

IAJ/UIM
Study Commission IV — 2022

Judicial Workplace and Judicial Independence

Answers from Finland

What is the impact on judicial independence of the judicial workplace (including nominations and appointments, independence in decision making, governance, assignments, fund and other resources)?

In Finland what is the judicial independence based on

The juridical independence is established in the Constitution of Finland (817/2018).

The Constitution shall promote justice in society.

The Constitution orders the courts: The Supreme Court, the Courts of Appeal and District Courts are the general courts of law. The Supreme Administrative Court and the regional Administrative Courts are general courts of administrative law. Provisions on special courts administering justice in specially defined fields (the Market Court, the Insurance Court, the Labour Court) are laid down by an Act. The Constitution also orders that provisional courts shall not be established. (Sec. 98)

The Constitution guarantees the independence of judges. A judge shall not be suspended from office, except by a judgement of a court of law. A judge shall not be transferred to another office without his or her own consent. Exceptions are only the age of retirement and if a judge loses capability to work as laid down by an Act. More detailed provisions on the other terms of service are laid down by an Act. (Sec. 103).

The independence of the judge has been secured by the right to remain in office. A judge may not lose his or her office in another way than by a court decision.

Nominations and appointments

According to the Constitution (Sec. 102) tenured judges are appointed by the President of the Republic in accordance with the procedure laid down by an Act.

Under the Courts Act (673/2016) Judicial Appointments of Finnish judges are appointed by the President of the Republic on recommendation from the Ministry of Justice, as advised by a Judicial Appointments Board.

The independent Judicial Appointments Board shall prepare for the filling of positions in the judiciary and a reasoned proposal on an appointment to a position in the judiciary. The Board may promote the recruitment of judges from different fields of legal life. The Judicial Appointments Board is composed mainly of members of the judiciary, but three members come from outside the judiciary. One is a practising 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.

The Judicial Appointments Board has no jurisdiction regarding the appointment of Judges to the Supreme Court and the Supreme Administrative Court. President of the Republic is the final decisionmaker also in these matters.

Provisions on the appointment of other judges like non-permanent judges are laid down by the Courts Act.

The Courts Act is essential. It entered into force in 2017. One of the main goals to the Act has been to ensure judicial independence, to ensure independence from other organs of the state. The nomination system of a judge is meant to be transparent.

Independence in decision making

Independence in a judge's decision making means the power to obey only legislation and generally accepted legal principles.

A court cannot be given advice or orders how an individual case should be decided. Independence also means impartiality and objectivity. To protect independence there are procedure rules of disqualification of the judge.

Independence also means that public opinion, the press or other media may not impact a judge's work.

Governance and assignments, fund and other resources

To help the courts, The National Courts Administration has been formed at the beginning of 2020. The Administration is responsible for the central administrative functions of all courts, also the administrative support functions of the Judicial Appointments Board and the Judicial Training Board.

The Administration makes proposals to the Ministry of Justice on appropriations for the operating expenditure of the courts and boards and decides on the allocation of the appropriations to the courts in accordance with the approved budget. The Administration monitors the performance of the courts and conducts studies and assessments concerning it.

The Administration oversees the premises management of the courts. It is responsible for the maintenance and development of the information systems of the courts.

The Administration supports the courts in their communication activities. It represents the court system in national development projects, coordinates projects and takes part in international cooperation. Also, it submits initiatives to the government on legislation in its field of activity.

All courts have their own administration system. The presidents of the courts lead the administration of their courts.

Fund and other resources

The Government of Finland grants the courts the necessary funds.

Court fees and application fees are also charged as compensation for the handling of the case and the measures taken in the courts.

As a rule, the court fee is also charged when a lawsuit, complaint or application is withdrawn. Certain matters are handled free of charge, for example, criminal cases pursued by the official prosecutor in the first instance of court, appeal cases initiated by an individual in the insurance court, which concern the right to a benefit and most social matters handled by Administrative Courts.

For an audio or video recording or other recording, the subscriber is charged the cost of the tape or recording and the delivery cost.

Examples in the judicial workplace that foster judicial independence and identify barriers and practices that impede or negatively impact judicial independence.

To clarify the ordinary daily work many courts have own order of work or rules of procedure.

Judges must notify the court of their affiliations before starting their duties. Information about affiliations is recorded in the Judges' affiliations and side activities register, which was put into use at the beginning of 2017. The register is maintained by the Legal register centre. The register is public.

The Finnish Association of Judges and Association of Supreme Court Justices in 2012 established and accepted own Ethical principles for judges. The document contains general principles for the identification and interpretation of ethical issues as well as guidelines for the deliberation and resolution of these issues.

Right now The Finnish Association of Judges and Association of Supreme Court Justices are forming a new Ethical advisory board.