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.

There is no legislation in Japan that specifies the tenure of Justices of the Supreme Court, except that the appointment of these Justices shall be reviewed by the people at the first general election of members of the House of Representatives following their appointment and at the subsequent general elections to be held every ten years (Article 79, paragraphs (2) through (4) of the Constitution).

Judges of lower courts shall hold office for a term of ten years and may be reappointed (Article 80, paragraph (1) of the Constitution).

All Justices and judges shall retire upon their attainment of the mandatory retirement age, namely, 70 years of age in the case of Justices of the Supreme Court and judges of summary courts, and 65 years of age in the case of judges of other courts (Article 79, paragraph (5) and Article 80, paragraph (1) of the Constitution; Article 50 of the Court Act).

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

The Constitution provides for the independence of Justices and judges in the exercise of their power, stipulating, “All judges shall be independent in the exercise of their conscience and shall be bound only by this Constitution and the laws” (Article 76, paragraph (3)). The purpose of this provision is to eliminate any undue interference with or pressure on judges and to guarantee that they will exercise their power independently, so as to maintain fairness in judicial decisions.

To reinforce this, there is legislation that guarantees the status of judges. Specifically, the Constitution contains the following provisions. Judges shall not be removed except by public impeachment unless judicially declared mentally or physically incompetent to perform official duties, and no disciplinary action against judges shall be administered by any executive organ or agency (Article 78). All
judges shall receive, at regular stated intervals, adequate compensation which shall not be decreased during their terms of office (Article 79, paragraph (6) and Article 80, paragraph (2)). Furthermore, Article 48 of the Court Act provides as follows: “A judge shall not be removed or be transferred, or be suspended from performing his/her job, or have his/her salary reduced, against his/her will, except in accordance with the provisions of law concerning public impeachment or national referendum or where the judge is declared mentally or physically incompetent to perform his/her duties in accordance with provisions of applicable law.”

The Constitution further stipulates that the whole judicial power is vested in courts (Article 76, paragraph (1)), and prohibits any executive body from making a final judicial decision (Article 76, paragraph (2)), while vesting the Supreme Court with the rule-making power (Article 77), thereby enabling courts to administer their personnel affairs, budgets and other matters at their own discretion. Thus, judiciary independence in Japan is guaranteed by the Constitution and other statutes.

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

As mentioned in b) 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?

To the knowledge of Association of Japanese Judges (AJJ), there is no legislation that protects the physical security of a judge or a judge’s family.

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.

As mentioned in b) 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?
As mentioned in b) above.

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.

(Qualification to be appointed as judges)

Justices of the Supreme Court shall be appointed from among learned persons with extensive knowledge of law, who are not less than 40 years old. At least ten of the 15 Justices of the Supreme Court must be persons who have held the position of President of High Court or the position of judge for not less than ten years, or who have held the position of judge, public prosecutor, attorney, university professor or associate professor of law for at least 20 years in total (Article 41 of the Court Act).

Presidents of high courts and judges shall be appointed from among persons who have held the position of assistant judge, public prosecutor, attorney, etc. for at least ten years (Article 42 of the Court Act).

Assistant judges shall be appointed from among persons who have completed the training as legal apprentices (Article 43 of the Court Act).

Judges of summary courts shall be appointed from among persons who have held the position of President of High Court or judge or who have held the position of assistant judge, public prosecutor, attorney, etc. for at least three years (Article 44 of the Court Act). In addition, persons who have been engaged in judicial affairs for many years and therefore possess the knowledge and experience necessary for performing the duties of a summary court judge may be appointed as summary court judges through the selection process by the Selection Committee of Summary Court Judges even if they do not meet the requirements prescribed in Article 44 of the Court Act (Article 45 of the Court Act).

(Procedures and Criteria for Appointment)

Judges of lower courts shall be appointed by the Cabinet from a list of persons nominated by the Supreme Court (Article 80, paragraph (1) of the Constitution; Article 40, paragraph (1) of the Court Act). The nomination of lower court judges, except for summary court judges, is done in consultation with the Advisory Committee for the Nomination of Lower Court Judges and is determined in consideration of the committee’s opinions (Article 3 of the Rules of the Advisory Committee for the Nomination of Lower Court Judges). The Advisory Committee
for the Nomination of Lower Court Judges has been established as a body to state opinions from an national perspective and multilateral viewpoint, so as to enhance the transparency of the judge nomination process and have public views reflected in such process. The committee is composed of the three categories of legal professionals (judges, public prosecutors, and attorneys) and persons with relevant knowledge and experience. Its duty is to examine the appropriateness of the nomination of prospective lower court judges when consulted by the Supreme Court and to report the results of such examination (Article 2 of the Rules of the Advisory Committee for the Nomination of Lower Court Judges).

There is no statute that clearly defines the criteria for appointment of judges. Article 46 of the Court Act (Grounds for Incompetence for Appointment) provides that the following types of persons may not be appointed as judges:
(i) a person who is incompetent to be appointed as an ordinary government official;
(ii) a person who has been punished with imprisonment without work or a heavier penalty; and
(iii) a person whose removal from office has been decreed by an impeachment court.

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. As mentioned in 2 above, the Supreme Court has in place the Advisory Committee for the Nomination of Lower Court Judges (Article 1 of the Rules of the Advisory Committee for the Nomination of Lower Court Judges).

As mentioned in 2 above, the Advisory Committee for the Nomination of Lower Court Judges is set up at the Supreme Court (Article 1 of the Rules of the Advisory Committee for the Nomination of Lower Court Judges).

ADMINISTRATION OF THE JUDICIARY

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a) How are the salaries of judges set?

The monthly salaries of judges are prescribed by the Act on Remuneration, etc. of Judges. The monthly salary be applied to each judge shall be determined by the
b) Are those salaries and any other allowances paid to the judges adequate to satisfy the reasonable living expenses of judges?

Yes.

c) Do the judges’ compensation adequately reflect the dignity and importance of the judges’ position?

Yes.

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?

As mentioned in 1b) above, Article 76, paragraph (3) of the Constitution provides for the independence of judges in the exercise of their power. This provision is intended to eliminate any interference with judges not only by the legislative or executive body but by upper courts, so as to maintain fairness in judicial decisions, and what is more, it requires the independence of judges in handling cases assigned thereto. Following this constitutional rule, Article 81 of the Court Act provides that the power of supervision over judicial administration shall not affect or restrict the power of judicial decision of judges. Thus, the judicial administrative authority can have no influence on the adjudication of cases or the content of judicial decision-making.

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:

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

Any person who finds grounds to remove a judge through public impeachment may request that the Judge Indictment Committee, which is composed of members of both Houses of the Diet, institute proceedings for removal (Article 15 of the Judge Impeachment Act). Upon such request, the
committee must investigate the alleged grounds for removal (Article 11 of the Judge Impeachment Act).

Other disciplinary actions against judges are taken as necessary by the courts that have the power to supervise them, in accordance with the rule that court proceedings of a case involving the status of a judge shall be instituted upon the petition of the court that has the power to supervise the judge concerned (Article 6 of the Judges Status Act).

b) 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.

The removal of a judge shall be conducted by an impeachment court composed of members of both Houses of the Diet (Article 78 and Article 64, paragraph (1) of the Constitution).

Other disciplinary measures shall be implemented by high courts or the Supreme Court (Article 3 of the Judges Status Act).

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

There is no procedure available to file an appeal against a decision of removal rendered by an impeachment court.

With regard to a decision on the status of a judge rendered by a high court, an appeal may be filed with the Supreme Court (Article 8 of the Judges Status Act).

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?

There is no opportunity for such complainant to participate in the review process.

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 98, paragraph (2) of the Constitution provides that “The treaties concluded by Japan and established laws of nations shall be faithfully observed.” Accordingly, such treaties concluded and promulgated and laws of nations are effective in Japan as national laws.

In the course of dealing with cases, Japanese judges supposedly take into consideration the existence or nonexistence and the content of human rights treaties concluded by Japan as well as the existence or nonexistence and the content of human rights national laws, in accordance with the abovementioned constitutional provisions.

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.

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?

In general terms, it is possible for Japanese judges to take into consideration the purposes of international human rights treaties when interpreting and applying the respective provisions of the Constitution, treaties, and national laws, as long as they consider that they can be justified to do so. There is no such provision in Japanese laws and regulations that particularly restricts judges from taking into consideration the purposes of international human rights treaties when making a decision.

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?

Article 51 of the Constitution provides that “Members of both Houses shall
not be held liable outside the House for speeches, debates or votes cast inside the House.”