAB’s existing competences, secondly, giving the collegium of justices the power to select their Chief from amongst themselves, and thirdly, establishing an entirely new procedure, in which an *ad hoc* consultative council is set up for the purposes of recommending a new Chief Justice, highly reminiscent of the one set up by the Ministry in 2016.¹⁴⁹ In the second Commission’s view, the third model constitutes the best calibration of the competing considerations at play.¹⁵⁰ The council is to be appointed by the Ministry of Justice, and should consist of a representative from the Ministry, a representative from the JAB, and a representative from the Bar Association, and it should always provide a prioritized list of three candidates for the position.¹⁵¹

The second Commission has also recommended certain changes as to the division of responsibilities between the NCA and the JAB. The task of recruitment, currently overseen by the NCA, is to be transferred to the JAB, and while the NCA’s administrative responsibilities over the secretariat should prevail, “clearer lines” ought to be established, in particular in the context of interviews.¹⁵² The ability to regulate the JAB’s activities in regulations, currently given to the Ministry of Justice, should furthermore be divided amongst the JAB and the NCA. The NCA is to be given the task of developing guidelines for the selection of candidates, which are to be binding upon the JAB, however the JAB should otherwise be able to regulate its proceedings.¹⁵³

In the second Commission’s view, the changes proposed do not challenge the kingly constitutional prerogative under the Constitution’s article 21 to appoint public officials.¹⁵⁴ Thus, its proposal does not necessitate constitutional amendment. Nonetheless, the Commission has proposed a new constitutional regulation of judicial appointment procedures, by constitutionalizing the executive’s duty to obtain the recommendation of an independent and collegiate consultative organ prior to a judicial appointment.¹⁵⁵

When it comes to *temporary* judges, the JAB is generally involved in the appointment of *acting* judges, with the exception of acting Supreme Court justices. The task of hiring deputy judges

¹⁴³ NOU 2020:11 p. 117-118.

¹⁴⁴ NOU 2020:11 p. 118.

¹⁴⁵ NOU 2020:11 p. 118.

¹⁴⁶ NOU 2020:11 p. 119.

¹⁴⁷ NOU 2020:11 p. 126.

¹⁴⁸ NOU 2020:11 p. 126.

¹⁴⁹ NOU 2020:11 pp. 128-130.

¹⁵⁰ NOU 2020:11 p. 130.

¹⁵¹ NOU 2020:11 p. 130.

¹⁵² NOU 2020:11 pp. 121-122.

¹⁵³ NOU 2020:11 pp. 122-123.

¹⁵⁴ NOU 2020: 11 p. 226.

¹⁵⁵ NOU 2020: 11 p. 226-227.

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is a prerogative for the local chief judge.¹⁵⁶ The Ministry of Justice has however been given the authority to provide guidelines concerning the appointment of deputy judges, which the Ministry has duly done by way of the circular G-46/99.¹⁵⁷ Ordinarily, judges cannot be instructed by the executive.

The judicial system in Denmark

The judicial system in Denmark builds on traditions back to the age of autocracy and divine rights of the absolute monarch. The independence of the judiciary was developed to a certain level under the system where courts dispensed royal justice. Not only did they dispense the King's justice, the monarch would on mainly ceremonial occasion preside over the Supreme Court and could even deliver the judgment. Even today, the monarch will on purely ceremonial occasion preside over the Supreme Court.

Today, the judicial system in Denmark is established by the Constitution (Chapter 6, The Courts) and several laws, in particular the Administration of Justice Act (AJA). The latter also includes specific provisions on the status of judges, which complement the general provisions of the Civil Servants Act.¹⁵⁸ The independence of the judiciary vis-à-vis the executive and legislative powers is enshrined in the Constitution. In accordance with article 3 (on the tripartite division of power), all judicial authority lies with the courts. Article 61 makes it clear that the execution of the judicial power (e.g. competencies, procedures and organisation of the courts) can be regulated by statute only. Article 64 (on the functional and personal independence of judges) states that judges must abide solely by the law and they cannot be dismissed except by a judgment, nor may they be transferred against their wishes except in the event of a reorganisation of the courts. The authorities add that no one can give directions in individual cases to judges, and that judges are thus fully independent in the exercise of their judicial functions.¹⁵⁹ The courts must ensure equality before the law and protect each citizen against the abuse of power. In that context, the independence of our courts and judges is vital.¹⁶⁰

The Court Administration ensures proper and adequate administration of the courts' and the Appeals Permission Board's funds, staff, buildings and IT. It was established in 1999 as an independent institution and it is headed by a board of governors and a director who is appointed and may be discharged by the board of governors. The board has 11 members, eight of whom are court representatives, one is an attorney in private practice and two have special management and social expertise. They are appointed by the Minister of Justice on the recommendation of the Supreme Court, the High Courts, the General Council of the Bar and Law Society, the Employment Council and the Rectors' Conference, District Court judges, other academic staff and non-academic staff, respectively. The Court Administration belongs under the Ministry of Justice, but the Minister of Justice has no instructive power and cannot change decisions taken by the Court Administration.

The court system is based on a unified structure in which all courts of law may decide cases in legal areas such as civil and criminal law, labour, administrative and constitutional law, with

¹⁵⁶ The CJA section 55 g.

¹⁵⁷ Available at <https://www.regjeringen.no/no/dokumenter/g-4699/id108472/>

¹⁵⁸ Council of Europe, Fourth Evaluation Round, Corruption prevention in respect of members of parliament, judges and prosecutors, page 20, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c323e>

¹⁵⁹ Council of Europe, page 20

¹⁶⁰ https://www.domstol.dk/media/lacbg0w5/profillbrochure_uk.pdf

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the following exceptions. The Maritime and Commercial Court is a special court competent, inter alia, for cases concerning the Trade Marks Act, the Design Act, the Marketing Practices Act, the Competition Act and cases concerning international trade. The Land Registration Court, which was established in 2007, handles registration of titles to land, mortgages and other charges, marriage settlements, etc., and decides on disputes arising from registration. The special Court of Impeachment mainly decides cases brought against ministers and the Special Court of Indictment and Revision deals, inter alia, with disciplinary matters concerning judges and other legal staff employed by the courts.

There are 24 District Courts (first tier) whose decisions may be appealed to the two High Courts (second tier). Appeal to the Supreme Court in Copenhagen (third tier, final court of appeal) requires a special permission from the Appeals Permission Board, which is granted in cases that may have implications for rulings in other cases, or in cases of special interest to the public. In terms of grants and administration, the Appeals Permission Board belongs under the Court Administration, but it is otherwise independent of the judiciary and the Government services. The Supreme Court also decides on appeals against judgments by the Maritime and Commercial Court. Decisions of the Land Registration Court are subject to appeal to the High Court of Western Denmark.¹⁶¹

The court system comprises professional judges, lay judges and expert judges. Professional judges are employed full-time and are lawyers who are either appointed judges or deputy judges. Lay judges and expert judges work part-time in the judiciary. In the District Courts, the general rule is that civil cases are heard by a single professional judge. However, they may be heard by three professional judges or by a professional judge and two expert judges. Minor criminal cases are heard by a single professional judge and more serious criminal cases are heard by a professional judge and two lay judges (decisions are adopted by simple majority). The most serious criminal cases are heard by three professional judges and six jurors (i.e. lay judges) and a guilty verdict requires a two thirds majority among both the professional judges and the jurors. The High Courts are split into chambers which consist of three professional judges. In civil appellate cases which were heard with expert judges in the court below, two expert judges may participate. In more serious criminal cases, three lay judges participate and decisions are adopted by simple majority; in case of a tie the result most favourable to the accused is adopted. In the most serious criminal cases, nine jurors participate and decisions are adopted as in the District Courts. The Supreme Court has only professional judges, normally 15, and is split into two chambers. A case is heard by at least five judges.¹⁶²

The Danish Court Administration was established in 1999 and is an independent agency in charge of administering the Courts of Denmark. The Administration’s Board of Directors consists of representatives of the court staff, users, the universities, and the Danish employment council. The Board of Directors appoints a managing director to oversee day-to-day affairs, court budgets, and the allocation of resources to the courts. In Denmark the Danish Court Administration evaluates the performance of the courts.¹⁶³ Formally and in terms of funding, the Administration is an agency under the Ministry of Justice, but the Minister cannot

¹⁶¹ Council of Europe, page 20

¹⁶² Council of Europe, page 21

¹⁶³ European Judicial Systems – Edition 2014 (2012 data), Council of Europe, <https://books.google.no/books?id=aZaXBgAAQBAJ&pg=PA145&lpg=PA145&dq=evaluation+of+judge+s+performance+denmark&source=bl&ots=tZwuKYZStj&sig=ACfU3U3ldXQoC4OOM2gBudN62FEv6hycVQ&hl=no&sa=X&ved=2ahUKEwjnhev8zKjxAhVnwosKHbfwC4AQ6AEwBnoECAUQA#w=onepage&q=evaluation%20of%20judges%20performance%20denmark&f=false>

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change decisions made by the Administration.¹⁶⁴ Prior to the establishment of the Danish Court Administration, these functions and responsibilities were placed within the Ministry of Justice. And although the Danish Court Administration is still formally connected to the Ministry of Justice, this is mainly for administrative and practical purposes – the Minister of Justice has no instructive power and cannot change decisions made by the Danish Court Administration. Thus, the creation of the Danish Court Administration stands as a clear manifestation of the (organisational) independence of the Courts of Denmark in relation to the political sphere.¹⁶⁵

The Danish Court Administration has the overall responsibility for the training and education of the courts’ legal staff.¹⁶⁶ It offers around 200 to 270 courses for judges per year. Deputy judges must take part in a three-day introduction course which includes, among other subjects, ethics, rules on incompetency/disqualification and on impartiality/independence as well as best practices in how to conduct oneself in the court room. These subjects also underlie training activities with a different main focus. Furthermore, the current training catalogue includes a topic devoted to ethical dilemmas that judges may face. Namely, in recent years, a three-day course on questions of ethics and conduct has been organised twice a year for the benefit of around 80 to 100 judges each time. All training activities except introductory training for deputy judges are voluntary, but it was indicated to the GET that in practice, almost all judges participate regularly.¹⁶⁷

The Danish Court Administration does not handle judicial appointments. As will be discussed below, judges are formally appointed by the Queen on the recommendation of the Minister of Justice as advised by the Judicial Appointments Council. However, deputy judges are employed by the Danish Court Administration. They are recruited either directly from law school or after they have had a few years of experience with various legal employments, for example in a law firm or a ministry.¹⁶⁸

The judicial system in Sweden

The judicial system in Sweden builds on traditions back to the ages of semi-constitutionalism and absolute monarchism.

Judicial independence is firmly established in the constitution of 1809, building on a separation of powers doctrine, and formally remaining in force until 1974 with many fundamental amendments.

There are three kinds of courts in Sweden: the general courts, which comprise district courts, courts of appeal and the Supreme Court; the general administrative courts, that is to say, administrative courts, administrative courts of appeal and the Supreme Administrative Court; and also the special courts, which determine disputes within special areas, for example, the Labour Court and the Market Court.¹⁶⁹

¹⁶⁴ <https://www.domstol.dk/om-os/domstolsstyrelsen/>

¹⁶⁵ https://www.encj.eu/images/stories/pdf/factsheets/domstolsstyrelsen_denmark.pdf

¹⁶⁶ <https://www.domstol.dk/om-os/domstolsstyrelsen/>

¹⁶⁷ European Council, page 32

¹⁶⁸ https://www.encj.eu/images/stories/pdf/factsheets/domstolsstyrelsen_denmark.pdf

¹⁶⁹ <https://polisen.se/en/victims-of-crime/the-judicial-system/>

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The Swedish Judiciary, which comprises some 80 different agencies and boards, is an important part of the judicial system. It is vital that the courts remain independent and free from the control of Parliament, Government and other authorities.¹⁷⁰

Within the Government Offices, the Ministry of Justice has the primary responsibility for matters relating to the judicial system, including the budgets and administration of the government agencies. The Ministry of Justice is also responsible for core legislation in the fields of civil law, criminal law and procedural law.

The Ministry of Justice may not interfere with the way a government agency applies a law or takes a decision in a specific case in its exercise of public authority. In many other countries, it is common for an individual minister to have the power to intervene directly through a decision on an agency’s day-to-day operations. In Sweden, the Instrument of Government – one of our fundamental laws – prohibits this, and is commonly called ‘ministerial rule’.

Over and above the general regulations on financial governance and on the powers and obligations of agencies, the Government sets the terms for each agency’s activities. This is done in the agency’s instructions, in annual ‘appropriation directions’ and through special assignments. An agency’s instructions specify the agency’s main tasks and forms of management. The appropriation directions specify how much money the agency has at its disposal during the year.¹⁷¹

Every district court, court of appeal, administrative court and administrative court of appeal has a number of lay judges. They are appointed by the municipal councils in the municipalities that are part of the judicial district of each district court, and by the county council assembly in the counties that are part of the judicial district of each administrative court, administrative court of appeal or court of appeal. A lay judge has the same responsibility for the court’s decision as a legally qualified judge. The appointment is non-political, even though lay judges are appointed by the political parties. A lay judge is appointed for four years.¹⁷²

The judicial system in Finland

The judicial system in Finland is established by the Constitution (Chapter 9, articles 98 to 105, “Administration of justice”) and several laws, in particular the Code of Judicial Procedure. As concerns the status of judges, in principle the general provisions of the State Civil Servants Act apply – except for certain provisions, inter alia, those on appointment and dismissal. Chapter 12 of the State Civil Servants Act, sections 45 to 48, “Judges.”¹⁷³

¹⁷⁰ <http://old.domstol.se/Funktioner/English/The-Judicial-System/>

¹⁷¹ <https://www.government.se/49ec0b/contentassets/9ebb0750780245aeb6d5c13c1ff5cf64/the-swedish-judicial-system.pdf>

¹⁷² <https://www.government.se/49ec0b/contentassets/9ebb0750780245aeb6d5c13c1ff5cf64/the-swedish-judicial-system.pdf>

¹⁷³ Council of Europe, *Fourth Evaluation Report*, Corruption prevention in respect of members of parliament, judges and prosecutors, 2014, page 22, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c5d12>

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Judicial independence and the impartiality of judges are fundamental principles in a State governed by the rule of law; they benefit the citizens and society at large as they protect judicial decision-making from improper influence and are ultimately a guarantee of fair court trials.¹⁷⁴

The independence of the judiciary in Finland is guaranteed by the Constitution (article 3, “Separation of powers”). The Constitution also provides that no individual or institution can give instructions in individual cases to a judge, see article 21 which furthermore guarantees the right to a fair trial, the right to be heard, the right to a reasoned decision, and the right to appeal against a decision.¹⁷⁵

According to article 98 of the Constitution, the general courts are the Supreme Court, the Courts of Appeal and the District Courts. The courts of administrative law are the Supreme Administrative Court and the regional courts. Parliament can establish special courts for specific matters. Provisional courts are prohibited by the Constitution. There is no constitutional court. Currently, there are around 950 professional judges, 370 referendaries and 1,700 lay judges in Finland.¹⁷⁶

The Association of Finnish Judges aims for its part to develop the court system and maintain its significance as well as the independent position of judges in society. It follows legal policy and the preparation of draft legislation in particular, makes statements and introduces motions. Other activities include education and publishing as well as the organisation of joint events for judges. Currently, around 850 judges and referendaries are members of the Association of Finnish Judges (via specific sub-associations) and the 40 Supreme Court justices are members of a specific association. There is also an Association of Finnish Lay Judges.¹⁷⁷

The judicial system in Iceland

A new court level was introduced in Iceland on 1 January 2018, replacing the former two tiers with a three-tier system. The new court is called the Court of Appeal (Icel. Landsréttur) and is a court of second instance, situated between the District Court and the Supreme Court. The introduction of the Court of Appeal is part of a major restructuring of the Icelandic justice system.

All court actions in Iceland commence in the District Courts (Icel. Héraðsdómstólar), which are eight in number and located around the country. The conclusion of a District Court can be appealed to the Court of Appeal, provided specific conditions for appeal are satisfied. In special cases, and after receiving the permission of the Supreme Court, it will be possible to refer the conclusion of the Court of Appeal to the Supreme Court, which will continue to be the country’s court of highest instance. In most instances, the judgement of the Court of Appeal will be the final resolution in the case. These changes to the judicial system will reinforce the role of the Supreme Court of Iceland in setting precedents in jurisprudence. There are a total of 64 judges in Iceland, 42 of whom preside over the eight District Courts. The Court of Appeal has fifteen judges and the Supreme Court has seven.

¹⁷⁴ Ibid.

¹⁷⁵ <https://finlex.fi/fi/laki/ajantasa/1999/19990731>

¹⁷⁶ Council of Europe, page 22

¹⁷⁷ Ibid., 21-22

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Judicial Administration (Icel. Dómsstólasýsla), a new public agency, also commenced work on 1 January this year. Judicial Administration will take care of the administrative work of all the courts and represent their interests in dealing with the government, the media and other parties.¹⁷⁸

The courts are free from political control. Although the Ministry of Justice administers the lower courts, the Supreme Court oversees independent and fair application of the law. A recent reform project transferred all judicial authority for criminal and civil cases from local officials (chiefs of police) to newly established district courts. This complete separation of judicial and executive power in regional jurisdictions was completed in 1992.¹⁷⁹

Judicial independence and the impartiality of judges are fundamental principles in a State governed by the rule of law; they benefit the citizens and society at large as they protect judicial decision-making from improper influence and are ultimately a guarantee of fair court trials. The independence of judges in Iceland is guaranteed in the Constitution and the Act on the Judiciary No. 15/1998. Article 2 of the Constitution provides for the separation of powers in Iceland. Article 61 of the Constitution specifies that in the performance of their official duties, judges shall only be guided by the law. Article 70 of the Constitution provides for everyone's right – be it in civil, criminal or administrative cases – to have his/her case decided upon by an independent and impartial court, following a fair trial and within a reasonable time. Article 24 of Act No. 15/1998 confirms the principle of independence of judges: when resolving a case, judges are only bound by the law and shall never be subject to the authority of another person; a judicial decision cannot be overturned, except by appeal to a higher court.¹⁸⁰ (Page 21).

Article 61: In the performance of their official duties, judges shall be guided solely by the law. Those judges who do not also have administrative functions cannot be discharged from office except by a judicial decision, nor may they be transferred to another office against their will, except in the event of re-organization of the judiciary. However, a judge who has reached the age of 65 may be released from office, but Judges of the Supreme Court shall not lose any of their salary.¹⁸¹

The Constitution stipulates in Art. 2 that judges exercise judicial power and according to Art. 59 the organization of the judiciary can only be established by law. The main Act on the organization of the judiciary is Act No. 15/1998 on Courts. The judicial court system of Iceland comprises 8 District Courts, of which the Reykjavík District Court is by far the largest, and the Supreme Court (Hæstiréttur Íslands). Additionally, there are two Special Courts; the Labour Court (in Icelandic Félagsdómur) which deals with trade union matters and industrial disputes according to the Act on Trade Unions and Industrial Disputes, No. 80/1938 (unofficial English translation), see Section IV of the Act. The decisions of Félagsdómur are available online (only in Icelandic) since the year 2000. The other Special Court is the Court of Impeachment (in Icelandic Landsdómur) which has competence if Ministers, in pursuance of their official tasks, are impeached, see Art. 14 of the Constitution and Act No. 3/1963 (not translated). Landsdómur was established in 1905 but has never been convened.

In order to guarantee the independence of the judiciary it is stipulated in Art. 61 of the Constitution that in the performance of their official duties, judges shall be guided solely by the law. In the same Article it is further stipulated that those judges who do not also have

¹⁷⁸ <https://www.government.is/topics/law-and-order/the-judicial-system-in-iceland/>

¹⁷⁹ <https://www.nationsencyclopedia.com/Europe/Iceland-JUDICIAL-SYSTEM.html>

¹⁸⁰ <https://rm.coe.int/16806c67c5>

¹⁸¹ https://www.constituteproject.org/constitution/Iceland_2013.pdf?lang=en

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administrative functions cannot be discharged from office except by a judicial decision, nor may they be transferred to another office against their will, except in the event of re-organization of the judiciary.

The district courts in Iceland have jurisdiction in civil as well as criminal cases. The judges of the district courts are 38 in number and are appointed to their offices for an indefinite period of time by the Minister of Justice, see Art. 12 of Act No. 15/1998. The Judicial Council, which is established according to Act No. 15/1998, deals with matters pertaining to the district courts, see Art. 13.-15. It was established in 1998 to secure to a greater extent the independence of the Judiciary from the executive power. The Judicial Council’s authority only extends to the district courts.

The Supreme Court is the only court of appeal and has nationwide jurisdiction. It is composed of nine judges, commissioned for an indefinite period of time by the President of Iceland as proposed by the Minister of Justice, see Art. 4 of Act No. 15/1998. Judgments in criminal cases may be referred to the Supreme Court without any restriction while the appeal of civil judgments is dependent on minor requirements related to the minimum interests at stake.¹⁸²

1.4 Central Europe region

1.4.1 Czech Republic

The purpose of this national version is creation of the basic structure and the content for the subsequent territorially continentally specified (Central-European) comparative matrix for further two states: Slovak Republic and Republic of Poland. The aim of the structure of this matrix is to present the judicial system of the Czech Republic, considering the particular regard to choice of new judges, their preparation as judge candidates and appointment in judicial positions. It is further necessary to assess the mission of the public administration and in particular of the Ministry of Justice in relation to HR management of judges, including certain concept of the top supervision of the Ministry over the courts, in particular in relation to judges, which is the important issue of independence of the judicial power. The professional promotion of a judge is specific in every country and it therefore means a certain model of professional career. The issue of the discipline of judges is inseparably related thereto, including possible termination of the function of judge due to disciplinary reasons. The eventual system of lifelong learning of judges is also the important issue.

Legal Regulation of the Court System

- a) The constitutional regulation in valid wording:
 - Articles 81, 82 [of the Constitution of the Czech Republic](#) (Constitutional Act No. 1/1993 Coll.), [here](#) in English translation
 - The relating provisions in Articles 1, 2, 9, 30, 82 to 96 of the Constitution and in Articles 36 to 40 [of the Charter of Fundamental Rights and Freedoms](#) (decree of the presidency of the Czech National Council No. 2/1993 Coll.),
- b) The legal regulation in valid wording:
 - Act No. 6/2002 Coll., [on Courts and Judges](#),
 - Act No. 182/1993 Coll., [on Constitutional Court](#),
 - Act No. 7/2002 Coll., [on Proceedings on Issues of Judges, State Prosecutors and Judicial Executors](#),

¹⁸² <https://www.nyulawglobal.org/globalex/iceland.html>

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- Act No. 150/2002 Coll., [the Administrative Court Rules](#),
- c) The inferior implementing legal regulation in valid wording:
 - Decree No. 37/1992 Coll., [on Court Rules for District and Regional Courts](#),
 - Decree No. 382/2017 Coll., [on Choice, Admission and Preparation Service of Justice Candidates and on Professional Justice Examination](#)
- d) Resort methodology regulation of the Ministry of Justice:
 - Methodology to process and assessment of the entrance interview (Section 1(3) of Decree No. 383/2017 Coll.)
 - Methodology and assessment of entry test and written test (Section 2 and Section 10 of Decree No. 382/2017 Coll.)

Court System of the Czech Republic. The court system of the Czech Republic, the legal order of which is historically included in the Austrian sub-circle of the Roman-German legal group, is composed of the Constitutional Court and the uniform system of so called ordinary courts. While the Constitutional Court is, pursuant to Art. 83 of the Constitution of the Czech Republic, a special judicial body the purpose of which is, in particular, to carry out abstract and concrete review of the constitutionality and to fulfil some tasks of the election and political jurisdiction; the mission of ordinary courts is, according to Art. 90 of the Constitution, in particular to "provide protection of rights in legally determined way" and decide on "guilty and punishment for crimes". In the framework of ordinary courts, the Constitution differs the supreme and other courts. The system of courts is in particular composed of: the Supreme Court, the Supreme Administrative Court, high courts, regional courts and district courts. In framework of the capital city of Prague, the capacity of a regional court is performed by the Municipal Court in Prague and the capacity of district courts is performed by area courts. Within the area of the city of Brno, the capacity of a district court is performed by the Municipal Court in Brno.¹⁸³

There is no body of the type of the Supreme Judicial Council established in the Czech Republic, which exists in a number of further European states, including the Slovak Republic and the Republic of Poland. The bodies of this type are the important institutions dividing the part of the public (administrative) administration of the justice, including personal and discipline competences.

Competent authorities.

State Administration of Courts

In the Czech Republic, the system of operation of the judicial power and therefore also the nature of its independence is set differently from what the usual standards in most of the European states are. Notwithstanding, besides the Czech Republic, the ministry system of judicial administration is similar, for example, in Germany, and it is generally considered to be one of the possible and admissible ones.

The state administration of courts is governed by the central executive power in the continuous Austria-emperor and later Czechoslovakian tradition (as of 1918, including the period after 1948). Also according to the so called [Competence Act of 1969](#), the state administration of courts is to be ascertained by the Ministry of Justice, which among others, determines the number of judges, determines the way and organization of work at courts and determines the monetary funding for ensuring the courts operation, including material equipment.

¹⁸³ [Organisation of justice/judicial systems](#)

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The Ministry of Justice performs the state administration of high, regional and district courts to the extent determined by Act No. 6/2002 Coll., on Courts and Judges, either directly or through presiding judges of these courts; the state administration of district courts may also be performed through presiding judges of regional courts. Some tasks of the central state administration are performed by the presiding judge of the Supreme Court (or its vice-presiding judge) and the presiding judge of the Supreme Administrative Court (or its vice-presiding judge). The bodies of the state administration of courts perform the state administration of courts with regard to the statement of the respective judicial councils.

According to the judicature of the Constitutional Court (Pl. ÚS 18/06) the legal structure, when the presiding judges and vice-presiding judges also perform activities, which are, due to their nature, the administrative activity, without these persons losing the quality of the position of an independent judge, and therefore, due to this reason only, they achieve the position of a state employee, which feature is remarkably defined by the relationship of subordination and respecting of orders of officially superior persons, is in a number of developed countries of Europe (e.g., Austria, Germany, Sweden, Norway, Netherlands, Great Britain, Ireland, Italy, Portugal) considered to be the integral part of the principle of work division, sourced in requirements of the legal state and from the principle of institutional independence of the justice derived therefrom, as well as the principle of undisturbed execution of personal independent court mandate.

The Constitutional Court also adds that the current state, when the central body of the state administration of courts is the Ministry of Justice and the justice power itself has no representative body corresponding by its position to the level of the Ministry of Justice (provided that this body would be the body entitled to qualitatively take over the task of the Ministry in personal issues, including supervision over professional level of judicial staff or, where applicable, in further areas of management and execution of court administration), according to the opinion of the Constitutional Court, does not sufficiently exclude eventual options of indirect interference of the justice power by the executive power (e.g., through assignment of budget means and control of their use).

Judicial Councils

The Act on Courts and Judges established judicial councils at all ordinary courts, including district courts (provided that they have at least 10 judges). These bodies are the advisory bodies of the presiding judge of the court, as they operate in particular in issues of appointment of presiding judges of divisions and panels (at high and regional courts), they make statements to judges, who are to be assigned or redeployed to the given court, whether permanently or temporarily, they discuss the work schedule of the given court, they make statement to key issues of administration of the given court. Assembly of all judges of the given court elects members of the judicial councils for the period of XX years.

Appointment and Assignment of Judges

Candidate to the function of a judge is appointed into the function of the judge by the President, upon proposal of the Government, on the basis of his/her own prior consent and to the particular court. These are the prerequisites determined by law, necessary for appointment of a judge, under the obvious condition of entire criminal clean record of the candidate: achievement of the age of 30 years, completion of entire masters' education in the area of law, completion of the practice of the justice candidate, and completion of justice examination and undergoing of psychology examination.

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A judge may be temporarily assigned to a court other than the court, which s/he was originally assigned to, for the period of no longer than 3 years, provided that the Minister of Justice or the presiding judge of the regional court decide on his/her temporary assignment.

The Minister of Justice may also decide on temporary assignment of a judge to a district court other than which s/he was assigned to, but only with his/her consent. The Minister of Justice shall decide on redeployment of a judge after discussion with the presiding judge of the given court.

The act also enables redeployment of a judge to a court other than the one which s/he was assigned to, on the basis of his/her request or with his/her consent or also without his/her consent in the case that a change in organization of courts occurred, or when due execution of justice is not possible to ensure in the place, where the judge is redeployed to.

The state administration of particular courts is also performed by officials of these courts, i.e., their presiding judges and vice-presiding judges.

The judges of the Constitutional Court of the Czech Republic are appointed upon approval of the Senate by the President of the Republic for the period of ten years, and the repetition of the appointment is not prohibited by the Constitution. The President of the Republic independently appoints the presiding judge and two vice-presiding judges of the Constitutional Court from the group of judges of the Constitutional Court. A citizen of the Czech Republic with a clean record, who is electable into the Senate of the Parliament (i.e., s/he is at least 40 years old) may become the judge of the Constitutional Court if s/he completed university education in the area of law and was active in any profession of law for the period of at least ten years; thus, s/he need not be a professional judge at an ordinary court. Just like in the case of judges of ordinary courts, the function of the judge of the Constitutional Court is not congruent with the function of the President of the Republic, a member of Parliament or other function in public administration or any other paid function or profitable activity. Besides that, a judge of the Constitutional Court may not be a member of any political party or movement.

Lay Judges of District and Regional Courts

In cases determined by law, lay judges, who are not professional judges, operate in panels of district and regional courts. The possibility of existence of a non-professional element in the justice is already explicitly anticipated in Art. 94(2) of the Constitution.

While judges of ordinary courts are appointed to ordinary courts without time limitation, the lay judges are elected for a timely limited period of 4 years by the councils of municipalities in the case of lay judges of district courts, and by councils of regions in the case of lay judges of regional courts. Only a citizen with permanent residence in the area of the council, which elects him/her in the function, may become a lay judge. Lay judges only co-decide at courts of the first instance. In the case of voting within the panel, a vote of lay judges has the same importance as a vote of the presiding judge; the panel presiding judge may be over-voted.

Considering the importance of this function, the actual legal regulation is quite insufficient, as it does not regulate the method of choice of persons instead of lay judges (non-existence of any psychology tests nor any other entry attestations), nor it expressly regulates possible conflicts of interests and limitations by any age level. The financial evaluation is also insufficient. Unified and transparent process for assignment of lay judges to individual cases is also not determined, or it is only set at the level of administration of courts, not in legal regulation.

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1.4.2 Poland

Legal Regulation of the Court System of the Republic of Poland

a) Constitutional regulation:

- Articles 155 to 157, 178 to 181 of the Constitution of the Republic of Poland,
On the basis of Article 10(2) of the Constitution, it is determined that the court power is implemented by courts and tribunals. According to Article 175(1) of the Constitution of the Republic of Poland, this is the system of state authorities, which perform justice. According to Article 175(2) of the Constitution of the Republic of Poland, in time of war, the so called extraordinary courts may be established. So called tribunals are the part of the court system in which the Constitutional Court and the so called State Court are included by the Constitution of the Republic of Poland.

b) Legal regulation:

- Act No. 126/2011 Coll. (*Dz. ustaw*), on the National Council of the Judiciary (*o Krajowej radzie sadownictwa*),
- Act No. 98/2001 Coll., on the System of Common Courts (*prawo o ustroju sadow powszechnych*),
- Act No. 5/ 2018 Coll., on the Supreme Court (*o Sadzie Najwyższym*),
- Act No. 146/ 2017 Coll., on the National School of Judiciary and Public Prosecution (*o Krajowej szkole sadownictwa i prokuratury*),

c) Implementing legal regulation:

- Decree of the Ministry of Justice 602/2018 Dz. u., on Recruitment to Court Application and Prosecutor Application (*w sprawie przeprowadzenia naboru na aplikacje sędziowska i aplikacja prokuratorska*),

The Court System of the Republic of Poland – Basic Information.

The Constitution of the Republic of Poland establishes:

a) the unified system of the so called common courts, which are the courts performing court justice in the given issues extent, unless such justice is performed by courts of other type. Therefore, the court system of the Republic of Poland distinguishes administrative courts and military courts, which are not part of the system of common courts.

b) administrative courts,

c) military courts,

and further, the Supreme Court, the Supreme Administrative Court and the Constitutional Court.

The supervision over the system of common courts is performed by the Supreme Court from the point of view of jurisdiction and by the Minister of Justice from the point of view of their operating. The Ministry of Justice determines, in the way of organizational regulation, the seat and the content of competences of common courts.

In framework of common courts, the following courts are differentiated:

a) district courts (*Sad rejonowy*), established for one or more municipalities of special category (*gmina* – central municipality of greater area), exceptionally two courts in one *gmina*, for approx. 50,000 inhabitants, with the extent of new issues of at least 5,000 cases,

b) provincial courts (*Sad okregowy*), established for the range of two district courts,

c) appellate courts (*Sad apelacyjny*), currently, there are 10 such courts of this type in Poland.

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Within the structure of the general justice of the Republic of Poland, there is also the so called *Anti-monopoly* (Court for Competition and Customers Protection), which is part of the Provincial Court in Warsaw.

The courts are organizationally divided into court departments, managed by a presiding judge, appointed for 3 years. In framework of a district court, there are two departments: civil and criminal. The following departments may also be established: labour, for family issues, children and minors, for commercial issues. As regards provincial courts, besides civil and criminal departments, also departments for labour and social security issues, for commercial issues, for telecommunication, mail and Internet message control may also operate. In framework of an appellate court, there are in principle these departments: civil, criminal and for labour and social security.

In framework of courts, the justice is performed by judges and, as regards district courts, also by court assistants, who are entrusted to perform the court function. However, court assistants are excluded from deciding of certain issues (for example, as regards deciding on bail, ending of criminal prosecution, but also deciding on family and adoption issues).

National Council of the Judiciary (*Krajowa rada sadownicza*)

On the basis of Article 186 of the Constitution of the Republic of Poland, this is an authority, which "protects independence and impartiality of judges". It is appointed for 4 years. Competences of this authority are then determined in Article 187 of the Constitution.

The National Council of the Judiciary is composed of:

- the presiding judge of the Supreme Court, the Minister of Justice, the presiding judge of the Supreme Administrative Court and persons appointed by the President,
- 15 members from judges of the Supreme Court, common courts, administrative courts and military courts,
- four deputies of the Sejm, elected by it, two senators elected by the Senate.

It is the authority, which represents justice power, provided that it guarantees its independence from other powers. This authority is very important institution performing the important assessment activities in the process of choice and appointment of candidates to places of judges.

Court Self-government

All courts of the Supreme Court are included in the so called General Assembly of Judges of the Supreme Court of the Republic of Poland. The mission of this body is in particular to approve the court rules of this body, as well as the system of internal procedure in determination of conditions for election of judges of the Supreme Court itself, the presiding judge of the Supreme Court, but also of the National Council of the Judiciary. The Supreme Court acts in particular as the "Division of the Supreme Court".

The division of the appellate court is composed of the presiding judge of the court and 3 to 5 further judges of this court, who are elected from the group of judges of this court. This authority also decides on candidates to functions of judge.

The division of a provincial court is composed of 4 to 8 members of the court, who are elected by the assembly of judges of this court. The competences of this court also include deciding on candidates for judges of provincial and district courts.

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In the system of Polish justice, there are also the self-government councils of judges as the authorities of justice self-government. These are the authorities of this type:

- a) General assembly of provincial judges,
- b) General assembly of judges of an appellate court.

These authorities in particular discuss candidatures of judges to particular justice positions.

1.4.3. Slovak Republic

Legal Regulation of the Court System

- a) The constitutional base of the Slovak legal regulation of the court power is determined by [Constitution Act No. 460/1992 Coll., the Constitution of the Slovak Republic](#) in provisions of Art. 124–148, which regulate the position of the Constitutional Court of the Slovak Republic, as well as the ordinary courts and further, in Articles 46–50 of the Constitution, the right to equitable process is regulated.
- b) The legal regulation:
 - The Act on Judges, i.e., [Act No. 385/2000 Coll., on Judges and Lay Judges and on Change and Supplementation of Some Laws](#)
 - The Act on Courts, i.e., [Act No. 757/2004 Coll., on Courts and on Change and Supplementation of Some Laws](#)
 - The Act on the Court Council of the Slovak Republic, i.e., [Act No. 185/2002 Coll., on the Court Council of the Slovak Republic and on Change and Supplementation of Some Laws](#)
 - The Act on the Constitutional Court of the Slovak Republic, i.e., [Act No. 314/2018 Coll., on the Constitutional Court of the Slovak Republic and on Change and Supplementation of Some Laws](#)
- c) Implementing Regulation:
 - Decree [No. 160/2017 Coll., laying down the details on selection procedure in functions of judges](#)
 - Decree [No. 543/2005 Coll., on Administration and Office Rules for District Courts, Regional Courts, the Special Court and Army Courts.](#)
 - [Principles of the selection procedure](#) for a vacant place of a judge, functional promotion of judges to a court of higher instance and for the appointment into higher judge functions approved by the Court Council according to Section 4 (2)(a) of Act No. 185/2002 Coll.

Court System of the Slovak Republic

The court power of the Slovak Republic is performed by ordinary courts and the Constitutional Court of the Slovak Republic. The justice is performed by independent and impartial courts, which are at all levels separated from other authorities of the state power. The system of ordinary courts is created by district courts, regional courts, the Supreme Court of the Slovak Republic and the Special Criminal Court.¹⁸⁴ The National Council of the Slovak Republic actually enacted the governmental proposal of the Constitutional Act, amending the Constitution as well as the governmental proposal of the Act on Justice Reforming. Besides the Supreme Court of the Slovak Republic, also the Supreme Administrative Court of the Slovak Republic shall become the equal top authority of the system of ordinary courts. The Supreme Administrative Court should commence its activity as of 1 August 2021.

State Administration of Courts

¹⁸⁴ [Judicial system in Slovakia](#)

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The administration of courts in Slovak Republic shall be performed to the extent determined by law by the Ministry of Justice of the Slovak Republic and the presiding judge, who is also the statutory body of the court. The administration of the court shall also be performed by the director of the administration of the court to the extent determined by law.

The Judicial Council of the Slovak Republic

The Judicial Council of the Slovak Republic, which is the constitutional body of the justice legitimacy, was established in Slovakia. The chairmen and vice-chairmen of the Judicial Council shall be elected and recalled by the Judicial Council itself from its members. The members of the Judicial Council of the Slovak Republic are: one judge elected and recalled by judges of the Supreme Court of the Slovak Republic and judges of the Supreme Administrative Court from judges of these courts; further eight judges, who are elected and recalled by judges of other courts in more election districts, which are created in order the number of votes of judges necessary for election and recalling is comparable; three members, who are elected and recalled by the National Council of the Slovak Republic; three members, who are appointed and recalled by the President of the Slovak Republic; and three members, who are appointed and recalled by the Government. The function period of members of the Judicial Council is 5 years and the same person may be the member or the chairman of the Judicial Council no more than in two subsequent periods.

The execution of the function of chairman and vice-chairman of the Judicial Council is not congruent with a function in another body of the public power and any other employment relationship, business activity, membership in a management or controlling body of a business legal person, etc., with the exception of administration of own property and scientific, pedagogy, literature and art activity.

The following is included in the competence of the Judicial Council according to the constitutional law:

- a) To ensure fulfilment of tasks of the public control of the justice,
- b) To adopt statement, whether a candidate for appointment of a judge complies with prerequisites of the justice capability, which provide guarantees that s/he shall duly perform the function of judge,
- c) To present proposals of candidates for appointment of judges and proposals of recalling of judges to the President of the Slovak Republic,
- d) To decide on assignment and redeployment of a judge,
- e) To present proposals of appointment of presiding judge and vice-presiding judge of the Supreme Court of the Slovak Republic, presiding judge and vice-presiding judge of the Supreme Administrative Court of the Slovak Republic and proposals to their recalling,
- f) To present proposals of candidates for judges to the Government, who should operate on behalf of the Slovak Republic in international court authorities,
- g) To make statements to proposal of the budget of courts during the composition of the proposal of the state budget and to present statement to proposal of the budget of courts to the National Council of the Slovak Republic,
- h) To supervise, whether a judge complies with prerequisites of judge capability, which provide guarantee that the function of judge will be performed duly for the entire period of duration of the function of judge,
- i) To ensure supervision and act in issues of property relations of a judge,
- j) To issue principles of justice ethics in cooperation with authorities of court self-government,
- k) Further competences, if determined by law.

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The more detailed regulation is, further to Art. 141a of the Constitution, entrusted to Act No. 185/2002 Coll., on Judicial Council.

Conclusions. Legal regulation in the compared countries of Central European region (Czech Republic, Slovakia, Poland) is based on a constitutional definition of the judiciary and is further laid out within regular legislation, as well as by-laws.

Justice Organisation. Differences of various character can be found in a specific judiciary organisation. On the one hand, the justice organisation is partly laid out differently, for example, in Slovakia, the Special Criminal Court was established, and, on the other hand, there is a three-stage structure of the general justice there (district and regional courts, the Supreme Court); in the Czech Republic and Poland, there is a four-stage structure (in the Czech Republic, there are also high courts, and in Poland, there are also appellate courts). As far as the justice typology is concerned, we can see both the differences – the Polish regulation, for example, governs military courts, that were abolished in the Czech Republic and Slovakia and whose activity was shifted to ordinary courts, and common elements – e.g., the existence of the structure of administrative justice (in the Slovak Republic, the Supreme Administrative Court has been established recently) and the existence of the Constitutional Court.

Role of Judicial Councils. The Slovak Republic and Poland have established Judicial Councils (the Judicial Council of the Slovak Republic and the National Council of the Judiciary in Poland) that are responsible, within their competences, for monitoring the fulfilment of justice tasks (Slovak Republic) and protecting independence of courts and impartiality of judges (Republic of Poland). Regarding the judge selection and evaluation issue, the Judicial Council of the Slovak Republic has important powers to adopt a statement whether the candidate for appointment of a judge complies with prerequisites of the justice capability to duly perform the function of judge, further to present proposals of candidates for appointment of judges (also the National Council of the Judiciary in Poland has the same powers) and proposals of recalling of judges to the President, and to decide on assignment and redeployment of a judge. In the Czech Republic, there is no such body established and, thus, the role of the Ministry of Justice is significantly increased in this regard.

Lay Judges and other Non-judicial Members. In all three countries surveyed, also lay judges participate in performing the justice similarly, specifically, in deciding, particularly, within criminal proceedings, and, in the Czech Republic and Poland, also in some civil proceedings. They are appointed in all countries for the period of four years by local authorities (in Poland, by the Municipal Council). Lay judges have equal rights with judges when resolving cases (except for presiding the panel), and may over-vote judges in the panel. Their education and qualification are defined differently. In addition to lay judges, also other persons (e.g. higher court clerks (Czech republic and Slovak Republic), judicial clerks and court secretaries (Republic of Poland)) may participate in various extent in court decisions.

1.5 Western Europe region

The comparative analysis covered Netherlands, Germany and Spain.

1.5.1 The Netherlands

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The Rule of Law Report 2020 carried out by the European Commission notes that Dutch justice system is characterized by a high level of perceived judicial independence and a particular attention for fostering the quality of justice¹⁸⁵. EU Justice Scoreboard shows that efficiency of the Dutch justice system over the past years is consistently high, encompassing low time disposition with cases in general as well as civil, commercial and administrative cases in the first instance in particular, and a consistent clearance rate around 100 per cent¹⁸⁶. The trust of the society in the justice system, as well as figures on its efficacy form the basis for the choice of the Kingdom of Netherlands as one of the systems to be analyzed regarding the selection, evaluation and promotion of judges.

Under the Constitution of the Kingdom of Netherlands, the adjudication of disputes involving rights under civil law and debts as well as the trial of offences is the responsibility of the judiciary, (Article 112 part 1, Article 113 part 1)¹⁸⁷. It should be noted that the judicial system in Netherlands has undergone relevant changes in the last decade that include both – the geographical distribution of the courts and the selection process of judges.

Currently (since 2013) the court system is composed of eleven district courts, four general courts of appeal, two specialised courts (The Central Appeal Tribunal and the Trade and Industry Appeals Tribunal), the Council of State and a Supreme Court. The Council of State has two branches, one of which acts as the highest administrative court, while another is an advisory branch, rendering opinions on the draft legislation.

Each of the 11 district courts may have a number of sub-district venues, in which civil cases up to the value of 25,000 euro and minor criminal cases are tried by a single judge. District courts are comprised of departments (sections) and there may be up to 5 departments in each district court, which always include administrative law, civil law, criminal law and sub-district departments, a separate fifth department may be established for hearing family and juvenile cases.

There are 4 courts of appeal, which deal with appeals of district court decisions in civil and criminal cases and also deal with taxation cases. Their decisions may be appealed to the Supreme Court, dealing with cases in cassation. The Supreme Court also settles other matters prescribed in the Constitution, such as trying present and former members of the State's General, Ministers and State Secretaries (Article 119 of the Constitution of the Kingdom Netherlands). Other functions may be prescribed to the Supreme Court by an Act of the Parliament.

The decisions of district courts in administrative matters may be appealed to, depending on the subject matter, special tribunals, competent in the specific areas of administrative law – Administrative Court for Trade and Industry, Central Appeals Court for Public Service and Social Security Matters or Administrative Jurisdiction Division of the Council of State.

It is also important to note that the Constitutionality of Acts of Parliament and treaties shall not be reviewed by the courts (Article 120 of the Constitution of the Kingdom of Netherlands).

Regulatory framework of selection, evaluation and promotion of judges.

¹⁸⁵ 2020 Rule of Law Report, Country Chapter on the rule of law situation in Netherlands, SWD(2020) 318, final, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1602579986149&uri=CELEX%3A52020SC0318>.

¹⁸⁶ EU Justice Scoreboard 2020, Figures 5-11, available at: https://ec.europa.eu/info/sites/info/files/justice_scoreboard_2020_en.pdf.

¹⁸⁷ The Constitution of the Kingdom of Netherlands, available at: [file:///C:/Users/m.treige/Downloads/WEB_119406_Grondwet_Koninkrijk_ENG%20\(2\).pdf](file:///C:/Users/m.treige/Downloads/WEB_119406_Grondwet_Koninkrijk_ENG%20(2).pdf).

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The main principles for selection and appointment of judges are set out in the **Constitution of Kingdom of Netherlands**, Chapter 6, Articles 117-118. While the selection and appointment procedure for judges to the majority of courts is delegated to the Act of Parliament, the appointment procedure for the justices of the Supreme Court is set out in the Constitution to a greater extent.

Furthermore, two acts adopted by the Parliament are essential concerning selection, appointment, evaluation and promotion of judges – the **Law on Judicial Organization**¹⁸⁸ and **Law on the Legal Status of Judicial Officers**¹⁸⁹. The provisions of the Judicial Officers (Legal Status) Act are further detailed in the Royal **Decree** co-signed by the Minister of Justice **on the Legal position of judicial officers** (Besluit rechtspositie rechterlijke ambtenaren (Brra))¹⁹⁰.

There also several relevant documents approved by the Council for the Judiciary, which were developed by the working groups comprised of members with different backgrounds including, the members of academia. Firstly, there is a developed **National (Job) Profile of a Judge**¹⁹¹, describing the relevant personal characteristics, which are evaluated throughout the selection procedure by the use of different methods and evaluated, when promotion of a judge is considered. There are five job profiles developed, depending on the seniority of judge, however, not all are publicly accessible. A second relevant document is a **Guide for conducting performance interviews** (attached to the present analysis), detailing the procedure and enlisting issues to be covered by the performance interview and its outcome (report). However, it should also be noted that not everything relevant to the selection, evaluation and promotion procedures of judges in Netherlands is formalized and the website of the Dutch judiciary is a valuable resource¹⁹².

Competent authorities. There are several competent authorities, which act in the selection and appointment (nomination) procedure of a judge of a district courts or courts of appeal, so that the system of checks and balances would work properly.

Although Council for the Judiciary is tasked with the selection of candidates under the Law on the Legal Status of Judicial Officers, it has delegated this function to the National Selection Committee for Judges. Therefore, candidate judges are selected by the National Selection Committee for Judges and subsequently appointed for life by the executive on the proposal of the Minister of Justice. The appointment decision itself is adopted by royal decree, which is signed by the King and countersigned by the Minister of Justice and Security (hereinafter – the Minister, the Minister of Justice). It is noted that the Minister solely verifies, whether the applicant fulfils the legal requirements and in practise the Minister has in all cases followed the recommendation by the Council for the Judiciary (Selection Committee)¹⁹³, thus the selection procedure is primarily in the hands of independent judicial authorities.

¹⁸⁸ Version in force from 1st January 2020 available at (in English): https://www.rechtspraak.nl/SiteCollectionDocuments/Wet-op-de-Rechterlijke-Organisatie_EN.pdf.

¹⁸⁹ Version in force from 1st January 2020, available at (in English): <https://www.rechtspraak.nl/SiteCollectionDocuments/judicial-officers-legal-status.pdf>.

¹⁹⁰ Version valid from 1st October 2020, available at (in Dutch): <https://wetten.overheid.nl/BWBR0006530/2020-10-01>.

¹⁹¹ Available at (in Dutch): <https://www.werkenbijderechtspraak.nl/wp-content/uploads/2016/08/Referentiefunctie-rechter-4-april-2012.pdf>.

¹⁹² <https://www.werkenbijderechtspraak.nl/>.

¹⁹³ Rule of Law report 2020, p. 2-4

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Therefore, the composition and nomination of the Council for the Judiciary as well as that of the National Selection Committee should be considered. The **Council for the Judiciary** was established in 2002 as an independent buffer between the judiciary and the government, with the terms of composition and functions set out under the Law on Judicial Organization, Part 6 (Sections 84-111). The Council is a part of the judiciary, but does not administer justice itself¹⁹⁴. The Council consists of the minimum of 3 and maximum 5 members. If the Council consists of three or four members, or five members, as the case may be, either two members or three members respectively must be judicial officers responsible for the administration of justice appointed under the Law on the Legal Status of Judicial Officers. The remaining members are not judicial officers. The members of the Council are appointed by the royal decree, upon the recommendation of the Minister of Justice, for six years. The Chairman of the Council is appointed from one of the judicial members by the royal decree¹⁹⁵. The Law on Judicial Organization also provides the list of positions, which are considered incompatible with the office at the Council for the Judiciary.

Currently members to the Council of the Judiciary are appointed in the following manner: the Minister and the Council for the Judiciary establish jointly a list of maximum six persons to fill a vacancy. This list is submitted to a Recommendation Committee. The Recommendation Committee is composed of one court president, a representative of the Dutch Association for the Judiciary, a member of the College of Representatives of the courts, a non-judge member of a court administration and a person appointed by the Minister. Recommendation Committee then draws up a list of maximum three persons and submits it to the Minister, who subsequently then nominates the new member of the Council to be appointed for six years by the Royal Decree (Law on Judicial Organization, Section 85). However, this appointment procedure is criticized due to lack of involvement of judiciary and the role of the Minister, which might be regarded as an intervention to the independence of the judiciary and draft legislation is proposed to amend the appointment procedure, minimizing the role of the Minister¹⁹⁶. The Council decides by the majority of votes, in cases when there are 3 members of the Council, a decision may be taken if at least 2 of the members are present. The members are discharged by the Royal Decree on the recommendation of the Minister, upon the termination of their term, upon their own request, when they are subject to disciplinary action, discharged or suspended as judicial officers. (Section 87).

The Council is independent and its functions, set out in Section 91 of the Law on Judicial Organization, encompasses supervision of the operation of courts, it also plays a key role in safeguarding the independence of the judiciary and is tasked with fostering the quality of the justice system, including allocating financial resources to courts as well as nationwide activities relating to the recruitment, selection, appointment and training of the court staff. The Council

¹⁹⁴ Website of the Dutch Council for the Judiciary: <https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Raad-voor-de-rechtspraak/Paginas/default.aspx>.

¹⁹⁵ Law on Judicial Organization, Section 84.

¹⁹⁶ A draft legislation amending the appointment procedure of the members of the Council for the Judiciary has been proposed to the effect that would limit the role of the Minister in this procedure. Under the proposed legislation the Minister would neither delegate a member of the Recommendation Committee, nor participate in establishing the list of six persons as the candidates. A Parliamentary motion from the House of Representatives has been lodged to the Government to request a Council of State opinion on potential weaknesses in the legal framework regarding the appointment of members of the Council for the Judiciary and of members of court boards, and to report on this to the Chamber. In February 2020, the Minister asked the Council of State for advice in this regard. The objective of this reflection is to further limit the influence of the executive or legislative powers on the appointment of the members of the Council for the Judiciary. Rule of Law Report 2020, p. 4.

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is also tasked with providing support for activities of the courts aimed at achieving uniform application of the law and promoting legal quality (Section 94).

There is an advisory body to the Council – Board of Delegates, which is tasked with providing the Council with solicited or unsolicited advice on the performance of its duties and is comprised of the representatives of the courts (Law on Organization of Courts, Section 90).

National Selection Committee for Judges (*nl. Landelijke Selectiecommissie Rechter* (LSR))¹⁹⁷ composed of at least six judges and six non-judge members, among which at least one public prosecutor and one attorney. There currently are two groups of six selectors, with two groups of six deputy selectors (24 members in total), and in addition management of the Committee (the president, vice-president and two secretaries), who may also function as deputy selectors. Generally, besides judges, attorneys and public prosecutors, the Committee is composed of members from various social sectors such as public administration, business, education and science. The concept of the manner of composition of the Committee is that members would work for the time allocated as selectors and then would serve another term as deputy selectors so that the continuity and the passage of knowledge was be ensured¹⁹⁸. The basis (reason) for having a small Committee was to allow the members, performing the selection, to get really trained, as previously with a larger selection committee (with 75 members in total), the selectors were only able to do several selections per year and thus their ability to build sufficient expertise in selecting the candidates was hindered¹⁹⁹.

Members of the Committee select candidates for the positions of the judge or councilor (judge at the court of appeals) in training or a deputy councilor or deputy judge. Although throughout the selection procedure members of the Committee take turns, all members participate in the final selection, where the Committee assesses, whether a particular candidate is suitable for one of the vacant positions. One of the appointed judicial members acts as a chairman for the final selection day, while one of the member secretaries of the Committee presides over the deliberation in chamber.

The members of the Committee are selected on the basis of a job profile and formally appointed by the Council for the Judiciary. The member of the Committee should preferably have experience in conducting selection interviews or have some affinity with recruitment and selection and/or training judges. The member should preferably have been working for a while within the current magistracy or, as an external member, and have a good overview (understanding) of the judiciary and the judicial office. The required competences for the members of the Committee listed in the job profile are the following: communication skills, ability to listen, sensitivity, integrity, firmness, decision making. When appointed to their position, the members of the Committee are trained through an education (training) program to fulfill their task to the best of their abilities.

Current composition of the National Selection Committee may be found on the website of Dutch Judiciary²⁰⁰.

Another body acting (to a certain extent) in the processes of selection, evaluation and promotion of judges is the **Management Board** of a particular court. Court board is comprised of

¹⁹⁷ More information available on the website: <https://www.werkenbijderechtspraak.nl/de-organisatie/lshr/>.

¹⁹⁸ Judicial Reform in Netherlands, Journal of the Judiciary, 2015, p. 17. Available at (in English): <https://www.rechtspraak.nl/SiteCollectionDocuments/judicial-reform-2015-compleet-alttekst.pdf>

¹⁹⁹ Judicial Reform in Netherlands, Journal of the Judiciary, 2015, p. 15.

²⁰⁰ <https://www.werkenbijderechtspraak.nl/rechter-of-raadsheer-worden/werving-selectie-en-opleiding/>.

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three members – two judges and a non-judge member, one of judicial members acts is appointed a chairperson. Members of the Management board at courts are appointed by the Royal Decree on the nomination of the Minister of Justice for six years, following the recommendation of the Council of the Judiciary, who hears the court board of the court in question (Section 15)²⁰¹. The Management Board is tasked with the day-to-day management of the court²⁰², but is also tasked with the promotion of legal quality and uniform application of the law within the court (Section 23(3)). While performing its tasks, the management board may not, however, become involved in the procedural aspects or substantive assessment of or decision in a specific case or a category of cases.

1.4.3 Germany

Germany has played an influential role in the European Union since its inception. It is a great power with a strong economy; it has the largest economy in Europe, the world's fourth-largest economy by GDP (Gross domestic product), and the fifth-largest by PPP (Purchasing power parity). As a global leader in several industrial, scientific and technological sectors, it is both the world's third-largest exporter and importer of goods. As a developed country, which ranks very high on the Human Development Index, it offers social security and a universal health care system, environmental protections, and a tuition-free university education. Germany is also a member of the United Nations, NATO, the G7, the G20, and the OECD.²⁰³ It was the world's second-biggest aid donor in 2019 after the United States²⁰⁴.

Germany has a civil law system based on Roman law with some references to Germanic law.²⁰⁵ The Bundesverfassungsgericht (Federal Constitutional Court) is the German Supreme Court responsible for constitutional matters, with power of judicial review. Germany's supreme court system is specialised: for civil and criminal cases, the highest court of appeal is the inquisitorial Federal Court of Justice, and for other affairs the courts are the Federal Labour Court, the Federal Social Court, the Federal Finance Court and the Federal Administrative Court²⁰⁶.

For ordinary proceedings in civil matters, German civil procedure provides for three instances. The criminal courts as well as the labour courts, administrative and social courts have a similar structure of three instances. Constitutional courts exist at state and federal level. Although decisions by the Federal Court of Justice may be challenged before the Federal Constitutional Court, the latter does not act as a further instance to which decisions can be appealed. The Federal Constitutional Court will only assess whether or not a court decision would violate constitutional law; it does not judge whether sub-constitutional law has been applied

²⁰¹ The Rule of Law Report indicates that discussions are ongoing regarding a greater involvement (influence) of judges in the appointment process of the courts' Management Boards and members for the Council of the Judiciary. P. 3-4

²⁰² The responsibilities of the Management Board include: information systems and the provision of administrative information; preparing, adopting and implementing the budget; accommodation and security; the quality of the administrative and organizational procedure of the court, including its external focus; personnel matters; other facilities (Law on Judiciary Organization Section 23(1)).

²⁰³ Germany. See in: <https://en.wikipedia.org/wiki/Germany>

²⁰⁴ Green, Andrew (8 August 2019). "Germany, foreign aid, and the elusive 0.7%". Devex. Archived from the original on 8 August 2019. See in: <https://en.wikipedia.org/wiki/Germany>

²⁰⁵ Merryman, John; Pérez-Perdomo, Rogelio (2007). *The Civil Law Tradition: An Introduction to the Legal Systems of Europe and Latin America*. Stanford University Press. pp. 31–32, 62. ISBN 978-0-8047-5569-6. See in: <https://en.wikipedia.org/wiki/Germany#Law>

²⁰⁶ Wöhrmann, Gotthard. "The Federal Constitutional Court: an Introduction". German Law Archive. Retrieved 29 March 2020. See in: <https://en.wikipedia.org/wiki/Germany#Law>

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correctly.²⁰⁷ In Germany, there is a strong focus on this constitutional principle (Article 20 GG states: “All governmental power comes from the people”).²⁰⁸

In summing up the influence of one of the oldest democracies Germany for other countries, as well as the universally recognized high authority of German courts and judges, indicates that the analysis on selection, evaluation and promotion of judges in Germany is really important.

The German Judiciary Act²⁰⁹ foresees the **Qualification for judicial office**: Whoever concludes his legal studies at a university by taking the first state examination as well as a subsequent period of preparatory training by taking the second state examination shall be qualified to hold judicial office; the first state examination comprises a university examination covering areas of specialisation and a state examination covering compulsory subjects. University studies and preparatory training shall be harmonised in content.

Preparatory training. The period of preparatory training shall last for two years.

Training shall be given at the following compulsory agencies:

1. at a court of ordinary jurisdiction in civil matters,
2. at a public prosecutor's office or at a court with jurisdiction in criminal matters,
3. at an administrative authority,
4. with counsel;

and at one or more optional agencies where proper training is guaranteed.

The training may take place on an appropriate scale with supranational, intergovernmental or foreign training agencies or with foreign lawyers. Credit may be given for training undergone at a faculty of law and at the German Academy of Administrative Science in Speyer. Land law may provide that the training according to subsection (2) number 1 may partly be given at a court with jurisdiction in labour matters and the training according to subsection (2) number 3 may partly be given at a court with jurisdiction in administrative, finance or social matters.

Training at a compulsory agency shall last for no less than three months, compulsory training with counsel shall last for nine months; Land law may provide that the training pursuant to subsection (2) number 4 may be undertaken for up to three months with a public notary, a company, an association or at another training agency where appropriate training in the provision of legal advice is ensured. Preparatory training may be extended in individual cases for compelling reasons but not, however, on account of inadequate performance.

During training provision may be made for training courses for a total period of three months. Detailed provision shall be made by Land law.

Examinations. The state and university examinations shall relate to the practice in court adjudication, in the administration and in legal advice, including the key qualifications required therefor according to section 5a subsection (3), first sentence; notwithstanding

²⁰⁷ Legal systems in Germany: overview. See in: [https://uk.practicallaw.thomsonreuters.com/w-007-7132?transitionType=Default&contextData=\(sc.Default\)&firstPage=true#co_anchor_a596255](https://uk.practicallaw.thomsonreuters.com/w-007-7132?transitionType=Default&contextData=(sc.Default)&firstPage=true#co_anchor_a596255)

²⁰⁸ Bovend'Eert. Recruitment and appointment of judges and justices in Europe and the US; see official publication <https://trema.nvvr.org/editie/2018-05/recruitment-and-appointment-of-judges-and-justices-in-europe-and-the-us>

²⁰⁹ German Judiciary Act in the version promulgated on 19 April 1972 (Federal Law Gazette I p. 713), as last amended by Article 9 of the Act of 8 June 2017 (Federal Law Gazette I p.1570) http://www.gesetze-im-internet.de/englisch_drig/englisch_drig.html#p0067 Service provided by the Federal Ministry of Justice and Consumer Protection and the Federal Office of Justice – www.gesetze-im-internet.de

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section 5a subsection (2), second sentence, examinations may also take account of foreign language skills. Standardisation of examination requirements and achievement rating must be ensured. The Federal Minister of Justice and Consumer Protection shall be authorised with the approval of the Bundesrat to lay down by legal ordinance a scale of marks and points for the individual and overall marks for all examinations.

The syllabus

for the university examination covering areas of specialisation and for the state examination covering compulsory subjects shall be so designed as to enable university studies to be completed after four-and-a-half years of study. The university examination covering areas of specialisation must include at least one written assignment. The state examination covering compulsory subjects must comprise both written assignments and oral examinations; Land law may provide that examinations can be taken during the course of studies, though not before the end of two-and-a-half years of study. The first state examination certificate shall list the results of the university examination covering areas of specialisation which has been passed and of the state examination covering compulsory subjects which has been passed, as well as the overall mark, to which the result of the state examination covering compulsory subjects contributes seventy per cent and the result of the university examination covering areas of specialisation contributes thirty per cent; the certificate is issued by that Land in which the state examination covering compulsory subjects was passed.

The written examinations forming the second state examination may be taken in the eighteenth month of training at the earliest and in the twenty-first month of training at the latest. They shall

at least relate to the training undergone in the compulsory agencies. Where Land law stipulates that a home assignment shall be performed in addition to assignments performed under invigilation, provision may be made to the effect that such assignment shall be performed after completion of the last compulsory agency. The oral examinations shall relate to the entire period of training

In the first and the second state examinations the examining body may deviate in its decision from the arithmetically calculated total mark where such deviation gives a better reflection of the candidate's performance in view of the overall impression gained and this has no influence on the candidate's passing the examination; in respect of the second state examination performance during preparatory training shall also be taken into consideration. The deviation shall not exceed one third of the average range within a class of mark. The proportion of oral examination attainments shall not exceed forty per cent of the total mark. In determining the total mark given for the second examination no account shall be taken of marks given during preparatory training.

The state examination covering compulsory subjects may be repeated once. A failed state examination covering compulsory subjects shall be deemed not to have been taken if the candidate registered early for the examination and completed the required examination assignment in full. Detailed provision, in particular as regards the expiry of the registration deadline, account to be taken of periods of study abroad, of illness or of release from study in respect of the total period of study, as well as the repercussions of interrupted examinations, shall be made by Land law. Land law may enable a candidate to repeat the examination for the purpose of improving his grade.

Every full professor of law at a university within the area of application of this Act shall be qualified to hold judicial office.

Appointment for life. Whoever has worked as a judge for at least three years after acquiring the qualification to hold judicial office may be appointed a judge for life.

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Opinion of the council for judicial appointments. The council for judicial appointments shall deliver a written opinion, with reasons, on the candidate's or the judge's personal and professional aptitude. The opinion shall be placed in the personal file. The council for judicial appointments shall deliver its opinion within one month. A judge may only be appointed or selected when the council for judicial appointments has submitted its opinion or where the time-limit in subsection (2) has expired.

The council for judicial appointments shall be asked to participate in the appointment of a judge to an office with a final basic salary that is higher than the final basic salary of an initial office. It shall deliver a written opinion, with reasons, on the judge's personal and professional aptitude. Further duties can be assigned to the council for judicial appointments.

Career change. A judge who is qualified as a professional judge may, on being given civil service tenure for life, also be appointed as public prosecutor after his appointment as judge for life where he is qualified and competent and with his written approval. Proof of suitability and aptitude shall be provided in the course of a two-year probationary period with the public prosecution office and by means of an appraisal. Where the appraisal does not attest to the judge's suitability and aptitude, the judge shall continue in his previous employment.

Competent authorities. Germany is a federal state. Judicial authority in Germany is shared between the Federation (“Bund”) and the sixteen “Länder” (states, provinces).

“In Germany there is no Council for the Judiciary. Federal judges in Germany are appointed by the Federal President (Bundespräsident), after being elected. The judges are elected for life tenure by the Judges Election Committee (Richterwahlausschuss) consisting of 16 ministers of the substates (Länder) and 16 members elected by the German Parliament (Bundestag). The committee examines the qualifications of the candidates and makes a proposal for appointment. The President (Bundespräsident) formally appoints a judge, but a federal minister is responsible for the decision. The German appointment process does not exclude potential political influence. And it has been criticized in the past. Nevertheless, there are important guaranties to ensure the decision-making process is based on objective criteria. There are checks and balances in the composition of the Judges Election Committee (ministers of the substates), there is an effective judicial control concerning judicial appointments (appeal procedure). And perhaps, most important, there is a legal culture in Germany which respects the independence of judges”.²¹⁰

“Germany, as a rule, has career judges, which means that judges spend all or most of their working life in the judiciary. Their career usually begins at a court of first instance and therefore in the employment of one of the Länder. Consequently, it is the Länder administrations that have to organize the system of first recruitment for the judiciary. Within the Länder the Ministry of Justice of the Land usually organises this process; in some of the Länder, appointments for the social and labour courts come within the scope of the Ministry of Labour and Social Affairs. In about half of the 16 Länder, judicial electoral committees (Richterwahlausschüsse) participate in the process of recruitment and appointment”.²¹¹

²¹⁰ Bovend'Eert. Recruitment and appointment of judges and justices in Europe and the US; see official publication <https://trema.nvvr.org/editie/2018-05/recruitment-and-appointment-of-judges-and-justices-in-europe-and-the-us>

²¹¹ Johannes Riedel. Training and Recruitment of Judges in Germany. International Journal For Court Administration. Vol. 5 No. 2, October 2013. URL: <http://www.iacajournal.org>

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“As has been shown, the process of recruitment and appointment of career judges is in the hands of the Länder judicial administrations. In some of the Länder, this matter is dealt with in full by their Ministry of Justice whereas in other administrations the authority to decide on recruitment and on the (first) appointment has been transferred to the presidents of the higher regional courts (i.e. the Länder courts of appeal). In some administrations candidates can apply at any time, and selection proceedings are held continuously throughout the year as vacant positions have to be filled, whereas in other cases applicants for judicial office are sought by job advertisement (Ausschreibung – public tender). Job advertisements are intended to ensure that applicants have equal opportunities of access to public office and that at the same time the most suitable applicant can be selected from as large a group as possible. Where proceedings are commenced without prior advertisements, it is assumed that those interested in the judiciary will try to acquaint themselves with the procedure that has been adopted and apply on their own initiative; it is expected that this is the group most interested and most suitable for judicial office.

In half of the 16 Länder [Baden-Württemberg, Berlin, Brandenburg, Bremen, Hamburg, Hessen, Schleswig-Holstein, Thüringen], judicial electoral committees (Richterwahlausschüsse) also participate in recruitment. These committees are parliamentary committees. Their members are appointed for a parliamentary election period and, as a rule, chosen by a parliamentary vote, in some cases on the basis of nominations of relevant professional groups (e.g. the judiciary, the bar). There are some differences between the electoral committees of each Land in regard to composition. They consist mainly of members of the respective Land parliament or persons commissioned by them; sometimes members of the judiciary and lawyers are included. The recruitment is only possible on the basis of concurring votes of the competent minister and the electoral committee.

Generally speaking, both in proceedings where only the Land’s Ministry of Justice or the higher regional court are involved as well as in those where electoral commissions have to decide together with the Ministry of Justice, some kind of evaluation of the credentials of candidates is taking place. Because of the different nature of these proceedings, the process of evaluation may vary. Invariably, the criteria listed above will have to be taken into account. These are:

- General criteria (German citizen, health, moral standing)
- Professional qualification (state exams, Befähigung zum Richteramt)
- Social competence”²¹²

“Justices of the Federal Constitutional Court are also elected, half of them by the German Parliament (Bundestag) and half of them by the Federal Council (Bundesrat).²¹³

1.5.3 Spain

Article 117 of the Spanish Constitution of 1978 states that the principle of the unity of the judicial power (*Poder Judicial*) is the basis for the organisation and operation of the courts²¹⁴. This principle results in the existence of a single judiciary making up the ordinary courts. Numerous courts exist, among which the work is distributed according to criteria determining

²¹² Johannes Riedel. Training and Recruitment of Judges in Germany. International Journal For Court Administration. Vol. 5 No. 2, October 2013. URL: <http://www.iacajournal.org>

²¹³ Bovend’Eert. Recruitment and appointment of judges and justices in Europe and the US; see official publication <https://trema.nvvr.org/editie/2018-05/recruitment-and-appointment-of-judges-and-justices-in-europe-and-the-us>

²¹⁴ “Justice emanates from the people and is administered on behalf of the King by judges and magistrates members of the Judicial Power who shall be independent, shall have fixity of tenure, shall be accountable for their acts and subject only to the rule of law”.

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jurisdiction – subject matter, amount, person, function or region – since the unity of the judicial power does not preclude the existence of different courts with different areas of jurisdiction.

The main legal act regulating the status of the Judiciary in Spain is Organic Law 6/1985 of 1 July on the Judiciary (*Ley Orgánica 6/1985, de 1 de Julio, del Poder Judicial*), which, among other matters, governs the scope and limits of jurisdiction, territorial organisation, composition and powers of judicial bodies, the governing bodies of the judiciary, judicial careers, independence and responsibility, rules on the organisational structure and functioning of the Justice Administration, and the office of the Public Prosecutor.

In accordance with the explanatory memorandum to Organic Law 6/1985, the State is divided **territorially**, for judicial purposes, into municipalities, districts (*partidos*), provinces and autonomous communities, with jurisdiction over them exercised by:

- Magistrates Courts (*Juzgados de Paz*);
- Courts of First Instance and Criminal Investigation (*Juzgados de Primera Instancia e Instrucción*);
- Commercial courts (*Juzgados de lo Mercantil*);
- Courts for dealing with violence against women (*Juzgados de Violencia sobre la Mujer*);
- Criminal courts (*Juzgados de lo Penal*);
- Contentious-Administrative Courts (*Juzgados de lo Contencioso-Administrativo*);
- Social Courts (*Juzgados de lo Social*);
- Prison Custody Courts (*Juzgados de Vigilancia Penitenciaria*);
- Juvenile Courts (*Juzgados de Menores*);
- Courts of Appeal (*Audiencias Provinciales*). The **Courts of Appeal** have their seats in the provincial capitals, from which they take their names, and their jurisdiction, as a rule, extends to the entire province;
- High Courts of Justice (*Tribunales Superiores de Justicia*). There is one **High Court of Justice** in each autonomous community that is the highest court within the territorial scope of that community, without prejudice to the jurisdiction of the Supreme Court. The high court of justice takes the name of the autonomous community in question and its jurisdiction extends to the territorial scope of that community.

The National Court (*Audiencia Nacional*), Supreme Court (*Tribunal Supremo*), Central Criminal Investigation Courts (*Juzgados Centrales de Instrucción*) and the Central Contentious-Administrative Courts (*Juzgados Centrales de lo Contencioso*) have nationwide jurisdiction.

Under the Spanish legal system, **ordinary jurisdiction is divided into four areas of law: civil, criminal, contentious administrative and social or employment.** In addition to the four areas of law under ordinary jurisdiction, the Spanish legal system recognises **military jurisdiction**, which is vested exclusively in the military courts established by law. Military jurisdiction falls outside the ordinary jurisdiction, and prosecutes offences under the Military Criminal Code and in cases of a state of siege, thereby constituting an exception to the principle of jurisdictional unity²¹⁵.

Within the areas of law under ordinary jurisdiction some courts may specialise in a particular subject matter. Examples include courts dealing with violence against women, commercial courts, courts with special duties in the matter of criminal sentencing (Prison Custody Courts) and juvenile courts.

²¹⁵ Appointment and promotion of judges of military courts is not the object of this study.

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Prison Custody Courts (*Juzgados de Vigilancia Penitenciaria*) perform the jurisdictional functions laid down in the General Law on Criminal Sentencing (*Ley General Penitenciaria*) in the matter of enforcing custodial sentences and security measures, exercising jurisdictional control over the disciplinary power of the criminal sentencing authorities, protecting the rights and benefits of the inmates of prisons and in other matters as specified by law. They form part of the criminal jurisdictional system.

Juvenile Courts (*Juzgados de Menores*) have jurisdiction to hear cases involving alleged crimes committed by persons aged between 14 and 18. Each province has at least one Juvenile Court based in the provincial capital with jurisdiction throughout the province. The city of Madrid has a Central Juvenile Court with jurisdiction for the whole of Spain. Each district has at least one **Court Dealing with Violence against Women** (*Juzgado de Violencia sobre la Mujer*) based in the district capital with jurisdiction throughout the province. They form part of the criminal jurisdictional system.

Commercial Courts (*Juzgados de lo Mercantil*), which have been in operation since 1 September 2004, form part of the civil jurisdictional system.

Without affecting the principle of jurisdictional unity insofar as they form part of the five jurisdictional systems, specialised courts can not only be set up by the Organic Law 6/1985, as is the case with the Commercial Courts, Juvenile Courts or Courts Dealing with Violence against Women, but can also be set up by the General Council for the Judiciary pursuant to Article 98 of the aforementioned law²¹⁶.

Competent authorities and categories of judges

Spanish General Council for the Judiciary (*El Consejo General del Poder Judicial*) was established in the Spanish Constitution of 1978 (Article 122) following similar models from neighboring countries such as France, Portugal and notably Italy. It started working as governing body of the judiciary in the year 1980. General Council for the Judiciary has 21 members: 12 judges, appointed by the parliament, 8 lay members, appointed by the parliament (prosecutors, professors of law, lawyers or members of other legal professions) and the President of the Supreme Court, who presides over the General Council.

The members of the General Council for the Judiciary are elected by a qualified majority of 3/5 of the Chambers pursuant to the following method:

	Among Judges and Magistrates	Among jurists of recognized competence	TOTAL
Members nominated by the Congress	6	4	10
Members nominated by the Senate	6	4	10
TOTAL MEMBERS	12	8	20
Chairman	<i>Elected by the Plenary of the General Council of the Judiciary among the</i>		1

²¹⁶ “The General Council of the Judiciary may order, subsequent to a report from the Governing Chambers, that in those judicial areas where there is more than one Court of the same type, one or several of these courts shall assume the exclusive task of hearing specific types of case, or execute actions proper to the jurisdictional area in question, without prejudice to the work of support from communal services constituted to this effect.”

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members of the judicial career or jurist of recognized competence.

Only 6 members of the General Council for the Judiciary (president and other 5 members) have full-time position (according to the amendment introduced by the Organic Law on the Judiciary of June 2013). Term of office of members of the General Council for the Judiciary is 5 years. The General Council for the Judiciary is renewed in its entirety, after the five-year tenure is over, although the outgoing Council continues his functions until the entry to office of the new one²¹⁷. The members may not be re-elected in the following Council. The tenure of the Chairman is linked to that of the Council which proposed him; however, the Chairman can be re-elected and appointed once for a new tenure. In case of anticipated dismissal of a member, he is substituted through the same procedure whereby he has been appointed; the tenure of the substitute member terminates with the General Council for the Judiciary of which he is part.

Article 122.2 of Spanish Constitution attributes three essential functions to the General Council for the Judiciary: first, the appointment and promotion of Judges and Senior Judges; secondly, the inspection of Courts and Tribunals; and, finally, the so-called “judicial disciplinary regime”.

The President of the Supreme Court and also President of the General Council for the Judiciary of [Spain](#) is the highest judicial authority of the [Kingdom of Spain](#) and holds the representation of the [judicial branch](#) and its governing body, the General Council of the Judiciary. The office of President of the Supreme Court is foreseen in the [Constitution](#) as well as giving to the President the presidency of the General Council for the Judiciary.

To be elected as President of the Supreme Court and the General Council for the Judiciary, it is necessary to be a member of the judiciary with the category of Senior Judge of the Supreme Court (*Magistrado del Tribunal Supremo*) and meet the conditions required to be chamber president thereof, or be a lawyer of recognised competence with more than twenty-five years’ experience in the profession.

The President of the Supreme Court is appointed by the King by Royal Decree endorsed by the Prime Minister after being nominated by the Plenary of the [General Council for the Judiciary](#). The President is elected in the Plenary of the Council if he has obtained the confidence of 3/5 of the members of the Plenary. If this was not the case, a second ballot would be held between the two candidates most voted in the first ballot, and the one who obtained the most support would be elected President.

Spanish Judicial School (*Escuela Judicial Consejo General del Poder Judicial*) depends on the General Council for the Judiciary. The Judicial School is responsible for coordinating

²¹⁷ The qualified majority of 3/5 required for the appointment of members of the CGPJ was impossible to reach after the last two general elections, held in 2019. As a result, the CGPJ has been exercising its functions on a temporary basis since December 2018. In October 2020 Spain’s socialist-led coalition has proposed changing how members the General Council for the Judiciary are appointed - triggering a political and judicial discussion about the independence of the institution. With the new legislative proposal, the need for a three-fifths majority remains - but it also adds the possibility of a second round of voting, 48 hours later, that would only require an absolute majority. Following the negative reaction, the proposed reform was at the end suspended <https://www.france24.com/en/live-news/20201022-spain-suspends-judicial-reform-that-upset-brussels>

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and providing initial training and continuous training, in the terms set forth in Article 433 bis (Article 307 of the Organic Law 6/1985). A special feature of the Judicial School is to have a team of full-time trainers (judges, jurists or university professors). Many outside collaborators, such as judges, lawyers and experts intervene in the School throughout the year.

The Spanish judiciary is a professional judiciary whose members are divided into three categories: **Judges (*Juez*)**, **Senior Judges (*Magistrado*)** and **Senior Judges of the Supreme Court (*Magistrado del Tribunal Supremo*)** (Article 299 of the Organic Law 6/1985). The distinction between these three ranks is relevant, since the procedures for selection and appointment of holders of judicial offices differ depending on the respective rank.

Judges (*Juez*) are appointed by Order of the General Council for the Judiciary.

Senior Judges (*Magistrado*) and court presidents are appointed by Royal Decree, at the proposal of the Council. Presentation to Royal Decree is made by the Ministry of Justice, who endorses the appointment (Article 316 of the Organic Law 6/1985). **However, neither the King nor the Ministry of Justice may object the appointment of the candidates proposed by the General Council for the Judiciary.**

Senior Judges of the Supreme Court (*Magistrado del Tribunal Supremo*) are appointed by the General Council for the Judiciary from senior judges with at least 15 years' service, including 10 years as a senior judge, while one fifth of Supreme Court judges are appointed from lawyers of recognised competence with at least 15 years' experience. The appointments are made by the General Council for the Judiciary according to the specific Council Regulation.

Conclusions

General remarks on the judicial systems.

1. All three abovementioned judicial systems share a common important feature, which determines significantly the approach to the formation and performance of the judiciary – these are old democracies with long-standing traditions and clear perception of judiciary as an independent and trust-deserving power.
2. Although what distinguishes the Netherlands in this context is that the Dutch justice system is characterized by a high level of perceived judicial independence and a particular attention for fostering the quality of justice. EU Justice Scoreboard shows that efficiency of the Dutch justice system over the past years is consistently high, encompassing low time disposition with cases.
3. In the context of the analysis of the selection, evaluation and promotion of judges it must also be noted Germany is a federal state, where judicial authority is shared between the Federation (“Bund”) and the sixteen “Länder” (states, provinces). This also impacts the system of formation of judicial corpus.

Legislative framework.

4. In all analysed states the basis for the judicial system is established on the constitutional level and the main principles and procedure of selection and appointment of judges are regulated in the relevant laws on judiciary (in the Netherlands – the Law on Judicial Organization, in Spain - Organic Law 6/1985 of 1 July on the Judiciary, in Germany - The German Judiciary Act), whereas details of the procedures, criteria, methodology are subject to the secondary legislation.

Institutional framework and the role of Judicial Councils.

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5. In Germany there is no Council for the Judiciary. Federal judges in Germany are appointed by the Federal President (Bundespräsident), after being elected by the Judges Election Committee (Richterwahlausschuss) consisting of 16 ministers of the substates (Länder) and 16 members elected by the German Parliament (Bundestag). The President (Bundespräsident) formally appoints a judge, but a federal minister is responsible for the decision. The German appointment process does not exclude potential political influence. There are checks and balances in the composition of the Judges Election Committee (ministers of the substates), there is an effective judicial control concerning judicial appointments (appeal procedure).
6. In Spain and the Netherlands Judicial Councils (Spanish General Council for the Judiciary and the Dutch Council for the Judiciary accordingly) are mainly authorized to select and appoint judges. Though in the Netherlands the task is delegated by the Council for the Judiciary to the National Selection Committee for Judges. Therefore, candidate judges are selected by the National Selection Committee for Judges and subsequently appointed for life by the executive on the proposal of the Minister of Justice. The appointment decision itself is adopted by royal decree, which is signed by the King and countersigned by the Minister of Justice and Security, in practise the Minister has in all cases followed the recommendation by the Council for the Judiciary (Selection Committee), thus the selection procedure is primarily in the hands of independent judicial authorities.
7. Distinctive feature of the system of bodies participating at the selection procedures in the Netherlands is the role of the Management Board of a particular the court. Court board is comprised of three members – two judges and a non-judge member, one of judicial members acts is appointed a chairperson. Members of the Management board at courts are appointed by the Royal Decree on the nomination of the Minister of Justice for six years, following the recommendation of the Council of the Judiciary.
8. Both in Spain and the Netherlands competent bodies are composed of judges and non-judges: the Spanish General Council for the Judiciary is composed of 12 judges and magistrates and 8 non-judges (jurists of recognized competence), the Dutch National Selection Committee for Judges is composed of six judges and six non-judge members from various social sectors such as public administration, business, education and science, among which at least one public prosecutor and one attorney must be present.

1.6 Balkan region

The comparative analysis covered Albania, Kosovo and North Macedonia.

1.6.1 Albania

Under the Constitution, the court system is composed by: (i) the Supreme Court (SC) as the highest judicial authority in the Republic of Albania. It represents the last instance of the judiciary, meaning that against its decisions cannot be made an appeal, except for issues that

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fall under the constitutional jurisdiction. The mission of the SC is to ensure the uniform interpretation of the law and standardization of administering justice. The SC consists of 19 judges and is organized into three chambers, namely in the civil, administrative and criminal chambers.

(ii) Second instance courts are courts of appeal of ordinary jurisdiction (civil and criminal), administrative courts of appeal and the court of appeal against corruption and organized crime. In the territory of the Republic of Albania operate in total eight (8) courts of appeal. Of these, 6 (six) are courts of appeal of ordinary jurisdiction, 1 (one) is a court of appeal for administrative cases and 1 (one) is a court of appeal against corruption and organized crime.

(iii) District courts are organized and function in judicial districts throughout the territory of the Republic of Albania. First instance courts adjudicate cases that are in the territorial jurisdiction of the district where the courts exercise their functions, which according to the subject matter of adjudication are divided into civil and criminal cases; the first instance court of administrative cases and first instance court against corruption and organized crime.

The Albanian Justice System has undergone a very deep legal reform in 2016. This came after a series and long-lasting previous reform which could not improve the quality and efficiency of justice system, and also could not prevent the corruption in the system despite the measures taken on that regard.

As result of this reform the whole chapters of the Constitution related with judicial power were revised, adding also for the first time an Annex on transitory evaluation of all judges and prosecutors in duty on their assets, professional and background criteria. As result, more than 50% of judges and prosecutors were dismissed from the duty mostly because they failed to justify their assets.

Regulatory framework of selection, evaluation and promotion of judges.

The legal framework on selection, evaluation and promotion of judges is as follows:

Constitution of the Republic of Albania (Articles 7, 135-147 “ç”).

Laws

- Law on the Transitional Re-evaluation of Judges and Prosecutors in the Republic of Albania (so-called vetting law, temporary law till 2026)
- Law on the Status of Judges and Prosecutors in the Republic of Albania
- Law on the Organisation of the Judicial Power in the Republic of Albania
- Law on Governance Institutions of the Justice System
- Law on the Organisation and Functioning of Institutions for Combating Corruption and Organised Crime (first instance court, appeal court, prosecutor office and investigation unit against corruption and organized crime. Established with the constitutional reform of 2016 (Art. 135 (2) of the Constitution)

High Judicial Council decisions:

- No.263, Date 21.11.2019 “supplementary rules on the evaluation of judges”
- No.264, date 21.11.2019 “scoring methodology aimed at determining a judge’s evaluation grade”
- No.316, dated 19.12.2019 “standard statistical tables for the ethical and professional evaluation of judges”
- No.120, dated 05.03.2020 “integrated form for the evaluation of judges”
- No.197, dated 11.06.2020 “rules for the selection of cases by lot in the process of ethical and professional evaluation of a judge”
- No.591, dated 26.11.2020 “template of the evaluation report”

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Competent authorities. The competent body to appoint, evaluate and promote the judges is the High Judicial Council.

1.6.2 Kosovo

Under the Constitution, the court system is composed of: the Basic Courts, the Court of Appeals, and the Supreme Court. The Supreme Court (SC) is the highest judicial authority in the Republic of Kosovo.²¹⁸

Second instance courts are courts of appeal of ordinary jurisdiction (civil and criminal). They are organized in following departments: 1. General Department; 2. Serious Crimes Department; 3. Special department for cases under the jurisdiction of the Special Prosecution of the Republic of Kosovo; 4. Department for Commercial Matters; 5. Department for Administrative Matters; 6. Juvenile Department. In the territory of the Republic of Kosovo operate in total 5 courts of appeal.²¹⁹

District courts are organized and function in judicial districts throughout the territory of Kosovo. First instance courts adjudicate cases that are in the territorial jurisdiction of the district where the courts exercise their functions, which according to the subject matter of adjudication are divided into civil and criminal cases; the first instance court of administrative cases and first instance court against corruption and organized crime. In addition to its main seat, each Basic Court shall have its branches as established by the Law on Courts.²²⁰ Commercial and administrative matters are exclusively within the competence of the Basic Court of Prishtina.²²¹

Regulatory framework of selection, evaluation and promotion of judges.

The legal framework on selection, evaluation and promotion of judges is as follows:

Constitution of the Republic of Kosovo (Articles 102-108).

Laws

- Law on Judicial Council
- Law on Courts

Kosovo Judicial Council regulations:

- No.1/2021 “On performance evaluation” as amended in supplementary rules on the evaluation of judges”
- No.09/2016, dated 01.06.2016 “On the election, nomination, evaluation suspension and discharge of court chairperson and supervising judge”, as amended.

Competent authorities. The competent body to appoint, evaluate and promote the judges is the Judicial Council and the President of the Republic, based on the proposal of the Council, who selects and ranks the candidates and also does the evaluation of judges during their career.

1.6.3 North Macedonia

²¹⁸ Article 103 of the Constitution.

²¹⁹ Article 24 of Law on Courts

²²⁰ Article 10 of

²²¹ Article 12 (3)

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Under the Constitution²²², the judicial power is exercised by the courts, without specifying their nature and jurisdiction. Special courts are prohibited. The types, competence, establishment, abolishment, organization and composition of the courts as well as procedure before the courts are regulated by a law adopted by a two-thirds majority vote of the total number of the members of parliament of the Republic of North Macedonia.²²³

The court organization is as follows²²⁴:

- basic courts established for one or several municipalities of the country (actually there are 27 basic courts)²²⁵; they may be organized in court department which may try outside the court's seat;²²⁶
- courts of appeal, which are established in 4 regions,²²⁷
- the Administrative Court, which is established and exercise its jurisdiction on the whole territory of the country and has the seat in Skopje;²²⁸
- the Higher Administrative Court with jurisdiction on administrative cases decided by the administrative court;²²⁹
- and the Supreme Court.²³⁰

Regulatory framework of selection, evaluation and promotion of judges.

The legal framework on selection, evaluation and promotion of judges is as follows:

Constitution of the Republic of North Macedonia (Articles 98-105).

Laws

- Law on Judicial Council
- Law on Courts

Competent authorities. The competent body to select, evaluate, promote and dismiss the judges is the Judicial Council²³¹ and the President of the Republic, based on the proposal of the Council, who selects and ranks the candidates and also does the evaluation of judges during their career.

Conclusions. The legislative framework of the selection, evaluation and promotion of judges in Balkan countries is set, as in majority of the countries, in the Constitution, the general Law on Judiciary and in the numerous secondary legislation, regulating principles, methodology and procedures as well as a very specific aspects of the procedures of the selection, appointment, qualification assessment.

The distinctive characteristic is the aim towards transparency via detailed procedures.

1.7 Other countries: Ukraine

²²² Article 98 (1) of the Constitution

²²³ Article 98 (3) of the Constitution.

²²⁴ Article 22 of the Law on Courts.

²²⁵ Article 28 (1) *ibid*

²²⁶ Article 23 (4) *ibid*.

²²⁷ Article 24 *ibid*.

²²⁸ Article 25 *ibid*

²²⁹ Article 25-a

²³⁰ Article 26

²³¹ Article 36 (1) of the Law on Judicial Council.

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Ukraine was selected as example outside European Union for the comparative analysis due to the ongoing reforms in the area of selection, evaluation and promotion of judges which showed the interest of the society in improving the existent status quo.

After the Revolution of Dignity Ukraine started a complex judiciary reset. It was foreseen as a part of the Justice Sector Reform Strategy and Action Plan 2015-2020 (JSRSAP), adopted in 2015 after the Maidan events. In 2016 the amendments to the Constitution of Ukraine, Law on Judiciary and Status of Judges marked the beginning of action in changing the system of recruitment and career of judges.

Judiciary reset includes an obligatory one-off evaluation (“qualification re-assessment”) of the existing judges to confirm their capability to continue to exercise their judicial duties. The judiciary reset also involves a new mechanism of selection of new judges (based also on the so-called qualification assessment procedure of candidates, including judges seeking career, similar to the “qualification re-assessment”), and the creation of new courts (for example, High Anti-Corruption Court) with specific recruitment rules (open competition on the basis to all candidates, including judges, seeking promotion).

Newly introduced approaches and procedures in Ukraine were unique in their scope and extent by comprising very important specific features:

- Comprehensiveness and complexities of procedures and methodologies of the candidate assessment;
- Involvement of the civil society;
- High level of technocracy in the candidate assessment, in which not only the legal knowledge and skills, but also their social competences and psychological abilities are assessed on the basis of the established criteria and procedures;
- Substantial impact of the method of psychological testing, which is comparable to methods already applied, albeit to a lesser scope and extent, in some EU countries; the tests provide a good base to receive a thorough expert assessment of the personality of a candidate.

Therefore, it was considered to be a good example for analysis of particular approaches to profile of a judge and methodologies applied.

However, it must be noted, that the system, described in this analysis, was effective till the end of 2019, when the draft law No.1008 “On Amendments to the Law of Ukraine on the Judiciary and Status of Judges and Some Laws of Ukraine on Activities of Judicial Authorities”, submitted to the Parliament by the President Volodymyr Zelensky was adopted by the Parliament and entered into force as the Law No. 193-IX, establishing new rules regarding the structure and role of the HCJ, and the new status and procedure for establishing the HQCJ. Accordingly, activities of the “old” HQCJ were suspended until a new HQCJ would be established. The Law envisaged the reduce of the number of judges in the new SC and put in place a new procedure and new rules for judges’ disciplinary liability. Once the law was adopted, the Supreme Court appealed to the Constitutional Court of Ukraine (CCU) to challenge the constitutionality of the provisions regarding the reduction in the number of SC judges; the reduction in judicial remuneration; the change in the number of members of the HQCJ; the creation of the Integrity and Ethics Commission and the scope of its competency; the simplification of procedures for holding judges disciplinarily responsible. In its decisions No.2-r/2020 from 18 February 2020 and No.4-r/2020 from 11 March 2020, the CCU declared a number of provisions of the Law No. 193-IX unconstitutional, including those related to the new status and the establishment of the HQCJ.

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On 22 June 2020, President Zelensky introduced a new draft law No 3711 on the judiciary in the Parliament. Though, this draft Law and further draft amendments and attempts to solve the constitutional crisis in judiciary have not yet resulted in a new regulation. Therefore, all the procedures of the judicial reset, qualification re-assessment procedures, recruitment of new judges have been postponed for more than a year without clear vision, if a system, procedures and methodologies, described in this analysis would be envisaged by a new regulation.

Regulatory framework of selection, evaluation and promotion of judges.

In 2016, the amendments to the Constitution of Ukraine and the adoption of the Law of Ukraine "On the Judiciary and the Status of Judges" (hereinafter referred as to the Law on Judiciary of Ukraine) have established main principles and directions of the complex judiciary reform in Ukraine.

The abovementioned changes introduced a number of novelties in the selection and assessment of judges. For example, scholars and attorneys have been allowed to compete for a judicial position to higher courts, new qualification assessment procedures for judicial candidates have been introduced, a new body, providing the participation of the civil society in the selection and assessment procedures – the Public Integrity Council Integrity – was formed, etc.

The following legislative acts regulate main principles, methodology and procedures of the selection and the qualification assessment:

Constitution of Ukraine²³²

The amendments were made to the Constitution within the framework of judicial reform, in particular: provisions envisaging first-time appointment of the judge were removed (lifetime appointment was established), requirements for a candidate to the judicial position were modified (age and professional qualification criteria were enhanced).

The Constitution sets forth the following requirements for candidates to positions of judges: citizenship of Ukraine, age over thirty and below sixty-five, higher legal education, not less than five years of professional experience in the field of law, professionalism, integrity, fluency in the state language.

Law of Ukraine “On the Judiciary and the Status of Judges”, adopted 16 July 2016 (hereinafter referred as to the Law on Judiciary)²³³

This legal act defines the legal status of a judge, the system of the judiciary organization, the grounds for the selection and qualification assessment of a judge and the candidate for a judicial position.

Requirements for persons seeking judicial position (both general ones and those specific for persons seeking positions in higher court) have been established (Art. 28, 33, 38, 69). Also, Art. 69 specifies the categories of persons not eligible for a judicial position, in particular having: partial capability or incapability, recognized by court; chronic mental or other diseases

²³² <https://zakon.rada.gov.ua/laws/main/en/254%D0%BA/96-%D0%B2%D1%80#Text>

²³³

<https://vkksu.gov.ua/userfiles/doc/Law on Judiciary and Status of Judges 16%2007%202016 EN G.pdf>

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that prevent them from performing the functions of the administration of justice; an unexpunged or unspent conviction; a prohibition to hold the respective position under the law; earlier dismissal from a position of judge based on results of qualification evaluation or due to committing a substantial disciplinary offence, gross or systematic neglect of duties which is incompatible with the status of judge; violated of the incompatibility requirements, the duty to certify the legality of the source of property.

A new system of selection, appointment and career of judges was established by the Law by introducing a new institutes of qualification assessment, regular performance evaluation. New procedures are envisaged, where a civil society has become a very important player in deciding upon appointments and career of judges.

What is also worth mentioning, that the Law expanded criteria applied in qualification assessment and selection procedure to those not only related to professional/legal knowledge and skills, but also to personal, social competences, professional ethics and integrity.

Regulation on the Qualification Assessment Procedure and Methodology, Indicators of Compliance with Assessment Criteria and Means of their Determination (approved by the High Qualification Commission of Judges (approved by the Decision of the High Qualification Commission of Judges No.143/zp-16 of November 3, 2016, with amendments introduced by the Decisions of the Commission No.22/zp-18 of February 16, 2018, and No.57/zp-18 of March 21, 2018)²³⁴ further sets more specific procedure and indicators for qualification assessment as well as the methodology of the evaluation of these indicators.

Regulation “On the Procedure of the Administration of the Judicial Dossier” (approved by the Resolution of the High Qualification Commission of Judges No. 150/zp-16 of 15 November 2016)²³⁵ establishes the structure of the dossier (with according template as an annex), procedure of collecting relevant information, competent bodies to provide information, etc.

Regulation on the procedure and methodology of qualification assessment of the candidates to judicial positions (approved by the Decision of the High Qualification Commission of Judges, 8 October 2018 No 221/zp-18)²³⁶ regulates the requirements of the examination of the candidates, methodology of the assessment of their professional knowledge and rating the best candidates, etc.

Rules of Procedure of the High Qualification Commission of Judges of Ukraine (approved by the Decision of the High Qualification Commission, October 13, 2016 No. 81/зп-16 with later amendments)²³⁷ regulates organization of procedure, decision-making, principles of hearings, etc.

²³⁴

<https://vkksu.gov.ua/userfiles/doc/REGULATION%20ON%20THE%20PROCEDURE%20AND%20METHODOLOGY%20FOR%20THE%20QUALIFICATION%20ASSESSMENT,%20INDICATORS%20OF%20COMPLIANCE%20WITH%20THE%20QUALIFICATION%20ASSESSMENT%20CRITERIA%20AND%20MEANS%20OF%20THEIR%20DETERMINATION.pdf>

²³⁵ <https://vkksu.gov.ua/en/commission-in-brief/regulation-on-the-procedure-of-maintenance-of-the-judicial-dossier/>

²³⁶ <https://vkksu.gov.ua/userfiles/polozhennya.pdf>

²³⁷ <https://vkksu.gov.ua/userfiles/doc/regulations020719>

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Also, there are a number of regulations and other acts (guidelines, etc.), regulating very specific aspects of the procedure of the selection, appointment, qualification assessment (e.g., separate list of indicators for moral-psychological portrait of candidate to judicial position, programme for legal tests, etc.).

Competent authorities.

High Qualification Commission of Judges (HQCJ)

According to the Art. 92 of the Law on Judiciary the HQCJ is a state body of judicial self-government which operates on a standing basis within the system of justice in Ukraine. It consists of sixteen elected (appointed) members who are citizens of Ukraine, have a university degree in law and at least fifteen years of professional activity in the field of law. 8 members (judges or retired judges) are elected by the Congress of Judges of Ukraine, 2 members - by the Congress of Representatives of law schools and research institutions; 2 members - by the Congress of Lawyers (the Bar) of Ukraine; 2 members - by the Commissioner of the Verkhovna Rada of Ukraine for Human Rights; 2 members (not judges) - by the Head of State Judicial Administration.

HQCJ announces a competition, accepts documents from candidates, holds a special examination of candidates, conducts qualification re-assessment, determines the results of the competition, and passes a decision on the recommendation to the High Council of Justice of a candidate to be appointed to the judicial position or re-assessed in terms of his or her fitness to continue to exercise the judicial duties.

High Council of Justice (HCJ)

According to Art. 131 the HCJ is a collective independent constitutional body of public authority and judicial governance to guarantee the independence of the judiciary and its functioning on the grounds of responsibility, accountability before the society, to guarantee establishing of an honest and highly professional judicial corps in compliance with the provisions of the Constitution and the laws of Ukraine, as well as with the professional ethics in the functioning of judges and prosecutors.

It consists of 21 members: *ex officio* Chief Justice of the Supreme Court; 10 members (judges or retired judges) are elected by the Congress of Judges of Ukraine, 2 members are nominated by the President of Ukraine, 2 members – by the Verkhovna Rada of Ukraine, 2 – Congress of Representatives of law schools and academic institutions; 2 members – by the Congress of Lawyers (the Bar) of Ukraine; 2 members – by the Head Congress of Prosecutors.

HCJ considers the HQCJ's recommendations on the appointment of candidates for a judicial position, forwarding its submission to the President of Ukraine the appointment of a judge. The HCJ deliberates on the candidate for a judge based on the results of a review of the recommendation of the HQCJ at a session, following the presentation of the report by the rapporteur and the dossier of the candidate. The candidate for a judge, whose appointment is being considered, is invited to the session of the HCJ. At the end of the procedure the successful candidates are to be appointed by the President of Ukraine who issues a decree on appointment on the basis of the submissions of the High Council of Justice.

President of Ukraine

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The President of Ukraine appoints a judge on the basis and within the scope of the HCJ submission. The President of Ukraine may not check the compliance with the statutory eligibility requirements of the candidates.

Public Integrity Council (PIC)

PIC is a non-governmental body envisaged by the Law on Judiciary of Ukraine (Art. 86) with a aim to assist the HCCJ in determining compliance of the candidate for a judicial position with the professional ethics and integrity criteria. It is composed of 20 members (representatives of human-rights public associations, legal scholars, attorneys, journalists) elected by NGOs that meet formal criteria provided by law: acknowledged professionals in their area, having solid reputation and meeting the political impartiality and integrity requirement.

The PIC provides to HCCJ information or advisory opinions in this respect. PIC is not authorised to check whether the (legal or other professional) competence criterion is met. Its opinions are not binding for the HCCJ. However, if the PIC in its opinion finds that the candidate does not meet the professional ethics and integrity criteria, the HCCJ may decide to override the PIC veto request by way of the qualified majority of at least 11 votes of HCCJ Members out of the total 16 Members.

Conclusions.

Legislative framework

In Ukraine, the legislative framework of the selection of judges is set, as in majority of the countries, in the Constitution and the general Law on Judiciary (the Law of Ukraine "On the Judiciary and the Status of Judges").

What is distinctive in the Ukrainian system is the numerous secondary legislation, regulating principles, methodology and procedures as well as a very specific aspects of the procedure of the selection, appointment, qualification assessment (e.g., administration of the judicial dossier; separate list of indicators for moral-psychological portrait of candidate to judicial position, programme for legal tests, etc.).

Competent authorities

Judicial governance bodies are the actors of the selection and appointment: the High Qualification Commission of Judges, which announces a competition, accepts documents from candidates, holds a special examination of candidates, conducts qualification re-assessment, determines the results of the competition and passes a decision on the recommendation to the High Council of Justice. HCCJ consists of 16 elected (appointed) members: 8 judges or retired judges, elected by the Congress of Judges of Ukraine, and 8 non-judicial members. The High Council of Justice, consisting of 21 members: 11 judges or retired judges and 10 non-judicial members, submits nomination on the appointment to the President of Ukraine, who's role is more of ceremonial nature.

A distinctive feature of the Ukrainian system of selection and appointment of judges is the involvement of a separate body: Public Integrity Council, a non-governmental body

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with a aim to assist the HQCJ in determining compliance of the candidate for a judicial position with the professional ethics and integrity criteria.

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2. Selection of candidates to judicial office (first time appointment)

2.1. International standards, principles and recommendations

Selection. The procedure and the criteria should be defined in primary legislation²³⁸, the procedure itself, however, should not be too complex and intricate or involve too many actors as it may lead to a temptation to make informal arrangements²³⁹.

The information on the vacancy, as well as requirements and conditions to fill it in should be publicly announced and widely disseminated²⁴⁰, in a manner that is known to the society and where the information is easily accessible.

A method of **competitive (written and (or) oral) examination** for the selection of judges, carried out by an independent body or a separate commission therein at an entry level seems to be in line with the recommendation of international bodies²⁴¹. A system of competitive entry examination is appropriate for the selection of judges in countries where judges enter the judiciary right after their law studies (as opposed to the common law system of appointing experienced barristers as judges)²⁴². The **selection from experienced practitioners** is also possible. Both methods could potentially raise questions: in the first instance, it may be argued that the examination should not be the sole ground of appointment, while in the second instance the objectivity of the selection could be questioned²⁴³.

It is desirable that the selection body would perform **an interview** at least with the candidates, who have come to the final round of selection. The topic of the interview and its ‘weight’ in the selection procedure have to be made known to the candidates beforehand²⁴⁴. The weight of the respective elements of the selection procedure towards the final result, in general, should be specified beforehand²⁴⁵.

In instances, when a selection procedure encompasses **background checks**, they should be carried out strictly in line with the law. The selecting authority may request a standard check for a criminal record and any other disqualifying grounds from the police. The information produced should be made available to the candidate and he/she should be entitled to contest them before the court. Background checks should not be performed by security services. In instances, when a decision to reject the candidate is made on the basis of the background check, it has to be motivated (reasoned)²⁴⁶.

²³⁸ ODHIR Kyiv Recommendations, para.21

²³⁹ See CDL-AD(2018)032, Opinion on the Concept Paper on the reform of the High Judicial Council of Kazakhstan, §36.

²⁴⁰ ODHIR Kyiv Recommendations, para. 21.

²⁴¹ *Ibid*, para. 3. See also CDL-AD(2012)014, Opinion on Legal Certainty and the Independence of the Judiciary in Bosnia and Herzegovina, §91.

²⁴² See CDL-AD(2011)019, Opinion on the Draft Law on the Council for the Selection of Judges of Kyrgyzstan, §§13-15

²⁴³ See CDL-AD(2007)028, Report on Judicial Appointments by the Venice Commission, §36.

²⁴⁴ ODHIR Kyiv Recommendations, para. 21.

²⁴⁵ See CDL-AD(2018)032, Opinion on the Concept Paper on the reform of the High Judicial Council of Kazakhstan, §66.

²⁴⁶ ODHIR Kyiv Recommendations, para. 22.

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A list of candidates applying (or a short-list of candidates) should be made publicly available²⁴⁷. **Publication of the results**, however, should preferably be limited to pass or fail without providing further details²⁴⁸.

Article 6 of the ECHR protects not only the independence and impartiality of individual judges, but also requires a system of judicial appointments that excludes arbitrary appointments²⁴⁹. In this light, it is an indisputable principle that selection and career of judges should be based **on objective criteria pre-established by law** or by competent authorities. The criteria should be based **on merit, having regard to the qualifications, skills and capacity** required **for the adjudication** of cases by applying the law²⁵⁰, excellence and proficiency of judges are regarded as the best guarantees for their independence. The substantive and procedural rules should also be established and published publicly²⁵¹.

Selection should be carried out in a manner that does not **discriminate** the candidates²⁵². The decision on the selection (and evaluation) of judges should be free from the considerations outside their professional competence. Disability of a candidate, when it does not affect the candidate’s capacity to perform judicial duties, should not be considered as an impediment²⁵³. A requirement for the candidates to be nationals of a particular state, on the other hand, is longstanding and is not regarded as discriminatory²⁵⁴, yet deviations to this principle are possible in cases of small states, where it may not be possible to fill in the judicial positions solely from their nationals²⁵⁵. The command of the language of the state is a legitimate requirement for a candidate and thus regarded as ‘a valid reason to discriminate’²⁵⁶. A higher law degree is agreed to be a proportionate requirement for the candidates²⁵⁷.

International standards call for a **diversified judiciary body**. The recommendations note that, in general, the composition of the judiciary should reflect the composition of the population as

²⁴⁷ *Ibid*, para. 21.

²⁴⁸ See CDL-AD(2009)055, Opinion on the Draft Law about obtaining information on activities of the Courts of Azerbaijan, §38.

²⁴⁹ CDL-AD(2018)028, Opinion on Constitutional arrangements and separation of powers and the independence of the judiciary and law enforcement of Malta, §30.

²⁵⁰ CM/Rec(2010)12, para. 44. See CDL-AD(2010)004, Report on the Independence of the Judicial System Part I: The Independence of Judges, §27; CDL-AD(2018)028, Opinion on Constitutional arrangements and separation of powers and the independence of the judiciary and law enforcement of Malta, §43.

²⁵¹ CDL-AD(2012)001, Opinion on Act CLXII of 2011 on the Legal Status and Remuneration of Judges and Act CLXI of 2011 on the Organisation and Administration of Courts of Hungary, §§57 and 58.

²⁵² A non-exhaustive list of grounds for discrimination contained in the recommendation provides that: sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, proprietary status, disability, birth, sexual orientation or other status. CM/Rec(2010)12, para. 45.

²⁵³ Explanatory memorandum to CM/Rec(2010)12, para 50. The standard, where a candidate could be refused on the grounds of disability such as ‘unusual difficulties of speaking or controlling movement of organs that may be regarded as odd by other people’ was regarded as inappropriate test by the Venice Commission. It was regarded too broad and the test of ‘appearing odd to other people’ and inobjective one. See CDL-AD(2011)004, Opinion on the Draft Law on Judges and Prosecutors of Turkey, §31

²⁵⁴ CM/Rec(2010)12, para. 45

²⁵⁵ See CDL-AD(2013)018, Opinion on the balance of powers in the Constitution and the Legislation of the Principality of Monaco, §86.

²⁵⁶ See CDL-AD(2013)034, Opinion on proposals amending the draft law on the amendments to the constitution to strengthen the independence of judges of Ukraine, §38.

²⁵⁷ ODHIR Kyiv Recommendations, para. 18.

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a whole. Underrepresented groups should be encouraged to acquire the necessary qualifications for becoming a judge²⁵⁸.

An entry into the profession from outside the judiciary at a **mid-career level** is advocated proclaiming that the judicial profession should be open not only to the young professionals, but lawyers with significant experience²⁵⁹, a strictly closed judicial career, where promotion is based on requirements of judicial experience is not considered to be an asset²⁶⁰. The qualifications, which would allow such entry and to what particular level of the judiciary should be carefully assessed, considering it together with the issue of the training of an incoming judge.

A possibility to **challenge the decision** of the selecting authority, or at least the procedure under which the decision was made, preferably with the court, should be ensured²⁶¹.

The recommendations spell out that theoretical and practical initial and in-service **training**, funded fully by the state, should be provided²⁶². The training should complement the university education and cover such necessary skills as: judicial ethics, communication, ability to settle disputes, management skills and drafting skills²⁶³, economic, social and cultural issues related to the proper exercising of judicial functions²⁶⁴.

2.2 Baltic region

2.2.1 Lithuania

There are two pathways to become a judge in Lithuania: first one is as a legal practitioner and second one as an academic. Both paths have similarities when it comes to evaluation of candidates. According to article 51 paragraph 1 of Law on Courts,²⁶⁵ a person applying to become a judge of a district court must have at least 5 years of legal practice. What falls under the category of legal practice is defined by one of the Government’s resolutions.²⁶⁶ All candidates must have a bachelor’s and master’s degree (or single degree of joint continuous studies) in law. The third requirement is to pass the examination for candidates. However, there is one key difference in requirements for academics and legal practitioners. If a candidate has a doctor’s degree in social sciences (law) he or she is exempt from the examination. This exemption recognizes the notion that a person with a doctor’s degree in law is qualified enough to apply for a candidacy without having to pass the examination.

²⁵⁸ *Ibid*, para. 24.

²⁵⁹ *Ibid*, para. 17.

²⁶⁰ It is also argued that if such closedness pertains to the Supreme Court, strictly limiting access through the ranks of judiciary, it could lead to isolation of the judiciary as well as rigid and conservative opinions. See CDL-AD(2014)038, Opinion on the draft laws on courts and on rights and duties of judges and on the Judicial Council of Montenegro, §53; CDL-AD(2018)003, Opinion on the Law on amending and supplementing the Constitution (Judiciary) of the Republic of Moldova, §§31, 33.

²⁶¹ CM/Rec(2010)12, para. 48. See also CDL-AD(2014)008, Opinion on the draft Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, §§77-78.

²⁶² CM/Rec(2010)12, para. 56.

²⁶³ ODHIR Kyiv Recommendations, para. 19.

²⁶⁴ CM/Rec(2010)12, para. 56.

²⁶⁵ The Law on Courts of the Republic of Lithuania, adopted on the 31st May 1994, No. I-480 (a new version of the 24 January 2002 No. IX-732); see official publication <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.187988?jfwid=191fum7vkm>.

²⁶⁶ The Government’s of the Republic of Lithuania resolution, adopted, adopted on the 7th July 2020, No. 841 (the newest version of the 12th September 2009).

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According to article 52 of the Law on Courts requires for potential judges to meet the *standard of high moral character*. Paragraph's 1 sub-paragraphs 1-4 state, that a person does not meet this requirement if a court convicted him or her of committing criminal offence; he or she has been dismissed from the position of a judge, a prosecutor, a lawyer, a notary, a bailiff, a police officer or an employee of the system of the interior or from the public service for violation of professional ethics or malfeasance and if less than five years have lapsed after the dismissal; he or she abuses psychotropic substances, narcotic drugs, toxic substances or alcohol; or he or she does not meet other requirements of the judicial code of conduct. The Judicial Council via resolution²⁶⁷ adopted a set of rules²⁶⁸ for The Selection Commission which establishes the **criteria for evaluation** of candidates for district court judges.

Each candidate can score up to 100 points. Candidates are assessed and scored on the basis of length of service, nature and quality of legal or scientific-pedagogical work, results of the examination, professional competence and knowledge, personal competences and character qualities.

Length of service. It is calculated from the acquisition of bachelor's and master's degrees in law or a professional qualification of a lawyer (single-level university law degree). Points are awarded only for more than 5 years of legal experience. 0.5 point shall be awarded for each full year included in the record of legal service, but the total amount may not exceed 5 points.

The nature and quality of legal or scientific-pedagogical work. Taking into account the significance of the work included in the legal work experience in forming the skills necessary for the work of a district court judge, the nature and quality of the candidates' legal or scientific-pedagogical work is assessed up to 20 points. For legal practitioners the rules do not give a detailed guidance on how the nature and quality of legal practitioner's work should be evaluated. However, the rules are more detailed for scholar candidates as they state, that a doctor of social sciences – for the position of a judge of a district court is assessed taking into account the field of personal research (interests), nature of legal, scientific-pedagogical work, participation in scientific activities after obtaining a scientific degree, number of scientific articles in peer - reviewed scientific publications, participation in research, etc.), university results, certification results, pedagogical workload (number of lectures, supervision of students' research and final theses, dissertation opposition, participation in doctoral committees, review of final theses, etc.).

Results of the examination. If a candidate's examination is evaluated by 10, the candidate is awarded 15 points, if 9 - 14, if 8 - 13, if 7 - 12 points. Candidates who are exempted from the examination for candidates for judges (doctors of social sciences in the field of law and persons who have previously worked as a judge) are awarded 15 points by default.

Professional competences and knowledge. The professional competences and knowledge of a candidate for the position of a district court judge shall be assessed by awarding up to 10 points, taking into account knowledge of foreign languages, university education other than in law field, professional development and improvement, participation in expert activities (for example, in the process of drafting legal acts, expert evaluation of draft legal acts, participation in the activities of working groups, etc.), activities as a conciliator mediator, research cooperation (does not apply to candidates with a doctorate in social sciences), the level of the

²⁶⁷ The Judicial Council's resolution on approval of the selection criteria for candidates for district court judges, adopted on 27 September 2019, No. 13P-161-(7.1.2).

²⁶⁸ Formally named: "Selection criteria for candidates to the judicial office at a district court".

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candidate’s current pedagogical duties and performed pedagogical activities, prepared scientific publications in peer-reviewed scientific publications, participation in public activities related to courts or justice, other activities of the candidate related to the acquisition and deepening of knowledge necessary for the work of a judge.

Methodology.

Personal competences and character qualities. This assessment is made by the information obtained during the personal interview. Also by reasoned opinions or characteristics received from a person’s workplaces, entities performing the control or supervision of his or her work, the recommendations or characteristics of other persons provided by the candidate himself or herself, as well as the opinion obtained during the interview by the judges of the court, and where the court is composed of a court chamber, the general opinion of all members of the court, as well as other information relevant to the assessment of personal competences.

Candidate’s personal style and cognitive characteristics, general abilities are assessed up to 50 points, taking into account: 1) constructiveness of the candidate’s thinking, erudition: scope of thinking, professional and general erudition, ability to concentrate on the essentials and summarize, quick perception); 2) personality maturity, emotional balance, effectiveness and objectivity of decision-making: principledness, ability to defend one’s opinion with arguments, ability to decide, to resist environmental pressure; 2) duty and responsibility, the ability to effectively organize one’s own and the work of others: the ability to work according to a plan, set priorities, work constructively in tense (stressful) situations, the ability to cope with heavy workloads; 3) communication and cooperation skills: ability to present information clearly and intelligibly (orally and in writing), ability to listen and understand, ability to behave constructively in difficult communication situations, respectful treatment of other people, ability to work in a team, adherence to professional ethics, professional culture; 4) strength and adequacy of motivation, strength of professional identity, initiative, aspiration to learn and improve, activity in the legal and/or judicial community.

After aforementioned evaluation, the Selection Commission recommends for the President of the Republic of Lithuania one or few best suited candidates for the district judge’s vacancy. It is important to note, that the recommendations of the Selection Commission do not bind the President. After the President chooses the best candidate for a vacant position, he or she must get an approval of the Judicial Council. According to the Constitution of the Republic of Lithuania and the case law of the Constitutional Court, the approval of Judicial Council is legally binding the President. It was stated by the Constitutional Court that: “<...> if the Judicial Council does not give its approval, the President cannot make decisions to appoint, promote or remove a judge from office”.²⁶⁹

Conclusions. The strongest suit of the selection procedure in Lithuania is an involvement of members of society in selection procedure. They are generally not professional lawyers, but represent other occupations such as psychologists, psychiatrists, journalists, scholars. For example, appointment of a psychologist or psychiatrist is invaluable when assessing candidate’s personal characteristics.

Only 6-month period of validity of selection procedure results is too short and it sometimes leads to not filled vacancy due to not timely appointment of the selected best suited candidates. This term should be lengthened ant least to a one year.

²⁶⁹ The Constitutional Court’s decision of 21st December 1999.

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The selection system is geared towards selecting (*ad hoc*) a particular candidate to a particular vacancy in a particular court. Thus, if a person is not selected to a particular vacancy and wants to apply, for example, to another first instance court, he or she must get through selection procedure all over again. This leads to cumbersome lengthy selection procedures when vacancies are not filled with a timely manner. Thus, a reform to create a pool of possible judges to fill a vacancy of first instance, appeal or cassation would be advised.

2.2.2 Latvia

Section 51 of Law on Judicial Power sets the requirements for a judge. A candidate: 1) must be a citizen of Latvia; 2) has the highest proficiency of official language; 3) has completed the higher vocational or academic education (except for the first level vocational education) and acquired the qualification of a lawyer, and also has a master's or doctoral degree; 4) has impeccable reputation; 5) has attained the age of 30 years.

There is also a way for a person to be selected as a judge straight to the court of appeals (regional court) or the supreme court. According to section 53 paragraph 2, a person whose total length of service in a position of an academic personnel in the legal specialities at an institution of higher education, a sworn advocate or a prosecutor, or, until 30 June 1994, a deputy prosecutor, an assistant prosecutor, or an investigator for the prosecution is at least 10 years, and who has passed the qualification examination may apply for the office of a judge of a regional court.

According to section 54 paragraph 2, A person whose total length of service in a position of an academic personnel in the legal specialities at an institution of higher education, a sworn advocate or a prosecutor is at least 15 years, who has passed the qualification examination, and who has received a favourable opinion from the General Meeting of Judges of a department of the Supreme Court may apply for the office of a judge of the Supreme Court.

The law also expressly stipulates non-discrimination “When selecting a judge, no discrimination based on origin, social and financial status, race or nationality, sex, attitude towards religion, type and nature of occupation, or political or other views is permitted. The requirement that a judge must be a citizen of Latvia shall not be considered as discriminatory”.

Section 55 of Law On Judicial Power stipulates the following persons may not be candidates for the office of a judge: 1) who have been previously convicted of committing a criminal offence (irrespective of whether the conviction has been extinguished or set aside); 2) who have previously committed a criminal offence, but has been released from serving the sentence in connection with the expiration of a limitation period, amnesty, or clemency; 3) against whom criminal proceedings have been terminated for non-exonerating reasons; 4) against whom a criminal prosecution has been commenced; 5) for whom insolvency proceedings have been declared and less than five years have passed since the day of their termination; 6) who have acquired the status of a debtor in accordance with the Maintenance Guarantee Fund Law; 7) who are or have been employed in staff positions or as supernumeraries of the State Security Committee of the U.S.S.R. or the Latvian S.S.R., the Ministry of Defense of the U.S.S.R., or the state security service, army intelligence service or counter-intelligence service of a foreign country, or as an agent, resident or safehouse keeper of the aforementioned institutions; 8) who are or have been participants (members) of organisations, which are prohibited by the laws of the Republic of Latvia, decisions of the Supreme Council, or court rulings, after the prohibition of such organisations; 9) who have been removed from the office of a judge, sworn bailiff, assistant of sworn bailiff, sworn notary, assistant of a sworn notary, excluded from the number of sworn advocates or assistants of

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sworn advocates or dismissed from the position of a prosecutor on the basis of a decision in a disciplinary case and five years have not been passed from entering into effect of the decision taken in a disciplinary case.

Methodology.

Selection procedure in Latvia consists of 5 rounds. According to Selection rules:

The first round - evaluation of the application by examining the formal criteria: the applicant's compliance with the requirements specified in the Law on Judicial Power for a candidate for the position of a judge and the absence of the specified restriction to hold the position of a judge.

The second round - the Commission, without the participation of the tenderer, shall evaluate the detailed answers provided in the tenderer's application regarding: 1) previous work experience and the most significant professional achievements during the last three years, where the applicant has described his / her role in achieving them and his / her benefits; 2) one important personal success, which describes the situation, one's role and actions, results, provides conclusions about the experience gained and its further use; 3) a situation in work or social life which took place over a long period of time, in which other persons were also involved and in which difficulties had to be encountered, as well as to resolve them in order to achieve the desired result; the applicant has described the situation and difficulties, his / her actions and conclusions and the further application of the acquired experience; 4) their qualities and skills, which indicate suitability for the position of a judge, as well as the objectives which they wish to fulfill in this position; 5) their vision of the role of the judiciary and the judge in the development of the country.

The candidates' answers are evaluated by each member of the Commission in points from 1 to 10.²⁷⁰ An applicant will not be promoted if the average number of points awarded by the members of the Commission is less than 7 points. The arithmetic result is rounded to two decimal places (if the third decimal place of the decimal number is 5 or greater than 5, the second decimal place is rounded up). If the applicant has successfully passed the second round of selection, the time and place of the third round of selection will be announced together with the result of the second round.

The third round - a test of professional knowledge. The test examines the applicant's professional knowledge required to perform the duties of a judge. understanding of the constitutional values included in the *Satversme* (The Constitution of Republic of Latvia), current findings arising from the case law of the European Court of Justice and the European Court of Human Rights, the procedural and substantive significance of rulings in the work of a judge (for example, a request for a preliminary ruling, an appeal to the Constitutional Court), as well as the norms of procedural law and the legal method.

The test has 30 multiple choice questions. Prior to each selection, the Commission shall ensure the development of at least two test variants in accordance with the jurisdiction of the court specified in regulatory enactments. The results of the third round are evaluated in full points, assigning one point for each completely correct test answer. The candidate for the position of a judge has passed the third selection round successfully, if he has obtained at least 21 points in the test. Receiving a negative evaluation in the third round of selection denies the applicant the right to participate in the fourth round of selection. If the candidate has passed

²⁷⁰ In accordance to Selection rules' Annex 1.

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the test, the time and place of the fourth round of selection will be announced together with the result of the third round.

The fourth round - provision of a written solution to two tasks of a legal problem (hereinafter - case) and oral defense of the provided solution to the Commission. Evaluates the applicant's ability to apply regulatory enactments in accordance with the problem situation, the ability to argue and present one's opinion. Thus, it consists of two parts: 1) written part - preparation of a written solution for two weddings in accordance with the competence of the court; 2) oral part - presentation of prepared solutions.

The Commission ensures that at least three case variants are developed prior to selection. The applicant draws case variants. Repeated lotteries are not allowed. The applicant has two hours to prepare a written solution for two cases. After preparing the cases' solutions, the applicant submits it to the President of the Commission and leaves the selection room. At the end of the written part, the President of the Commission shall invite the candidates to the selection room, one after the other, in alphabetical order, after the surnames for the oral part. There are 10 minutes to present each cases' solutions. After the presentation of the applicant's cases', the members of the Commission may ask additional questions.

Each member of the Commission separately evaluates the written cases' solutions and the presentation of the solutions in accordance with the evaluation criteria of the fourth round of selection²⁷¹ (Annex 1, Latvia templates). The grade is recorded on the fourth round of grades²⁷², with a brief justification for the grade, and the total grade of each case is determined by adding up the points obtained for the presentation and the written solution.

The total evaluation of the fourth round of the candidate is obtained by summing up the total evaluation of the fourth round given by all members of the Commission and dividing by the number of members of the Commission who have participated in the evaluation. The arithmetic result obtained is rounded to two decimal places (if the third decimal place of the decimal number is 5 or more than 5, the second decimal place is rounded up). If the arithmetic result obtained does not reach seven points, it is not rounded.

The candidate has passed the fourth selection round successfully, if the average evaluation of this round is at least 7 points. Receiving a negative evaluation in the fourth selection round deprives the applicant of the right to participate in the fifth selection round. If the candidate has successfully passed the fourth round of selection, the time and place of the fifth round of selection will be announced together with the result of the fourth round.

The fifth round - a competency interview, in which the candidate's personal and social competencies are assessed. These competences comprise of

1) *values and ethics* - awareness, acceptance and support of mission and values. Understanding of the role of organizational culture and values in the national legal system. Ability to adhere to ethical principles in the performance of their duties and in cooperation with customers and partners;

2) *Analytical and conceptual thinking* - understanding of the problem and situation, dividing it into parts and seeing the relationships between causes and effects, as well as the ability to

²⁷¹ In accordance to Selection rules' Annex 3

²⁷² In accordance to Selection rules' Annex 4

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draw appropriate conclusions. Ability to systematize, ability to choose priorities and make a plan. Ability to see connections between situations and processes that are not obviously related. Ability to identify the most important issues and root causes in complex situations. Ability to think in generalizations and creatively;

3) *willingness to learn/Development orientation* - deliberately analyzes personal strengths and weaknesses to identify development needs and improve personal and institutional performance. Implement development needs not only on the initiative of the employer, but also through self-study;

4) *ability to make decisions and take responsibility* - ability to make decisions by evaluating information and using different approaches;

5) *communication, ability to cooperate* - ability to listen to others and communicate effectively. Ability to communicate and collaborate with others through an appropriate form and channel of communication. Ability to receive and transmit information. Willingness and ability to work with colleagues to help achieve team goals. Ability to maintain good relationships with team members, exchange important information, create a sense of a common team;

6) *planning, organization and flexibility* - ability to set priorities, plan, organize and control one's own and others' work in the short and long term, ensuring efficient use of time and resources. Adapts quickly and efficiently (changes plans and priorities) to changes in circumstances, work requirements, situations or needs.

The total evaluation of the fifth round of the Applicant is obtained by summing up the total evaluations given by all members of the Commission and dividing by the number of members of the Commission who have participated in the evaluation. The arithmetic result obtained is rounded to two decimal places (if the third decimal place of the decimal number is 5 or more than 5, the second decimal place is rounded up). If the arithmetic result obtained does not reach seven points, it shall not be rounded. The Secretary of the Commission shall record the total average evaluation of the Applicant in the fifth round in the minutes.

A candidate has passed the fifth selection round successfully if it has obtained at least 7 points. In case of receiving a negative evaluation in the fifth round of selection, the candidate is not included in the list of candidates for the position of a judge.

The overall result of the selection is obtained by summing up the evaluation of the candidate obtained in the second, third, fourth and fifth rounds of the selection.

Conclusion. The main strength of the selection system is the creation of a pool of candidates for a select court instance (for example, first instance). It allows a timely appointment of judges. The judiciary has a strong participation in selection procedures, which might be seen as an advantage or a disadvantage by some. As a distinct weakness can be seen complete lack of involvement of members of the society in the selection procedure.

2.2.3 Estonia

Article 47 of Courts act sets the requirements for a candidate for judge's position. Only a citizen of Estonia may be a candidate. According to paragraph 1 of this article, he or she must have:

1) acquired in the field of law at least an officially certified Master's degree, a corresponding qualification for the purposes of subsection 28 (22) of the Republic of Estonia Education Act or a corresponding foreign qualification;

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- 2) proficiency of the Estonian language at the level C1 provided for by the Language Act or a corresponding level;
- 3) high moral character;
- 4) the abilities and personal characteristics necessary for working as a judge.

Paragraph 2 of article 47 states that a person cannot be appointed as a judge if he or she:

- 1) was convicted of a criminal offence;
- 2) have been removed from the office of judge, notary or bailiff;
- 3) have been expelled from the Estonian Bar Association;
- 4) have been released from the public service for a disciplinary offence;
- 5) is bankrupt;
- 6) had professional activities as an auditor have been terminated except termination on the basis of the application of an auditor;
- 7) have been deprived of the qualification of a patent agent, except deprivation of qualification on the basis of the application of a patent agent;
- 8) have been deprived of the profession of a sworn translator on the basis of clause 28 (3) 3) of the Sworn Translators Act.

According to article 53 of Courts act, judges are appointed to office on the basis of public competition.

Judges of a court of first instance who run as candidates for the office of judge of the court of second instance shall submit an application containing the information provided in criteria.

The Personnel Department of the Supreme Court gathers and appends the following information to the application before submitting it to the Supreme Court *en banc*: 1) career information, 2) data on procedural statistics for the three years preceding the application; 3) information on complaints about the judge's activities during the three years preceding the application; 4) information on participation in trainings organized by the Legal Information and Judicial Training Department of the Supreme Court during the three years preceding the application.

Methodology.

According to article 54 paragraph 1 of Courts act the suitability of the personal characteristics of a candidate for judicial office shall be evaluated by the judge's examination committee. The judge's examination committee shall take into account in the evaluation of the personal characteristics of a candidate for judicial office the information which is important for the performance of the duties of a judge and the committee can make inquiries.

Applicants to a judge's position in a first instance court must pass an exam. Article 50 paragraph 1 of Courts act states, that a person who has undergone judge's preparatory service or is exempted therefrom and has passed a judge's examination may be appointed as a judge of a county or city court, or administrative court (county judge, city judge or administrative court judge). However, paragraph 2 sets some exceptions stating that a person who has worked as a sworn advocate or prosecutor, except an assistant prosecutor, for two years immediately prior to passing the judge's examination and a person who has worked as a judge earlier and if not more than ten years have passed since his or her release from the office of judge need not have undergone judge's preparatory service.

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The same requirement of passage of judge’s examination is set for first time appointees to appeal courts (circuit court judges) (Article 51 of Courts act). However, there is no such requirement for first time judge candidates to the Supreme court (Article 52 of Courts act). In order to be selected as a judge of appeal courts or the Supreme court, a candidate must be experienced and recognized lawyer. However, the Courts act does not clarify how candidate’s experience and recognition is measured.

As mentioned before, there are criteria for selection of first-time judges, which were approved at the joint meeting of the Judges’ Examination Committee and the Training Committee. They are subdivided into 3 categories:

- 1) personal traits and high moral character;**
- 2) Legal knowledge and skills;**
- 3) Judicial skills.**

A judge has to have personal traits that ensure an impartial, fair, selfless and diligent performance of his or her duties.

Thus, candidate’s **personal traits and high moral character are evaluated** based on these characteristics:

- 1) honesty and trustworthiness;
- 2) conscientiousness;
- 3) Perseverance and courageous decision making;
- 4) good stress tolerance;
- 5) emotional stability;
- 6) empathy;
- 7) humanly maturity;
- 8) curiosity to learn;
- 9) politeness and dignity
- 10) respect for law and order;
- 11) being balanced, hardworking, independent and cooperative.

Legal knowledge and skills are evaluated based on these three criteria:

- 1) very good legal knowledge and ability to use it;
- 2) very good Estonian language skills in speech and writing;
- 3) ability to describe the facts and to analyze and argue.

When becoming a judge, it is necessary to teach the candidate the professional skills of a judge.

Thus, judicial skills are evaluated according to these criteria:

- 1) procedure leadership and court skills;
- 2) knowledge of judicial ethics;
- 3) ability to draft judicial decisions;
- 4) ability to conciliate and refer to an agreement;
- 5) communication skills, conflict management skills;
- 6) ability to use legal information databases;
- 7) knowledge of the principles of public relations;
- 8) ability to organise one's work, including time planning;
- 9) team management skills;
- 10) stress management skills.

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According to article 54 paragraph 1 of Courts act, the suitability of the personal characteristics of a candidate for judicial office shall be assessed on the basis of *an interview*. Thus, the main method for assessment of a candidate is an interview with potential first-time judges.

Detailed guidelines of assessment are set in aforementioned rules of judge’s examination committee. Before the interview on the assessment of the suitability of personality traits, candidates for the judge complete the online questionnaires on the assessment of personality traits and values. Instructions for completing the questionnaires are provided and access to the online environment is provided to the candidate by the committee, and the candidate completes the questionnaires at the same time as the Security Police Board performs security checks. The personality interview will be considered by the committee in the context of a competition for the post of judge only with candidates who have been screened and who have completed the personality and value assessment questionnaires. As a result of the interview, the committee will decide whether or not the candidate for the post of judge is suitable as a judge by personal characteristics.

In addition to the information obtained during the interview, the committee may use *other information* that is relevant to the assessment of the candidate's suitability for the judiciary. The candidate's background shall be verified by, if necessary, *making inquiries of current and previous employers* and gathering other necessary information.

After the interviews, the committee submits information and materials on the candidates for the vacant position of a judge to the Supreme Court *en banc*.

Conclusions. In Estonia regulation of selection procedures is very lean and leaves room for interpretation. This might be seen as an advantage or do disadvantage at the same time. For example, the law states that a person who wants to become a justice of the Supreme court must be an experienced and recognized lawyer. What is considered experienced or recognized lawyer is not defined in any legal act. On one hand, it allows very leniently select the best possible candidate for the Supreme court without looking for formally defined years of experience such as ten (Lithuania) or fifteen (Latvia) years. On the other hand, it can lead to a perception of lack of objectivity.

Compared to Lithuania or Latvia, during the examination phase of selection, Estonia does not use a multiple-choice test as a method of the assessment. That can be seen as a strength because in such a complexed subject as law questions can have more than one answer. A multiple-choice test *prima facie* can look objective, but rather is a restrictive assessment tool which leads to formally correct answer and does not showcase candidate’s reasoning, which led he or her to the selected answer. And being a judge is not only about giving a correct decision in a particular case, but also a well-reasoned one.

As a distinct weakness can be seen complete lack of involvement of members of the society in the selection procedure.

2.3. Scandinavian region

2.3.1 Norway

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There are a few minimum requirements in place as to the qualifications a person must possess in order to qualify for a judgeship. Some have constitutional status; the Constitution’s article 91 establishes that a Supreme Court justice must be at least 30 years of age, and article 21 prohibits the “Royal Princes and Princesses” from being public officials. Others are statutory; the CJA for instance prescribes that a professional judge must be a solvent national above a certain age with a master’s degree in law or an equivalent, and she must still be in possession of her right to vote.²⁷³ The CJA used to lay down certain minimum requirements as to academic achievement, but these have since been abandoned.²⁷⁴ The CJA also establishes a norm for the selection of candidates to judicial positions, in its section 55, second subsection, which must be supplemented by the general qualification principle, according to which the best qualified candidate for the position should be selected.²⁷⁵ The provision reads:

“Judges should be appointed from among persons who satisfy exacting requirements concerning professional qualifications and personal characteristics. Judges sitting in the Supreme Court, the courts of appeal and the district courts should be recruited from among lawyers with varying professional backgrounds.”

The preparatory works provide some guidance regarding these qualifiers, however, they were intentionally made vague and thus susceptible to subjective considerations.²⁷⁶ The JAB has nonetheless provided some relatively detailed guidelines in their policy document.

According to this document, academic performance, while not a determinate factor in the choice between applicants, remains a relevant parameter, and most of those recommended have achieved good grades (under the old system, an achievement of *laud*, under the new, a grade point average between A and B).²⁷⁷ Other qualities include the ability to be an attentive listener²⁷⁸, to be patient and give room for explanations not directly relevant to the case when this is due, while all the same being capable of firmly administering the case when necessary²⁷⁹, humility and self-awareness²⁸⁰, the ability to weigh the need for thoroughness and with calls for efficiency²⁸¹, and to be capable both of tight cooperation, and of independence.²⁸²

As indicated by section 55, the JAB operates with a principle of broad recruitment. As a general rule, the JAB only appoints jurists with at least 10 years of work experience to permanent judicial positions.²⁸³ Prior experience as a judge, either as a deputy or a full position, is considered an asset, but not a requirement.²⁸⁴ Previously, judges were normally recruited from the civil service or the prosecutorial authority.²⁸⁵ However, these days, judges are usually either recruited from private law firms or from other judicial positions.²⁸⁶ The JAB expressly

²⁷³ The CJA sections 53 and 54. Whether a person can be considered as being in possession of an equivalent degree, will depend on whether the conditions in the CJA’s section 241 have been satisfied.

²⁷⁴ Ot.prp.nr.102 (2008–2009) p. 20.

²⁷⁵ The Civil Service Act section 3.

²⁷⁶ NOU 1999:19 7.3.1.1.

²⁷⁷ Innstillingsrådets praksisnotat p. 12.

²⁷⁸ Innstillingsrådets praksisnotat p. 12.

²⁷⁹ Innstillingsrådets praksisnotat p. 13

²⁸⁰ Innstillingsrådets praksisnotat p. 13

²⁸¹ Innstillingsrådets praksisnotat p. 13

²⁸² Innstillingsrådets praksisnotat p. 13

²⁸³ Innstillingsrådets praksisnotat p. 25.

²⁸⁴ Innstillingsrådets praksisnotat p. 25.

²⁸⁵ NOU 1999:19 subchapter 7.3.2.1.

²⁸⁶ Innstillingsrådets årsmelding 2019, p. 3.

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views experience as a “customer” of the courts, either by way of a prosecutorial position or as a private lawyer, as desirable.²⁸⁷ Most land consolidation court judges are recruited from the public sector.²⁸⁸

Most judges are appointed when they are between 45 and 49 years of age.²⁸⁹ The JAB has indicated that it views the issue of *old* age somewhat differently, depending on whether it is assessing a candidate who is applying for a judgeship for the very first time, or an applicant who is already a judge, but who wishes to transfer to a different judicial position.²⁹⁰ Seemingly, the Board is more inclined to take old age into account in the former situation, provided it is otherwise faced with equally qualified candidates. The JAB has also indicated that it will not normally recommend candidates below 32-33 years of age to permanent positions.²⁹¹

While there are no formal requirements as to the criminal record, or lack thereof, of a potential judge, the JAB has indicated that the fact that one has been prosecuted for a crime is normally a disqualifying factor.²⁹² Exceptions can however be considered, depending on the severity of the offense, and on whether the crime was committed a long time ago or at a young age.²⁹³ The JAB gives the requirements concerning criminal records applicable to lay judges, equal application to professional judges.²⁹⁴ The JAB has been given the legal authority to request a complete police certificate of conduct from applicants.²⁹⁵ Applicants are also asked to inform the JAB of any prior history with the disciplinary authority, the SCJ.²⁹⁶

There are no absolute requirements as to the gender balance of the Norwegian judiciary. Currently, 44 % of the total body of judges are women.²⁹⁷ The JAB used to operate with moderate quotation based on gender until 2016, meaning that female applicants would be preferred, if multiple male and female applicants were equally or approximately equally qualified.²⁹⁸

2.3.2 Denmark

In Denmark, the Adjustment of Justice Act (Retsplejeloven) §42, stk 3, maintains that a law degree is necessary to become a judge in Denmark. Furthermore, according to the Administration of Justice Act §43, the appointment of judges should be done following an overall assessment of the applicants’ qualifications, where judicial and personal qualifications are given crucial weight.²⁹⁹ Administration of Justice Act §43 states that “the appointment of a judge should be done following an overall assessment of the candidate’s qualifications, with decisive weight placed on the candidate’s judicial and personal qualifications. Furthermore,

²⁸⁷ Innstillingsrådets praksisnotat p. 26.

²⁸⁸ Innstillingsrådets praksisnotat p. 27.

²⁸⁹ Innstillingsrådets praksisnotat p. 28.

²⁹⁰ Innstillingsrådets praksisnotat p. 29.

²⁹¹ Innstillingsrådets praksisnotat p. 29.

²⁹² Innstillingsrådets praksisnotat p. 34.

²⁹³ Innstillingsrådets praksisnotat p. 34.

²⁹⁴ Innstillingsrådets praksisnotat p. 34. These may be found in the CJA, section 72.

²⁹⁵ The CJA section 55, fourth subsection.

²⁹⁶ Innstillingsrådets praksisnotat p. 35.

²⁹⁷ Innstillingsrådets praksisnotat p. 31.

²⁹⁸ Innstillingsrådets praksisnotat p. 32.

²⁹⁹ NOU 2020: 11, section 11.5, page 111, <https://www.regjeringen.no/contentassets/367acaf16a2941bfaf5e3b1ae7bfe95f/no/pdfs/nou202020200011000dddpdfs.pdf>

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the breadth in the candidate’s judicial experience should be weighted. The need for the courts to be composed by judges with different judicial background and experience should also impact the assessment of the candidate.”³⁰⁰ Denmark desires judges to be recruited from all branches of the legal professions, for example deputy judges, civil servants, academics and attorneys in private practice. For this purpose, all posts for judges are broadly advertised in the relevant branch journals.³⁰¹ Before 1999, it was felt that too many judges had a career background within the Ministry of Justice.³⁰² Beyond the requirement of a law degree, neither Sweden nor Denmark demand a particular exam result or grade to be eligible to appointment as a judge.³⁰³

The selection of judges in Denmark has previously been characterised by a career path for judges, where one typically started as a deputy judge or as an employee in the department of justice. After ten to twelve years of employment one would be eligible to apply to become a judge at a district court. The court reform of 1999 sought to secure a broader recruitment of judges and a greater degree of openness in the appointment of judges. As a part of the reform a separate Judicial Appointment Council, Dommerudnævnelsesrådet, was created by law number 402 of 26th of June 1998 which amended the Adjustment of Justice Act, the Civil Service Act and other legislation.³⁰⁴ Judges are appointed by the Queen following a selection by the Ministry of Justice. The Ministry selects judges based on appointments made by the Judicial Appointment Council. Regulations regarding the selection of judges is stipulated in chapter 4 of the Administration of Justice Act.³⁰⁵ The Judicial Appointment Council is comprised by six members, appointed by the Minister of Justice for four years. Members cannot be re-appointed. Two members leave the Council every other year. Each member has a personal substitute member. The leader of the Council should be a Supreme Court judge. The other members are a High Court judge, a district court judge, a lawyer in private practice and two representatives of the general public. Members of central, regional, and local political organs may not be members of the Council. The Council’s leader has a double vote, meaning that the judge members of the Council may have decisive influence over who are appointed as judges.

All appointments made by the Council have been solicited by the Danish Court Administration (Domstolsstyrelsen) in advance. The Danish Court Administration solicits the the positions on different medias, including domstol.dk, Danmarks Domstoles intra, DJØFbladet, Jobnet, JuraJob, AvoJob and DJØF Jobunivers.³⁰⁶ Anyone applying for a position as a judge would have to include as part of their application: evidence of exam at bachelor- and **kandidat**-level, as well as a CV. Furthermore, as follows by the Civil Service Act §8 stk. 1, the applicant should supply statements made by previous and current employers. This is so that the Council will

³⁰⁰ Retsplejeloven §43

³⁰¹ Council of Europe, Fourth Evaluation Round, Corruption prevention in respect of members of parliament, judges and prosecutors, page 23, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c323e>

³⁰² Ibid.

³⁰³ Ot. Prp. Nr. 102, section 3.3, page 15, <https://www.regjeringen.no/contentassets/2027ea6191c54bbdb5aca090124f660a/nn-no/pdfs/otp200820090102000dddpdfs.pdf>

³⁰⁴ <https://www.domstol.dk/dommerudnaevnelsesraadet/om-dur/>

³⁰⁵ NOU 2020: 11, section 11.5, page 111, <https://www.regjeringen.no/contentassets/367acaf16a2941bfaf5e3b1ae7bfe95f/no/pdfs/nou20202020011000dddpdfs.pdf>

³⁰⁶ <https://www.domstol.dk/dommerudnaevnelsesraadet/proces/>

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have the broadest possible basis for making its decision. Following the Civil Service Act §5, stk. 3-5, the Danish Court Administration draws up a candidate list for every position which is then shared with the Council, the Danish Judge Association, and the Danish Association of Deputy Judges. The Administration also obtains information from the Danish Bar and Law Society on possible sanctions in connection with disciplinary proceedings concerning the applicants who are or have been lawyers.

The Danish Court Administration provides secretarial aid to the Judicial Appointment Council. The secretary is subject to the instructions of the leader of the Council. The Council only appoints one applicant to one post. The Council releases the selected candidate to the Minister of Justice who cannot appoint any other candidate than that selected by the Council but may discard this candidate. If the Minister were to reject the Council's candidate, he would have to notify Folketingets Retsudvalg (the parliament's court committee).³⁰⁷ It is generally expected that the recommendations of the Council for the appointment of judges will be followed by the Minister. If the Minister does not follow the recommendation s/he has to inform Parliament, but in practice there have not been any such cases.³⁰⁸

Lay judges are appointed for a period of four years by the High Courts following proposals by the municipalities. In each municipality, a special committee composed of local council members selects a number of residents who are considered suitable to serve as lay judges and includes them in a list which is sent to the relevant High Court president. Following criminal record checks, lists of available persons to act as lay judges are established through a system of lottery. According to sections 68 et seq. AJA, members of certain professions – e.g. professional judges, officials employed by central government, etc. – are excluded from acting as lay judges. During the talks on site, it was indicated to the GET that campaigns by the authorities aimed at achieving ethnic diversity and age balance among lay judges are quite successful. New lay judges are invited to an introductory meeting which includes a presentation of the disqualification rules. When a case starts that involves lay judges, the latter have to sign a declaration of impartiality.³⁰⁹

2.3.3 Sweden

There are three kinds of courts in Sweden: the general courts, which comprise district courts, courts of appeal and the Supreme Court; the general administrative courts, that is to say, administrative courts, administrative courts of appeal and the Supreme Administrative Court; and also the special courts, which determine disputes within special areas, for example, the Labour Court and the Market Court.

Once a student has completed the professional law degree (bachelor and master), 4,5 years of law school, they can apply to become a notary in the Swedish court, provided they have 270 university points. A notary is a training job in an administrative court or general court where you work while also studying for two years. The next step, which is the first step in the judge training, is to become a fiscal, which has a duration of three years. The fiscal starts with a probation period of six months after which they will work with sentencing for at least two years. After a fiscal, you work for one year as acting assessor in a court that judges in higher or final instance. As an assessor, you can apply for a job as a permanent job. Finally, you can apply to become an ordinary judge. Being a notary, fiscal and assessor are seen as valuable

³⁰⁷ NOU 2020:11, page 111

³⁰⁸ Council of Europe, page 22,

³⁰⁹ Council of Europe, page 23-24

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as they provide experience; however, these are not formal requirements, as those within the Swedish courts wish to find the most competent lawyers.³¹⁰

To become a judge, you must have Swedish citizenship. To be allowed to serve as a judge you must also have a Swedish law degree. In certain circumstances, legal training in another Scandinavian country can be regarded as equivalent to a law degree. Most permanent judges work as district court or administrative court judges, or as judges at courts of appeal or administrative courts of appeal. The president of a court of appeal or administrative court of appeal is known as the *president*, and the president of a district court or administrative court is known as the *lagman*. Judges of the Supreme Court and Supreme Administrative Court are known as justices (*justitieråd*).

Many of those appointed as permanent judges have followed a traditional career path during which they spend two years as a clerk at a district court (329 Kb) or an administrative court (281 Kb) and then apply to become a reporting clerk (*fiskal*) at a court of appeal or administrative court of appeal. After at least one year at such a court, a trainee judge must serve for at least two years as a reporting clerk at a district court or an administrative court. This is followed by at least one year's service as an acting associate judge at a court of appeal or administrative court of appeal. After successfully completing and passing the course, the trainee judge is appointed associate judge of appeal at a court of appeal or administrative court of appeal. Reporting clerks and associate judges are examples of judges without permanent tenure who can appear in courts.

District courts, courts of appeal, administrative courts and administrative courts of appeal all have a number of lay judges (*nämndemän*). The lay judges are appointed for a term of four years by the municipal council in municipalities within the territorial jurisdiction of the district court and the county council in counties within the jurisdiction of the administrative court, administrative court of appeal or court of appeal. During votes in connection with the court's deliberations, each lay judge has one vote.³¹¹

All permanent judges are appointed by the Government, for an indefinite period of time, following an open competition and upon a recommendation by the Judges Proposals Board in accordance with the provisions of the Act (2010:1390) on the appointment of permanent judges. Most non-permanent judges, e.g. assistant judges and associate judges are employed until further notice. Other non-permanent judges are employed for a fixed period of time. The courts are responsible for employing most of the non-permanent judges. Lay judges are hired for a term of four years.

An independent State authority called the Judges Proposals Board administers all matters regarding appointment of permanent judges including technical judges. It is composed of nine members appointed for a period of four years. Two of them are elected by the Riksdag as representatives of the public, and seven are appointed by the Government (of which five must be or have been permanent judges and two must be lawyers active outside the judiciary). The Judges Proposals Board submits proposals to the Government detailing which of the applicants is best suited for the post. The Government is not bound by the board's proposal, but it cannot appoint a person who has not first been heard by the board. The Ministry of Justice reviews the matter thoroughly and, finally, it is presented to a cabinet meeting for decision. There are no specific grounds on which the Government may derogate from the proposal, but appointments must always be based on objective factors. In practice, the Government has always followed the board's proposal except in two instances. During the

³¹⁰ <https://www.domstol.se/om-sveriges-domstolar/jobba-hos-oss/sa-blir-du-domare/domarbanan/>

³¹¹ https://e-justice.europa.eu/29/EN/types_of_legal_professions?SWEDEN&member=1

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interviews held on site, the GET was made aware of two cases (one case in the 1980's and the other in 2005/2006) where the Government derogated from the initial proposal by the board and where the second-best candidate was selected. Neither the proposals by the Judges Proposals Board, nor the Government's decision can be appealed against (26-27).

Appointments of judges must be based only on objective factors such as merit and competence. All legally trained judges must be Swedish citizens and must have passed the professional examinations prescribed for qualification for judicial office. No person declared bankrupt or who is legally represented by an “administrator” may exercise judicial office. Normally, during the competition for the post of permanent judge the Judges Proposals Board obtains references from the applicant's current and recent employers. The board can also give other authorities and organizations an opportunity to make comments, for example the Swedish Prosecution Authority and the Swedish Bar Association. The head of the court in question interviews the applicant and submits her/his comments to the board. Before the board submits its proposal to the Government the criminal records system is consulted (27).³¹²

The Swedish code of judicial procedure

- The legally qualified judges shall be Swedish citizens and shall have passed the professional examinations prescribed for qualification for judicial office.
- The professional examinations and other conditions for judicial office are prescribed by the government.
- The lay judges are elected. If a court district covers more than one municipality, the district court shall divide the number of lay judges among the municipalities in proportion to their population. The government or the authority designated by the government shall decide the number of courts of appeal lay judges to be elected for every county in the territorial jurisdiction of the court of appeal or, if the territorial jurisdiction includes part of a county, for that part of the county. (SFS 1988:616)
- All Swedish citizens registered in the municipality or, as to lay judges of a court of appeal, in the county or that part of the county that is within the area of the court, are eligible to be elected as a lay judge, provided they are adult and do not have an administrator under the Code on Parents, Guardians and Children, Chapter 11, Section 7, Legally qualified judges, court officers, public prosecutors, police officers, advocates or other persons who are otherwise professionally engaged in the representation of litigants in judicial proceedings, may not be lay judges. No person may at the same time be a lay judge in a court of appeal and in a district court. A person who has attained the age of sixty years or who provides a valid excuse is not obliged to accept appointment as a lay judge. A person who has resigned as a lay judge is not obliged to serve again before the expiration of four years. The court shall on its own motion examine the eligibility of the elected person. (SFS 1994:1620)³¹³

Laws regarding the appointment of judges from the Swedish constitution

Art. 6. Permanent salaried judges are appointed by the Government. When appointments are made, only objective factors, such as merit and competence, shall be taken into account. Provisions concerning the grounds for the procedure for appointing permanent salaried judges are laid down in law.

³¹²<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806ca2c3>

³¹³https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/National_Regulations/National_Laws_on_the_Bars/EN_Sweden_Swedish-Code-of-Judicial-Procedure.pdf

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Art. 11. Only a Swedish citizen may be a permanent salaried judge. Swedish nationality may otherwise be stipulated as a condition of eligibility to perform judicial functions only with support in law or in accordance with conditions laid down in law.

The Judges Proposals Board

Supplementary provision 13.23.2 In accordance with Section 4 of the Act on the appointment of permanent salaried judges (2010:1390), the Riksdag elects two members to represent the public in the Judges Proposals Board and one personal substitute for each of them (158).³¹⁴

The Swedish Judicial System, (Ministry of Justice)

Every district court, court of appeal, administrative court and administrative court of appeal has a number of lay judges. They are appointed by the municipal councils in the municipalities that are part of the judicial district of each district court, and by the county council assembly in the counties that are part of the judicial district of each administrative court, administrative court of appeal or court of appeal. A lay judge has the same responsibility for the court's decision as a legally qualified judge. The appointment is non-political, even though lay judges are appointed by the political parties. A lay judge is appointed for four years (Page 22).³¹⁵

2.3.4 Finland

To be appointed a judge in Finland one must be a Finnish citizen. One must also hold a master's degree within law and possess the necessary personal skills. Furthermore, one should have illustrated a certain level of 'insight' required to be a judge through earlier employment at a court or other relevant workplace.³¹⁶ In order to secure the language rights the bilingual courts should employ a sufficient number of judges with excellent written and oral knowledge of the minority language. This is stipulated in Domstolslag chapter 10.³¹⁷

Those holding positions in the judiciary are required to be Finnish citizens and have a Master of Laws degree in Finland (or approved and supplemented in Finland). Goal of the Act on Judicial Appointments (205/2000) is to ensure that persons with versatile experience of various branches of law fill positions in the judiciary. For this reason, the person appointed in a position in the judiciary need to have prior experience of court and other legal work and the functioning of society on a more general level. Thus, the appointed Judges are usually persons with long judicial work experience (e.g. as a Referendary), as well as work experience outside the Judiciary.

Usually, Judges appointed for the first time are persons around the age of forty. The most typical career path for a Finnish Judge proceeds as follows: University degree in law - Judicial traineeship at a District Court - Work as a referendary at a Court of Appeal or Administrative Court - Temporary service as a District Judge, Justice of a Court of Appeal or Administrative Judge - Appointment to a tenured judgeship. However, also other type of career paths exist, for example concerning Judges appointed from other branches of legal professions. In year 2015, 93% of appointed Judges had a position in the Judiciary at the point of nomination. In

³¹⁴ <https://www.riksdagen.se/globalassets/07.-dokument--lagar/the-constitution-of-sweden-160628.pdf>

³¹⁵ <https://www.government.se/49ec0b/contentassets/9ebb0750780245aeb6d5c13c1ff5cf64/the-swedish-judicial-system.pdf>

³¹⁶ NOU 2020:11, page 112, <https://www.regjeringen.no/contentassets/367acaf16a2941bfaf5e3b1ae7bfe95f/no/pdfs/nou202020200011000dddpdfs.pdf>

³¹⁷ Domstolslag, chapter 10, <https://finlex.fi/sv/laki/ajantasa/2016/20160673>

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recent years, the proportion of outside applicants in the appointments have been between 4-9%, which is slightly less than proportion among the applicants.³¹⁸

Following the Finnish Article 102 of the Constitution the President of the Republic appoints judges.³¹⁹ The Act on Judicial Appointments (Law 205/2000) governs the judicial appointment process. The Judges are mainly appointed for an indefinite period of time.³²⁰ Temporary appointees can cover when a judge is prevented from carrying out his/her duties, including vacations, heavy caseloads in court, or other special reasons.³²¹

The independent Judicial Appointments Board (Domarförslagsnämnden) shall do the groundwork for the filling of positions in the judiciary and issue a reasoned proposal on an appointment to a position in the judiciary. The Board has no jurisdiction regarding the appointment of Judges to the Supreme Court and the Supreme Administrative Court. These courts of final instance make their own appointment proposals to the President of the Republic, who formally appoints these judges. All lawyers who meet the general qualifications set forth in the Act may apply. The Board is expected to promote the recruitment of judges from all walks of legal life, that is, from among legal advisers in the courts the civil service, academia and the legal profession.³²² The law does not specify for which reasons the President or the Government may derogate from the advice of the JAB. In practice this has only happened once. The JAB (12 members) is an independent body composed mainly of members of the judiciary. Three members come from outside the judiciary. One is a practicing lawyer appointed by the Bar Association, another is a prosecutor appointed by the Prosecutor General, and the third is an academic appointed by the Ministry of Justice.³²³

The court announcement of a vacancy concerning the applicants' qualification and familiarity with the position shall be detailed. The applicants' qualifications should be assessed by looking at the knowledge and skills they have acquired through their education and earlier work experience. The focus is on the applicants' ability to perform the duties required in the position. Familiarity includes issues such as substantive and procedural legal knowledge, command of legal information, problem analysis and solving skills, ability to familiarise oneself with the facts and legal material of a case, process management skills, reasoning skills and language skills.³²⁴

The procedure for appointing judges to Courts of Appeal, District Courts, Administrative Courts and special courts follow the same process. In the first two courts mentioned, the Court of Appeal declares a vacancy, prepares a summary of the merits of the candidates and presents a statement to the JAB. The statement always includes a reasoned decision as to which applicant should be appointed. For vacancies in the District Court, the Court of Appeal first consults with the District Court in which the vacancy is located and follows the same process. For the position of President of the Court of Appeal the process of declaring a vacancy, preparing and submitting a statement to the JAB is managed by the Supreme Court. The

³¹⁸ Ibid. 15

³¹⁹ NOU 2020:11, page 112

³²⁰ Judicial Appointments Act, https://www.finlex.fi/fi/laki/kaannokset/2000/en20000205_20010442.pdf

³²¹ Council of Europe, page 25

³²² Comparative Note on International Standards for Selection Competencies and Skills for Judges in Administrative Justice, OSCE Office for Democratic Institutions and Human Rights, page 22 https://www.legislationline.org/download/id/8955/file/04.12.20%20NOTE%20Kazakhstan%20Admin%20Justice%20FINAL%20for%20publication_eng.pdf

³²³ Council of Europe, page 25

³²⁴ Comparative Note, OESC, page 22

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Administrative Court manages the same process for its own vacancies as do the special courts (Market, Labour and Insurance).³²⁵

In year 2015 the board made 151 permanent Judge and manager appointments. For these appointments, there were altogether 1006 applicants. From the applicants about 60 % were female and 40% male and about 85 % of the applicants had already a position in the judiciary. The typical applicant is a person in a fixed-period Judge position. 15% of the applicants were from another branch of legal career. Typical examples of outside applicants are prosecutors and legal counsellors.

The main steps in the selection process are:

1. The applicants send a written application (including all personnel record and certificates of education and previous work experience).
2. Before making its appointment proposal, the board requests a detailed assessment concerning the applicants and an opinion of the nominee from the court that has opened the position. In District Court Judge positions a statement and assessment from both the District Court in question and from the Appeal Court is required. The court that has announced the open position must give a detailed assessment and acquire sufficient information as the basis of its assessment concerning all applicants who seem eligible in regard of the qualifications they have presented. If the applicant is not sufficiently well-known in the court issuing the opinion, a written statement can be requested from the applicant's employer such as another court or another agency. If possible, information should also be obtained on eligible applicants working outside the court system. The court may also obtain other opinions and statements. Usually the court also interview the applicants as the basis for the assessment.
 - After the courts have submitted their assessment and opinion to the board, the applicants are reserved the opportunity to comment on the statements and information acquired for the preparation of the appointment.
 - The board selects one person from the applicants to be proposed for appointment³²⁶

As an addition, in manager positions suitability testing is used. An external, specialized firm conducts the suitability testing. The test is a one-day psychological test focusing on managerial and leadership abilities. The test-day includes dozens of both oral and written of tasks, which are evaluated by experts.

The assessments required from the court concerning the applicants' qualification and familiarity with the position need to be detailed. The applicants' qualifications should be assessed versatile by looking at the knowledge and skills they have acquired through their education and earlier work experience. The focus is on the applicants' ability to perform the duties required in the position. Familiarity includes issues such as substantive and process knowledge, command of legal information, problem analysis and solving skills, ability to familiarise oneself with the facts and legal material of a case, process management skills, reasoning skills and language skills.

A person appointed for a position in the judiciary must also have the necessary personal characteristics. These include talent, ability to work, initiative, efficiency and leadership skills.

³²⁵ Council of Europe, page 26

³²⁶Lut University, Report – The Evaluation and development of quality of justice in Finland, page 13, <https://www.lut.fi/documents/27578/465522/Deliverable+1.2+Report+-+The+evaluation+and+development+of+quality+of+justice+in+Finland+D.pdf/f69d7404-0951-4a34-b513-df8d1a522d33>

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These also include professional ethics: the ability to make independent decisions, independence, motivation for personal development, teamwork skills and an attitude towards work and changes. These skills can be acquired in other legal professions, aside from working for the court system. Such professions include attorney, prosecutor, university researcher, lecturer, and law drafting officials, and legal professions in various administrative sectors.³²⁷

2.3.5 Iceland

The Act on Judiciary No. 15/1998 introduced substantial changes in the administration of the courts in Iceland. The external regulation is made by institutions not grouped with the judicial power. Parliament (Althingi) makes decisions on financial appropriations to the courts in the Finance Act, and regulates the organisation and activity of the courts, e.g. the Act on the Judiciary and Codes of Procedure. The Minister of Justice appoints judges to the Supreme Court based upon a recommendation from The Supreme Court and judges to the district courts based upon a recommendation from a special board of appointment. The Minister of Justice is the spokesman for the courts to the public and to Althingi, and responsible for their activity.³²⁸

The Judicial Council consists of five members. Two are elected by district court judges from among their peers, two by the chief judges of the district courts from among their peers, and the Minister of the Interior appoints one more member, who is not an active judge. The members are appointed for five years and cannot serve more than two terms. The Judicial Council has mainly administrative functions, which include the control of the financial affairs of the courts, issuing rules on the harmonisation of judicial practice, determining the number of judges and staff in district courts, collecting statistics, organising continuing education programmes for judges and lawyers serving the courts, etc. (Page 21)

The rules for the appointment of judges were changed in May 2010, pursuant to Act No. 45/2010 amending Act No. 15/1998. District court judges are appointed to office for an indefinite period by the Minister of the Interior (Article 12, Act No. 15/1998). Supreme Court judges are appointed for an indefinite period of time by the President of Iceland, as proposed by the Minister of the Interior (Article 4(1), Act No. 15/1998) (Page 22).

Positions for both district court judges and Supreme Court judges are advertised in the Icelandic Official Journal and/or newspapers. Criteria for the appointment as a judge relate to the merits of the applicant, including education and experience, integrity, competence and job efficiency. No formal training for entering the judiciary is required, but judges have to meet high standards to be appointed; this includes qualification as a lawyer. Assessment guidelines are contained in Rules No. 620/2010 on the work of the evaluation committee. The Administrative Procedure Act No. 37/1993 and the Government Employees Act No. 70/1996 also contain provisions which need to be taken into account in the appointment of judges, e.g. as stated above with respect to gender equality and also with respect to non-discrimination.³²⁹

The Supreme Court of Iceland shall be composed of nine judges, appointed for an indefinite period of time by the President of Iceland as proposed by the [Minister]. Only a person who fulfils the following conditions may be appointed to the office of Supreme Court judge. The person has attained the age of 35 years. The person is an Icelandic national. The person has the necessary mental and physical capacity. The person is legally competent to manage

³²⁷ Ibid. page 14

³²⁸ <https://www.scandinavianlaw.se/pdf/51-29.pdf>

³²⁹ Council of Europe, <https://rm.coe.int/16806c67c5>, page 23

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his or her personal and financial affairs and has never been deprived of the control of his or her finances. The person has not committed any criminal act considered to be infamous in public opinion or evinced any conduct detrimental to the trust that persons holding judicial office generally must enjoy. The person has completed a graduation examination in law or graduated from a university with an education deemed equivalent thereto. The person has for a term of no less than three years been a district court judge, Supreme Court attorney, professor of law, commissioner of police, district commissioner, Director of Public Prosecutions, Assistant Director of Public Prosecutions, public prosecutor, permanent secretary of a ministry, director general of a department of [the Ministry], or Althingi's Ombudsman, or has for such period discharged a similar function providing similar legal experience. The person is deemed capable to hold the office in the light of his or her career and knowledge of law. A person who is, or has been, married to a Supreme Court judge already in office, or a person related to such judge by blood or marriage by ascent or descent, or in the second sideline, may not be commissioned to the office of a Supreme Court judge.

The [Minister]¹⁾ shall appoint an evaluation committee of five members to examine the qualifications of applicants for the office of Supreme Court judge or district court judge. Two members shall be nominated by the Supreme Court, of which one shall serve as chairman; at least one of the two shall not be in active service as a judge. The third member shall be appointed by the Judicial Council and the fourth by the Icelandic Bar Association. The fifth member shall be elected by the Althing. Alternate members shall be nominated and appointed in the same manner. The term of appointment to the evaluation committee is five years, with the proviso that the term of one member shall expire each year. The same member cannot be appointed as a principal member of the board for more than two consecutive terms.

The evaluation committee shall provide the Minister with a written and reasoned opinion concerning applicants for the office of Supreme Court judge. The opinion of the evaluation committee shall state the board's position regarding which applicant is best qualified for the post; the board may rank two or more applicants equally. In other respects, the Minister shall establish further rules²⁾ on the functions of the Board.

No applicant may be appointed to the office of judge which the evaluation committee has not designated as the most qualified of the applicants, whether alone or equally ranked with others. However, derogation from this condition is permitted if the Althing adopts a motion of the [Minister]¹⁾ to appoint another identified applicant who, in the opinion of the evaluation committee, meets all the requirements laid down in the second and third paragraphs of Section 4. The Minister shall in such circumstances place the motion before the Althing within two weeks from the time of submission of the evaluation committee's opinion or within two weeks from the time that the Althing is next convened following submission of the opinion; the motion must be approved within one month from the time that it is placed before the Althing or the Minister will be bound by the opinion of the evaluation committee.³³⁰

2.4. Central Europe region

2.4.1 Czech Republic

Appointment and Assignment of Judges. Candidate to the function of a judge is appointed into the function of the judge by the President, upon proposal of the Government, on the

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https://www.legislationline.org/download/id/3906/file/Iceland_Act_on_Judiciary_1998_am2011_en.pdf

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basis of his/her own prior consent and to the particular court. These are the prerequisites determined by law, necessary for appointment of a judge, under the obvious condition of entire criminal clean record of the candidate: achievement of the age of 30 years, completion of entire masters' education in the area of law, completion of the practice of the justice candidate, and completion of justice examination and undergoing of psychology examination.

A judge may be temporally assigned to a court other than the court, which s/he was originally assigned to, for the period of no longer than 3 years, provided that the Minister of Justice or the presiding judge of the regional court decide on his/her temporary assignment.

The Minister of Justice may also decide on temporary assignment of a judge to a district court other than which s/he was assigned to, but only with his/her consent. The Minister of Justice shall decide on redeployment of a judge after discussion with the presiding judge of the given court.

The act also enables redeployment of a judge to a court other than the one which s/he was assigned to, on the basis of his/her request or with his/her consent or also without his/her consent in the case that a change in organization of courts occurred, or when due execution of justice is not possible to ensure in the place, where the judge is redeployed to.

The state administration of particular courts is also performed by officials of these courts, i.e., their presiding judges and vice-presiding judges.

The judges of the Constitutional Court of the Czech Republic are appointed upon approval of the Senate by the President of the Republic for the period of ten years, and the repetition of the appointment is not prohibited by the Constitution. The President of the Republic independently appoints the presiding judge and two vice-presiding judges of the Constitutional Court from the group of judges of the Constitutional Court. A citizen of the Czech Republic with a clean record, who is electable into the Senate of the Parliament (i.e., s/he is at least 40 years old) may become the judge of the Constitutional Court if s/he completed university education in the area of law and was active in any profession of law for the period of at least ten years; thus, s/he need not be a professional judge at an ordinary court. Just like in the case of judges of ordinary courts, the function of the judge of the Constitutional Court is not congruent with the function of the President of the Republic, a member of Parliament or other function in public administration or any other paid function or profitable activity. Besides that, a judge of the Constitutional Court may not be a member of any political party or movement.

Lay Judges of District and Regional Courts. In cases determined by law, lay judges, who are not professional judges, operate in panels of district and regional courts. The possibility of existence of a non-professional element in the justice is already explicitly anticipated in Art. 94(2) of the Constitution.

While judges of ordinary courts are appointed to ordinary courts without time limitation, the lay judges are elected for a timely limited period of 4 years by the councils of municipalities in the case of lay judges of district courts, and by councils of regions in the case of lay judges of regional courts. Only a citizen with permanent residence in the area of the council, which elects him/her in the function, may become a lay judge. Lay judges only co-decide at courts of the first instance. In the case of voting within the panel, a vote of lay judges has the same importance as a vote of the presiding judge; the panel presiding judge may be over-voted.

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Considering the importance of this function, the actual legal regulation is quite insufficient, as it does not regulate the method of choice of persons instead of lay judges (non-existence of any psychology tests nor any other entry attestations), nor it expressly regulates possible conflicts of interests and limitations by any age level. The financial evaluation is also insufficient. Unified and transparent process for assignment of lay judges to individual cases is also not determined, or it is only set at the level of administration of courts, not in legal regulation.

Methodology. Persons interested in the position of justice candidates are registered in the register of persons interested in admission into preparation service of justice candidates, which is held by the Ministry of Justice. The registration into register at websites of the Ministry of Justice is the unavoidable condition for the option of passing the selection procedure for filling of places of justice candidates. Upon registration, the interested person proves in particular the citizenship, clear criminal record and details of the acquired education in law, which the interested person also proves in electronic form. The interested person shall further specify the area of regional court and particular district courts, where s/he is interested to perform the preparation service of justice candidates, and may also specify more courts.

The candidates are subsequently, in the order, as they registered, invited to an entrance test, the purpose of which is to verify basic professional knowledge and prerequisites for candidates for admission in the preparation service. The entrance test is ensured and organized by the Judicial Academy in cooperation with the Ministry of Justice. Passing of the entrance test is the condition for participation in the selection procedure. The result of the entrance test is valid for the period of 3 years as of the day of its passing. The candidate may repeat the entrance test no earlier than after 12 months as of doing the previous entrance test.

The selection procedure for the function of the candidate is announced by the presiding judge of the regional court after discussion with the Ministry, according to need of filling of vacant places of justice candidates, at least 14 days before the written tests take place. Announcement of the selection procedure also includes criteria of assessment. The selection procedure includes a written test and interview before a commission of the respective regional court. The presiding judge of the regional court may decide that the selection procedure does not include a written test and, instead, determine which number of points of the entrance test is necessary to proceed to the entrance interview.

The written test shall verify professional knowledge and prerequisites of the candidate for admission into preparation service on the basis of a unified methodology prepared by the Judicial Academy and approved by the Ministry; it also includes the way of assessment of results of the written test. A candidate, who was not successful in the written test, shall be excluded by the presiding judge of the regional court from the selection procedure. The presiding judge of the regional court shall send a written notification on elimination from the selection procedure to the candidate.

The purpose of the entrance interview is the overall assessment of prerequisites of the candidate for admission into the preparation service. The entrance interview is made by the commission composed of judges operating within the area of the respective regional court. The presiding judge and the members of the commission are appointed and recalled by the presiding judge of the regional court, in order the commission has an odd number of

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members. A representative of the Judicial Academy authorized by the Council of the Judicial Academy shall participate in the entrance interview. At the end of the entrance interview, the representative shall make his/her written statement to the progress thereof.

The content of the entrance interview and the criteria for its assessment shall be determined by the presiding judge of the regional court on the basis of unified methodology processed by the Judicial Academy and approved by the Ministry. The presumed determination of the court, where the candidate shall perform the preparation service shall also be the part of the entrance interview.

The result of the entrance interview shall be assessed by the grades "s/he is proposed to admission" or "s/he is not proposed to admission"; the commission shall present it with a brief overall assessment and its reasoning and with a written statement of a representative of the Judicial Academy to the presiding judge of the regional court.

The candidate shall be admitted in the preparation service by the presiding judge of the regional court, provided that s/he shall consider the results of all phases of the selection procedure and the statement of the Judicial Academy. The presiding judge of the regional court shall also determine the place of execution of the preparation service for the candidate.

The presiding judge of the regional court shall send the list of successful candidates, who were admitted into the preparation service, to the Ministry and the Judicial Academy.

Progress and Content of the Candidates' Practice. The progress of the preparation service shall be governed by the issue and time plan of the preparation service. The plan of the preparation service shall be focused in order the professional preparation of the candidate for execution of the function of the judge serves in particular to improve professional knowledge of the candidate on substantial and procedural law, to develop the ability of the candidate to apply the legal rules in a particular issue, to acquire knowledge on individual agendas held by courts and their execution, to learn procedural routes and customs necessary for execution of the function of judge and to get familiar with ethical principles relating to execution of the function of judge.

The preparation service shall be performed at district and regional courts as courts of first instance. In compliance with the plan of preparation service, the candidate shall perform the preparation service at a district or regional court. The candidate shall usually be assigned in framework of preparation service to one judge. Adaptation courses, seminars and lectures organized by the Judicial Academy and education activities organized by regional courts in extent of at least 2 days in a month shall be the part of the preparation service. The adaptation course is focused on informing of the candidate of the progress of the preparation service and with basic legal rules regulating the activity of courts. The adaptation course shall commence in first 6 months of the preparation service.

The progress of the preparation service shall be coordinated and its results are supervised by the advisory committee in cooperation with the Judicial Academy. The advisory committee shall prepare, after completion of the first and second year of the preparation service, the proposal of assessment of the candidate. After completion of the preparation service, the advisory committee shall prepare the proposal of the final assessment of the candidate. The final assessment shall be attached to the application of the candidate for approval to make the professional examination. The advisory committee shall also recommend the candidate to foreign study stays organized by the Judicial Academy. The preparation service shall also

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be focused on acquisition of principles of professional ethics.

The progress of the preparation service and its level shall be ensured by determined supervisors as regards professional and pedagogy aspects. The supervisors shall be appointed and recalled by the presiding judge of the regional court from the group of judges, who have the prerequisites for teaching of candidate in framework of the preparation service.

The candidate shall respect the instructions of the presiding judge of the court, determined supervisor and the judge, whom s/he was assigned to, fulfil the tasks determined by them under conditions and to the extent determined by another legal rule, participate in the training educational actions and update and improve his/her professional knowledge within self study.

The Content and Progress of Justice Examinations. According to Act No. 6/2002 Coll., on Courts and Judges, the Ministry of Justice shall enable a justice candidate, assistant to judge, higher court official and assistant of the Public Defender of Rights to perform the professional justice examination. The justice candidates shall submit application for completing a professional justice examination through the respective regional court.

The Minister of Justice shall appoint the presiding judge as the chairman of the examination commission. The professional justice examination is public and is composed of a written and oral part. In framework of the written part of the professional examination, the candidate shall prepare one decision in a criminal issue, one decision in a civil or commercial issue and one decision in an issue of administrative justice.

The candidate is obliged to prepare the decision independently. The candidate is entitled to use the legal information system provided by the Ministry as the only helping tool during the written part of the professional examination. Breach of the obligation to work independently or use of not permitted helping tools is a reason for elimination of the candidate from the examination; the examination commission shall decide on elimination. The time of duration of the written part of the professional examination may not exceed 6 hours. After lapse of this time, the candidate is obliged to hand over the written work to the one, who performs supervision, even in the case it is not completed.

At the beginning of the oral part of the examination, the chairman of the examination commission assesses the written part of the professional examination of the candidate. During the oral part of the professional examination, the knowledge of the candidate of the constitutional law, civil substantive and procedural law, labour law and law of social ensuring, family law, criminal substantive and procedural law, commercial law, administrative justice and administrative substantive and procedural law, notary rules and execution rules and of court rules of courts, their internal and office rules and organization of courts and state prosecution are verified. Basic knowledge of laws of the European Union and orientation in basic sources of international law are also verified at the candidate.

The overall orientation of the candidate in the legal rules and the internal and office rules for district and regional courts, the ability of the candidate to correctly apply and interpret legal rules and its oral presentation are also considered during the oral part of the professional examination. The candidate may, during the oral part of the examination, use the collection of legal and other rules, collection of court or other decisions and journal or book legal literature only with consent of the chairman of the examination commission. The time of duration of the oral part of the professional examination may not exceed 2 hours.

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The result of the professional examination shall be assessed by the grade "excellently capable", "capable" and "incapable". The examination commission shall decide on assessment at a non public meeting by voting. The first voting is whether a candidate is capable or incapable; and then as regards the assessment "excellently capable" as regards candidates, who were assessed to be capable.

The result of the professional examination shall be announced by the chairman of the examination commission to the candidate immediately after ending of the discussion, and the Ministry shall send the candidate a certificate of successful completion of the professional examination.

Appointment of Judges and Their Assignment at Places of Particular Courts. In the Czech Republic, the candidates for the function of judge shall currently be recruited from three sources – justice candidates, assistants to judges and persons from the practice (in particular attorneys-at-law).

A citizen with a clean record, who completed university education of law, completed the practice of a justice candidate and passes a professional justice examination, may become a professional judge. The examination of attorneys-at-law, the final examination of a legal candidate, the notary examination and the professional examination of executors shall also be considered to be the professional justice examination. Execution of the function of judge at the Constitutional Court for the period of at least 2 years shall have the same effect.

A candidate shall be appointed into the function of the judge upon proposal of the Government by the President of the Republic without time limitation of execution of his/her function (this is the important guarantee of independence of the judge). The function of judge shall nonetheless terminate upon achievement of the age of 70 years. The function shall be accepted upon completion of the promise to the President of the Republic.

The Minister of Justice assigns judges to execution of function to a certain court on the basis of his/her prior consent. The Minister of Justice may only redeploy a judge to another court of the same instance or to a higher court with his/her consent.

The Minister of Justice may only redeploy a judge to a lower court upon his/her request. A judge may be redeployed without consent or without request to another court of the same instance or to a lower court upon legally effective decision of a punitive court. A judge may also be temporarily redeployed to a court of different instance with his/her consent in compliance with legal conditions.

2.4.2 Poland

Judges are appointed by the President of the Republic upon proposal of the National Council of the Judiciary for the indefinite period of time (Art. 179 of the Constitution).

The conditions for appointment of a judge of a common court:

- a) S/he must be first approved at the general assembly of the court (secret voting),
- b) Then s/he is presented to the National Council of the Judiciary, through the Minister of Justice,
- c) Then s/he is proposed to the President of the Republic for appointment by the National Council of the Judiciary.

Redeployment of a judge to a higher court requires the same procedure.

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The System of Choice of Candidates to Places of Court Assistants. A candidate for a place of court assistant shall comply with these conditions:

- a) A citizen of the Republic of Poland, legally competent, with clear criminal record, of not disordered (*niezkażitelnego*) character, healthy capable to execution of the function of judge,
- b) A graduate of a law school in the five-year-subject of study of the law (mgr.) or also a graduate of foreign legal masters’ degree,
- c) Achievement of the age of 29 years,
- d) Completion of practice of a court assistant at the National School of Judiciary and Public Prosecution in the duration of 3 years.

A candidate to the function of judge (so called *aplikant*) shall submit application at the National School of Judiciary and Public Prosecution in Krakow (*Krajowa szkoła sadownictwa i prokuratury*), at the maximum age of 35 years. The justice application of the school endures 36 months (3 years). The entrance procedure is divided into two parts: 1. test in the duration of 180 minutes (i.e., 150 questions, each with 4 options, provided that one is correct), 2. written work, based on resolution of a case, in the duration of 180 minutes. A patron (coordinator, trainer) is assigned to each candidate. Participants of the course shall come in the school twice per quarter, they perform the practice at a certain district court.

So called court applications are the important means of choice of judges in the Polish traditional practice, which serves to forming of personality a future judge, including acquisition of ethical principles of court activity.

Court assistants shall take the justice examinations within one month after completion of the assistance service. The assistant must acquire at least 60 % of points in the written part, as well as in the oral part of the examination. An assistant is not allowed to the oral part if s/he has acquired less than 30 % of points in the solution of one case. The examination questions and cases are composed by the commission appointed by the Minister of Justice. The Minister of Justice also issues, at least one month before the examinations, the summary of places, where the assistants are assigned to.

Court assistants are then appointed by the President of the Republic to an undefined period of time, with determination of a service place (seat) of the assistant. A court assistant performs the function of judge for the period of 4 years. During performance of the function, a court assistant is independent to the same extent as a judge and cannot be a member of a political party or labour unions.

A court assistant may not be redeployed, unless

- change in organization of justice occurred,
- an affiliation conflict occurred as regards the person of the assistant at the given court,
- the disciplinary court decided thereof on the basis of a disciplinary sanction.

Before lapse of 36 months of performance of the function of court assistant, the assistant may ask the presiding judge of the provincial (*okregowego*) court for appointment into the function of judge of a district court (*rejonowego*). In such a case the presiding judge of the appellate court shall draw a judge for preparation of assessment of the assistant (so called *wizitator*), from the composition of the courts of both previous instances. The assessment shall include the level of decided cases, organization of work, professional growth, court culture of deciding, as well as complexity of decided issues. Twenty issues from one hundred, where the assistant decided, and, further, also at least six commenced issues as

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well as issues, where the candidate to judge was the reporter, shall be drawn.

Candidates to Judges from Other Legal Professions. Also a lawyer from other legal professions may apply for a place of judge, in particular attorneys-at-law, legal advisers, notaries, as well as judges of administrative, military courts, prosecutors or assessors (assistants) of prosecution, but also academicians of legal universities, Polish Academy of Sciences, from investigation institutions with the rank of professor or habilitated doctor of legal sciences.

Assessment of candidates for judges from attorneys-at-law and legal advisers shall be done based on the assessment of at least 50 legal issues, legal opinions, and/or other documents; in the case of notaries, these shall include assessment of 50 notary acts. In the case of a professor or a habilitated doctor in legal science, the achieved science results, level of publications, and/or also review opinions shall be assessed.

The joint feature of each of the mentioned options to appointment to a place of judge is the necessity to register in a competition to a vacant place of judge. The candidacy shall be assessed by the National Council of the Judiciary, which shall then propose the candidate to the President of the Republic of Poland with proposal to appointment as a judge.

2.4.3 Slovak Republic

Appointment of Judges – Prerequisites. The judges of ordinary courts are, according to the Constitution, appointed by the President of the Slovak Republic upon proposal of the Judicial Council of the Slovak Republic without time limitation. A citizen of the Slovak Republic, who achieved the age of 30 years, is electable in the National Council and has completed university legal education may be appointed. Judge shall take over the function upon completion of the promise to the President of the Republic.

The prerequisites for appointment into function of judge are besides the Constitution governed in Act No. 385/2000 Coll., on Judges and Lay Judges. A candidate to the position of judge shall have the education of the second degree in the area of law at a law school in Slovakia or have an acknowledged document on acquisition of university legal education of second degree at a foreign law school. The further prerequisite is full capability to legal acts, the health capability for execution of the function of judge. Clear criminal record shall be proven by an excerpt from the criminal record, no older than 3 months. The Act further determines prerequisites of judge capability that should be the guarantee of due execution of the function of judge. These are the prerequisites of moral standard and integrity for due and liable execution of the function.

A candidate, who passed the professional justice examination and successfully passed the selection procedure, may be appointed. The examination of attorneys-at-law, the prosecutor examination, the notary examination and the professional examination of a commercial lawyer shall also be considered to be the professional justice examination. With approval of the Judicial Council, the Minister of Justice may exempt from passing the professional justice examination for those who are provably scientific or other important personalities in the area of law and are active in a legal profession for at least 10 years. The justice examination may also be exempted for the one, who acted and decided for at least 10 years in the area of public administration or who operated in the area of creation of legislation and whose professional experience and knowledge are necessary for execution of the function of judge.

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The candidate must agree in writing with appointment into function of judge, as well as with assignment to a court determined in advance or with assignment for the area of a regional court as a temporary judge.

The Act negatively specifies conditions, which prevent appointment of judge. A citizen who already performed the function of judge and was recalled from it on the basis of a decision of disciplinary panel for an act, which is not congruent to execution of function of judge, or a citizen who is subject to disciplinary measure of depriving of execution of an executor's office, disciplinary measure of deletion from the list of attorneys-at-law, disciplinary measure of deletion from the list of commercial lawyers, disciplinary measure of depriving of execution of a notary office or disciplinary measure of depriving of execution of function of a prosecutor, cannot be appointed as a judge.

Assignment and Redeployment of a Judge, Temporary Judge. A judge is assigned for execution of function to a district court or for execution of function of judge as a temporary judge for the area of a regional court by the Judicial Council from candidates to function of judge on the basis of results of bulk selection procedure. A judge is assigned for execution of function to a regional, the Special Criminal Court, the Supreme Administrative Court and the Supreme Court by the Judicial Council on the basis of results of the selection procedure, which are announced to it by the chairman of the selection commission.

If due operation of justice cannot be ensured by assignment of a judge or redeployment of a judge, a judge may be with his/her consent temporarily assigned for performance of the function to another court; a judge may be temporarily assigned to a district court if not even a temporary judge can ensure due operation of justice. Performance of function at two courts is excluded, besides execution of function of chairman of the disciplinary panel or a member of the disciplinary panel.

The Judicial Council shall temporarily assign a judge to execution of the function of presiding judge of a court at a court of lower or the same instance if s/he was appointed into this function on the basis of the Act on Courts. During temporary assignment to execution of the function of presiding judge of a court, the judge shall perform the function of judge at a court to which s/he was temporarily assigned. The temporary assignment of a judge to execution of function of presiding judge of a court shall terminate upon ending of function of the presiding judge of the court.

A temporary judge is a judge, who performs the function of judge at a determined district court in the area of the regional court and who granted consent to assignment to a vacant place of a temporary judge for the area of the regional court. The temporary judge performs his/her function on the basis of reasons determined by law (among others, substitution of the legal judge during maternity or paternity leave, longer work incapacity, internship, etc., or due to a reason of temporary overload of a district court). After four years of execution of function of judge as temporary judge, the temporary judge may be, upon his/her request, redeployed to a vacant place of judge at a district court or, on the basis of results of the selection procedure, at a regional court.

The Judicial Council may redeploy the judge to another court only with his/her consent, upon his/her request or on the basis of a decision of the disciplinary court. Redeployment of a judge is only possible to a vacant position of judge determined by the Minister, and, as far as redeployment of a judge to a court of the same instance is concerned, a judge may only be redeployed to a vacant place determined after submission of a request of a judge on

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redeployment to another court. A judge may only be redeployed upon his/her request after five years from his/her appointment into the function of judge; upon his/her request, a judge may also be redeployed before the lapse of this period for reasons of special regard.

Only a judge, who executed legal practice for at least seven years, may be redeployed to regional courts and the Special Criminal Court in the case of redeployment to a regional court into a correct division, and at least ten years in other cases. Only a judge, who executed legal practice for at least 15 years, may be redeployed to the Supreme Court. Only a judge, who executed legal practice for at least ten years, may be redeployed to the Supreme Administrative Court.

A judge shall be redeployed to a court of lower instance by the Judicial Council on the basis of a decision of a disciplinary panel.

A judge shall be redeployed to a court of higher instance on the basis of results of selection procedure and in compliance with principles of functional promotion of judges. According to these principles, each judge may participate in a selection procedure to a function of judge at a court of higher instance. The important prerequisite of functional promotion is assessment of a judge according to Section 27 of the Act on Judges, the statement of the respective division of a court of higher instance and the activity of a judge in the area of professional internship and seminars, in publication area, and lecturing and lecturer's activity.

Lay Judges of District and Regional Courts. Lay judges (judges from the public) may also participate in court decisions in panels together with judges. During deciding, their vote has the same importance as a voice of a judge. Lay judges are elected by the local authority in the area of the respective court for four years from candidates out of citizens, who have their permanent residence in the area of the court or work there. Lay judges are proposed by mayors of municipalities and mayors of towns. A citizen of the Slovak Republic, who has clear criminal record, is healthy and legally capable, who achieved the age of 30 years, whose moral features provide guarantee that s/he will duly execute the function of lay judge, can be elected a lay judge. The Ministry of Justice coordinates and manages professional preparation of lay judges for execution of their function, in which case the execution of function shall also include participation of a lay judge in professional education of lay judges. Lay judges perform deciding activity together with judges at district and regional courts in criminal issues and have the same rights as judges (they also have the same immunity), with the exception of the presiding judge of the panel. A lay judge may execute the function for no more than 12 working days in a calendar year, unless the nature of the issue, to the discussion of which s/he was assigned by the schedule of work, requires higher number of days for execution of function.

Methodology. Bulk Selection Procedure. In the Act on Judges and Lay Judges, the Slovak legal regulation lays down detailed rules for the method of selection procedure for the function of judge. Each vacant place of a judge as well as a temporary judge shall be filled on the basis of a selection procedure if it is not filled by redeployment of a judge or a temporary judge.

The selection procedure for the function of judge at a district court shall be carried out as a bulk selection procedure for vacant places of judges and temporary judges in the number not determined in advance. The number of places of candidates for function of judge filled by bulk selection procedure shall be determined for the area of each regional court by the Minister after discussion with the Judicial Council and on the basis of the presumed number

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of vacant places of judges and temporary judges in the respective calendar year.

Selection procedure for the function of judge at a regional court, the Special Criminal Court, the Supreme Court and the Supreme Administrative Court shall be performed for the number of vacant places of judges determined in advance.

The selection procedure for the function of judge shall verify professional knowledge, general overview, which is necessary to require considering the instance of the court where the selection procedure takes place, the ability of creative thinking, speed of thinking and capability of deciding, verbal language, personality prerequisites, health state and knowledge of a foreign language of the candidate.

The selection procedure is public with the exception of the voting of the selection commission and the psychological assessment. If greater public interest in the assembly is expected, the body ensuring the selection procedure in administrative and organizational terms shall be obliged to conduct the selection procedure in a suitable room considering the extent of the presumed interest and the capacity options. The selection procedure shall be carried out in compliance with the principle of equal treatment.

The bulk selection procedure shall be announced by the chairman of the Judicial Council at least once per year in the spring period or autumn period with territorial scope of authority for the area of each regional court, so that the bulk selection procedures take place in the same term.

The selection procedure shall be announced publicly at the websites of the Judicial Council and the Ministry, in nation wide periodicals and in other means of communication generally available to the public, with reference to details specified in the announcement of competition published at the websites of the Judicial Council and the Ministry, at least 60 days before it takes place. The selection procedure shall be administratively and organizationally ensured by the presiding judge of the respective regional court.

Besides a judge, also a person who achieved the age of 30 years on the first day of the selection procedure, at the latest, and complies with further legal hereinabove specified prerequisites for appointment as a judge, may participate in the selection procedure.

A candidate is obliged, together with an application for inclusion into the selection procedure, to present a written statement where s/he specifies the list of affiliated persons, who are judges, employees of courts, the Ministry, including budget organizations or contribution organizations within the competences of the Ministry or member of the selection commission, to the extent of the name, surname, functional position and denomination of the organisation. The statement shall be published together with the application for inclusion into the selection procedure. A candidate is also obliged, together with the application for inclusion into the selection procedure, to submit his/her property statement.

All applications for inclusion into the selection procedure, including professional curriculum vitae and motivation sheets of candidates, are published at internet websites, and any person can make reasonable objections against candidates within the determined period, which shall be presented to the selection commission by the Ministry together with applications. The respective candidates may make their statement to the made objections.

The bulk selection procedure includes a written test, case study, preparation of court

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decisions, translation from a foreign language, psychological assessment and the oral part. The written test, case study, court files for purposes of preparation of a court decision and the translation from a foreign language are drawn by the selection procedure on the day of the selection procedure from databases determined thereto, which are created and administered by the Judicial Academy of the Slovak Republic. The psychological assessment shall be made by application of psycho-diagnostics methods determined by the Ministry. The oral part of the selection procedure shall also be recorded using the technical equipment determined for record of sound.

After completion of the selection procedure, the chairman of the selection commission ensures execution of the list of candidates according to the order of successfulness. In the case of equality in the order, draw shall decide. The number of successful candidates within the bulk selection procedure shall be determined according to the number of filled places of candidates to function of judge for the area of the respective regional court. Successful candidates in the bulk selection procedure shall become the candidates for the function of judge for the area of the respective regional court.

On the basis of results of the bulk selection procedure, the Ministry creates the database of candidates for the function of judges, separately for the area of each regional court. A vacant place of a judge at a district court in the area of a regional court and a vacant place of a temporary judge may only be filled from the database of candidates for the function of judge created for the area of this regional court.

A candidate for the function of judge is obliged to pass preparation education focused on acquisition of practical abilities necessary for execution of the function of judge and to notify the Ministry of passing of the preparation education. Besides the title, name and surname of candidates for function of judge, the database shall also indicate details on complying with prerequisites of judge capability and completing the preparation education.

The selection procedure for filling a vacant place of the presiding judge of panel of a court of higher instance shall be announced for judges of the respective court and shall include an oral part. The number of members and the composition of the selection commission shall be determined by the principles for appointment into higher judge function.

The selection commission for bulk selection procedure has five members who are appointed from the list of candidates for members of the selection commissions by the chairman of the Judicial Council. For purposes of creation of the list of candidates for members of the selection commission, the Judicial Council elects at least 16 candidates and the Minister appoints at least 16 candidates. The list shall be published at the websites of the Ministry. A candidate for a member of the selection commission may only be elected or appointed if s/he is a person with moral and professional prerequisites for impartial execution of function of member of the selection commission, is capable to assess candidates and operates in particular in the area of universities, non-profit sector or performs a legal profession.

Details of Written and Oral Parts of the Selection Procedure

The bulk selection procedure includes a written test, case study, preparation of court decisions, translation from a foreign language, psychological assessment and the oral part.

- 1) **The written test** verifies professional knowledge of a candidate from the constitutional law, criminal law, administrative law, international law, law of the European Union, civil and family law, commercial law and labour law. The written test is composed of 40 questions, assigning one point to each correctly answered question in the time limit of

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30 minutes for marking correct questions. The test questions, of which the written test for the selection procedure is composed, shall be drawn from the database by the chairman of the selection commission in presence of all present members of the selection commission. The database of questions for purposes of composition of written tests consists of at least 1,000 test questions and shall be changed according to need; the test questions shall be published at the website of the Ministry and the Judicial Academy of the Slovak Republic.

2) **The case study** includes description of a possible and/or real situation, where the candidate is to propose its written solution. During preparation of the written solution of the case study non-commented versions of generally binding legal rules in printed form may be used. The time limit for completion of the written solution of the case study is 60 minutes. The maximum number of 25 points may be acquired for the written solution of the case study. The case study for the selection procedure shall be drawn from the database by the chairman of the selection commission in presence of all present members of the selection commission. The database of case studies consists of at least 100 case studies of comparable difficulty and it is changed according to need.

3) **Translation from a foreign language** may be made from English language, German language or French language. During preparation of the written translation of a text from a foreign language, a translation dictionary in printed form may be used. The time for completion of the written translation of a text from a foreign language is 60 minutes; the written translation is assessed by no more than 20 points. The text for purposes of the written translation from a foreign language shall be drawn from the database by the chairman of the selection commission in presence of all present members of the selection commission. The database of texts in foreign language consists of at least 50 texts in foreign languages and it shall be changed according to need.

4) In framework of preparing of written court decisions, candidates shall **prepare one court decision** from the area of criminal law and one court decision from the area of civil law. Court files from the double number of presented court files in relation to the number of candidates shall be drawn from the database by the chairman of the selection commission in presence of all present members of the selection commission so that one court file from the area of criminal law and one court file from the area of civil law shall be drawn together for all candidates. During preparation of court decisions, non-commented versions of generally binding legal rules in printed form may be used.

Before completion of particular parts, the candidates shall draw a number by which their completion of the given part is to be marked; the name and surname of the candidate shall be assigned to the prepared work after assessment of each part.

For purposes of participation in the **psychological assessment** and the oral part of the selection procedure, it is necessary to acquire at least: 24 points for the written test, 15 points for the case study, 12 points for the translation and 18 points for each prepared court decision.

5) The purpose of the psychological assessment is to verify personal prerequisites of a candidate for execution of the function of judge. Requirements of the personal prerequisites for candidates shall be set by the Ministry in cooperation with courts and psychologists. Psychological assessment shall be made by psychologists in a different day of the selection procedure. In the results of the psychological assessment, the psychologist shall express, whether s/he recommends the candidate from the point of view of his/her personality prerequisites to the function of judge or not and for what reasons. The results of the psychological assessment shall be presented by the psychologist in written form to the selection commission. If a candidate requests so in writing, the psychologist, who assessed

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him/her psychologically for purposes of this decree, shall provide him/her with consultation relating to interpretation of results of the psychological assessment.

6) **The oral part** is composed of presentation of the candidate about his/her person, the professional practice, as well as motivation for execution of function of judge, and also of answers to questions of members of the selection commission, the purpose of which is to verify circumstances, which are verified in the selection procedure. Each member of the selection commission assesses the candidate in the oral part individually for each circumstance, which is verified in the selection procedure, by granting points in the range from zero points to three points, and the highest assessment is three points. Evaluation of each question and the total result of assessment shall be marked by each member of the selection commission in writing in the assessment sheet.

After completion of the oral part, each member of the selection commission shall fill his/her **own assessment sheet**. After filling the assessment sheet, it shall be handed over by each member of the selection commission to the chairman of the selection commission. The chairman of the selection commission shall identify the names of unsuccessful candidates in presence of members of the selection commission. An unsuccessful candidate is a candidate who is marked unanimously by the members of the selection commission as unsuccessful or who acquires less than 72 points in the oral part. The chairman of the selection commission shall create from the successful candidates in the summary assessment sheet the final order of successful candidates. The results of the selection procedure and the order of successful candidates, as well as the list of unsuccessful candidates, shall be publicly announced and notified to the candidates by the selection commission immediately after ending of the selection procedure.

Conclusions.

Regarding who Proposes and Appoints the Candidates. In all the countries surveyed, judges of ordinary courts are appointed by the President of the Republic without time limitation. In the Slovak Republic, it is based on the proposal of the Judicial Council of the Slovak Republic, in Poland, it is based on the proposal of the National Council of the Judiciary, and, in the Czech Republic, it is based on the proposal of the Minister of Justice.

Regarding General Criteria of the Selection

In all selected countries, similar general conditions for appointment of a judge are established. Specifically: the citizenship of the respective country, clear criminal record, full legal capacity (capacity to legal acts), achievement of the required age (Czech Republic and Slovak Republic – 30 years, Republic of Poland – 29 years), acquired education in law at a certain degree, health capacity and judicial capability (moral feature requirements). In the Czech Republic, it also involves the completion of the practice of judicial trainee, completion of justice examination and undergoing of psychology examination; in the Slovak Republic, it involves the completion of professional justice examination at the Judicial Academy and passing a bulk selection procedure; and, in the Republic of Poland, it involves the completion of practice of a court assistant at the National School of Judiciary and Public Prosecution in the duration of 3 years. In all countries, also other legal professions (attorneys-at-law, notaries, public prosecutors – it means prosecutors in Poland, and others) may apply. The condition of such application is the participation in a competition to a vacant place of judge – in Poland, or crediting other legal practice or acknowledging other exams instead of the justice examinations – in the Czech Republic and the Slovak Republic.

Regarding Candidate Evaluation Process and Special Characteristics

Specific procedures for selecting appropriate candidates to fill a judge position differ in individual countries.

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In Slovakia, candidates for the position are selected in so called “bulk selection procedure”, prepared very transparently and in detail, to which the candidates, who meets the prerequisites determined by law – in particular, inter alia, the completion of professional justice (or similar) examination – may submit their applications. It means that a regular candidate is subject to a two-stage process and his/her professional and other prerequisites are verified twice – firstly within the professional justice examination and secondly within the bulk selection procedure.

In the Czech Republic, candidates to a place of judge shall first complete their practice of judicial trainee at the court, to which they are recruited based on a selection procedure. After three years of the preparation practice of judicial trainee, they can pass the justice examination consisting of a written and oral part. Then, subject to compliance with other prerequisites determined by law, the candidate may be appointed as a judge, however, without any legal claim in this regard.

In Poland, the candidate to a place of judge shall submit application to the National School of Judiciary and Public Prosecution (in Krakow). After the admission exams, the candidate is assigned to a certain district court (sąd rejonowy), where he/she performs his/her practice under the guidance of a trainer for the period of 3 years. Then, he/she needs to pass the justice examination and becomes an assistant. He/she is appointed to a specific vacant place by the President of the Republic upon proposal of the National Council of the Judiciary. He/she holds the position for a maximum period of 4 years. After 3 years, he/she may ask the presiding judge of a court of higher instance (the provincial court (sąd okręgowy)) for appointment into the function of a judge of a district court. The presiding judge of the provincial court shall pass the application to a presiding judge of the respective appellate court (sąd apelacyjny), who shall appoint an assessment commission composed of judges of the 1st and 2nd instances. The commission shall then propose the appointment of judge to the National Council of the Judiciary, which then submits the matter to the President of the Republic for signing a decree. The Polish legal regulation laying down the appointment of judges reasonably follows the French legal regulation – the system of organisation of a large country, very centralised from the Napoleonic era, including the justice administration.

2.5 Wester Europe region

2.5.1 The Netherlands

Under the Constitution of Netherlands members of the judiciary, responsible for the administration of justice, shall be appointed for life by a Royal Decree. They shall cease to hold office on resignation or on attaining an age to be determined by Act of Parliament (Article 117 parts 1 and 2), currently 70 years. The Constitution also lays down a special appointment procedure for the members of the Supreme Court noting that the members of the Supreme Court of Netherlands shall be appointed from a list of three persons drawn up by the Lower House of States General (Article 118 part 1).

Selection and appointment procedure for hiring to the first instance and appellate courts form outside the judiciary is the same, albeit the criteria to fill out these positions differ. Selection procedure and the required indicators are set out on the website of the Dutch Judiciary³³¹.

³³¹ <https://www.werkenbijderechtspraak.nl/rechter-of-raadsheer-worden/werving-selectie-en-opleiding/>.

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Whereby it is claimed that judiciary aims to be accessible to new colleagues through uniform and transparent admission criteria, through transparent application procedures and by offering tailor-made training courses that match previous work experience and individual training needs of the successful candidates.

In order to be able to participate in the selection procedure **to become a judge (*nl. rechter*)**, following criteria, set out in Law on the Legal Status of Judicial Officers (Section 4) are the following:

1. be a Dutch national³³²;
2. have a completed degree in law ‘with civil effect’³³³;
3. have at least two years of legally relevant work experience outside of judiciary or public prosecution service after graduation³³⁴.

In order to be able to participate in the selection procedure **to become a councilor (*nl. raadsheer*)** at the court of appeals, the Dutch nationality and the law degree criteria must also be fulfilled, but the experience of legal work is at least ten years after graduation.

Through the use of different methods, the selection procedure is aimed at evaluating, whether a candidate has the personal qualities described in the National (Job) Profile of a Judge³³⁵, five job profiles were updated (for judge, senior judge, senior judge a, justice and senior justice), which together will be referred to as the National Profile of a Judge. The National Profile sets out the criteria that current and future judges and justices have to meet and they were the basis for the modernization of the recruitment, selection and training process for judges set out in 2015³³⁶.

The National Profile of a Judge **comprises and overall description of the position**, including: aim/goal of the position, its place in the organization (judiciary), requirements for the results (in different areas such as: handling of cases and hearings, decisions/judgements,

³³² Judicial Officers (Legal Status) Act, Section 4. Dual citizenship does not preclude from applying. <https://www.werkenbijderechtspraak.nl/veelgestelde-vragen/>.

³³³ Section 5 of Judicial Officers (Legal Status) Act. The person has to be awarded Bachelor of Laws and also a Master in Laws after passing a final examination for a university study program in the field of law. In order to meet the requirement of ‘civil effect’ the university diploma must meet certain criteria. On the website of Dutch judiciary it is noted that in principle it is meant that the diploma meets three-out-of-five requirements set in the Article 2 of the Royal Decree co-signed by the Minister of Justice on the Legal position of judicial officers (Besluit rechtspositie rechterlijke ambtenaren (Brra)) (<https://wetten.overheid.nl/BWBR0006530/2020-10-01>). The final university exam should be composed in such a manner that at least a thorough knowledge and insight into three of the five areas of law is obtained: a) civil law; b) criminal law; c) administrative law; d) constitutional law; e) tax law.

³³⁴ It is further explained on the website of the judiciary, what is meant by legally relevant work, work experience outside the judiciary. Legally relevant work experience is the experience gained (1) after graduation as a lawyer and (2) in a legal position. Legal experience outside the judiciary is outlined to include: practical experience as a lawyer, company lawyer, legal aid lawyer or process representative; work experience as a university lecturer in law; legal work experience at the European Court of Human Rights and the Court of Justice of the European Union; practical experience as a public prosecutor or advocate general at the Public Prosecution Service. The website also lists authorities, which are regarded as ‘work experience within the judiciary’.

³³⁵ The profile was defined (adopted) by the Council of Judiciary together with the Presidents’ meeting and the Netherlands’ Association for the Judiciary. Available at (in Dutch): <https://www.werkenbijderechtspraak.nl/wp-content/uploads/2016/08/Referentiefunctie-rechter-4-april-2012.pdf>.

³³⁶ Judicial Reform in Netherlands, Journal of the Judiciary, 2015, p. 4. Available at (in English): <https://www.rechtspraak.nl/SiteCollectionDocuments/judicial-reform-2015-compleet-alttekst.pdf>.

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managing/directing (the dependent personnel as well as initiating improvements and innovations in the process overall), communication, quality, policy and its formation, intervision (self-reflection and training)), responsibilities, framework of action, contacts and essential situations and competences). All of the abovementioned components are described in the National Profile of a Judge with a degree of accuracy, however this research focuses on the essential (circumstances) skills and competence of a judge, described under ident 6 of the profile.

Ident 6 of the National Judge Profile includes the following subdivisions: essential circumstances (situations), competences, skills and knowledge and experience (already discussed above). The **essential circumstances**³³⁷ describes the environment in which the judge carries out his or her functions and assesses the manner in which the judge should present oneself, the following **competences** are aimed at dealing with the circumstances :

- **awareness of the environment:** observes social developments and forms his/her own understanding relevant in the context of judicial activities; seeks familiar, new and contradictory information and diverse perspectives that may influence decision and process of deciding; is aware of the influence of differences and the background of the parties;
- **analytical skills:** deals with issues by unraveling, systematically examining and assessing situations, processes and a diversity of data; asks questions based on understanding; uses a logical chain of thought that leads to unambiguous and transparent reasoning when making statements;
- **listening:** shows understanding of the situation of others and makes personal contact; is able to recognize the motives of others and pick up less pronounced signals; listens actively - makes others feel that their input is being received (valued);
- **persuasiveness:** provides clear and unambiguous insights throughout the hearing and the process that was followed in taking the decision; in such a manner manages to gain more acceptance from the parties for the decision;

³³⁷ - **external orientation:** social relevance and effectiveness requires that the judiciary ensure the settlement of disputes in a manner that contributes to the solution of the underlying problems of the parties and society and that, in general, takes into account the sense of justice of the citizens. This requires an external orientation of the judge to society;

- **external image:** the judiciary is in the public eye with constant attention from the media; the individual judge deals with this while retaining integrity and authority; with an appropriate degree of assertiveness; in a manner that the judge is (viewed) an authority and an anchor in society;
- **impartiality:** there is a constant need in society for an impartial and independent authority with high demand on integrity, expertise and speed; this requires a solid awareness of one's own position in society and within the judiciary; insight into the way in which the symbolism of law is depicted in the role of judge, as well as the ability to guard boundaries and to hold others accountable;
- **settling disputes:** constantly looking for (making new) ways to settle disputes, making decisions and finalizing disputes; this requires understanding the essence of a matter, probing into the real problem, exploring possible solutions and obtaining acceptance (of a decision from the parties);
- **legal reasoning:** decision-making is based on the relevance of legal reasoning, which requires a convincing transfer of arguments and persuasiveness;
- **formulation in writing:** written formulation of the decisions has to be clear, effective and well substantiated;
- **productivity (efficiency) versus quality:** a balance between productivity (efficiency, speediness) and quality of the decision, even under high work pressure, has to be maintained; this requires good management, rapid understanding of legal positions and clear motivation of the decisions;
- **peer review:** this requires attention to one's own and other people's performance and a willingness to strive for improvement based on peer observations.

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- **management:** plans and organizes his own activities while handling the case, involves others, making also an optimum use of (non-legal) expertise in order to organize his/her own work as efficiently as possible, informs others about the progress of work, adjusts the process (content, quality, timeliness) as required;
- **collaboration:** is open to collaboration with others; takes the initiative and seizes opportunities to share knowledge, support others and, in consultation, improve the quality and efficiency of the judiciary.
- **self-confidence and authenticity:** shows pride and passion in the administration of justice and belief in own quality; stands by a decision taken; when necessary, dares to go against generally accepted views and to do things differently; is resourceful within the established frameworks; dares to make a turn in the treatment and changes in the points of view. Is clear about expectations, draws boundaries;
- **flexibility:** adapts his/her own approach when the situation changes or insights give cause to do so;
- **self-awareness:** knows his/her own limits in terms of specialization and preference for approaching the case. Shows insight into the origin of his/her own behavior and its impact on others;
- **ability to learn and self-reflection:** is open to a feedback from others and has a learning attitude; is curious, actively seeks out new and/or different knowledge; includes what has been learned in his/her own ‘tool-kit’;
- **decisiveness:** makes decisions based on available data; does not wait (procrastinate) and makes decisions; acts decisively even when the pressure increases.

In accordance with the National Judge Profile, the judge should possess such **essential skills:** act with integrity; show decisiveness (be decisive); rapidly understand legal and social positions; ability to handle cases and hearings; assess the expectations of litigants against social background; possess written and oral communication skills; be able to listen actively; delegate tasks to specialists; be able to give and receive feedback; be able to constructively convert observations into improvement; be able to evaluate the legal and social consequences of his/her own judgment; have critical judgement; be able to balance productivity and quality as well as precision and speed.

The importance of social awareness of a future judge or councilor is stressed both in the National Profile of a Judge and throughout the selection procedure. In order to better meet the needs of society, judges have to be aware of the social consequences of a case, they should understand, what is at play in the society and familiarize themselves with the situation. Such an attitude should transpire both: during the court sessions as well as in judgements. This may include a delivery of a rapid judgment, but also addressing the problem that lies beneath the legal conflict³³⁸. Social awareness (orientation) of the candidate has to show that he/she has gained sufficient insight to know what is going on in society. The social orientation could be evidenced, for example, by additional positions, administrative activities, voluntary work or other forms of commitment across the social field.

Appointment procedure to the Supreme Court justices is less formalized. An internal Supreme Court committee, comprised of the Supreme Court justices, selects possible candidates for appointment to the Supreme Court. It seeks out people eligible for appointment in the future and follow them throughout their further career. The justices of the Supreme Court are lawyers, who are successful in both – practical and theoretical work in law, and usually

³³⁸ <https://www.rechtspraak.nl/SiteCollectionDocuments/judicial-reform-2015-compleet-alttekst.pdf>. P. 6.

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have several publications³³⁹. When a vacancy for a Supreme Court justice opens, this committee decides on the most suitable candidates depending on the area of law and draws up a list of six candidates. This list is discussed at the general meeting of the Supreme Court and a recommendation of three people to fill in the position of a Supreme Court justice is submitted to the House of Representatives of the Parliament.

The person at the top of this list of three candidates is invited to an interview with the Permanent Parliamentary Committee on Security and Justice. Under a standing agreement between the Supreme Court and the House of Representatives, no questions are asked about the candidate’s political views, religion or beliefs. In practice, the House of Representatives always follows the recommendation of the Supreme Court. The Supreme Court and the House of Representatives both agree that the appointment of Supreme Court judges must not be politicised. The recommendation for appointment of the new Supreme Court judge then goes to the Minister of Justice, who assesses whether the formal requirements have been met. If this is the case, a nomination for appointment is submitted to the monarch, who nominates the justice by a royal decree. It should be noted that the Government of Netherlands has announced plans to amend the procedure of appointment of Supreme Court justices to make it more transparent³⁴⁰.

Methodology. The selection procedure for district courts and the courts of appeal (from outside the judiciary).

The available vacancies are directly accessible in the website of Netherlands Judiciary³⁴¹ and the prospective candidate may apply to two vacancies in one recruitment round. The candidate has to undergo all elements of the selection procedure consecutively, thus, if a candidate does not pass one of the elements in the beginning, he or she may not move proceed with other elements.

After the recent reform changes were made to the schedule of the selection process and currently, the weeks during which particular phase for a certain intake is conducted, are known beforehand and it is not possible to deviate from this schedule. The schedule is construed in a manner that the whole procedure should not be stretched out in time and usually the whole

³³⁹ Information available at the website of the Supreme Court of Netherlands: https://www.hogeraad.nl/vragen-antwoorden/?PagClIdt=299#PagClIs_299.

³⁴⁰ The Government of Netherlands has announced plans to amend the appointment procedure for Supreme Court judges. Following recommendations of an independent State Commission. The State Commission recommended establishing a committee, composed of a member of Parliament assigned by the House of Representatives, a member of the Supreme Court assigned by its President, and an expert appointed jointly by the House of Representatives and the Supreme Court. This committee would be in charge of nominating new Supreme Court judges, which is currently the prerogative of the House of Representatives. The nomination would be submitted for appointment by the executive, which would be bound by the nomination. The Government has drafted a concept proposal for a revision of the Constitution to implement this recommendation. The proposal was published for an online stakeholder consultation from December 2019 to March 2020. The objective pursued by this envisaged reform is to further limit the role of the executive and legislative branch in the appointment of Supreme Court judges, which is consistent with Council of Europe recommendations. Rec. of Commission - Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, para. 47. See also, as regards the process of judicial appointment from the perspective of judges’ independence and impartiality, judgment of the Court of Justice of 19 November 2019 in Joint Cases C-585/18, C-624/18 and C-625/18, paras 124-125 and 133-134; judgment of the Court of Justice of 9 July 2020, *Land Hessen*, C-272/19, paras 54-60.

³⁴¹ <https://www.werkenbijderechtspraak.nl/rechter-of-raadsheer-worden/rechterlijke-vacatures/>.

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selection procedure is carried out in 5-6 weeks³⁴². There normally are three or four recruitment rounds per year, which are commenced with a view to start training groups on January 1, April 1, (sometimes: July 1) and October 1.

1. The procedure starts with the **brief selection**, by the selection letter from the candidate to the National Selection Committee, whereby the formal requirements such as: Dutch citizenship, master's degree in law and civil effect as well as relevant legal work experience outside the judiciary (at least 2 years for the selection as a judge and at least 10 years for the councilor) are affirmed. The letter should also include candidate's motivation letter, CV and a certificate of conduct. After the review of the documents, the candidate is informed, whether he or she may continue with the selection procedure.
2. **Test phase** verifies the required intellectual capacities of the candidates. The analytical test is mandatory and it consists of 3 following tests, which in the opinion of university researchers, have a predictive value for the successful completion of judicial training:
 - verbal reasoning ability (Verbal Relationships and Analogies test);
 - critical reasoning (Watson Glaser test);
 - abstract reasoning ability (Abstract Matrix test).

Practice materials and practice tests are available online for the preparation³⁴³. Only when the candidate successfully passes these tests by achieving a required score, he or she may move to the phase of local interviews. If the candidate does not pass the tests, the selection procedure is terminated and there is a waiting period of 3 years from the date of registration to selection before a candidate may register for another selection³⁴⁴.

3. **References**. Within 7 days after the test phase is passed, a candidate has to provide two references to be submitted digitally. The references have to comply with a specific format (guideline size: max. 1 A4 or 400 words)³⁴⁵. If the candidate works in a certain position (an attorney, a (junior) civil-law notary or have / had a position at a court or at the Public Prosecution Service) additional references are also requested from certain authorities (i. e. Dean of the Bar Association in the district where the candidate is registered, the President of the Chamber for the Notary's Office of the district where you are registered, the president of the court or the chief public prosecutor). In case the candidate does not consent to the automatic request for these references, the selection procedure is terminated.
4. **Background check**. At this point also a background check is conducted through a request from a specific registry. A person guilty of a crime (criminal offence) is not eligible to continue the selection procedure³⁴⁶.
5. **Local selection (advisory-committee)**. In this phase the candidate undergoes one or more interviews with the representatives (judicial and/or management) of the court, where the vacancy is open. They are usually held at the court, which announced the vacancy. These interviews focus on the motivation, persuasiveness/oral expression, communication skills and other characteristics local selection committee deems to be important for a

³⁴² <https://www.werkenbijderechtspraak.nl/rechter-of-raadsheer-worden/werving-selectie-en-opleiding-jaarplanning/>.

³⁴³ Practice platform available at: <https://tponline.com/portal/practice>.

³⁴⁴ Information available at: <https://www.werkenbijderechtspraak.nl/veelgestelde-vragen/>.

³⁴⁵ Requirements for the reference (in Dutch) are available at: <https://www.werkenbijderechtspraak.nl/wp-content/uploads/2020/06/Format-referentievragen.pdf>.

³⁴⁶ Exceptions may be made by the Presidium of the National Selection Committee. For example, an exception could be made in instances, when in the light of all circumstances, the offence committed is very minor and lengthy time period has passed, so it can not be reasonably claimed, that it would damage the image of the judicial office. In such instances, the candidate would be requested to clarify the circumstances and the content of the document and the Presidium would decide without undue delay (as soon as possible), whether the candidate may nevertheless continue with the selection procedure.

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candidate to be successful in the particular position the court is offering. The aim of this phase is to answer the question, whether a specific candidate has the right profile to become a judge in the specific court at the specific position. The candidate also gets impression of the court, the work environment and the personnel.

The representatives of the local selection, will decide and inform National Selection Committee, whether the candidate is going to proceed to the final phases of selection (assessment and final interview). In case of a negative decision, the candidate is provided with the possibility to contact the representative of the court to discuss the result.

6. **Assessment.** In this phase the candidate undergoes extensive psychological and personality assessment in an assessment center with the accredited psychologists. This assessment (in conjunction with the previous test results) aims to review/assess the following capacities: analytical thinking and other intellectual capacities, decisiveness, balance, independence, contact and communication skills, empathy, sociability, capacity to cooperate, persuasiveness, expression skills, work attitude, ability to judge (take a decision) independently, integrity and resistance to stress³⁴⁷.

The assessment consists of a meeting with an assessment center advisor, a number of personality questionnaires. After this phase a report by the advisor is drawn up, indicating the positive and negative aspects for the candidate's suitability to become a judge. Upon the wish of a candidate, the results may be discussed with him by the advisor of the center. It is important that the assessment report is not decisive and even in the case of negative review a candidate would proceed to final interviews with the National Selection Committee. The information, provided, on the website of Dutch judiciary indicates that it occurs with a certain degree of regularity that after the final interviews the National Selection Committee comes to the conclusion that an applicant with a positive assessment will not be admitted to the training, while the applicant with a negative assessment is admitted.

In instances, when a candidate refuses to send the assessment interview to the National Selection Committee, the selection procedure is deemed to have ended and a person may register as a candidate again after three years.

7. **Final interviews with the National Selection Committee.** In this phase a candidate undergoes three 45-minute interviews with two Committee members each time, whenever possible – one of the selectors in each interview is a judge (councilor) and another is a member active outside the judiciary with relevant social background and experience. All of the members of the Committee, who participate in the interviews, have the information on the candidates, including their motivation, test results and assessment reports. The National Selection Committee reserves the right to google the candidate and ask questions on this publicly available information during the interviews.

The purpose of the interviews is, among other things, to gain insight into your personal qualities in the judicial field, candidate's vision on the judiciary and social developments in the society, as well as certain personal qualities – willingness to cooperate, listening / empathy. Among other practices, the STARR method (situation, task, action, result, review) is used, in accordance to which the candidate is asked to give examples from his personal of professional life.

The successful candidate is then placed into a personally tailored training program. The duration of the program depends on the length of previous legal experience of the candidate. Candidates with 2-6 years of legally relevant experience are enrolled in the training program of 4 years, candidates of at least 6 years of legal work experience – in a 2 year training

³⁴⁷ Personality tests, carried out in the assessment center also include questions aimed at revealing, whether a candidate has a 'dark-side', for example an addiction or a psychiatric disorder. Judicial Reform in Netherlands, Journal of the Judiciary, 2015, P. 16.

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program, and candidates with at least 10 years of legal work experience – 15-24 months. The training is organized by the Training Center for the Judiciary and Public Prosecution Service³⁴⁸. In the case there are multiple successful candidates for a single vacancy, the court, where the vacancy is announced makes the final decision. In such an instance, the candidate, who has successfully completed the selection procedure, but was not placed in a vacancy may apply for other positions and has only to fulfill the first step of the selection (application) and go through the local selection interviews. The results of the test, assessment and final interviews remain valid for two years and do not need to be repeated.

2.5.2 Spain

The issue of selection, appointment and promotion of members of the Judiciary in Spain is dealt with by two basic texts of primary legislation: the Spanish Constitution of 1978 (Article 122.2) and the Organic Law 6/1985; Articles 298 to 323 as well as secondary legal texts, basically regulations issued by the Ministry of Justice and the General Council for the Judiciary.

Access principles to the judiciary include, at the level of principles regarding candidates, merit, capability and equality (gender and disability), and at the level of procedural principles, guarantee, objectivity and transparency.

Entry into the Judicial Service can be obtained in one of three different ways:

- **Free public competitive examination.** Entry into the Judicial Service with the category of Judge is obtained through public competitive examination and a theoretical and practical selection course carried out by the Judicial School.
- **Merit-based competition.** Legal professionals can join the Judicial Service with the rank of Senior Judge when they have renowned competence in those cases, manner and proportion respectively established in the law. Entry into the Senior Judge level occurs after passing an open competition involving highly qualified jurists with more than ten years of professional experience, in addition to a training course in the Judicial School.
- **Discretionary appointment by the General Council for the Judiciary.** Regarding discretionary appointments, the General Council for the Judiciary has passed an internal regulation on the criteria and procedure for appointment of holders of high judicial offices (Regulation nº 1/2010), in order to guarantee the observance of the constitutional imperative of interdiction of the arbitrariness of the public powers (Article 9.3 of the Constitution) and the respect of the fundamental right of access under conditions of equality to public functions and positions (Article 23.2 of the Constitution). **The specific posts to be covered as discretionary appointments are the followings:** Presidents of the Chamber and Senior Judges of the Supreme Court, Presidency of the National Court and Presidencies of its Chambers, Presidencies of Superior Courts of Justice of the Autonomous Communities and Presidencies of their Chambers, Senior judges of the Civil and Criminal Chambers of the High Courts of Justice proposed by the Legislative Assemblies of the Autonomous Communities and Presidencies of Provincial Courts.

Appointment of Judges (Juez). Quantitatively speaking, the most significant entry level is the Judge category. The procedure for the selection and appointment of Judges comprises **two stages: 1) a public competitive examination, jointly with the candidates to Public Prosecutors; and 2) a theoretical and practical selection course delivered by the Judicial School.** The first phase consists of examinations which rank candidates mainly

³⁴⁸ The website of the training institute may be accessed here: <https://ssr.nl/>.

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according to legal knowledge. Once selected, the aspirant enters the second phase: formal studies in theoretical and procedural subjects at the judicial school and internships.

The competition, which in theory must be held at least every two years, has taken place in practice, since 1998, once a year. Since 2001 it has been administered together with the competition for entry in the career system for prosecutors.

Eligibility criteria for participation in the selection procedure include Spanish nationality, full legal age (i.e., 18 years old) and a University Degree in Law. Moreover, candidates must not be affected by any of the causes of inability established by law (persons affected by physical or psychological inability to perform judicial duties; persons convicted for willful misconduct who have not yet been rehabilitated; persons indicted or accused of unlawful conduct who have not been acquitted or had their case dismissed or withdrawn; and persons who are not in full use of their civil rights). Furthermore, the Law contains some provisions encouraging selection and appointment of disabled persons on the basis of the principles of equal opportunities, non-discrimination and compensation for disadvantages. According to these provisions the selection procedures must be respectful with the principle of equality between men and women, including measures against gender violence, and its transversal application within the scope of jurisdictional functions, and be adapted, if appropriate, to the special needs and specific requirements of disabled candidates, so that a percentage (no less than 5%) of the positions to be covered shall also be reserved for persons with disability of a degree equal to or greater than 33 percent, provided that they successfully complete the selective examinations and attest the degree of disability and their compatibility for carrying out the (judicial) duties and tasks in accordance with regulations.

The average preparation time is of more than four years after the university law degree. Only the candidates with the best scores enter the school. The selection examinations cover a wide range of subjects, some in detail, and candidates must review all law school subjects if they hope to succeed. The subject areas are published to allow candidates to know what to expect.

The public examination comprises a **preliminary written exercise - test format** of one hundred questions with four alternative answers and only one true: 10 on Constitutional Law, 40 on Civil Law, 30 on Criminal Law and 20 on Procedural Law: 13 Civil Procedure and 7 Criminal Procedure; **and two oral presentations** (lasting 60 minutes each and maximum 15 minutes by topic) in public hearing of 5 topics (out of 6 extracted). The first oral exam comprises: 1 Subject of Constitutional Law, 2 Civil Law topics: 1 topic between number 1 and number 45 and 1 topic between 46 and 91 of the program, 2 topics of Criminal Law: 1 topic between number 1 and number 30 and 1 topic between 31 and 58 of the program. The second oral exam comprises: 2 topics of Civil Procedural Law: 1 topic between number 1 and 30 of program and 1 topic between 31 and 58 of program, 1 issue of Criminal Procedural Law, 1 subject of Commercial Law and 1 issue of Administrative Law or Labor Law.

Candidates who have passed the examination must opt for the profession of judge or prosecutor according to the marks they have achieved. Only those candidates who opt for the judiciary must undergo the selection course organized by the Judicial School, whilst the candidates for the profession of prosecutor must undergo a similar (but shorter) initial training and selection course organized by the Centre of Legal Studies under the Ministry of Justice. Candidates who have successfully passed the competitive examination are considered civil servants on practical training during the initial training and selection course organized by the Judicial School.

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The initial training and selection course at the Judicial School consists of two stages: 1) a theoretical phase based on a program of multidisciplinary training; and 2) a practical period of training in different courts, in which the trainees act as assistants to mentor judges. During this practical stage the task assigned to the trainees shall not, in principle, exceed the drafting or planning of judgments and other judicial decisions, so that the mentor judge can, if appropriate, assume the text of the drafts adding any amendments or corrections that may be deemed necessary.

After passing the phase of guarded practices, there will be a mandatory period in which the judges in practice will carry out replacement and reinforcement work in accordance with Articles 210 and 216a of the Organic Law 6/1985, taking precedence over the substitute judges in any call for the exercise of such functions. At the same stage they shall exercise jurisdiction with the same extent as that of the holders of the judicial body and shall be made available to the President of the High Court of Justice concerned, who shall draw up a report on the dedication and performance of his duties, for assessment by the Judicial School. The General Council for the Judiciary and the Presidents of the High Courts of Justice shall ensure that the performance of such work takes place, preferably, in judicial bodies of similar characteristics to which the judges in practice can then be assigned.

The duration and contents of the three phases of the initial training and selection course are determined by the General Council for the Judiciary according to the program devised by the Judicial School, but under the Article 307.5 of the Organic Law 6/1985 the **duration of the theoretical course shall not be less than nine months and the duration of the two practical courses shall not be less than four months in both cases.**

Competencies to instil during the initial training³⁴⁹:

1. Knowledge based competencies: the judge must have a high-level understanding of the law (theoretical and practical).

2. Functional competencies: trainees have to develop their intellectual skills in order to analyse and summarise information and to give well-reasoned decisions and should master the written word. The judge must have tools for organising and planning his/her work and the work of administrative staff.

3. Personal competencies: the trainee must develop qualities such as a good sense of ethics, should be able to learn and be constantly up-to-date, and should be open minded, flexible and honest. The judge must master interpersonal relationships with defendants, victims, citizens, professionals, and institutions.

Ordinary Training areas:

1. Civil Law and Civil Procedure, Penal law and Criminal Procedure, Constitutional law, European Union Law,
2. Ethics and code of practice,
3. Simulations and Mock trials,
4. Visit to institutions: social services, police headquarters, prisons, lawyers' offices, prosecutor 's offices,

³⁴⁹

<https://www.google.it/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwils7Xy9zuAhVJtIsKHQI6CLkQFjAAegQIARAC&url=https%3A%2F%2Fjustice.europa.eu%2FfileDownload.do%3Fid%3Dd5005009-ac04-4a52-9c97-d90426351f0f&usq=AOvVaw1zY-3Pf9DIEMQpEh63Macd>

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5. Specialist seminars,

6. Additional courses: forensics, psychology, finance, mediation, languages (English and other Spanish official languages), communication skills, regional civil laws, IT technologies.

The candidates who successfully complete the theoretical and practical stages of the course shall be appointed judges by the order of the proposal made by the Judicial School. To this purpose, the panel of trainers at the Judicial School shall draw up a list of candidates who have passed the theoretical and practical courses according to the grade achieved. The list is submitted to the General Council for the Judiciary, who formally issues the appointment order.

In principle, all judges appointed after the completion of the examination process and the initial training and selection course assume a judicial office in a first instance (civil) and investigating (criminal) court. Candidates who fail the course may repeat it in the next call (i.e., the call which follows the next public competitive examination), but if they fail the course again, they shall be definitively excluded from any expectation of entering the judiciary based on the selective examinations they had initially passed.

2.5.3 Germany

General requirements. “The general criteria for appointment to any public office – and this includes any position in the civil service and any judicial office - are laid down in article 33 paragraph 2 Grundgesetz. According to this article all German citizens have equal access to public office according to their aptitude, qualifications and professional ability. This guarantees equal access to a judicial office for everyone. In addition, section 9 of the (federal) German Judiciary Act³ prescribes that judicial tenure may only be given to a person who is:

- a German national in terms of article 116 Grundgesetz,
- prepared to at all times uphold the free democratic basic order within the meaning of the Grundgesetz,
- qualified to hold judicial office (according to sections 5 to 7 of the act),
- able to provide the social competence necessary for the office.

These criteria are binding on the bodies competent to decide on recruitment and appointment. Any alleged violation of equal access to public office is open to judicial review before the administrative courts.”³⁵⁰

“In addition, the Länder have laws providing for preferential treatment of female applicants to public service. These have been enacted to implement the principle of equality of men and women - with regard to access to employment, vocational training and professional advancement. In cases where applicants of both sexes are equally eligible with regard to aptitude, qualifications and professional ability preference will be given to appointment or promotion of female applicants if in the office concerned fewer women than men are employed, unless grounds in the person of a male applicant are overriding.”³⁵¹

“Professional qualification to hold judicial office is regulated in section 5 of the (federal) German Judiciary Act. Professional qualification to hold judicial office is also a necessary prerequisite for admission to professional legal practice, according to section 4 of the Lawyers

³⁵⁰ Johannes Riedel. Training and Recruitment of Judges in Germany. International Journal For Court Administration. Vol. 5 No. 2, October 2013. URL: <http://www.iacajournal.org>

³⁵¹ Johannes Riedel et al: " Recruitment, professional evaluation and career of judges and prosecutors in Europe: Austria, France, Germany, Italy and the Netherlands ", by CeSROG, University of Bologna, in partnership with IRSIG-CNR, Giuseppe Di Federico (Eds), 2005;

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Act.³⁵² These two provisions are the technical legal foundation for the long-standing German tradition of unified theoretical and practical training for practising lawyers, judges, prosecutors and also lawyers in the civil service. Consequently, Germany does not have specific initial training for future judges and there does not exist specific initial training for future practising lawyers. The professional qualification to hold judicial office (Befähigung zum Richteramt) as certified by passing law exams organized by the state is the (only) professional entrance qualification for all regulated legal professions³⁵³.

Section 5 German Judiciary Act states that in order to qualify to become a judge (or via section 4 of the lawyers act to become a member of the bar) an applicant has to complete legal studies at university, pass a first exam, do an apprenticeship and pass a second state examination. The course of study at university lasts (on average) four years.

Subjects of study have to include central fields of civil law, criminal law, administrative law, constitutional law, procedural law plus legal theory and the historical, sociological and philosophical foundations of law, including relevant aspects of European law. In addition to compulsory subjects, students must also study further legal subjects of their choice (“Schwerpunktbereiche”, for example, international law, European law, insurance law, media law etc.). The course of study is concluded by passing a first examination which is split up in two parts, an exam on compulsory subjects before a state exam board and an exam on subjects of choice before the law faculty.

University education is largely theoretical. Studies concern the knowledge of important codes and acts and court decisions. Students rely mainly on textbooks. Casebooks are rare, because emphasis of the courses lies more on principle than on precedent. Practical implications of legal principles are not covered in depth; procedural law is dealt with only briefly. In spite of this emphasis on theory, a decisive element of university education in law is training in the methods of “solving” a case, a legal problem. Strict logical thinking, exact interpretation of statutes and precise deduction from principles (“Subsumtion”) lie at the centre of this methodical training. In addition, the reform of 2002 placed more emphasis on practical aspects of the law, above all on the way a practising lawyer deals with legal problems, how he perceives the case and how he can act to influence the outcome of legal disputes. It is in the course of this reform that many law faculties have introduced courses on the law of the legal professions, on drafting contracts and also moot courts. According to the law on legal education in the Land North-Rhine/Westphalia⁸, essential fields of study include, for example, the law of contract, tort, chattels, real property, consumer credit,

- an overview of family law and the law of succession upon death,
- an overview of exemplary parts of mercantile law, of company law, of labour law,
- core subjects of criminal law,
- an overview of criminal procedure,
- constitutional law, general principles of administrative law including procedure, the law of local government,
- European law and an overview of private international law.

This covers a wide range of legal fields. In addition, what may belong to “principles” or “overview” in any given field is open to discussion. Universities or examination boards do not

³⁵² Bundesrechtsanwaltsordnung (BRAO) of August 1, 1959, Bundesgesetzblatt 1959 I p. 565, as amended per December 6, 2011, Bundesgesetzblatt 2011 I p. 2515.

³⁵³ Certain exceptions for lawyers from other countries, especially from within the European Union, are neglected here.

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have strict or binding curricula. Students are free to choose the time when they want to enter the exam on compulsory subjects before the state exam board. In fact, more than half of the students enter their first exam after about 4 years of study. The reason for this is that students who enter their first examination after only four years at university are entitled to an extra attempt if they fail the examination.

The state part of the first examination is organized by a state-administered examination office which is usually attached to a higher regional court. Examiners are university professors, judges and - occasionally - other practising lawyers. The examination consists of six or seven written (supervised) tests and an oral examination. Supervised written tests deal with cases or legal problems of (mostly) undisputed facts. The oral examination usually lasts four hours and covers various subjects, again discussing simple legal problems. A group of up to six students is examined by a panel of three examiners; in some of the Länder candidates also have to give a short speech on a legal problem being presented to them at the morning of the oral exam. The panels of examiners for the oral examination are composed by the director of the examination office; as a rule, one of the three examiners is an expert in civil, one of them in criminal and the third an expert in administrative law. As regards the part of the first examination administered by the law faculties in fields of specialisation (“Schwerpunktbereiche”), it is open to the law faculties to decide on the details. As it appears at present, most faculties require students to write some kind of thesis and at least one supervised test; in addition, there are also oral exams.

After the first exam there is a period of practical training, literally called preparatory service, followed by the second state examination. As pointed out above, it is the rather unique concept of the German legal education system that it is essential for all future lawyers (i.e. judges, prosecutors, barristers / solicitors) to do this preparatory service and to pass the second state exam. The overriding idea of this uniform legal education is to provide young lawyers with inside knowledge of most legal professions and to guarantee an equal level of competence for all legal professions. The duration of preparatory service is 2 years, and it entails various different stages of training. Students are employed by the state (the judicial administration) as civil servants in training and are paid a small monthly allowance while in preparatory service. They have to spend a few months each in a court for civil law suits, in a criminal court or a prosecutor's office, in a local or government administration, with a practising lawyer (barrister/solicitor) and at other places of their choice. In NorthRhine/Westphalia, trainees have to spend:

- a) 5 months with a court for civil law suits at first instance,
- b) 3 months with a prosecutor or in a criminal court,
- c) 3 months with an administrative office (usually on the local level),
- d) 10 months with a practising lawyer (solicitor, barrister),
- e) 3 months at a place of choice - where training is offered in a special subject of his or her choice.

The aim of education in these various stages is to instruct trainees in the practical skills concerning the application of the law. Students are supposed to learn how to draft judgements, to weigh and evaluate evidence, to write indictments, to produce written pleadings. The idea also is that a trainee should accompany the lawyer who is instructing him during daily work as often as possible. He should work under the instructor's supervision and take over some of the workload so that he can, for example, learn how to examine witnesses (which under German procedural rules is mostly done by the judges), how to plead in court (an art which is rarely exercised) and how to meet clients.

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Practical training in these stages is accompanied by courses that are given by experienced practitioners (mostly judges but also prosecutors and increasingly practicing lawyers). These courses cover practical questions. Their purpose is to make students familiar with the methods of analysing and deciding court cases, especially teaching them to find the issues of fact that are relevant to the decision of the case. Increasingly, these courses bring more emphasis on a lawyer’s practical skills in private practice. They also serve the purpose of preparing students for the final state examination and to ensure an equal standard of practical training because quality of individual instruction during practical stages may differ markedly.

The second and final examination is again held before a state office that is usually attached to the Ministry of Justice of the Land. In contrast to the first examination, only few law professors serve as examiners, the majority being judges of all courts (civil courts, administrative courts, labour courts, even tax courts), but increasingly members of the Bar are sitting as examiners. The importance attached to this examination may be shown by the fact that a large number of court presidents regularly serve as chairpersons of the panels of examiners. Again, examiners are usually appointed by the Ministry of Justice of the Land on the basis of a proposal of the director of the examination office.

The subjects of this examination are by and large identical with those of the first exam; they include however procedural law at a much deeper level. Papers and questions are usually set not from the abstract point of view of a legal scholar but almost invariably from the point of view of the court that has to give the decision in a case or of the practising lawyer who has to deal with a given situation for his client. Again there are written (supervised) tests and an oral examination. Written tests usually require the drafting of a judgement, of an indictment and, to an increasing extent, of a pleading or application - given from the barrister’s point of view. Oral examinations (five to six candidates being examined by a panel of three examiners, selected by the director of the examination office) begin with a short speech which the candidate has to give on a simple practical case, again mostly from a practicing lawyer’s point of view. The candidate is presented with the case on the morning of the examination and is allowed one hour of preparation; the speech should not last more than ten minutes and should end in a proposal for a practical decision. After every candidate has given his speech, the oral examination takes place in the form of a discussion covering everyday practical situations, for example, simulating the visit of a client to a solicitor, a procedural situation during a trial in court, a factual or legal problem that may arise in local administration. In short, in all phases of this examination, candidates do not only have to show their abstract knowledge of the law but also their ability to work with the law in a practical situation and to weigh and choose between a number of options which seem to be open to them.”³⁵⁴

“At the end of all this, those who are successful are qualified to hold any position as a lawyer (i.e. judge, prosecutor, barrister). By that time, the average age of a student is about 28 to 30 years. Their chance of being appointed as a judge or employed as a lawyer in the civil service, however, depends not only on their passing these two law examinations but also on how well they have passed them. Only a better than "average" performance in the examinations, for example, may open the opportunity to becoming a judge; in spite of the meaning of the word "average", only about 15 % of all students receive marks that are called "above average". The rate of failure in the final exam lies around 15 % with an additional rate of failure of about 30 % in the first exam.³⁵⁵ The remaining 70 % "average" lawyers have to look for jobs in industry

³⁵⁴ Johannes Riedel. Training and Recruitment of Judges in Germany. International Journal For Court Administration. Vol. 5 No. 2, October 2013. URL: <http://www.iacajournal.org>

³⁵⁵ Statistics of 2003, cf. tables 3 and 4; numbers vary quite a lot from Land to Land. The reasons for this are manifold and open to discussion and further research. Likely explanations are the quality of

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or go into private practice. With the number of successful law students rising steadily (in former West Germany from 4653 in 1981 to 7522 in 1991 and to about 10,800 in the whole of Germany in 2002)³⁵⁶ there is an ever-increasing number of self-employed lawyers in private practice who have a hard time earning their living. At the end of 2004, nearly 130,000 lawyers were admitted to private practice in Germany.”³⁵⁷

Further Prerequisites. “Federal law does not provide for any further prerequisites. As far as can be seen, no further requirements are laid down by the laws of the Länder either. Apart from the professional qualification acquired by the two law exams (Befähigung zum Richteramt within the meaning of section 5 of the Judiciary Act) no further professional experience is necessary. There is no policy of recruiting judges from the ranks of other legal professions although applicants who have been in private practice for a few years with some experience in litigation are generally welcome. In addition, for the purposes of appointment for life, time spent in other legal professions may be taken into account. There is no minimum or maximum age although, of course, when appointing future career judges, the duration of future working life until the compulsory retirement age of 65 may be taken into account. Likewise, applicants for the judiciary - like all applicants for the civil service - have to provide a health certificate in order to allow a prognosis whether the retirement age is likely to be reached in their case. On the other hand, the law requires preference to be given to handicapped persons in cases where they have met all other criteria at a level equal to that of other applicants. Finally, as is the case with all applicants to the civil service, they should be of good moral standing, i.e. they have to provide a report from the registry of criminal convictions and they have to make a declaration as to whether and in what way they are indebted. It can be assumed that if these matters give rise to objections they will not be appointed.”³⁵⁸

“<...> the process of evaluation [proceedings where only the Ministry of Justice or the higher regional court are involved as well as in those where electoral commissions] may vary. Invariably, the criteria listed above will have to be taken into account. These are:

- General criteria (German citizen, health, moral standing)
- Professional qualification (state exams, Befähigung zum Richteramt)
- Social competence

The information available as to the extent to which professional qualifications and “soft criteria”, such as social competence are weighed in this process will be discussed below (1.2)”³⁵⁹.

school training, the quality of law faculties, standards and demands in law exams but also social and economic background in certain regions. Exam results are increasingly being challenged. In North-Rhine/Westphalia, about 5 percent are being challenged in a pre-trial administrative review proceeding (Widerspruchsverfahren) which requires examiners to reconsider their marks. About 1 percent of all exam results are eventually reviewed in court. Less than 0.1 percent are successful - success meaning that either the papers have to be marked again by the same or by other examiners or that the candidate has to be offered another chance to write an exam paper or to do the oral exam.

³⁵⁶ cf. table 5

³⁵⁷ Johannes Riedel et al: " Recruitment, professional evaluation and career of judges and prosecutors in Europe: Austra, France, Germany, Italy and the Netherlands ", by CeSROG, University of Bologna, in partnership with IRSIG-CNR, Giuseppe Di Federico (Eds), 2005;

³⁵⁸ Johannes Riedel. Training and Recruitment of Judges in Germany. International Journal For Court Administration. Vol. 5 No. 2, October 2013. URL: <http://www.iacajournal.org>

³⁵⁹ Johannes Riedel et al: " Recruitment, professional evaluation and career of judges and prosecutors in Europe: Austra, France, Germany, Italy and the Netherlands ", by CeSROG, University of Bologna, in partnership with IRSIG-CNR, Giuseppe Di Federico (Eds), 2005;

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Methodology. “Recruitment proceedings invariably start with an application by the respective candidate. From then on, proceedings differ greatly in detail, and this irrespective of whether a judicial electoral committee is involved or not. In most of the Länder, candidates have to appear before a recruitment commission and present their application, and it is on the basis of the vote of this commission that the competent authority (the ministry or the president of the higher regional court) decides on recruitment where no judicial electoral committee is involved. Recruitment commissions are set up on the administrative level, usually by the Ministry of Justice; in general, they are composed of high-ranking civil servants of the Ministry of Justice and / or court presidents. Proceedings before these recruitment commissions vary greatly. In some of the Länder, such commissions have not been established and it is the respective authority itself that decides, mostly on the basis of the documents supplied and in the light of an interview with the candidate. In those cases where the Länder have electoral committees, recommendations as to which candidate should be selected are quite often given to the electoral committee. Such recommendations may be based on the vote of a recruitment commission; they may be given by the president of the higher regional court on his own account; or there may have been a formal process involving another commission, in some cases consisting of judges. In addition, details of the recruitment procedure may vary even within a Land – from judicial branch to judicial branch (i.e. ordinary courts, administrative courts etc.) and from district to district. There has so far been no evaluation of the value of these various procedures. The general impression of those involved in the process is that the grade in law exams is of high if not overriding importance. In addition, the overall impression of those responsible for judicial staff is that all the Länder have a judiciary of very high and very homogenous competence, which can be seen, e.g. when judges meet for professional exchange in seminars or professional meetings or where judges are being transferred on their own initiative to another judiciary.”³⁶⁰

“In all the Länder, regulations on equal opportunity for female applicants (gender mainstream rules) require the person who has to observe and control the application of these regulations (Gleichstellungsbeauftragte, such offices exist in all administrations) to take part in the proceedings at some stage.

Baden-Württemberg

The decision is reached on the basis of documents supplied by the candidate, the result of the final exam including all assessments during the two years’ practical training and an interview with the head of the personnel department of the ministry. The idea of introducing more detailed procedures (assessment centres, cf. Nordrhein-Westfalen, below) has been rejected because results of the present scheme have been satisfactory, and the time consumed and costs produced by such procedures are considered higher than the expectation of achieving better results.

Bayern³⁶¹

The decision is reached on the basis of documents supplied by the candidate, the result of the final exam and an interview with the head of the respective personnel department of the court. The idea of introducing more detailed procedures (assessment-centres, cf. Nordrhein-Westfalen, below) has been rejected because the efforts occasioned by such procedures were considered higher than the expectation of achieving better results.

Berlin

Extensive interviews are conducted by the president of the higher regional court and the court’s head of the personnel department. The court then reports on the basis of these interviews and the relevant documents to the Ministry of Justice which then passes the

³⁶⁰ Johannes Riedel. Training and Recruitment of Judges in Germany. International Journal For Court Administration. Vol. 5 No. 2, October 2013. URL: <http://www.iacajournal.org>

³⁶¹ cf. Meisenberg, Deutsche Richterzeitung 2003, p. 227

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proposal on to the judicial electoral committee. Before introducing more detailed procedures consideration would have to be given to the weight attached to the results of such procedures with respect to the vote of the judicial electoral committee.

Brandenburg

Extensive interviews are conducted by the president of the higher regional court and the court’s head of the personnel department. The court then reports on the basis of these interviews and the relevant documents to the Ministry of Justice which then passes the proposal on to the judicial electoral committee.

Bremen

The decision is reached on the basis of documents supplied by the candidate, the result of the final exam and interviews. An electoral committee is, however, involved.

Hamburg

The decision is reached on the basis of documents supplied by the candidate, the result of the final exam and interviews. An electoral committee is, however, involved.

Hessen

The decision is reached on the basis of documents supplied by the candidate and the result of the final exam. An electoral committee is, however, involved.

Mecklenburg-Vorpommern

The decision is reached on the basis of documents supplied by the candidate and the result of the final exam.

Niedersachsen³⁶²

The decision is reached on the basis of documents supplied by the candidate, the result of the final exam and an extensive interview in the Ministry of Justice.

Nordrhein-Westfalen

The higher regional courts in Nordrhein-Westfalen employ different systems. All of them have formed commissions which usually consist of the president of the higher regional court, the head of the personnel department, a president of a regional court (usually the court where the vacant position has to be filled) and the person responsible for equal opportunity matters (Gleichstellungsbeauftragte). Proceedings, however, differ:

- in the court in Düsseldorf, candidates have to go through
 - a 10-minute interview on the role of a judge,
 - a 5-minute role play concerning a situation at a court trial
 - a 20-minute general interview designed to obtain an impression of the candidate’s personality
- a 10-minute role play
- a 30-minute group discussion
- in the court in Cologne, candidates have to
 - give a 10-minute speech without referring to notes on a subject of their choice (which may have been prepared)
 - go through a 30-minute „working test“ where they are confronted with 10 different files or documents and they have to decide what to do with them next
 - go through a 45-minute standardised interview (presentation, structured and standardised questions)
- in the court in Hamm, the most elaborate system has been employed.³⁶³ It takes a full working day and consists of

³⁶² cf. Kramer, Deutsche Richterzeitung 2003, p. 226

³⁶³ For a detailed description of this system given by the president of the higher regional court in Hamm cf. Debusmann, Deutsche Richterzeitung 2003, p. 263. A system like this is, in German, labelled with the English word „assessment centre“. This technical term has come in use during the last decade,

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- a 45-minute group discussion on a given - legal - topic; the participants (usually 6) are divided into two groups of three who have to present the differing views (pro and con); after about 20 minutes, the discussion is usually interrupted and guided in a different direction, the groups of three may then be dissolved
- after this, candidates have to assess in writing their situation during the group discussion; meanwhile each member of the committee individually assesses the performance of the candidates
- three of the candidates are given interviews in the morning while the other three candidates undergo a „working test“; in the afternoon, they then switch
- the interview in its first part lasts about 30 minutes and is conducted by one member of the commission (but in the presence of all members) whereas in the second part all members may ask questions; the interview is standardised (structured and standardised questions); after the first part of the interview, there is a short break during which candidates are asked to give their written assessment of this part
- the practical “working test” consists of 15 different files or documents with which the candidates are confronted and where they have to decide what to do with them next
- after all this, the individual assessments given by the members of the commission are presented to the commission; the results of the “working test” are considered by a judge and presented to the commission; the commission decides in the light of the candidate’s total performance throughout the day, and the candidate is then informed of this decision.

An evaluation of these different systems is planned but has yet to be conducted.

Rheinland-Pfalz

The decision is reached on the basis of documents supplied by the candidate, the result of the final exam and extensive interviews with the presidents of the respective higher regional courts and the head of the personnel department of the Ministry of Justice. Results are considered satisfactory; therefore, more time-consuming procedures like assessment-centres are not being considered.

Saarland

The decision is reached on the basis of documents supplied by the candidate, the result of the final exam and an extensive interview with the secretary of state in the Ministry of Justice, the head of the personnel department of the ministry and representatives of the staff council.

Sachsen

The decision is reached on the basis of documents supplied by the candidate, the result of the final exam and extensive interviews.

Sachsen-Anhalt

The decision is reached on the basis of documents supplied by the candidate and the result of the final exam.

Schleswig-Holstein

The decision is reached on the basis of documents supplied by the candidate and the result of the final exam. An electoral committee is, however, involved.

Thüringen

originating apparently from recruitment proceedings in commerce and industry and being increasingly used in staff recruitment in the administration. The general discussion on the value of „assessment centres“ cannot be reported here. Main points of debate are the expenditure of (human and financial) resources and expected results as well as whether specific training of applicants for the purpose of performing well in assessment centres might blur results.

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The decision is reached on the basis of documents supplied by the candidate, the result of the final exam, including the assessments during practical training before the final exam, and an extensive interview.”³⁶⁴

Judicial Review. “Regardless of these various systems of selection employed, all decisions by the competent authorities are - at least in theory - subject to judicial review. An unsuccessful applicant can challenge the decision to recruit somebody else on the basis that his/her right under article 33 of the constitution (Grundgesetz) has been violated. It is accepted that it follows from article 33 that authorities are under a duty to recruit the person who is best qualified for the vacant position. On the other hand, because strict criteria do not exist, it is equally accepted that there is a certain prerogative for the authorities to decide on which criteria they are going to place the most emphasis. Applicants have a right to be treated fairly and equally in the proceedings and also have a right to be informed of the intended decision on selection. This is to enable them to seek judicial review before the decision is implemented because, once another candidate is appointed and the vacant position has been filled, the recruitment procedure is closed.”³⁶⁵

Federal Judges. “The judges of the highest federal courts (Bundesrichter) are elected jointly by the electoral committee of the Federation and the Federal Minister competent for the court concerned, in general the Federal Minister of Justice. The electoral committee of the Federation consists of the respective Länder ministers (16) and 16 members of the Federal Parliament (Bundestag) or persons commissioned by parliament (article 95, para 2, Grundgesetz). The Federal Minister competent for the type of court concerned chairs the sessions of the electoral committee but has no voting right. Each individual member of the electoral committee has a right to present candidates, and it follows from this that a strict recruitment procedure does not exist. There is, however, participation of the judiciary through a body representing the judges (presidential council or “Präsidentialrat”, i.e. a council for judicial appointments at the respective federal court which represents the judges of the court).¹⁶ This council gives an advisory opinion on the personality and the aptitude of the candidate and this opinion has to be presented to the electoral committee”³⁶⁶.³⁶⁷

Conclusions.

1. Germany has a fairly complex and lengthy judicial selection system. Of utmost importance in this process is the tradition or legal culture of making selections based on objective criteria. A person who has consistently sought to become a judge can achieve his or her ultimate goal at the age of 28-30 and after passing all three stages, i.e.: 1) having obtained the required legal university education, 2) passing theoretical and practical examinations and 3) practical training, literally called preparatory service. It is a rather unique concept of the German legal education system that

³⁶⁴ Johannes Riedel et al: " Recruitment, professional evaluation and career of judges and prosecutors in Europe: Austria, France, Germany, Italy and the Netherlands ", by CeSROG, University of Bologna, in partnership with IRSIG-CNR, Giuseppe Di Federico (Eds), 2005;

³⁶⁵ Johannes Riedel. Training and Recruitment of Judges in Germany. International Journal For Court Administration. Vol. 5 No. 2, October 2013. URL: <http://www.iacajournal.org>

³⁶⁶ The process of election and appointment to federal courts is closer to promotion than to initial recruitment. Vacant positions, however, will not be publicly advertised, applications are quite uncommon; instead prospective candidates have to rely on being presented by a member of the electoral committee. The electoral committee decides on the basis of written evaluations. Decisions are subject to judicial review. The electoral process is subject to some critical discussion because it is not considered sufficiently transparent.

³⁶⁷ Johannes Riedel. Training and Recruitment of Judges in Germany. International Journal For Court Administration. Vol. 5 No. 2, October 2013. URL: <http://www.iacajournal.org>

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it is essential for all future lawyers (i.e. judges, prosecutors, barristers / solicitors) to do this preparatory service and to pass the second state exam.

2. What is also important in the German system is that the content of the requirements for candidates for judges and the skills assessed in the selection procedures show that a great deal of attention is paid to the candidate's versatility. The selection system for judges in Germany provides a basis for selecting the best-trained lawyer from a large number of university law graduates. In assessing the possibility of adopting the practice of selecting judges in Germany, it is necessary to consider that it is a Federal State with a large number of lawyers and a large number of judges. It is argued that the German judge selection system, due to its specificity, complexity, and duration, may not work in unitary states with a relatively small population.
3. The Dutch system of the selection of candidates deserves a special attention, as it is based on the comprehensive and modern approach to the competences of judge. In the Netherlands the selection procedure is based on the evaluation, whether a candidate has the personal qualities described in the National Profile of a Judge, where inter alia the essential (circumstances) skills and competence of a judge are described, such as: essential circumstances (situations), competences, skills and knowledge and experience.
4. Among the essential circumstances awareness of the environment should be emphasized as an example to be considered in development of competence model. Awareness of the environment means that a candidate observes social developments and forms his/her own understanding relevant in the context of judicial activities; seeks familiar, new and contradictory information and diverse perspectives that may influence decision and process of deciding; is aware of the influence of differences and the background of the parties. The importance of social awareness of a future judge is stressed both in the National Profile of a Judge and throughout the selection procedure. In order to better meet the needs of society, judges have to be aware of the social consequences of a case, they should understand, what is at play in the society and familiarize themselves with the situation. Such an attitude should transpire both: during the court sessions as well as in judgements. This may include a delivery of a rapid judgment, but also addressing the problem that lies beneath the legal conflict. Social awareness (orientation) of the candidate has to show that he/she has gained sufficient insight to know what is going on in society. The social orientation could be evidenced, for example, by additional positions, administrative activities, voluntary work or other forms of commitment across the social field.
5. In Spain, similarly to the German system, an important part of selection process is dedicated to the initial training: after the first public examination (written exercise - test and two oral presentations) candidates must opt for the profession of judge or prosecutor according to the marks they have achieved; those, who opt for the judiciary must undergo the initial training and selection course organized by the Judicial School (a theoretical phase based on a program of multidisciplinary training and a practical period of training in different courts). Candidates develop knowledge-based competencies; functional competencies (intellectual skills in order to analyse and summarise information and to give well-reasoned decisions and should master the written word); personal competencies (qualities such as a good sense of ethics, ability to learn

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and be constantly up-to-date, flexible and honest, etc.).

2.6 Balkan region

2.6.1 Albania

All persons are entitled to apply to the School of Magistrates for admission to the initial training as a magistrate, as long as they fulfil simultaneously the following criteria:

- a) Have full capacity to act;
- b) Be an Albanian citizen;
- c) Have graduated with the minimum scoring as determined by the School of Magistrates the second cycle of university studies in law, with a diploma of “Master of Science” and have passed the state exam for jurists in Albania, or have graduated in law in a European Union Member State and have been awarded an equivalent diploma;
- ç) Have at least three years of full time active professional experience in the judiciary or the prosecution office, public administration, free legal professions or teaching in law faculties, or in any other equivalent position in the private sector or international organizations;
- d) Have never been criminally convicted by a final decision; dh) Have never been dismissed from office for disciplinary reasons and are not subject to a current disciplinary sanction;
- e) Not to be a member of political parties at the time of application;
- ë) Have not been a member, collaborator or favoured by the State Security before 1990;
- f) Have not been a collaborator, informant, or agent of any secret service.(Art. 28 of Status Law)

During January of each calendar year, the Council following a needs analysis shall determine and publish the maximum number of candidate judges for admission to the initial training for the next academic year. The School of Magistrates shall administer an exam for admission to the initial training (Art.31). The School of Magistrates shall establish a ranking list of the applicants in accordance with the exam results and shall publish the adopted list, by indicating in the list also the maximum number of candidates admitted to the initial training. Any applicant has the right to appeal. The candidates with the highest scoring on the published list, as set out in the provisions of Article 31 of this Law, who are likely to be admitted to the initial training of the School of Magistrates, shall be subject to a thorough asset and background checking.

The applicant shall not be admitted to the School of Magistrates if:

- a) The report of the High Inspectorate for the Declaration and Audit of Assets and Conflict of Interests shows that the legitimate financial sources of the candidate do not justify his/her assets and she/he has not declared property or assets or has provided a false or a nonaccurate declaration of the assets;
- b) The reports of the National Bureau of Investigation or the State Intelligence Service show that the candidate has connections to organized crime according to provisions of the law “On the organization and functioning of institutions for combating corruption and organized crime”;
- c) There exists any other disqualifying ground, as provided by law.

The School of Magistrates shall publish a list of candidate magistrates graduating from the initial training. The graduates shall be ranked in the list according to the results of the exams in the first and second year, in their final examination, and the evaluations during their professional internships. The School of Magistrates shall draft and publish the criteria for weighting professional internship evaluations and any examination results.

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The graduate shall be appointed magistrate, if she/he meets concurrently the following criteria:

- a) Having graduated from the School of Magistrates in the initial training with a score of at least 70% of the maximum reachable scores;
- b) Having achieved evaluation scores of at least "good" in each of the assignments during the professional internship in the third year of the initial training;
- c) Having passed the asset declaration and background check, carried out by the Councils.

A graduate may apply for appointment as magistrate. The request shall contain, in a preferential list, three courts where the graduate seeks to be appointed. Within the period of one month as of the date of the publication of the graduates' list the Councils shall:

- a) Appoint as magistrate, each person who appears in the graduates' list, who satisfies the criteria for appointment, or
- b) Reject the appointment as magistrate if he/she does not satisfying the criteria for appointment.

Assignment to position of an appointee having recently graduated from the School of Magistrates is a priority and it must be based on: a) The ranking in the graduates' list b) The fulfilment of preferences expressed by graduates in the initial training by implementing it to the extent possible.

2.6.2 Kosovo

The Constitution of Kosovo stipulates that proposals for appointments of judges must be made on the basis of an open appointment process, on the basis of the merit of the candidates³⁶⁸. Candidates for appointment as a judge under Article 108 of the Constitution shall meet the general qualifications as follows:

1. be a citizen of the Republic of Kosovo;
2. have a valid university degree in Law recognized in Kosovo;
3. have passed the bar examination recognized by the applicable law;
4. have high professional reputation and moral integrity;
5. have not been convicted of a criminal offense with the exception of the criminal offenses committed by negligence;
6. have at least three (3) years of legal working experience; and
7. have passed the examination for a judge in compliance with the requirements and procedures set out by special regulation approved by the Council.

The working experience in the legal field shall include experience, not limited to, legal matters in local and international institutions and organizations.

Upon the appointment by the President of Kosovo, judges, shall undergo initial training, which will be organized by the Academy of Justice. The initial training will last twelve (12) months, in accordance with the relevant legislation in force. During the initial training, judges may be assigned cases under the supervision of the mentor. Appointed judges shall be assessed after the initial training results, in accordance with the relevant provisions of this Law. The initial training period shall continue for those judges who fail to properly complete the initial training, as defined by the Academy of Justice³⁶⁹.

³⁶⁸ Article 108, § 4 of the Constitution.

³⁶⁹ Article 31 of the Law on Courts

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There are also additional conditions for some categories of judges as follows³⁷⁰:

In addition to the minimum qualifications, all candidates for appointment as judges, for the purpose of appointment or promotion in the courts, must meet the following qualifications:

1. to serve as a judge in the Serious Crimes Department or the Juvenile Department of the Basic Court, the candidate should have at least three (3) years of experience as a judge in the field of criminal law;

2. to serve as a judge in the Department for Administrative Matters or Department for Commercial Matters of the Basic Court, the judge should have at least six (6) years of experience in the legal field, including experience in administrative and commercial matters;

3. to serve as a judge in the Court of Appeals, the judge should have at least five (5) years of experience as a judge;

4. to serve as a judge in the Supreme Court, the judge should have at least eight (8) years of experience as a judge.

5. to serve as a judge in special department for cases under the jurisdiction of the Special Prosecution Office of the Republic of Kosovo, the candidate should meet the conditions to work as a judge in the Department of Serious Crimes and have a positive assessment of the performance.

The law foresees lay judges who will serve only when required by the law.³⁷¹ Condition and procedures for recruitment of the Lay Judges shall be regulated with sub-legal act approved by the Kosovo Judicial Council. Nevertheless the law provides for some basic criteria, such as:

1. be a citizen and resident of Kosovo;

2. be at least twenty five (25) years of age;

3. have successfully completed training required according to KJC regulation;

4. have not been convicted for a criminal offense with the exception of the criminal offenses committed by negligence;

5. have a high moral reputation in society and personal integrity.

6. Lay judges shall be compensated for their services according to a compensation schedule that shall be established by the Kosovo Judicial Council.

The recruitment of the judges is regulated in the law on judicial council. The Council, through a public announcement, invites all qualified legal professionals to apply as candidates for judicial appointments.³⁷² When recruiting a candidate, the Council shall, inter alia, consider the following requirements:

1. professional knowledge, work experience and performance, including knowledge and respect for human rights;

2. capacity for legal justifications as evidenced by professional activities in the field of justice, including in the capacity of a judge, prosecutor or lawyer, academic work or other professional activity;

3. professional ability based on the result of the previous career, including participation in organized training forms where performance is assessed;

4. ability and capacity to analyze legal problems;

5. ability to perform tasks impartially, honestly, with care and responsibility;

6. communication skills;

7. personal integrity.

³⁷⁰ Article 32 of the Law on Courts

³⁷¹ Article 33 of the law.

³⁷² Article 20 of the Law on Judicial Council.

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The Council develops procedures for recruiting candidates to be appointed as judges. The procedure for assessing the eligibility of a candidate to become part of the judiciary shall be carried out through verification of the data submitted by the candidate, data from relevant public records for evaluation, including the standard verification of records for the criminal past. The recruitment process of lay judges shall be defined by a regulation adopted by the Council and it will be carried out by respective courts.

After conducting recruitment procedures, the Council shall submit to the President proposals for candidates to be appointed judges with a three (3) year initial term.³⁷³ The proposal should include a written report on the process and the candidate.³⁷⁴

The President appoints judges in the judicial system with a three (3) year initial mandate based on the Council’s proposals. Within sixty (60) days after the receipt of the proposal, the President shall issue a decree on the appointment as judge of the candidate proposed by the Council. If within this deadline the President does not appoint the judge, the Council may re-submit the proposed candidate together with the supplementary reasoning in writing. Thereafter the President appoints the judge upon the proposal of the Council.³⁷⁵

After finishing the 3 years initial mandate, the President reappoints judges in the judicial system with a permanent mandate based on the Council’s proposals.³⁷⁶ Even the title of this provision is called “reappointment of judges”, in fact it constitutes a permanent appointment. In any case, to ensure that the independence of the judiciary is fully respected, if the first appointment is temporary, the decision on whether to confirm or renew such an appointment (reappointment) follows the same criteria that are stipulated for first appointment – the only exception being that a judge with 3 years of experience is expected to have more maturity and improved ability to face heavier workload, due to the experience previously gained. In any case, it should be taken into special consideration the results from the evaluation of the judge’s performance during the first appointment.

2.6.3 North Macedonia

It is to be noted that in case of North Macedonia, unlike in Albanian and Kosovo case, the criteria for selection of judges are provided in the law, not in the constitution.

The Law on Judicial Council stipulates that the Council, based on analysis determine the number of vacant judicial positions in the basic courts in the Republic in Macedonia, after taking into consideration the total number of vacant judicial positions in the basic courts, as well as the projection regarding the need of vacancies which shall be filled upon the completion of the initial training decides on the number of vacancies.³⁷⁷ The Council publishes the announcement for selection of a judge immediately after a judge position becomes vacant or after the need for opening a judge position is established. The necessary specialization (in the criminal, civil, economic, administrative area or another area within the scope of work of the court) for filling the vacant judicial position, and in accordance with the previously submitted request by the court to the Council by which filling the judicial position is required, shall be stated in the decision on publication of an announcement for selection of a judge. The

³⁷³ Article 105 of the Constitution of Kosovo stipulates that the initial mandate for judges shall be three years.

³⁷⁴ Article 21 of the Law on Judicial Council.

³⁷⁵ Article 22 of the Law on Judicial Council.

³⁷⁶ Article 24 of the Law on Judicial Council.

³⁷⁷ Article 45 (1) *ibid*.

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announcement shall be published in the “Official Gazette of the Republic of North Macedonia” and in at least two daily newspapers, one of which is published in the language spoken by at least 20% of the citizens that speak an official language other than the Macedonian language.³⁷⁸

The Council elects a judge of a basic court from the list of candidates, submitted by the Academy for Judges and Prosecutors taking into account the year of completion of the training and the achieved success, as well as the results of the interview conducted by Council.³⁷⁹ The Council conducts an interview with the candidates by evaluating their personal and social competences, which should be evaluated with no more than 10% of the total points.³⁸⁰ The Council shall elect to be judge a candidate of the three best ranked based on the results of the Academy for Judges and Prosecutors and the interview conducted by the Council. The ranking methodology is to be adopted by the Council.³⁸¹

The Council shall select and dismiss also the lay judges, on a proposal of the president of the basic court and appellate court. The Council shall determine the number of lay judges, on a proposal of the president of the court wherefore the lay judges are being selected. When the Council selects a lay-judge in a court which is in the region of a local self-government unit where 20% of the citizens speak an official language other than Macedonian language, it shall decide with the majority of the votes of the attending members and there must be majority of votes of the present members that belong to the communities that are not a majority in the Republic of North Macedonia.³⁸²

There is no expressed stipulation for the criteria to be nominated as a judge, but there are criteria for admission to the initial training at the Academy for Judges and Prosecutors, which has to be fulfilled by every candidate, as follows³⁸³:

1. to be a Bachelor in law, with a four-year higher education VII/ I degree in law studies or a Bachelor in law who has acquired 300 credits under the European credit - transfer system (ECTS),
2. to have passed the bar exam,
3. to have work experience of at least two years in legal affairs after passing the bar exam,
4. not to have been pronounced a court sentence banning exercise of profession, activity or duty,
5. to be a citizen of the Republic of Macedonia,
6. to be fluent in Macedonian language,
7. to be fluent in one of the three most frequent EU languages (English, French, German language), which is verified within the entry exam in the Academy,
8. to be familiar with practical work with computers, and
9. to be fit for work and show general health capacity.

The type, manner and detailed conditions for performing medical examinations and the level of practical work with computers referred to in point 8 and 9 shall be regulated by the Academy Management Board.³⁸⁴

³⁷⁸ Article 46 *ibid.*

³⁷⁹ Article 47 (1) *ibid.*

³⁸⁰ Article 47 (2) *ibid.*

³⁸¹ Article 47 (4) *ibid.*

³⁸² Article 53 (3) *ibid.* There are 2 official languages in North Macedonia: the Macedonian and the Albanian one, because the Albanian community is more than 35% of the population of North Macedonia.

³⁸³ Article 57 (1) of the Law on Academy of Judges and Public Prosecutors.

³⁸⁴ Article 57 (3) *ibid.*

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Admission in the initial training is available to anyone who meets the admission criteria defined by the Law and by-laws of the Academy and who will successfully pass the entrance exam at a test session. The procedure for organizing and conducting the entry exam is based on the principle of transparency in the rules, methods and manner of implementation, evaluation and publication of results, and the work of the Commission for admission to initial training, based on objective and publicly announced criteria that ensure independence, objectivity, as well as free access to the program for the entrance examination.³⁸⁵

The entrance exam for the initial training is organized by 30 September by the Judicial Council of the Republic and the Council of Public Prosecutors, taking into account the total number of vacancies for judges and public prosecutors in the trial courts and the public prosecution offices, and the projection of the positions to be filled following the completion of initial training, decided and determined the total number of participants in the initial training consists of passing: (i) qualifying test; (ii) psychological test; (iii) integrity test and exam.³⁸⁶ The exam is taken within 7 days of the publication of the final results of the integrity test. The right to take the entrance exam is given to candidates who have passed the qualifying test, psychological test and the integrity test.³⁸⁷ Admission of candidates who will be in the initial training at the Academy is based on the order of success in the rankings to fill the anticipated number of participants.³⁸⁸

After completion of the initial training the candidates take a final exam that checks the practical knowledge and ability acquired in the initial training to perform the function of judge in the courts Public prosecutor in the public prosecution offices.³⁸⁹ After completion of the initial training, the participant receives a final grade, which is a summary of the grade of the two stages of initial training and final examination.³⁹⁰ After completion of the initial training participants in the initial training acquire the status of a candidate for judge or public prosecutor.³⁹¹

After completion of the initial training and the acquisition of candidate status as a judge or public prosecutor until becoming a judge or public prosecutor, the Academy refers the candidate for judge or public prosecutor to the court or to public prosecutor's office where he performs the second phase of initial training to practice the judicial or prosecutorial function under the supervision of a judge or public prosecutor, according to the program adopted by the Academy.

The selection of judges and public prosecutors in the basic courts and basic public prosecutor's offices from among the candidates who completed the training, based on announcements for appointment by the Judicial Council of the Republic of Macedonia and the Council of Public Prosecutors is carried out according to the results in the final rankings.

The first three candidates from the final list may apply for a judge or public prosecutor in the appellate region where they realized the second phase of initial training, or any other appellate region. The remaining candidates for judges and public prosecutors in the rankings shall apply

³⁸⁵ Article 61 *ibid.*

³⁸⁶ Article 64

³⁸⁷ Article 76.

³⁸⁸ Article 91 (1).

³⁸⁹ Article 97.

³⁹⁰ Article 110.

³⁹¹ Article 113 (1)

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to every announcement published for appointing judges in the basic court or public prosecutors in the basic public prosecutor's office.

If for a specific vacancy call for the election of judges and public prosecutors, candidates with the same number of points apply, there is an advantage when selecting a candidate for judge or public prosecutor for the candidate from the appellate region where he realized the second phase of his initial training. If a candidate for judge or public prosecutor twice subsequently fails to respond to announcements, he/she loses the status of a candidate for judge or public prosecutor, which results in compensation of costs and other fees for the training, upon calculation determined by the Academy.³⁹² The candidate for judge or public prosecutor is obliged at least five years after being selected as judge or public prosecutor to work in court or public prosecution; otherwise, he shall have to compensate costs and other fees for the training, upon calculation determined by the Academy.

Conclusions. The similarity of the procedures is the high level of detailed regulation of procedures in primary legislation. Beside that the regimes are quite specific, as a distinguished future in Albania and Kosovo the focus on the integrity of the candidates are being marked.

2.7 Other countries: Ukraine

A candidate to the judicial position at the first instance court (judicial candidate) must comply with general requirements (citizenship, age, education, professional experience, knowledge of state language, professionalism, honesty), set in the Constitution and the Law on Judiciary.

Procedure for Selecting and Appointing to Judicial Position/Office consists of the main following stages:

- 1) Decision and announcement of the HQCJ regarding the selection of judicial candidates and estimated number of judicial vacancies for the next year;
- 2) Submission by persons who intend to be a judge of a respective application and documents to the HQCJ.
- 3) Admission exam;
- 4) Background check under the Anti-Corruption Law;
- 5) Initial training;
- 6) Qualification examination by the candidates who went through initial training and determining its results;
- 7) Announcement by the HQCJ of a competition for filling such positions;
- 8) A competition for the vacant position of judge on the basis of the rating of the candidates who took part in that competition;
- 9) Decision of the HQCJ regarding a candidate for a position of a judge;
- 10) Decree of the President of Ukraine on appointing to judicial position – in case the High Council of Justice makes a proposal on appointing a judge to the office.

Selection of judicial candidates with at least three years of record of service as judge's assistant are conducted with specific criteria determined by the decision of the HQCJ.

Admission/selection examination is conducted by the HQCJ in the form of anonymous testing to check the general theoretical knowledge of a candidate in law, their command of the official language of the country, personal moral and psychological qualities of the candidate. Grading

³⁹² Article 113 (7).

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of the examination is set, with account to the estimated number of vacant positions. The passing score may not be less than 75 percent of the maximum possible score of the respective admission examination. Based on the results of admission examination, the HQCJ passes a preliminary decision on admitting the persons who successfully passed the admission examination to the next stage of the selection and publish the decision on the official website.

For the purpose of background check, the HQCJ after adoption a preliminary decision on the admission of persons who have successfully passed the qualification examination to the next stage of the selection sends to the authorized bodies (with a special status which ensures the development and implements the state anti-corruption policy) requests to verify the relevant information concerning the persons specified. The verification involves verifying the accuracy of information declared, assessment of the accuracy of the assets declared and checking the existence of a conflict of interests and signs of illicit enrichment.

Based on the background check results, the HQCJ adopts a decision to send persons who meet the requirements established for judicial candidates to take the initial training at the NSJ.

Initial training of a candidate for a position of a judge includes theoretical and practical training of a judge at the National School of Judges (NSJ). Initial training lasts for twelve months. During the training period, the candidates retain their main job, are paid a scholarship in the amount of judge’s assistant salary in a local court. Based on the results of the initial training, the candidates receive a certificate. The NSJ sends materials regarding the candidates who have completed initial training to the HQCJ for taking qualification examination.

The qualification examination is an evaluation of a person who completed initial training and expressed an intention to be recommended for the appointment to a position of a judge. The qualification examination consists of identifying if the candidate has the respective theoretical knowledge and the level of professional training of a judicial candidate, including those gained during the initial training, and a degree of their ability to administer justice.

The qualification examination is conducted with a judicial candidate taking a written anonymous test and doing an anonymous written practical task in order to identify the level of knowledge, practical skills and abilities to apply law and conduct a court session. If a person scored less than 75 percent of the maximum possible score in the qualification examination, he/she shall be deemed as having failed the qualification examination. A person who failed the qualification examination may be admitted to taking the qualification examination again not earlier than in one year. A person who did not pass the qualification examination the second time may be admitted to the next exam not earlier than two years thereafter.

The HQCJ ranks the candidates for a position of a judge according to the points scored by the candidates in the qualification examination. The ranking shall also separately show the points scored for the questions that test the candidate's ability to be a judge in respective specializations.

In order to conduct a competition for a vacant position of a judge, the HQCJ approves a decision on its announcement, place the relevant information on its official website. The competition is based on a rating of judicial candidates and judges who want to be transferred to another local court based on the results of qualification examinations taken under the procedure of judicial selection or under the procedure of qualification evaluation respectively.

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Based on the results of the competitive selection, the HQCJ sends to the HCJ in accordance with the number of vacant judicial positions, its recommendations on the appointment of candidates to judges' positions. In accordance with the recommendations the HCJ considers at its meeting the appointment of a candidate to a position of a judge and, in case of the positive decision, submits a proposal to the President of Ukraine on the appointment of the judge to the office.

The HCJ may refuse to submit a proposal to the President of Ukraine regarding the appointment of a judge to the office exclusively on the following grounds:

- 1) if there is reasonable doubt that the candidate meets the criterion of integrity or professional ethics or other circumstances which may have a negative impact on public trust in the judiciary due to such appointment;
- 2) violation of the statutory procedure for appointment to a position of a judge.

In case of refusal to make the proposal to the President of Ukraine regarding the appointment of a judge to the office, the HCJ takes a reasoned decision that may be appealed to the Supreme Court in the manner stipulated by the procedural law.

Conclusions.

1. An exclusive feature of a system of recruitment of judges in Ukraine, established from 2015, is the high-level technocracy (use of tests as primarily instruments to evaluate competences, detailed methodology of scoring, etc.) and publicity (live streaming of interviews, published opinions of the PIC on candidate's integrity, etc.) as well as the significant role of civil society.
2. A new approach and procedures with regard to the selection of new judges involve two stages – the assessment of legal professional skills and competences by employing multiple choice testing and case studies, and the assessment of personal, social and psychological skills and competences by the way of three distinct procedures: psychological testing, examination of evidence provided by various third parties in the candidate's dossier and the interview.
3. On the other hand, the system has some shortcomings, such as the complexity of the recruitment system determining long and difficult procedures, which result in big numbers of vacant judicial positions for a long time.

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3. Evaluation of judges

3.1. International standards, principles and recommendations

In accordance with the view to contribute to the efficiency of the administration of justice and continuing improvement of its quality, systems for the assessment of judges may be introduced³⁹³. The main rule, however, is that any individual evaluation of judges would maintain total respect for the judicial independence³⁹⁴. The common view taken by the relevant international bodies is that some form of evaluation of judges is necessary in order to produce justice of the highest quality and ensure proper accountability in a democratic society³⁹⁵. Regular evaluations of the performances of a judge are regarded as important instruments for the improvement of his/her work and may also serve as a basis for promotion³⁹⁶.

The Consultative Council of European Judges in its consultative opinion has noted that **two types of evaluation models exist: a formal evaluation and informal evaluation**.

In cases of formal evaluation, the aims of the evaluation, the criteria used the composition of the evaluating body, the procedure for evaluation and its possible consequences are set out in advance in the primary or subordinate legislation. An informal evaluation does not entail formalized ratings or criteria and usually has no direct consequences for the evaluated judge. An informal evaluation may be conducted in a manner of a discussion, allowing the evaluated judge to address problems, show his or her abilities and agree on career goals³⁹⁷.

The Consultative Council of European Judges **tends to recommend informal evaluations models** as much as possible in respect of a legal culture and tradition of a particular country. Informal assessment may assist judges by giving them an opportunity for self-evaluation, providing feedback and determining their training needs. All these can be effective ways of improving the skills of judges and thereby improving the overall quality of the judiciary. Informal peer review and advice among judges can also be helpful and should be encouraged³⁹⁸.

Only in instances, when an informal evaluation model is not a viable option, an **evaluation of a formal character** should be considered³⁹⁹. Where such systems for assessment are established, they should be based **on objective, clearly defined criteria**, which should be made **publicly available (known) in advance**⁴⁰⁰ as well as the **consequences of evaluation**

³⁹³ CM/Rec(2010)12, para. 42.

³⁹⁴ In instances, when an individual evaluation has consequences for a judge's promotion, salary and pension or may even lead to his or her removal from office, there is a risk that the evaluated judge will not decide cases according to his or her objective interpretation of the facts and the law, but in a way that may be thought to please the evaluators. Consultative Council of European Judges (CCJE) Consultative Opinion No. 17 (2014) On the evaluation of judges' work, the quality of justice and respect for the judicial independence (hereinafter – Consultative Opinion No. 17 (2014)), para. 6.

³⁹⁵ Consultative Opinion No. 17 (2014), para. 23.

³⁹⁶ CDL-AD(2011)012, Joint Opinion on the constitutional law on the judicial system and status of judges of Kazakhstan by the Venice Commission and OSCE/ODIHR, §55.

³⁹⁷ Consultative Opinion No. 17 (2014), para. 8-10.

³⁹⁸ *Ibid*, para. 25.

³⁹⁹ *Ibid*, para. 23.

⁴⁰⁰ CM/Rec(2010)12, para. 58. See CDL(2005)066, Opinion on Draft Constitutional Amendments concerning the Reform of the Judicial System in “the former Yugoslav Republic of Macedonia”, §30.

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should be set out in the primary regulation⁴⁰¹. It is crucial for the criteria, procedure and consequences of the evaluation to be clearly formulated, easily accessible and foreseeable⁴⁰². In general, the international principles note that the principle of **peer-review** should be respected, it has to be concentrated in the hands of the judiciary⁴⁰³. Some of the recommendations note that while the independent authority (judicial council) may play a role in specifying the evaluation criteria, the evaluations themselves should be carried out at a **local level**⁴⁰⁴. As to the persons directly performing the evaluations presidents of the courts or other elected or appointed members of the judiciary are mentioned⁴⁰⁵. The presidents of the courts should not have an exclusive role in the matter and could be complimented by other members of that particular or another court⁴⁰⁶. The use of serving judges to evaluate their colleagues, however, has certain caveats. For example, it may lead to bad personal relationships between colleagues and has the potential to undermine the morale of the judiciary. Alternatively, where judges receive favorable evaluations, this could give rise to allegations of cronyism.⁴⁰⁷ Consideration of opinions provided by other professions, outsiders who regularly deal with the judge (lawyers) and law professors, with respect to the diligence, respect for the parties and rules of procedure may be considered⁴⁰⁸. However, it is essential that such outside assessors are able to draw on sufficient knowledge and experience of the judicial system to be capable of properly evaluating the work of judges. It is also essential that their role is solely advisory and not decisive.⁴⁰⁹

A rule/mechanism providing for a **disqualification of an evaluator** should be considered, furthermore the evaluators should be under the obligation to report any **conflict of interest** and any attempts to influence the evaluation process by improper means (including, but not limited to, undue pressure, duress, or coercion)⁴¹⁰.

The procedure of evaluation should be construed in such a manner **that judges would be able to express their views** both on their activities and the evaluation of such activities⁴¹¹. Evaluated judges have to be informed about the outcome (results) of the evaluation and the **right to challenge** assessment (a review of appeal) before an independent authority or a court should be guaranteed⁴¹². In any event evaluation should be separate from disciplinary proceedings⁴¹³.

⁴⁰¹ Consultative Opinion No. 17 (2014), para. 30.

⁴⁰² CDL-AD(2013)015, Opinion on the draft law on the courts of Bosnia and Herzegovina, §68

⁴⁰³ ODHIR Kyiv Recommendations, para. 30. See also CDL(2005)066, Opinion on Draft Constitutional Amendments concerning the Reform of the Judicial System in “the former Yugoslav Republic of Macedonia”, §30. Consultative Opinion No. 17 (2014), para. 6.

⁴⁰⁴ ODHIR Kyiv Recommendations, para. 30.

⁴⁰⁵ Consultative Opinion No. 17 (2014), para. 36.

⁴⁰⁶ ODHIR Kyiv Recommendations, para. 30.

⁴⁰⁷ See CDL-AD(2014)007, Joint opinion on the draft law amending and supplementing the judicial code (evaluation system for judges) of Armenia, §§62, 67, 69-70 and 75

⁴⁰⁸ ODHIR Kyiv Recommendations, para. 30.

⁴⁰⁹ Consultative Opinion No. 17 (2014), para. 38.

⁴¹⁰ See CDL-AD(2014)007, Joint opinion on the draft law amending and supplementing the judicial code (evaluation system for judges) of Armenia, §§62, 67, 69-70 and 75

⁴¹¹ See CM/Rec(2010)12, para. 58, ODHIR Kyiv Recommendations, para. 31

⁴¹² See CM/Rec(2010)12, para. 58, ODHIR Kyiv Recommendations, para. 31.

⁴¹³ See CDL-AD(2014)007, Joint opinion on the draft law amending and supplementing the judicial code (evaluation system for judges) of Armenia, §§28, 102 and 108; CDL-AD(2018)032, Opinion on the Concept Paper on the reform of the High Judicial Council of Kazakhstan, §77.

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Criteria: the recommendations of the international bodies stress that the evaluation should be primarily focused on **qualitative criteria**, because they include the most important aptitudes that a judge should have, such as knowledge and professional skills, personal competences and social competences.⁴¹⁴ Qualitative criteria should **not** entail **evaluation of the content of the decisions and verdicts**. The CCJE Consultative Opinion No. 17 (2014) enumerates the following quantitative criteria currently used in the European countries: the manner in which judge handles complex cases, the ability to mediate between the parties, the ability to draft clear and comprehensible judgments, the ability to cooperate with other colleagues, to work in areas of law that are new to the judge, readiness to take on extra activities such as mentoring and educating recently appointed judges or lawyers. Organization skills, work ethics or scholarly activities may also be taken into consideration⁴¹⁵.

Quantitative criteria, such as the number of reversals and acquittals should be avoided as a standard for evaluation.⁴¹⁶ Among the quantitative criteria used the following are enumerated: the number of cases decided by the evaluated judge, the time spent on each case and the average time required to complete a judgment, the number of ‘closed cases’⁴¹⁷. In cases of the measurement of **workloads** a system would need to be in place to evaluate the weight and the difficulty of different files.

Observance of procedural periods may be regarded as a criterion pointing towards a possible problem, but the judge should be given an opportunity to express his or her views on the matter. The ‘stability of judicial acts’ is regarded as a ‘questionable’ criterion, especially when the first-tier judges are concerned, as the reversal of the decision by an appellate court may be re-reversed by the cassation or the European Court of Human Rights.⁴¹⁸

The **manner in which criteria is assessed** also differs throughout the European countries, with most states assigning ratings for the evaluated judges, some use grades (‘very good’, ‘good’, ‘sufficient’ and ‘insufficient’ or A, B, C) or a productivity factor through percental comparison to the performance of other judges is determined. Various **methods (procedures)** for carrying out evaluation may be used ranging from self-assessment, a more or less formal interview with an evaluator, taking into account the observations of colleagues, to formal, regular inspections⁴¹⁹.

Performance of the presidents of the courts should not be linked to the evaluation of performance of the ordinary judges in a particular court⁴²⁰.

3.2. Baltic region

3.2.1. Lithuania

⁴¹⁴ See CDL-AD(2011)012, Joint Opinion on the constitutional law on the judicial system and status of judges of Kazakhstan by the Venice Commission and OSCE/ODIHR, §55CDL-AD(2014)007, Joint opinion on the draft law amending and supplementing the judicial code (evaluation system for judges) of Armenia, §§37-40, 42-43, 49-50 and 77-78.

⁴¹⁵ Consultative Opinion No. 17 (2014), para. 13.

⁴¹⁶ See CDL-AD(2011)012, Joint Opinion on the constitutional law on the judicial system and status of judges of Kazakhstan by the Venice Commission and OSCE/ODIHR, §55

⁴¹⁷ Consultative Opinion No. 17 (2014), para. 13.

⁴¹⁸ See CDL-AD(2014)007, Joint opinion on the draft law amending and supplementing the judicial code (evaluation system for judges) of Armenia, §§37-40, 42-43, 49-50 and 77-78

⁴¹⁹ Consultative Opinion No. 17 (2014), para. 14-19.

⁴²⁰ CDL-AD(2015)042, Opinion on the Laws on the Disciplinary Liability and Evaluation of Judges of "The Former Yugoslav Republic of Macedonia", §106

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Professional, personal competencies and skills that are required and appropriately evaluated are described in The Description of the Assessment of Activities of Judges, approved by Judicial council, Resolution No. 13P-135-(7.1.2) on 31 October 2014 (revision No. 13P-135-(7.1.2) by the Judicial Council on 27 September 2019).

It is defined there that the assessment of activities of judges is a procedure that provides information on the level of professional knowledge and skills of judges, their ability to apply theoretical knowledge and skills in practice, to participate in and organize the administrative work of the court, and the strengths and weaknesses of judges. The professional activities and personal qualities of a judge that should be evaluated is described very generally - the evaluation should be purposed to evaluate their compliance with the requirements established in the Law on Courts of the Republic of Lithuania, the Code of Ethics of Judges and other legal acts is assessed. So, it may be concluded, that the competencies the same as for the selection of the judges should be taken into account. In Law of Courts such qualities are indicated:

Article 51. Requirements for a Candidate to Judicial Office of the District Court

1. The post of a district court judge may be filled by a national of the Republic of Lithuania of good repute, having a university degree in law – the academic title of bachelor in law or master in law or the lawyer’s professional academic title (one-cycle university education in law) meeting the requirements established by law required for security clearance procedure or work permit or right of access to or exchange in classified information, upon submitting a health certificate, having a record of at least five years of work in the legal profession and passing the examination for candidates to judges. A person having Doctor or Habil. Doctor of Social Sciences (Law) degree, also a person of at least five years standing as a judge, if not more than five years have lapsed since he last held that position, shall be exempt from sitting for the candidate examination.

Article 66. Requirements for a Person Seeking Judicial Office at the Regional Administrative Court or the Regional Court

A judge entered in the register of persons seeking judicial office or a person having Doctor of Social Sciences degree of at least four years standing as a judge and/or pedagogical position in law who has submitted a health certificate may be appointed a judge of a regional administrative court or a regional court. If a person has simultaneously worked as a judge and has done legal pedagogical work, the length of service of a judge and the length of legal pedagogical work acquired during such a period shall not be added together when calculating the length of service referred to in this Article.

Article 67. Requirements of a Person Seeking Judicial Office of the Supreme Administrative Court or the Court of Appeals

1. A judge entered in the register of persons seeking judicial office or a person having Doctor of Social Sciences degree of at least four years standing as a judge and/or pedagogical position in law who has submitted a health certificate may be appointed a judge of the Supreme Administrative Court or the Court of Appeals. If a person has simultaneously worked as a judge and has done legal pedagogical work, the length of service of a judge and the length of legal pedagogical work acquired during such a period shall not be added together when calculating the length of service referred to in this Part.

2. A judge of the Court of Appeals may be appointed a judge of the Supreme Administrative Court, and a judge of the Supreme Administrative Court may be appointed a judge of the Court of Appeals without regard to his record of work at the Court of Appeals or at the Supreme Administrative Court.

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Article 68. Requirements for a Person Seeking Judicial Office of the Supreme Court

A judge entered in the register of persons seeking a judicial office or a doctor of social sciences with at least ten years of experience as a judge and/or legal pedagogue work may be appointed as a judge of the Supreme Court, having presented a medical certificate. If a person has simultaneously worked as a judge and has done legal pedagogical work, the length of service of a judge and the length of legal pedagogical work acquired during such a period shall not be added together when calculating the length of service referred to in this Article.

Article 69. Recognition of the Record of Service as a University Professor of Law

The legal pedagogical work of a doctor of social sciences in the field of law is recognized as the legal pedagogical work experience specified in Articles 66, 67 and 68 of this Law, worked in the positions of lecturers and researchers established at the Law on Science and Studies of the Republic of Lithuania at universities preparing bachelors and/or masters of law, as well as lawyers obtaining the professional qualification degree of a lawyer, i. e. providing one-level higher legal university education, the procedure for recognizing legal pedagogical work experience shall be established by the Government.

In Code of Ethics we can find only general requirements for the professional and human activities of judge, they are as follows:

Article 5. Basic principles of conduct of judges

Basic principles of conduct of judges are these:

- 1) respect for human;
- 2) respect and loyalty for the State;
- 3) justice and impartiality;
- 4) independence;
- 5) confidentiality;
- 6) transparency and publicity;
- 7) honesty and selflessness;
- 8) decency;
- 9) exemplarity;
- 10) dutifulness;
- 11) solidarity;
- 12) the improvement of qualification.

So, all these aspects are taken into account gathering necessary for evaluation data and during the evaluation procedures.

It should be emphasized, that while evaluating professional skills different aspects of these are analysed - from the reasons of amending or cancellation of judge's decision (can be their systematic mistakes or some gaps in the knowledge of common legal practices, etc), also the reasons for prolonged procedural terms, etc.

The regulations of the Commission define such skills and competencies, that should be evaluated - the capacities of judges to use in practice theoretical knowledge and skills, to establish the strengths and weaknesses of the activities of judges and use the negative results for the preparation of judicial training and qualification courses as well as promote the improvement of the judge's qualification. The goal of assessing the activities of chairmen, vice chairmen and chairmen of divisions shall be to determine their management, organisational and administrative skills.

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The Law on Court indicates that "when assessing the activities of the judges, qualitative and quantitative professional performance indicators of the judge, his subject and character requirements, jurisdictional and non-jurisdictional activities of the judge must be taken into account."

Methodology. The evaluation methodology is provided in the Description of the Assessment of Activities of Judges. Paragraph 9. define, that "The following quantitative and qualitative indicators of a judge's professional activities in the last three calendar years are assessed: statistical average workload of a judge, statistical average length of proceedings, quality of procedural decisions, quality of a judge's management and organizational skills. The professional activities of a judge (quality of legal work) are assessed by points and, after assessing all the quantitative and qualitative indicators of the professional activities of a judge set out in items 10–13 of this Description, is determined by degrees to ensure a comprehensive assessment of each judge's professional competence."

All these criteria are evaluated separately in the scale of points from 1 to 25 (max) on each. For normal evaluation 1-20 points may be applied, and additional 5 points may be added for the activities, indicated in the regulation.

The statistical average workload of a judge (hereinafter the workload of a judge) is assessed taking into account the number of cases examined by the judge, complexity, specialization of the judge, employment of the judge in other activities. internal or external administrative functions of the court, etc.), periods of legal absence of the judge and other factors influencing the workload of a judge, awarding up to 25 points:

1. from 16 to 20 points when the workload of a judge is higher or close to the average workload of judges in the respective court;
2. from 11 to 15 points, when the workload of a judge is 90-99 percent of the average workload of judges in the respective court;
3. from 6 to 10 points, when the workload of a judge is 80-89 percent of the average workload of judges in the respective court;
4. from 1 to 5 points, when the judge's workload is less than 80 percent of the average workload of judges in the respective court;
5. additional up to 5 points may be awarded in cases when the average workload of a judge is higher than the workload of judges in the courts of the respective level in the Republic of Lithuania, as well as for the activities of a court mediator by assessing the number of cases the number of settlement agreements concluded in the cases under consideration or the employment of a judge in other activities.
6. In cases where the workload of the Chairman of the court, the Vice-Chairman of the court or a judge due to the performance of court administration functions or participation in the activities of judicial self-government institutions is reduced, an appropriate weighting is applied to assess the statistical average workload of the judge.

The duration of proceedings is assessed taking into account the statistical average duration of proceedings in court and in Lithuania, the categories of cases pending, the number of cases pending for more than a year or half a year for some categories of cases, together with an assessment of the reasons for the duration of the process, awarding up to 25 points:

1. from 16 to 20 points, when the statistical average length of proceedings for a judge is close to the average duration of proceedings of judges of the respective court;
2. from 11 to 15 points, when the statistical average length of proceedings for a judge corresponds to or is not more than 5 percent longer than the average length of proceedings

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of judges of the respective court, when the reasons for prolonged proceedings are only in rare cases related to shortcomings in the conduct of proceedings within the shortest possible time;

3. from 6 to 10 points, when the statistical average length of proceedings for a judge is not more than 10 percent longer than the average duration of proceedings of judges of the respective court, when the reasons for prolonged proceedings are only in rare cases related to shortcomings in the work organization of the judge;

4. from 1 to 5 points, when the statistical average length of proceedings for a judge is more than 10 percent longer than the average duration of proceedings of judges of the respective court, when the reasons for longer proceedings are related to shortcomings in the work organization of the judge, repeated violations of procedural deadlines;

5. additional up to 5 points may be awarded, taking into account the specifics of the cases under consideration (complexity and scope of the cases under consideration), as well as in cases when the statistical average duration of proceedings in the relevant court is shorter than the statistical average duration in the Republic of Lithuania.

The quality of procedural decisions is assessed taking into account the stability indicators of procedural decisions (data on procedural decisions adopted or revoked by a higher court), reasons for amendment and revocation of procedural decisions, number of absolute grounds for invalidity, compliance with procedural decision form, clarity of procedural decisions, logic, language expression, application of good practice in drafting procedural decisions (for example, the Recommended Standards for the Quality of Judicial Procedures, approved by the Judicial Council Resolution No. 13P-65- (7.1.2) of 27 May 2016), awarding up to 25 points:

1. from 21 to 25 points, when the quality of procedural documents is very good (procedural decisions are logical, clear, meet the requirements for procedural documents and the requirements of the state language), the stability indicators of procedural decisions adopted and appealed by a judge are higher than the average in courts;

2. from 15 to 20 points, when the quality of procedural documents is good (procedural decisions are logical, clear, meet the requirements for procedural documents and the requirements of the state language, there are only isolated deficiencies of this kind), the stability indicators of procedural decisions adopted and / or appealed by a judge are slightly higher, equal to or slightly below the average of these indicators in the courts of the relevant level;

3. from 8 to 14 points, when the quality of procedural documents is average (procedural documents are not always written in an orderly manner, do not always meet the requirements of legal acts and the state language, they lack clarity and consistent presentation), stability indicators of procedural decisions adopted and / or appealed by a judge slightly lower than the average of these indicators in the courts of the respective level, many procedural decisions had been changed;

4. from 1 to 7 points, when the quality of procedural documents is satisfactory (a higher court, when judging the legality and reasonableness of procedural decisions made by the judge under review, often notes shortcomings in motivation of procedural decisions), the stability indicators of judicial decisions made and appealed are significantly lower in the courts of the appropriate level, these shortcomings are recurrent.

The quality of a judge's leadership and organizational skills is assessed in terms of the judge's attention, diligence, treatment of parties and other participants in the proceedings, ability to listen to each person involved, attentiveness, proper planning and organization of work, ability to devote sufficient time to all issues, diligence, punctuality, observance of

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statutory deadlines, performance of duties related to the professional activities of a judge, etc., awarding up to 25 points:

1. from 19 to 25 points, when the quality of leadership of the process and shortcomings of the judge's communication and work organization were not identified;
2. from 10 to 18 points, when individual deficiencies in the quality of management of the process, deficiencies in the communication and work organization of the judge have been identified, which did not have a significant impact on the fair and just process, ensuring the rights and legitimate interests of the participants;
3. from 1 to 9 points, when re systematic and recurring shortcomings in the quality of leadership of the process, shortcomings in the communication and work organization of the judge have been identified, the judge does not comply with the requirements of duty, responsibility and impeccable conduct in his / her professional activities.

The criteria for the assessment of the professional activities of a judge set forth in items 10–13 of this Description shall apply *mutatis mutandis* to the assessment of activities of judges of the Supreme Court of Lithuania and the Supreme Administrative Court of Lithuania.

The text of the document shows that all the peculiarities related to the position of the judge (administrative office, additional work in self-governance bodies, etc.) are taken into account and foreseen by separate paragraph.

The professional activities of a judge (quality of legal work), summing up the results of the professional activities of a judge specified in items 10–13 of this Description, is considered:

1. excellent, when the overall degree of professional activities of a judge (quality of legal work) is from 86 to 100 points;
2. very good, when the overall degree of professional activities of a judge (quality of legal work) is from 76 to 85;
3. good, when the overall degree of professional activities of a judge (quality of legal work) is from 61 to 75;
4. satisfactory, when the overall degree of professional activities of a judge (quality of legal work) is from 41 to 60;
5. unsatisfactory when the overall degree of professional activities of a judge (quality of legal work) is 40 points or lower.

The Commission's opinion on the results of the assessment of an activities of judges provides information on the judge's personal and business qualities. In assessing the personal and business qualities of a judge, the following shall be taken into account:

1. communication skills of the judge (business communication with other judges, lawyers, prosecutors, participants in proceedings, employees of courts and other courts and other institutions, other persons, etc.);
2. Compliance with the requirements of the Code of Ethics for Judges;
3. other personal qualities of the judge (responsibility, tact, duty, prudence, activity in the judiciary, etc.);
4. other subject qualities of the judge (professional development in Lithuania and foreign countries, participation in international trainings, internships or seminars, scientific-pedagogical activities, participation in judicial self-government, public activities of the judiciary, drafting legal acts, ensuring common and procedural language culture, foreign language skills, information technology skills, etc.).

The information basing on which all the decisions are made are as follows:

Information needed to assess activities of judges can be obtained:

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1. directly or by means of procedural law, monitoring the progress of the proceedings of the judge whose activity is being assessed;
2. by collecting statistics on the activity of the judge in the information system of Lithuanian courts LITEKO;
3. by examining information on the training of the judge, professional development and results of examination of acquired knowledge, internships abroad, scientific and pedagogical activities of the judge, etc;
4. by analysing the material of inquiries and statements by persons, complaints not related to the administration of justice, collected in accordance with the procedure for supervision of administrative activities;
5. by assessing oral and written explanations by the judge whose activity is being assessed and (or) the written answers to the questionnaires given by the Chairman of the Court and / or the Permanent Commission for the Assessment of Activities of Judges (hereinafter - the Commission);
6. by analysing procedural decisions made by the judge alone or when participating as a speaker.

The information necessary for the assessment of activities of chairmen, vice-chairmen or chairmen of divisions may also be obtained by examining information on the performance of internal court administration and judicial administrative functions assigned to these persons (implementation of measures to ensure internal court administration objectives, external administration assessment of the state of the court's internal administration and provision of proposals, methodological recommendations, unification of the court's internal administration).

Conclusions: Very detailed regulation of evaluation procedures may be accepted as benefit or as weakness, depending on different aspects which may be compared or affected.

Essential role in evaluation procedures play quantitative criteria – number of cases solved, number of decisions changed or canceled, terms of the procedures, etc. Those criteria on international level are defined as less important or that should not be crucial in decision making procedures.

There are some gaps in regulation related to the right of a judge to ask for extraordinary evaluation – should it be performed in the period when previous conclusion is valid?

Terms of gathering of the data necessary for evaluation on one hand are appropriate, on another hand – may be obstacle for quick and effective performance of procedures, especially if they are related to upcoming selection procedures.

3.2.2. Latvia

The competencies evaluated by the Committee are also detailedly explained in Law on Judicial powers.

Section 94.² Assessment of the Professional Activities of a Judge

(1) When assessing the professional activities of a judge, the Judicial Qualification Committee shall analyse the following professional activities of a judge and their results:

- 1) the structure of the prepared rulings, the legal reasoning provided therein, the application of material and procedural norms, and also the use of ancillary legal sources;
- 2) the management of the court procedure;
- 3) the organisation of work for ensuring the examination of court cases;
- 4) the compliance with the regulations regarding the organisation of work and the orders of the President;

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- 5) the participation in measures for improving qualification (including the acquisition of a master’s degree or doctoral degree), as well as the teaching and scientific activities;
- 6) public activities (participation in judicial self-government authorities, in the development and improvement of draft laws and regulations, the provision of opinions on legal matters to the Saeima, the Constitutional Court and other institutions);
- 7) statistical data on the work of the judge.

(2) Based on the analysis of the professional activities of a judge, the Judicial Qualification Committee shall provide an assessment of the following professional skills of a judge:

- 1) acquisition and analysis of information in order to make justified conclusions;
- 2) taking of decisions by evaluating information and using different approaches in resolving a problem;
- 3) explanation of their opinion and arguing of its correctness;
- 4) analysis of their actions and hearing of criticism;
- 5) ability to compromise in problem situations;
- 6) ability to maintain emotional equilibrium in stressful situations.

[9 June 2011/ Section shall come into force on 1 January 2013. See Paragraph 45 of the Transitional Provisions]

Methodology. The procedure (methodology of evaluation) is defined in the Law in such way: **Section 94.³ Procedures for the Assessment of the Professional Activities of a Judge**

(1) For the assessment of the professional activities of a judge of a district (city) court or, regional court, the President of the relevant court, and the President of a higher instance court shall provide feedback on the work of the judge, including information on the quality of the rulings given thereby, the quality of the management of the court procedures, the improvement of the professional and academic qualification and other professional activities.

(2) The President of the Supreme Court shall provide the feedback provided for in Paragraph one of this Section on the work of a judge of the Supreme Court.

(3) The Court Administration shall compile and submit to the Judicial Qualification Committee the feedback provided by the President of a court and the President of a higher instance court on the work of a judge of a district (city) court or a regional court.

(4) The Administration of the Supreme Court shall compile and submit to the Judicial Qualification Committee the feedback on the work of a judge of the Supreme Court.

(5) A judge shall submit a self-appraisal of his or her own professional activities to the Judicial Qualification Committee.

(6) If the received feedback does not provide sufficient information, prior to the assessment of the professional activities of a judge, the Judicial Qualification Committee may request the Court Administration to compile the feedback of the judges and court employees of the relevant court on the work of the judge, and also survey other participants in the procedure.

(7) The Chairperson of the Judicial Qualification Committee may order any member of the Committee to selectively become acquainted with the rulings given and procedures managed by a judge (with recordings of the procedures).

(8) The professional activities of a judge shall be assessed at a meeting of the Judicial Qualification Committee, with the participation of the judge whose professional activities are being assessed. If the judge fails to appear at the meeting without a justified reason, professional activities of this judge may be assessed in his or her absence.

(9) Prior to the meeting the Judicial Qualification Committee shall become acquainted with the materials submitted regarding the work of the judge and with the judge’s self-appraisal of the professional activities. The Court Administration and the Administration of the Supreme

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Court shall acquaint the judge whose professional activities are being assessed with the relevant materials in a timely manner before the meeting the Judicial Qualification Committee.

(10) The Judicial Qualification Committee shall provide a favorable or unfavorable opinion on the professional activity of a judge.

[9 June 2011; 25 October 2018 / Amendment to Paragraphs one and three regarding deletion of the words “and a Land Registry Office” shall come into force on 1 June 2019. See Paragraph 95 of Transitional Provisions]

Section 94.⁴ Re-assessment of the Professional Activities of a Judge

(1) If a judge has received an unfavorable opinion in the assessment of the professional activities or the extraordinary assessment of the professional activities, when the extraordinary assessment has been made based on a decision of the Judicial Disciplinary Committee, the re-assessment of the professional activities of the judge shall be made within the time period specified by the Judicial Qualification Committee, however, not later than within two years from the previous assessment, with the participation of the judge whose professional activities are being re-assessed. If the judge fails to appear at the meeting without a justified reason, professional activities of this judge may be assessed in his or her absence.

(2) If a judge has received an unfavorable opinion in the re-assessment of his or her professional activities, he or she shall be dismissed from office.

[9 June 2011; 6 September 2018]

The decisions of the Committee may be appealed according regulations of the Law on courts:

Section 93.¹ Appeal of an Opinion of the Judicial Qualification Committee

(1) A judge may appeal an opinion of the Judicial Qualification Committee to the Disciplinary Court.

(2) The regulations of the Judicial Disciplinary Liability Law in relation to the preparation and examination of a complaint regarding a decision of the Judicial Qualification Committee shall also be applicable to the preparation and examination of an opinion of the Judicial Qualification Committee, insofar as this Law does not provide otherwise.

(3) When examining a complaint regarding an opinion of the Judicial Qualification Committee, the Disciplinary Court may:

1) leave the opinion of the Judicial Qualification Committee unamended and reject the complaint;

2) revoke the opinion of the Judicial Qualification Committee and send the files for re-examination to the Judicial Qualification Committee.

Conclusions. Procedures are rather similar to Lithuanian experiences. The main regulation is defined in specialized law. The participation of lay persons in commission procedures is limited to the legal experts active in the field related to courts activities.

More influence in decision making procedures is given to the Minister of Justice.

See for concrete templates used Annex 1 “Selection, evaluation and promotion in Latvia”.

3.2.3 Estonia

According to standard formats for submission of opinion of chairman of court and of report of judge-supervisor:

1) the procedural statistics of resolved matters,

2) the professional knowledge and skills very good legal knowledge, ability to use legal knowledge, ability to describe circumstances, analytical skills, argumentation skills, knowledge

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of judicial ethics, ability to draft court decisions, ability to reconcile and reach an agreement, communication skills, conflict management skills, ability to use legal information databases, knowledge of the principles of public relations, ability to organize one's work, including time planning, team management skills, stress management skills,

3) the participation in training (especially the professional skills training program for judges of a court of the first instance and of a court of appeal who assumes office approved by the Judicial Training Council),

4) the abilities and personal characteristics, are considered/evaluated - honesty and trustworthiness conscientiousness perseverance and courage to decide good stress tolerance emotional stability empathy human maturity curiosity courtesy and dignity respect for the rule of law balance diligence independence interoperability.

Methodology. The Supreme Court *en banc*. Decision that a judge is unsuitable for the office of judge shall be made by the Supreme Court *en blanc* (within three years after appointment to office only).

Upon assessment of suitability for the office of judge, the Supreme Court *en banc* shall consider the proposal of a person or body entitled to commence disciplinary proceedings, the opinion of the judge's examination committee and other information characterizing the work of the judge. At least ten days before the suitability of a judge is discussed at a session of the Supreme Court *en banc*, a reasoned proposal of a person or body entitled to commence disciplinary proceedings to release the judge from office and the opinion of the judge's examination committee shall be presented to the judge whose suitability for office is assessed, and he or she is allowed to examine the gathered materials.

A chairman of a court. Once a year, the chairman of a court shall submit his or her opinion and reports by a judge-supervisor concerning a judge with less than three years length of service employed in the court to the judge's examination committee.

A judge-supervisor. A judge supervising a judge with less than three years length of service shall submit a report regarding the supervised judge, assessing his or her suitability for the office of judge and the development of the management skills of the proceedings, and, if necessary, provide other information once a quarter until the expiry of the term of supervision to the chairman of a court (a report of a judge-supervisor – Annex 1).

The judge's examination committee. The judge's examination committee 1) examines opinions submitted by chairmen of courts and reports submitted by judges-supervisors; 2) gives an opinion concerning judge whose suitability for office is assessed, for the Supreme Court *en blanc* (the committee shall hold a session where the judge whose suitability is assessed is heard).

The judge's examination committee shall establish the standard formats for submission of opinion and of report. (it is attached to the document).

Conclusion. The question exists how judges' activities are controlled after he passes the term of three years (supervision period) and becomes permanent judge.

The main player in evaluation procedures are representatives of Courts and Supreme court. No lay persons are involved.

3.3 Scandinavian region

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3.3.1 Norway

As mentioned earlier Norway does not have a formal evaluation procedure. For more details check the Chapter on the General legal framework of the selection, evaluation and promotion of judges in Norway.

3.3.2 Denmark

The Special Court of Indictment and Revision (*Den Særlige Klagerett*) that makes decisions in disciplinary cases involving judges and other judicial personnel employed by the courts. The Special Court of Indictment and Revision is comprised by one Supreme Court judge as the chairman, one High Court judge, one District Court judge, one professor of law and one attorney in private practice. Four members are nominated by the Supreme Court, the High Courts, the Association of Danish Judges, the General Council of the Danish Bar and Law Society, respectively. The professor of law is appointed without nomination. The Special Court of Indictment and Revision secretariat is under the supreme court and is made up of three deputy judges and two secretaries. The organ handles complaints against judges and other judicial personnel as well as experts over the execution of their office. Following the Adjustment of Justice Act §86, it also handles requests to reopen criminal cases.⁴²¹

A person who considers that s/he has been offended by the unseemly or improper conduct of a judge in the performance of the latter’s official duties may lodge a complaint with the Special Court of Indictment and Revision which acts as a disciplinary court in such cases. The complaint has to be filed within four weeks of the plaintiff becoming aware of the conduct occasioning the complaint. The case can also be brought before the Court by the relevant court president or by the Director of Public Prosecutions upon request of the Minister of Justice, if the latter finds that a judge’s conduct diminishes or makes her/himself unworthy of the esteem and confidence presupposed by judicial office. In the disciplinary procedure, the judge concerned is requested to submit a written statement on the alleged facts. If s/he contests them, ordinary standard procedures for inquiries and investigation may be put into action. If the judge wishes or if the nature of the case demands it, the Court may order that the case be heard either publicly or in camera. Upon request, the Court may assign a counsel to the judge and the private complainant.⁴²²

The Special Court of Indictment and Revision cannot review a judge’s judicial decision, but it can reprimand the judge in a written statement or impose a fine if it is found that the judge has behaved improperly or unseemly in her/his acts in office. In case of serious misconduct, the Court can dismiss the judge. Judgments in these cases can be appealed to the Supreme Court. Finally, the Court can suspend a judge if criminal proceedings have been instituted against her/him, if the judge must be presumed to be guilty of such unseemly conduct as described above, or if the judge has become unreliable or is unable to perform her/his duties due to mental or bodily weakness.⁴²³

Judges may be subject to ordinary criminal proceedings and sanctions if they commit offences such as bribery or breach of professional confidentiality. Furthermore, the intentional submission by judges of incorrect information relating to paid accessory occupations is

⁴²¹ <https://domstol.dk/densaerligeklageret/>

⁴²² Council of Europe, page 31

⁴²³ Council of Europe, page 31

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punishable under article 162 CC (fraudulent misrepresentation) by a fine or up to 4 months' imprisonment. Judges do not enjoy immunity.⁴²⁴

According to the Adjustment of Justice Act, all criminal cases must be processed within due time depending on the nature of the case. Furthermore, all courts must – in both civil and criminal cases – by the end of the trial have notified the parties of when a decision will be delivered, and give a decision as soon as possible after the trial. The law provides for precise deadlines for different types of cases. For example, in criminal cases the decision must in principle be given within one week after the trial if the decision cannot be given on the same day and in jury trials, no later than the day after the trial. If a judge does not follow the requirements on processing times, s/he may in serious cases be criticised by the Special Court of Indictment and Revision for having shown unseemly conduct, but such cases are rare. In 2005, a judge was criticised for not ending a simple case in due time and in 2006 a judge was criticised for failing to comply with a request from the prosecution to conduct a preliminary hearing within 24 hours of the arrest of a person (as required by the Constitution). Unseemly conduct may in very serious cases lead to a verdict from the Special Court that the judge is to be removed from her/his position, but this has never happened in practice.⁴²⁵

Violations by judges of rules may result in either disciplinary actions or criminal sanctions. Where a judge is guilty of negligence or carelessness in the performance of her/his duties in a way that does not result in punishment under the law, or where the judge otherwise conducts her/himself in an unseemly or improper manner, a caution may be administered to the judge by the relevant court president (or by the president of the closest superior court if the conduct of a court president is concerned). Such cases can be instituted by complaint within four weeks of the plaintiff becoming aware of the conduct occasioning the complaint, or by the court president.⁴²⁶

A lay judge may be suspended temporarily or permanently if s/he is charged with or convicted of a criminal offence that makes her/him unfit to perform as a lay judge. A lay judge who misbehaves in court can be suspended if s/he continues to behave in an improper way. The president of the relevant High Court decides on any question of suspension.⁴²⁷

Regarding expert judges, after their nomination by private organisations, the experts submit to the court a letter of motivation including a curriculum vitae, their criminal records are checked, and personal interviews are held. Expert judges are asked to answer a questionnaire in order to inform the court, inter alia, of their present and past specific field of expertise and of their employment and any membership of boards of governors. If an expert judge is employed by or otherwise affiliated to a group of companies s/he is asked to list all companies in the group in question. The information submitted is stored in the court's database and is updated on a yearly basis according to a standard procedure. The names of the expert judges are made public on the internet and the parties are informed of the identity of the expert judges who are selected for the particular case. Information on the current main employment of the expert judges is also published on the internet, with the consent of the expert concerned.⁴²⁸

Regarding the managers: each year goals are set by the courts concerning the processing time in the District Courts. If a court has problems meeting the goals, the Court Administration

⁴²⁴ Council of Europe, 31

⁴²⁵ Council of Europe, 25

⁴²⁶ Council of Europe, 26

⁴²⁷ Council of Europe, 24

⁴²⁸ Council of Europe, 25

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might initiate a dialogue with the president of the court to discuss what can be done to improve processing times.⁴²⁹

Methods for evaluation. The selection of judges in Denmark has previously been characterised by a career path for judges, where one typically started as a deputy judge or as an employee in the department of justice. After ten to twelve years of employment one would be eligible to apply to become a judge at a district court. The court reform of 1999 sought to secure a broader recruitment of judges and a greater degree of openness in the appointment of judges. As a part of the reform a separate Judicial Appointment Council, Dommerudnævnelsesrådet, was created by law number 402 of 26th of June 1998 which amended the Adjustment of Justice Act, the Civil Service Act and other legislation.⁴³⁰ Judges are appointed by the Queen following a selection by the Ministry of Justice. The Ministry selects judges based on appointments made by the Judicial Appointment Council. Regulations regarding the selection of judges is stipulated in chapter 4 of the Administration of Justice Act.⁴³¹ The Judicial Appointment Council is comprised by six members, appointed by the Minister of Justice for four years. Members cannot be re-appointed. Two members leave the Council every other year. Each member has a personal substitute member. The leader of the Council should be a Supreme Court judge. The other members are a High Court judge, a district court judge, a lawyer in private practice and two representatives of the general public. Members of central, regional, and local political organs may not be members of the Council. The Council’s leader has a double vote, meaning that the judge members of the Council may have decisive influence over who are appointed as judges.

All appointments made by the Council have been solicited by the Danish Court Administration (Domstolsstyrelsen) in advance. The Danish Court Administration solicits the the positions on different medias, including domstol.dk, Danmarks Domstoles intra, DJØFbladet, Jobnet, JuraJob, AvoJob and DJØF Jobunivers.⁴³² Anyone applying for a position as a judge would have to include as part of their application: evidence of exam at bachelor- and *kandidat*-level, as well as a CV. Furthermore, as follows by the Civil Service Act §8 stk. 1, the applicant should supply statements made by previous and current employers. This is so that the Council will have the broadest possible basis for making its decision. Following the Civil Service Act §5, stk. 3-5, the Danish Court Administration draws up a candidate list for every position which is then shared with the Council, the Danish Judge Association, and the Danish Association of Deputy Judges. The Administration also obtains information from the Danish Bar and Law Society on possible sanctions in connection with disciplinary proceedings concerning the applicants who are or have been lawyers.

The Danish Court Administration provides secretarial aid to the Judicial Appointment Council. The secretary is subject to the instructions of the leader of the Council. The Council only appoints one applicant to one post. The Council releases the selected candidate to the Minister of Justice who cannot appoint any other candidate than that selected by the Council but may discard this candidate. If the Minister were to reject the Council’s candidate, he would have to notify Folketingets Retsudvalg (the parliament’s court committee).⁴³³ It is generally expected that the recommendations of the Council for the appointment of judges will be

⁴²⁹ Council of Europe, 24

⁴³⁰ <https://www.domstol.dk/dommerudnaevnelsesraadet/om-dur/>

⁴³¹ NOU 2020: 11, section 11.5, page 111, <https://www.regjeringen.no/contentassets/367acaf16a2941bfaf5e3b1ae7bfe95f/no/pdfs/nou202020200011000dddpdfs.pdf>

⁴³² <https://www.domstol.dk/dommerudnaevnelsesraadet/proces/>

⁴³³ NOU 2020:11, page 111

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followed by the Minister. If the Minister does not follow the recommendation s/he has to inform Parliament, but in practice there have not been any such cases.⁴³⁴

Lay judges are appointed for a period of four years by the High Courts following proposals by the municipalities. In each municipality, a special committee composed of local council members selects a number of residents who are considered suitable to serve as lay judges and includes them in a list which is sent to the relevant High Court president. Following criminal record checks, lists of available persons to act as lay judges are established through a system of lottery. According to sections 68 et seq. AJA, members of certain professions – e.g. professional judges, officials employed by central government, etc. – are excluded from acting as lay judges. During the talks on site, it was indicated to the GET that campaigns by the authorities aimed at achieving ethnic diversity and age balance among lay judges are quite successful. New lay judges are invited to an introductory meeting which includes a presentation of the disqualification rules. When a case starts that involves lay judges, the latter have to sign a declaration of impartiality.⁴³⁵

The same entities that are responsible for the appointment of judges are responsible for the promotion or transfer of judges. The procedures are substantially the same. A judge can only be promoted or transferred on application. Only the Special Court of Indictment and Revision can, by a judgment, dismiss or transfer a judge against her/his will, except in cases where a reorganisation of the courts is made. In the course of the 2007 reorganisation of the courts which merged the 82 District Courts into 24, no judge was dismissed but some were transferred against their will as their District Court ceased to exist.⁴³⁶

2.3.3 Sweden

The Government Disciplinary Board for Higher Officials examines matters concerning disciplinary responsibility, reports for prosecution, dismissal, suspension and compulsory medical examination regarding government employees in senior positions.⁴³⁷

The board examines questions about disciplinary liability, prosecution, dismissal, suspension and medical examination by force regarding government employees in senior positions. Among other things, plant managers, judges, prosecutors and professors belong to this circle. The purpose of an examination outside the authority where the employee works and has a higher position, is that it should not be possible to suspect that colleagues take unauthorized considerations into account in the examination. The board's decision may, like other decisions by employers, in some cases be the subject of an employment dispute. The authority where the employee is employed has the right but also the obligation to report a matter to the liability committee. The Riksdag's ombudsmen (JO) or the Chancellor of Justice (JK) also have the right to report.⁴³⁸

⁴³⁴ Council of Europe, page 22,

⁴³⁵ Council of Europe, page 23-24

⁴³⁶ Council of Europe, Page 23

⁴³⁷ https://www.government.se/government-agencies/government-disciplinary-board-for-higher-officials--statens-ansvarsnamnd/?fbclid=IwAR3GN6fe5i2W6Pm5EeBI3MvtxTdLtNQwVaD-MEYshnGdZfvRU1COxoQFxFk&TSPD_101_R0=088d4528d9ab2000c8be54da76e32e8472223c9afc6d9d9eb91d9f7f820b9a3b3e12c401857d522808259bc90a143000f50bee1956dac5f4c457a8b1f74a3ba36ac4270a3bb85122140ea980d63c035480f85bdeaaa7887e8b27d9b9fb8770f5

⁴³⁸ <http://statensansvarsnamnd.se/?fbclid=IwAR0NDZYb0d32RnotlrPWx23p27zalUhcV55sGk8nel7utrwcnkOM9xa7z3M>

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In principle, a permanent judge can be removed from office only on one of the grounds enumerated in Chapter 11, article 7 of the Instrument of Government, namely if through a criminal act or through gross or repeated neglect of official duties s/he has demonstrated being manifestly unfit to hold the office (according to the established practice, these conditions are fulfilled in particular where a judge commits a crime and receives a sanction other than a fine, e.g. imprisonment); when s/he has reached the age of retirement; when due to loss or reduction of working capacity s/he is permanently unable to satisfactory fulfil assignments. As a rule, such matters are decided by an independent State authority called the National Disciplinary Offence Board. However, the Supreme Administrative Court examines whether a justice of the Supreme Court shall be removed from duty, and vice versa. A non-permanent judge may be dismissed if her/his obligations to the employer have been grossly neglected. The decision to dismiss a non-permanent judge is taken by the National Disciplinary Offence Board. A court shall dismiss a lay judge if s/he has shown her/himself through a criminal act or otherwise to be manifestly unfit for the task. It is possible to appeal a decision to dismiss a lay judge (Page 29).⁴³⁹

There exist several institutional safeguards against corruption, inter alia, in the form of the Chancellor of Justice and the Parliamentary Ombudsmen who are tasked with supervising the actions of public officials including judges (Page 4).⁴⁴⁰

If a judge knows of any circumstance that can be considered to warrant disqualification, he is obliged to disclose it on his own accord. If a party desires to assent to the disqualification of a judge, he shall raise the objection on his first appearance in court or in his first written submission in the case after learning that the judge serves in the court or is otherwise handling the case or, if at that time the disqualifying circumstance was not known to the party, after learning of the circumstance. If a party fails to observe this requirement the right to raise the objection lapses. The question of disqualification of a judge in a lower court may not be entertained in a superior court unless the objection is made in the superior court by a party who, in accordance with the provisions of the second paragraph, is entitled to raise the question, or an appeal is brought against the decision that rejected the objection. (SFS 1983:370).⁴⁴¹

Methods of evaluation. All permanent judges are appointed by the Government, for an indefinite period of time, following an open competition and upon a recommendation by the Judges Proposals Board in accordance with the provisions of the Act (2010:1390) on the appointment of permanent judges. Most non-permanent judges, e.g. assistant judges and associate judges are employed until further notice. Other non-permanent judges are employed for a fixed period of time. The courts are responsible for employing most of the non-permanent judges. Lay judges are hired for a term of four years.

An independent State authority called the Judges Proposals Board administers all matters regarding appointment of permanent judges including technical judges. It is composed of nine members appointed for a period of four years. Two of them are elected by the Riksdag as representatives of the public, and seven are appointed by the Government (of which five must be or have been permanent judges and two must be lawyers active outside the judiciary). The

⁴³⁹https://www.legislationline.org/download/id/5206/file/GrecoEval420131_Sweden_EN.pdf

⁴⁴⁰<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806ca2c3>

⁴⁴¹https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/National_Regulations/National_Laws_on_the_Bars/EN_Sweden_Swedish-Code-of-Judicial-Procedure.pdf

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Judges Proposals Board submits proposals to the Government detailing which of the applicants is best suited for the post. The Government is not bound by the board’s proposal, but it cannot appoint a person who has not first been heard by the board. The Ministry of Justice reviews the matter thoroughly and, finally, it is presented to a cabinet meeting for decision. There are no specific grounds on which the Government may derogate from the proposal, but appointments must always be based on objective factors. In practice, the Government has always followed the board’s proposal except in two instances. During the interviews held on site, the GET was made aware of two cases (one case in the 1980’s and the other in 2005/2006) where the Government derogated from the initial proposal by the board and where the second-best candidate was selected. Neither the proposals by the Judges Proposals Board, nor the Government’s decision can be appealed against (26-27).

Appointments of judges must be based only on objective factors such as merit and competence.

The Swedish code of judicial procedure

- The legally qualified judges shall be Swedish citizens and shall have passed the professional examinations prescribed for qualification for judicial office.
- The professional examinations and other conditions for judicial office are prescribed by the government.
- The lay judges are elected. If a court district covers more than one municipality, the district court shall divide the number of lay judges among the municipalities in proportion to their population. The government or the authority designated by the government shall decide the number of courts of appeal lay judges to be elected for every county in the territorial jurisdiction of the court of appeal or, if the territorial jurisdiction includes part of a county, for that part of the county. (SFS 1988:616)
- All Swedish citizens registered in the municipality or, as to lay judges of a court of appeal, in the county or that part of the county that is within the area of the court, are eligible to be elected as a lay judge, provided they are adult and do not have an administrator under the Code on Parents, Guardians and Children, Chapter 11, Section 7, Legally qualified judges, court officers, public prosecutors, police officers, advocates or other persons who are otherwise professionally engaged in the representation of litigants in judicial proceedings, may not be lay judges. No person may at the same time be a lay judge in a court of appeal and in a district court. A person who has attained the age of sixty years or who provides a valid excuse is not obliged to accept appointment as a lay judge. A person who has resigned as a lay judge is not obliged to serve again before the expiration of four years. The court shall on its own motion examine the eligibility of the elected person. (SFS 1994:1620)⁴⁴²

The Judges Proposals Board

Supplementary provision 13.23.2 In accordance with Section 4 of the Act on the appointment of permanent salaried judges (2010:1390), the Riksdag elects two members to represent the public in the Judges Proposals Board and one personal substitute for each of them (158).⁴⁴³

⁴⁴²https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/National_Regulations/National_Laws_on_the_Bars/EN_Sweden_Swedish-Code-of-Judicial-Procedure.pdf

⁴⁴³<https://www.riksdagen.se/globalassets/07.-dokument--lagar/the-constitution-of-sweden-160628.pdf>

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There is no promotion list. A permanent or non-permanent judge who wants to obtain a higher position has to apply for it. Permanent judges are appointed by the government on the proposal of a special board. Most of the members of this board are judges and the chairman are the president of one of the supreme courts. The trade unions that organize court personnel are also represented. Only objective factors such as the merits and competence of the candidates are considered. Swedish citizenship is needed to be appointed to a judge. The suggestions of the board are made public.⁴⁴⁴

Once a person secures one of the permanent judicial positions, the cabinet determines judicial appointments and promotions based on merit. Judges who wish to serve at the appellate level usually must wait until they have accrued approximately 20 years of service. Supreme court justices are generally selected from the ranks of the appellate judges. Occasionally, a law professor or a distinguished attorney is selected to serve on the high court.⁴⁴⁵

The same entities that are responsible for the appointment of permanent judges are responsible for the promotion of permanent judges. The procedures are substantially the same (28).⁴⁴⁶

2.3.4 Finland

Judges enjoy constitutional protection and can, in principle, not be removed. A judge can however be dismissed by court order if s/he is found guilty of abuse of official authority or other serious offences of office or if s/he is sentenced to jail. Justices or referendaries of the Supreme Courts who wish to resign, offer their resignation to the court in which they serve. All other judges submit their resignations to the Ministry of Justice unless otherwise provided for by law. A judge is required to resign from State service if s/he has become disabled because of sickness, handicap or injury. If a judge does not then resign, the court of law before which s/he would be charged with an offence in office shall discharge him/her without application, after having been given an opportunity to state his/her case.⁴⁴⁷

There is no express provision in the law on removal of a judge from a case. The authorities state that in practice, the Chief Judge as part of his/her management duties may remove a judge from a case in the event of unacceptable delay in the consideration of a case. Under article 21 of the Constitution, everyone has the right to have his/her case dealt with appropriately and without undue delay by a legally competent court of law or other authority. A recent specific act lays down provisions on the right of a party to receive compensation out of State funds for the excessive length of judicial proceedings. It is up to the Chief Judge of the court to ensure that cases are resolved without undue delay.

In accordance with section 14(2) of the State Civil Servants Act, a civil servant – including a judge – “shall conduct him/herself in the manner befitting his/her status and duties.” Pursuant

⁴⁴⁴ <https://www.aihja.org/images/users/ARCHIVES/docutheque-docs/ERreportSweden.pdf>

⁴⁴⁵ https://books.google.no/books?id=hJaEzC1CBe8C&pg=PA248&redir_esc=y#v=onepage&q&f=false

⁴⁴⁶ <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806ca2c3>

⁴⁴⁷ Council of Europe, page 27

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to article 7 of the Code of Judicial Procedure, judges take an oath of office at the start of their judicial career which binds them to upholding the principles of office and to avoiding misconduct. The authorities furthermore indicate that the “Instructions for a Judge” - drafted by the reformer, minister and legal scholar Olaus Petri around 1540 - are integral to the Finnish legal tradition. Although the Instructions have never been confirmed as law, they have, as the introduction to the Collection of Laws, had a profound influence on judicial practice and a number of these rules on civil, criminal and procedural law have also been incorporated into the laws. The main theme of the Instructions is that the laws and authorities are for the good of the people and that power must not be abused.

On 4 May 2012, the Association of Finnish Judges adopted a set of “Ethical Principles for Judges”, following consultations with the Finnish Bar Association, the Association of Finnish Prosecutors, the Faculty of Law and the Department of Philosophy at the University of Helsinki, the Ministry of Justice, the Parliamentary Ombudsman, the Office of the Chancellor of Justice, the National Research Institute of Legal Policy, the Association of Finnish Crime and Court journalists “Oikeustoimittajat”, and the Association of Finnish Lawyers. Furthermore, during the preparation of the Ethical Principles hearings had been organised for judges and referendaries – regardless of whether they were members of the Association of Finnish Judges or not – and the Association of Finnish Lay Judges had been asked to comment on the draft. The Ethical Principles were made public on 12 October 2012 and are available on the website of the Association of Finnish Judges and on a website on the “Judicial system in Finland” maintained by the Ministry of Justice. The authorities furthermore indicate that the Ethical Principles have already been distributed to all professional judges and referendaries and they will be included in the next Ministry of Justice training programme for 1,700 newly elected lay judges.⁴⁴⁸

Evaluation bodies. As an independent and autonomous professional, the Judge has the main responsibility for the quality and effectiveness of his/her work. The managers carry out monitoring activities regularly, but interventions are made only if clear problems or negative trends emerge. Productivity, timeliness and judgments are the main subject of continuous evaluation of Judges. The quality of judgments is a more sensitive issue and the productivity and effectiveness are seen somewhat easier to evaluate and control. The continuous evaluation is needed, because in promoting and recruiting situations, a detailed and versatile statement about the person’s knowledge and skills is required from the court manager. However, no official Judge specific registration concerning the quality evaluations are kept. The continuous evaluation of Judges is the responsibility of the court manager(s). In larger courts, this usually means the department managers (management team) in co-operation with the court President. In smaller courts, the manager usually personally knows the personnel and the evaluation is more straightforward in practice and can be handled by a single court manager/president. In larger courts, the departments are quite independent related to e.g. distribution of work and monitoring performance. Also close colleagues and other peers have a role in evaluating the work situations and react if needed.

The large size differences between Finnish courts influences significantly the operating environment and management requirements. Thus the exact ways and levels of details and systematics in evaluation practices varies between courts and depends heavily on the managers/management team focus, interests and ways of working.⁴⁴⁹

Evaluation Process. As Judges do not have specified working time nor performance based salary, the focus of evaluation is in the work results.

⁴⁴⁸ Council of Europe, page 27-28

⁴⁴⁹ Lut University, Report – The Evaluation and development of quality of justice in Finland, page 19

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There are variations between courts, but the primarily *statistical* evaluation is based on the reports acquired from the case management system (e.g. number of solved cases, handling times of solved cases, number of pending cases, number of old pending cases).

In larger courts, the department managers follow the workload and work situation of individual Judges based on the statistics on regular basis and they are controlled approximately twice a year in management team meetings. In these meetings the work situation and the work activity of each Judge is evaluated. One important aim in these evaluation meetings is to ensure that the workload is even between the Judges. If there appears to be large differences in the workloads and activity, the reasons are evaluated (e.g. complex case structure, personal reasons). The aim is to ensure that the times from filing to hearing/handling of the cases are as equal as possible. If problems appears in capacity and work situation, the Judge is asked to given an explanation for it. If the workload situation is too problematic, a re-distribution of cases or temporary easement in case distribution are considered

Different types of department meetings, executive board meetings and other internal discussions are arranged as a part of everyday court management system. In these meetings, the current topics and improvement needs are discussed. The goals and arrangement of these type of meetings varies between the needs of the court and the department.

The yearly development discussion between the Judges and the supervisors are a central tool for evaluation. In the discussion the work and actions are evaluated and discussed diversely and based on personal situation and needs; e.g. possible complains, functions in work community, workload situation, possible delays and capacity situation. As an addition, improvement and training needs for the following year is reviewed and agreed. There are no other systematic and standardized ways to evaluate the treatment of the parties or work community behaviour: namely, if problems or complaints acquire, they are examined, discussed and reacted to accordingly, and on a case-by-case basis by the supervisors. Possible complaints or compensations are not registered in any official register

All public agencies (including courts) need to have a gender and equality program. The appointments to Judge and management positions are, however, completely gender neutral and are based purely on the evaluation statements prepared on person’s past competencies, abilities and knowledge. Judge positions divide equally between males and females.⁴⁵⁰

Evaluation of judgments and legal writing. The Code of Judicial Procedure and the Act on Criminal Procedures sets the minimum requirements for judgments and reasoning. The Supreme Court will restore the case to lower courts on procedural grounds if the justifications are insufficient. Due to the diversity of cases and different factors affecting the process of reasoning, there are no unified model for structuring and conducting judgments and writings.⁴⁵¹

The proportion of changed judgments by appellate courts are not recorded or registered by Judges. However, all decision of appellate court are delivered and advised to lower level courts. The department managers and/or court manager goes though the appellate decisions and changed judgments at a general level. If some trends emerge, these are taking into consideration in the development discussions and in planning the training needs. If it appears that there is a clear problematic trend in the judgments of an individual Judge, the reasons are analysed and discussed accordingly and case-by-case with the Judge in question. If needed, additional data of past judgments and justifications are acquired. The quality of judgments in

⁴⁵⁰ Ibid., page 20

⁴⁵¹ Lut University, Report – The Evaluation and development of quality of justice in Finland, page 20

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Finland is broadly and generally good, there still exists some variability in the quality between courts and sometimes even between the same court's Judges. However, all and all, the situations where there have been systematic problems with individual Judge's judgments and legal writings are highly unusual.⁴⁵²

In some courts there are Judge specialisation procedures used (e.g. specialization for criminal/civil cases or for some specific case group). Specialization is seen as a means for ensuring unified application of law, as well as increased effectiveness and expertise in the area. For practical reasons, the specialization has been possible only in larger courts. In courts where there are specialization procedures, there is also rotation between specialized areas (typical time-span 2-3 years).

Important tool also in the evaluation and improvements of judgments and legal writings are the personal training plans. Judgments and legal writings are central elements in training programs and in different quality projects undertaken in various judicial districts. Individually planned training programs are the main mean to improve and maintain legal competence. For example for newly appointed Judges with a working background outside judiciary, usually more comprehensive training program is planned.

Methods of evaluation. Usually, Judges appointed for the first time are persons around the age of forty. The most typical career path for a Finnish Judge proceeds as follows: University degree in law - Judicial traineeship at a District Court - Work as a referendary at a Court of Appeal or Administrative Court - Temporary service as a District Judge, Justice of a Court of Appeal or Administrative Judge - Appointment to a tenured judgeship. However, also other type of career paths exist, for example concerning Judges appointed from other branches of legal professions. In year 2015, 93% of appointed Judges had a position in the Judiciary at the point of nomination. In recent years, the proportion of outside applicants in the appointments have been between 4- 9%, which is slightly less than proportion among the applicants.⁴⁵³

Following the Finnish Article 102 of the Constitution the republic's president appoints judges.⁴⁵⁴ The Act on Judicial Appointments (Law 205/2000) governs the judicial appointment process. The Judges are mainly appointed for an indefinite period of time.⁴⁵⁵ Temporary appointees can cover when a judge is prevented from carrying out his/her duties, including vacations, heavy caseloads in court, or other special reasons.⁴⁵⁶

The independent Judicial Appointments Board (Domarförslagsnämnden) shall do the groundwork for the filling of positions in the judiciary and issue a reasoned proposal on an appointment to a position in the judiciary. The Board has no jurisdiction regarding the appointment of Judges to the Supreme Court and the Supreme Administrative Court. These courts of final instance make their own appointment proposals to the President of the Republic, who formally appoints these judges. All lawyers who meet the general qualifications set forth in the Act may apply. The Board is expected to promote the recruitment of judges from all walks of legal life, that is, from among legal advisers in the courts the civil service, academia and the legal profession.⁴⁵⁷ The law does not specify for which reasons the President or the

⁴⁵² Ibid., 20-21

⁴⁵³ Ibid. 15

⁴⁵⁴ NOU 2020:11, page 112

⁴⁵⁵ Judicial Appointments Act, https://www.finlex.fi/fi/laki/kaannokset/2000/en20000205_20010442.pdf

⁴⁵⁶ Council of Europe, page 25

⁴⁵⁷ Comparative Note on International Standards for Selection Competencies and Skills for Judges in Administrative Justice, OSCE Office for Democratic Institutions and Human Rights, page 22

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Government may derogate from the advice of the JAB. In practice this has only happened once. The JAB (12 members) is an independent body composed mainly of members of the judiciary. Three members come from outside the judiciary. One is a practicing lawyer appointed by the Bar Association, another is a prosecutor appointed by the Prosecutor General, and the third is an academic appointed by the Ministry of Justice.⁴⁵⁸

The court announcement of a vacancy concerning the applicants' qualification and familiarity with the position shall be detailed. The applicants' qualifications should be assessed by looking at the knowledge and skills they have acquired through their education and earlier work experience. The focus is on the applicants' ability to perform the duties required in the position. Familiarity includes issues such as substantive and procedural legal knowledge, command of legal information, problem analysis and solving skills, ability to familiarise oneself with the facts and legal material of a case, process management skills, reasoning skills and language skills.⁴⁵⁹

The procedure for appointing judges to Courts of Appeal, District Courts, Administrative Courts and special courts follow the same process. In the first two courts mentioned, the Court of Appeal declares a vacancy, prepares a summary of the merits of the candidates and presents a statement to the JAB. The statement always includes a reasoned decision as to which applicant should be appointed. For vacancies in the District Court, the Court of Appeal first consults with the District Court in which the vacancy is located and follows the same process. For the position of President of the Court of Appeal the process of declaring a vacancy, preparing and submitting a statement to the JAB is managed by the Supreme Court. The Administrative Court manages the same process for its own vacancies as do the special courts (Market, Labour and Insurance).⁴⁶⁰

In year 2015 the board made 151 permanent Judge and manager appointments. For these appointments, there were altogether 1006 applicants. From the applicants about 60 % were female and 40% male and about 85 % of the applicants had already a position in the judiciary. The typical applicant is a person in a fixed-period Judge position. 15% of the applicants were from another branch of legal career. Typical examples of outside applicants are prosecutors and legal counsellors.

The main steps in the selection process are:

3. The applicants send a written application (including all personnel record and certificates of education and previous work experience).
4. Before making its appointment proposal, the board requests a detailed assessment concerning the applicants and an opinion of the nominee from the court that has opened the position. In District Court Judge positions a statement and assessment from both the District Court in question and from the Appeal Court is required. The court that has announced the open position must give a detailed assessment and acquire sufficient information as the basis of its assessment concerning all applicants who seem eligible in regard of the qualifications they have presented. If the applicant is not sufficiently well-known in the court issuing the opinion, a written statement can be requested from the applicant's employer such as another court or another agency. If possible, information should also be obtained on eligible applicants working outside

https://www.legislationline.org/download/id/8955/file/04.12.20%20NOTE%20Kazakhstan%20Admin%20Justice%20FINAL%20for%20publication_eng.pdf

⁴⁵⁸ Council of Europe, page 25

⁴⁵⁹ Comparative Note, OESC, page 22

⁴⁶⁰ Council of Europe, page 26

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the court system. The court may also obtain other opinions and statements. Usually the court also interview the applicants as the basis for the assessment.

- After the courts have submitted their assessment and opinion to the board, the applicants are reserved the opportunity to comment on the statements and information acquired for the preparation of the appointment.
- The board selects one person from the applicants to be proposed for appointment⁴⁶¹

As an addition, in manager positions suitability testing is used. An external, specialized firm conducts the suitability testing. The test is a one-day psychological test focusing on managerial and leadership abilities. The test-day includes dozens of both oral and written tasks, which are evaluated by experts.

The assessments required from the court concerning the applicants' qualification and familiarity with the position need to be detailed. The applicants' qualifications should be assessed versatile by looking at the knowledge and skills they have acquired through their education and earlier work experience. The focus is on the applicants' ability to perform the duties required in the position. Familiarity includes issues such as substantive and process knowledge, command of legal information, problem analysis and solving skills, ability to familiarise oneself with the facts and legal material of a case, process management skills, reasoning skills and language skills.

A person appointed for a position in the judiciary must also have the necessary personal characteristics. These include talent, ability to work, initiative, efficiency and leadership skills. These also include professional ethics: the ability to make independent decisions, independence, motivation for personal development, teamwork skills and an attitude towards work and changes. These skills can be acquired in other legal professions, aside from working for the court system. Such professions include attorney, prosecutor, university researcher, lecturer, and law drafting officials, and legal professions in various administrative sectors.⁴⁶²

Fixed term appointments are made by the Supreme Court for the position of the President or Chief Judge of the Court of Appeal, Labour and District Courts, and the Supreme Administrative Court for the Administrative, Market and Insurance Courts. The Supreme Court and the Supreme Administrative Courts also appoint temporary judges (for terms of more than one year) to these same courts on the recommendations of their respective Presidents or Chief Judges. If the appointment is for no more than one year, then it is made by the President or Chief Judge of the respective courts. Before a temporary vacancy is filled, the management team of the court is consulted or where there is none, the tenured judges of the court, unless it is such a short contract that this is not deemed necessary. Vacancies for the position of justice at the Supreme Court or Supreme Administrative Courts must be announced prior to being filled. Such appointments are made by the President of Finland for a fixed term.⁴⁶³ Judges can be promoted and transferred through the appointment procedure. Article 103 of the Constitution only allows judges to be transferred with their consent unless the reason is the reorganisation of the judiciary.⁴⁶⁴

⁴⁶¹Lut University, Report – The Evaluation and development of quality of justice in Finland, page 13, <https://www.lut.fi/documents/27578/465522/Deliverable+1.2+Report+-+The+evaluation+and+development+of+quality+of+justice+in+Finland+D.pdf/f69d7404-0951-4a34-b513-df8d1a522d33>

⁴⁶² Ibid. page 14

⁴⁶³ Council of Europe, page 26

⁴⁶⁴ Council of Europe, page 26

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Prior to the year 2017, Finland did not have compulsory in-service training for Judges. Judges participated in training on a voluntary and independent basis according to their personal needs and interest. A new Court Act came into effect in Finland on 1 January 1 2017. This changed the system and practices of judicial training and recruitment. The reform introduced Judge training positions called “Assessor Training Judge” and the creation of a Judicial Training Board. In addition, the training of Judges is now made compulsory and more systematic. The idea in the reform is to implement a training path, where all Judges would have a planned training program throughout their whole career based on their skills and needs.⁴⁶⁵

The purpose of the independent Judicial Training Board is to plan and coordinate, jointly with the Ministry of Justice and the courts, the training of the staff involved in applying the law at the courts of law, from court traineeships to supplementary training. The Judicial Training Board implements the application procedure for the posts of Junior Judges candidates under the Courts Act and carries out the pre-selection. As part of the pre-selection process, the Board confirms and arranges the pre-selection exam. The Board grants the candidates who complete the training programme the title of Junior Judge. The Board also carries out the centralised application procedure for court traineeships and selects and appoints Trainees to District Courts, Administrative Courts and Courts of Appeal and grants the candidates who successfully complete the court traineeship the right to use the qualification of ‘judicial training’.⁴⁶⁶

The Government appoints the Judicial Training Board for a term of five years. The Board has ten members, six of which represent the court system. The Finnish Prosecution Service, members of the Finnish Bar Association, legal research and teaching, and the Ministry of Justice are each represented by one Board member. The appointment procedure for the Board members largely corresponds to the appointment procedure of the Judicial Appointments Board. The first Judicial Training Board took up its activities on 1 January 2017 when the Courts Act 673/2016 entered into force. The first five-year period of the Board will therefore run from 1 January 2017 to 31 December 2021.⁴⁶⁷

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⁴⁶⁵ Comparative Note, OESC, page 22

⁴⁶⁶ Ibid.

⁴⁶⁷ Comparative Note, OESC, page 23

⁴⁶⁸ NOU 2020:11, page 112

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⁴⁷⁷ Council of Europe, page 26

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Judges can be promoted and transferred through the appointment procedure. Article 103 of the Constitution only allows judges to be transferred with their consent unless the reason is the reorganisation of the judiciary.⁴⁷⁸

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2.3.5 Iceland

Judges may request not to be given a particular case due to conflict-of-interest situations or by reason of workload. The chief judge is to consider the motives stated and to take a decision on that basis. The requesting judge can always turn to the Judicial Council to review the decision taken by the chief judge.

Court procedures must be conducted efficiently; judges must deal with cases without undue delay (Article 70 of the Constitution, Article 24 Act No. 15/1998 on the Judiciary, Article 171 of the Act on Criminal Procedure). A chief judge may decide to withdraw a case from the judge to whom it was originally assigned to if the latter does not conclude it within a reasonable

⁴⁷⁸ Council of Europe, page 26

⁴⁷⁹ Comparative Note, OESC, page 22

⁴⁸⁰ Ibid.

⁴⁸¹ Comparative Note, OESC, page 23

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period of time (Article 18, Act No. 15/1998). The Judicial Council has issued guidelines for district courts on efficiency when conducting civil and criminal cases. The Act on Criminal Procedure (Article 209) and the Act on Civil Procedure (Article 165) establish a maximum delay of four weeks for the Supreme Court to deal with a case submitted for judgement and ruling. If that is not possible, in a case where there has been an oral hearing, the case is to be heard again insofar as the Supreme Court deems it necessary. The average duration of cases dealt with by district courts in 2012 was around 90 days for criminal cases and 350 days for civil cases, respectively. An excessive length of proceedings is extremely rare and there is no backlog of cases in Iceland. No single complaint against Iceland concerning Article 6 of the European Convention on Human Rights has ever been declared admissible before the European Court of Human Rights.⁴⁸²

Methods of evaluation. In Iceland, there is no regular system of evaluation for judges, nor is there a promotion system in place within the judiciary. District court judges can apply to work in the Supreme Court. Chief judges are selected in each court by their peers for a five-year term; in cases where there is no agreement in the selection, the Judicial Council has a say. Formal appointment of a chief judge is the responsibility of the Minister of the Interior. Complaints regarding the performance of judges are handled by the Committee on Judicial Function.⁴⁸³

The Act on Judiciary No. 15/1998 introduced substantial changes in the administration of the courts in Iceland. The external regulation is made by institutions not grouped with the judicial power. Parliament (Althingi) makes decisions on financial appropriations to the courts in the Finance Act, and regulates the organisation and activity of the courts, e.g. the Act on the Judiciary and Codes of Procedure. The Minister of Justice appoints judges to the Supreme Court based upon a recommendation from The Supreme Court and judges to the district courts based upon a recommendation from a special board of appointment. The Minister of Justice is the spokesman for the courts to the public and to Althingi, and responsible for their activity.⁴⁸⁴

The Judicial Council consists of five members. Two are elected by district court judges from among their peers, two by the chief judges of the district courts from among their peers, and the Minister of the Interior appoints one more member, who is not an active judge. The members are appointed for five years and cannot serve more than two terms. The Judicial Council has mainly administrative functions, which include the control of the financial affairs of the courts, issuing rules on the harmonisation of judicial practice, determining the number of judges and staff in district courts, collecting statistics, organising continuing education programmes for judges and lawyers serving the courts, etc. (Page 21)

The rules for the appointment of judges were changed in May 2010, pursuant to Act No. 45/2010 amending Act No. 15/1998. District court judges are appointed to office for an indefinite period by the Minister of the Interior (Article 12, Act No. 15/1998). Supreme Court judges are appointed for an indefinite period of time by the President of Iceland, as proposed by the Minister of the Interior (Article 4(1), Act No. 15/1998) (Page 22).

Positions for both district court judges and Supreme Court judges are advertised in the Icelandic Official Journal and/or newspapers.

⁴⁸² Council of Europe, page 26-27

⁴⁸³ Council of Europe, Iceland, page 24

⁴⁸⁴ <https://www.scandinavianlaw.se/pdf/51-29.pdf>

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The [Minister]¹⁾ shall appoint an evaluation committee of five members to examine the qualifications of applicants for the office of Supreme Court judge or district court judge. Two members shall be nominated by the Supreme Court, of which one shall serve as chairman; at least one of the two shall not be in active service as a judge. The third member shall be appointed by the Judicial Council and the fourth by the Icelandic Bar Association. The fifth member shall be elected by the Althing. Alternate members shall be nominated and appointed in the same manner. The term of appointment to the evaluation committee is five years, with the proviso that the term of one member shall expire each year. The same member cannot be appointed as a principal member of the board for more than two consecutive terms.

The evaluation committee shall provide the Minister with a written and reasoned opinion concerning applicants for the office of Supreme Court judge. The opinion of the evaluation committee shall state the board's position regarding which applicant is best qualified for the post; the board may rank two or more applicants equally. In other respects, the Minister shall establish further rules²⁾ on the functions of the Board.

No applicant may be appointed to the office of judge which the evaluation committee has not designated as the most qualified of the applicants, whether alone or equally ranked with others. However, derogation from this condition is permitted if the Althing adopts a motion of the [Minister]¹⁾ to appoint another identified applicant who, in the opinion of the evaluation committee, meets all the requirements laid down in the second and third paragraphs of Section 4. The Minister shall in such circumstances place the motion before the Althing within two weeks from the time of submission of the evaluation committee's opinion or within two weeks from the time that the Althing is next convened following submission of the opinion; the motion must be approved within one month from the time that it is placed before the Althing or the Minister will be bound by the opinion of the evaluation committee.⁴⁸⁵

Conclusions: There are no formalized or ‘advanced practices’ making use of psychological testing, specific methods for integrity check, conclusion of court president about the quality of the judge’s performance and procedural communication, questionnaires of peers and court staff on judge’s daily communication and behavior, specific software, e-tools, facilitating the process. The interviews of applicants and referees may serve some of the same purposes. In Finland, as Judges do not have specified working time nor performance based salary, the focus of evaluation is in the work results. There are variations between courts, but the primarily *statistical* evaluation is based on the reports acquired from the case management system (e.g. number of solved cases, handling times of solved cases, number of pending cases, number of old pending cases).

3.4. Central Europe region

3.4.1. Czech Republic

In the Czech Republic, there is currently no legal regulation directly regulating the system of control and assessment of judges. The career promotion of a judge to a court of higher instance therefore is in particular based on personal and consensual base.

Within the conditions of justice organization in the Czech Republic, there is no entity, which

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https://www.legislationline.org/download/id/3906/file/Iceland_Act_on_Judiciary_1998_am2011_en.pdf

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can independently assess judges. This was adjudicated by the Constitutional Court in the decision dated 18 June 2002, file No. Pl. ÚS 7/02, by which the part of the Act on Courts and Judges, regulating assessment of judges, was cancelled. The condition that the final decision regarding the assessment of judges shall be performed by a body, which is independent and is not related to the executive power, is included in several international documents, and also the legal regulation of assessment of judges in other states is based thereon.

In framework of the actually discussed amendment of the Act on Courts and Judges, assessment of judges for purposes of the selection procedure for the officials of the court and the assessment of justice candidates are proposed.

3.4.2 Poland

In Poland, the court assistants are evaluated before the appointment into the function of judge. Before lapse of 36 months of performance of the function of court assistant, the assistant may ask the presiding judge of the provincial (okregowego) court for appointment into the function of judge of a district court (rejonowego). In such a case the presiding judge of the appellate court shall draw a judge for preparation of assessment of the assistant (so called wizitator), from the composition of the courts of both previous instances. The assessment shall include the level of decided cases, organization of work, professional growth, court culture of deciding, as well as complexity of decided issues. Twenty issues from one hundred, where the assistant decided, and, further, also at least six commenced issues as well as issues, where the candidate to judge was the reporter, shall be drawn.

After the appointment of a judge, no further evaluation of judges follows from the legislation.

3.4.3. Slovak Republic

System of Control and Assessment of Judges. The Slovak legal order regulates, differently from the Czech Republic, continuous assessment of a judge in the Act on Judges and Lay Judges. The assessment of a judge shall always occur after five years of execution of function of judge, and the assessed period is the period of five years preceding the assessment.

If the assessment of a judge is ended with a conclusion "unsatisfactory", further assessment shall be made after one year.

Further assessment of a judge is made in relation to the selection procedure, unless the judge presents assessment not older than one year to the selection commission. The assessment may further be made upon proposal of a person, who is entitled to submit a proposal to commencement of a disciplinary proceedings; in such a case, the assessed period is the period of five years preceding the assessment. The assessment may also be required at any time by the judge himself/herself.

Assessment of judges in the area of a regional court shall be made by a three-member assessment commission composed of judges. Members of the assessment commission are elected and recalled by the Judicial Council. For the area of the regional court, it shall elect three members from a different regional court. The functional period of members of the assessment commission is five years.

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The assessment of a judge of the Supreme Court and a judge of the Supreme Administrative Court shall be performed by the presiding judge of the division, which the assessed judge is a member of. The presiding judges of the division are assessed by another member of the staff determined by the division. The assessing activities are then performed by a three-member commission determined by the judicial council of judges of the respective court. During assessment of the judge, the following is considered

- a) The investigation of the deciding practice of the activity, fluency and dignity of conduction of the court proceedings in the assessed period, in which case the legal and factual complexity of issues assigned to the judge is considered,
- b) The statements of the appellation panels and/or the panels for extraordinary appellation,
- c) The statement of the presiding judge of the court regarding the activity of the assessed judge, or in the case of assessment of a temporary judge, the statement of presiding judges of courts, where the temporary judge performed the function of judge in the assessed period,
- d) Own knowledge of the person who performs the assessment of the judge, and the statement of the presiding judge of the panel,
- e) The state and reasons of older unresolved issues and delays in the proceedings, and reports,
- f) The statement of the Judicial Council regarding the compliance with principles of the justice ethics.

The investigation is done by the assessment commission. During investigation of the court department, the judge shall proceed from a report on results of the internal revision made at the court, which the court was assigned to, redeployed to or where it performed function of the judge as the temporary judge. In the case the report on result of the internal revision is not sufficient for purposes of assessment of the judge, the assessment commission shall in particular focus on compliance with rules on proceedings at courts, details of records and decisions, compliance with legal periods for proceedings and decisions, further punctuality of execution and persuasiveness of decisions, as well as the level of preparation of court proceedings and progress of court proceedings, use of court rooms and reasons for adjourning of proceedings; for this purpose, members of the commission participate in randomly selected proceedings of the assessed judge.

During investigation of court files of the assessed judge, the assessment commission proceed from at least 10 and no more than 15 court files, but at least of two court files for each assessed year, and of five court files, which are chosen by the assessed judge; these court files may not include files in issues with the same subject of proceedings and also the most of the court files must relate to issues, where a decision on the merits was issued. The investigation of court files may only relate to issues finally decided, which does not apply to arrears issues.

On the basis of the made investigation, the assessment commission shall assign up to 30 points to the assessed judge. On the basis of statements of appellation panels or panels of extraordinary appellation, statements of judicial councils to compliance with principles of justice ethics and own information on activity of the assessed judge, the one, who makes the assessment, shall grant up to 35 points to the assessed judge. On the basis of records and own information of activity of the assessed judge, the presiding judge shall grant up to 35 points to the assessed judge and submit a written report thereof to the one, who performs the assessment.

The result of assessment of the judge is the sentence "excellent" if the sum of granted points is 86 to 100; "good" if the sum of granted points is 60 to 85, or "insufficient" if the sum of

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granted points is 59 and less. The sentence must be reasoned. The judge is entitled to ask for supplementation or accuracy improvement of the assessment in the period of 15 days as of its delivery. In the case the judge does not ask for supplementation or accuracy improvement of assessment within the period according to the previous sentence, the assessment of the judge is final.

In the case the one, who performs the assessment of the judge, does not fully satisfy the objections of the judge, the judicial council at the court, where the judge performs his/her function, shall make a statement to the disputable questions which is to be attached to the assessment of the judge. The one, who performs assessment of the judge, may change, on the basis of a statement of the judicial council, assessment of the judge; in the case it changes assessment of the judge, such changed assessment is final. The assessment of the judge cannot be reviewed by a court.

In a selection procedure for a vacant place of judge at promotion to a court of a higher instance, a judge shall only participate in the translation from a foreign language, psychological assessment and the oral part of the selection procedure if the result of the immediately preceding assessment of the judge is the sentence "excellent".

The one, who performs the assessment of the judge, shall ensure the assessment of the judge to be published in full wording at the website of the Ministry no later than within 30 days from the day on which the assessment of the judge became final, and, together with the assessment of the judge, shall also publish objections of the judge, where applicable, including the statement of the judicial council as well as the changed assessment of the judge.

Conclusions. Evaluation of Judges and Methods thereof.

In the Czech Republic, evaluation of judges after their appointment basically does not exist. In Poland, the evaluation is carried out for judge assistants before their appointment into the function of a judge, and the evaluation includes the level of decided cases, organization of work, professional growth, court culture of deciding, as well as the complexity of decided issues.

The evaluation procedure is specified at the most detailed level by the legal order of the Slovak Republic, where not only the pre-evaluation of the candidates for judges is carried out, but, then, they are also evaluated continuously after five years of execution of the function. The evaluation of judges in the area of a regional court shall be made by a three-member assessment commission composed of judges, appointed to and recalled from the commission by the Judicial Council. The commission proceeds from a report on results of the internal revision of the respective court department, further, it focuses, in particular, on compliance with the rules of procedure, details of records and decisions, compliance with legal periods for proceedings and decisions, punctuality of execution and persuasiveness of decisions, the level of preparation of court proceedings, use of hearing days, etc. For this purpose, members of the commission participate in randomly selected proceedings of the evaluated judge.

3.5 Western Europe region

3.5.1 The Netherlands

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From the 1st July, 2014 the royal decree co-signed by the Minister of Justice on the Legal Status of Judicial Officers (*Besluit rechtspositie rechterlijke ambtenaren (Brra)*)⁴⁸⁶ was amended to include a requirement for a functional authority (board of that court with the exception of the non-judicial member of this board⁴⁸⁷) to pay regular attention to the way in which the judicial officer, appointed for life, performs his duties by conducting performance interviews (Article 37b parts 1 and 4).

The Decree on the Legal Status of Judicial Officers goes continues to provide that the performance of the judge is evaluated in a performance interview, which takes place in instances, when the functional authority considers it desirable or when the judge requests it (Article 37b part 2). Prior to an interview two references are requested and the evaluated judge is given an opportunity to familiarize himself/herself with those recommendations. After the interview, a report (performance review) is drafted by the functional authority and the evaluated judge is given an opportunity to express his/her views on the report. The remarks of the judge are included in the report (Article 37b part 3).

This reform has instilled performance interviews in lieu of evaluation interviews, the main difference being that the performance interviews tend to review the functioning of a judge not only retrospectively, but also to discuss plans and set goals for the nearest future.

Methodology. The **evaluation procedure**, of a judge, prescribed in the Decree on the Legal Status of Judicial Officers (*Besluit rechtspositie rechterlijke ambtenaren (Brra)*), is detailed in the **Guide on conducting performance interviews**. The Guide is not binding, but is intended to provide a tool for conducting performance interviews with judicial officers, in order to ensure uniformity as much as possible. It is important to note, that the performance evaluation also takes into account the characteristics prescribed in the National Profile of a Judge.

The importance that the independency of the position of judicial officer appointed for life is and remains guaranteed is stated in the preamble of the Guide. However, the independent position does not go so far that individual judges within the judiciary should not have a degree of accountability. In accordance to the Explanatory Memorandum attached to the Decree on the Legal Status of Judicial Officers, the line is drawn that the evaluation of performance should not in any case encompass the procedural or substantive assessment of a case or decision or in a category of cases.

The aim of the performance interview is to discuss the working behavior of a judge, both the substantive work behavior and the functioning within a team or a department, with a view to valuing and, if necessary, improving the functioning and performance, adapting the working situation in such a manner that the judge could perform his/her functions as well as possible and discussing the career prospects of the judge in the short and long term.

The performance appraisal should be regarded as a living practice, peer-review and an exchange of good practices as well as a tool for constantly ongoing education. Performance interview should be carried out as much horizontally as possible, with due regard for the hierarchical relationship, and that the conversation pays attention to craftsmanship and the associated values. It is therefore closely tied to the skills and competences of the National Judge Profile, and also provides important information in the light of strategic personnel planning, as career development is one of the topics to be discussed.

⁴⁸⁶ <https://wetten.overheid.nl/BWBR0006530/2020-10-01>.

⁴⁸⁷ The management board may delegate this authority to a particular judge at the court. This authority, however, may not be delegated to a judicial officer, who is not a judge.

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It is important that the manager bases his feedback on both his own observations and the observations of the informants. In the Explanatory Memorandum it is added that the performance interview can be used to zoom in more on the work and person of the judge and to get to the core of the functioning of the judge more emphatically within the boundaries of the tasks of the functional authority.

The Guide on performance interviews specifically covers the following issues:

1. Target audience and frequency

- A performance review is held at least once a year with the judicial officer appointed for life (hereinafter referred to as: "judge" (*‘rechter’*), including councilor (*‘raadsheer’*)).
- In addition, a performance interview can take place if the functional authority considers it desirable or if the judge requests it.

2. Authority conducting the interview

- The authority to conduct the performance interview rests with the management board of the court, with the exception of the non-judicial member of this board. The performance review is held by a judicial member of the board, or by a mandated judicial officer (supervisor), who is also a judge.

3. Informants (referees)

- The judge is given the opportunity to nominate two informants for the performance interview.
- The supervisor, conducting the interview, appoints at least two informants and he/she may deviate from the nomination of the judge. The choice of informants should be based on the degree of cooperation with the judge in the past year, as well as the distribution in job tasks (job level), timing should be taken into account (not the same informants every year).
- The supervisor invites the informants to list in the reference both assets and a possible points of attention, of the judge’s performance, preferably on the basis of concrete examples.
- When requesting an input, it is clearly stated to the informants that the information provided will be submitted to the relevant judge.
- The information of the informants is provided to the judge in question prior to the performance interview, in such a time that the judge could consult with the informants prior to the performance interview.

4. Character

- The performance interview examines the performance of the judge in the period since the previous performance or evaluation interview and looks ahead to both the next period of approximately one year and a longer period in connection with judge’s career and development agreements.
- The performance interview is bilateral in nature and, in addition to the functioning of the judge, also addresses the role and support of the supervisor. It is as horizontal as possible, respecting the formal relationship.

5. Content of the interview

- the substantive and personal qualities, professionalism and essential skills required for the performance of the primary task (National Judge Profile), including professional knowledge, professional values such as magistrate nature and attitude, integrity, sitting skills (in preparation, during the hearing and when making decisions), communication and collaboration skills and the competences (National Judge Profile), as well as the need for development in these areas;
- the behavior within the team or the department, such as cooperation, feedback and peer review, communication, contribution to the team;
- any changes to the ancillary relationships;
- possible career developments and judge mobility;
- and, in addition, other factors that may influence the functioning of a judge, such as:

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- o workload, the pressure experienced when the workload is greater than the ability to cope with it, which occurs, when the person concerned is unable to meet the requirements set for a longer period of time, or with difficulty within the available time;
- o workload and the intensity of tasks, i. e. an effect of the work content (the whole of tasks that make up the position) and the work environment (the organization of the work, productivity, the workplace and working hours, the provision of information, IT support, etc.) and any consequences thereof for the person concerned or the quality of his work;
- o working conditions that promote or hinder functioning of a judge;
- o behavior and style of the supervisor, with regard to the judge in question, but also with regard to the entire team or department;
- o organization and management of team/department/court;
- and agreements are made with regard to:
 - o work goals - both in a qualitative and quantitative sense - with regard to the upcoming period, whereby attention is also paid to the combination with and required competencies for activities other than the primary process, such as employee participation tasks, quality initiatives and (national or local) projects, and other;
 - o development, career and possibly mobility.

6. Reporting

- The supervisor makes a draft report of the performance review, which is submitted to the judge.
- The judge signs the report approving it or fills in comments and additions in the space provided in the report.
- The supervisor processes the comments and additions insofar as he agrees and submits the report again to the judge concerned, who signs for approval or disagrees. In the latter case, the comments and additions of the judge remain together with the report.

7. Storage, inspection and transfer

- The report of the performance review is included by the manager in the digital personnel file. And is stored for a maximum of three years, after which it normally is destroyed. The report is available to the officers, who by virtue of their position and based on regulations that apply within the court, are entitled to inspect the reports.
- In the event of an individual transfer of a judge or councilor to another employer, reports of performance interviews are not transferred.

Conclusions. The selection procedure, for the judges and councilors to be appointed first time outside the judiciary is elaborate and involves numerous tools described above. It is also significant that after the recent reform in the selection procedure, it is not possible to enlist in becoming a judge right after the university and at least two years of prior legal **experience outside a judiciary** is a requirement. This requirement was set due to a required change in the profile of a judge – that the judge would be able to understand the importance of her/his judgement in the society and to understand the underlying changes in the society, before making a decision. Another specific requirement, assessed throughout the selection procedure is **social engagement** of a judge, which may be seen from the participation in various social activities (for example volunteering), but also from the interest of the person to follow the current trends (events): reading the news portals, listening to the news, other.

The specific tools in selection procedure include: tests for a review of analytical thinking, integrity check (both as a presentation of the certificate of conduct and as a reservation to google the candidate), references, assessment center - interview with the psychologist and personality assessment through tests, interviews with the local selection committee at the court with an open vacancy and a number of interviews at the National Selection Committee. As one of the specificities, worth double mentioning, is a relatively small size and the manner of functioning of the National Selection Committee, which allows its members to gain more

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experience in selecting the future judges and councilors. When appointed the members are trained and the manner of composition of the Committee allows the transfer of knowledge with former selectors acting as deputy selectors.

Finally, the value of a person-tailored training should not be undermined. This tool allows the future judge to act in a role of a junior colleague and to learn from various mentors throughout the prescribed period, as well as to gain theoretical knowledge, inter-personal skills training and other support to become ‘an excellent functioning judge’.

The **evaluation procedure** rests on references of the teammates and interview with a supervisor. The references are a valuable tool as the referees are requested to list both – the good qualities and the points of attention of a judge based on the concrete examples from the evaluation period. It is significant that these reviews are carried out relatively often – at least every year and are informal as much as possible in nature, allowing also to assess the role of the supervisor in connection with the functioning of a concrete judge and the team, the short term and long term career developments of a judge.

3.5.2 Spain and Germany

Evaluation in combination with promotion (see the subchapter on the promotion of judges at 4.5.2 and 4.5.3)

Conclusions

1. The evaluation of judicial performance is a part of a procedure of the promotion in Germany and Spain. There is no separate procedure of the regular evaluation of a performance of a judge (except in some Länder) for other reasons (improving performance, indicating training needs, etc.) as in the Netherlands.
2. In The Netherlands the evaluation procedure rests on references of the teammates and interview with a supervisor. The references are a valuable tool as the referees are requested to list both – the good qualities and the points of attention of a judge based on the concrete examples from the evaluation period. It is significant that these reviews are carried out relatively often – at least every year and are informal as much as possible in nature, allowing also to assess the role of the supervisor in connection with the functioning of a concrete judge and the team, the short term and long-term career developments of a judge.
3. The value of a person-tailored training is important in the Netherlands. This tool allows the future judge to act in a role of a junior colleague and to learn from various mentors throughout the prescribed period, as well as to gain theoretical knowledge, inter-personal skills training and other support to become ‘an excellent functioning judge’.

3.6 Balkan region

3.6.1 Albania

The aim of the ethical and professional performance evaluation of the magistrate is to:

- improve continuously the ethical and professional skills of magistrates;
- establish consistent standards for the performance of magistrates;
- announce the Councils’ decisions in relation to decisions on the status of magistrates in connection with the development of their career based on their merits;

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- gather information with regard to training needs of magistrates in order to facilitate the planning of the training;
- identify the magistrates who may have particular professional skills relevant to the justice system;
- contribute to the improvement of the organizational structure of the courts as well as working conditions for magistrates.

The evaluation scheme is based on and applied through the following principles:

- Independence: the evaluation process shall not interfere with the independence of magistrates.
- Meritocracy and career development: the magistrate’s evaluation is performed by giving utmost importance to professional values and to the quality of the work in order to develop the professional career.
- Efficiency: the evaluation of the performance is conducted through a rapid process, through simple procedures and reasonable timeframes to provide timely information for the magistrates’ career.
- Due process: the evaluation procedure respects the standards of due process for the magistrate, including the right to be notified for the acts, the right of access to the evaluation file, the right to participate in the process, the right of adversarial proceedings, the right to be heard, the right to be defended, the right to have a reasoned decision on the evaluation and the right to appeal the decision on the evaluation.
- Confidentiality: entities assigned with the task of the evaluation are obliged to maintain the confidentiality of the data of the magistrate under evaluation and the personal data according to the current legislation.

Subjects of Evaluation are all magistrates, including the presidents of the courts.

- The court presidents shall be additionally evaluated with regard to their performance as chairpersons of a court.
- The magistrates, who are in a mobility scheme or who are seconded to the Councils, the High Court or the General Prosecution Office.
- The magistrates, who are seconded to other structures and maintain the status of a magistrate.

Methodology. *Evaluation Criteria* are:

- a) Judicial professional capacity (legal knowledge and legal reasoning, clearness and comprehensiveness of the decision, etc. but no judging over the correctness of the decision)
- b) Organizational skills (ability to handle the workload and judicial procedures, meet legal deadlines, meet the minimum time standards, the average time spent on each case, etc.);
- c) Ethics and commitment to judicial professional values (work ethics, integrity and impartiality);
- d) Personal qualities and professional commitment (ability to cooperate with colleagues, the readiness to be engaged in other activities, participation at the continuous training).

The evaluation of magistrates shall be based on **the following sources**:

- a) Personal file of the magistrate;
- b) Statistical data,

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- c) Files selected by lot for evaluation, including the audio or video recording of the hearing;
- d) Self-evaluation of the magistrate;
- e) The opinion of the chairperson;
- f) Data regarding the verification of complaints against the magistrate;
- g) Written information from the School of Magistrates or other institutions;
- h) Final decisions for disciplinary measures against the magistrate;
- i) Reports requested from High Inspectorate for the Declaration and Audit of Assets and Conflict of Interest or other auditing or controlling institutions;
- j) Objections of the magistrate or any minutes or documentation of hearings during the evaluation process;
- k) Any other information that shows the professional development of the magistrate.

Evaluation grades are as follows:

- a) ‘Excellent’: in case of an ethical and professional performance of very good qualities (given only when the magistrate is evaluated “excellent” for all four criteria);
- b) ‘Very good’: in case of an above average ethical and professional performance (given only when the magistrate is evaluated “very good” for three criteria and “good” for one criterion)
- c) ‘Good’: in case of an average ethical and professional performance (the skills of a magistrate are evaluated “good” for two criteria and “acceptable” for the other two criteria);
- d) ‘Acceptable’: in case of a below average ethical and professional performance (when there is equality in the evaluation of criteria at the levels of “acceptable” and “incapable”. In any case, the criteria of “professional skills of the judge” and “ethics and commitment to professional values of the judge” should be evaluated at least “good);
- e) ‘Incapable’: in case of a poor ethical and/or professional performance (when i. the magistrate is evaluated “incapable” for at least 3 criteria; ii. the magistrate is evaluated “incapable” for the criteria “professional skills of the judge” and “ethics and commitment to professional values of the judge” and not more than “good” for the other two criteria).

The evaluation process undergoes these phases:

- a) Preliminary phase: drafting, approving and publishing the annual evaluation program and designating the rapporteur and the officer responsible for each evaluation;
- b) Preparatory phase: collecting documentation and creating the evaluation file by the responsible officer under the supervision of the rapporteur;
- c) Preparing the initial draft-analytical report by the officer responsible for the evaluation;
- d) Checking of the due completion of evaluation procedures by the Ethics and Professional Activity Evaluation Committee;
- e) Drafting of the evaluation draft-report by the rapporteur;
- f) Adoption of the evaluation report by the Council.

The evaluation files contains:

- a) Evaluation acts submitted by the court president (self-evaluation of the magistrate, two judicial decisions per year selected by him/her and any other evidence provided by the magistrate; opinion of the chairperson; and potential objections of the magistrate against the opinion of the court president and the minutes of the hearing).
- b) Statistical data on:
 - i) The number of cases adjudicated by the judge as reporting judge, the number of cases adjudicated as member of the adjudication panel, number of cases in which the judge has been temporarily transferred and has assumed the function at another court;

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- ii) time spent on trials, compared to the minimum time standards and the number of cases adjudicated beyond the minimal standard time; number of judicial hearings for every case and the clearance rate of the judge in settling the cases and time of reasoning of each decision;
- iii) data on the verification of the complaints referring to the magistrate during the evaluation period, on the inspection of the activity of the magistrate or the court, final decisions regarding disciplinary measures against the magistrate, which entered into force within the evaluation period (The High Justice Inspector provides a documentation of the complaints against the magistrates registered with this institution during the evaluation period)
- iv) reports of High Inspectorate for the Declaration and Audit of Assets (The High Inspectorate for the Declaration and Audit of Assets and Conflict of Interests provides a detailed report on assets;
- c) Number of cases where the magistrate has been recused on grounds of conflict of interest upon request of the parties;
- d) Cases selected by lot for the evaluation (For the purpose of the ethical and professional performance evaluation of the magistrate not more than 21 cases that have been finalized by the magistrate during the evaluation period are selected by lot);
- e) Documentation provided by the School of Magistrates (The School of Magistrates, as responsible body for the continuous training of the magistrate, documents the participation of the magistrate in the professional training activities).

The draft report is notified to the judge, who gets informed of the right to access the evaluation file and to lodge an objection in written within 2 weeks from the date of receipt of the notification. The judge has the right to be heard by the Council at the plenary meeting at which the draft evaluation report will be examined. Against the decision of the Council, the judge has the right to appeal only for serious procedural violations. The appeal is submitted to the Court of Administrative Appeals within 15 days from the date of notification of the reasoned decision of the Council.

The Councils prepares each calendar year a report on the evaluation activity carried out during the previous year. This report is published at the end of March of the following year, which contains the following information:

- A general description of the evaluations made during the reporting period;
- An analysis of the evaluation results to the effect of identifying the weaknesses and strengths of the body of magistrates and judicial system;
- An analysis of the efficiency of the approved recommendations for the previous reporting period;
- Recommendations of measures to be taken to the effect of surpassing the identified weaknesses.

The periodic report is published not later than the end of March of the year following the reporting period.

Same rules are applied for evaluation with respect to promotion.

3.6.2 Kosovo

The legal framework on selection, evaluation and promotion of judges is as follows: *Constitution of the Republic of Kosovo (Articles 102-108)*. Laws: Law on Judicial Council; Law on Courts. *Kosovo Judicial Council regulations*: - No.1/2021 “On performance evaluation” as amended in supplementary rules on the evaluation of judges”; No.09/2016, dated 01.06.2016 “On the election, nomination, evaluation suspension and discharge of court chairperson and supervising judge”, as amended.

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Ethical and professional performance evaluation.

The evaluation of judges is done in accordance with the principle of legality, objectivity, transparency and equality, in order to guarantee equal opportunities and rights for career development than the judge. During the evaluation process it should be taken in consideration not to interfere with the independence and impartiality of the judge.

Unless otherwise provided by law or regulation, all data and information of collected during the performance appraisal process are confidential and are not disclosed during the first phase of evaluation. Disclosure of any information that violates the confidentiality of the process assessment constitutes a disciplinary violation and will be treated according to the legislation in force.⁴⁸⁸

As for evaluation period, judges with initial mandate are evaluated 2 (twice) during this mandate, once after training initial and once before the expiration of the initial mandate for the purpose of reappointment. Judges with permanent mandate are evaluated every 3 (three) years.⁴⁸⁹

The evaluation falls under the responsibility of the Commission on Performance evaluation, composed by 13 judges of all courts, including five (5) judges from the Supreme Court, five (5) judges from the Court of Appeals and three (3) judges from the basic courts. The selection of the members of the Commission is done through an open and competitive process. The council announces open positions for internal competition on the website.⁴⁹⁰ The Chairman of the Commission is appointed by the Council, from among the judges of the Supreme Court, who are members of the Council. The evaluating judge does the evaluation for the respective judge as decided by the Commission respecting the principle of professionalism, objectivity, confidentiality and anonymity of the procedure, based on which he drafts the evaluation report.⁴⁹¹

Permanent judges are evaluated in the order determined by the method of lottery. The evaluation of courts chairmen and supervisory judges, shall be done according to the Regulation on Assessment of the Presidents of the Courts. Evaluation of judges who during the last three years have performed the function of judge for a period, while in the other period they have performed other leading or representative functions, is proportional to the period during which they worked as judges.⁴⁹²

As for evaluation criteria they shall include: (i) Professional ability, based on the result of work during the evaluation period, including participation in organized training formats where performance is assessed; (ii) The number of cases returned for trial or cases dropped by the highest court, in relation to the number of cases completed; (iii) The ability to perform tasks impartially, honestly, with responsibility, the out-of-office behavior and personal integrity; (iv) Professional knowledge, work experience and performance, including respect for human rights and communication skills; (v) Capacity for legal reasoning and ability in analyzing legal problems.⁴⁹³

The sources of evaluation are as follows:

1. Selected judgments/decisions;

⁴⁸⁸ Article 3 of the Regulation No.1/2021 of the Council.

⁴⁸⁹ Article 4 of the Regulation.

⁴⁹⁰ Article 5 of the Regulation.

⁴⁹¹ Article 7 (3) of the Regulation.

⁴⁹² Article 10 of the Regulation.

⁴⁹³ Article 11 of the Regulation.

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2. Personal file of the judge;
3. Evaluation report of the chairman of the court where the judge exercise his/her function;
4. Statistical data;
5. Evaluation report of the commission member charged to monitor the court hearing and the report on training activities;
6. Disciplinary decisions;
7. Any other official document or act containing objective and relevant information on professional or personal activity of the judge.⁴⁹⁴

The sources of information shall apply mutatis mutandis to the assessment of judges with initial mandate, and are limited to only measurable indicators that are applicable to judges of the Supreme Court.⁴⁹⁵ Data to prove the performance of the judge should not be older than three (3) years from the year when the performance evaluation is done.

The scale of evaluation of judges is as follows:

- 0 to 35 points is evaluated "poor",
- 36 to 51 points is considered "sufficient",
- 52 to 67 points is evaluated "good",
- 68 to 82 points is evaluated "very good",
- 83 to 89 points is rated "excellent".

Only judges who are ranked as "excellent" will be considered for promotion, in case of vacancies in the Court of Appeals and / or the Supreme Court. In case there are not enough judges ranked according as "excellent", the Council takes into consideration the judges ranked according to the points with the evaluation "very good".⁴⁹⁶

When a judge has request to be promoted, as a basis for his / her evaluation will be taken the performance evaluation which has been done within the last three years, for his work as a judge.⁴⁹⁷

The Commission recommends to the Council to initiate the procedure for dismissal of a judge in case the judge receives a "poor" assessment.⁴⁹⁸

The judge has the right to appeal the decisions of the Judicial Council regarding the evaluation of the performance to the Supreme Court. Otherwise the consequence of that decision is the salary reduction of judges.⁴⁹⁹

Same rules are applied for evaluation with respect to promotion.

3.6.3. North Macedonia

The legal framework on selection, evaluation and promotion of judges is as follows: *Constitution of the Republic of North Macedonia (Articles 98-105). Laws: Law on Judicial Council; Law on Courts; Judicial Council regulations.*

The evaluation of judges is done in accordance with the principle of legality, objectivity, transparency and equality, in order to guarantee equal opportunities and rights for career

⁴⁹⁴ Article 13 (1) of the Regulation.

⁴⁹⁵ Article 13 (2) *ibid.*

⁴⁹⁶ Article 14 *ibid.*

⁴⁹⁷ Article 19 *ibid.*

⁴⁹⁸ Article 29 *ibid.*

⁴⁹⁹ Article 30 *ibid.*

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development than the judge. During the evaluation process it should be taken in consideration not to interfere with the independence and impartiality of the judge.

According to the rulebook on ranking judges in a higher court where it is prescribed the manner of ranking the candidates for election of a judge in an Appeal Court, Administrative Court, Higher Administrative Court and the Supreme Court of the Republic of North Macedonia, the ranking of candidates for election of a judge in a higher court is conducted by a Commission, composed of three members, who are elected by lot from among the voting members of the Judicial Council, one of is elected by the Assembly and one is from the minority communities and from these three members, the President of the Commission is elected by lot.⁵⁰⁰ The Commission check:

- the timeliness of the applications and the wholeness of the candidate's documents, as in the announcement;
- the functionality of the E-Mail address of the candidate and the readiness of the candidate to reply within the next working day. If this communication fails, the candidate has to provide a reliable communication opportunity.
- check the good reputation in exercising the judicial office by obtaining the opinion from the court president and other sources
- compose the candidate list who fulfill the conditions for election of a judge for a higher court, prescribed in the Law on Courts and Law on the Judicial Council of the RNM;
- obtain an opinion from the court in which the candidate performs the judicial function;
- evaluate the candidates based on the ranking criteria in a manner determined with this Rulebook;
- compiles a ranking list of candidates, which is submitted to the Council.

If the Commission finds that an application is questionable or inadmissible or that the good reputation in exercising the judicial office is questionable and the candidate cannot be subject to the ranking, the Commission forwards this application together with its reasoning to the Council within three working days.⁵⁰¹

The Commission ranks the candidates on the basis of the criteria provided by the law⁵⁰² according to which candidates can obtain maximum 100 points. The Commission provides points for each aspect of the criteria:

1) expert knowledge and specialization in the profession (maximum 40 points) and participation in continuous training (maximum 5 points); A specialization is a substantial experience in the required specific area of law. The professional knowledge and specialization in the profession means having theoretical and practical knowledge necessary for the performing of the judicial function.⁵⁰³ These aspects are taken into account: (i) completed doctoral studies in law (2 points), to be evidenced by the university certificate and in addition another (2 points), if the doctor's degree has been obtained in the field of the required specialization area; (ii) number of publications with scientific content about legal topics (maximum 5 points), a tenth point for each publication published in the last 5 years before the announcement of the vacancy, (2 points) for the participation in scientific commentaries or a book with ISBN in the field of the required specialization (a doctor thesis does not count twice), published in the last 10 years before the announcement of the vacancy; (iii) the number of educational materials developed for the needs of the Academy for Judges and Public Prosecutors or for other trainings of legal professionals or law students or other scientific projects the field of the required specialization area (maximum 5 points, 1 point for each material); (iv) language skills in English, French or German (maximum 15 points, Art. 45 Law on Courts). The language knowledge is regularly proven by a language certificate (1 point for

⁵⁰⁰ Article 2 (1) of the Rulebook

⁵⁰¹ Article 2 (3) *ibid.*

⁵⁰² Article 48 paragraph 2 of the Law on Judicial Council

⁵⁰³ Article 4 (1) of the Rulebook

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an A level of each language with a certificate not older than 10 years at the time of the application, 5 points for a B level of each language with a certificate not older than 15 years, 15 points for a C level of each language with a certificate not older than 20 years). The candidate can verify language knowledge of the level A or B also by a test in front of the Commission or if other facts, in particular certificates of studies abroad or work templates in the relevant language, confirm the language knowledge; (v) a computer test provides (1 point, Article 45, Law on Courts), which is evaluated according to the Council’s Rulebook on knowledge check of practical work with computers.⁵⁰⁴

If the candidate has worked previously in the required field of specialization or in a specialized court division (Article 12 Law on Courts), the Commission grants maximum 10 points (half point for each completed 12 month period of work in the relevant area of specialization). Working experiences on legal topics abroad count as specialized court experience. The Commission takes into account the number of trainings the candidate participated in during the last 10 years (maximum 5 points), to be verified by a training certificate or the training agenda or training evaluation assessments (each training 1 point). The Commission grants 2 points instead of one for a training in the field of the required specialization area.

2) positive performance rating (maximum 20 points); A positive performance evaluation shall take into account the total number of points a judge has received in relation to the quantitative and qualitative criteria in the professional evaluation done according to the provisions in the Law on Judicial Council. The extraordinary assessment (Article 77 paragraph 2 of the Law on Judicial Council) and the previous ordinary evaluation (Article 77 paragraph 2 of the Law on the Judicial Council) are taken into account with 50 % each. The calculation is done by dividing the received evaluation points (Art. 79 paragraph 3 of the Law on Judicial Council) of each evaluation (maximum 200 evaluation points) by 20. Both figures are added. In the case an extraordinary assessment should not become available, the last two ordinary evaluations are taken into account.⁵⁰⁵

3) ability for oral and written expression, as evidenced by the decisions made and the judicial professional action (maximum 5 points); The ability for oral and written expression, as reflected in the prepared decisions and professional judicial action, is determined by assessing an oral hearing and two written decisions. The commission based on a visit to a court hearing or after obtaining 5 cases with audio recordings from the hearings assesses if the candidate communicates clearly and in an understandable way with the parties. Based on this information, the Commission grants up to 2 points for the oral expression. In addition, the Commission assesses two decisions, which have not been used for the performance evaluations. The decisions are selected randomly in the case management system. The Commission evaluates the written expression by assessing the short, but complete summary of the relevant facts and the distinction between undisputed and disputed facts, the quotation of the legal basis and the elements of the legal norm and the evaluation of evidence if appropriate, the understandability of the legal reasoning, the scientific language and the logic and understandability of the argumentation for professionals and citizens. Each decision that entirely fulfills these requirements shall score one point. Based on the opinion of the president of the court, where the candidate performs judicial function and which is based on a session of judges from the court, the Commission grants another point, if the opinion confirms in a reasoned way very good oral and written expression capabilities of the candidate. An opinion of the president without reasoning is not sufficient to grant the point.⁵⁰⁶

4) undertaking additional work in the exercise of judicial office by participating in the resolution of backlogs (maximum 5 points); The undertaking of additional work in the

⁵⁰⁴ Article 4 (2) *ibid*

⁵⁰⁵ Article 5 *ibid*.

⁵⁰⁶ Article 6 *ibid*.

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exercise of judicial office by participating in the resolution of backlogs, is determined by the Commission, by assessing the candidate's evaluations, the number of solved cases which had duration in court in the same instance of more than 24 months according to the CMS and by obtaining an opinion from the president of the court in which the candidate is performing the judicial function. The scoring is a quarter of the average points of the evaluations (Article 5 of the Rulebook) in the quantitative criteria given for resolved cases above 100 % (Article 86 paragraph 3 of the Law on Judicial Council), if the candidate has solved during the time being the basis for the evaluations - cases with a longer duration in court than 24 months and if the president has confirmed the willingness of the candidate to reduce backlogs. If the candidate has been temporarily assigned to perform the judicial function in another court, 5 points are granted, if the candidate obtained in the qualitative assessment of one evaluation (Article 86 paragraph 2 Law on Judicial Council) 40 points and had declared him/herself in written form to the Judicial Council that he/she is willing to be assigned temporarily (Article 61 paragraph 1 Law on Courts) to a different court with the need to solve backlogs.⁵⁰⁷

5) undertaking additional work in the exercise of judicial office through mentoring, education and similar tasks (maximum 5 points); The undertaking of additional work in the exercise of judicial office through mentoring, education and similar activities means participation of the judge in other activities in the court and outside the court, which are not directly related with performing of the judicial function, like participation of the judge in: (i) lecturer at the Academy for Judges and Public Prosecutors or a higher education institution; (ii) programs for professional development at the Academy for Judges and Public Prosecutors; (iii) professional development of judges; (iv) in working groups for preparations of laws, academic or international projects. Mentoring is the officially given task of providing consultancy and guidance of younger colleagues in their profession. The Commission grants:

- zero points, if activities of the candidate cannot be detected;
- 1 point, if the candidate has applied for mentoring and education;
- 2 points, if the candidate has served as a mentor or delivered up to two trainings as a trainer in the past 5 years;
- 3 points, if the candidate has delivered up to five trainings in the past 5 years; (v) 4 points, if the candidate has delivered up to ten trainings as trainer in the past 5 years;
- 5 points, if the candidate has delivered more than ten trainings in the past 5 years and has produced publications or training materials. The undertaking of additional work in the exercise of judicial office through mentoring, education and similar activities, is determined by the Commission, by obtaining an opinion from the Academy for Judges and Public Prosecutors and the opinion of the court president.⁵⁰⁸

6) the period of judicial service (maximum 20 points). The period of judicial service of a judge is calculated by the sum of years the candidate really worked within the judiciary for a duration more than what is requested for the judicial position for a higher court. If a candidate has not worked the entire year, the full months shall be taken into consideration accordingly. The absence due to vacations or illness for a duration of less than six months is not reducing the period of delivered judicial service. Each year of judicial service counts one point, but in total not more than the maximum number allocated to this criterion.⁵⁰⁹ Same rules are applied for evaluation with respect to promotion.

Conclusions. Distinguished features of the approach of the Balkan counties is the detailed oriented regime with not only specifies list of criterias but also with the methodologies combined with providing points and calculating the final outcome.

⁵⁰⁷ Article 7 ibid

⁵⁰⁸ Article 8 ibid

⁵⁰⁹ Article 9 ibid

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3.7 Other countries: Ukraine

Regular evaluation of judicial performance is envisaged by the Law on Judiciary (Par. 1 Art. 90) with the aim at identifying the judge's individual needs in improving and motivating him/her to maintain his/her qualification at the proper level and grow professionally.

It is provided by the Law, that the regulatory evaluation of judge shall be conducted by: lecturers (trainers) of the NSJ based on the results of training and completion of a questionnaire; other judges of the relevant court by offering to fill in a questionnaire; the judge himself/herself by filling in a self-estimation questionnaire; public associations by independent evaluation of the judge's work in court sessions.

However, this institute has not been yet put into the practice due to a number of reasons, including that the initial qualification assessment, which is a key precondition for a judicial corpus to be functional, has not been yet finished. The draft regulation on procedure and methodology of the regular evaluation was developed by the HQCJ, describing criteria for evaluation (professional competence, personal competence, social competence, professional ethics, integrity); methods of evaluation (e.g. written questionnaires, observation as a method for peer-evaluation); procedure, etc. Though, it has not been adopted as envisaged by the Law. Thus, further analysis of this yet unfunctional institute would not be relevant.

Conclusions. Although in Ukraine the comprehensive regular evaluation of judicial performance is envisaged by the Law on Judiciary with the aim at identifying the judge's individual needs in improving and motivating him/her to maintain his/her qualification at the proper level and grow professionally, in practice this institute has not been yet put into the practice due to a number of reasons, including that the initial qualification assessment, which is a key precondition for a judicial corpus to be functional, has not been yet finished.

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4. Promotion of judges applying to a higher court and (or) managerial (leadership) positions.

4.1 International standards, principles and recommendations

Decisions on the career of judges should be taken independently from other governmental branches (executive or legislative)⁵¹⁰. Clear promotion procedure and criteria should be set and known in advance⁵¹¹, it is important to strictly circumscribe the conditions of eligibility to the office, among which the question of experience is paramount⁵¹².

Venice Commission notes that competition should be the basis for the promotion of judges in order to prevent possible abuse⁵¹³. The idea of selecting presidents of the chambers (even on the level of the local courts) is through completion welcomed⁵¹⁴.

The criteria of age and experience of a judge are called to the attention, when discussing the issue of promotion to a higher instance court, especially, the Supreme Court. For example, the Venice Commission has noted that the age of 30 and an experience of 5 years as a judge, lawyer or academic are relatively low thresholds for a position of a Supreme Court judge and may cast doubts on whether a person will have acquired the necessary experience to carry out such functions⁵¹⁵.

Promotion to the managerial positions. Although there is no clear recommendation on what level the appointment and functions of the presidents of the courts should be regulated, considering the importance of their functions, a clear regulation is considered necessary⁵¹⁶. In addition to the qualifications for ordinary judges seeking career, the capacity to manage and organize the activities of the court may be regarded as a proper requirement, when choosing the president of the court. It is nonetheless important to take into account that a person who is a first-time-candidate for a president of the will not have had the opportunity to show his or her managerial abilities⁵¹⁷.

The recommendations note that the role of the chairpersons vis-à-vis other judges should be regarded as superior only in the representative and managerial (administrative) matters. In the realm of judicial functions, the presidents of court must assume the role equivalent to that

⁵¹⁰ *Ibid*, para. 46

⁵¹¹ See CDL-AD(2014)031, Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate of Human Rights and the Rule of Law (DGI) of the Council of Europe, on the draft Law on Amendments to the Organic Law on General Courts of Georgia, §64.

⁵¹² See CDL-AD(2019)004, Opinion on the law on administrative courts and the law on the entry into force of the law on administrative courts and certain transitional rules of Hungary, §§95 and 97

⁵¹³ See CDL-AD(2014)031, Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate of Human Rights and the Rule of Law (DGI) of the Council of Europe, on the draft Law on Amendments to the Organic Law on General Courts of Georgia, §64.

⁵¹⁴ See CDL-AD(2018)032, Opinion on the Concept Paper on the reform of the High Judicial Council of Kazakhstan, §72.

⁵¹⁵ See CDL-AD(2019)009, Urgent Opinion on the selection and appointment of Supreme Court judges of Georgia, §23.

⁵¹⁶ See CDL-AD(2018)003, Opinion on the Law on amending and supplementing the Constitution (Judiciary) of the Republic of Moldova, §24.

⁵¹⁷ See CDL-AD(2009)023, Opinion on the Draft Criteria and Standards for the Election of Judges and Court Presidents of Serbia, §§50, 52

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of exercised by other members of the court, while control over non-judicial staff could be regarded as an administrative function. The presidents of the court should not interfere with the adjudication of concrete disputes, nor with the allocation of cases other than in a manner prescribed beforehand, they should refrain from misusing their competence in the allocation of court resources as a manner of influence to the judges⁵¹⁸.

The term of the presidents of the court should be limited even though in several European countries, court presidents are irremovable⁵¹⁹. A fixed term and a limit on possible renewals should be embedded in instances, when executive authorities have a decisive influence on such appointments. Yet the term itself should not be too short as it may undermine the presidents' possibilities to realize effective leadership and to ensure a solid and strong court organization⁵²⁰.

4.2 Baltic region

4.2.1. Lithuania

Requirements are established by the Law on courts⁵²¹. A judge entered in the register of persons seeking judicial office or a person having Doctor of Social Sciences degree of *at least four years* standing as a judge and/or pedagogical position in law who has submitted a *health certificate* may be appointed a judge of a *regional administrative court or a regional court*. If a person has simultaneously worked as a judge and has done legal pedagogical work, the length of service of a judge and the length of legal pedagogical work acquired during such a period shall not be added together when calculating the length of service referred to in this Article. (Article 66).

A judge entered in the register of persons seeking judicial office or a person having Doctor of Social Sciences degree of *at least eight years* standing as a judge and/or pedagogical position in law who has submitted a *health certificate* may be appointed a judge of the *Supreme Administrative Court or the Court of Appeals*. If a person has simultaneously worked as a judge and has done legal pedagogical work, the length of service of a judge and the length of legal pedagogical work acquired during such a period shall not be added together when calculating the length of service referred to in this Part. A judge of the Court of Appeals may be appointed a judge of the Supreme Administrative Court, and a judge of the Supreme Administrative Court may be appointed a judge of the Court of Appeals without regard to his record of work at the Court of Appeals or at the Supreme Administrative Court (Article 67).

⁵¹⁸ ODHIR Kyiv Recommendations, para. 11-12. The competence of the court chairperson should stay purely administrative and should not interfere with the judicial functions of judges. The president should not be in a position to give them directions concerning their cases – neither de jure nor de facto. Therefore, it is important that powers of the presidents are formulated with sufficient precision, so as to limit any possibility of abuse. See CDL-AD(2017)018, Opinion on the Judicial System Act of Bulgaria, §83.

⁵¹⁹ See CDL-AD(2014)021, Opinion on the draft law on introducing amendments and addenda to the judicial code of Armenia (term of Office of Court Presidents), §41

⁵²⁰ See CDL-AD(2014)031, Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate of Human Rights and the Rule of Law (DGI) of the Council of Europe, on the draft Law on Amendments to the Organic Law on General Courts of Georgia, §§86, 88, 90, and 91

⁵²¹ *Ibid.*

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A judge entered in the register of persons seeking a judicial office or a doctor of social sciences with at least ten years of experience as a judge and/or legal pedagogue work may be appointed as a judge of the Supreme Court, having presented a medical certificate. If a person has simultaneously worked as a judge and has done legal pedagogical work, the length of service of a judge and the length of legal pedagogical work acquired during such a period shall not be added together when calculating the length of service referred to in this Article (Article 68).

The legal pedagogical work of a doctor of social sciences in the field of law is recognized as the legal pedagogical work experience specified in Articles 66, 67 and 68 of this Law, worked in the positions of lecturers and researchers established at the Law on Science and Studies of the Republic of Lithuania at universities preparing bachelors and/or masters of law, as well as lawyers obtaining the professional qualification degree of a lawyer, i. e. providing one-level higher legal university education, the procedure for recognizing legal pedagogical work experience shall be established by the Government. (Article 69).

Methodology. Assessment criteria for persons pursuant to the career of judges, transferred or appointed to another court. Article 69¹ of Law on courts provides that selection to judicial vacancies of persons seeking judicial office shall be carried out according to the regulations of selection of persons seeking judicial office approved by the Judicial Council. Selecting the persons seeking judicial office, the quality of work of every candidate to judicial office, subject and personal qualities, organisational capacities and priority giving advantages shall be evaluated. The assessment criteria of persons seeking judicial office shall be established by the Judicial Council.

When persons having a degree of Doctor or Habil. Doctor of Social Sciences (Law), prosecutors, lawyers seek to become judges of regional administrative court, regional court, judges of Supreme administrative court, judges of Court of Appeal and the Supreme Court, only their personal qualities and key competencies shall be evaluated.

The persons seeking judicial office shall be selected by the Selection Commission specified in paragraph 1 of Article 55¹ of this Law. The requirements set in Article 55¹ of this Law shall be applied to selection of persons seeking judicial office.

The assessment criteria are established by the Resolution of the Judicial Council⁵²² from 27 September 2019 No. 13P-160-(7.1.2).

Persons who have been assessed by the Judge Selection Committee in accordance with the procedure established in items 3–5 of these criteria may score up to 100 points. The obtained scores determine the person's place in the list of candidates ranked by the Judge Selection Committee (hereinafter - the Commission).

Persons seeking to become judges of a higher court shall be assessed according to:

1. **Record of work in the legal area.** Record of work in the legal area includes periods when a person who has acquired the legal education provided for in Paragraph 1 of Article 51 of the Law on Courts has worked in a job provided for in the list of legal positions approved by the Government or an institution authorized by it. 0.5 point is awarded for each full year of legal service, but the total amount of points *may not exceed 5 points*.
2. **The nature and quality of the work.** Taking into account the nature of the work included in the legal length of service and its significance in forming the skills necessary for the work of

⁵²² Assessment criteria for persons pursuant to the career of judges, transferred or appointed to another court, approved by the Judicial Council by Resolution No.13P-160-(7.1.2) of 27 September 2019

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the respective higher court judge and the professional status of the person (judge or doctor of social sciences), the quality of legal work is assessed:

2.1. *the professional activity (quality of legal work) of a judge* seeking to become a judge of a higher court is assessed by multiplying the points of professional activity (quality of legal work) of a judge specified in the conclusion of the standing judicial activity evaluation commission by a *coefficient of 0.45*;

2.2. *The nature and quality of scientific-pedagogical work of a doctor of social sciences* seeking to become a judge of a higher court is assessed, taking into account the field of personal research (interests), the nature of legal, scientific-pedagogical work, participation in scientific activities after obtaining a scientific degree (prepared number of monographs, scientific articles in peer-reviewed scientific publications, participation in research, etc.), university position, attestation results, pedagogical workload (number of lectures, supervision of students' research and final theses, dissertation opposition, participation in doctoral committees, review of final theses and etc.), awarding *up to 45 points*;

2.3. the quality of the work of a judge who holds a doctoral degree in social sciences and actively carries out scientific-pedagogical activities is assessed in accordance with subparagraph 3.2.1. of the following criteria. The Commission, taking into account 3.2.2. may award up to 5 points to a judge for scientific and pedagogical activities, but the total amount of points may not exceed **45 points**.

2.4. When assessing the quality of other work included in the legal work experience, the indicators corresponding to the specifics of this work shall be taken into account, to which the *mutatis mutandis* requirements shall be applied to the indicators taken into account when assessing the nature and quality of the doctoral degree in social sciences.

3. **Professional competence and knowledge.** The professional competences and knowledge of a person applying for the position of a judge of a higher court shall be assessed by awarding up to 10 points, taking into account:

3.1. *knowledge of foreign languages* when it is substantiated by official certificates issued by accredited centres or other institutions entitled to conduct international foreign language examinations and / or use international foreign language proficiency tests. For each foreign language proficiency, points are awarded separately starting from level B1 according to European Framework of Reference for Languages adopted by Regulation (EC) No. 2241/2004 on 15 December 2004 December 15 by the European Parliament and of the Council;

3.2. *university education other than law*;

3.3. *professional development and improvement* (its intensity, purposefulness, validity);

3.4. *participation in expert activities* (for example, in the process of drafting legal acts, expert evaluation of draft legal acts, participation in the activities of working groups, etc.);

3.5. *activities as a conciliator* (mediator);

3.6. *research cooperation* (does not apply to candidates with a doctorate in social sciences);

3.7. *the level of the candidate's current pedagogical duties and performed pedagogical activities*;

3.8. *prepared scientific publications in peer-reviewed scientific publications*;

3.9. *participation in public activities* related to courts / justice;

3.10. *other activities of the candidate related to the acquisition and deepening of knowledge necessary for the work of a judge, etc.*

4. **Personal competencies.** The general abilities and motivation of a person applying for the position of a judge of a higher court, which is important for holding the position of a judge of a higher court, are assessed up to 40 points, taking into account:

4.1. *constructiveness of the candidate's thinking, erudition*: scope of thinking, professional and general erudition, ability to concentrate on the essentials and summarize, quick perception;

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4.2. *personality maturity, emotional balance, effectiveness and objectivity of decision-making: principledness, ability to defend one's opinion with arguments, ability to decide, to resist environmental pressure;*

4.3. *duty and responsibility, the ability to effectively organize one's own and the work of others: the ability to work according to a plan, set priorities, work constructively in tense (stressful) situations, the ability to cope with heavy workloads;*

4.4. *communication and cooperation skills: ability to present information clearly and intelligibly (orally and in writing), ability to listen and understand, ability to behave constructively in difficult communication situations, respectful treatment of other people, ability to work in a team, adherence to professional ethics, professional culture;*

4.5. *strength and adequacy of motivation, strength of professional identity, initiative, aspiration to learn and improve, activity in the legal / judicial community.”*

Promotion of judges applying to managerial (leadership) positions. *Law on courts*.⁵²³

The Chairman, the Deputy Chairman of the district court, the regional court and the regional administrative court, the Chairman of the Court Division shall be appointed by the President of the Republic on the advice of the Judicial Council. The Chairman, the Deputy Chairman of the regional administrative court, the Chairman of the regional court, the Chairman of the Court Division shall be appointed for a term of five years. The Chairman, the Deputy Chairman of the district court shall be appointed for a term of five years. (Article 74).

The Chairman and the Deputy Chairman of the Supreme Administrative Court shall be appointed by the President of the Republic of Lithuania on advice of the Judicial Council. The Chairman and the Deputy Chairman of the Supreme Administrative Court shall be appointed for a term of five years. (Article 75).

The candidates to the office of Chairman, the Deputy Chairman, and the Chairman of a division of the district court, the regional administrative court, the regional court and the Supreme Administrative Court shall be elected by the Selection Commission indicated in Article 55¹, part 1 of this Law according to the Selection regulations of persons seeking judicial office approved by the Judicial Council and the assessment criteria of persons seeking judicial office. 2. The candidates to the office of Chairman, the Deputy Chairman, and the Chairman of a division of the district court, the regional administrative court, the regional court and the Supreme Administrative Court shall be considered by the Judicial Council in accordance with the procedure set forth in Article 56, paragraphs 3, 4, 5 and 6 of this Law. (Article 76).

The Chairman of the Court of Appeal shall be appointed by the President of the Republic subject to the concurrence of the Seimas. The Chairman of a division of the Court of Appeal shall be appointed by the President of the Republic. The President of the Republic in respect of the appointment of the Chairman of the Court of Appeals and of the Chairman of a division of the Court of the Appeal shall be advised by the Judicial Council. The Chairman of the Court of Appeal and the Chairman of a division of the Court of Appeal shall be appointed for a term of five years. (Article 77).

Nominations for vacant positions of the Chairman of the Court of Appeal, the Chairman of the division or these positions to become vacant, are shall be selected by the Selection Commission referred to in Paragraph 1 of Article 55¹ of this Law in accordance with the

⁵²³ The Law on Courts of the Republic of Lithuania, adopted on the 31st May 1994, No. I-480 (a new version of the 24 January 2002 No. IX-732); see official publication <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.187988?jfwid=191fum7vkm>.

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regulations for the selection of persons seeking Judicial office and the evaluation criteria for persons seeking Judicial office approved by the Judicial Council. Candidates to the office of the Chairman of the Court of Appeal and the Chairman of a division of the Court of Appeal shall be considered by the Judicial Council in accordance with the procedure set forth in Article 56, paragraphs 3, 4, 5 and 6 of this Law. (Article 78).

The Chairman of the Supreme Court shall be appointed by the Seimas on the recommendation of the President of the Republic from among the judges appointed to the Court. The Chairman of a division of the Supreme Court shall be appointed by the Seimas on the recommendation of the President of the Republic. The President of the Republic advises the President of the Republic on the appointment of the Chairman of the Supreme Court and the Chairman of the division. The Chairman of the Supreme Court and the Chairman of a division of the Supreme Court shall be appointed for a term of five years. Candidates to the office of the Chairman of the Supreme Court and the Chairman of a division of the Supreme Court shall be considered by the Judicial Council in accordance with the procedure set forth in Article 56, paragraphs 3, 4, 5 and 6 of this Law. (Article 79).

Candidates for vacant positions of Chairman of the Supreme Court, Chairman of a Division or these positions to become vacant are selected by the Selection Commission referred to in Paragraph 1 of Article 55¹ of this Law in accordance with the regulations on the selection of candidates to Judicial office and the criteria for the assessment of candidates to Judicial office approved by the Judicial Council. Nominations for vacant positions of the Chairman of the Supreme Court, the Chairman of a division shall be selected by the Selection Commission according to the evaluation criteria of persons seeking judicial office in accordance with the procedure established in Article 55¹ of this Law. The personal character and cognitive qualities of the candidates shall be assessed in accordance with the procedure established in Paragraph 8 of Article 55¹ of this Law. Candidates to the office of the Chairman of the Supreme Court and the Chairman of a division of the Supreme Court shall be considered by the Judicial Council in accordance with the procedure set forth in Article 56, paragraphs 3, 4, 5 and 6 of this Law. (Article 79¹).

Methodology. The assessment criteria are established by the Resolution of the Judicial Council from 27 September 2019 No. 13P-160-(7.1.2)⁵²⁴

Persons who have been assessed by the Judge Selection Committee in accordance with the procedure established in items 3–5 of these criteria may score up to 100 points. The obtained scores determine the person's place in the list of candidates ranked by the Judge Selection Committee (hereinafter - the Commission).

A person seeking appointment as a chairperson of a division of a courts, and other persons who, when participating in the selection of judges of district courts, regional administrative courts, regional courts, the Court of Appeal of Lithuania, the Supreme Administrative Court of Lithuania or the Supreme Court of Lithuania also seek appointment as a chairperson, vice-chairperson of a court or a chairperson of a division of a courts, shall be assessed in the light of:

1. ***Record of work in the legal area.*** Record of work in the legal area includes periods when a person who has acquired the legal education provided for in Paragraph 1 of Article 51 of the Law on Courts has worked in a job provided for in the list of legal positions approved by the

⁵²⁴ Assessment criteria for persons pursuant to the career of judges, transferred or appointed to another court, approved by the Judicial Council by Resolution No.13P-160-(7.1.2) of 27 September 2019

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Government or an institution authorized by it. 0.5 point is awarded for each full year of legal service, but the total amount of points *may not exceed 5 points*.

2. **Administrative (managerial) work experience.** 0.5 point is awarded for each full year of administrative work in courts or other companies, institutions or organizations, but the total amount of points *may not exceed 5 points*.

3. **Quality of legal work.** Taking into account the indicators of the quality of work relevant to the development of the skills necessary for the work of a judge of the respective court, which are included in the legal service for at least the last three years, the quality of legal work of the candidate seeking management positions in courts is assessed by:

3.1. *multiplying the points of the judge's professional activity* (quality of legal work), indicated in the assessment by the Permanent Commission for the Assessment of Activities of Judges, by a coefficient of 0.4;

3.2. Quality of the scientific-pedagogical work by a doctor of social sciences is assessed taking into account the area of personal research (interests), position at the university, results of certifications, pedagogical workload (number of lectures, supervision of students' research and final theses, dissertation opposition, participation in doctoral committees, reviewing final theses, etc.), participation in scientific activities after obtaining a scientific degree (number of prepared monographs, scientific articles in peer-reviewed scientific publications, participation in scientific research, etc.), awarding up to 40 points.

3.3. When assessing the quality of other work included in the legal work experience, the indicators corresponding to the specifics of this work shall be taken into account, to which the *mutatis mutandis* requirements shall be applied when assessing the nature and quality of scientific doctoral work.

4. **Professional competencies and knowledge.** The professional competencies and knowledge of a person seeking a career in courts of the same level shall be assessed by awarding up to 10 points, taking into account:

4.1. knowledge of foreign languages when it is substantiated by official certificates issued by accredited centres or other institutions entitled to conduct international foreign language examinations and / or use international foreign language proficiency tests. For each foreign language proficiency, points are awarded separately starting from level B1 according to European Framework of Reference for Languages adopted by Regulation (EC) No. 2241/2004 on 15 December 2004 December 15 by the European Parliament and of the Council;

4.2. university education other than law;

4.3. professional development and improvement (its intensity, purposefulness, validity);

4.4. participation in expert activities (for example, in the process of drafting legal acts, expert evaluation of draft legal acts, participation in the activities of working groups, etc.);

4.5. activities as a conciliator (mediator);

4.6. research cooperation (does not apply to candidates with a doctorate in social sciences);

4.7. the level of the candidate's current pedagogical duties and performed pedagogical activities;

4.8. prepared scientific publications in peer-reviewed scientific publications;

4.9. participation in public activities related to courts / justice;

4.10. other activities of the candidate related to the acquisition and deepening of the relevant knowledge required for the position of the chairperson, vice-chairperson of the court, or a chairperson of a division of a court.

5. **Personal competencies.** The personal ability and motivation of a candidate for a career in the courts of the same level, relevant to holding the office of chairperson, vice-chairperson of the court, or a chairperson of a division of a court, shall be assessed up to a score of 40, taking into account:

5.1. constructiveness of the candidate's thinking, erudition: scope of thinking, professional and general erudition, ability to concentrate on the essentials and summarize, quick perception;

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5.2. personality maturity, emotional balance, effectiveness and objectivity of decision-making: principledness, ability to defend one's opinion with arguments, ability to decide, to resist environmental pressure;

5.3. duty and responsibility, the ability to effectively organize one's own and the work of others: the ability to work according to a plan, set priorities, work constructively in tense (stressful) situations, the ability to cope with heavy workloads;

5.4. communication and cooperation skills: ability to present information clearly and intelligibly (orally and in writing), ability to listen and understand, ability to behave constructively in difficult communication situations, respectful treatment of other people, ability to work in a team, adherence to professional ethics, professional culture;

5.5. strength and adequacy of motivation, strength of professional identity, initiative, aspiration to learn and improve, activity in the legal / judicial community.”

Assessment criteria for persons pursuant to the career of judges, transferred or appointed to another court⁵²⁵ (3.5, 4.6) provides that

The assessment of the candidate's personal style and cognitive qualities shall take into account the information obtained during *the interview with the person*;

-to *reasoned opinions or characteristics received from a person's workplaces*, entities performing the control or supervision of his or her work;

-the *recommendations or characteristics of other persons* provided by the candidate himself or herself,

-as well as the *opinion of the requested court*, which shall reflect the position of the judges of that court formed on the basis of the information obtained during the interview, taking into account the general opinion of the court, consisting of the position of the Chairperson of the court and of the judges of the court,

-as well as *other information relevant* to the assessment of personal competences.

N.B. A new tool is foreseen: since 1 January 2022 assessment of a person's competencies, revealing a person's readiness to be judge shall be carried out with the help of experts⁵²⁶.

Conclusions: The main insights/observations and remaining questions for further discussions:

The procedure for promotion of judges is regulated in very detailed manner in law and by-law acts. Other branches of state power (especially the President of the Republic) play very significant role in promotion of judges while the role of the judiciary is relatively low. Specific feature of Lithuanian system – participation from „public” in promotion procedure - persons seeking a career as a judge are selected by the Selection Commission composed of seven persons: three members of the Selection Commission shall be judges appointed by the Judicial Council and four – members of the public – appointed by the President of the Republic. Uniform selection procedure applies for candidates to all courts and positions, including the Supreme Court. Procedure of promotion ad hoc – a public competition is organized when a vacancy becomes available. Applicant who participated in the selection for judicial position has the right to challenge before the Supreme Court a decision of the Selection Commission regarding material procedural violations which may have affected the selection result as a whole. Opportunity to appeal – an advantage.

⁵²⁵ Assessment criteria for persons pursuant to the career of judges, transferred or appointed to another court, approved by the Judicial Council by Resolution No.13P-160-(7.1.2) of 27 September 2019.

⁵²⁶ The Law on Courts of the Republic of Lithuania, adopted on the 31st May 1994, No. I-480; a new version of the Article

55 ¹ of the 16 July 2019 No. XIII-2372 (since 1 January 2022).

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Assessment of a person’s competencies, revealing a person’s readiness to be judge shall be carried out with the help of experts (psychologists). *BUT: Not implemented yet.*

After calculation of the score and completion of the ranking list of candidates the Selection Commission shall vote on the recognition of each candidate proposed as the most suitable; decisions shall be taken by a majority vote of the members. Question from the side of transparency, how does this tool comply with principles of transparency and objectivity.

4.2.2 Latvia

Promotion of judges applying to the regional court. Requirements are established by the Law on judicial power⁵²⁷. **Section 53 of the Law on Judicial power provides:**

(1) A judge of a district (city) court whose total *length of service* in the office of a judge is at least *six years* and who has received a *favourable opinion from the Judicial Qualification Committee* in the extraordinary assessment of the professional activities of the judge may apply for an office of a judge of a regional court.

(1¹) In *exceptional cases*, a judge of a district (city) court who has been approved to the office for an unlimited term and who *has a master’s or doctoral degree*, and who *has received a favourable opinion from the Judicial Qualification Committee* in the extraordinary assessment of the professional activities of the judge may apply for the office of a judge of a regional court.

Professional, personal and social competencies required for the position of a judge of district or regional court are established by *Procedure for Selection of Candidates for the Position of a Judge of a District (City) Court and a Regional Court*⁵²⁸.

1. Professional competencies

1.1. Relevant professional qualifications and experience, including:

knowledge of the specific field of law, as well as the ability to apply it in practice; ability to use the legal method; ability to learn new areas of law; the ability to perceive facts and distinguish the essential from the insignificant; ability to structure work using case law and literature; analytical thinking; good analytical and conceptual thinking skills; understanding of interdisciplinary relationships (eg social, economic, technical, political); good general knowledge and awareness of current political issues; computer skills at least at the level of an experienced everyday user; the necessary work and life experience; belief in the need for professional and general education; ability to conduct self-directed learning.

1.2. Position understanding, which includes:

the ability to be objective regardless of the individual; ability to distance oneself, to be reserved (to draw objective conclusions); the ability to be aware of and test the possibility of one’s own prejudices; the ability to avoid influence and opportunities for influence; understanding of the impact of private transactions on the position; civic courage; ability to be aware of internal and external independence; readiness to participate in the work of self-government institutions.

1.3. Argumentation and persuasion skills:

⁵²⁷ Law on judicial power 15.12.1992; <https://likumi.lv/ta/en/en/id/62847>

⁵²⁸ Procedure for Selection of Candidates for the Position of a Judge of a District (City) Court and a Regional Court, approved by the Judicial Council Decision of 15 April 2020; <http://at.gov.lv/files/uploads/files/9>.

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is able to formulate an opinion clearly and comprehensibly; is able to explain complex issues in an understandable way; is able to argue logically and methodologically correctly; is able to substantiate the opinion in detail, individually and concretely; is able to avoid excessive scientific oversaturation; can accurately subsume; is open to other differences of opinion and is able to form a constructive discussion.

1.4. Case preparation and court management skills:

carefully prepare for the case; knows the case materials; is able to structure the case review process; good responsiveness; ability to clearly define boundaries; ability to create a constructive and reliable atmosphere; ability to speak safely and kindly; the ability to prevent unreasonable harm; the ability to recognize and facilitate situations where reconciliation is possible; ability to control and manage the situation.

1.5. Educational competence / skill:

readiness to recruit and involve trainees; readiness to get involved in preparing and conducting lectures, seminars.

2. Personal competencies

2.1. General personality traits:

has comprehensive interests (also outside his / her position); notices the success of others; has natural authority; persuasive behavior, good manners; sets high standards for itself; is aware of his emotions and is able to control them; is prudent and keeps peace; controls your behavior even in critical situations; is able to self-reflect; analyzes their strengths and weaknesses and works on personal development.

2.2. Duty and responsibility:

is aware of its responsibility to society and is aware that there is a role model for society; takes responsibility; is able to evaluate the consequences of his decisions; the work is done carefully; is open to communication within the competence; make efficient use of the resources at its disposal; is aware of itself as part of the judiciary and the judiciary.

2.3. Operational readiness and load bearing capacity:

has a high working capacity and high load capacity, including psycho-emotional load resistance, is aware of its limits; ready to take on additional responsibilities; also works quickly and concentrated in stressful conditions; does not lose quality when doing several jobs; withstands pressure and maintains peace; takes the initiative; is ready to help.

2.4. Self-organization and organizational skills:

plans its work and time, sets priorities; operates independently and purposefully; effectively plans and optimizes its work process; implement the work plan step by step; is able to motivate oneself and others; can delegate; follows the work process; the interests of those involved shall be taken into account when planning time limits.

2.5. Determination and readiness to make decisions:

provide proportionate legal protection; understands and facilitates decision-making; if necessary, is able to make a quick decision; assumes responsibility for the decisions taken; does not avoid the necessary discussions.

2.6. Readiness for innovation and flexibility:

is open to new working methods and modernization; acquires new experience and develops new ideas and solutions; responds to and is able to adapt to changes in the situation.

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3. Social competences

3.1. Ability to work in a team:

pass on information, experience, knowledge and solutions; promotes and strengthens the sense of team; joins the team and supports other team members; able to work on common solutions.

3.2. Communication skills:

is open to business communication; creates and is able to maintain business contacts; actively listens and allows to express opinions; is clear and understandable; argues objectively and is based on facts; decisions are taken openly; is able to accurately identify problems and offer a solution to them; promotes the exchange of experience.

3.3. Conflict resolution capabilities:

expresses and criticizes dissenting views in a constructive manner; find out the causes of the conflict; considers the arguments of others and is willing to compromise; promotes understanding and reconciliation; behaves honestly and collegially and demands it from others; do not avoid the necessary decisions; takes a clear position.

3.4. Service orientation:

is friendly and kind; follow the agreements; devotes time to the interlocutor; is able to be empathetic; is aware of the strengths and weaknesses of one's personality; is able to maintain peace and balance in stressful situations, as well as create a peaceful atmosphere; is tolerant and patient.

3.5. Team leadership competence:

calls for involvement; is able to provide feedback on work results; delegates and gives clear tasks; creates a positive work climate; take into account the interests of employees.

Promotion of judges applying to the Supreme Court. Requirements are established by the Law on judicial power⁵²⁹

Section 54 of Law on judicial power provides:

(1) A judge of a district (city) court or such judge of a regional court whose total *length of service in the office of a judge is at least ten years* and who has received a *favourable opinion from the General Meeting of Judges of a department of the Supreme Court* may apply for the office of a judge of the Supreme Court.

(1¹) *In exceptional cases*, a judge of a district (city) court who has been approved to the office for an unlimited term or a judge of a regional court *who has a master's or doctoral degree*, and who has received a favourable opinion from the General Meeting of Judges of a department of the Supreme Court. may apply for the office of a judge of the Supreme Court.

(4) To apply for the office of a judge of the Supreme Court, a person must have reached *40 years of age*.

Appointment of court presidents. *Professional, personal and social competencies required for the position and the procedure of appointment* are established by Procedure

⁵²⁹ Law on judicial power 15.12.1992; <https://likumi.lv/ta/en/en/id/62847>

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for nomination and Appointment of the Chairperson, Deputy Chairperson and Chairperson of a Court House of a District (City) Court and Regional Court⁵³⁰

Methodology. Selection commission of candidates for the position of the judge of a district (city) court and a regional court.

The procedure of the appointment, composition and the competence ⁵³¹

For the selection of candidates for the position of a judge of a district (city) court and a regional court, *the Judicial Council shall establish for three years a Commission consisting of three senators, three judges of regional courts and three judges of district (city) courts. The President of the Judicial Council or his authorized representative may take part in the work of the Commission in an advisory capacity.*

The Commission shall have a quorum if the Chairman of the Commission or his or her Deputy and at least five members of the Commission participate in its work.

Methodology. Decision-making procedure⁵³². The selection shall take place in an open competition of candidates for the status of a candidate for the position of a judge (hereinafter - the candidate), evaluating the professional, personal and social competencies necessary for the position of a judge.

]The selection takes place in five rounds:

the first round - evaluation of the application by examining the formal criteria: the applicant's compliance with the requirements specified in the Law on Judicial Power for a candidate for the position of a judge and the absence of the specified restriction to hold the position of a judge. If a tenderer does not comply with the requirements specified in the Law on Judicial Power or if the restrictions specified in the Law on Judicial Power to hold the position of a judge apply to him or her, the Commission shall inform the tenderer in writing that he or she *is not promoted to the second round*. The applicant may appeal against the refusal to admit to the selection tests in accordance with the procedures specified in *the Administrative Procedure Law*.

the second round - evaluation of the answers to the questions submitted in the applicant's application, ascertaining the applicant's motivation and ability to substantiate it. The applicant's answers shall be evaluated by each member of the Commission in points from 1 to 10 in accordance with Annex 2 to this Procedure. An applicant will not be promoted if the average number of points awarded by the members of the Commission is less than 7 points.

the third round - a test of professional knowledge. The test examines the applicant's professional knowledge required to perform the duties of a judge. The form of the test shall be determined by the Commission. The test has *30 multiple choice questions*. The results of the third round are *evaluated in full points, assigning one point for each completely correct test answer*. The candidate for the position of a judge has passed the third selection round

⁵³⁰ Procedure for nomination and Appointment of the Chairperson, Deputy Chairperson and Chairperson of a Court House of a District (City) Court and Regional Court, approved by the Judicial Council decision of 3/15/2019; <http://at.gov.lv/files/uploads/files/9>.

⁵³¹ Procedure for Selection of Candidates for the Position of a Judge of a District (City) Court and a Regional Court, approved by the Judicial Council Decision of 15 April 2020; <http://at.gov.lv/files/uploads/files/9>.

⁵³² *Ibid.*

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successfully, if he has obtained *at least 21 points* in the test. Receiving a negative evaluation in the third round of selection denies the applicant the right to participate in the fourth round of selection.

the fourth round - provision of a *written solution to two tasks of a legal problem* (hereinafter - case) and *oral defence of the provided solution* to the Commission. Evaluates the applicant's ability to apply regulatory enactments in accordance with the problem situation, the ability to argue and present one's opinion. The total evaluation of the fourth round of the Applicant shall be obtained by summing up the total evaluation of the fourth round given by all members of the Commission and dividing by the number of members of the Commission who have participated in the evaluation. The Applicant has passed the fourth selection round successfully, if the *average evaluation of this round is at least 7 points*. Receiving a negative evaluation in the fourth selection round deprives the applicant of the right to participate in the fifth selection round.

the fifth round - a *competency interview, in which the applicant's personal and social competencies are assessed*. The Applicant's personal and social competences shall be assessed in accordance with Annex 5 in the form of a competence interview, in conversation with a commission or a specialist invited by the Council of Justice to participate in the competence assessment process. The total evaluation of the fifth round of the Applicant is obtained by *summing up the total evaluations given by all members of the Commission and dividing by the number of members* of the Commission who have participated in the evaluation. A tenderer has passed the fifth selection round successfully if it has obtained *at least 7 points*. In case of receiving a negative evaluation in the fifth round of selection, the applicant *is not included in the list of candidates for the position of a judge*.

The *total result* of the selection shall be obtained by summing up the evaluation of the tenderer *obtained in the second, third, fourth and fifth rounds* of the selection. *Candidates shall be ranked in the list* in accordance with the result obtained in the selection of candidates for the position of a judge, starting with the highest number of points.

An applicant *may appeal against a refusal* to include a candidate for the position of a judge in court in accordance with the procedures specified in *the Administrative Procedure Law* due to *violations of the selection procedure* committed during the selection rounds, which may have affected the selection result as a whole.

An applicant who has successfully passed the selection tests shall become a candidate for the position of a judge and shall be included in one of the lists of candidates for the position of a judge, taking into account the competence of the court and the court instance.

The competition is held at least once every three years, unless the list of candidates for the post is extended in accordance with a decision of the Council for the Judiciary.

Upon opening of a vacancy for the position of a judge, the vacant position of a judge shall be offered to the candidate who has the largest number of points in the relevant list of candidates. If upon the opening of a vacant position of a judge, there are several candidates on the list of candidates with the same result obtained in the selection process and they have all expressed readiness to accept the vacant position of a judge, interviews with the President of the relevant court. The decision on the most suitable nomination for appointment shall be taken by the *President of the court holding the vacant judicial post*. The decision cannot be appealed.

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Promotion of judges applying to the Supreme Court. Professional, personal and social competencies required for the position of a judge of the Supreme Court are established by the Procedure for selection, internship and passing the qualification examination for a candidate for the position of a judge of the Supreme Court⁵³³

The selection of candidates shall take place in an open competition (hereinafter - competition). The competition shall take place in *two rounds* and shall include the selection of candidates in accordance with the mandatory requirements specified in regulatory enactments, the assessment of professional qualifications and knowledge required for the position. The candidate shall undergo a *psychological assessment* in accordance with Paragraph 33 of this Procedure.

The *general meeting of senators of the Department shall provide an opinion* regarding the candidate in accordance with the procedures specified in Chapter VII of this Procedure. The criteria specified in Paragraphs 1 and 6 of the Annex to this Procedure shall not be assessed. At the *first round* of the competition:

- The administration verifies if a *candidate complies with the requirements specified in the Law " On Judicial Power "*.
- If a candidate *is not a judge* and qualify for the position of a senator the Administration shall forward the documents of candidates *Judges Qualification Board qualification examination for adoption*.
- When accepting the qualification examination, the Judicial Qualification Board shall assess the professional training of a candidate who is not a judge. The qualification examination consists of two questions (a question in substantive law, a question in procedural law) and a task of a legal problem (case).
- Before the second round, candidates must *prepare an essay* and participate in a *psychological assessment*.
- The essay should demonstrate the candidate's ability to systematically analyze a complex legal issue.
- The psychological assessment of a candidate consists of *tests and an interview* performed by a specialist invited by the Supreme Court. The specialist prepares a summary of the candidate's psychological assessment and submits it to the Administration.

At the **second round** of the competition the *general meeting of senators* of the Department shall provide an opinion regarding a candidate for the position of senator or a judge who applies to replace a senator of the Supreme Court.

- The general meeting of senators of the Department shall hold a *structured interview* with the candidate, the candidate shall be heard and his or her suitability for the position of a senator or replacement of a senator shall be assessed on the basis of the criteria specified in the Annex to this Procedure
- *The Chief Justice of the Supreme Court and each senator of the department shall enter their assessment* (0-5, where 0 is the lowest and 5 the highest assessment) in the individual *candidate assessment sheet* (in the appendix). The assessment is indicative.
- After filling in the individual candidate evaluation sheet, the senators of the department and the Chief Justice of the Supreme Court *shall vote for each candidate*. You may not abstain in the vote.

⁵³³ Procedures for Selection, Internship and Qualification Examination of Candidates for the Position of a Judge of the Supreme Court, approved by the Judicial Council Decision of 11/13/2020; <http://at.gov.lv/files/uploads/files/9>.

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- A candidate whose suitability for the position of a department senator or for the replacement of a senator has been voted for by *more than half of the number of decision-making senators* shall be nominated for approval.
- A proposal for approval of a candidate for the position of senator *shall be forwarded by the Chief Justice of the Supreme Court to the Saeima* or the Judicial Council, respectively, a proposal regarding a judge who applies to replace a senator during a vacancy or temporary absence - to the Judicial Council.

Appointment of court presidents. Law on Judicial power Section 40 provides that:

The *President of a regional court shall be appointed to the office by the Judicial Council* for five years. Procedures for the nomination and appointment of candidates for the office of the President shall be determined by the Judicial Council.

Law on Judicial power Section 50 provides that:

The work of the Supreme Court shall be managed by the President of the Supreme Court who shall, upon *recommendation of the Plenary Session of the Supreme Court*, be approved from amongst the judges of the Supreme Court by *the Saeima* for five years.

The selection of the chairperson, deputy chairperson (hereinafter - candidate) of a district (city) court and a regional court shall take place in an open competition, announcing a competition between all judges of the relevant and higher instance court.

A motivated application is to be sent and the concept for the development of the operation of the particular court or court building prepared by the candidate (hereinafter - the concept). In the concept, the candidate shall indicate his / her vision for the functioning of the judiciary and the future development of the court in the areas of strategic management, judicial management, personnel management and administrative management, including objectives, tasks and actions to be taken in the overall development of the court and judiciary.

If the President of the Court, the Vice-President or the President of the Court wishes to reapply for this post, the concept shall be accompanied by a review of the performance of the previous term of office. The concept is published on the website of the Supreme Court (website www.at.gov.lv) in the section Council of Justice.

In order to assess the suitability of a candidate, the Council for the Judiciary shall set up a commission. The Commission shall include:

- two delegated members of the Judicial Council from among the judges;
 - an authorized representative of the Minister of Justice;
 - a representative of the panel of judges of the relevant court;
 - Court administrations would provide a recruitment specialist.
- Representatives of associations of judges may participate in the work of the Commission in an advisory capacity.

After the application deadline, the Court Administration:

- organize the voting of the general meeting of judges of the relevant court or court building regarding the suitability of the candidate for the position for which he or she has applied;
- prepare a reference, which includes information on the candidate's education, length of service as a judge, workload, professional and academic qualification improvement and academic, scientific and pedagogical activities (for example, preparation and conducting of lectures, publications, etc.);
- send the concepts prepared by the candidates and ask for feedback on the candidates: the Chief Justice of the Supreme Court (Senate), if the candidate applies for the position of the

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Chief Justice of the Regional Court, the Deputy Chief Justice of the Regional Court or the Chief Justice of the Regional Court; the chairperson of the relevant regional court, if the candidate applies for the position of the deputy chairperson of the regional court, the chairperson of the regional court courthouse or the chairperson of the district (city) court; the chairperson of the relevant district (city) court, if the candidate applies for the position of the deputy chairperson of the district (city) court or the chairperson of the district (city) court building.

- the general meeting of voting judges referred to in subparagraph shall get acquainted with the concept prepared by the candidate. The general meeting can be organized in absentia. Voting is organized in absentia in the form of electronic voting and is provided by the Court Administration. A candidate who has applied for the competition will not take part in the voting. If several candidates have applied, each vote shall be taken. The court administration shall submit to the commission the result of the vote of the general meeting of judges for each of the candidates, indicating also the number of judges who have participated in the respective voting.

Article 14.3 of this Procedure. The opinion shall indicate the opinion of the candidate:

- management skills, for example, in organizing the work of the court, taking a leading role in solving various issues related to the work of the court, as well as in the quality of work;
- explain and justify one's opinion, the ability to analyze one's actions and listen to criticism, as well as the ability to maintain emotional balance in stressful situations;
- as well as other relevant information that may be relevant to the examination of the matter.

In order to assess the suitability of a candidate, the commission shall get acquainted with the submitted materials and organize an interview with the candidate. At the beginning of the interview, the candidate presents the prepared concept. If several candidates have applied, an interview with each of the candidates shall be organized separately from the others.

In assessing the suitability of a candidate for a position, the commission shall take into account:

- education and work experience;
- reputation and authority in the judiciary;
- professional competencies (communication skills, management skills, etc.);
- an understanding of the functioning of the court system and a vision for the future development of the court (concept prepared by the candidate);
- involvement in the organization of court work (for example, work with new judges, etc.), participation in judicial self-government institutions, as well as activities outside court work related to raising awareness of court work (for example, preparation and conducting of lectures, publications, etc.).

In assessing the suitability of a candidate for a position, the commission shall also use:

- a survey of judges and employees of the relevant court regarding the reputation and authority of the candidate, which is assigned to the Court Administration (the survey shall be conducted as anonymously as possible); within the framework of the survey referred to in subparagraph shall ascertain the opinion of the candidate: the ability to organize one's work, including the candidate's professional skills; communication skills; personal qualities necessary for a good leader; activity in the said position during the previous term of office, if the candidate re-applies for the same position.

- information from the candidate's personal file, which is requested from the Court Administration;

- competence interview in accordance with the competence module developed by the commission.

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Each member of the commission shall enter his or her assessment from 0 to 10, where 0 is the lowest assessment and 10 is the highest assessment, in the individual assessment sheet in accordance with the Annex to this Procedure.

No later than ten working days after the hearing of the candidates, the commission shall prepare a summary of the evaluations, indicating the commission's opinion on the suitability of each candidate for the position (in order of priority), and send it to the Judicial Council, enclosing all evaluation materials. The Commission shall inform the candidate concerned of the evaluation.

In order to formulate an opinion regarding the suitability of a candidate for a position, the commission may vote. The Commission shall vote openly by a simple majority. In the event of a tie, the chairman of the commission shall have the casting vote. During the voting, only the members of the commission and the person acting as the secretary of the commission may be in the meeting room of the commission.

The Council for the Judiciary may hear the candidates before taking a decision at a meeting of the Council for the Judiciary.

If the Judicial Council does not appoint a candidate for the position of the President of the Court, the Deputy President of the Court or the President of the Court House, the Court Administration shall announce a new competition and this shall be ensured by the Court Administration.

Conclusions. The main insights/observations and remaining questions for further discussions:

- The procedure for promotion of judges is regulated in very detailed manner in law and by-law acts.

Sufficient but not excessive.

- Significant role of the judiciary (general meetings of relevant courts, bodies of the Supreme Court, courts presidents) in promotion of judges.

Proper guaranties of the independence of the judicial system?

- Separate procedures (inter alia competent institutions) of promotion to courts of second instance, to positions of courts presidents and to Supreme Court.

Better adapted mechanism?

- Periodical public competition (every three years): applicant who has successfully passed the selection test shall be included in the relevant list of candidates; upon opening of a vacancy, position of a judge shall be offered to the candidate who has the largest number of points.

Latvian model of „a pool of candidates” looks more effective – less time consuming, ensures prompt filling of vacancies.

- Applicants may appeal against the refusal of the Selection Commission to admit to the selection tests and the refusal to include into the list of candidates in accordance with the procedures specified in the Administrative Procedure Law due to violations of the selection procedure which may have affected the selection result as a whole.

Opportunity to appeal – an advantage.

- Selection procedure includes, inter alia, knowledge tests.
- Assessment of a person's competencies, revealing a person's readiness to be judge shall be carried out with the help of experts (psychologists).
- Participation of a recruitment expert in selection of court presidents.

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- The concept for the development of the operation of the particular court or court building prepared by the candidate to leadership position is published on the website of the Supreme Court (website www.at.gov.lv) in the section Council of Justice.

4.2.3 Estonia

Promotion of judges for the office of the court of circuit courts.

Competences (requirements) and criteria (indicators) are established by the Criteria for Selecting Among the Judges Applying for the Position of Circuit Court Judge and the Procedure for Collecting Information on Candidates (Approved by the Supreme Court en banc on 15 December 2020)

The following criteria, taken together, shall be taken into account in the selection of candidates for the post of circuit court judge:

- Quality of judicial decisions.
- Ability to organise the proceedings.
- Specialisation of the candidate, including based on the need of the circuit court to ensure the proper functioning of the judiciary.
- Candidate's education, previous self-improvement, research and experience. Self-improvement is deemed to be the participation in trainings (both in Estonia and abroad). Research refers to publications, research degrees, etc.
- The personality traits required of the candidate to work in the collegiate court, in particular the ability to cooperate and communicate.

Promotion of judges for the office of the court of circuit courts

§ 55 (3¹) of the Courts Act provides that **a judge in the service of a court of first instance shall be transferred to the position of a judge of a court of appeal by a resolution of the Supreme Court en banc.** The authority of a judge at a court of appeal shall commence as of the date specified in a resolution of the Supreme Court en banc.

Procedure

is established by the Criteria for Selecting Among the Judges Applying for the Position of Circuit Court Judge and the Procedure for Collecting Information on Candidates (Approved by the Supreme Court en banc on 15 December 2020)

Judges of a court of first instance who run as candidates for the office of judge of the court of second instance shall submit an application containing the information provided in criteria (see attachment no 1 “Criteria by the Supreme Court”).

The Personnel Department of the Supreme Court collects and appends the following information to the application before submitting it to the Supreme Court en banc:

- career information;
- data on procedural statistics for the three years preceding the application;
- information on complaints about the judge's activities during the three years preceding the application;
- information on participation in trainings organised by the Legal Information and Judicial Training Department of the Supreme Court during the three years preceding the application;
- career information.

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NB. The procedures described above applies to judges of courts of first instance and courts of appeal. These procedures are not applicable in the selection of justices of the Supreme Court. Candidates for Supreme Court Justice shall run as candidates in public competition, they shall meet requirements for judges (§-s 54 and 52 etc of Courts Act) and shall pass a security check.

Justices of the Supreme Court shall be appointed to office by the Parliament (Riigikogu) on the proposal of the Chief Justice of the Supreme Court. The Chief Justice of the Supreme Court shall first consider the opinion of the Supreme Court en banc and the Council for Administration of Courts concerning a candidate.

The Courts Act

§ 52. A person who is an experienced and recognised lawyer may be appointed as a justice of the Supreme Court (Supreme Court justice).

§ 54. (4) Justices of the Supreme Court shall be appointed to office by the Riigikogu on the proposal of the Chief Justice of the Supreme Court. The Chief Justice of the Supreme Court shall first consider the opinion of the Supreme Court en banc and the Council for Administration of Courts concerning a candidate.

Appointment of the courts' presidents

The chairman of a court of the first instance shall be appointed from among the judges of a court of the first instance and of a court of appeal for a term of seven years.

The chairman of a circuit court shall be appointed from among the judges of a court of appeal for a term of seven years.

The chairman of the court shall be appointed by the minister responsible for the area after having considered the opinion of the full court, the chairman of which the judge is appointed, and after the approval by the Council for Administration of Courts.

A person acquires the status of the candidate for the Chief Justice of the Supreme Court after the President of the Republic has proposed to the person to apply for the office and the person agrees to it in writing.

The Estonian Internal Security Service performs the security check of a candidate for the Chief Justice of the Supreme Court pursuant to the procedure prescribed in the Security Authorities Act.

Conclusions on Estonia: Very low degree of legal regulation of promotion procedure. Exclusive role of the Supreme Court - independent power to nominate candidates to the Supreme Court; exclusive power to appoint judges to circuit courts. Separate procedures of promotion to courts of second instance and to the Supreme Court. Security check of candidates to judicial positions is directly provided by the Courts act. No indications about the right to appeal in legislation available.

4.3 Scandinavian region

4.3.1. Norway

The criteria for the promotion of judges applying to a higher court is set out in a memo by the Judicial Appointments Commission (Innstillingsrådets praksisnotat which is published on the web: <https://www.domstol.no/innstillingsradet/publikasjoner/praksispolicynotat/>). The terms are general, for instance applicants to the Supreme Court 'must show a very good performance in their previous posts to succeed'. Norway

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In Norway promotion of judges applying to managerial (leadership) positions happens in the same manner as all new appointments. The presidents of a court is not elected by their colleagues but appointed as any new judge would be. The Board of the Court Administration in 2007 promulgated a set of criteria for leaders in the courts, trying to balance the legal competence with management skills and other criteria. The criteria are published on the website of the Court Administration.

4.3.2 Denmark

In Denmark, the Supreme Court controls access by being able to veto new appointments. To be appointed as a Supreme Court judge, the candidate must have proven their capabilities by delivering judgments (‘voting’) in at least four cases in the Supreme Court. The Judicial Appointments Council (Dommerudnævnelsesrådet) choose what judges are eligible for this kind of trial voting. This decision is made based on a recommendation from the Supreme Court, who have decided among the applicants with all Supreme Court judges present.⁵³⁴

The same entities that are responsible for the appointment of judges are responsible for the promotion or transfer of judges. The procedures are substantially the same. A judge can only be promoted or transferred on application. Only the Special Court of Indictment and Revision can, by a judgment, dismiss or transfer a judge against her/his will, except in cases where a reorganisation of the courts is made. In the course of the 2007 reorganisation of the courts which merged the 82 District Courts into 24, no judge was dismissed but some were transferred against their will as their District Court ceased to exist.⁵³⁵

4.3.3 Sweden

There is no promotion list. A permanent or non-permanent judge who wants to obtain a higher position has to apply for it. Permanent judges are appointed by the government on the proposal of a special board. Most of the members of this board are judges and the chairman are the president of one of the supreme courts. The trade unions that organize court personnel are also represented. Only objective factors such as the merits and competence of the candidates are considered. Swedish citizenship is needed to be appointed to a judge. The suggestions of the board are made public.⁵³⁶

Once a person secures one of the permanent judicial positions, the cabinet determines judicial appointments and promotions based on merit. Judges who wish to serve at the appellate level usually must wait until they have accrued approximately 20 years of service. Supreme court justices are generally selected from the ranks of the appellate judges. Occasionally, a law professor or a distinguished attorney is selected to serve on the high court.⁵³⁷

⁵³⁴ NOU 2020:11, page 112

⁵³⁵ Council of Europe, Page 23

⁵³⁶ <https://www.aihja.org/images/users/ARCHIVES/docutheque-docs/EReportSweden.pdf>

⁵³⁷ https://books.google.no/books?id=hJaEzC1CBe8C&pg=PA248&redir_esc=y#v=onepage&q&f=false

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The same entities that are responsible for the appointment of permanent judges are responsible for the promotion of permanent judges. The procedures are substantially the same (28).⁵³⁸

4.3.4 Finland

When a person is applying for a position in judiciary or promotion (e.g. fixed Judge position), a detailed and versatile evaluation of past performance and expertise is conducted as a basis for the official statement: what data is available concerning the person, what can be concluded from the data and on what grounds is the conclusion based on.⁵³⁹

Fixed term appointments are made by the Supreme Court for the position of the President or Chief Judge of the Court of Appeal, Labour and District Courts, and the Supreme Administrative Court for the Administrative, Market and Insurance Courts. The Supreme Court and the Supreme Administrative Courts also appoint temporary judges (for terms of more than one year) to these same courts on the recommendations of their respective Presidents or Chief Judges. If the appointment is for no more than one year, then it is made by the President or Chief Judge of the respective courts. Before a temporary vacancy is filled, the management team of the court is consulted or where there is none, the tenured judges of the court, unless it is such a short contract that this is not deemed necessary. Vacancies for the position of justice at the Supreme Court or Supreme Administrative Courts must be announced prior to being filled. Such appointments are made by the President of Finland for a fixed term.⁵⁴⁰ Judges can be promoted and transferred through the appointment procedure. Article 103 of the Constitution only allows judges to be transferred with their consent unless the reason is the reorganisation of the judiciary.⁵⁴¹

Prior to the year 2017, Finland did not have compulsory in-service training for Judges. Judges participated in training on a voluntary and independent basis according to their personal needs and interest. A new Court Act came into effect in Finland on 1 January 1 2017. This changed the system and practices of judicial training and recruitment. The reform introduced Judge training positions called “Assessor Training Judge” and the creation of a Judicial Training Board. In addition, the training of Judges is now made compulsory and more systematic. The idea in the reform is to implement a training path, where all Judges would have a planned training program throughout their whole career based on their skills and needs.⁵⁴²

The purpose of the independent Judicial Training Board is to plan and coordinate, jointly with the Ministry of Justice and the courts, the training of the staff involved in applying the law at the courts of law, from court traineeships to supplementary training. The Judicial Training Board implements the application procedure for the posts of Junior Judges candidates under the Courts Act and carries out the pre-selection. As part of the pre-selection process, the Board confirms and arranges the pre-selection exam. The Board grants the candidates who complete the training programme the title of Junior Judge. The Board also carries out the centralised application procedure for court traineeships and selects and appoints Trainees to District Courts, Administrative Courts and Courts of Appeal and grants the candidates who

⁵³⁸ <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806ca2c3>

⁵³⁹ Lut University Report, 21

⁵⁴⁰ Council of Europe, page 26

⁵⁴¹ Council of Europe, page 26

⁵⁴² Comparative Note, OESC, page 22

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successfully complete the court traineeship the right to use the qualification of ‘judicial training’.⁵⁴³

The Government appoints the Judicial Training Board for a term of five years. The Board has ten members, six of which represent the court system. The Finnish Prosecution Service, members of the Finnish Bar Association, legal research and teaching, and the Ministry of Justice are each represented by one Board member. The appointment procedure for the Board members largely corresponds to the appointment procedure of the Judicial Appointments Board. The first Judicial Training Board took up its activities on 1 January 2017 when the Courts Act 673/2016 entered into force. The first five-year period of the Board will therefore run from 1 January 2017 to 31 December 2021.⁵⁴⁴

Regarding the promotion to the managerial positions: A person appointed to a manager position (court/department manager) need to have proven leadership skills and previous management experience. However, person’s judicial expertise is still considered the primal factor in manager selection. On one hand, it is said that management skills and personal characteristics should be highlighted more in manager selections in order to receive younger managers with more enthusiasm for improvement and leadership. On the other hand, there are arguments that the main responsibility of managers is to ensure uniform judgments and this is not possible without extensive judicial expertise. If manager is not actively involved in the judicial work, it is seen to undermine the credibility also as a manager.

The requirements, duties and tasks of court managers have increased a lot in recent decades. Therefore, the manager role is becoming more and more professional, needing special skills and personal characteristics. In larger courts, there are limited possibilities in practice to continue actively working also as a Judge. The reasons behind the increased demands are for example the growing size of courts, increased result responsibility and changes brought by technology development and digitalization. The manager role requires the ability to balance the needed autonomy of Judges and necessary management actions. At the same time, there have been constant cost pressures with decreasing resources and budgets, making the management duties sometimes unrewarding and stressful. This has led to decreased willingness for management positions among the most qualified and best expert Judges.

There are no mechanisms for gender balance in management nominations. In manager positions, the majority of both applicants and nominees are still males. This is largely due to historic reasons: Judges with longer career are usually applying and appointed to manager positions (there are not as many older female Judges as males). However, this is seen to even in time.⁵⁴⁵

4.3.5 Iceland

In Iceland, there is no regular system of evaluation for judges, nor is there a promotion system in place within the judiciary. District court judges can apply to work in the Supreme Court. Chief judges are selected in each court by their peers for a five-year term; in cases where there is no agreement in the selection, the Judicial Council has a say. Formal appointment of a chief judge is the responsibility of the Minister of the Interior. Complaints regarding the performance of judges are handled by the Committee on Judicial Function.⁵⁴⁶

⁵⁴³ Ibid.

⁵⁴⁴ Comparative Note, OESC, page 23

⁵⁴⁵ Lut University, Report – The Evaluation and development of quality of justice in Finland, page 22

⁵⁴⁶ Council of Europe, Iceland, page 24

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4.4 Central Europe region

4.4.1 Czech Republic

Promotion of Judges to Higher Instances and Appointment of Court Officials.

There is not complete concept for the way of redeployment of judges of lower courts to courts of higher instance in the Czech Republic. Only the Supreme Court and the Supreme Administrative Court have their own rules.

Appointment of court officials is regulated in the Constitution and the Act on Judges and Courts. The President of the Republic appoints the presiding judge and vice-presiding judges of the Constitutional Court of the Czech Republic, and, similarly, the President of the Republic appoints the presiding judge and vice-presiding judges of the Supreme Court and the Supreme Administrative Court from the group of judges of these courts. The presiding judge of the Supreme Court shall appoint presiding judges of divisions and presiding judges of panels of the Supreme Court, and the presiding judge of the Supreme Administrative Court shall appoint presiding judges of divisions and presiding judges of panels of the Supreme Administrative Court. The function period of presiding judges of divisions of the Supreme Court and the Supreme Administrative Court is 5 years.

The presiding judges of high and regional courts are appointed by the President of the Republic upon proposal of the Minister of Justice from the judges. The Minister of Justice appoints presiding judges of district courts upon proposal of the presiding judge of the regional court from the judges. The Minister of Justice appoints vice-presiding judges of high, regional and district courts upon proposal of the presiding judge of the given court from the group of judges. The function period of the presiding judge and the vice-presiding judge of high, regional and district courts is 7 years. Presiding judges of panels of the high and regional courts are appointed from the judges of such courts by the presiding judge of the given court; presiding judges of panels of a district court are appointed by the presiding judge of the regional court, in whose jurisdiction the district court belongs.

4.4.2 Poland

A judge, who (in particular) performed at least 4 years of the function of district judge or who was an attorney-at-law, legal advisor or notary for at least 6 years, may endeavour for appointment to a place of judge at a provincial court. A judge of two previous instances and military courts with at least ten-year-practice may become a judge at an appellate court. The top of the career of judge is the function of judge at the Supreme Court, who has the corresponding court practice in the length of ten years and the age of 40 years.

From the point of view of appointment of officials of particular courts, this model was set by important amendments of the act in 2017. The current situation empowers the Minister of Justice to execution of entirely *discretion* power in appointment of officials at particular courts.

4.4.3 Slovak Republic

Appointment into Higher Judge Function

The presiding judge of the respective court shall appoint presiding judges of panels into functions from judges of such a court on the basis of results of selection procedure and after

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prior statement of the Judicial Council. Statement of the respective division is also necessary to appointment of the presiding judge of the panel of the Supreme Court and the presiding judge of the Supreme Administrative Court.

The presiding judge of the board shall be elected by judges of the respective presidium by secret voting for three years, out of presiding judges of panels of such a board. Proposals may be submitted by members of the presidium or the presiding judge of the court who presents its proposal to the respective presidium.

The judges of the respective division shall elect the presiding judge of the division by secret voting for three years, out of presiding judges of panels of the respective division. The presiding judge of the panel, the presiding judge of the presidium and the presiding judge of the panel are not the representatives of the administration of courts.

Conclusions

Redeployment and Promotion of Judges.

A judge may only be redeployed to another court with his/her consent. There is no complete concept for the way of redeployment of judges of courts of lower instance to courts of higher instance in the Czech Republic. Only the Supreme Court and the Supreme Administrative Court have their own rules. In Poland, there are requirements for promotion to a higher instance consisting in the necessity to comply with the determined practice duration at a court of lower instance or a court of another type (military court). In the Slovak Republic, the promotion to a court of higher instance is subject to passing the selection procedure, and a judge is assigned for the execution of the function to a court of higher instance by the Judicial Council on the basis of results of the selection procedure, which are announced to it by the chairman of the selection commission. In Slovakia, there is a special position established, so called “temporary judge” (in particular, for reasons of temporary and longer-term substitution of another judge).

4.5 Western Europe region

4.5.1 Netherlands

Promotion of judges applying to a higher court or a managerial position.

The procedure of promotion either to the position of seniority or a managerial position is not thoroughly regulated. It is closely linked to annual evaluation (performance interview) and, when a position opens up, a the selection committee (or management of the court in the instances of promotion to the position of seniority) evaluates, whether a person meets the requirements prescribed in a job profile.

The decision to move judge to the higher court is taken by the management (or president, court’s meeting) of the court, where the vacancy is open it is noted that the in practice the positions usually filled out essentially internally⁵⁴⁷.

4.5.2 Spain

Appointment of Senior Judges (*Magistrado*)

The appointment of Senior Judges is done following three procedures:

1. Two of every four vacant positions in the rank of Senior Judges are provided by **promotion of judges, according to their seniority.**

⁵⁴⁷ Judicial Reform in Netherlands, Journal of the Judiciary, 2015, P. 16.

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2. The third vacant position is provided **among judges, by means of selective examinations** in the civil, criminal, commercial, administrative and labor branches of the jurisdiction.
3. The fourth vacant position is provided **through a competition between legal professionals of renowned competence** with over ten years of professional practice.

The General Council for the Judiciary establishes the merits to be taken into account in the selection process, which, pursuant to Article 313 of the Organic Law 6/1985 include:

- a) Law Degree with a grade higher than a pass, including academic history;
- b) Doctorate of Law and grade reached on completing, including academic history;
- c) Years of effective law practice if the Courts and Tribunals, opinions issued and assessment provided;
- d) Years of effective service as Professor of Law or full time University teacher in legal disciplines at Public Universities or with similar categories in private Universities;
- e) Years of service as civil servant in any other divisions of the Public Authority or Civil Service, entry to which requires express possession of the qualification of Doctor or Bachelor of Law and implies intervention before the Courts of Justice, in the Public Prosecution Service or in the division of Clerks of the Court, having served and performed duties in said posts;
- f) Years of effective service in judicial functions without being a member of the judicial services and number of judgments handed down, including evaluation of said judgments;
- g) Scientific-legal publications;
- h) Talks and lectures in conferences and courses on relevant legal interest;
- i) Completion of legal specialization courses with a duration of no less than three hundred hours, as well as obtaining research qualifications accredited by the National Agency for Quality and Accreditation;
- j) Having passed one of the exercises as part of the examinations for access to the judiciary in the rank of judge.

The competition process also includes practical examination based on the drafting of an opinion report which will help to assess the candidates' aptitude.

The assessment of the candidates is done by a panel appointed by the General Council for the Judiciary and composed by senior judges, public prosecutors, university professors, advocates and court clerks⁵⁴⁸. In order to assess the merits of the candidates the selection panel may interview them and discuss these merits together with the professional curriculum of the candidates. **The sole purpose of the interview is to attest to the reality of the legal training and suitability for access to the judiciary of the candidates on the basis of the alleged merits and shall not become a general examination of legal knowledge.** The panel may exclude those candidates who do not possess the quality of legal professional with renowned competence, either due to insufficiency or lack of aptitude deduced from the objective data in the case, or due to the presence of circumstances which presuppose discredit

⁵⁴⁸ The composition of the qualifying tribunal that will evaluate the entry tests for this level is: the President of the Supreme Court or the delegated Supreme Court or High Court Magistrate, who will preside over the tribunal, two magistrates, a prosecutor, two university professors, a state attorney, a lawyer with more than ten years of professional experience, a first-category court clerk, a lawyer of the General Council of the Judiciary who holds a law degree and who will act as secretary. <https://www.poderjudicial.es/cgpj/en/Services/Access-to-the-Magistrate-category/Guide-for-jurists-of-acknowledged-competence/>

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incompatible with that condition, even when a candidate has exceeded the minimum mark fixed by the panel for the assessment of candidates' merits.

At the end of the selection procedure the panel issues a report of the content and result of the process expressing the criteria applied for the definitive qualification of the candidates and proposing the list of candidates to be appointed by the General Council for the Judiciary. Pursuant to Article 313.11 of the Organic Law 6/1985, **the General Council for the Judiciary may reject a candidate on specific grounds despite the favorable proposal of the qualifying panel**, provided that subsequent to that procedure, evidence arises of a circumstance which implies insuperable discredit of the candidate.

Candidates included in the proposal list issued by the panel must attend an **initial training and selection course** organized by the Judicial School, **which consists of two stages: 1) a theoretical phase** based on a program of multidisciplinary training; and **2) a practical period of training** in different courts as in the case of the initial training for judges. The candidates who successfully complete the theoretical and practical stages of the course shall be appointed Senior judges by the order of the proposal made by the Judicial School. To this purpose, the Judicial School shall draw up a list of candidates who have passed the theoretical and practical course according to the grade achieved. The list is submitted to the General Council for the Judiciary, who formally forwards the appointment order to the Ministry of Justice, since the appointment of Senior judges is formally done through a Royal Decree signed by the King and the Minister of Justice.

Furthermore, pursuant to Article 330.4 of the Organic Law 6/1985, in the Civil and Criminal Divisions of the High Courts of Justice one out of every three posts shall be covered by a lawyer of renowned prestige with over ten years of professional practice in the Autonomous Community (where the High Court has its seat), appointed at the proposal of the General Council for the Judiciary on a short-list of candidates presented by the legislative Assembly (of the Autonomous Community). The candidate is proposed by the Plenary Assembly of the General Council for the Judiciary by simple majority and formally appointed through a Royal Decree signed by the King and the Minister of Justice, who may not object the appointment of the candidate proposed by the General Council for the Judiciary. Unlike the other Senior judges appointed among legal practitioners, **the candidates proposed by the General Council for the Judiciary for the positions of Senior Judges at the Civil and Criminal Divisions of the High Courts need not undergo any kind of training before being formally appointed.**

Selection tests for **promotion from the category of Judge to Senior Judge** within the civil and criminal court systems take place at the Judicial School and assess the candidates' ability and legal training, as well as their knowledge of the various branches of law. They may consist of studies, courses, drafting of reports or decisions and their defense before the Board, presentations and responses to comments by the Board in other similar exercises. **The selection process involves completion of theoretical and practical exercises, followed by a course at the Judicial School.** The theoretical exercises are related to knowledge of law in the area of particular specialization. Activities of the Judicial School course that aspiring candidates who have completed the exercise will be required to take include attending single-judge and collegial courts that have sole jurisdiction to hear and rule in the particular specialization.

For example, candidates that seek promotion in contentious administrative jurisdiction follow the **selection process** which comprises two stages - the first involves a theoretical and

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practical exercise, and the second involves a theoretical and practical course at the Judicial School headquarters in Barcelona:

I. Completion of a selection process, comprising the following exercises:

a) Theoretical exercise (maximum 80 minutes’ duration): Oral presentation to the board in a public hearing, on four topics drawn at random (two topics on general administrative law, one topic on specialised administrative law and procedural contentious-administrative law, and one topic on tax law). After the presentation, the candidates must respond to comments made by the board about the presentation, for no longer than fifteen minutes.

b) Practical exercise (maximum five hours): this will involve writing a judgment based on a practical case set by the board, which will be corrected and assessed by the board, adopting the necessary measures to duly preserve the anonymity of its authors.

II. Completion of a theoretical and practical course at the Judicial School, which currently lasts six weeks and includes theoretical and practical modules taught jointly, which are divided into two stages:

a) First stage (five weeks): this takes place at the Judicial School and the Chamber of Contentious-Administrative Matters of the High Court of Justice of Catalonia.

b) Second stage (one week): this takes place at the Chamber of Contentious-Administrative Matters of the Supreme Court.⁵⁴⁹

Appointment of Senior Judges of the Supreme Court (*Magistrado del Tribunal Supremo*)

The proposal for appointment of Senior Judges of the Supreme Court is always done by the Plenary Assembly of the General Council for the Judiciary according to Articles 342 to 347 of the Organic Law 6/1985.

Pursuant to Article 343 of the Organic Law 6/1985, **four out of five vacant positions at the Supreme Court shall be assigned to members of the judiciary** having served for at least ten years with the rank of Senior Judge and a minimum of fifteen years in the judiciary. **The fifth vacant position is assigned to candidates among lawyers and other legal professionals, all of renowned competence.** Prominent lawyers and legal professionals may be appointed Senior Judges of the Supreme Court, provided that they fulfil the established requirements and have sufficient merit in the opinion of the General Council of the Judiciary, and have practiced professionally for a period of more than fifteen years preferably in the branch of law corresponding to the jurisdiction of the division for which they are to be appointed (Article 345 of the Organic Law 6/1985).

Regulation 1/2010 of the General Council for the Judiciary distinguishes between the provision of jurisdictional posts and the provision of posts of a governmental nature. In relation to jurisdictional positions (Senior Judges of the Supreme Court), the distinction is made between those reserved for members of the judiciary and those reserved for lawyers and jurists of recognized competence.

With respect to the members of the judiciary, Article 5 of the Regulation establishes that the merits of the degree of excellence in the strict service of the jurisdictional function will be valued as a preferential consideration, being the subject of weighting: the time of active service in the Judicial Career, the exercise in destinations corresponding to the jurisdictional order of the place in question, the time of service in collegiate judicial bodies and jurisdictional

⁵⁴⁹

<https://www.poderjudicial.es/cgpi/en/Services/Access-to-the-category-of-Special-Magistrate/Administrative-litigation/>

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resolutions of special legal relevance and significant technical quality. The exercise of professions or non-jurisdictional legal activities of analogous relevance will also be considered as complementary merits.

As regards the provision of **positions corresponding to lawyers and jurists of recognized competence**, preferential merits are the effective exercise in legal professions of a public or private nature, the effective service as university professor in legal disciplines, the doctorate in Law and other revealing merits of specialization in the respective legal branch, as established in Article 6 of Regulation 1/2010.

Except in the case of appointments of Senior Judges of the Supreme Court among members of the Judicial Career, in the other cases of discretionary appointments an interview is conducted with the candidates. All information on appointments is available in the Transparency Portal of the General Council for the Judiciary.

Discretionary appointments are the responsibility of the Plenary of the General Council for the Judiciary, requiring a simple majority of the members present (Article 630.1 of the Organic Law 6/1985) and must be reasoned. Against these appointments, a contentious-administrative appeal can be filed with the Third Chamber of the Supreme Court.

The candidates are formally appointed following the proposal of the General Council for the Judiciary through a Royal Decree signed by the King and the Minister of Justice, who may not object the appointment of the candidate proposed by the General Council for the Judiciary. Candidates appointed following the proposal by the General Council for the Judiciary for the positions of Senior Judges of the Supreme Court **need not undergo any kind of training before being formally appointed.**

4.5.3 Germany

Promotion of judges applying to a higher court. “In Germany there is no Council for the Judiciary. Federal judges in Germany are appointed by the Federal President (Bundespräsident), after being elected. The judges are elected for life tenure by the Judges Election Committee (Richterwahlausschuss) consisting of 16 ministers of the substates (Länder) and 16 members elected by the German Parliament (Bundestag). The committee examines the qualifications of the candidates and makes a proposal for appointment. The President (Bundespräsident) formally appoints a judge, but a federal minister is responsible for the decision”.⁵⁵⁰

“Justices of the Federal Constitutional Court are also elected, half of them by the German Parliament (Bundestag) and half of them by the Federal Council (Bundesrat)”.⁵⁵¹

Conclusions

⁵⁵⁰ Bovend'Eert. Recruitment and appointment of judges and justices in Europe and the US; see official publication <https://trema.nvvr.org/editie/2018-05/recruitment-and-appointment-of-judges-and-justices-in-europe-and-the-us>

⁵⁵¹ Bovend'Eert. Recruitment and appointment of judges and justices in Europe and the US; see official publication <https://trema.nvvr.org/editie/2018-05/recruitment-and-appointment-of-judges-and-justices-in-europe-and-the-us>

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1. In the Netherlands the procedure of promotion either to the position of seniority or a managerial position is not thoroughly regulated. It is closely linked to annual evaluation (performance interview) and, when a position opens up, the selection committee (or management of the court in the instances of promotion to the position of seniority) evaluates, whether a person meets the requirements prescribed in a job profile. The decision to move judge to the higher court is taken by the management (or president, court’s meeting) of the court, where the vacancy is open it is noted that in practice the positions usually filled out essentially internally
2. While in Spain, the promotion procedures are mainly based on competition, involving extensive theoretical and practical training organized by the Judicial School. Judicial promotion follows the principle of specialization. Defined number of higher judicial positions are distributed according to seniority. Defined number of higher judicial positions are reserved for legal professionals outside the judiciary. During the appointment procedure, those professionals do not compete with judges seeking promotion. The crucial role is played by the Council for the Judiciary. Political appointment is merely formal, as neither the King nor the Ministry of Justice may object the appointment of the candidates proposed by the General Council for the Judiciary. The General Council for the Judiciary, on the other hand, may reject a candidate to Senior Judges on specific grounds despite the favourable proposal of the qualifying panel.

4.6 Balkan region

4.6.1 Albania

Same rules are applied for evaluation with respect to promotion as for ordinary evaluation (see the 5.5.1 part).

Promotion of judges applying to a higher court.

Legal Basis:

- The law no. 96/2016 On the Status of Judges and Prosecutors in the Republic of Albania” as amended.
- HJC Decision no. 70. dated 07.02.2020 “On the criteria and procedures for the promotion of judges”
- HJC Decision nr. 75 dated 23.05.2019 “On procedure of verification of conditions and criteria of recruitment of the candidates for judges, development of career of judges and appointment of judges of the High Court”
- Decision no. 102, dated 05.07.219 “On the criteria of evaluation, scoring and ranking of non judge candidates and the selection procedure for appointment in the High Court”
- Decision no. 209, dated 11.10.2019 “On the Methodology for the evaluation and scoring of non-judge candidates in the High Court”.

According to the Law no. 96/2016 “Promotion” means a move from one position in the judicial or prosecutorial system to another position at a higher instance level; from a position of general civil, criminal or administrative jurisdiction to a position at one of the special courts for

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the adjudication of the criminal offences of corruption and organised crime or the Special Prosecution Office; from a position as magistrate to the position of a chairperson of the court or prosecution office; from a seconded position or a position in the mobility scheme, to a position in a higher level than the position held prior to the secondment. Following a call for applications for a promotion which is published on the website of the Council, the candidate may apply for up to 3 vacant positions or positions expected to become vacant. If the magistrate is applying for more than one position, he /she must list them according to preference.

Eligibility Criteria:

1. *Asset declaration and background check:* Only applicants who have passed the asset declaration and background check and have no disciplinary sanction in force are allowed to participate further in the promotion procedure. In this regard, the Council requests information from competent institutions⁵⁵², as responsible authorities to provide respective data needed under the process of verification of assets and background check, with the aim of identification of any disqualification ground for the candidates.
2. *Professional experience:* The magistrates are promoted if they meet the following minimum criteria of the professional experience required for the different vacancies at different level of courts:
 - a. For the position of a judge at the special court⁵⁵³ for the adjudication of the criminal offences of corruption and organised crime:
 - a. first instance: the magistrate must have assumed the function no less than **7 years as judge**, out of which at least 5 years as judge in the area of criminal justice or inspector at the Office of the High Justice Inspector, including even the experience as seconded magistrate;
 - b. appeal: the magistrate must have assumed the function not less than **10 years as judge**, out of which at least 5 years as judge in criminal matters or inspector at the Office of the High Justice Inspector;
 - b. In order to be promoted to a position as magistrate of any other court of appeal, a magistrate must have assumed the function no less than **7 years** in the first instance, out of which at least 5 years in the area of law relevant for the vacant position, including the experience as a seconded magistrate.
 - c. In order to be promoted to a position as magistrate of the High Court a magistrate must have assumed the function not less than **13 years** in a lower instance, out of which at least 5 years in the area of law relevant for the vacant position, including a period of experience as seconded magistrate.
 - d. promotion to the High Court from prominent lawyers: One fifth of the judges at the High Court may be renowned jurists, having a scientific degree in law, with not less than **15 years'** experience as advocates, law professors or lectors, senior jurists in the public administration or other fields of law)

The magistrate may be promoted in office to the position of the **chairperson of a court** of first instance or appeal, if she/he:

⁵⁵² High Inspectorate for Declaration and Audit of Assets and Conflict of Interest, prosecution office, financial, tax and customs authorities, National Bureau of Investigation, General Prosecution, state intelligence institutions and any disciplinary authorities having supervised the discipline in the labour relations of the candidate.

⁵⁵³ For all positions the magistrate shall further comply with the other criteria and security conditions, provided for in the law “On the Organization and Functioning of Institutions for Combating Corruption and Organized Crime.

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- a) has assumed the function not less than **7 years** as magistrate, during which at least 4 years at the same level, including the experience as a seconded magistrate,
- b) embodies the indicators required for the organizational and management abilities, like:
 - i. experience as deputy chairperson or chairperson of a section or press magistrate;
 - ii. experience in leading positions in the public or justice administration, like an experience as member of a Council which expired at least three years ago;
 - iii. insight in different organizational set ups and management styles, as magistrate in a mobility scheme or inspector at the Office of the High Justice Inspector;
- c) must not have been a member of a Council in the previous 3 years.

A candidate having served as a member of the Council is excluded from promotion proceedings during the exercise of the function as member and three years following the end of the mandate.

3. two past ethical and professional performance evaluations: comparative assessment of which is the criteria for the ranking of candidates. The candidate with the highest evaluation level is ranked highest.

In case of the candidate seconded to an institution within the justice system, the level of the ethical and professional evaluation made by this institution shall be recognized as evaluation level taking into consideration the evaluation levels according to the special law of the institution of the justice system and the evaluation levels according to the system of that time for the ethical and professional evaluation of judges.

If the institution of the justice system has not made the ethical and professional evaluation of its seconded judge, the latter has the right to be evaluated for its professional capabilities as a non-judge candidate in the High Court⁵⁵⁴.

In case of more candidates with the same grades, the magistrates are ranked according to:

1. “The last level of evaluation” - According to this priority, the candidate with the last highest ethical and professional evaluation, shall be ranked highest.
2. “The experiences as seconded judge, as judge in the mobility scheme, or as a member of the Council” - According to this priority, the candidate who has one of these experiences is ranked highest.
3. “Duration of the experience as seconded judge, as judge in the mobility scheme, or as a member of the Council” - According to this priority, the candidate who has the experience with the longest yearly duration is ranked highest.
4. “Diversity of experiences as seconded judge, as judge in the mobility scheme, or as member of the Council” - According to this priority the candidate who has most of these experiences is ranked highest;

Additionally, other below criteria are taken into consideration as well:

- i. Seniority as magistrate or jurist.

⁵⁵⁴ According to the provisions of article 49 of the Status Law and decisions of the High Judicial Council, Decision no. 102, dated 05.07.2019 “On the criteria of evaluation, scoring and ranking of non judge candidates and the selection procedure for appointment in the High Court” and Decision no. 209, dated 11.10.2019 “On the Methodology for the evaluation and scoring of non-judge candidates in the High Court”.

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- ii. Duration of the specific professional experience. The candidate who has the longest duration of the specific professional experience is ranked highest.
- iii. Seniority at work as judge: The candidate who is the most senior at work as a judge is ranked highest.
- iv. Career development as judge: The candidate with the most developed career is ranked the highest.
- v. Seniority at work as a jurist: The candidate the most senior at work as a jurist is ranked the highest.

A temporarily eligible criteria for promotion procedures is the successfully passing of transitional reassessment process (Vetting) with a final decision from the relevant authorities.

The Council not later than 7 days from the first final decision on the eligibility of a candidate, decides on the commencement of the selection procedure for the promotion and through the lot assigns the rapporteur for that procedure.

The member of the Committee and/or any other member of the Council, at any time when informed of the existence of a conflict of interest or legal obstacle is obliged to state the nature of the conflict of interest or obstacle and withdraw from participating in the selection procedure for promotion to the vacant position in question. On the withdrawal request decides the Chairperson and in case this latter resigns, the decision is made by the deputy chairperson.

The candidates' selection procedure for promotion is conducted in three stages:

- A. Procedural and verification actions of the case rapporteur, including as the case may be, also those on the evaluation and scoring of the candidate who has been seconded to an institution within the justice system and the latter has not performed his/her ethical and professional evaluation;
- B. Reviewing and approval by the Committee of the draft decision on candidates' ranking or the preliminary draft decision on appointment;
- C. Reviewing and approval by the Council of the draft decision on candidates' ranking or the preliminary draft decision on appointment.

The selection procedure for promotion is performed alongside:

- a) the procedures of verification of legal criteria of candidacy, assets and background check of all the candidates for the vacant position in question.
- b) with the evaluation and scoring procedures for other candidates who compete for that vacant position, who have been seconded to an institution within the justice system and the latter has not made their ethical and professional evaluation.

Only the qualified candidates who have two ethical and professional evaluations are part of the selection procedure for the promotion to the vacant position.

The Council's decision on the ranking of candidates and preliminary decision on the appointment proposal is reasoned by the case rapporteur and is notified to the candidates, who have the right to appeal. The final decision on the ranking of candidates and the preliminary decision on the appointment proposal, are published in the official website of the Council.

Not later than 7 days from the day the decision on the ranking of candidates in the selection procedure for promotion becomes final, according to the law, on the draft decision drafted by the rapporteur of the case, the Council decides to promote the highest-ranking candidate to the relevant vacant position. In case of the selection procedure for the promotion to court, for more than one vacant position in the same field of law, the Council takes a decision for the promotion to those vacant positions of the highest ranked candidates. The Council's promotion

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decision is notified to the promoted candidate, respective courts and is published on the official website of the Council.

4.6.2 Kosovo

Legal Basis: The law No. 06/L-055, dated 26.12.2018 „On Judicial Council“.

- LAW No. 06/L-054, dated 18.12 2018 “On courts”. JC Regulation No.2/2021 On evaluation of performance of judges.

According to Article 27 of the Law No. 06/L-055, dated 26.12.2018 „On Judicial Council” the Council evaluates the performance of judges and it is also responsible for the promotion of judges in accordance with the sub-legal act issued by it. The evaluation of performance shall include at least:

1. professional knowledge, work experience and performance, including an understanding of, and respect for human rights;
2. capacity for legal reasoning;
3. professional ability, based on the work results during the evaluation period, including participation in organized forms of training in which the performance has been evaluated;
4. capability and capacity for analyzing legal problems
5. ability to perform duties impartially, honestly, with care and responsibility;
6. communication skills;
7. conduct out of office;
8. personal integrity;
9. number of cases returned to re-trial or re-decision or cases that have been removed by the highest court.

The evaluation of the performance assessment committee has an direct effect on promotion or should also serve as a ground for initiating a disciplinary procedure of a judge. Such assessment should be based on measurable and transparent criteria. The judge shall be notified for the initiation of an evaluation process in order to present his/her written statements/objections to the Council with regard to its conclusions or findings. The evaluation of performance shall be taken place periodically, every three (3) years.

There is a different appointment procedure for the chairmen of the courts in Kosovo: The President of the Republic appoints/dismiss the President of the Supreme Court from the ranks of judges of the Supreme Court for a seven (7) year mandate with no possibility of reappointment after the proposal of the Council for his appointment/dismissal. The other courts chairpersons shall be appointed by the Council in consultation with the judges of the respective courts. In appointing the Presidents of the Courts, the Council considers specialized training, managerial experience and performance assessment.

The Council is responsible for appoint the Supervising Judge of each branch of the Basic Court, based in an open, competitive and merit-based process. The Council, in consultation with the President of the Basic Court, may appoint a Vice-President of the Court who shall assist in the management of the court and in the absence of the President of the Court. The Court Presidents shall be appointed for a five (5) year term, without the right to re-election. Upon termination of the mandate as President of the Court, the judge shall continue to serve as a judge in the same court where they were first appointed. The supervising judges shall be appointed for a five (5) year term, without the right to re-election. Upon termination of the mandate as a supervising judge, the judge shall continue to serve as a judge in the same court where they were first appointed. In order to ensure that courts reflect the multiethnic nature of Kosovo, the Council shall endeavor to ensure that members of non-majority communities in

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Kosovo are appointed to judicial management roles, including as Court Presidents and supervising judges.⁵⁵⁵ The appointment of the courts chairpersons and supervising judges shall be conducted through an open, competitive, transparent and merit-based process.⁵⁵⁶ The candidate for president of the court, respectively for supervising judge must meet the following criteria:

- have at least 3 years of experience as judge;
- not having a disciplinary sanction with a final decision;
- to have leadership and organizational skills;
- as well as personal integrity.

There is a ban to apply for this position for a member of the Judicial Council, unless he / she resigns before applying and also for the president of the court or the supervising judge who has completed his/her second term as presiding judge or supervising judge, and also for a judge who does not enjoy a good reputation among his/her peers.⁵⁵⁷

For a better performance of the courts, the Council shall establish the Assembly of Presidents of Courts and Supervising Judges, which is an advisory body to the Council on matters related to the courts. The Assembly shall be composed of the President of the Supreme Court, the President of the Court of Appeals, the Presidents of the Basic Courts and of a supervising judge from each of the Basic Court appointed by the Council. The Assembly exercises only advisory power subject to regulations issued by the Council after the public consultation process with the members of the Assembly. The Council may invite the Assembly or individual Members of the Assembly to attend meetings of the Council when the Council decides, that such participation would be helpful to the Council.⁵⁵⁸

4.6.3. North Macedonia

Legal Basis:

- LAW ON COURTS CONSOLIDATED TEXT, Official Gazette of the RNM: 58/2006; 62/2006; 35/2008; 61/2008; 118/2008; 16/2009; 150/2010; 39/2012; 83/2018; 198/2018; 96/2019
- LAW ON THE JUDICIAL COUNCIL OF THE REPUBLIC OF NORTH MACEDONIA (“Official gazette of the Republic of North Macedonia“ No.102/2019 of 22 May 2019)
- LAW ON ACADEMY FOR JUDGES AND PUBLIC PROSECUTORS CONSOLIDATED TEXT (20/15, 192/15, 231/15, 163/18)

According to the Law on Courts, there are special requirements for election of a judge to a Court of First Instance, Court of Appeal and the Supreme Court of the Republic of Macedonia as follows:⁵⁵⁹

A person who has completed the training at the Academy for Judges and Public Prosecutors, determined by the law, may be elected as a judge of a basic court, if he/she

⁵⁵⁵ Article 5 of the Law on Courts provides that the composition of the judiciary shall reflect the ethnic diversity of the Republic of Kosovo in accordance with the Constitution and internationally recognized principles of gender equality. The composition of the judiciary shall reflect the ethnic composition of the territorial jurisdiction of each respective court. This principle reflects also in the appointment of the chairpersons of the courts.

⁵⁵⁶ Article 30 of the Law on Judicial Council.

⁵⁵⁷ Article 4 of the Regulation No.4/2016 of the Judicial Council, as amended.

⁵⁵⁸ Article 33 of the Law on Judicial Council.

⁵⁵⁹ Article 46 of the Law on Courts.

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- has a working experience of at least four years of uninterrupted judicial service as a judge in another basic court up to the moment of the application for election, who has been assessed by a competent authority with a positive assessment, in accordance with the Law on the Judicial Council of the Republic of Macedonia.
- Has a working experience of at least six years of continuous service as a judge in a basic court, Administrative or Higher Administrative Court up to the moment of the application for election may be elected as a judge of the court of appeal, who is assessed by the competent authority with a positive assessment, in accordance with the law the Law on the Judicial Council of the Republic of Macedonia;
- Has a working experience of at least four years of continuous service as a judge in another appellate court up to the moment of the application for election may be elected as a judge of an appellate court, who is assessed by a competent authority with a positive assessment, in accordance with the law the Law on the Judicial Council of the Republic of Macedonia;
- Has a working experience of at least six years of service as a judge in an appellate court up to the moment of the application for election may be elected as a judge of the Supreme Court of the Republic of Macedonia and who is assessed by a competent authority with a positive assessment in accordance with the Law on the Judicial Council of the Republic of Macedonia.

As for the special conditions for election of a judge in the Administrative Court and the Higher Administrative Court, they are as follows:

- A person with a working experience of at least four years of uninterrupted judicial service as a judge in a basic court up to the moment of the application for election may be elected as a judge of the Administrative Court, who is evaluated by a competent authority with a positive assessment, in accordance with the Law on the Judicial Council of the Republic of Macedonia;
- As a judge of the Higher Administrative Court may be elected a person who has working experience of at least six years uninterrupted judicial service as a judge in the appellate court or the Administrative Court up to the moment of the application for election, who is assessed by a competent authority with a positive assessment in accordance with the Law on the Judicial Council of the Republic of Macedonia.
- A person who has completed at least one mandate as a judge of an international court and who meets the requirements of Article 45 of this Law, may be elected a judge at all levels of the judiciary.

According to Article 27 of the Law No. 06/L-055, dated 26.12.2018 „On Judicial Council” the Council evaluates the performance of judges and it is also responsible for the promotion of judges in accordance with the sub-legal act issued by it. The evaluation of performance shall include at least:

- professional knowledge, work experience and performance, including an understanding of, and respect for human rights;
- capacity for legal reasoning;
- professional ability, based on the work results during the evaluation period, including participation in organized forms of training in which the performance has been evaluated;
- capability and capacity for analyzing legal problems
- ability to perform duties impartially, honestly, with care and responsibility;
- communication skills;
- conduct out of office;
- personal integrity;
- number of cases returned to re-trial or re-decision or cases that have been removed by the highest court.

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The evaluation of the performance assessment for promotion is the same as described above.

4.7 Other countries: Ukraine

Alongside with the general requirements for a person, seeking judicial position, set in the Constitution and the Law on Judiciary, for the Court of Appeal a candidate has to meet one of the following additional requirements (Art. 28 of the Law on Judiciary): 1) at least five years of experience as a judge; 2) has an academic degree in the field of law and at least seven years of scientific work experience in the field of law; 3) has at least seven years of professional experience as an attorney representing clients in court and/or defending against criminal charges; and 4) has cumulatively at least seven years of service (professional experience).

Similar additional requirements apply to the candidates to the judicial position at higher specialized courts, for example, candidate to the High Courts of Intellectual Property must have at least three years of experience working as a judge, or at least five years of professional experience as a representative in intellectual property cases (patent attorney), or at least five years of professional experience as a lawyer representing clients in court in cases on intellectual property, or at least five years on a general record of service (professional experience).

As for the Supreme Court (Art. 38 of the Law on Judiciary) a person may be appointed as a justice if he/she either 1) has at least ten years of experience as a judge; or 2) has an academic degree in the field of law and at least ten years of scientific experience in the field of law; or 3) has at least ten years of professional experience as an attorney, in particular representing clients in court and/or defending against criminal charges; or 4) has at least ten years on a general record of service.

Selection and appointment of the judges of higher specialized courts, courts of appeal and the Supreme Court is performed by the way of open competition, based on the participants' ranking as a result of the qualification assessment procedure⁵⁶⁰.

The grounds for scheduling the qualification evaluation are as follows: 1) an application by a judge (judicial candidate) for qualification evaluation including for participation in a competition; 2) decision by the HQCJ in cases stipulated by law.

The Law on Judiciary (Art. 83) sets the following qualification assessment criteria:

- 1) competency (professional, personal, social);
- 2) professional ethics;

⁵⁶⁰ According the Ukrainian legislation the aim of the qualification evaluation (often referred as to the qualification assessment) is to establish whether a judge (judicial candidate) is capable of administering justice in a relevant court. It must be noted, that this institute of qualification assessment was established in a Law on Judiciary after the Revolution of Dignity. Therefore, alongside with its regular purpose, a very special application of it was provided by the transitional provisions of the Law – to perform the qualification re-assessment of all acting judges as a one-stand exercise and as a part of systemic judicial reset in order to confirm sitting judiciary's fitness to continue to exercise judicial duties. This special application of the qualification assessment procedure has been widely discussed in the context of its conformity with international standards, etc. Though, in this analysis, the procedure will be analysed only in the context of its primary application – to evaluate judge's (judicial candidate's) capacity to perform judicial duties for selection and career reasons.

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3) integrity.

Legislative provisions formally determine the stages of qualification assessment: a) examination and b) review of the judicial dossier and interview.

In fact, these two stages involve:

1. Assessment of legal professional skills and competences (“examination”). The purpose of this stage is to identify the level of legal knowledge, practical skills and abilities in applying the law, and the ability to administer justice in the relevant court. A judge/candidate who has scored below the minimum required score at this stage fails to proceed with further stages of the qualification assessment.
2. Assessment of social and psychological skills and competences.

Regulation on the Qualification Assessment Procedure and Methodology, Indicators of Compliance with Assessment Criteria and Means of their Determination (approved by the High Qualification Commission of Judges has established the 1 000 points for the composition of the final ranking of candidates based on the assessment of the following substantive competences and skills, comprised of the following components:

- 300 points for legal professional competences and skills, of which 90 points for legal knowledge, 120 points – legal professional skills, 80 points – quality of performance (based on the professional experience as a judge, lawyer etc.), 10 points – development of professional competence (training, capacity building);
- 100 points for personal competences;
- 100 points for social competences;
- 250 points for professional ethics, including 100 points for “moral-psychological” characteristics, and 150 points for “other relevant characteristics”;
- 250 points for “conscientiousness, honesty, morality”, of which 100 points for integrity (“*dobrochesnist*”), and 150 points for “other relevant characteristics”.

The candidates not collecting the minimum score as to their legal professional competences and skills at Stage 1 are not allowed to proceed further in the selection process. Only the candidates with a sufficient level of legal professional knowledge and skills proceed to Stage 2 with 300 or less points for professional competence, where further “soft” competences – such as integrity and ethical characteristics – are being checked.

Assessment of legal professional skills and competences (“examination”).

This Stage includes 2 procedural steps:

a) anonymous written tests by way of multiple-choice test questions (MCTQs). The MCTQ database is run by the NSJ. These tests are composed taking into account principles of instances and specialization of courts. The MCTQs answers are checked by the computer, and the test results are disclosed to the candidates on the day of the examination, and are available to the public.

b) case studies (practical exercises) – to identify the level of knowledge, practical skills and qualifications to apply the law, depending on the candidate’s specialisation. Case study tasks are mostly developed on the basis of real-life scenarios – sometimes by way of one real past case, and at times by bundling together a few real past cases together in one case study. Each case study work is checked by at least three members of the HQCJ. The computer automatically displays the average score.

Assessment of social and psychological skills and competences.

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The candidate’s ethics and integrity are key factors for assessment at this stage. This stage in fact includes 3 distinct procedures: 1) psychological testing, 2) examination of evidence provided by various third parties (law enforcement authorities, civil society etc.) in the candidate’s dossier, and 3) the interview with each candidate with the participation of the PIC.

The “personal competences” line of qualifications is assessed by following indicators: “logical thinking, abstract thinking, verbal thinking, stress resistance, control of emotions, etc.”. These characteristics are evaluated using the method of testing, limiting the discretion of HQCJ in its interpretation of what are “personal” and what are “social” characteristics.

The “professional ethics” block is assessed both on the basis of the results of psychological testing and the examination of the dossier and interview, whereby HQCJ examines such indicators as: understanding and following the rules and norms, commitment to the obligations, discipline, respect to others.

Similarly, the integrity / “*dobrochesnist*” block is evaluated on the basis of the psychological testing indicators of “*dobrochesnist/integrity*”, and on the basis of the information of the dossier and interview. Thus the “professional ethics” and “integrity / “*dobrochesnist*” blocks are evaluated on the basis of psychological testing results for up to 200 points. A further 300 points for both these criteria are allocated on the basis of other materials – including the PIC’s opinion – which give a substantial weight to the “soft” characteristics of professional ethics and integrity in the overall scoring.

The testing of personal moral and psychological competences and general skills (“psychological testing”) has been so far conducted by OS Ukraine, an independent HRM services provider. The psychological tests were developed after a validation process to ensure their suitability for the Ukrainian socio-cultural context. Some psychological testing components – such as BFQ-2 or other “off-the-shelf” solutions – are officially certified by the Ukrainian Psycho-Diagnostics Association. The partial basis for the design of psychological tests was found in the so-called “Professiogramme” (Qualifications Framework) – a research document developed by Ukrainian psychologists for the use by HQCJ as a list of desired socio-psychological skills and competences of a judge (including integrity, etc.).

During the psychological testing, the candidates undergo psycho-diagnostic tests, such as BFQ-2 – the so-called “Big Five Questionnaire”; HCS Integrity Check; MMPI-2 - clinical instrument for identification of patho-psychological risks; and Psychometrics Test – two separate blocks of items identifying the level of verbal and abstract-logical thinking. The candidate/judge undergoes a five-hour self-assessment, and has a thirty-minute interview with a psychologist for validation purposes. The tests are processed by the computer online, making it a relatively quick process. The interview with a psychologist is used to clarify and validate the results, identify the levels of mentioned indicators in case of an invalid profile. After the interview, every expert psychologist completes the final report on each respondent, marking the levels of indicators according to the pre-determined normative profile, and writes a narrative report based on the results of the interview.

The narrative psychological testing report contains three mandatory points:

- strong points of a person (as a candidate to a certain position);
- zones of development (weak points of a candidate that do not state anything about disadvantages of a person, but mark personal features that do not suit a certain position or profession);

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- risks.

The HQCJ developed a practice of putting the results of the testing into the scoring for the purpose of the final evaluation. The HQCJ would transfer, for instance, the 5-scale assessment in the psychological testing report of the candidate’s “integrity” into an equivalent range of 100 points under the same parameter in the HQCJ scoring grid. Thus a “very low level” of integrity in the psychological testing report would mean from 0 to 20 points for the candidate; “low” - 20 to 40 points, “average” - 40 to 60 points, “high” - 60 to 80 points, and “very high” - 80 to 100 points.

The next step in the stage is the analysis of the dossier, which is studied by a number of HQCJ members, also taking into account the materials from the National Anticorruption Bureau (NABU) and the National Agency for the Prevention of Corruption (NACP).

The procedure of the ethics and integrity check performed by the PIC impacts the whole process and methodology in a significant manner. As provided by the Article 87 of the Law on Judiciary, the PIC collects, checks, and analyses the information about a judge (candidate to a judicial position). It may provide HQCJ with the information about the candidate, or with justifiable reasons, provide negative opinion that the candidate does not meet professional ethics and integrity criteria. The PIC evidence is included in the dossier. The role of the PIC in the process is very important, because its negative opinion can be rejected only by the Plenary of the HQCJ.

The next and ultimate step in the qualification assessment is the interview, whereby both the candidate’s self-assessment during the HQCJ questioning and the results of the dossier review are discussed. The interview takes place in the form of the HQCJ open session, whereby some key elements in the dossier are announced, while the candidate may provide additional information, present explanations and answer questions of the HQCJ members. Interviews are public and streamed online on the HQCJ official website. Besides, anyone can review and record it for further broadcasting. PIC Members sit alongside the Commission members during the interview.

Promotion of judges applying to managerial (leadership) positions. The Law on Judiciary provides that administrative positions in a court are the position of the Chief Judge and Deputy Chief judge(s) (Par. 1 Art. 20 of the Law on Judiciary). In courts where the number of judges exceeds ten, a Deputy Chief Judge of the court may be elected and in courts with more than thirty judges – no more than two Deputy Chief Judges may be elected.

According to the law, the abovementioned leadership positions are occupied on the basis of election, not a competition. Therefore, there are not specific requirements, criteria, procedures for recruitment of chief judges.

The Chief judge of the local court, his/her Deputies, Chief Judge of the court of appeal, his/her Deputies, Chief Judge of the high specialized court and his/her Deputies shall be elected to their positions by meetings of judges of the respective court among the judges of that court. The Chief Judge of the local court, his/her Deputy, Chief Judge of the court of appeal, his/her Deputies, Chief Judge of the high specialized court and his/her Deputies shall be elected to his/her position by meeting of judges by secret ballot by a majority of the judges of the respective court for a period of three years but shall not exceed the term of office of a judge under the procedure established by law.

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They may be early dismissed on the initiative of at least one third of all the judges of the respective court by secret ballot of at least two-thirds of the judges of that court. The grounds for dismissing a judge from administrative office is his/her application or continuous unsatisfactory discharge of duties of Chief Judge, Deputy Chief Judge respectively, systematic or gross one-time violation of law while discharging the duties.

The Chief Justice of the Supreme Court and his/her Deputy are elected to the position and dismissed by the Plenary Meeting of the Supreme Court.

Conclusions

Selection and appointment of the judges of higher specialized courts, courts of appeal and the Supreme Court is performed by the way of open competition, based on the participants' ranking as a result of the qualification assessment procedure.

With regard to the promotion to a position of the chairperson/deputy chairperson of the court, according to the law, the abovementioned leadership positions are occupied on the basis of election, not a competition. Therefore, there are not specific requirements, criteria, procedures for recruitment of chief judges. This concept though is discussed and argued as some risks have been encountered: the process is based on “political”/personal engagement of voters (judges of the respective court) rather than the assessment of candidate's competences; less judicial accountability, possible pressure and favouritism, reluctance in taking „unpopular”, though necessary decisions.

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5. Additional comparative material from selected countries

- I. Austria
- II. Belgium
- III. Croatia
- IV. France
- V. Great Britain
- VI. Italy
- VII. Slovenia

I. Austria

Constitutional and Legal Regulation of Judicial System and Appointment of Judges

The system of courts is defined in the Federal Constitutional Law (*Bundes-Verfassungsgesetz*, B-VG). Administrative courts (*Verwaltungsgerichte*) and the Constitutional Court (*Verfassungsgerichtshof*) are defined in a separate part.

There is a four-stage system of ordinary courts. The lowest instance consists of 119 district courts (*Bezirksgerichte*, BG), the second one consists of 20 regional courts (*Landesgerichte*, LG), two of which only deal with the civil law (Vienna) and criminal law (Graz). The third instance consists of 4 appellate courts (*Oberlandesgerichte*, OLG), specifically at Vienna, Graz, Linz and Innsbruck (jurisdiction based on individual federal countries). The Supreme Court (*Oberster Gerichtshof*, OGH) in Vienna is a court of the highest instance.

Appointment of judges is also regulated by the Judges and Public Prosecutors Service Act (*Richter und Staatsanwaltschaftsdienstgesetz*, RStDG), education of judicial trainees is regulated by the Ordinance of the Federal Minister of Justice on education of judicial trainees (*Verordnung der Bundesministerin für Justiz über die Ausbildung der Richteramtswärterinnen und Richteramtswärter*, RiAA-AusbVO), and the professional practice at a court is regulated by the Act on so called legal trainees (*Rechtspraktikantengesetz*, RPG).

According to Art. 134 of the Federal Constitutional Law (B-VG), the President, Vice-President and other members of the Supreme Administrative Court are appointed by the Federal President upon the proposal of the Federal Government. The proposal for the appointment of other members is submitted by the Government based on three alternative proposals of the plenary assembly of the Supreme Administrative Court.

Art. 134 B-VG:

(3) The members of the Supreme Administrative Court must have completed legal studies and political science studies and have had at least ten years of professional experience at the position, for which this study is prescribed. At least one third of members of the court must be authorised to hold the position of a judge, and at least one quarter of members must be recruited from persons holding professional positions in federal countries, preferably, within the national administration.

Judge Selection and Appointment Process

Art. 86 of the Federal Constitutional Law lays down that judges are appointed upon the proposal of the Federal Government by the Federal President or, by reason of his authorization, by the competent Federal Minister. The Federal Minister of Justice is authorised by the Federal President to appoint judges of appellate courts

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(*Oberlandesgerichte*, OLG), district courts (*Bezirksgerichte*, BG) and regional courts (*Landesgerichte*, LG), except for the president and vice-presidents of district courts. The Federal Ministry of Justice is also entrusted by the Federal Government to propose nomination of judges.

The appointment of judges of ordinary courts is based on nomination of one or two so called personnel committee (*Personalsenate*), i.e., independent judicial bodies consisting of at least five members. Each such proposal (provided that sufficient number of appropriate candidates is available) should contain at least three names (including their order) for each vacant position. The personnel committee (*Personalsenate*) must justify its nominations and also indicate qualification, abilities and suitability of the candidate in the justification. However, this proposal is not legally binding for the body authorised for the appointment.

Pursuant to Section 25(3) of the Judges and Public Prosecutors Service Act (RStDG), the judge is appointed based on a selection procedure after receiving the proposal of the personnel committee (*Personalsenate*). Section 26(1) of the Judges and Public Prosecutors Service Act (RStDG) provides for that only a person who meets the requirements determined for the judicial preparation service (*Richterlicher Vorbereitungsdienst*), has passed the judge examination and completed four years of legal practice (*Rechtspraxis*), including at least one year in the judicial preparation service (*Richterlicher Vorbereitungsdienst*), may be appointed as a judge.

Only university professors of faculties of law of Austrian universities are excluded from these conditions. The exception to meeting the condition regarding the completion of a one-year judicial preparation service (*Richterlicher Vorbereitungsdienst*) may also be granted by the Federal Minister of Justice, only if there is no other appropriate candidate, who meets all requirements for the appointment.

Individual candidates are admitted to the selection procedure based on proving their abilities. Section 33 of the Judges and Public Prosecutors Service Act (RStDG) lays down that, unless the Act provides for otherwise, the decisive element in case of the same abilities of candidates shall be the legal practice duration, as for the first appointment, and, as for the next appointment, the decisive element shall be the longer period of execution of the function of judge. Regarding the nomination to the President of Chamber of an appellate court (*Oberlandesgericht*) or the Supreme Court (*Oberster Gerichtshof*), the selection is made from the already appointed judges of the respective court. The duration of execution of the function of judge at the respective court shall be decisive only if the function is held at the respective court (Section 33(2) of the RStDG). As for the nomination to a judge of the Supreme Court (*Oberster Gerichtshof*), candidates from less represented regions of appellate courts (*Oberlandesgerichtssprengeln*) take precedence (Section 33(3) of the RStDG).

No psychological testing is applied for the appointment of judges provided that the judge, who is to be nominated has been a judicial trainee in the previous period. In case of ordinary courts, there is no appeal regarding the decision on the appointment of or the refusal to appoint a judge.

Criteria taken into consideration, when assessing a candidate, are laid down in Section 54(1) (RStDG). It involves the scope and timeliness of professional knowledge, in particular, knowledge of regulations and provisions necessary for the execution of the function; abilities and professional prerequisites; accuracy, diligence, patience, perseverance, conscientiousness, reliability, determination and resolution; social and communication skills;

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verbal skills (both oral and written) in German language and, where desirable for the execution of the respective position, also knowledge of a foreign language; relationship and behaviour towards superiors, colleagues and individual parties of disputes, as well as behaviour of the candidate outside work and successes achieved in the previous professional career. Regarding judges applying for the appointment or eligible to be appointed to a leading position, also their suitability for this position is considered.

Then, the overall final evaluation may be (Section 54(2)) excellent, with outstanding knowledge, abilities and performance; very good with above-average knowledge, abilities and performance; good with average knowledge, abilities and performance; satisfactory, when the minimum performance necessary for the proper execution of the function is achieved; or unsatisfactory, when not even the minimum performance necessary for the proper execution of the function is achieved.

Preparation for the Function of Judge

Each person graduated from law school, who wants to become a judge may apply for the position of so called judicial trainee (*Richteramtswarter*). After the appointment of a judicial trainee, he/she is admitted to the judicial preparation service (*Richterliche Vorbereitungsdienst*). Pursuant to Section 2(1) of the Judges and Public Prosecutors Service Act (RStDG), he/she has to meet the requirement of the Austrian citizenship, full legal capacity, full personal and professional qualification, including the necessary social skills required for the performance of tasks associated with the execution of the function of judge. Further, he/she has to meet the requirement of completed studies of Austrian laws or legal study of masters degree (*Rechtswissenschaftliches Diplomstudium*) under the Federal Act on University Studies (BGBl. I No. 48/1997), Federal Act on Legal Studies (BGBl. No. 140/19678) with a master of law degree achieved based on such a study, or completed legal studies and political science studies under the rules for the study and passing the law state exam (StGBI. No. 164/1945). Another condition is judicial practice (*Gerichtspraxis*) such as legal trainee practice (*Rechtspraktikant*) for the period of five months (Section 2(2) RStDG). A candidate, who worked as a judicial assistant (*Rechtspfleger*) may be partially exempted from this requirement. The scope of waiver of the judicial practice depends on factors, such as past professional achievements (*Verwendungserfolg*), work sector and the duration of the judicial assistant job performance.

The education and practice within the judicial preparation service (*Richterlicher Vorbereitungsdienst*) endure four years and are completed by successful passing of the judge examination. Pursuant to Section 16 of the RStDG, the candidate's knowledge and skills, necessary for the execution of the function of judge, as well as his/her ability to formulate court decisions are proved by the judge examination composed of both written and oral part. The composition of the examination commission is laid down by Section 19 of the RStDG.

II. Belgium

Constitutional and Legal Regulation of Judicial System and Appointment of Judges

Basic definitions are included in Art. 151 of the Belgian Constitution, further in Art. 190 et seq. of the Judicial Code and the Constitutional Court Act of 6 January 1989.

In addition to ordinary courts, also the Constitutional Court and the Supreme Administrative Court are parts of the judiciary. The Supreme Administrative Court is composed of 44 judges.

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Judges are proposed unanimously by the Council of State. Three names are proposed for each position. The proposed candidate may be vetoed by the Minister of Justice for formal reasons. Then, the nominee names are passed to Chambers of the Parliament, where the number of persons named can be reduced. Consequently, the King selects from the three names proposed.

Judge Selection and Appointment Process

In Belgium, there is the High Council of Justice that is competent for the entire country. Examinations for new judges of ordinary courts are organised by two commissions for individual language communities (a Francophone commission for nominations and appointments – CND, and a Dutch-language commission for nominations and appointments – BAC). A programme of nomination examinations is published in the Collection of Law. The appointment is carried out formally by the King.

There are three types of examinations, specifically, the examination for the admission to a judicial internship, which may be taken by doctoral, master or bachelor degree graduates of the respective field of study, having at least one-year practice in a legal profession. The examination is composed of written and oral part. The positions are filled according to the test ranking. After passing the examination, the graduates are entitled to the internship and, then, they can apply for the execution of a vacant position of judge. It is an indirect selection of judge as, in the meantime, the candidate must complete a one-year internship. The next examination is for the professional aptitude. Candidates must have at least five-year practice that is credited for getting the position of public prosecutor, or ten-year-practice that is credited for a justice position. This examination may be taken by lawyers with special legal experience. The examination is in writing, composed of two parts, and oral. The oral examination is taken before three various groups appointed by the Council. Candidates, who have passed the examination successfully, may directly submit their application for the function of judge. The third examination is an oral assessment exam that may be taken by experienced lawyers with at least 20-year-practice, and, thus, they directly apply for the position of judge. The mandatory practice includes 20 years of full-time legal job and at least 5-year-practice that required deep knowledge of law.

The certificate of the assessment exam is valid for 3 years. During this period, they can start exercising the function of judge. This option was not established until 2001. The number of judges that may fill the position of judges is hereby limited. If a candidate passes one of the examinations, he/she shall not become a judge automatically. Candidates apply for vacant positions in the justice. The positions are announced in the Collection of Law once a month.

The appointment is made after interviews with and comparison of the candidates. The Council must consent to the appointment of the nominee by a two-thirds majority. The candidate selected thereby is presented to the Minister of Justice (formally, to the King). The Minister of Justice can only refuse to appoint the nominee for explicit reasons; this happens very exceptionally. The process described above covers both new judges and officials at courts.

III. Croatia

Constitutional and Legal Regulation of Judicial System and Appointment of Judges

Regulation laying down the appointment of candidates for the function of judges is defined

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primarily in the Constitution of the Republic of Croatia⁵⁶¹. Art. 124 of the Constitution provides for: *The State Judicial Council is an autonomous and independent body ensuring the autonomy and independent justice in the Republic of Croatia. The State Judicial Council decides autonomously, in conformity with the Constitution and law, on the appointment, promotion, redeployment, dismissal and disciplinary responsibility of judges and presidents of courts, with the exception of the President of the Supreme Court of the Republic of Croatia.*

Decisions referred to in para 2 of this Article are taken by the State Judicial Council impartially based on criteria determined by law.

Other legislative sources include the Courts Act (Act on Courts), Official Journal No. 28/13; the State Judicial Council Act, Official Journal No. č. 116/10, 57/11, 130/11, 13/13, 28/13; the Act on Judicial Academy, Official Journal No. 153/09, 127/10; the Judicial Trainees and the Bar Examination Act, Official Journal No. 84/08, 75/09; the Ordinance on Evaluation in the Process of Appointment of Judges, Official Journal No. 93/13.

The judicial system consists of courts with general jurisdiction, specifically, ordinary courts (first instance courts), regional courts (second instance courts or courts of the first instance in some criminal issues) and the Supreme Court of the Republic of Croatia. Further, there are courts with specialised jurisdiction, represented by misdemeanour courts (first instance courts), High Misdemeanour Court (second instance court), commercial courts (first instance courts), High Commercial Court (second instance court), administrative courts (first instance courts) and High Administrative Court (appellate court).

Judge Selection and Appointment Process

The President of the Supreme Court of the Republic of Croatia is appointed and exempted from his/her duties by the Croatian Parliament upon the proposal of the President of the Republic based on recommendation of the plenary meeting of the Supreme Court of the Republic of Croatia and the Judiciary Committee of the Croatian Parliament. The President of the Supreme Court of the Republic of Croatia is appointed for the period of four years. A candidate for the President of the Supreme Court of the Republic of Croatia must meet all requirements determined for this position, specifically, a 15-year-practice at the position of court official or lawyer, notary, university professor of legal sciences, who passed the attorney-at-law examination and has at least 15-year-practice from passing thereof, or prominent lawyer, who passed the attorney-at-law examination and has at least 20-year-practice, proved his/her professional skills in a specific legal field, and is able to demonstrate professional and scientific publications.

The State Judicial Council is entitled to appoint all judges of the Republic of Croatia, except for judges of the Constitutional Court and the President of the Supreme Court. The State Judicial Council publishes announcements regarding vacant positions of judges in the Official fJournal Narodne Novine and elsewhere if required so. The announcement must contain a call for the submission of application and respective documents proving the compliance with requirements for the appointment of judges, as well as information of the work thereof.

If a judge applies for the vacant position, the State Judicial Council requests from the respective court an evaluation of performance of judicial duties. Based on the evaluation and an interview, the State Judicial Council elaborates a graduated list of candidates and makes a decision regarding the appointment on basis thereof. The decision of the State Judicial Council must be based on the overall evaluation and the graduated list of candidates.

⁵⁶¹ The Constitution of the Republic of Croatia, Official Journal Narodne Novine No. 85/10, 5/14

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Where the State Judicial Council appoints a judge out of the candidates, who have completed the State School for Judicial Officials, the selection must be based on final evaluation of the candidate and the overall evaluation of the interview with the candidate.

If it involves persons, who have not worked in any judicial body (e.g., lawyers) before, the evaluation of competences of such candidates, is made by written examinations and a structured interview. The decision regarding the appointment is published in the Official Journal Narodne Novine.

Persons belonging to national minorities, who apply for an announced vacant position of judge, may invoke their rights conferred to them by the provisions of the Constitutional Act regarding the rights of national minorities. Candidates, who belong to national minorities, are prioritised, if the final result achieved by them is the same as the result of another candidate.

Preparation for the Function of Judge

Qualification examinations for the admission to the State School for Judicial Officials are organised by a special commission composed of five members, who are elected by the State Judicial Council or the Public Prosecutor’s Office depending on whether the candidate applies for the position of judge or public prosecutor. The candidates must already have the examinations completed. The two-year professional education is based on law, and, during these two years, the candidates’ work is being assessed by assigned trainers. The candidates are also employees of judicial bodies with the status of advisers of judges or public prosecutors. The final exam is taken before the same commission as the admission exam and is composed of written and oral part.

General conditions that must be met by the candidates for judges include the requirement for legal education, passing the judge examination and necessary professional experience determined by law for each type and level of courts. Candidates, who are admitted as trainees at a court or public prosecutor may, after passing the exams (oral and written), take the qualification examinations for the admission to the State School for Judicial Officials. After the successful completion of the study (which takes 2 years), they pass the final exams. As a rule, the number of candidates admitted to the State School for Judicial Officials corresponds to the estimated number of vacant judge positions after the completion of the study by each generation of candidates. Judge examinations are organised by an examination commission, whose members (5 members and 5 substitutes) are appointed by the minister responsible for judicial issues. Only legal practitioners with at least 15-year-practice after the completion of examinations may become members of the commission.

IV. France

Constitutional and Legal Regulation of Judicial System and Appointment of Judges

The judiciary is regulated by the Constitution of the French Fifth Republic⁵⁶² in Title VI – X. It establishes the Constitutional Council that solves legislative disputes. Title VIII lays down that the President of the Republic, together with the High Council of the Judiciary, shall be the guarantors of the independence of the judicial authority. Title IX establishes the High Court, and Title X establishes the Court of Justice of the Republic. The structure of the French judicial system is set out in more detail in the Judicial Organisation Code, describing the

⁵⁶² Constitution of 4 October 1958

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system of ordinary courts and the internal organisation thereof. The French judicial system can be divided into general justice and administrative justice. Outside the system of general and administrative justice, there are specialised judicial bodies, i.e., the High Court, the Court of Justice of the Republic, the Court of Arbitration and, finally, the Constitutional Council. The justice is administered by the High Council of the Judiciary, formally presiding by the President of the Republic. In addition to the Minister of Justice, he/she proposes appointments of particular categories of judges (and has the right of veto regarding the others).

Justice officials in the system of ordinary courts fall under two categories. It involves judges of ordinary courts, who decide legal cases and represent the largest group of judges. Within this group, it is also possible to separate the civil and criminal matter branch. Further, it involves public prosecutors (serving at first instance courts), who represent the public interest. Judges of ordinary courts cannot be redeployed to another court without their consent, while public prosecutors are part of the hierarchy with the Ministry of Justice on the top.

Judges of ordinary courts decide in general cases, which means that they can decide both in civil and minor criminal offences. Or, they can have specialisation and, thus, can decide, for example, in matters of family law or minors as investigating judges, sentencing judges, etc.

Judges serving at appellate courts are known as so called counsellors. The counsellors sit in chambers, each of which has its own president, who leads the overall appellate court. The terms counsellor, chamber president and president are also used for officials serving at the court of cassation where, in addition, so called counsellor-rapporteurs serve. They are officials of a lower instance, but exercise the same decision-making activity.

The administrative justice in France also includes administrative courts, administrative courts of appeal and the Council of State. The Constitutional Council (in its decision dated 22 July 1980) recognised the existence and independence of the administrative justice to be the fundamental principles of legal state recognised by laws of the French Republic. Administrative judges have the status enabling them to maintain their independence, including, inter alia, also the guarantee of their irremovability. These judges are usually selected from graduates from the National School of Administration (ENA) based on competitions. The high council of administrative courts has advisory function in matters of individual actions towards administrative judges (career promotion, punitive offences, etc.).

In addition to the professional judiciary, there are also so called “non-professional judges” in France, for example, labour judges, who resolve individual labour issue disputes, trader judges, who solve disputes among traders, lay judges at courts for minors, judges for disputes regarding estates, judges for social security issues, or judges who resolve disputes of very low value. Though the persons above are not professional judges, they exercise decision-making activities.

Judge Selection and Appointment Process

The first basis for the appointment of judges in France is the Constitution (particularly, Art. 64 and 66) and Ordinance No. 58-1270 of 22 December 1958, governing the Status of the Judiciary that is the subject of frequent changes. Judges are appointed by the President of the Republic. Most of French judges start their job upon a competition intended for graduates. However, there are also other ways how to get the status of judge in France.

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Candidates for justice professions, who take the basic competition complete the so called “National School for the Judiciary” located in Bordeaux, whose students have the status of “judicial trainees”.

An applicant may be admitted to the National School for the Judiciary, if he/she is a holder of a university diploma proving his/her university study in the duration of at least four years after the school leaving exam, or a holder of a diploma from the Institute of Political Studies, or graduated from so called normative university (university in a legal discipline is not required). Further, the applicant must be at least 31 years of age as at 1 January of the calendar year, in which he/she takes the competition.

Every year, the Ministry of Justice determines by its decree, published in the Official Journal, the date of competition and the number of applicants to be admitted. The same decree also regulates by which date the applicants are obliged to submit their candidature. The applicants are obliged to address their candidature to the public prosecutor, serving at the civil court with local jurisdiction over the respective applicant’s residence address, within the first quarter of the respective calendar year.

Capability examinations enabling to classify among the candidates take place at the beginning of September of the calendar year. This examination only verifies, whether the respective applicant is capable to be included among the candidates. The admission examination that is decisive for admitting the respective applicant, is composed of oral exam, physical tests, as well as language exam, and is usually taken from the beginning of November through the end of December of the calendar year. The examination also includes psychological testing of applicants. Results of the admission examination are published at the end of the calendar year.

The second form of competition in order to get the status of a judicial trainee is intended for civil servants and local government officials and the contributory organisations thereof, who can prove at least four-year-professional experience on positions in some of these organisations.

The third form of competition is intended for those applicants, who can prove at least eight-year professional experience in the execution of private practice, the execution of judicial activity as a non-professional activity, or the execution of one or more political mandates for the same period of time in a regional representative body. Such applicants must be at least 40 years of age as at 1 January of the calendar year, in which they are willing to take the competition. Applicants, who are interested in the second or the third method for becoming a judge, may use the preparation training cycle. Candidates are allowed take each of the three above mentioned competitions three times.

Also, directly named applicants with a master-level diploma in a legal discipline or persons with at least four-year experience in the field of law, economy or social studies may become judicial trainees subject to obtaining a positive opinion from the Promotion Commission for Magistrates (Commission d’avancement des magistrats). The same conditions for becoming a judicial trainee also apply to applicants with a doctoral-degree education in a legal discipline who, in addition, hold other university diploma, or applicants, who had been teaching law or executing scientific activities in this discipline at least three years after they obtained their master-level diploma in some legal discipline.

Judicial trainees shall also complete court internship, where they participate in judicial

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activities under the supervision of a judge and, in particular, assist a judge in the decision-making process. They may also serve on juries of civil and criminal courts in matters of minor offences, as well as participate in their meetings with advisory capacity. They may participate in meetings of criminal courts in matters of serious criminal offences, however, without an advisory capacity.

In addition to the options above, there is also the option of direct integration of a candidate to the function of judge to respective courts (second instance category) without completing the training programme of the National School for the Judiciary. Thereby applicants with at least 35 years of age may be admitted provided that they meet some of the following conditions: they are holders of university diplomas similar to those required for the admission to the study at the National School for the Judiciary, and have at least seven years of such professional experience making them, especially advisable for the execution of the position of judge. The admission of such applicants also requires consent from the Promotion Commission for Magistrates; in case they work as head officials at courts of first or second instance or at courts for labour matters for at least seven years; in case they work as category A officials at the Ministry of Justice for at least seven years, even though they do not meet the above condition of being a holder of the respective diploma.

The direct integration option for the admission to a court may also apply to Secretaries of State providing regular service; judges serving as workers on detachment, in the position of a director or head of department at the Ministry or in the position of a director of the National School for the Judiciary; persons taking decisions on complaints in the Council of State and serving in this function for at least 10 years; professors at state law schools, who undergo trainings as recognised professors for at least 10 years; attorneys-at-law serving at the Council of State or the Court of Cassation, members or former members of law enforcement council with at least 20-year-professional experience. The direct integration to the respective court cannot be made without having the applicant to complete the preparatory court internship of at least 6 months and a short training course at the National School for the Judiciary. The aim of direct integration methods is to enrich the justice by other experience from other legal professions. In practice, it particularly involves attorneys-at-law.

In most of the methods of recruitment of new judges, the decisive role is played by the Promotion Commission for Magistrates. It is composed of the President, which is the General Prosecutor at the Court of Cassation, the Inspectorate-General of Judicial Services, two judges of the Court of Cassation, two first presidents and two public prosecutors of the appellate court, who are elected by their colleagues and, further, ten judges appointed by all persons serving in justice professions. The mandate is for three years. The Promotion Commission for Magistrates evenly represents various specialisations within the justice professions.

A decree regarding the appointment of new justice officials is passed to the High Council of the Judiciary for approval before such officials take their offices. The aim of the High Council of the Judiciary is to ensure the transparency, as far as possible. Justice officials may only be redeployed during their career subject to the consent of the High Council of the Judiciary and the opinion thereof regarding the decision shall always be respected by the Ministry of Justice. The most important position in the justice must always be assigned upon the proposal of the High Council of the Judiciary, based on professional achievements, and not the seniority. In compliance with the established practice of the High Council of the Judiciary, a justice official may only change his/her position after two-year service on one position. However, throughout the evolution of the regulation regarding their career, also the obligation

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of mobility, both functional and geographical, was imposed on justice officials. This obligation was recognised by the Constitutional Council as compatible with the principle of irremovability of judges. In 2002, also the longest possible period, for which certain specialised judges may serve on one position, was determined. In this respect, for example, investigating judges, judges deciding in matters of minors, etc., cannot serve on the same position for more than 10 years. Judicial officials are also obliged to improve their knowledge continuously during their career.

Preparation for the Function of Judge

Despite there is a number of ways to justice professions, as mentioned above, still, most of judges is recruited in a traditional manner, i.e., by completing the so called National School for the Judiciary.

In France, there are six general conditions, which must be met by each candidate to the function of judge, regardless of the way they choose for the achievement thereof. It includes the French citizenship; meeting the military service obligation, where applicable; legal capacity and moral capability; sufficiently good physical fitness for the execution of the position of judge; achievement of the required age and the submission of candidature for the position of judge within the respective deadline.

The National School for the Judiciary provides education of future judges, as well as those, who already exercise their function. The National School for the Judiciary was established by ordinance of 22 September 1958 and ordinance of 7 January 1959 on the status of the judiciary under the name “National Centre for Judicial Studies”. The name of the school was changed to the current name “National School for the Judiciary” by organic act of 16 July 1970. The National School for the Judiciary is, in particular, subject to Decree No. 72-355 of 4 May 1972 on the National School for the Judiciary, which is regularly amended to correspond to the character of a state school for the judiciary and the mission thereof, as much as possible. The National School for the Judiciary is an administrative contributory organisation and is sponsored by the Ministry of Justice.

The status of judicial trainees in France is regulated, in particular, by:

- a) Ordinance No. 58-1270 of 22 December 1958, on the Status of the Judiciary;
- b) Decree No. 72-355 of 4 May 1972, on the National School for the Judiciary;
- c) Decree No. 94-874 of 7 October 1994, on General Status of Trainees in State Authorities and State Contributory Organisations;
- d) Act No. 83-634 of 13 July 1983, on Rights and Obligations of Civil Servants;
- e) Act No. 84-16 of 11 January 1984, laying down conditions relating to the public service of the State.

It means that judicial trainees are, simultaneously, subject to rules of law regulating the justice and status of trainees in state authorities and contributory organisations, as well as legal regulations generally relating to public service in France.

Judicial trainees form a part of the judiciary. Their obligation is to take the oath and maintain professional secrecy. In addition, they are also subject to incompatibility of holding some public offices and political mandates, and, depending on the type of the respective position, it includes either full, partial or temporary incompatibility of office-holding.

Article 19 of the Ordinance No. 58-1270 lays down the competence of judicial trainees during their professional internship and defines tasks, in which they participate under the supervision of experienced judges. However, the decision-making powers not even in

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simpler matters can be transferred to judicial trainees.

Judicial trainees are civil servants, who are entitled to a remuneration for “exercising their powers”. The execution of powers of judicial trainees must be evaluated based on their obligation to perform their job in compliance with their educational programme and decisions of the management of the National School for the Judiciary taken, in particular, by judges, who are responsible for the education in the National School for the Judiciary. They are remunerated, in particular, for the performance of their obligations during the professional internship. Judicial trainees are not allowed to exercise any other paid function or activity, whether it is private or public activity, or to run his/her own business. However, they can devote themselves to a scientific, literary or artistic activities without the need of any other permission.

The evaluation whether a judicial trainee is competent to exercise the function of judge is made by a panel. The panel shall issue a statement for the judicial trainee regarding his/her professional skills, containing recommendation about the justice professions, which he/she should exercise, or, where applicable, the identified areas, which the trainee can improve yet.

Upon the first appointment of the judicial trainee into the function of judge, this recommendation, including any identified areas to be improved and the judicial trainee’s comments thereon, becomes a part of his/her occupational file. The panel may also not allow the judicial trainee to exercise respective justice professions or order him/her to repeat one year of the study. The statement regarding professional skills of the judicial trainee is submitted to the Ministry of Justice, which shall ensure this document to be published in the Official Journal.

The evaluation of judicial trainees regarding their competence to exercise the function of judge and the statement of professional skills of judicial trainee are also regulated by Chapter III of Decree No. 72-355 of 4 May 1972, on the National School for the Judiciary (hereinafter referred to as the “Decree No. 72-355”).

In case it is decided that any specific judicial trainee is not competent to exercise the function of judge or the judicial trainee is obliged to repeat one year of the study at the National School for the Judiciary in compliance with Art. 21 of Decree No. 58-1270, such a decision is communicated to the respective judicial trainee during an oral interview with the panel president or another member of the panel appointed by the president thereof.

Otherwise, each judicial trainee selects his/her post from the list of vacant judicial offices. This selection is made upon the recommendation of the panel, on which judicial offices the candidate should exercise. In France, a graduate from the National School for the Judiciary can also choose from posts of public prosecutors; these two official positions are not strictly separated as in many other countries, in particular, the Anglo-Saxon ones. During their career, the officials may also migrate among the posts of judges and public prosecutors. In most cases, judges in France start their career at a relatively young age and devote their entire professional life to it.

V. Great Britain

Legal Regulation of Judicial System and Appointment of Judges

The method of appointment of judges in Great Britain differs in individual parts of Great

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Britain; the only common court is the Supreme Court of the United Kingdom. The next part describes the system in England and Wales. Legislation of the process of appointment of judges was significantly reformed in 2005 by the Constitutional Reform Act 2005, based on which the Judicial Appointments Commission was created and the position of the Lord Chancellor, who was a member of the Government and was responsible, inter alia, for the appointment of judges, was greatly reduced. Another change took place in 2007 upon the adoption of the Tribunals Courts and Enforcement Act 2007 by which the number of years of practice, required for the position of a judge, was decreased. In 2013, based on the Crime and Courts Act 2013, a part of the powers in the appointment of judges was transferred from the Lord Chancellor to the Lord Chief Justice of England and Wales.

The lowest level of courts in England and Wales include lower (magistrates’) courts and tribunals dealing with summary trials and a part of appeal proceedings. The higher level includes the Crown Court, trying criminal issues, and the County Court. Most of civil proceedings are dealt with by such courts. In England and Wales, there is also the High Court. An appeal against a decision of the High Court may be lodged with the Court of Appeal. The final appeal instance in Great Britain is the House of Lords.

As for the appointment of judges, there is no minimum age level, the age is only limited by upper age level of 70 years, i.e., the age of retirement. Though the condition of practice is established, the number of years of previous practice is not specifically defined. It is expected that the number of years served will be reasonable; generally, a 5-year-practice is expected. Thus, it is not possible to apply for the position of judge immediately after the completion of law school. The position of judge is considered here a second subsequent employment in the career, before which another practice is needed. Therefore, there are no people under 30 years of age among judges. The selection of judges falls under the responsibility of the Judicial Appointments Commission in England and Wales. This Commission is composed of 15 members, one of which is the Chairman. The Commission is appointed based on an open selection procedure and, in terms of organisation, it is subject to the Ministry of Justice. Before 2005, the powers, devolved to the Commission now, were entrusted to the Lord of Chancellor. The commissioners are persons with professional experience from the justice and advocacy, and they can also be judicial officials or from the public. However, at least 3 of the commissioners must be judges.

Judge Selection and Appointment Process

Upon the request of courts or the Ministry of Justice, the Commission opens and exercises a selection procedure for the vacant positions of judges. The Commission selects one candidate for one vacant position. The Commission’s task is not the appointment of judges but the selection and recommendation thereof to a competent person.

In England and Wales, the highest level of justice is represented by the Supreme Court. Requirements for the position of judge of the Supreme Court include, in particular, the experience of each candidate. The condition is the execution of high judicial office for at least 2 years or a 15-year-legal practice. The selection of judge of the Supreme Court starts with the Lord Chancellor, who convenes a selection panel. This commission is chaired by the chair of the Court of Justice, and the members are composed of representatives of the Judicial Appointments Commission in England and Wales, the Judicial Appointments Board for Scotland and the Northern Ireland Judicial Appointments Commission. Selection of a specific candidate needs to be consulted with the Lord Chancellor. If the Lord Chancellor consents to the selection, he/she passes the name of the candidate to the Prime Minister and, then, the Prime Minister passes the name to Queen, who appoints the judge of the

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Supreme Court.

The selection procedure starts once the Judicial Appointments Commission receives a request for a vacant position. Requirements for the candidate have already been specified in this request. In the next stage, individual candidates to the vacant position are published on websites and their integrity and orientation are being verified. Then, there is a stage of pre-selection of candidates and reducing the number thereof, in particular, based on results from online testing. After the number of candidates is reduced, the selection of candidates starts. The selection day is composed of interviews, play of roles, presentation and, where applicable, situation questions are added. After the end of the selection day, a report from the selection of candidates is elaborated based on the evaluation of each candidate, containing also an assessment of the candidate, who meets the best the requirements for the respective position. Before the appointment of the candidate as a judge, the respective court must be notified of the result of the selection procedure and any comments thereof must be addressed.

VI. Italy

Constitutional and Legal Regulation of Judicial System and Appointment of Judges

The legal regulation is based on applicable articles of the Constitution⁵⁶³ and, further, Articles 1 and 4 of Royal Decree No. 12 of 30 January 1941. The Constitution explicitly lays down the condition of independence of judges (Articles 101 to 104 of the Constitution).

The appointment of judges (as well as public prosecutors) specified below only relates to the positions that are subject to laws regulating the judicial system. So called ordinary judges are subject to control of the High Council of the Judiciary (Consiglio Superiore della Magistratura, CSM).

“The High Council of the Judiciary is presided over by the President of the Republic. The first president and the general prosecutor of the Court of Cassation are members on basis of the law. Two thirds of the members are elected by all the ordinary judges belonging to the various judicial categories, and one third are elected by the Parliament in joint session from among university professors of law and lawyers with at least 15 years of practice. The Council elects a vice-president from among those members designated by the Parliament. Elected members of the Council remain in office for 4 years and cannot be immediately re-elected. They may not, while in office, be registered in professional rolls, nor serve in the Parliament or on a Regional Council. The High Council of the Judiciary, in accordance with the regulations of the Judiciary, has jurisdiction for employment, assignments and transfers, promotions and disciplinary measures of judges.” (Art. 104 and 105 of the Constitution).

“Judges are appointed through competitive examinations (“per concorso”). The law on the regulations of the Judiciary allows the appointment, also by election, of honorary judges for all the functions performed by single judges. Following a proposal by the High Council of the Judiciary, university professors of law and lawyers with at least 15 years of practice and registered in the special professional rolls for the higher courts may be appointed for their outstanding merits as Cassation councillors.” (Art. 106 of the Constitution).

Judge Selection and Appointment Process

Currently, the attitude to the justice is regulated by Royal Decree No. 160 of 2006 (decreto

⁵⁶³ Constitution of the Italian Republic of 22 December 1947

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legislativo n. 160 del 2006). The Decree lays down necessary prerequisites for admitting to examinations with the aim to ensure the candidates to be professionally qualified and the number thereof be reduced. In practice, only the candidates with legal background and diploma from law school postgraduate study are admitted to the written examinations. Further, judges of administrative courts and judges of accounting courts, civil servants with corresponding qualification and at least five years of practice at a senior position, university professors, civil servants with legal background and at least five years of practice at a senior position, lawyers without any disciplinary punishment, honorary judges serving for at least six years without any mistakes, as well as graduates from law schools with the PhD degree in a legal discipline or a specialised diploma from postgraduate school (post lauream).

Candidates to the position of judge must pass a public competitive examination under Article 106(1) of the Constitution. Legal regulation laying down the attitude to the justice was subject to repeated amendments with the aim to accelerate the process of examinations on one hand, and, on the other hand, to ensure the candidate to have better qualification as, before these amendments, they only needed legal background to be admitted to the competitive examination. Currently, the attitude to the justice is regulated by Legislative Decree No. 160 of 2006 (decreto legislativo n. 160 del 2006). Chapter I lays down conditions for admitting the examinations, methods of submitting applications, and composition and role of the examination board, method of conducting both written and oral examinations, as well as rules for examiners. The examinations above are organised as second-level public examinations.

Given the importance of training of judges in the field of EU law, the curriculum for oral examinations includes both European and international law (with particular regard to the private and public sector). Those, who pass the examinations successfully, are appointed as judges.

Preparation for the Function of Judge

In the past, a special term for new judges (trainee magistrates), used before for judges, who entered the justice for the first time, was cancelled. However, such judges must still complete the 18-month-training period. This training covers forensic theory, practical exercise sessions, as well as practice at a court office. Theory courses are provided at the School for the Judiciary (Scuola Superiore della Magistratura), an institution established recently by the judicial system reform.

A judge, who is completing the training, does not exercise the function of judge. At the end of the training, the High Council of the Judiciary assesses whether the judge may execute the function of judge. Where the evaluation is positive, the function of judge is entrusted by the High Council of the Judiciary to the judge. The reform in the past established that a judge after the completion of the training cannot execute the office of prosecutor, single criminal judge, investigating judge in a pre-trial process, and preliminary hearing judge, unless he/she undergoes his/her first professional assessment, which is taken after four years from the appointment thereof. Where the evaluation is negative, the judge is admitted to a new training for the period of one year. Second negative evaluation means dismissal.

VII. Slovenia

Constitutional and Legal Regulation of Court System and Appointment of Judges

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The basic regulation is laid down in the Constitution of the Republic of Slovenia⁵⁶⁴, the Constitutional Court Act⁵⁶⁵, the Courts Act⁵⁶⁶, the Judicial Service Act⁵⁶⁷, and the State Law Examination Act⁵⁶⁸.

The judicial system in the Republic of Slovenia is composed of general and specialised courts. General courts are represented by local and regional courts and operate as first-instance courts, while higher courts deal with appeals against their decisions. The highest judicial authority in the country is represented by the Supreme Court. In Slovenia, there also is a system of specialised courts that is composed of four labour courts of the first instance, one of which also deals with disputes regarding social security. These courts have a common court of appeal – the Higher Labour and Social Court based in Ljubljana. Another specialised court is the Administrative Court of the Republic of Slovenia. This Court has the status of a higher court and provides judicial protection in administrative issues. The Constitutional Court of the Republic of Slovenia is the highest judicial authority as for the protection of the constitutionality, legality, human rights and fundamental freedoms. It is independent of other state authorities and issues binding decisions.

According to the Constitution, judges (except for the Constitutional Court) are elected by the National Assembly on the proposal of the Judicial Council (Art. 130), composed of eleven members. The National Assembly elects five members of the Judicial Council on the proposal of the President of the Republic from among university professors of law, attorneys, and other lawyers, whereas judges holding permanent judicial office elect six members from among their own number. The members of the Council select a president from among their own number (Art. 131). It is a state authority, but is neither a judicial authority, nor does it represent judges before the other two state authority branches.

Judge Selection and Appointment Process

Art. 15 of the Judicial Service Act lays down that the Supreme Court calls for the submission of applications to vacant judicial office within seven days from receiving a justified opinion from the president of the court where the position became vacant. The call for the submission of applications to the office of judge is published in the Collection of Law. The deadline for submitting the applications cannot be less than fifteen days. Applications submitted after the stated deadline, as well as incomplete applications are refused by a decision of the Supreme Court in compliance with the provisions regulating the general administrative procedure. An appeal against this decision may be lodged within the period of eight days. The competent court must decide on such an appeal within the period of thirty days after lodging the appeal. In such a case, all processes relating to the vacant position to which the appeal applies are suspended until the final decision of the competent court.

The Constitution states that the office is permanent. The age requirement and other conditions for election are determined by implementing law (Art. 129 of the Constitution). Conditions of the election and appointment of judge are laid down in the Judicial Service Act. Under the Act, everybody who meets general conditions for the election, as well as special conditions for the election/appointment to judicial office, may be appointed as judge (Art. 7).

Any person, who meets the general condition of the citizenship of the Republic of Slovenia,

⁵⁶⁴ No. 33/91-I, 42/97, 66/00, 24/03, 69/04, 68/06, 47/13

⁵⁶⁵ No. 64/07 – official consolidated version and 109/12

⁵⁶⁶ No. 94/07 – official consolidated version, 45/08, 96/09, 86/10

⁵⁶⁷ No. 94/07 – official consolidated version, 91/09, 33/11, 46/13, 63/13 a 69/13 – amended version

⁵⁶⁸ No. 83/03 – official consolidated version, 111/07 and 40/12

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active knowledge of the Slovenian language, mental and general health condition, not less than 30 years of age, university or bachelor or master law school degree obtained in the Republic of Slovenia or a similar degree from a foreign law school that may be demonstrated by a foreign certificate proving the education achieved or by a statement issued in order to assess the education or by a decision regarding the recognition of the study, may be appointed as a judge. Another condition is passing state exam for lawyers and personal characteristics for holding the judicial office (Art. 8). Persons, who meet the above conditions, may be elected to the judicial office of a local court provided that, after passing the state exam for lawyers, they have a three-year-practice of serving in a legal profession (Art. 10).

Any person, who has been serving as a judge for at least six years or has at least 9-year professional experience in a legal profession after passing the state exam for lawyers, can be elected to the office of judge of a higher court. In addition, also university professors of law, who meet all six general conditions, if they hold at least the position of a professional assistant, may be elected (Art. 11).

A person, who has been successfully serving as a judge for at least fifteen years or has at least twenty-year-professional experience in a legal profession after passing the state exam for lawyers, can be elected to the office of judge of the Supreme Court. A university professor of law, who meets all six general conditions, can also be elected to the office of judge of the Supreme Court, provided that he/she has obtained at least the senior lecturer degree (Art. 12).

As for the election to the judicial office of a specialised court, special conditions laid down in Art. 9 to 11 of this Act must be complied with, considering the status of the court.

The position of the president and vice-president of a court is regulated by the Courts Act, specifying in Art. 61 that the management of the court falls under the responsibility of the president of the court and a director of the court administration. The director of the court administration is appointed and recalled by the president of the court. Any judge, who meets the following two conditions, specifically, he/she is a judge of a court of the same or higher instance and has been successfully serving as a judge for at least three years, and has attached a six-year strategic plan of the court work to the application, may be appointed as the president of the court.

The president of a court must take a training programme for higher judicial posts, organised by the Judicial Training Centre, within one year from his/her appointment to the office. After the completion of the training, the president submits a certificate of the training to the Judicial Council, the President of the Supreme Court as well as the Minister of Justice (Art. 62).

The President of the Supreme Court of the Republic of Slovenia is elected by the National Assembly upon the proposal of the Minister of Justice after hearing the opinion of the Judicial Council and the plenary of the Supreme Court of the Republic of Slovenia. The President of the Supreme Court is elected for 6 years with the option to be re-elected.

Presidents of other courts are elected for six years with the option to be re-elected by the Judicial Council, which shall first hear the opinion of the Minister of Justice, the President of the Supreme Court, and the president of a superior higher court or the president of a regional court, when electing the president of a local court, as the local court is an organisational unit of the regional court. The Judicial Council calls for submitting applications for vacant positions of presidents of courts at least six months before the end of the office term. The

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call for submitting applications is published in the Collection of Law of the Republic of Slovenia.

An administrative objection against the decision of the Judicial Council, by which a candidate is elected and, thus, other candidates are refused, or against the decision, under which no candidate is elected can be lodged within the period of 8 days from issue of the decision. The competent court must decide the administrative dispute within the period of 30 days from the appeal against the decision. The appeal results in postponing the appointment until the expiration of the statutory period, during which the court is to decide regarding the appeal, or until the court decides within such a period (Art. 62b).

Preparation for the Function of Judge

As already stated above, one of the conditions for holding the office is a proper legal background (bachelor or master law school degree) and passing the state exam for lawyers. The act on state exams for lawyers regulates the practice that needs to be exercised by the candidate in order to be able to hold the office of judge or public prosecutor, lawyer, or notary, or to carry out other activities for which the state exam for lawyers is required by law (Art. 1). The practice lasts for two years, is exercised at courts and public prosecutors and is completed by the state exam for lawyers (Art. 2).

The admission to the exam is approved by the Minister of Justice (Art. 20). The chairman of the State Examination Commission for state exams for lawyers, as well as the members thereof are appointed for specific areas by the Minister of Justice. They are elected from experienced judges, public prosecutors, lawyers, notaries and other eminent legal professionals (Art. 21).

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D. Conclusions, recommendations and good practices

1. The comparative research confirms the existence of a multitude of approaches related to selection, evaluation and promotion of judges in EU countries and abroad. The differences and concrete models depend on the legal culture, tradition of each country and they need for reforms. No framework is developed until now which would allow the easy comparison of various approaches and singling out of the most promising good practices;
2. Most of the analyzed countries have introduced the system of appointment of judges, where a significant role has been designated to the councils for judiciary as a safeguard to a political influence of the executive and legislative in the procedure; Main principles of each of the abovementioned procedures mostly are established on the level of primary legislation;
3. The main findings from the comparative research of various European countries show that despite the variety of the approaches there is the clear tendency in countries undergoing the reforms in the area of the judiciary towards transparency and ensuring the principle of non-discrimination;
4. But the comparative research confirms the necessary to seek for the balance of transparency and objectivity of the selection and appointment procedures vs effectiveness and efficiency of the formation of judicial corpus. Too complex procedures (as, for example, in case of Lithuania) and too technocratic approach (as in case of, for example, Ukraine) can become an obstacle to effectively recruit judges and ensure effective functioning of judicial system;
5. Another risk of too long and difficult procedures with many stages, testing, examination, interviewing is that the best lawyer would become reluctant to apply to the judicial positions;
6. It was stressed in all reports and during the international conference aimed at the discussion of the results of comparative analysis that the principle of the independence of judges must be ensured in all procedures and all proposals of reforms should be first measured against this standard;
7. As far as evaluation of judges is concerned, international bodies tend to lean towards the promotion of informal evaluation. In instances, when the evaluation of judge is carried out in a formal manner, it should be based on objective, clearly defined criteria, known in advance, and should together with the possible consequences of the evaluation be set out in the primary regulation. Peer-review based evaluation is advocated for, the right to provide the view (opinion) of a judge both on his/her activities and their evaluation should be provided. A possibility to contest the decision of the evaluation (in a formal evaluation system) should be ensured.
8. General conclusion regarding the legal framework on the selection, evaluation and promotion of judges in the evaluated countries is that in countries which recently undergone or are undergoing through judiciary reforms there is tendency to set very high and very detailed requirements (criteria) for the selection, evaluation and promotion of judges but lesser focus is on the methodology how to check these requirements. The attention to requirements but on the methodology can cause doubts about the objectivity of the procedures. Therefore the focus of the future research should be on the concrete methodologies and tools allowing to understand how the decisions are being made whether a person corresponds to these detailed requirements (e.g. how the “integrity” is being measured and how to ensure that these procedures are transparent and non-discriminatory in nature);

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9. Research shows that there are 3 models of acquisition of (access to) a professional place of judge in European states, specifically:
- 1st model:** This is candidacy to a place of judge based on many years of professional activity in other legal professions. It is applied in England, Ireland, Wales and Malta. In this sense, it is required from a future judge to work some number of years (e.g. at least 7 years as an attorney-at-law);
 - 2nd model:** The so called competition one, when the procedure is based on competition examinations organized by a certain body after fulfilment of the organized training. The system is applied for example in Spain, Austria and Romania. In some countries it is also necessary to undergo an internship at a court (at least 5 months in Austria, and preparation period of 4 years);
 - 3rd model:** So called mixed model, which is based on competition examination on one part and also on other legal practice on the other part. This applies in Germany, Netherlands, Portugal, Slovakia, Poland and Czech Republic;
- 1) The comparative research, the answers to the questionnaires and discussion with the stakeholder showed that it is important to ensure the high level of perceived fairness of the persons undergoing through the selection, evaluation and promotion of judges procedures. Otherwise people can be deterred from participating at lengthy and not as fair understood procedures which will cause the smaller pool of candidates to be chosen from. Therefore the criteria should be based on merit, having regard to the qualifications, skills and capacity, required for the adjudication of cases by applying the law. The substantive and procedural rules of the selection should also be clearly established and publicly available. The weight of the criteria or different stages of selection procedure towards the final result should be clear to the candidates. Selection should entail transparent procedures and reasons for the decisions taken should be provided. Both a competitive examination and hiring of experience lawyers are regarded as possible selection methods. An interview is a desirable tool in an overall selection process. A possibility to challenge the decision of a selection body should be available;
- 2) The countries differ widely in their approach regarding the evaluation of judges: from the almost non-existent formal procedures (informal approach) (e.g. Scandinavian countries) up to extremely formal approach with very detailed technocratic procedures (e.g. Ukraine, also Lithuania). In some countries the results of formal evaluation define the carrier of a judge and can bear sanctions (negative evaluation can result in initiating the procedures of dismissal from office etc., in countries reforming their judicial systems and combating corruption). There is also an emerging hybrid model with the tendency towards formalization procedures but ensuring that the results can be used only for encouraging the judge to better fulfill her/his role. Despite their differences all these approaches are legitimate and their use is based on the traditions, culture of the concrete country and trust relationships between judiciary and other branches of powers. Non-formal evaluation approach allows the flexibility and effectiveness of procedures, but does not offer any safeguards against misuse of powers and provides no solution how to deal if someone is not playing according the rules therefore it is not recommended for countries aiming to fight the possible corruption and misuse of offices in their countries. On the other hand, too lengthy and complicated procedures are contra productive: they narrow the pool of potential candidates, make the profession not attractive and can cause unwanted delays in the procedures. Therefore as the most promising up to date approach would be to strike the balance between the transparency and effectiveness of the procedures in combining the setting of clear criteria with the methodology how to check them. Too lengthy procedures are contra

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productive: they narrow the pool of potential candidates and make the profession not attractive.

10. Most of the countries acknowledge the importance of the soft competences in selection and evaluation of judges. Among practices to be considered as progressive and addressing society's expectations from judges the Dutch approach towards essential (circumstances) as a part of competences and skills to be assessed. Among the essential circumstances, awareness of the environment should be emphasized as an example to be considered in development of competence model. Awareness of the environment means that a candidate observes social developments and forms his/her own understanding relevant in the context of judicial activities; seeks familiar, new and contradictory information and diverse perspectives that may influence decision and process of deciding; is aware of the influence of differences and the background of the parties;
11. Alongside with the system of recruitment of judges, which ensures the selection of the best candidates with the best qualities, not less important is to establish the system of monitoring of judges' performance and development of skills in order to help a judge to encounter risks (including psychological burnt-out, etc.), shortcomings and to take measures to manage the risks and to improve performance. For this, the effective regular evaluation of judges performance is necessary.
12. Comparative research and the scientific discussion showed that in order to increase the level of objectiveness and eliminate conscious or/and unconscious biases the subjects involved in the decision making procedures of selection, evaluation and promotion of judges need to undergo specific trainings on how to conduct these procedure in a fair, transparent and non-discriminatory way, based on merits and quality information;
13. Comparative research shows that countries aiming at transparency have formed variety of criteria for judges which are used sometimes only in selection procedures, sometimes in both: selection and evaluation or also in promotion and could be summarised and assigned to these categories:
 - professional competence (capacity to write reasoned decisions, ability to properly conduct court proceedings etc.),
 - personal competence (ability to decide, to work under stress, openness to new technologies etc.),
 - social and communication competences (ability to mediate, respect for parties, ability to lead, ability to explain one selves etc.)
 - integrity competence (ability to resist undue influence, respect of professional ethics etc.) and
 - other optional sets of competencies. (e.g. social engagement of a judge, learning agility).
14. Manner in which criteria for judicial excellence are assessed differs widely throughout the European countries, with most states assigning ratings for the evaluated judges, some use grades ('very good', 'good', 'sufficient' and 'insufficient' or A, B, C) or a productivity factor through percental comparison to the performance of other judges is determined. Various methods (procedures) for carrying out evaluation may be used ranging from self-assessment, a more or less formal interview with an evaluator, taking into account the observations of colleagues, to formal, regular inspections.
15. In Scandinavian countries there are no formalized or 'advanced practices' making use of psychological testing, specific methods for integrity check, conclusion of court president about the quality of the judge's performance and procedural communication, questionnaires of peers and court staff on judge's daily communication and behavior, specific software, e-tools, facilitating the process. The interviews of applicants and

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referees may serve some of the same purposes. Expert findings and recommendations on the best practices and main aspects mainly relate to the need for establishing guarantees for the independence of the appointments process. It is of paramount importance that the procedures and criteria maintain and support this principle.

16. An analysis of different systems and discussions during the expert meetings and international conference revealed new trends and expectations for competences to be possessed by a modern judge, i.e.: learning agility (ability to constantly develop qualifications, being aware of innovations and developments in society); good skills of IT (it is not a choice anymore, it is a must, which became obvious in pandemic situation, when online solutions for justice administration became vital).
17. In addition the abovementioned competences, the developments in modern world have brought specific requirements for the leaders of courts, as for example: strong performance and decision-making in critical situations (pandemic situation has revealed shortcomings in this area, when courts had to find the best possible solutions in order to ensure access to justice in critical environment); ability to introduce necessary measures for ensuring mental health of judges and employees; understanding and introduction of the policies of equality, diversity, inclusion.
18. Moreover, the modern leader of the court must be aware of the practices and tools (for example, the LMX concept - a relationship-based approach to leadership that focuses on the two-way relationship between leaders and followers) and apply them in managing the conflicts, effectively address various needs of the team.
19. As example of innovative modern requirement few skills are identified: social engagement of a judge, which may be seen from the participation in various social activities (for example volunteering), but also from the interest of the person to follow the current trends (events): reading the news portals, listening to the news, other and Learning agility esp. for the candidates to the managerial positions, but also for ordinary judges ((ability to constantly develop qualifications, being aware of innovations and developments in society); good skills of IT (it is not a choice anymore, it is a must, which became obvious in pandemic situation, when online solutions for justice administration became vital).
20. In systems aiming at improving the judges capacities via the evaluation the references (peer to peer evaluation) could be seen as a valuable tool as the referees are requested to list both – the good qualities and the points of attention of a judge based on the concrete examples from the evaluation period. It is significant that these reviews are carried out relatively often – at least every year and are informal as much as possible in nature. The referees should undergone trainings on how to deliver the feedback in a most acceptable way.
21. As good practice example singled out are the use of professionals for measuring the „personality“ of a judge. The results should be only of recommended character. (Netherlands, Lithuania – project); ensuring the transparency not only for the candidates but also for the civil society by providing publicly the main information; Trainings for the persons who are involved in the selection, evaluation and promotion of judges based on practical guidelines illustrating the problems with the examples. As a good practice example see the Netherlands, where there is a relatively small size and the manner of functioning of the National Selection Committee, which allows its members to gain more experience in selecting the future judges and councilors. The appointed the members are trained and the manner of composition of the Committee allows the transfer of knowledge with former selectors acting as deputy selectors.
22. With regard to the systems of promotion to leadership, there are several approaches: no specific criteria and competence assessment (e. g. Estonia, Spain, Scandinavian

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- countries); basic criteria and tools of assessment (e. g. the Netherlands, Finland); precise criteria, methodology and procedure (e. g. Latvia, Kosovo, Lithuania). Also, there is an example of election vs selection of chairpersons of the courts (Ukraine), which could be criticized for the lack of objective assessment of candidate's competences; possible pressure and favouritism, reluctance in taking „unpopular”, though necessary decisions, etc.
23. Regarding the promotion of judges applying to a higher court and (or) managerial (leadership) positions the clear promotion procedures and criteria should be set and known in advance. In addition to the qualifications for ordinary judges seeking career, the capacity to lead, to manage and organize the activities of the court may be regarded as a proper requirement, when choosing the president of the court. It is nonetheless important to take into account that a person who is a first-time-candidate for a president of the will not have had the opportunity to show his or her managerial abilities.
 24. In addition the abovementioned competences, the developments in modern world have brought specific requirements for the leaders of courts, as for example: strong performance and decision-making in critical situations (pandemic situation has revealed shortcomings in this area, when courts had to find the best possible solutions in order to ensure access to justice in critical environment); ability to introduce necessary measures for ensuring mental health of judges and employees; understanding and introduction of the policies of equality, diversity, inclusion.
 25. The comparative research clearly shows that specific tools used in the selection, evaluation and promotion procedures need to be described with more clarity and the potential candidates should be aware of them (this ensures the possibility to plan one's carrier moves): e.g. how the analytical thinking capacity will be checked, how the integrity test will be done (for example, both as a presentation of the certificate of conduct and as a reservation to google the candidate), if the procedure of interview with the psychologist or personality assessment through tests will be used etc.
 26. Based on the concluded comparative analysis, three countries were chosen for consideration to arrange study visits in order to check how the selected approaches of selection, evaluation and promotion of judges are working in practice: The Netherlands as example of very innovative, balanced and up to date system, Estonia as example of more informal approach and the Slovak Republic as one of the most detailed and, apparently, the most transparent system of selection and evaluation of judges in Central European region. This Report will be updated after the study visits with the practical insights.

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Annex. Examples of templates used in the procedures of selection, evaluation and promotion of judges

LATVIA

Annex 1

to the Procedure for Selection of Candidates for the Position of a Judge

Professional, personal and social competencies required for the position of a judge

1. Professional competencies

1.1. Relevant professional qualifications and experience, including:

knowledge of the specific field of law, as well as the ability to apply it in practice; ability to use the legal method; ability to learn new areas of law; the ability to perceive facts and distinguish the essential from the insignificant; ability to structure work using case law and literature; analytical thinking; good analytical and conceptual thinking skills; understanding of interdisciplinary relationships (eg social, economic, technical, political); good general knowledge and awareness of current political issues; computer skills at least at the level of an experienced everyday user; the necessary work and life experience; belief in the need for professional and general education; ability to conduct self-directed learning.

1.2. Position understanding, which includes:

the ability to be objective regardless of the individual; ability to distance oneself, to be reserved (to draw objective conclusions); the ability to be aware of and test the possibility of one's own prejudices; the ability to avoid influence and opportunities for influence; understanding of the impact of private transactions on the position; civic courage; ability to be aware of internal and external independence; readiness to participate in the work of self-government institutions.

1.3. Argumentation and persuasion skills:

is able to formulate an opinion clearly and comprehensibly; is able to explain complex issues in an understandable way; is able to argue logically and methodologically correctly; is able to substantiate the opinion in detail, individually and concretely; is able to avoid excessive scientific oversaturation; can accurately subsume; is open to other differences of opinion and is able to form a constructive discussion.

1.4. Case preparation and court management skills:

carefully prepare for the case; knows the case materials; is able to structure the case review process; good responsiveness; ability to clearly define boundaries; ability to create a constructive and reliable atmosphere; ability to speak safely and kindly; the ability to prevent unreasonable harm; the ability to recognize and facilitate situations where reconciliation is possible; ability to control and manage the situation.

1.5. Educational competence / skill:

readiness to recruit and involve trainees; readiness to get involved in preparing and conducting lectures, seminars.

2. Personal competencies

2.1. General personality traits:

has comprehensive interests (also outside his / her position); notices the success of others; has natural authority; persuasive behavior, good manners; sets high standards for itself; is aware of his emotions and is able to control them; is prudent and keeps peace; controls your behavior even in critical situations; is able to self-reflect; analyzes their strengths and weaknesses and works on personal development.

2.2. Duty and responsibility:

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is aware of its responsibility to society and is aware that there is a role model for society; takes responsibility; is able to evaluate the consequences of his decisions; the work is done carefully; is open to communication within the competence; make efficient use of the resources at its disposal; is aware of itself as part of the judiciary and the judiciary.

2.3. Operational readiness and load bearing capacity:

has a high working capacity and high load capacity, including psycho-emotional load resistance, is aware of its limits; ready to take on additional responsibilities; also works quickly and concentrated in stressful conditions; does not lose quality when doing several jobs; withstands pressure and maintains peace; takes the initiative; is ready to help.

2.4. Self-organization and organizational skills:

plans its work and time, sets priorities; operates independently and purposefully; effectively plans and optimizes its work process; implement the work plan step by step; is able to motivate oneself and others; can delegate; follows the work process; the interests of those involved shall be taken into account when planning time limits.

2.5. Determination and readiness to make decisions:

provide proportionate legal protection; understands and facilitates decision-making; if necessary, is able to make a quick decision; assumes responsibility for the decisions taken; does not avoid the necessary discussions.

2.6. Readiness for innovation and flexibility:

is open to new working methods and modernization; acquires new experience and develops new ideas and solutions; responds to and is able to adapt to changes in the situation.

3. Social competences

3.1. Ability to work in a team:

pass on information, experience, knowledge and solutions; promotes and strengthens the sense of team; joins the team and supports other team members; able to work on common solutions.

3.2. Communication skills:

is open to business communication; creates and is able to maintain business contacts; actively listens and allows to express opinions; is clear and understandable; argues objectively and is based on facts; decisions are taken openly; is able to accurately identify problems and offer a solution to them; promotes the exchange of experience.

3.3. Conflict resolution capabilities:

expresses and criticizes dissenting views in a constructive manner; find out the causes of the conflict; considers the arguments of others and is willing to compromise; promotes understanding and reconciliation; behaves honestly and collegially and demands it from others; do not avoid the necessary decisions; takes a clear position.

3.4. Service orientation:

is friendly and kind; follow the agreements; devotes time to the interlocutor; is able to be empathetic; is aware of the strengths and weaknesses of one's personality; is able to maintain peace and balance in stressful situations, as well as create a peaceful atmosphere; is tolerant and patient.

3.5. Team leadership competence:

calls for involvement; is able to provide feedback on work results; delegates and gives clear tasks; creates a positive work climate; take into account the interests of employees.

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Annex 2

to the Procedure for Selection of Candidates for the Position of a Judge

**Evaluation criteria for the fourth round of selection of candidates for the position of a
judge**

1. Criteria for evaluating the written part

Evaluation in a five- point system	Explanation, evaluation criteria
5 points	Complete understanding of the application of regulatory enactments. Very good argumentation skills, comprehensive solution to the problem. The solution is precise and logically structured.
4 points	Good understanding of the application of regulatory enactments, good argumentation skills, but some minor shortcomings in solving the problem can be identified. The solution is sufficiently structured. There is a slight redundancy in some places.
3 points	There is an understanding of the application of regulatory enactments, argumentation skills are observed, but there is a lack of an in-depth solution to the problem. There is a strong redundancy, the solution is not structured.
2 points	Poor understanding of the application of regulatory enactments. Weak argumentation skills. Poor understanding of the problem. The statement is chaotic. There is redundancy.
1 point	There is no understanding of the application of regulatory enactments. There is no understanding of the problem. No conclusions have been drawn. The statement is chaotic. There is redundancy.

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Annex 3

to the Procedure for Selection of Candidates for the Position of a Judge

2. Criteria for evaluating the oral part

Evaluation in a five- point system	Explanation, evaluation criteria
5 points	Very good presentation skills. Logically formulated, clear, substantiated and skillfully argued opinion. In answering the questions, defend his / her opinion, providing sufficient justification and argumentation.
4 points	Good presentation skills, but general and formal reasoning and argumentation. When answering questions, they try to convince themselves that their opinion is correct, but sometimes they do not provide sufficient justification and argumentation.
3 points	The presentation reads a previously prepared text. Weak reasoning and argumentation. When answering questions, do not try to convince yourself that your opinion is correct. Inaccurate use of concepts and facts.
2 points	Weak presentation skills. Strong anxiety prevents you from expressing your opinion clearly and logically. Speaks chaotically.
1 point	Lack of skills to present one's opinion. Strong concern. Lose self-control.

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**Annex 4 to the
Procedure for Selection of Candidates for the Position of a Judge**

Fourth round evaluation sheet for the selection of candidates for the position of a judge

Member of the Commission

_____ (name and surname)

Candidate for the position of a judge

_____ (name and surname)

Wedding ticket no.	Evaluation of the written solution (1-5)	Presentation rating (1-5)	Overall wedding rating (1-10)	Notes
	a	b	(a + b)	

Fourth round overall rating: (1-10)	
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Signature of a member of the Commission

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**Annex 5 to the
Procedure for Selection of Candidates for the Position of a Judge**

**Evaluation sheet of the fifth round of selection of candidates for the position of a
judge**

Member of the Commission or person
invited to conduct a competency interview _____

(name and surname)

Candidate for the position of a judge _____

(name and surname)

Explanation, evaluation criteria	Ten-point rating (1-10)
<p>Values and ethics</p> <p>Awareness, acceptance and support of mission and values. Understanding of the role of organizational culture and values in the national legal system. Ability to adhere to ethical principles in the performance of their duties and in cooperation with customers and partners.</p>	
<p>Analytical and conceptual thinking</p> <p>Understanding of the problem and situation, dividing it into parts and seeing the relationships between causes and effects, as well as the ability to draw appropriate conclusions. Ability to systematize, ability to choose priorities and make a plan.</p> <p>Ability to see connections between situations and processes that are not obviously related. Ability to identify the most important issues and root causes in complex situations. Ability to think in generalizations and creatively.</p>	
<p>Willingness to learn / Development orientation</p> <p>Deliberately analyzes personal strengths and weaknesses to identify development needs and improve personal and institutional performance. Implement development needs not only on the initiative of the employer, but also through self-study.</p>	
<p>Ability to make decisions and take responsibility</p>	

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Ability to make decisions by evaluating information and using different approaches.	
<p>Communication, ability to cooperate</p> <p>Ability to listen to others and communicate effectively. Ability to communicate and collaborate with others through an appropriate form and channel of communication. Ability to receive and transmit information. Willingness and ability to work with colleagues to help achieve team goals. Ability to maintain good relationships with team members, exchange important information, create a sense of a common team.</p>	
<p>Planning, organization and flexibility</p> <p>Ability to set priorities, plan, organize and control one's own and others' work in the short and long term, ensuring efficient use of time and resources. Adapts quickly and efficiently (changes plans and priorities) to changes in circumstances, work requirements, situations or needs.</p>	
Overall, fifth round rating:	

Signature of the member of the Commission or the person invited to conduct the interview

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**Annex 6 to the
Procedure for Selection of Candidates for the Position of a Judge**

Judge candidate selection results page

No. p. k.	Applicant's name, surname	Second round evaluation (score)	Evaluation of the third round of selection (number of points)	Evaluation of the fourth round of selection (score)	Evaluation of the fifth round of selection (number of points)	Overall rating of the selection (score)

Chairman of the Commission:

_____ (name, surname, signature)

ESTONIA:

Annex 1

REPORT OF THE SUPERVISING JUDGE

The form of the report of the supervising judge on the suitability of a judge with less than three years' service and the development of procedural management skills has been established on the basis of § 73 (3) of the Courts Act.

The report must be submitted to the president of the court once a quarter.

I GENERAL INFORMATION

1. First name and surname of the judge
2. The courthouse
3. Date of office of judge
4. Period covered by the opinion. Indicate the period since taking office or previous opinion.
5. Supervising Judge

When issuing an opinion, the assessment criteria are compliance with the requirements for judges in § 47 (1) of the Courts Act (moral qualities, abilities and personality traits required

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for judicial work) and the list of criteria for a judge approved by a decision of the Judicial Examination Committee and Judicial Training Council of 25.04.2014.

II JUDICIAL WORK

6. The judge decides (tick one or more).

administrative matters

offenses

civil matters

Specialization

7. Other duties arising from the office of judge during the period of submission of the opinion (eg work as a pre-trial or enforcement judge, management duties, membership in the municipal councils of judges).

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8. Knowledge and skills expected of a person entering the judiciary. Mark with a cross if and for which skills you see the need for further training and / or You see that gaps in the judge's knowledge and skills can become an obstacle to holding the judiciary.

By the decision of the Judicial Examination Committee and the Judicial Training Council of 25.04.2014, the knowledge and skills expected in the Judicial Board were formulated as follows:

	Needs additional training	Deficiency, which can be an obstacle
very good legal knowledge	<input type="checkbox"/>	<input type="checkbox"/>
ability to use legal knowledge	<input type="checkbox"/>	<input type="checkbox"/>
ability to describe circumstances	<input type="checkbox"/>	<input type="checkbox"/>
analytical skills	<input type="checkbox"/>	<input type="checkbox"/>
argumentation skills	<input type="checkbox"/>	<input type="checkbox"/>

“THE PORTRAIT OF A JUDGE” – A MULTI-DIMENSIONAL MODEL OF COMPETENCIES TO BE MEASURED DURING THE PROCEDURES OF SELECTION, EVALUATION AND PROMOTION OF JUDGES

Selgituseks:

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9. Participation in training, including compulsory training of a young judge

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10. Judicial skills. Mark with a cross if and for which skills you see the need for further training. By the decision of 25.04.2014, the Judicial Examination Committee and the Judicial Training Council have formulated the official skills of a judge as follows:

the ability to conduct proceedings and hold hearings

- knowledge of judicial ethics
- ability to draft court decisions
- ability to reconcile and reach an agreement
- communication skills, conflict management skills
- ability to use legal information databases
- knowledge of the principles of public relations
- ability to organize one's work, including time planning
- team management skills
- stress management skills

Conclusions:

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PERSONAL CHARACTERISTICS

11. Personality traits. Tick the box if you think that the judge needs to be more aware of the personality traits below and / or you see that shortcomings in the judge's personality traits can be an obstacle to holding the office of judge.

“THE PORTRAIT OF A JUDGE” – A MULTI-DIMENSIONAL MODEL OF COMPETENCIES TO BE MEASURED DURING THE PROCEDURES OF SELECTION, EVALUATION AND PROMOTION OF JUDGES

By a decision of 25.04.2014, the Judicial Examination Committee and the Judicial Training Council have formulated important personality traits in the Judicial Office, which ensure fair, unselfish and diligent performance of duties, as follows:

	Needs awareness	Deficiency, which can be an obstacle
honesty and trustworthiness	<input type="checkbox"/>	<input type="checkbox"/>
conscientiousness	<input type="checkbox"/>	<input type="checkbox"/>
perseverance and courage to decide	<input type="checkbox"/>	<input type="checkbox"/>
good stress tolerance	<input type="checkbox"/>	<input type="checkbox"/>
emotional stability	<input type="checkbox"/>	<input type="checkbox"/>
empathy	<input type="checkbox"/>	<input type="checkbox"/>
human maturity	<input type="checkbox"/>	<input type="checkbox"/>
curiosity	<input type="checkbox"/>	<input type="checkbox"/>
courtesy and dignity	<input type="checkbox"/>	<input type="checkbox"/>
respect for the rule of law	<input type="checkbox"/>	<input type="checkbox"/>
balance	<input type="checkbox"/>	<input type="checkbox"/>
diligence	<input type="checkbox"/>	<input type="checkbox"/>
independence	<input type="checkbox"/>	<input type="checkbox"/>
interoperability	<input type="checkbox"/>	<input type="checkbox"/>

For explanation:

12. Meeting with colleagues

13. Supervisor's opinion on the suitability of the judge

OK Not suitable

For clarification:

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/allkirjastatud digitaalselt/

Allkiri Aruan