1st Study Commission

ANSWERS TO THE QUESTIONNAIRE

“How to Promote in Practical Way the Independence of Judges as Protectors of International Human Rights Law”

POLAND

Political independence

1. In your country and legal system, with respect to reducing the influence of politics on the decisions that are made by judges, what guarantees or provisions of law exist to ensure the independence of judges in their decision-making? NOTE: We list several examples and invite you to add any others that may also apply in your own judicial system:

a) Is there security of a judge’s tenure in office? If so, please describe how this is provided – for example, by constitution, by statute, by judicial rules, etc.

Judges are appointed for a lifetime. This rule is provided by the Constitution art. 179 which states that judges are appointed by the President of the State on the request of the National Judicial Council for a non-limited period.

The crucial provision for the position of the judges are described also in the art. 180 and 181 of the Polish Constitution. Art. 180 states that judges are irremovable unless it is based on the judgement of the court and only in the situation described in law.

Separate regulations such as “Regulation on the organisation of the courts” sets the age and conditions for judges retirement.

Art. 181 of the Constitution provides that judge cannot be detained nor may criminal proceedings be initiated against him without the consent of the respective court indicated in law. If judge is caught in a time of committing crime offence, he may be arrested only in case when this action is necessary to provide legal proceeding.

Judges must not be a member of the political parties, trade union or activities which may compromise judicial independence (art. 178 p. 3 Constitution).

b) Is there legislation that prohibits others in the government from interfering in the judicial decision-making process? If so, please describe
Yes, those are written in the Constitution.

Art. 178 p.1 Constitution states that judges are independent in the performance of the judicial function and shall be bound only by the Constitution and law.

Art. 183 p.1 Constitution states that Supreme Court exercises official supervision over the courts in the course of decision – making process. This regulation is also repeated in the art. 7 of the Regulation on the organisation of the courts. Nevertheless in the art. 9 above mentioned Regulation, there is a provision which states that administrative supervision over the courts is provided by the Ministry of Justice. It must be emphasised that in many cases it is really thin border line in between judicial and administrative supervision of the Ministry of Justice where some decision Ministry of Justice might be seen as interfering in the decision - making process i.e president of the court who is appointed by the Ministry of Justice is entitled to pass recommendation about numbers of cases should be judged in a month (due to art. 22 of the Regulation on the organisation of the courts).

c) Is there legislation that prohibits others outside the government from attempting to influence improperly a judge’s decision? If so, please describe

No, there is no such a regulation. Although prohibition from attempting to influence improperly on a judge’s decision is derived from the above mentioned regulations about judicial independence and whoever or whatever body is attempting to make such an influence may be stopped by the art. 178 p. 1 Constitution (see above).

d) Is there a system to provide for the physical security of a judge and the judge’s family that may be invoked by the judge? If so, how is this security provided and who provides it?

There is a security of the court building which is compulsory for the courts and its provided by the security companies which have civil contracts with the president of the respective court due to the Regulation on the security of persons and property (22.08.1997r. Dz. U 2005 no 145 position 1221).

There is no security legislation concerning judge or his relatives.

e) Are there any special provisions to ensure a judge’s independence from improper political influence when the judge is deciding a matter involving alleged human rights violations? If so, please describe.

There is no special provisions to ensure a judge’s independence when the judge is deciding a matter alleged human rights violation. This matter is treated the same way as any other cases and judicial independence is ensure the same way as mentioned above.

f) Please describe any other guarantees or provisions of law that are intended to reduce the influence of politics on a judge’s decision-making?

The Code of Judicial Ethics passed by the National Judicial Council.
Art. 9 “Judge shall not allow any encroachment from any source that could threaten his independence and in case of such a threat, judge is oblige to inform his supervisor”

Art. 10 states that “Judge shall avoid activities which might compromise the trust to his impartiality or independence”

The sanction for violating above rules might be a base to the disciplinary measures against judge.

**APPOINTMENT SYSTEM FOR THE JUDGES/JUSTICES**

2- Are the procedures and criteria for judicial selection clearly defined by law in order to ensure transparency in the selection process? Please describe the procedures and criteria that exist.

Procedures and criteria for judicial selection are very clearly and detailed defined in the Regulation of the organisation of courts (art. 55 and following http://bip.ms.gov.pl/Data/Files/public/bip/organizacja/usp.pdf). Simplify the very complex procedure and criteria, there are detailed criteria for the candidates (i.e polish nationality, university degree, compulsory training and exams, years of practice for other professionals – prosecutors, attorneys, solicitors, notaries, judges assists etc). The vacant post is published in governmental official journal. The assessment of the service of every candidate is prepared by the judges from supervisory department in the respective court. The self-government court bodies such as council and general assembly of the respective court is voting in favour or against each candidate. The results of this voting is not binding for the Judicial Council which make final decision who of the candidates will be presented to the President of the State for nomination. Decision made by the Judicial Council may be challenged by candidates to the Supreme Court which has a month to decided whether or not there were violation of the procedure during the course of nomination. Decision of the Supreme Court is final. Nomination is given by the President of the State on the request of the National Judicial Council.

The procedure is relevant and the same for the candidates on the post as well for the promotion of the judges. Although the specific 5 years length of service is needed in case of promotion for higher post.

3- Is there a separate expert commission or other authority either outside or inside the judiciary which has jurisdiction and competence to participate in judicial selection, including to conduct examinations of prospective judges if such examination are used in the process of judicial selection? If so, please describe

National School of Judges and Prosecutors leads the final exams for judges and prosecutors after 2 years of training. This exam has to be passed by the candidates but the body as such has no influence on the nomination process.

There is no other experts commission having influence on the nomination proceeding except National Judicial Council mentioned above. Art. 179 of the Polish Constitution states that judges are nominated by the President of the states on the proposal of

ADMINISTRATION OF THE JUDICIARY

4a. How are the salaries of judges set?

The specific regulation concerning the salaries of the judges is described in art. 91-91a Regulation on the organisation of the courts.

Art. 91 states that salaries of the judges are based on the average remuneration in the second quarter of the year previous to the respective year which is declared in the President of the National Statistic Office in the government official bulletin. This base is multiplied by the measures stated in the appendix to the Regulation on the organisation of the courts and differs depending on the position of the judge (first instance, appellate court etc), length of service and functions. Basic multiply measure for the first instance judge in the beginning of the service is 2.0 average remuneration declared by the National Statistic Office. There are 5 stages of the remuneration for the first instance judge and following 5 stages for the appellate court judges. Judges during service changes stages every 5 years. Moreover, remuneration differs depend on the length of service from 5% starting from the 6th year of service up to 20% by 1% every year.

Ministry of Justice with the opinion of the National Judicial Council sets the list of the functions holding in the court which will be gratified by the additional remuneration. Regulation passed by the Ministry of Justice sets such functions as president of the court, vice president, head of department and his vice, supervisory judges etc. which are entitled to the additional remuneration, usually of the amount 1-2% of the basic salaries.

Judges are not the part of the social security system but they are obliged to pay healthy insurance contribution.

4b. Are those salaries and any other allowances paid to the judges adequate to satisfy the reasonable living expenses of judges?

Above mentioned system of counting salaries was set in 2009 after massive protest of judges and with the help of the International organisation such as IAJ. Previous system set on the artificial made by the government base was not adequate to the economic situation in Poland. Nowadays binding system is more related to the economic measure but yet it is still far away from the satisfactory level. Specially in a big cities where prices are higher than average and there is lack of adds for judges working in those cities. Yet, the global crisis and the condition of the state finance allowed Ministry of Justice to freeze our remuneration for a year which caused real decrease of the judges salaries. Despite of the fairly adequate system of remuneration we still struggling with the difficulties to obtain relatively fair salaries.

4c. Do the judges’ compensation adequately reflect the dignity and importance of the judges’ position?
Definitely the compensation does not reflect the burden of responsibility and the workload judges must face during performing of service. In the relation to the salaries of other law professions i.e attorneys or notaries, judges are not the best paid profession, specially taking into consideration the importance of the judges position.

5- Is the administrative authority of the chief judges/justices used in a way to influence the adjudication of cases and to affect the content of judicial decision-making? If so, how?

Yes, in many cases. President of the courts passes recommendation concerning the adjudication of cases which, in opinion of the Polish Judges Association “Iustitia” violates the independence of the judiciary and affects case management. For example some Presidents of the courts recommend the number of cases that must be set on the session day, the time of postponing of the cases, the necessity of giving summary what has been done in the case lately. It does not affect the judicial decision as such but definitely affects decision – making process by taking away from judge the independence of managing cases.

6- To address disciplinary matters involving judges who are accused of violating judicial conduct rules, is there a judicial council or some other body that has the power to:

6a- Receive complaints and conduct disciplinary investigations? If so, please describe.

Disciplinary proceedings against judges who blatantly and obviously violated law rules or misconduct are set in art. 107 and following Regulation on the organisation of the courts. Art. 110 above mentioned act regulates that disciplinary measures are taken by disciplinary courts (as a first instance court) and the Supreme Court (as the second instance court). Each Court of Appeal (there are 11 Courts of Appeal) has a judge who is charged as a disciplinary spokesman. His role is to bring an action on front of the disciplinary court and he is established and elected by the National Judicial Council for 4 years. Judges in the disciplinary court of I instance are elected randomly out of the judges of the respective court of appeal (one judge must be of criminal cases experience – art. 111 Regulation).

6b - Hear evidence, make decision based on the evidence, and, if it finds a violation of judicial conduct rules, impose disciplinary measures? If so, please describe.

As indicated above, disciplinary courts make decision and lead disciplinary proceedings. Disciplinary measures are listed in the art. 109 Regulation on the organisation of the courts and there are following measures:

1. warning,
2. reprimand,
3. remove from the function,
4. transfer to another court,
5. termination of judicial office.
Decision of the first instance court might be appealed to the Supreme Court which decision is final. Accused judge can have professional defender, who can also be a judge.

6 c- Hear appeals from the decisions that have found disciplinary violations and imposed disciplinary measures? If so, please describe.

Supreme Courts hears appeals (art. 121 Regulation). Appeals may be submitted by the accused judge, national Judicial Council, Ministry of Justice or disciplinary spokesman. Supreme Court hears appeals in 3 judges panel. Decision is final.

6 d- Does the person who has made a complaint about a judge’s conduct have an opportunity to participate in whatever process is available for reviewing that conduct? If so, what is the extent of that participation?

Disciplinary proceedings is public unless the court decides opposite (in case of morality, state security, public order or serious private matters) – art. 116 Regulation. Nevertheless the person who made complain about judge’s conduct is not the party of the proceedings so cannot make any action. Decision is always declare in public.

INTERNATIONAL HUMAN RIGHTS ISSUES

7- What is the source of the law, if any, that a judge takes into consideration when deciding whether and how to enforce international human rights law? For example: the constitution, treaties, laws of the country?

Article 87-88 of the Constitution states that the sources of binding law in Poland are Constitution, regulations as well as ratified treaties which must be published in the same way that other sources of law. Art. 91 of the Constitution provides that ratified treaties being published are part of the legal order and are applied directly. The ratified treaty has the supremacy over the state law if that is agreed in the state regulation.

There is no difference whether the claim concerning violation of national law or international (human rights) law or treaties.

8- Do there exist procedures by which your courts may hear cases involving alleged violations of international human rights law when those alleged violations are separate from and independent of the laws of your country law? If yes, please describe these procedures.

No, the procedure is the same.

9- If the answer to Question 8 is “No,” are there any types of cases in which a judge may consider and apply principles of international human rights law when making a decision, or is the judge limited to applying fundamental principles of international human rights law in making a decision only if such principles are embodied in the laws of the country?
There is no limitation to applying fundamental principles of international human rights law during making decision by the court. There is supremacy of the Convention of Human Rights over the polish state law. The human right law is directly applicable and binding law.

10- Are there any persons or groups of people who work for the government in your country who have judicial immunity for their illegal actions?

Yes. Deputies of the national Assembly. Art. 105 Constitution provides that deputy of the National Assembly shall not be criminally liable for any activities connecting with his deputies activity. For this activity he is liable only in front of the National Assembly. No criminal proceedings may be initiated against deputy without the permission of the National Assembly, except where such deputy has been apprehended committing a criminal offence.

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