

**First Study Commission of the IAJ
Annual Meeting in Abidjan (28.-31.10.2002)**

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

Report of the Estonian Association of Judges

Introductory remarks:

In Estonia there does not exist such kind of a body (institution) as the Superior Council Judiciary or a body with a similar title at present. But such a body – the Administrative Council of Courts - shall be established in the new Courts' Act, which according to the plan shall be enacted on 01.07.2002. In May of the present year there will be the last hearing of the bill at Parliament (Riigikogu) and no large-scale changes can take place. Therefore the Estonian report concentrates on the activity of the Administrative Council of Courts as it has been envisaged in the present bill of the Courts' Act. The dispatch of the Estonian report delayed till the last moment with a hope that questions can be answered relying on the Act passed by the Parliament. Unfortunately it is not yet possible.

1. Constitution/Composition

1.1 Is there a Superior Council of the Judiciary or an analogous body, or bodies, in your Judicial System? (Please state title)

Administrative Council of Courts.

1.2 Give a brief summary of the role or function of such body or bodies.

The Administrative Council of Courts (hereinafter the Council) shall be established in order to decrease the role of the executive power (the minister and the ministry of justice) in the administration of courts, in order to guarantee the institutional independence of courts. The Council discusses and approves issues of essential importance to courts. These issues are later on formulated as a decision by the minister of justice (the number of judges in a court, the working district, the place and structure of a court, the appointment and the release of a president of a court prior the deadline). The Council renders its standpoint also about the principles of forming and amending courts' annual budgets.

1.3 Who are members of the body? (number, composition and qualifications of the members).

11 members: President of the Supreme Court (also chairman of the Council), 5 judges, 2 members of Parliament, 1 attorney, head public prosecutor of state and the chancellor of justice. The minister of Justice participates in the Council with a right to speech.

1.4 How is the body constituted and what are the procedures for the appointment of members?

Five judges are appointed by the General Assembly of Judges (the general meeting of all the Estonian judges), the attorney is appointed by the Management Board of the Bar. The head

public prosecutor of state and the chancellor of justice may appoint another representative to replace them. The Parliament (the Riigikogu) chooses two representatives to the Council according to their in-house rules.

1.5 Is there a majority of Judges on the body?

Yes, 6 of the 11 members are judges.

1.6 Are any of the members of the body elected by Judges and if so how many? What is the period of office of a member of the body and under what conditions does the term of office come to an end?. May a member be removed from office against his will and if so under what circumstances?

The period of authority of one composition of the Council has been planned to last for 3 years. The General Assembly of Judges chooses five judges (and such as many substitute members) from all court instances. The President of the Supreme Court is a member of the Council by law. The law does not provide the recalling of a member of the Council. The replacement of a member by his/her own wish is not out of question.

1.7 To what extent is there a *de facto* influence on the work of the body by the Executive (Government) or the Legislature, with particular regard to its composition, its judicial functions and non-judicial responsibilities.

As the Council has not yet been founded, it is difficult to predict, which influence it may exert. Theoretically the influence may also find the expression in who are the people to represent the Parliament in the Council and what is the belief of these people.

2. Responsibilities of the Superior Council or the analogous body

(If the Superior Council or the analogous body does not have responsibility in a particular field referred to below, please indicate, by reference to it's name only, the authority, which has responsibility.)

2.1 Is the Supreme Court subordinate to the Superior Council of the judiciary? If yes, describe in what respect.

The Supreme Court is independent.

2.2 In so far as the role of the Superior Council or analogous body involves a sharing of judicial power with non-judicial persons or representatives, does the functioning of the Council/body conflict with a strict separation of powers between the judiciary and other state powers, the Executive and Legislative.

Estonia has not yet developed the practice in this field, but we believe that the Council rather serves as a balancing institution between the three branches of power. In any case it is a big step forward in comparison to the present situation (the courts of first and second instance are administrated by the Ministry of Justice).

2.3 Does the Council/body have responsibility for the nomination or appointment of a judge? If yes, give a brief description.

The Council approves the appointment of a president of a court; it just as well renders its opinion of candidates to the vacant position of a judge of the Supreme Court.

- 2.4 Does the Council/body have responsibility for the promotion of judges? If yes, give a brief description.

See answer to question 2.3.

- 2.5 Does the Council/body have responsibility in the appointment of Presidents of Courts? If yes, give a brief description.

See answer to question 2.3.

- 2.6 Does it have responsibility for organising the training or continuing education of judges? If yes, give a brief description.

No, these issues are in the competence of the specially formed Training Council (the majority of its members are judges).

- 2.7 Does the Council/body have responsibility for the initiation or conduct of a disciplinary procedure against a judge? If yes, give a brief description.

No, it does not have.

- 2.8 Does such Council/body have responsibility in the evaluation of the work of a judge? If yes, give a brief description.

No, it does not have.

- 2.9 Does it have responsibility for the drafting or preparation of the budget of the judiciary? (If yes, describe).

The Council renders its opinion of the principles of forming and amending the budgets of courts that the minister of justice has to take into account when drafting the project of the budget.

- 2.10 Does it have responsibility concerning the allocation of resources (personnel and financial) within the budget approved by Parliament or Government? If yes, give a brief description.

No, it does not have.

- 2.11 Are there any other significant responsibilities of the Council/body not already mentioned? (e.g. the drafting of a judicial code of ethics).

The adoption of the judicial code of ethics for judges is in the competence of the General Assembly of Judges. The competence of the Council has not been exhaustively provided in the law – it has also the competence to discuss other issues on the initiative by the President of the Supreme Court and the Ministry of Justice.

3. **Superior Council and (a) the independence of the judiciary and (b) its advantages and disadvantages**

(Note: In some countries the question whether a Superior Council should be created is the subject of continuing debate. In this respect the experience of judges associations of other countries may be of interest. One of the key issues may be the independence of the judiciary).

3.1 If you have such a body, please list, very briefly the advantages and disadvantages.

3.2 If you do not have such a body:

(a) Is the creation of such a body contemplated?

(b) How do you view the advantages and disadvantages of such a body?

See the introductory remark and the answer to question 2.2.

4. Particularities/Criticisms

4.1 Are there some special features concerning the Superior Council or body in your country which might be of special interest to others from a comparative point of view? If yes, describe.

No, there are not, as we do not have any practice yet.

4.2 Are there particular fundamental problems concerning the role of the Council/body in your country? If yes, describe.

No, there are not, as the practice is missing.

4.3 Are reforms of such a Council/body under discussion or proposed? If yes, describe briefly.

See the introductory remark.

5. Topics

5.1 What topics do you propose for next year's meeting of the Ist Study Commission?

The Judges' Codes of Ethics and the disciplinary procedure.

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