

Estonian answers to the Fourth Study Commission Questionnaire

1. APPOINTMENT TO JUDICIAL OFFICE

A. Please describe the process by which a person is appointed to judicial office in lower courts, intermediate courts and superior courts pointing out any relevant differences between appointment in criminal civil or appellate courts.

The Estonian Courts Act provides for general requirements that should be met in order to become a judge. There are no differences between criminal and civil judges. The Chief Justice of the Supreme Court is appointed to office by the parliament, on the proposal of the president. Justices of the Supreme Court are appointed to office by the parliament, on the proposal of the Chief Justice of the Supreme Court. All other judges are appointed to office by the President on the proposal of the Supreme Court. However, essential decision is made the Supreme Court, not by the president.

A person may be appointed to office of the first instance court if she/he has a legal degree and has passed an examination. A person may be appointed to office of the second instance court if she/he is an experienced and recognized lawyer and has passed an exam or who has been exempted therefrom. In recent years the candidates to the second instance are exempted from exam. A person who is an experienced and recognized lawyer may be appointed a justice of the Supreme Court.

According to the law, there should be a public competition in order to appoint a judge. In practice, vacancies are filled by the decisions of the Supreme Court. The law does not provide any conditions that should be taken into account if there are several candidates. The decisions of the Supreme Court are not motivated and therefore it is not possible to state what criteria are actually taken into account.

B. If applicable, please identify whether political influences of any description bear upon in any way the appointment of a particular person to judicial office.

It is not possible to identify any direct political influences. However, all the justices at the Supreme Court are appointed by the parliament. Further on, all other judges are basically appointed by the Supreme Court. In fact, it is not possible to exclude political influences.

C. Is ethnic or gender diversity in any way relevant to appointment to judicial office, and if so, please describe why and in what respect each may be relevant.

According to the law it is not relevant. However, Estonian Chief Justice has publicly declared on several times that there are too many female judges in Estonia.

D. Describe whether and if so in what way the process of appointment to judicial office is independent of government.

It is independent from the government. The government cannot interfere in the appointment by the law.

2. PROMOTION WITHIN THE JUDICIARY

A. Does scope exist for promotion within the judiciary and if so, please describe how and in what circumstances a magistrate or judge may be promoted.

There are no any promotion rules or criteria. Vacancies at the second and third instance are filled by public competitions, but during recent years judges of first instance courts are usually not successful on these competitions. Candidates from outside are preferred to judges of first instance. It has created some disappointment within judges. All decisions are made by the Supreme Court and they do not contain any motivation.

B. To what extent is political affiliation of political partisanship relevant to promotion within the judiciary.

According to the law, all decisions are essentially made by the Supreme Court and there is no political impact. However, it is not possible to state whether there are or are not any political influence as far as the decisions of Supreme Court are not motivated.

C. Describe the transparency involved in the process of promotion within the judiciary.

There is no transparency. Although competitions are public, it is not possible to predict what kind of candidates are preferred by the Supreme Court. There are no criteria in the law on what kind of candidates should be preferred.

3. WORKLOAD WITHIN THE JUDICIARY

A. In broad terms, what are the requirements for magistrates and judges in relation to the number of sitting days per year or other measurement of judicial workload requirements?

There are no legal or binding requirements or other measurements. However, it is considered as a good rule that litigation of one case at one instance should take no longer than 100 days.

B. If a judge is encountering trouble keeping up with the workload, describe the regime that applies by which –

(i) that judge's workload is allocated to other judges;

This is possible under the decision of the President of the Court.

(ii) the overloaded judge can recover from workload arrears and from any other disabling factor that led to overload.

There are no any other means, except as described above.

(iii) there are other mechanisms to address judicial delinquency.

Failure to manage with workload may result in disciplinary action for the judge.

C. Are judges expected or required to assist other judges who may be adversely affected from overload so as to ensure that the business of the court is discharged in a timely manner.

Yes, they are. When the President of the Court decides that some cases shall be reallocated to other judges, other judges are expected to accept this decision.

4. REMOVAL FROM JUDICIAL OFFICE

A. Does a regime currently exist in your country pursuant to which a sitting judge may be removed from office. If so, please describe any such regime, giving all relevant details including-

(i) who decides that the judge is to be removed from office;

A judge may be released from office due to age (maximum age is 68), due to unsuitability for office – within three years after appointment to office, due to health reasons which hinder work as a judge, upon liquidation of a court or closure of a courthouse or reduction of the number of judges. The judge may also be released if she or he is appointed or elected to a position or office which is not in compliance with the restrictions on services of judges or where facts become evident which pursuant to law preclude the appointment of the person as a judge. These last two options are provided in the law, but they have not occurred in practice.

There are no legal procedural rules regarding release due to health reasons. There are some rules regulating the release within first three years. This decision is taken by the Supreme Court and the judge have no possibilities to appeal it.

As a general rule, judges of courts of first and second instance are released from office by the President of the Republic on the proposal of the Chief Justice of the Supreme Court. The Chief Justice of the Supreme Court may be released from office by the parliament on the proposal of the President.

Also the judge may be removed from office as a result of disciplinary procedure. This decision is taken by disciplinary chamber consisting only of judges chosen by the judges. This decision may be appealed to the Supreme Court.

(ii) does the judge have a right of audience on any such motion or otherwise possess a right to be heard against the removal and is there an appeal process if removed;

This right is only clearly guaranteed in disciplinary cases.

(iii) what are the grounds for seeking the removal of a sitting judge;

Please see the answer above.

(iv) what is the relationship between violation of the ethics code/principles and removal; and (v) describe the transparency in the process.

Any violation of ethics is not a ground for removal or even for disciplinary punishment. Only very serious offences may result with a disciplinary procedure and this procedure is transparent as far it is regulated in the law.

B. If removed from office, describe the adverse consequences that may affect the removed judge including - (a) financial (especially pension) consequences; (b) future employment consequences following removal; (c) societal consequences including loss of title or civic decorations; and (d) disciplinary steps that may be taken against the removed judge

Estonian judges do not have any longer special pensions and therefore the removal has no impact on that. Otherwise a removed judge is not allowed to join Prosecution Office or Bar Association. It is clear that removal has negative effects on future employment possibilities and there are other negative social consequences.